

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

**Schedule TO/A**

**(Rule 14d-100)  
Tender Offer Statement under Section 14(d)(1)  
of the Securities Exchange Act of 1934  
(Amendment No. 14)**

**RINKER GROUP LIMITED  
ABN 53 003 433 118**

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(Name of Subject Company (issuer))

**CEMEX Australia Pty Ltd  
ACN 122 401 405**

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

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(Names of Filing Persons (offerors))

**Ordinary shares**

**American Depositary Shares (each representing five ordinary shares)**

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(Titles of Classes of Securities)

**Ordinary Shares, ISIN AU000000RIN3**

**American Depositary Shares, CUSIP 76687M101, ISIN US76687M1018**

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(CUSIP and ISIN Numbers of Classes of Securities)

**Mr. Ramiro G. Villarreal Morales  
General Counsel  
Av. Ricardo Margain Zozaya #325,  
Colonia Valle del Campestre,  
Garza Garcia, Nuevo Leon, Mexico 66265**

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(Name, address and telephone number of  
person authorized to receive notices and communications on behalf of filing persons)

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**Copy to:**  
**Richard Hall**  
**Cravath, Swaine & Moore LLP**  
**Worldwide Plaza**  
**825 Eighth Avenue**  
**New York, NY 10019**  
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**CALCULATION OF FILING FEE**

<b>Transaction Valuation<sup>(1)</sup></b>	<b>Amount of Filing Fee<sup>(2)</sup></b>
\$3,262,941,077	\$100,172

<sup>(1)</sup> Estimated solely for the purpose of calculating the filing fee in accordance with Rule 0-11(d) under the Securities Exchange Act of 1934 (the "Exchange Act"), the transaction valuation is calculated by multiplying (i) 895,059,958 ordinary shares, which is the maximum number of ordinary shares of Rinker Group Limited, including 22,479,805 ordinary shares represented by 4,495,961 ADSs (according to documents filed by Rinker with the Australian Stock Exchange), subject to the Offer, by (ii) 23%, which is the percentage of US Holders of Rinker Securities (according to Rinker's annual report on Form 20-F filed on May 23, 2006), and by (iii) the purchase price of \$15.85 in cash for each ordinary share and \$79.25 for each ADS. Terms used and not defined in the preceding sentence are defined below.

<sup>(2)</sup> The amount of the filing fee, calculated in accordance with Rule 0-11 under the Securities Exchange Act of 1934, as amended, as modified by Fee Advisory No. 6 for the fiscal year 2007, equals \$30.70 per \$1,000,000 of transaction valuation. \$286,357 was paid on November 14, 2006, in accordance with Fee Advisory No. 3 for Fiscal Year 2007.

Check box if any part of the fee is offset as provided by Rule 0-11(a)(2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

Amount Previously Paid: \$286,357

Form or Registration No.: Schedule TO

Filing Party: CEMEX Australia Pty Ltd, ACN 122 401 405,  
CEMEX, S.A.B. de C.V.

Date Filed: November 14, 2006

Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.

Check the appropriate boxes below to designate any transactions to which the statement relates:

- third-party tender offer subject to Rule 14d-1.
- issuer tender offer subject to Rule 13e-4.
- going-private transaction subject to Rule 13e-3
- amendment to Schedule 13D under Rule 13d-2

This Amendment No. 14 amends and supplements the Tender Offer Statement on Schedule TO filed with the Securities and Exchange Commission on November 14, 2006 (the "Schedule TO") and amended thereafter. The Schedule TO, as amended, relates to the offer by CEMEX Australia Pty Ltd ("Bidder"), a proprietary company registered under the laws of Victoria, Australia and an indirect wholly-owned subsidiary of CEMEX, S.A.B. de C.V. ("CEMEX"), to acquire all the outstanding ordinary shares and American depository shares of Rinker Group Limited, a public company registered under the laws of New South Wales, Australia ("Rinker"), upon the terms and subject to the conditions of the offer (the "Offer") (including, if the Offer is extended or amended, the terms and conditions of any such extension or amendment), as described in the Bidder's Statement, dated October 30, 2006 (as amended by three Supplementary Bidder's Statements, the "Bidder's Statement"). Except as specifically provided herein, this Amendment does not modify any of the information previously reported on the Schedule TO, as amended. Capitalized terms used herein that are not otherwise defined have the meanings given to them in the Bidder's Statement.

#### **Item 4. Terms of the Transaction.**

On April 10, 2007, Bidder announced that it had reached an agreement with Rinker (see Item 5 below) pursuant to which Bidder will increase its offer price to acquire all the outstanding ordinary shares and American depository shares of Rinker from US\$13 per ordinary share and US\$65 per ADS in cash to US\$15.85 per ordinary share and US\$79.25 per ADS in cash, and waive all defeating conditions, with the exception of the defeating condition entitled "Minimum Acceptance", as described in Section 8.6(a) of the Bidder's Statement.

The Offer Period will be extended until 5:00 AM (New York Time) / 7:00 PM (Sydney Time) on May 18, 2007.

#### **Item 5. Past Contacts, Transactions, Negotiations and Agreements**

Following discussions between representatives of CEMEX and Rinker, the parties entered into a Non Disclosure Agreement dated April 5, 2007. In the evening (New York Time) on April 9, 2007, following further negotiations, the parties executed the Bid Agreement by and among CEMEX, Bidder, and Rinker (the "Bid Agreement"), which sets forth, among other things, the terms and conditions upon which Bidder will amend the Offer.

The following is a summary of the Bid Agreement and the Non Disclosure Agreement. It does not purport to be complete and is subject to, and is qualified in its entirety by reference to, all the provisions of the Bid Agreement and the Non Disclosure Agreement. CEMEX intends to provide additional information relating to the Bid Agreement and the revised Offer in a Supplementary Bidder's Statement, which is expected to be issued shortly. The Bid Agreement is attached hereto as Exhibit (a)(1)(O). The Non Disclosure Agreement is attached hereto as Exhibit (a)(1)(P).

## **Bid Agreement**

### *The Offer and Support for the Offer.*

Bidder agreed to increase the offer price from US\$13.00 per ordinary share and US\$65 per ADS to US\$15.85 per ordinary share and US\$79.25 per ADS in cash and to allow the Rinker shareholders to retain the dividend of A\$0.16 per ordinary share (which had a record date of November 24, 2006) that was previously paid to Rinker shareholders, without a reduction in the consideration payable to the Rinker Shareholders under the Offer. In addition, Bidder agreed to waive all of the defeating conditions with the exception of the defeating condition entitled "Minimum Acceptance", as described in Section 8.6(a) of the Bidder's Statement.

Bidder agreed to lodge with the Australian Securities and Investments Commission ("ASIC") and Rinker the required notice under section 650D of the Corporations Act and lodge with the Australian Securities Exchange ("ASX") the required notice under section 650F of the Corporations Act as soon as practicable. The notice under section 650D will be sent to Rinker Shareholders no later than the time at which the supplementary Bidder's Statement is sent to Rinker Shareholders, which is 5 business days after the variation of the Offer.

Bidder also agreed to (a) promptly apply to ASIC for any modifications required to give Rinker Shareholders who accept the Offer the option (in addition to the existing options available under the Offer) to receive an Australian Dollar price of A\$19.50, for the first 2,000 ordinary shares of Rinker held by each Rinker Shareholder or a nominee on behalf of such Rinker Shareholder based on the Rinker share register on April 12, 2007, (b) take all actions necessary to validly make such variation of the Offer, as soon as practicable after the receipt of the required modifications from ASIC, and (c) make a public announcement of such variation.

The directors of Rinker agreed to release to ASX a public announcement, immediately following Bidder's announcement required by the Bid Agreement, stating that the Rinker board unanimously intends to recommend the Offer at the higher price, in the absence of a superior proposal, and that each Rinker director intends to accept the Offer with respect to his Rinker shares, in the absence of a superior proposal. The directors of Rinker agreed that within 5 business days after Bidder varies the Offer and files an amended Schedule TO and Supplementary Bidder's Statement, as required by the Bid Agreement, the Rinker directors will, in the absence of a superior proposal, issue a supplementary target's statement containing (a) a unanimous recommendation by the Rinker directors to the Rinker Shareholders to accept the Offer at the higher price (as modified in accordance with the Bid Agreement) and (b) a statement that each director intends to accept the Offer at the higher price with respect to his Rinker shares.

### *Other Rinker Obligations.*

Rinker agreed that until the end of the Offer Period, Rinker will not and will ensure that its representatives do not, without the prior written consent of Bidder, (a) directly or indirectly solicit, initiate or invite discussions or proposals with respect to a Competing Proposal, as defined in the Bid Agreement or (b) negotiate or enter into, continue or participate in any discussions or negotiations with any third party with respect to a Competing Proposal. The obligations in clause (b) do not apply to the extent that they restrict Rinker or the Rinker board from taking or refusing to take any action provided that the Rinker directors have determined, in good faith after having consulted with their external legal and financial advisers, that failing to take, or failing to refuse to take, such action would or would be likely to constitute a breach of the Rinker directors' fiduciary or statutory obligations.

Rinker also agreed that if a Competing Proposal is announced or is received by Rinker which the Rinker directors consider superior to the Offer and the Rinker directors intend to change or withdraw their recommendation with respect to the Offer, Rinker will notify Bidder of the material terms of, but not the identity of the party making, the Competing Proposal (if it has not been publicly announced).

Rinker and its affiliates agreed not to convert any or all of its shares into a larger or smaller number of shares or resolve to reduce its share capital in any way, or issue or agree to issue shares or convertible notes or grant or agree to grant an option over its shares. Further, Rinker and its affiliates will conduct business in the usual and ordinary course and will not (a) subject to a lien, or agree to subject to a lien, the whole or a substantial part of its business or property, (b) make any material acquisitions or disposals or undertake any new commitments which would have breached the condition set out in clause 8.6(h) of the Bidder's Statement had it not been waived by Bidder, or (c) pay a dividend, other than annual and half yearly dividends consistent with past practice or undertake a buy-back, capital return or other payment to shareholders without the consent of Bidder.

Rinker agreed to use all reasonable efforts to facilitate the Offer and the acceptance of the Offer by the Rinker Shareholders, subject to Bidder complying with its obligations and in the absence of a superior proposal.

If Bidder receives acceptances under the Offer of more than 50% of Rinker's issued shares, Rinker agreed to allow not more than 3 representatives, approved by Rinker acting reasonably, to have access to information of Rinker solely for the purpose of investigating whether assets of Rinker that are the subject of the DOJ Settlement can be sold as self sustaining entities. Before Rinker must allow Bidder's representatives access to any information, Bidder, CEMEX and each of the 3 representatives referred to above must enter into such confidentiality undertakings as may be reasonably required by Rinker and must comply with such other reasonable requirements as Rinker may direct in relation to such access.

#### *DOJ Settlement.*

Rinker agreed that at the direction of Bidder, but subject to Bidder complying with its obligations under the Bid Agreement and only following Bidder's acquisition of a relevant interest in Rinker of not less than 90% and commencement of the compulsory acquisition process under the Corporations Act, Rinker will sign and become a party to an amended Hold Separate Stipulation and Order containing the same provisions as those contained in the Hold Separate, as defined in Item 11 below.

In addition, subject to Bidder complying with its obligations under the Bid Agreement, Rinker agreed, if requested by CEMEX, to discuss with the Department of Justice ("DOJ") an amended Hold Separate Stipulation and Order and, if such an amended Hold Separate Stipulation and Order is mutually agreed among CEMEX, Rinker and the DOJ, Rinker agreed to enter into such an amended Hold Separate Stipulation and Order. The Bid Agreement provides that nothing in such an amended Hold Separate Stipulation and Order shall commit or require Rinker to make any divestiture (the fact and terms of any such divestiture of assets of Rinker shall require the approval of Rinker's board (as reconstituted) after the occurrence of a Divestiture Trigger, as defined in the Bid Agreement) or require the Rinker board to take or agree to take any action, or refrain from taking any action, that would or would be likely to be inconsistent with its fiduciary or statutory duties under Australian law.

CEMEX agreed to indemnify Rinker and each of its directors, pursuant to the terms outlined in the Bid Agreement, from any claim, action, damage, loss, liability, cost, expense or payment of whatever nature and however arising which Rinker or any of its directors suffers, incurs or is liable for in connection with Rinker's entry into and performance of its obligations under any amended Hold Separate Stipulation and Order which it enters into under any provision of the Bid Agreement.

#### *Representations and Warranties*

Each party represented to the other party that (a) its execution and delivery of the Bid Agreement was properly authorized by all necessary corporate actions, and (b) that it had full corporate power and lawful authority to execute, deliver and perform its obligations under this agreement.

#### *Termination*

The Bid Agreement will terminate upon the earliest of the close, lapse or withdrawal of the Offer or four months from the date of the Bid Agreement.

#### **Non Disclosure Agreement**

CEMEX and Rinker entered into a Non Disclosure Agreement, dated as of April 5, 2007, pursuant to which Rinker has made available and may continue to make available confidential information to CEMEX to facilitate CEMEX's due diligence with respect to Rinker for the purpose of Bidder's consideration of varying the Offer.

**Item 7. Source and Amount of Funds or Other Consideration.**

In addition to the facilities described under Section 4 of the Bidder's Statement, Bidder may use the facility described below to finance the acquisition.

On September 24, 2004, Cemex Espana, S.A., the original borrower, the original guarantors, as defined therein, Banco Bilbao Vizcaya Argentaria S.A., Banco Santander Central Hispano, S.A., Calyon Corporate and Investment Bank and Citigroup Global Markets Limited, collectively, the arranger, the Original Lenders, as defined therein, and Citibank International PLC, the agent, entered into a US\$3,800,000,000 Revolving Facilities Agreement (as amended on November 8, 2004 and February 25, 2005, and amended and restated on July 4, 2005 effective as of July 7, 2005, the "Facilities Agreement"). The amended and restated Facilities Agreement is attached as Exhibit (b)(1)(M).

On June 21, 2005, Cemex España cancelled Facility 1 of the Facilities Agreement, which decreased the amount of the facilities under the Facilities Agreement to US\$2,300,000,000. On June 30, 2006, the parties entered into an amendment of the Facilities Agreement, which, among other things, decreased the amount of the facilities under the Facilities Agreement to US\$2,100,000,000, such amendment is attached as Exhibit (b)(1)(N).

Effective October 30, 2006 the guarantors of the Facilities Agreement were removed pursuant a Guarantor Removal Certificate dated October 17, 2006.

**Item 11. Additional Information.**

On April 4, 2007, in connection with the Proposed Final Judgment, representatives of CEMEX and the Antitrust Division of the DOJ entered into a Hold Separate Stipulation and Order (the "Hold Separate"). Pursuant to the Hold Separate, CEMEX agreed, among other things, to abide by and comply with the provisions of a proposed Final Judgment (the "Proposed Final Judgment"). The Proposed Final Judgment provides, among other things, that CEMEX will divest certain CEMEX and Rinker assets in the event that CEMEX either acquires more than 50 percent of the outstanding Rinker shares or elects a majority of the Rinker board of directors.

On April 6, 2007, the Federal Trade Commission granted early termination of the waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, thereby satisfying the Defeating Condition, entitled "Antitrust approvals - United States", as described in Section 8.6(d) of the Bidder's Statement.

**Item 12. Exhibits.**

<b>Exhibit</b>	<b>Description</b>
<b>(a)(1)(O)</b>	The Bid Agreement.
<b>(a)(1)(P)</b>	Non Disclosure Agreement between CEMEX and Rinker, dated April 5, 2007.
<b>(a)(5)(C)</b>	Press Release of CEMEX relating to the increased offer price and variation of the offer, dated April 9, 2007.
<b>(b)(1)(M)</b>	Amended and Restated Revolving Facilities Agreement, dated July 4, 2005 effective as of July 7, 2005.
<b>(b)(1)(N)</b>	Amendment dated June 30, 2006 to the Amended and Restated Revolving Facilities Agreement, effective as of July 7, 2005.

**SIGNATURES**

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

Dated: April 10, 2007

CEMEX Australia Pty Ltd

By: /s/ Ramiro G. Villarreal Morales  
Name: Mr. Ramiro G. Villarreal Morales  
Title: Director

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

By: /s/ Ramiro G. Villarreal Morales  
Name: Mr. Ramiro G. Villarreal Morales  
Title: General Counsel

**Exhibit Index.**

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# Bid Agreement

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**Cemex Australia Pty Ltd**

**Cemex,S.A.B. de C.V**

**Rinker Group Limited**

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# Bid Agreement

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Date ► \_\_ April 2007

Among the parties	<b>Cemex Australia Pty Ltd</b> ACN 122 401 405 of Level 4 126 Phillip St Sydney NSW ( <b>Bidder</b> ); <b>Cemex, S.A.B. de C.V.</b> of Av. Ricardo Margain Zozaya 325, C.P. 66265 San Pedro Garza Garcia, N.L. Mexico ( <b>Cemex</b> ) <b>Rinker Group Limited</b> ABN 53 003 433 118 of Level 8, Tower B, 799 Pacific Hwy Chatswood NSW ( <b>Target</b> ).
Background	(a) The Bidder has agreed to vary the terms of the Takeover Offer: <ul style="list-style-type: none"><li>(i) by increasing the consideration payable to the Target Shareholders under the Takeover Offer to the Higher Price;</li><li>(ii) to allow the Target Shareholders to retain the Interim Dividend without any reduction in the consideration payable to the Target Shareholders under the Takeover Offer; and</li><li>(iii) by freeing the Takeover Offer from all of the defeating conditions other than the 90% Condition.</li></ul> (b) The directors of the Target have agreed to recommend to the Target Shareholders acceptance of the Offer at the Higher Price, in the absence of a superior proposal.
The parties agree	as set out in the Operative part of this agreement, in consideration of, among other things, the mutual promises contained in this agreement.

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# 1 Definitions and interpretation

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## 1.1 Definitions

The meanings of the terms used in this document are set out below.

Term	Meaning
<b>90% Condition</b>	the condition in clause 8.6(a) of the Bidder's Statement.
<b>ASIC</b>	Australian Securities and Investments Commission.
<b>ASX</b>	Australian Securities Exchange Limited.
<b>Australian Dollar Price</b>	AUD 19.50
<b>Bidder's Statement</b>	the Bidder's Statement of the Bidder dated 30 October 2006 (as previously supplemented by the First Supplementary Bidder's Statement dated 8 December 2006, the Second Supplementary Bidder's Statement dated 23 January 2007 and the Third Supplementary Bidder's Statement dated 22 March 2007), which shall be modified pursuant to a supplementary Bidder's Statement in accordance with the terms and conditions set forth herein.
<b>Business Day</b>	a business day as defined in the ASX listing rules.
<b>Competing Proposal</b>	<p>any expression of interest, proposal or offer in relation to a bid, scheme, joint venture, dual listed company structure, purchase of a main undertaking, asset purchase, share issue or other similar reorganisation or transaction pursuant to which, if the transaction or arrangement is entered into or completed, either (a) the Target will issue more than 20% of the Target's voting shares as consideration for the shares or assets of a third party or (b) a third party will:</p> <ol style="list-style-type: none"><li>1 acquire (whether directly or indirectly) or become the holder of, or otherwise acquire, have a right to acquire or have an economic interest in all or a significant proportion of the business of the Target Group;</li><li>2 acquire (whether directly or indirectly) a relevant interest in, become the holder of, or otherwise acquire, have a right to acquire or have an economic interest in more than 20% of the Target's voting shares;</li><li>3 acquire control (as determined in accordance with section 50AA of the Corporations Act) of the Target; or</li><li>4 otherwise acquire or merge with the Target (including by way of a scheme of arrangement, reverse takeover bid or dual listed companies structure).</li></ol>
<b>Corporations Act</b>	the <i>Corporations Act 2001</i> (Cth).

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<b>Term</b>	<b>Meaning</b>
<b>Divestiture Trigger</b>	the day on which Bidder elects a majority of the board of directors of Target or 45 days after Bidder obtains legal ownership of a number of Target shares in excess of 50% of the issued shares in Target, whichever is sooner.
<b>DoJ</b>	U.S. Department of Justice
<b>DOJ Settlement</b>	the settlement between Cemex and the U.S. Department of Justice relating to the Takeover Offer as set forth in the Final Judgment of the U.S. District Court for the District of Columbia dated as of April 4, 2007 and the Hold Separate Stipulation and Order between Cemex and the U.S. Department of Justice dated as of April 4, 2007.
<b>Government Agency</b>	any government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity, or any minister of the Crown in right of the Commonwealth of Australia or any state.
<b>Higher Price</b>	US\$15.85 for each ordinary share in the Target.
<b>Interim Dividend</b>	the dividend of A\$0.16 per ordinary share (which had a record date of 24 November 2006) previously paid by the Target to its shareholders.
<b>Offer</b>	the offer set out in the Bidder's Statement by Bidder to acquire all shares in the Target at the Higher Price.
<b>Related Body Corporate</b>	the meaning given in the Corporations Act.
<b>Representative</b>	in relation to a party: <ol style="list-style-type: none"> <li>1 a Related Body Corporate of the party; or</li> <li>2 an Officer of the party or any of the party's Related Bodies Corporate; or</li> <li>3 an adviser to the party or any of the party's Related Bodies Corporate.</li> </ol>
<b>Restriction Period</b>	the period commencing on the date of this agreement and ending on the date that the Takeover Offer closes or lapses.
<b>SEC</b>	U.S. Securities and Exchange Commission
<b>Takeover Offer</b>	the Bidder's off market bid for all of the Target's ordinary shares pursuant to the Bidder's Statement (which shall be varied to reflect the Higher Price and other modified terms and conditions in accordance with this agreement).
<b>Target Group</b>	the Target and each of its subsidiaries.
<b>Target Shareholders</b>	the shareholders of the Target.

## **1.2 Interpretation**

In this agreement, headings are for convenience only and do not affect interpretation and, unless the context requires otherwise:

- (a) words importing the singular include the plural and vice versa;
- (b) other parts of speech and grammatical forms of a word or phrase defined in this agreement have a corresponding meaning;
- (c) a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture, a partnership, a trust and any Government Agency;
- (d) a reference to a clause, party, attachment, exhibit or schedule is a reference to a clause of, and a party, attachment, exhibit and schedule to this agreement, and a reference to this agreement includes any attachment, exhibit and schedule;
- (e) a reference to a statute, regulation, proclamation, ordinance or by law includes all statutes, regulations, proclamations, ordinances or by laws amending, consolidating or replacing it, whether passed by the same or another Government Agency with legal power to do so, and a reference to a statute includes all regulations, proclamations, ordinances and by laws issued under that statute;
- (f) a reference to any document (including this agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (g) the word “includes” in any form is not a word of limitation;
- (h) a reference to “\$” or “dollar” is, unless otherwise stated, to Australian currency;
- (i) a reference to any time is, unless otherwise indicated, a reference to that time in Sydney, Australia; and
- (j) a term defined in or for the purposes of the Corporations Act has the same meaning when used in this agreement.

## **1.3 Business Day**

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.

## **1.4 Contra proferentem excluded**

No term or condition of this agreement will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this agreement or that provision.

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## 2 Variation of Takeover Offer and Recommendation

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### 2.1 Variation of Takeover Offer

- (a) The Bidder must, immediately following the execution of this agreement, release to the ASX a public announcement of its intention to and take all actions necessary to validly vary the terms of the Takeover Offer so as to:
- (1) increase the consideration payable to the Target Shareholders who accept the Takeover Offer to the Higher Price;
  - (2) give the Target Shareholders who accept the Takeover Offer the right to retain the whole of the Interim Dividend without any reduction to the Higher Price payable to the Target Shareholders who accept the Takeover Offer; and
  - (3) free the Takeover Offer from all defeating conditions to the Takeover Offer other than the 90% Condition.

Without limiting the foregoing, the Bidder must lodge with ASIC and the Target the required notice under section 650D of the Corporations Act and lodge with ASX the required notice under section 650F of the Corporations Act as soon as practicable. The notice under section 650D must be sent to Target Shareholders no later than the time at which the supplementary Bidder's Statement is sent to Target Shareholders in accordance with clause 2.3(a).

- (b) The public announcement referred to in clause 2.1(a) must also state that the Bidder will, subject to obtaining any necessary ASIC modifications to the Corporations Act and Takeovers Panel approval (if required), vary the terms of the Takeover Offer so that Target Shareholders who accept the Takeover Offer are given the option (in addition to the existing options available under the Takeover Offer) to accept the Australian Dollar Price for the first 2,000 ordinary shares in the Target held by that Target Shareholder or by a nominee on behalf of that Target Shareholder based on the register of members of the Target on 12 April 2007, and the Bidder must promptly apply to ASIC for the modifications required to facilitate the variations referred to in this clause 2.1(b). As soon as practicable after the receipt of the required modifications from ASIC, the Bidder must take all actions necessary to validly vary the terms of the Takeover Offer in the manner contemplated by this clause 2.1(b) and make a public announcement of such variation.

### 2.2 Recommendation

- (a) The Target's directors must, immediately following the announcement by the Bidder under clause 2.1(a), release to the ASX a public announcement in relation to the Takeover Offer stating the Target board's unanimous intention to recommend the Takeover Offer at the Higher Price, in the absence of a superior proposal, and that each Target director intends to accept the Takeover Offer in respect of his shares in Target, in the absence of a superior proposal.
- (b) Within 5 Business Days after the Bidder varies the Takeover Offer in the manner referred to in clause 2.1(a) and files an amended Schedule TO and supplementary Bidder's Statement in the manner referred to in clause 2.3, the Target's directors will issue a supplementary target's statement in relation to the Takeover Offer containing:
- (1) a unanimous recommendation by the directors of the Target to the Target Shareholders that the Takeover Offer at the Higher Price (as modified in accordance with this agreement) be accepted; and
  - (2) a statement that each Target director intends to accept the Takeover Offer at the Higher Price in respect of his shares in Target,

in each case, in the absence of a superior proposal.

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## **2.3 Notice to the ASX, ASIC and SEC**

The Bidder must ensure that the announcement of the Bidder's intention to vary the terms of the Takeover Offer and the variation of the Takeover Offer referred to in clause 2.1, and the Target must ensure that the announcement of the Target directors' intention to recommend the Takeover Offer and the Target directors' recommendation referred to in clause 2.2, is notified to the ASX, ASIC and SEC in accordance with applicable laws. Without limitation of the foregoing:

- (a) the Bidder must, within 5 Business Days of the announcement referred to in clause 2.1(a), (i) file with ASIC and the ASX a supplementary Bidder's Statement in relation to the variation of the terms of the Takeover Offer in accordance with clause 2.1(a), (ii) file with the SEC an amended Schedule TO which contains such supplementary Bidder's Statement and (iii) disseminate to the Target Shareholders the supplementary Bidder's Statement and Schedule TO amendment in accordance with applicable law; and
- (b) the Target must, as soon as practicable after the Bidder varies the Takeover Offer in the manner referred to in clause 2.1(a) and files a supplementary Bidder's Statement and an amended Schedule TO in the manner referred to in this clause 2.3, (i) file with ASIC and the ASX a supplementary Target's Statement which includes the recommendation referred to in clause 2.2, (ii) file with the SEC an amended Schedule 14D-9 which contains such supplementary Target's Statement and (iii) disseminate to the Target Shareholders the supplementary Target's Statement and Schedule 14D-9 amendment in accordance with applicable law.

## **2.4 Announcements**

Each party must provide the other with a draft of their respective initial press releases with respect to the matters referred to in clause 2.1 and 2.2 and the documents referred to in clause 2.3 prior to their publication.

## **3 Target undertakings**

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### **3.1 No solicitation**

Subject to the Bidder complying with its obligations under clause 2.1, during the Restriction Period, the Target must ensure that neither it nor any of its Representatives, except with the prior written consent of the Bidder, directly or indirectly solicits, initiates or invites any enquiries, discussions or proposals with respect to, or to undertake due diligence in connection with, a Competing Proposal.

### **3.2 No Talk**

- (a) Subject to the Bidder complying with its obligations under clause 2.1 and subject also to clause 3.5, during the Restriction Period, the Target must ensure that neither it nor any of its Representatives, except with the prior written consent of the Bidder, negotiates or enters into, continues or participates in any discussions or negotiations with any third party (other than the Bidder and its affiliates and Representatives) with respect to a Competing Proposal, even if:
  - (1) that person's Competing Proposal was not directly or indirectly solicited, initiated, or encouraged by the Target or any of its Representatives; or
  - (2) that person has publicly announced their Competing Proposal.

The Target must immediately terminate any such discussions or negotiations that are underway at the date of this agreement. If the Target has provided any confidential information to any third party since 30 October 2006 in connection with such third party's consideration of a possible Competing Proposal, the Target must immediately request in writing the return or destruction by such third party of such confidential information.

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### 3.3 Conduct of business

- (a) Subject to the Bidder complying with its obligations under clause 2.1 and subject also to clause 3.5, during the Restriction Period, the Target will not, and will procure that the Target Group will not:
- (1) convert any or all or all of its shares into a larger or smaller number of shares or resolve to reduce its share capital in any way; or
  - (2) issue or agree to issue shares or convertible notes or grant or agree to grant an option over its shares;
- except in relation to matters for which the Bidder has given its prior written consent (such consent not to be unreasonably withheld).
- (b) Subject to the Bidder complying with its obligations under clause 2.1 and subject also to clause 3.5, during the shorter of the Restriction Period and the period commencing on the date of this agreement and ending 3 months later, the Target:
- (1) will conduct, and will procure that the Target Group conducts, the business of the Target Group in the usual and ordinary course of business;
  - (2) will not, and will procure that the Target Group does not, charge or agree to charge, the whole or a substantial part, of its business or property; and
  - (3) will not, and will procure that the Target Group does not, make any material acquisitions or disposals or undertake any new commitments which would have breached the condition set out in clause 8.6(h) of the Bidder's Statement had it not been waived by the Bidder,
- except in relation to matters for which the Bidder has given its prior written consent (such consent not to be unreasonably withheld).
- (c) At the direction of the Bidder but subject to the Bidder complying with its obligations under clause 2.1 and subject also to clause 3.5, following the Bidder acquiring a relevant interest in the Target of not less than 90% and commencing the compulsory acquisition process under the Corporations Act, the Target must sign and become a party to an amended Hold Separate Stipulation and Order containing the same provisions as those contained in the Hold Separate Stipulation and Order executed in connection with the DOJ Settlement. Cemex indemnifies the Target and each of its directors from any claim, action, damage, loss, liability, cost, expense or payment of whatever nature and however arising which the Target or any of its directors suffers, incurs or is liable for in connection with the Target's entry into and compliance with this clause 3.3(c) and the performance of obligations under the amended Hold Separate Stipulation and Order required to be signed by the Target in the circumstances referred to in this clause 3.3(c). The indemnity in this clause 3.3(c) in so far as it is in favour of the Target's directors takes effect as a deed poll by Cemex in favour of each of the directors of Target as at the date of this agreement who may enforce the indemnity directly against Cemex.
- (d) Subject to the Bidder complying with its obligations under clause 2.1, if so requested by Cemex, the Target will discuss with the DoJ an amended Hold Separate Stipulation and Order and, if such an amended Hold Separate Stipulation and Order is mutually agreed among Cemex, the Target and the DoJ, the Target must enter into such an amended Hold Separate Stipulation and Order. Nothing in such an amended Hold Separate Stipulation and Order shall (1) commit or require the Target to make any divestiture, and Cemex and the Target further acknowledge that the fact and terms of any such divestiture of assets of the Target shall require the approval of the Target board (as reconstituted) after the occurrence of a Divestiture Trigger or (2) require the Target board to take or agree to take any action, or refrain from taking any action, that would or would be likely to be inconsistent with its fiduciary or statutory duties under Australian law. Cemex indemnifies the Target and each of its directors from any claim, action, damage, loss, liability, cost, expense or payment of whatever nature and however arising which the Target or any of its directors suffers, incurs or is liable for in connection with the Target's entry into and compliance with this clause 3.3(d) and the performance of obligations under any amended Hold Separate Stipulation and Order signed by the Target in the circumstances referred to in this clause 3.3(d). The indemnity in this clause 3.3(d) in so far as it is in favour of the Target's directors takes effect as a deed poll by Cemex in favour of each of the directors of Target as at the date of this agreement who may enforce the indemnity directly against Cemex.
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### **3.4 Other obligations**

- (a) Subject to the Bidder complying with its obligations under clause 2.1 and subject also to clause 3.5, during the Restriction Period, the Target must not pay a dividend, other than annual and half yearly dividends consistent with past practice (provided that nothing in this clause 3.4(a) prejudices the Bidder's rights under clause 8.8(e) of the Bidder's Statement in respect of such dividend), or undertake a buy-back, capital return or other payment to shareholders without the consent of the Bidder.
- (b) Subject to the Bidder complying with its obligations under clause 2.1 and subject also to clause 3.5, in the absence of a superior proposal existing at the time, the Target will use all reasonable efforts to facilitate the Takeover Offer and the acceptance of the Takeover Offer by the Target Shareholders.
- (c) Subject to the Bidder complying with its obligations under clause 2.1 and subject also to clause 3.5, if a Competing Proposal is announced or is received by the Target which the Target directors consider is superior to the Takeover Offer and as a consequence of which the Target directors intend to change or withdraw their recommendation in respect of the Takeover Offer, the Target must notify the Bidder of the material terms of, but not the identity of the party making, the Competing Proposal (if it has not been publicly announced) and the Target directors must delay publicly announcing the change or withdrawal of their recommendation for 48 hours from the time that the Bidder became aware of the Competing Proposal (either by way of the public announcement of the Competing Proposal or by way of a notice from the Target).
- (d) Subject to the Bidder complying with its obligations under clause 2.1 and subject also to clause 3.5, if requested by the Bidder, at a time after the Bidder has received acceptances under the Takeover Offer in respect of more than 50% of the Target's issued shares, the Target must allow not more than 3 Representatives, notified by the Bidder to the Target and approved by the Target acting reasonably, to have access to information of the Target solely for the purpose of investigating whether assets of the Target the subject of the DOJ Settlement can be sold as self sustaining entities. Nothing in this clause 3.4(d) requires the Target to give the Bidder's Representatives (or any other person) access to information which the Target considers to be competitively or commercially sensitive. Before the Target will allow the Bidder's Representatives access to any information pursuant to this clause 3.4(d), the Bidder, Cemex and each of the 3 Representatives referred to above must enter into such confidentiality undertakings as may be reasonably required by the Target and must comply with such other reasonable requirements as the Target may direct in relation to such access.

### **3.5 Exceptions**

Nothing in clauses 3.2, 3.3 or 3.4 prevents the Target or the Target Directors from taking or refusing to take any action provided that the Target Directors have determined, in good faith after having consulted with their external legal and financial advisers, that failing to take, or failing to refuse to take, such action would or would be likely to constitute a breach of the Target Directors' fiduciary or statutory obligations.

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## 4 Representations and warranties

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Each party represents and warrants to each other party that:

- (a) its execution and delivery of this agreement has been properly authorised by all necessary corporate actions; and
- (b) it has full corporate power and lawful authority to execute, deliver and perform its obligations under this agreement.

## 5 General

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### 5.1 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this agreement or any other, except for representations or inducements expressly set out in this agreement.
- (b) Each party acknowledges and confirms that it does not enter into this agreement in reliance on any representation or other inducement by or on behalf of any other party, except for any representation or inducement expressly set out in this agreement.

### 5.2 Notices

Any communication under or in connection with this agreement:

- (a) must be in writing;
- (b) must be addressed as shown below:

Party	Address	Addressee	Fax
<b>Bidder</b>	Level 4 126 Phillip St Sydney NSW	Ian Hopkins	612 9230 5333
<b>Rinker</b>	Level 8, Tower B, 799 Pacific Hwy Chatswood NSW	Company Secretary	612 9412 6666
<b>Cemex</b>	Av. Ricardo Margain Zozaya 325, C.P. 66265 San Pedro Garza Garcia, N.L. Mexico	Ramiro Villarreal, Senior Vice President and General Counsel	+52 81 8888 4399

(or as otherwise notified by that party to the other party from time to time);

---

- (c) must be signed by the party making the communication or by a person duly authorised by that party;
- (d) must be delivered or posted by prepaid post to the address, or sent by fax to the number, of the addressee, in accordance with clause 5.2(b); and
- (e) is regarded as received by the addressee:
  - (1) if sent by prepaid post, on the third Business Day after the date of posting to an address within the country in which it was posted, and on the fifth Business Day after the date of posting to an address outside the country in which it was posted;
  - (2) if sent by fax, at the local time (in the place of receipt of that fax) which then equates to the time at which that fax is sent as shown on the transmission report which is produced by the machine from which that fax is sent and which confirms transmission of that fax in its entirety, unless that local time is not a Business Day, or is after 5.00 pm on a Business Day in the place of receipt, when that communication will be regarded as received at 9.00 am on the next Business Day; and
  - (3) if delivered by hand, on delivery at the address of the addressee as provided in clause 5.2(b), unless delivery is not made on a Business Day, or after 5.00 pm on a Business Day, when that communication will be regarded as received at 9.00 am on the next Business Day.
- (f) References in clause 5.2 to a "Business Day" shall mean a day which is not a Saturday, Sunday or a public holiday in the jurisdiction in which the notice is received.

### **5.3 Governing law and jurisdiction**

- (a) This agreement is governed by the laws of New South Wales.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales and courts competent to hear appeals from those courts. Each party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

### **5.4 Waivers**

- (a) Failure to exercise or enforce, a delay in exercising or enforcing, or the partial exercise or enforcement of any right, power or remedy provided by law or under this agreement by any party does not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this agreement.
  - (b) Any waiver or consent given by any party under this agreement is only effective and binding on that party if it is given or confirmed in writing by that party.
  - (c) No waiver of a breach of any term of this agreement operates as a waiver of another breach of that term or of a breach of any other term of this agreement.
-

## **5.5 Counterparts**

- (a) This agreement may be executed in any number of counterparts.
- (b) All counterparts, taken together, constitute one instrument.
- (c) A party may execute this agreement by signing any counterpart.

## **5.6 Termination**

This agreement will terminate upon the earliest of the close, lapse or withdrawal of the Takeover Offer or four months from the date of this agreement.

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Executed as an agreement (and as a deed poll for the purposes of clauses 3.3 (c) and (d))

---

**Cemex Australia Pty Limited**

Signed for  
**Cemex Australia Pty Limited**

*sign here* ▶ /s/ Mr. Ramiro G. Villarreal Morales  
Secretary/Director

*print name* Mr. Ramiro G. Villarreal Morales

*sign here* ▶ /s/ Hector Medina Aguiar  
Director

*print name* Hector Medina Aguiar

**Cemex S.A.B. de C.V**

Signed for  
**Cemex S.A.B. de C.V**

*sign here* ▶ /s/ Hector Medina Aguiar  
Authorised Officer

*print name* Hector Medina Aguiar

*sign here* ▶ /s/ Mr. Ramiro G. Villarreal Morales  
Witness

*print name* Mr. Ramiro G. Villarreal Morales

---

**Rinker Group Limited**

Signed for  
**Rinker Group Limited**

*sign here* ▶ /s/ P.B. Abraham  
Secretary/Director

*print name* P.B. Abraham

*sign here* ▶ /s/ J.P. Morschel  
Director

*print name* J.P. Morschel

Rinker Group Limited  
Level 8, Tower B  
799 Pacific Highway  
Chatswood, NSW 2067  
Australia

April 5, 2007

CEMEX, S.A.B. de C.V.  
Attn: Mr. Ramiro G. Villarreal Morales

Ladies and Gentlemen:

You have expressed an interest in a possible negotiated transaction involving Rinker Group Limited (the "Company", which term as used herein shall include all subsidiaries of the Company). In connection with your analysis of a possible transaction with or acquisition of the Company (a "Potential Transaction"), you will be provided with certain oral and written information concerning the Company and its subsidiaries and affiliates and the Company will be provided with certain oral and written information concerning you and your subsidiaries and affiliates. Any and all such information furnished to the Receiving Party (as defined below) or its Representatives (as defined below) by or on behalf of the Disclosing Party (as defined below) (irrespective of the form of communication and whether such information is so furnished before, on or after the date hereof), and all analyses, compilations, data, studies, notes, translations, memoranda or other documents prepared by the Receiving Party or its Representatives containing or based in whole or in part on any such furnished information are collectively referred to herein as "Information." As used in this agreement, "Disclosing Party" shall mean the party disclosing information regarding itself or its subsidiaries or affiliates or a Potential Transaction pursuant to this agreement and "Receiving Party" shall mean the party receiving information regarding the Disclosing Party or its subsidiaries or affiliates or a Potential Transaction pursuant to this agreement. In consideration of engaging in discussions regarding a Potential Transaction and exchanging Information regarding the Company and its subsidiaries and Information regarding you and your subsidiaries, each of you and the Company hereby agrees to the following:

1. The Information will be used solely for the purpose of evaluating a Potential Transaction, and the Information will be kept strictly confidential and will not be disclosed by the Receiving Party or its Representatives, except that the Receiving Party may disclose the Information or portions thereof to those of its Representatives who need to know such information for the purpose of evaluating or implementing such Potential Transaction; provided that the Receiving Party's Representatives are informed of the confidential and proprietary nature of the Information and are directed to comply with the terms of this agreement applicable to Representatives as if they were parties hereto. The term "Representatives" shall mean, with respect to any party, such party's directors, officers, employees, affiliates (and such affiliates' directors, officers and employees), such party's and such party's affiliates' advisors (including, without limitation, financial advisors, attorneys, accountants and consultants) and any prospective debt financing sources. The Receiving Party agrees to be responsible for any breach of this agreement by its Representatives (it being understood that such responsibility shall be in addition to and not by way of limitation of any right or remedy the Disclosing Party may have against the Receiving Party's Representatives with respect to any such breach).

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2. Without the prior written consent of the other party, neither party nor any of its Representatives will disclose to any person (other than its Representatives) the fact that any investigations, discussions or negotiations are taking place concerning a Potential Transaction involving the other party or the possibility of a Potential Transaction involving the other party, the fact that any party or its Representatives have requested or received Information or that Information has been made available, the existence of this agreement or any of the terms, conditions or other facts with respect to any such Potential Transaction, including the status thereof, unless and until such party is advised by its legal counsel (including internal legal counsel) that such disclosure is required by law or regulation or the rules of any applicable stock exchange, and in any event only after giving as much prior notice to the other party as is practicable under the circumstances. The term "person" as used in this agreement will be interpreted broadly to include the media and any corporation, company, group, partnership or other entity or individual.

3. If the Receiving Party or any of its Representatives become legally compelled (including by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process) to disclose any of the Information, the Receiving Party shall provide the Disclosing Party with prompt prior written notice of such requirement so that the Disclosing Party may seek a protective order or other appropriate remedy. If such protective order or other remedy is not obtained, the Receiving Party and its Representatives agree to disclose only that portion of the Information which the Receiving Party is advised by legal counsel (including internal legal counsel) is legally required to be disclosed and, at the Disclosing Party's expense, to take all reasonable steps to preserve the confidentiality of the Information (including by obtaining an appropriate protective order or other reliable assurance that confidential treatment will be accorded the Information). In addition, the Receiving Party and its Representatives will not oppose any action (and will, if and to the extent requested by the Disclosing Party, cooperate with, assist and join with the Disclosing Party, at the Disclosing Party's expense, in any reasonable action) by the Disclosing Party to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded the Information.

4. The term "Information" does not include any information which (i) at the time of disclosure or thereafter is generally available to the public (other than as a result of a disclosure directly or indirectly by the Receiving Party or its Representatives in violation hereof), (ii) is or becomes available to the Receiving Party or its Representatives on a nonconfidential basis from a source other than the Disclosing Party or its Representatives, provided that, to the Receiving Party's knowledge, such source was not prohibited from disclosing such information to the Receiving Party or its Representatives by a legal, contractual or fiduciary obligation owed to the Disclosing Party or (iii) the Receiving Party or its Representatives can establish is already in its possession (other than information furnished by or on behalf of the Disclosing Party).

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5. If, at any time, the Disclosing Party so directs, the Receiving Party and its Representatives will, at the Receiving Party's expense, promptly return to the Disclosing Party or destroy all Information which has been furnished to the Receiving Party or its Representatives by or on behalf of the Disclosing Party and all copies, extracts or other reproductions in whole or in part thereof. In the event of such a determination or request, the original and all copies of any of the Information prepared by the Receiving Party or its Representatives shall be destroyed, except to the extent required to comply with any legal, regulatory or professional obligations or any internal document retention policy or procedure relating to the backup storage of electronic data. Notwithstanding the return or destruction of the Information, the Receiving Party and its Representatives will continue to be bound by their respective confidentiality and other obligations hereunder.

6. The Receiving Party understands and acknowledges that the Disclosing Party shall have the right, in its sole discretion, to determine what information to make available to the Receiving Party and that none of the Disclosing Party or any of its Representatives is under any obligation to make any particular information available to the Receiving Party or to supplement or update any Information previously furnished. The Receiving Party further understands and acknowledges that neither the Disclosing Party nor any of its Representatives is making any representation or warranty, express or implied, as to the accuracy or completeness of the Information, and neither the Disclosing Party nor any of its Representatives will have any liability to the Receiving Party or any other person resulting from the Receiving Party's use of the Information. Only those representations or warranties that are made to the Receiving Party in a definitive agreement executed by the Disclosing Party regarding a Potential Transaction (a "Definitive Agreement") when, as, and if it is executed, and subject to such limitations and restrictions as may be specified in such Definitive Agreement, will have any legal effect. The term "Definitive Agreement" does not include an executed letter of intent or any other preliminary written agreement, nor does it include any written or oral acceptance of any offer or bid on the part of any party.

7. Each party hereto understands and agrees that (a) no contract, agreement or understanding providing for a Potential Transaction shall be deemed to exist unless and until a Definitive Agreement has been executed and delivered by the Company and you and (b) the Company has not approved, authorized or recommended, or resolved to approve, authorize or recommend to its shareholders or any other person, a Potential Transaction or any other possible transaction, proposal or offer involving the Company and you. Neither this paragraph nor any other provision in this agreement can be waived, amended or assigned except by written consent of the Company and you.

8. Each party hereby acknowledges that it is aware, and that it will advise its affiliates and Representatives, that (i) as a result of its receipt of the Information, it may be in possession of non-public price sensitive information relating to the other party hereto, and (ii) the United States and Australian securities laws ("Applicable Laws") prohibit any person who has non-public price sensitive information about a company from dealing in securities of that company or from communicating that information to any other person under circumstances in which it is reasonably foreseeable or likely that the other person may deal in any of those securities while the relevant information remains non-public. Each party also acknowledges and agrees that it will comply (and will procure that its affiliates and Representatives comply) with such Applicable Laws.

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9. Each party agrees that money damages would not be a sufficient remedy for any breach of this agreement by such party and that the other party hereto shall be entitled to, and such party shall not oppose the granting of, equitable relief, including injunction and specific performance, in the event of any such breach, in addition to all other remedies available to the other party hereto at law or in equity. Each party further agrees to waive, and to use its best efforts to cause its officers, employees and agents to waive, any requirement for the securing or posting of any bond in connection with such remedy.

10. The parties hereby irrevocably and unconditionally consent to submit to the nonexclusive jurisdiction of the courts of the Southern District of New York and of the United States of America located in the Southern District of New York with respect to any actions, suits or proceedings arising out of or relating to this agreement and the transactions contemplated hereby, and further agree that service of any process, summons, notice or document by U.S. registered mail to the respective addresses set forth on the first page of this agreement shall be effective service of process for any action, suit or proceeding brought against the parties in any such court. The parties hereby irrevocably and unconditionally waive any objection to the laying of venue of any action, suit or proceeding arising out of this agreement or the transactions contemplated hereby, in the courts of the Southern District of New York and of the United States of America located in the Southern District of New York, and hereby further irrevocably and unconditionally waive and agree not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

11. Each party agrees that no failure or delay by the other party thereto in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

12. If any provision of this agreement is found to violate any statute, regulation, rule, order or decree of any governmental authority, court, agency or exchange, such invalidity shall not be deemed to affect any other provision hereof or the validity of the remainder of this agreement, and such invalid provision shall be deemed deleted herefrom to the minimum extent necessary to cure such violation.

13. This agreement is for the benefit of each of the parties hereto and their respective directors, officers, employees, representatives and agents and their respective successors and assigns and will be governed by and construed in accordance with the laws of the State of New York.

14. This agreement shall terminate and be of no further force or effect on the one year anniversary of the date of this agreement.

*[Signature page follows]*

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If you agree with the foregoing, please sign and return a copy of this letter, which will constitute our mutual agreement with respect to the subject matter of this letter.

Very truly yours,

RINKER GROUP LIMITED

By: /s/ David V. Clarke  
Name: David V. Clarke  
Title: Chief Executive Officer

CONFIRMED AND AGREED  
as of the date first above written:

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

By: /s/ Ramiro G. Villarreal Morales  
Name: Mr. Ramiro G. Villarreal Morales  
Title: General Counsel

[Signature Page of Rinker Group Limited NDA]



Date 10 April 2007
Page 1 of 2
From Ewen Crouch / Richard Kriedemann
To The Manager, Company Announcements Office, Australian Securities Exchange, Sydney
Fax 1900 999 279

ABN 47 702 595 758
Deutsche Bank Place
Comer Hunter and Phillip Streets
Sydney NSW 2000
Australia
Tel 61 2 9230 4000
Fax 61 2 9230 5333

Correspondence
GPO Box 50
Sydney NSW 2001
Australia
DX 105 Sydney

www.aar.com.au

Fax enquiries ring 61 2 9230 4631

Dear Sir/Madam

CEMEX Australia Pty Ltd - takeover bid for Rinker Group Limited

On behalf of CEMEX, S.A.B. de C.V we enclose a media release announcing an increase in the offer price in the takeover offer by CEMEX Australia Pty Ltd for Rinker Group Limited and recommendation from the board of Rinker Group Limited that the offer be accepted in the absence of a superior proposal.

Yours faithfully

Handwritten signature of Ewen Crouch

Ewen Crouch
Partner
Ewen.Crouch@aar.com.au
Tel 61 2 9230 4958
Encl

Richard Kriedemann
Partner
Richard.Kriedemann@aar.com.au
Tel 61 2 9230 4260

Our Ref RXKS:205722377

rxks A0108372519v1 205722377 10.4.2007
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## **CEMEX ANNOUNCES INCREASED RECOMMENDED OFFER FOR RINKER**

**MONTERREY, MEXICO, April 9, 2007** - CEMEX, S.A.B. de C.V. (NYSE: CX) announced today that it had reached and signed an agreement with Rinker Group Limited (“Rinker”) (ASX: RIN, NYSE ADR: RIN) under which it would raise its offer price to US\$15.85 per share in cash, and that the Rinker Board of Directors had unanimously agreed to recommend to its shareholders that they accept the offer at this price, in the absence of a superior proposal.

CEMEX’s offer now represents a 45% premium to Rinker’s last traded share price during normal trading on ASX on October 27, 2006<sup>1</sup>, and a 22% increase from CEMEX’s original offer of US\$13.00. CEMEX has agreed to make no adjustment to the offer price for the dividend paid by Rinker in December of 2006.

The total enterprise value of the transaction, including Rinker’s debt, is approximately US\$15.3 billion, equivalent to A\$18.7 billion<sup>1</sup>. The offer is CEMEX’s best and final offer, in the absence of a superior proposal.

The combination of CEMEX and Rinker will create one of the world’s largest and most profitable building materials companies with pro forma revenues of US\$23.2 billion and more than 67,000 employees in more than 50 countries.

Lorenzo H. Zambrano, Chairman of the Board and CEO of CEMEX, said, “This is a good transaction for the stakeholders of both companies. The combination of CEMEX and Rinker will create value for shareholders as well as customers, particularly in key growth regions of the United States, through the complementary nature of our operations and best practice sharing between our organizations. It offers an attractive premium to Rinker’s shareholders while creating compelling value for CEMEX shareholders. Importantly, the transaction meets our investment criteria and we remain committed towards achieving our return on capital employed target.”

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<sup>1</sup> Based on converting the Revised Offer into Australian dollars at an exchange rate of A\$1.00 to US\$0.8167 which represents the latest Reserve Bank Mid Point Rate available, dated 5 April 2007

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Mr. Zambrano continued, "We intend to regain our financial flexibility as soon as possible and we expect to return to our steady state capital structure within two years."

The transaction has been unanimously approved by both companies' Boards of Directors. The Rinker directors have also agreed to accept the Revised Offer in respect of their own holdings. The offer will be extended to 7:00 P.M. on May 18, 2007 and is subject only to the acquisition of 90% of Rinker shares. All other conditions have been waived, and all necessary approvals, including Australian and U.S. regulatory approvals, have been obtained.

Under the agreement signed with Rinker, subject to obtaining necessary Australian regulatory approvals, CEMEX has agreed to offer existing shareholders the option to accept a fixed amount of A\$19.50 per share for the first 2,000 ordinary shares they hold.

Rinker has undertaken not to solicit or engage in discussions with other parties regarding any competing proposal, subject to the Rinker directors complying with their fiduciary duties, and has given certain other undertakings in relation to the conduct of its business. A summary of the key terms of the agreement is set out in the attachment.

A Supplementary Bidder's Statement reflecting the full extent of the agreement with Rinker, and the resulting Revised Offer, will be filed in the coming days.

CEMEX is a growing global building solutions company that provides high quality products and reliable service to customers and communities in more than 50 countries throughout the world. CEMEX has a rich history of improving the well-being of those it serves through its efforts to pursue innovative industry solutions and efficiency advancements and to promote a sustainable future. For more information, visit [www.cemex.com](http://www.cemex.com).

###

A Supplementary Bidder's Statement will shortly be lodged with the Australian Securities and Investments Commission, the Australian Stock Exchange, the Mexican Stock Exchange and Mexican Stock Market Authorities. When the Supplementary Bidder's Statement is sent to Rinker's shareholders, it will be filed with the United States Securities and Exchange Commission (the "Commission").

Investors and security holders are urged to read the Supplementary Bidder's Statement from CEMEX Australia Pty Ltd ("Bidder") regarding the proposed Offer described above, when it becomes available, as it will contain important information. Once filed in the United States with the Commission, the Supplementary Bidder's Statement will be available on the Commission's web site. Investors and security holders may obtain a free copy of the Supplementary Bidder's Statement (when it is available) and other documents filed by CEMEX with the Commission on the Commission's web site at [www.sec.gov](http://www.sec.gov). The Supplementary Bidder's Statement and these other documents may also be obtained for free from Bidder, when they become available, by directing a request to the CEMEX Offer Information Line on 1300 721 344 (within Australia) or 1 (866) 244 -1296 (toll free within the United States).

This document includes "forward-looking statements." These statements contain the words "anticipate", "believe", "intend", "estimate", "expect" and words of similar meaning. All statements other than statements of historical facts included in this document, including, without limitation, those regarding CEMEX's financial position, business strategy, plans and objectives of management for future operations (including development plans and objectives relating to CEMEX's products and services) are forward-looking statements. Such forward-looking statements involve known and unknown risks, uncertainties and other important factors that could cause the actual results, performance or achievements of CEMEX to be materially different from future results, performance or achievements expressed or implied by such forward-looking statements. Such forward-looking statements are based on numerous assumptions regarding CEMEX's operations and present and future business strategies and the environment in which CEMEX will operate in the future. These forward-looking statements speak only as of the date of this document. Accordingly, there can be no assurance that such statements, estimates or projections will be realized. None of the projections or assumptions in this document should be taken as forecasts or promises nor should they be taken as implying any indication, assurance or guarantee that the assumptions on which such projections have been prepared are correct or exhaustive or, in the case of assumptions, fully stated in this press release. CEMEX expressly disclaims any obligation or undertaking to disseminate any updates or revisions to any forward-looking information contained herein to reflect any change in CEMEX's results or expectations with regard thereto or any change in events, conditions or circumstances on which any such statement is based, except as required by law. The projections and forecasts included in the forward-looking statements herein were not prepared in accordance with published guidelines of the American Institute of Certified Public Accountants, the Commission or any similar body or guidelines regarding projections and forecasts, nor have such projections or forecasts been audited, examined or otherwise reviewed by the independent auditors of the Company. You should not place undue reliance on these forward-looking statements.

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## Summary of Bid Agreement

BidCo (*Bidder*) and CEMEX (*CEMEX*) have entered into a Bid Agreement with Rinker (*Rinker*) dated April 9, 2007.

### VARIATION OF TAKEOVER OFFER

Under the Agreement, Bidder has agreed to vary the terms of its off market bid for all of Rinker's ordinary shares dated 14 November 2006 (the *Offer*). The variation will:

- increase the consideration payable to Rinker shareholders to US\$15.85 for each ordinary share in Rinker (the *Higher Price*);
- permit Rinker shareholders who accept the Offer to retain the whole of the interim dividend of A\$0.16 per ordinary share (which had a record date of 24 November 2006) previously paid by Rinker to its shareholders, without any reduction to the Higher Price payable to those who accept the Offer; and
- free the Offer from all defeating conditions other than the 90% minimum acceptance condition.

Bidder will today lodge with the Australian Securities and Investments Commission and Rinker the required notice under section 650D of the Corporations Act and lodge with the Australian Stock Exchange Limited the required notice under section 650F of the Corporations Act as soon as is practicable. The notice under section 650D must be sent to Rinker shareholders no later than the time at which the supplementary bidder's statement is sent to Rinker shareholders, which is 5 business days after the announcement of the variation to the Offer.

In addition, subject to obtaining any necessary ASIC modifications to the Australian Corporations Act and Takeovers Panel approval (if required), Bidder will vary the terms of the Offer so that Rinker Shareholders who had acquired shares as at close of business on April 5 2007 and are subsequently registered as holders by close of business on April 12 2007 and who accept the Offer are given the option (in addition to the existing options available under the Offer) to accept AUD\$19.50 for the first 2,000 ordinary shares in the Target held by that Target Shareholder.

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The Bidder must promptly apply to ASIC for the modifications required to facilitate the variations referred to above. As soon as practicable after the receipt of the required modifications from ASIC, the Bidder must take all actions necessary to validly vary the terms of the Takeover Offer in the manner contemplated above and make a public announcement of such variation.

#### **RECOMMENDATION BY RINKER'S DIRECTORS**

Under the Agreement, immediately following the announcement by Bidder of the increase in offer price and waiver of bid conditions, Rinker's directors must announce the Rinker board's unanimous intention to recommend the Offer at the Higher Price, in the absence of a superior proposal. In addition, a statement will be made that each Rinker director intends to accept the Offer at the Higher Price, in the absence of a superior proposal.

#### **EXCLUSIVITY**

Under the Agreement, Rinker has agreed, for a period commencing on the signing date and ending on the date that the Offer closes or lapses (the **Restriction Period**), that:

- (a) it must ensure that neither it nor any of its officers, employees and advisors, directly or indirectly solicits, initiates or invites any enquiries, discussions or proposals with respect to, or to undertake due diligence in connection with, a competing proposal for Rinker (the **No Solicitation Restriction**); and
- (b) it must ensure that neither it nor any of its officers, employees and advisors, negotiates or enters into, continues or participates in any discussions or negotiations with any third party with respect to a competing proposal, even if: that person's competing proposal was not directly or indirectly solicited, initiated, or encouraged by Rinker or any of its officers, employees and advisors; or that person has publicly announced their competing proposal, and it must immediately terminate any such discussions or negotiations that are underway at the date of the Agreement (the **No Talk Restriction**);

The obligations in paragraph (b) do not apply to the extent that they restrict Rinker or the Rinker board from taking or refusing to take any action provided that the Rinker directors have determined, in good faith after having consulted with their external legal and financial advisers, that failing to take, or failing to refuse to take, such action would or would be likely to constitute a breach of the Rinker directors' fiduciary or statutory obligations.

#### **NOTIFICATION OF OTHER APPROACHES**

Under the Agreement, Rinker has agreed that during the Restriction Period if a competing proposal is announced or is received by Rinker which the Rinker directors consider is superior to the Offer and the Rinker directors intend to change or withdraw their recommendation in respect of the Takeover Offer, Rinker must notify the Bidder of the material terms of, but not the identity of the party making, the competing proposal (if it has not been publicly announced).

#### **CONDUCT OF BUSINESS AND OTHER OBLIGATIONS**

Under the Agreement, during the Restriction Period, Rinker will not, and will procure that the Rinker Group will not:

- (a) convert any or all of its shares into a larger or smaller number of shares or resolve to reduce its share capital in any way; or
- (b) issue or agree to issue shares or convertible notes or grant or agree to grant an option over its shares.

During the shorter of the Restriction Period and the period commencing on the date of the Agreement and ending 3 months later, Rinker:

- (a) will conduct, and will procure that the Rinker Group conducts, the business of the Rinker Group in the usual and ordinary course of business;
-



- (b) will not, and will procure that the Rinker Group does not, charge or agree to charge, the whole or a substantial part, of its business or property; and
- (c) will not, and will procure that the Rinker Group does not, make any material acquisitions or disposals or undertake any new commitments which would have breached the condition set out in clause 8.6(h) of the Bidder's Statement dated 30 October 2006 had it not been waived by the Bidder,

In addition, during the Restriction Period, Rinker must not pay a dividend, other than annual and half yearly dividends consistent with past practice, (provided that this does not prejudice the Bidder's rights under clause 8.8(e) of the Bidder's Statement to adjust the revised offer price in respect of any such dividend) or undertake a buy-back, capital return or other payment to shareholders without the consent of the Bidder and without prejudice to the Bidder's rights under clause 8.8(e) to make adjustments to the revised offer price, as appropriate.

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US\$2,300,000,000  
FACILITIES AGREEMENT  
dated 24 September 2004

for

CEMEX ESPAÑA, S.A.

as Borrower

CEMEX ESPAÑA, S.A.

CEMEX CARACAS INVESTMENTS B.V.

CEMEX CARACAS II INVESTMENTS B.V.

CEMEX EGYPTIAN INVESTMENTS B.V.

CEMEX MANILA INVESTMENTS B.V.

CEMEX AMERICAN HOLDINGS B.V.

CEMEX SHIPPING B.V.

as Guarantors

BANCO BILBAO VIZCAYA ARGENTARIA S.A.

BANCO SANTANDER CENTRAL HISPANO, S.A.

CALYON CORPORATE AND INVESTMENT BANK

CITIGROUP GLOBAL MARKETS LIMITED

as Arrangers and Joint Bookrunners

with

CITIBANK INTERNATIONAL PLC

acting as Agent

REVOLVING FACILITIES AGREEMENT  
(AS AMENDED ON 8 NOVEMBER 2004 AND 25 FEBRUARY 2005 AND AMENDED AND  
RESTATED ON 4 JULY 2005)

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**THIS REVOLVING FACILITIES AGREEMENT** is dated 24 September 2004 (as amended on 8 November 2004 and 25 February 2005 and amended and restated on 4 July 2005) and made

**BETWEEN:**

- (1) **CEMEX ESPAÑA, S.A.** (the "**Original Borrower**" or the "**Company**");
- (2) **THE COMPANIES** listed in Part I of Schedule 1 (*The Obligors*) as original guarantors (the "**Original Guarantors**");
- (3) **BANCO BILBAO VIZCAYA ARGENTARIA S.A., BANCO SANTANDER CENTRAL HISPANO, S.A., CALYON CORPORATE AND INVESTMENT BANK** and **CITIGROUP GLOBAL MARKETS LIMITED** as mandated lead arrangers and joint bookrunners (whether acting individually or together the "**Arranger**");
- (4) **THE FINANCIAL INSTITUTIONS** listed in Part II of Schedule 1 (*The Original Lenders*) as lenders (the "**Original Lenders**"); and
- (5) **CITIBANK INTERNATIONAL PLC** as agent of the other Finance Parties (the "**Agent**").

**IT IS AGREED** as follows:

**SECTION 1  
INTERPRETATION**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Agreement:

"**Accession Letter**" means a document substantially in the form set out in Schedule 6 (*Form of Accession Letter*).

"**Additional Cost Rate**" has the meaning given to it in Schedule 4 (*Mandatory Cost Formulae*).

"**Additional Borrower**" means a company which becomes an Additional Borrower in accordance with Clause 26 (*Changes to the Obligors*).

"**Additional Guarantor**" means a company which becomes an Additional Guarantor in accordance with Clause 26 (*Changes to the Obligors*).

"**Additional Obligor**" means an Additional Borrower or an Additional Guarantor.

"**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's Spot Rate of Exchange"** means the Agent's spot rate of exchange for the purchase of the relevant currency with the Base Currency in the London foreign exchange market as of 11:00 a.m. on a particular day.

**"Amendment and Restatement Agreement"** means the Global Transfer, Retrenching and Amendment Agreement dated \_\_\_ July 2005 and entered into between amongst others, the Company, the Arranger, the Original Lenders and the Agent, pursuant to which (amongst other things) this Agreement was amended and restated.

**"Asia Fund"** means Cemex Asia Holdings Ltd. ("CAH") or any other vehicles used by the Company or any other member of the Group to invest, or finance investments already made, in companies involved in or assets dedicated to the cement, concrete or aggregates business in Asia in both cases, such company or vehicle, as applicable, with committed third parties with minority interests other than members of the Group or CEMEX, S.A. de C.V. and its Subsidiaries and with the Company maintaining control of its management.

**"Authorisation"** means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration.

**"Authorised Signatory"** means, in relation to any Obligor, any person who is duly authorised and in respect of whom the Agent has received a certificate signed by a director or another Authorised Signatory of such Obligor setting out the name and signature of such person and confirming such person's authority to act.

**"Availability Period"** means the period from and including the date of the Amendment and Restatement Agreement to and including the date falling 7 days before the Termination Date in respect of each Facility.

**"Available Commitment"** means, in relation to a Facility, a Lender's Commitment under that Facility minus:

- (a) the Base Currency Amount of its participation in any outstanding Utilisations under that Facility; and
- (b) in relation to any proposed Utilisation, the Base Currency Amount of its participation in any other Utilisations that are due to be made under that Facility on or before the proposed Utilisation Date,

other than any Loans which are due to be repaid or prepaid on or before the proposed Utilisation Date.

**"Available Facility"** means, in relation to a Facility, the aggregate for the time being of each Lender's Available Commitment in respect of that Facility.

**"Base Currency"** means US dollars.

**"Base Currency Amount"** means in relation to a Utilisation, the amount specified in the Utilisation Request delivered by the Company for that Utilisation (or, if the amount requested is not denominated in the Base Currency, that amount converted into the Base Currency at the Agent's Spot Rate of Exchange on the date which is three Business Days before the Utilisation Date) as adjusted to reflect any repayment, prepayment, consolidation or division of a Utilisation.

"**Borrowers**" means the Original Borrower and any Additional Borrower and "**Borrower**" means any of them.

"**Break Costs**" means the amount (if any) by which:

- (a) the interest (excluding the applicable Margin) which a Lender 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 which that Lender 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 day of receipt or recovery if a Business Day and if received or recovered before 2 pm London time (or, if not, 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 and New York, 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.

"**Capital Lease**" means any lease that is capitalised on the balance sheet prepared in accordance with Spanish GAAP.

"**Cemex Parent**" means CEMEX, S.A. de C.V., a company (*sociedad anónima de capital variable*) incorporated in Mexico.

"**Cemex UK**" means Cemex UK Limited, a subsidiary of the Company incorporated in England and Wales with company number 05196131 and having its registered office at Cemex House, Coldharbour Lane, Thorpe, Egham, Surrey TW20 8TD.

"**Commitment**" means a Facility A Commitment, a Facility B Commitment and/or Facility C Commitment.

"**Compliance Certificate**" means a certificate substantially in the form set out in Schedule 7 (*Form of Compliance Certificate*).

"**Confidentiality Undertaking**" means a confidentiality undertaking substantially in a recommended form of the LMA as set out in Schedule 9 (*Form of LMA Confidentiality Undertaking*) or in any other form agreed between the Company and the Agent.

"**Default**" means an Event of Default or any event or circumstance specified in Clause 24 (*Events of Default*) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default.

"**Domestic Lender**" means any Spanish resident credit entity registered in the Special Registries of The Bank of Spain as defined in article 8 of Royal Legislative Decree 4/2004 of 5 March and mentioned in paragraph (c) of Article 59 of Corporate Income Tax Regulations approved by Royal Decree 1777/2004 of 30 July (*Real Decreto 1777/2004 de 30 de julio*) or a permanent establishment of a non-Spanish resident financial entity as defined in article 13.1.a of Royal Legislative Decree 5/2004 of 5 March and mentioned in the second paragraph of Article 8.1 of Non-Resident Income Tax Regulations approved by Royal Decree 1776/2004 of 30 July (*Real Decreto 1776/2004 de 30 julio*).

"**Environmental Claim**" means any claim, proceeding or investigation by any person in respect of any Environmental Law.

"**Environmental Law**" means any applicable law or regulation in any jurisdiction in which any member of the Group conducts business which relates to the pollution or protection of the environment or harm to or the protection of human health or the health of animals or plants.

"**Environmental Permits**" means any permit, licence, consent, approval and other authorisation and the filing of any notification, report or assessment required under any Environmental Law for the operation of the business of any member of the Group conducted on or from the properties owned or used by the relevant member of the Group.

"**ERISA**" means the United States Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated and rulings issued thereunder.

"**EURIBOR**" means, in relation to any Loan in euro:

- (a) the applicable Screen Rate; or
- (b) (if no Screen Rate is available for the Interest Period of that Loan) the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Agent at its request quoted by the Reference Banks to leading banks in the European interbank market,

as of the Specified Time on the Quotation Day for the offering of deposits in euro for a period comparable to the Interest Period of the relevant Loan.



"**Event of Default**" means any event or circumstance specified as such in Clause 24 (*Events of Default*).

"**Extension Request**" means a First Extension Request and/or a Second Extension Request issued by the Company in accordance with Clause 8.1 (*Request for Extension*).

"**Facility**" means Facility A, Facility B or Facility C.

"**Facility A**" means the multicurrency revolving loan facility made available under this Agreement as described in paragraph (a) of Clause 2.1 (*The Facilities*).

"**Facility A Commitment**" means:

- (a) in relation to an Original Lender, the amount in the Base Currency set opposite its name under the heading "Facility A Commitment" in Part II of Schedule 1 (*The Original Parties*) and the amount of any other Facility A Commitment transferred to it under this Agreement; and
- (b) in relation to any other Lender, the amount in the Base Currency of any Facility A Commitment transferred to it under this Agreement, to the extent not cancelled, reduced or transferred by it under this Agreement.

"**Facility A Loan**" means a loan made or to be made under Facility A or the principal amount outstanding for the time being of that loan.

"**Facility B**" means the multicurrency revolving loan facility made available under this Agreement as described in paragraph (b) of Clause 2.1 (*The Facilities*).

"**Facility B Commitment**" means:

- (a) in relation to an Original Lender, the amount in the Base Currency set opposite its name under the heading "Facility B Commitment" in Part II of Schedule 1 (*The Original Lenders*) and the amount of any other Facility B Commitment transferred to it under this Agreement; and
- (b) in relation to any other Lender, the amount in the Base Currency of any Facility B Commitment transferred to it under this Agreement, to the extent not cancelled, reduced or transferred by it under this Agreement.

"**Facility B Loan**" means a loan made or to be made under Facility B or the principal amount outstanding for the time being of that loan.

"**Facility C**" means the multicurrency revolving loan facility made available under this Agreement as described in paragraph (c) of Clause 2.1 (*The Facilities*).

**"Facility C Commitment"** means:

- (a) in relation to an Original Lender, the amount in the Base Currency set opposite its name under the heading "Facility C Commitment" in Part II of Schedule 1 (*The Original Lenders*) and the amount of any other Facility C Commitment transferred to it under this Agreement; and
- (b) in relation to any other Lender, the amount in the Base Currency of any Facility C Commitment transferred to it under this Agreement, to the extent not cancelled, reduced or transferred by it under this Agreement.

**"Facility C Loan"** means a loan made or to be made under Facility C or the principal amount outstanding for the time being of that loan.

**"Facility Office"** means the office or offices notified by a Lender to the Agent in writing on or before the date it becomes a Lender (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.

**"Fees Letter"** means the Fees Letter dated on or about 25 May 2005 between the Arranger and the Company.

**"Finance Document"** means this Agreement, any Accession Letter, the Fees Letter and any other document designated as a **"Finance Document"** by the Agent and the Company.

**"Finance Party"** means the Agent, the Arranger or a Lender.

**"Financial Indebtedness"** means any indebtedness for or in respect of, and without double counting:

- (a) moneys borrowed (including, but not limited to, any amount raised by acceptance under any acceptance credit facility and receivables sold or discounted on a recourse basis (it being understood that Permitted Securitisations shall be deemed not to be on a recourse basis));
- (b) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (c) the amount of any liability in respect of any lease or hire purchase contract that would, in accordance with Spanish GAAP, be treated as a Capital Lease;
- (d) the deferred purchase price of assets or the deferred payment of services, except trade accounts payable in the ordinary course of business;
- (e) obligations of a person under repurchase agreements for the stock issued by such person or another person;
- (f) obligations of a person with respect to product invoices incurred in connection with exporting financing;

- (g) all Financial Indebtedness of others secured by Security on any asset of a person, regardless of whether such Financial Indebtedness is assumed by such person in an amount equal to the lower of (i) the net book value of such asset and (ii) the amount secured thereby; and
- (h) guarantees of Financial Indebtedness of other persons.

"**First Utilisation Date**" means the date on which the first Utilisation is made under this Agreement.

"**GAAP**" means, in relation to an Obligor, the generally accepted accounting principles applying to it (i) in the country of its incorporation; or (ii) in a jurisdiction agreed to by the Agent.

"**Group**" means the Company and each of its Subsidiaries for the time being.

"**Guarantors**" means the Original Guarantors and any Additional Guarantor other than any Original Guarantor or Additional Guarantor which has ceased to be a Guarantor pursuant to Clause 26.4 (*Resignation of Guarantor*) and has not subsequently become an Additional Guarantor pursuant to Clause 26.3 (*Additional Guarantors*) 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.

"**Information Memorandum**" means the document in the form approved by the Company (and as updated from time to time with the approval of the Company) concerning Cemex Parent and the Group (including RMC Group Limited and its Subsidiaries) which, at the request of the Company and on its behalf was prepared in relation to the financing of the acquisition of shares in RMC Group Limited (formerly RMC Group PLC) and approved by the Company.

"**Initial Facility C Termination Date**" means the day which is 60 Months after the date of the Amendment and Restatement Agreement.

"**Intellectual Property**" means:

- (a) any patents, trade marks, 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.

"**Interest Period**" means, in relation to a Loan, each period determined in accordance with Clause 11 (*Interest Periods*) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 10.3 (*Default interest*).

"**International Accounting Standards**" means the accounting standards approved by the International Accounting Standards Board from time to time.

"**Legal Opinions**" means the legal opinions delivered to the Agent pursuant to Clause 4.1 (*Initial Conditions Precedent*) or in relation to any Additional Obligors.

"**Lender**" means:

- (a) any Original Lender; and
- (b) any bank, financial institution, securitisation trust or fund or other entity which has become a Party in accordance with Clause 25 (*Changes to the Lenders*),

which in each case has not ceased to be a Party in accordance with the terms of this Agreement.

"**LIBOR**" means, in relation to any Loan:

- (a) the applicable Screen Rate; or
- (b) (if no Screen Rate is available for the currency or Interest Period of that Loan) the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Agent at its request quoted by the Reference Banks to leading banks in the London interbank market,

as of the Specified Time on the Quotation Day for the offering of deposits in the currency of that Loan and for a period comparable to the Interest Period for that Loan.

"**LMA**" means the Loan Market Association.

"**Loan**" means a Facility A Loan, a Facility B Loan or a Facility C Loan.

"**Loan Notes**" means the loan notes (if any) issued to the shareholders of the Target Shares pursuant to the Offer.

"**Majority Lenders**" means a Lender or Lenders whose undrawn Commitments and participations in the Loans then outstanding aggregate more than 51 per cent. of all the undrawn Commitments and Loans then outstanding.

"**Mandatory Cost**" means the percentage rate per annum calculated in accordance with Schedule 4 (*Mandatory Cost Formulae*).

"**Margin**" means:

- (a) subject to paragraph (c) below, in relation to any Loan the percentage rate per annum determined pursuant to the table set out below:

<b>Facility</b>	<b>Margin % p.a.</b>
Facility A	0.300
Facility B	0.350
Facility C	0.375

- (b) in relation to any Unpaid Sum the percentage rate per annum specified above applicable to the Facility in relation to which the Unpaid Sum arises, or if such Unpaid Sum does not arise in relation to a particular Facility, the rate per annum specified above applicable to the Facility to which the Agent reasonably determines the Unpaid Sum most closely relates, or if none, the highest rate per annum specified above,
- (c) but if at any time after the first Utilisation Date following the date of the Amendment and Restatement Agreement:
- (i) no Default has occurred and is continuing; and
- (ii) the Net Borrowings to Adjusted EBITDA ratio in respect of the most recently completed Relevant Period is within a range set out below, then the Margin for each Loan under each Facility will be the percentage rate per annum set out below opposite that range:

	N e t B o r r o w i n g s t o A d j u s t e d E B I T D A		M a r g i n % p . a .	
	Facility A		Facility B	Facility C
Greater than or equal to 3.0:1	0.350		0.400	0.425
Less than 3.0:1 but greater than or equal to 2.5:1	0.300		0.350	0.375
Less than 2.5:1 but greater than or equal to 2.0:1	0.250		0.300	0.325
Less than 2.0:1	0.200		0.250	0.275

However any increase or decrease in the Margin shall take effect on the date (the "**reset date**") which is five Business Days after receipt by the Agent of the Compliance Certificate for that Relevant Period pursuant to Clause 21.2 (*Compliance Certificate*) and in the case of a then current Interest Period will apply to the whole of such Interest Period unless any payments of interest have already been made in which case any adjustments to the Margin will apply only from the date of such payment. For the purpose of determining the Margin, Net Borrowings to Adjusted EBITDA ratio and Relevant Period shall be determined in accordance with Clause 22.1 (*Financial definitions*).

"**Material Adverse Effect**" means a material adverse effect on:

- (a) the business, condition (financial or otherwise) or operations of the Group taken as a whole;
- (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.

"**Material Subsidiary**" means those companies set out in Schedule 12 (*Material Subsidiaries*) and any other Subsidiary of the Company:

- (a) which becomes a Subsidiary of the Company after the date hereof or acquires substantial assets or businesses after the date hereof; and
- (b) which:
  - (i) has total assets representing 5 per cent. or more of the total consolidated assets of the Group; and/or
  - (ii) has revenues representing 5 per cent. or more of the consolidated turnover of the Group,

in each case calculated on a consolidated basis and any Holding Company of any such Subsidiary (save unless such company is already a Guarantor hereunder).

Compliance with the conditions set out in paragraphs (a) and (b) shall be determined by reference to the most recent Compliance Certificate supplied by the Company and/or the latest audited financial statements of that Subsidiary (consolidated in the case of a Subsidiary which itself has Subsidiaries) 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 Company that a Subsidiary is a Material Subsidiary shall, in the absence of manifest error, be conclusive and binding on all Parties.

"**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 Investors Service Inc.

"**Notarisation**" has the meaning ascribed to such term in Clause 23.5 (*Notarisation*).

"**New Lender**" means a New Lender as specified in a Transfer Certificate.

"**Obligors**" means the Borrowers and the Guarantors and "**Obligor**" means any of them.

"**Optional Currency**" means a currency (other than the Base Currency) which complies with the conditions set out in Clause 4.3 (*Conditions relating to Optional Currencies*).

"**Original Financial Statements**" means:

- (a) in relation to the Company, its audited unconsolidated and consolidated financial statements for its financial year ended 31 December 2003;
- (b) in relation to each Guarantor, its respective audited unconsolidated (and, to the extent available, its audited consolidated) financial statements for its financial year ended 31 December 2003; and
- (c) in relation to any other Obligor, its most recent audited financial statements.

"**Original Obligor**" means an Original Borrower or an Original Guarantor.

"**Outlook**" means a rating outlook of the Company with regard to the Company's economic and/or fundamental business condition, as assigned by a Rating Agency.

"**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.

"**Permitted Notarisations**" has the meaning ascribed to such term in Clause 23.5 (*Notarisation*).

"**Permitted Securitisations**" means a sale, transfer or other securitisation of receivables and related assets by the Company or its Subsidiaries, including a sale at a discount, **provided that** (i) such receivables have been transferred, directly or indirectly, by the originator thereof to a special purpose vehicle in a manner that satisfies the requirements for an absolute conveyance, and not merely a pledge, under the laws and regulations of the jurisdiction in which such originator is organised, (ii) such special purpose vehicle issues notes, certificates or other obligations which are to be repaid from collections and other proceeds of such receivables and (iii) except for customary representations, warranties, covenants and indemnities, such sale, transfer or other securitisation is carried out on a non-recourse basis.

"**Process Agent**" means Cemex UK at its registered address and with fax number (+44) 01932 568933, Attn: The Secretary.

"**Qualifying Lender**" has the meaning given to that term in Clause 14 (*Tax gross-up and indemnities*).

"**Quotation Day**" means, in relation to any period for which an interest rate is to be determined:

- (a) (if the currency is sterling) the first day of that period;
- (b) (if the currency is euro) two TARGET Days before the first day of that period; or
- (c) (for any other currency) two Business Days before the first day of that period,

unless market practice differs in the Relevant Interbank Market for a currency, in which case the Quotation Day for that currency will be determined by the Agent in accordance with market practice in the Relevant Interbank Market (and if quotations would normally be given by leading banks in the Relevant Interbank Market on more than one day, the Quotation Day will be the last of those days).

"**Rating**" means at any time the solicited long term credit rating or the senior implied rating of the Company or an issue of securities of or guaranteed by the Company, where the rating is based primarily on the senior unsecured credit risk of the Company 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 or Moody's.

"**Reference Banks**" means, the principal London offices of Citibank, N.A., Deutsche Bank A.G., Banco Bilbao Vizcaya Argentaria, S.A. and such other banks as may be appointed by the Agent in consultation with the Company.

"**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; and
- (b) any jurisdiction where it conducts its business.



"**Relevant Period**" has the meaning given to that term in Clause 22 (*Financial Covenants*).

"**Repeating Representations**" means each of the representations set out in Clauses 20.1 (*Status*) to Clause 20.6 (*Governing law and enforcement*), Clause 20.9 (*No default*), paragraphs (a) and (b) of Clause 20.11 (*Financial statements*), Clause 20.12 (*Pari passu ranking*), Clause 20.13 (*No proceedings pending or threatened*) and Clause 20.14 (*No winding-up*).

"**Rollover Loan**" means one or more Loans:

- (a) made or to be made on the same day that a maturing Loan is due to be repaid;
- (b) the aggregate amount of which is equal to or less than the maturing Loan;
- (c) in the same currency as the maturing Loan (unless it arose as a result of the operation of Clause 6.2 (*Unavailability of a currency*)); and
- (d) made or to be made for the purpose of refinancing a maturing Loan.

"**S&P**" means Standard & Poors Corporation.

"**Screen Rate**" means:

- (a) in relation to LIBOR, the British Bankers' Association Interest Settlement Rate for the relevant currency and period; and
- (b) in relation to EURIBOR, the percentage rate per annum determined by the Banking Federation of the European Union for the relevant period,

displayed on the appropriate page of the Reuters screen. If the agreed page is replaced or service ceases to be available, the Agent may specify another page or service displaying the appropriate rate after consultation with the Company and the Lenders.

"**Security**" means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

"**Spain**" means the Kingdom of Spain.

"**Spanish Public Document**" means any obligation in an *Escritura Pública* or *documento intervenido*.

"**Specified Time**" means a time determined in accordance with Schedule 8 (*Timetables*).

"**Stake**" means a number of shares in any Group member held by another Group member the disposal of which would cause the first Group member to cease to be a Subsidiary of the second Group member.

"**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.

"**TARGET**" means Trans-European Automated Real-time Gross Settlement Express Transfer payment system.

"**TARGET Day**" means any day on which TARGET is open for the settlement of payments in euro.

"**Tax**" means any tax, levy, impost, duty or other charge 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).

"**Taxes Act**" means the Income and Corporation Taxes Act 1988.

"**Termination Date**" means:

- (a) in relation to Facility A, the day which is 36 Months after the date of this Agreement;
- (b) in relation to Facility B, the day which is 60 Months after the date of this Agreement;
- (c) in relation to Facility C and subject to Clause 8 (*Extension of Facility C*), the Initial Facility C Termination Date,

or, in each case, if such day would not be a Business Day, the first succeeding Business Day, unless such day would fall into the next month, in which case the immediately preceding Business Day.

"**Total Commitments**" means the aggregate of the Total Facility A Commitments, the Total Facility B Commitments and the Total Facility C Commitments.

"**Total Facility A Commitments**" means the aggregate of the Facility A Commitments.

"**Total Facility B Commitments**" means the aggregate of the Facility B Commitments.

"**Total Facility C Commitments**" means the aggregate of the Facility C Commitments.

"**Transfer Certificate**" means a certificate substantially in the form set out in Schedule 5 (*Form of Transfer Certificate*) or any other form agreed between the Agent and the Company.

"**Transfer Date**" means, in relation to a transfer, the later of:

- (a) the proposed Transfer Date specified in the Transfer Certificate; and
- (b) the date on which the Agent executes the Transfer Certificate.

"**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.

"**Utilisation**" means a utilisation of a Facility.

"**Utilisation Date**" means the date of a Utilisation, being the date on which the relevant Loan is to be made.

"**Utilisation Request**" means a notice substantially in the form set out in Schedule 3 (*Utilisation Request*).

"**VAT**" means value added tax as provided for in the Value Added Tax Act 1994 and any other tax of a similar nature.

## 1.2 Construction

(a) Unless a contrary indication appears a reference in this Agreement to:

- (i) the "**Agent**", the "**Arranger**", any "**Finance Party**", any "**Lender**", any "**Obligor**" or any "**Party**" shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
- (ii) a document in "**agreed form**" is a document which is initialled by or on behalf of the Company and the Agent or the Arranger;
- (iii) "**assets**" includes present and future properties, revenues and rights of every description;
- (iv) the "**European interbank market**" means the interbank market for euro operating in Participating Member States;
- (v) 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;

- (vi) "**indebtedness**" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
  - (vii) a "**participation**" of a Lender in a Loan, means the amount of such Loan which such Lender has made or is to make available and thereafter that part of the Loan which is owed to such Lender;
  - (viii) a "**person**" includes any person, firm, company, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) of two or more of the foregoing;
  - (ix) a "**regulation**" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law but, if not having the force of law, with which persons who are subject thereto are accustomed to comply) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
  - (x) the "**winding-up**", "**dissolution**", "**administration**" or "**reorganisation**" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings (such as, in Spain, *suspensión de pagos, quiebra, concurso* or any other *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, arrangement, adjustment, protection or relief of debtors;
  - (xi) a provision of law is a reference to that provision as amended or re-enacted without material modification;
  - (xii) a time of day is a reference to London time; and
  - (xiii) a reference to a clause, paragraph or schedule, unless the context otherwise requires, is a reference to a clause, a paragraph of or a schedule to this Agreement.
- (b) Section, Clause and Schedule headings are for ease of reference only.
- (c) 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.
- (d) 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 22 (*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 22 (*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 and "US\$", "\$" and "dollars" denote lawful currency of the United States of America and "¥" and "yen" denote lawful currency of Japan.

1.4 **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) 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  
THE FACILITIES**

**2. THE FACILITIES**

**2.1 The Facilities**

Subject to the terms of this Agreement, the Lenders make available:

- (a) a three year multicurrency revolving loan facility in an aggregate amount equal to the Total Facility A Commitments;
- (b) a five year multicurrency revolving loan facility in an aggregate amount equal to the Total Facility B Commitments; and
- (a) subject to Clause 8 (*Extension of Facility C*), a multicurrency revolving loan facility in an aggregate amount equal to the Total Facility C Commitments until the Initial Facility C Termination Date.

**2.2 Finance Parties' rights and obligations**

- (a) The obligations of each Finance Party under the Finance Documents are several. Failure by a Finance Party to perform its obligations under the Finance Documents does not affect the obligations of any other Party under the Finance Documents. No Finance Party is responsible for the obligations of any other Finance Party under the Finance Documents.
- (b) Except as otherwise stated in the Finance Documents, the rights of each Finance Party under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to a Finance Party from an Obligor shall be a separate and independent debt.
- (c) A Finance Party may, except as otherwise stated in the Finance Documents, separately enforce its rights under the Finance Documents.

**2.3 Affiliate Facility Offices**

- (a) A Lender may designate an Affiliate of that Lender as its Facility Office for the purpose of participating in or making Loans to Borrowers in particular countries.
- (b) An Affiliate of a Lender may be designated for the purposes of paragraph (a):
  - (i) by appearing under the name of the Lender in Parts II (*The Original Lenders*) of Schedule 1 and executing this Agreement; or
  - (ii) by being referred to in and executing a Transfer Certificate by which the Lender becomes a Party.
- (c) An Affiliate of a Lender referred to in this Clause 2.3 shall not have any Commitment, but shall be entitled to all rights and benefits under the Finance Documents relating to its participation in Loans, and shall have the corresponding duties of a Lender in relation thereto, and is a Party to this Agreement and each other relevant Finance Document for those purposes.

- (d) A Lender which has an Affiliate appearing under its name in Parts II (*The Original Lenders*) of Schedule 1 or, as the case may be, in a Transfer Certificate, will procure, subject to the terms of this Agreement, that the Affiliate participates in Loans to the relevant Borrower(s) in place of that Lender. However, if as a result of the Affiliate's participation, an Obligor would be obliged to make a payment to the Affiliate under Clause 14 (*Tax Gross-up and indemnities*) or Clause 15 (*Increased costs*), then the Affiliate is only entitled to receive payment under those clauses to the same extent as the Lender (designating such Affiliate) would have been if the Lender had not designated such Affiliate for purposes of paragraph (a) above.

3. **PURPOSE**

3.1 **Purpose**

Each Borrower shall apply the proceeds of each Loan for its general corporate purposes, including in or towards refinancing Financial Indebtedness of members of the Group which is outstanding as of the first Utilisation and for payment of any break funding costs, redemption premia and other costs, fees and expenses (and taxes thereon) payable in connection with such refinancing.

3.2 **Monitoring**

No Finance Party is bound to monitor or verify the application of any amount borrowed pursuant to this Agreement.

4. **CONDITIONS OF UTILISATION**

4.1 **Initial Conditions Precedent**

The Company may not deliver the first Utilisation Request unless the Agent has received all of the documents and other evidence listed in Part I of Schedule 2 (*Conditions Precedent to Initial Utilisation*). The Agent has notified the Company and the Lenders that it is so satisfied.

4.2 **Further Conditions Precedent**

The Lenders will only be obliged to comply with Clause 5.4 (*Lenders' participation*) if on the date of the Utilisation Request and on the proposed Utilisation Date:

- (a) in the case of a Rollover Loan, no Event of Default is continuing or would result from the proposed Loan and, in the case of any other Utilisation, no Default is continuing or would result from the proposed Utilisation;
- (b) the Repeating Representations which are or which are deemed to be made or repeated by each Obligor on such date pursuant to Clause 20.20 (*Times on which representations are made*) are true in all material respects;

**4.3 Conditions relating to Optional Currencies**

- (a) A currency will constitute an Optional Currency in relation to a Utilisation if:
  - (i) it is readily available in the amount required and freely convertible into the Base Currency in the Relevant Interbank Market on the Quotation Day and the Utilisation Date for that Utilisation; and
  - (ii) it is sterling, euros or yen or has been approved by the Agent (acting on the instructions of all the Lenders) on or prior to receipt by the Agent of the relevant Utilisation Request for that Utilisation.
- (b) The Lenders will only be obliged to comply with Clause 30.9 (*Change of currency*) if, on the first day of an Interest Period, no Default is continuing or would result from the change of currency and the Repeating Representations to be made by each Obligor are true in all material respects.
- (c) If the Agent has received a written request from the Company for a currency to be approved under paragraph (a)(ii) above, the Agent will confirm to the Company by the Specified Time:
  - (i) whether or not the Lenders have granted their approval; and
  - (ii) if approval has been granted, the minimum amount (and, if required, integral multiples) for any subsequent Utilisation in that currency.

**4.4 Maximum number of Loans**

- (a) The Company may not deliver a Utilisation Request if as a result of the proposed Utilisation:
  - (i) 10 or more Facility A Loans would be outstanding; or
  - (ii) 10 or more Facility B Loans would be outstanding; or
  - (iii) 10 or more Facility C Loans would be outstanding.
- (b) Any Loan made by a single Lender under Clause 6.2 (*Unavailability of a currency*) shall not be taken into account in this Clause 4.4.



**SECTION 3  
UTILISATION**

**5. UTILISATION**

**5.1 Delivery of a Utilisation Request**

The Company may utilise a Facility by delivery to the Agent of a duly completed Utilisation Request not later than the Specified Time.

**5.2 Completion of a Utilisation Request**

(a) Each Utilisation Request is irrevocable and will not be regarded as having been duly completed unless:

- (i) it identifies the Facility to be utilised;
- (ii) the proposed Utilisation Date is a Business Day within the Availability Period applicable to that Facility;
- (iii) the currency and amount of the Loan complies with Clause 5.3 (*Currency and amount*); and
- (iv) the proposed Interest Period complies with Clause 11 (*Interest Periods*).

(b) Only one Loan may be requested in each Utilisation Request.

**5.3 Currency and amount**

(a) The currency specified in a Utilisation Request must be the Base Currency or an Optional Currency.

(b) Unless the Agent otherwise agrees, the amount of the proposed Utilisation must be an amount whose Base Currency Amount is not more than the Available Facility (adjusted, where applicable, to take account of any additional Utilisations which are scheduled to take place on or before the relevant Utilisation Date) and which is:

- (i) if the currency selected is the Base Currency, a minimum of US\$20,000,000 or, if less, the relevant Available Facility; or
- (ii) if the currency selected is sterling or euros or yen, a minimum of £10,000,000 or, as the case may be, EUR15,000,000 or, as the case may be, ¥4,500,000,000 or, if less, the relevant Available Facility; or
- (iii) if the currency selected is an Optional Currency other than sterling, euros or yen, the minimum amount specified by the Agent pursuant to paragraph (c) (ii) of Clause 4.3 (*Conditions relating to Optional Currencies*) or, if less, the relevant Available Facility,

**provided that** such minimum amounts shall not apply where the proposed Utilisation is for the purpose of refinancing a maturing Loan in another currency and the relevant Utilisation Request instructs that proceeds shall be applied directly in such refinancing.

**5.4 Lenders' participation**

- (a) If the conditions set out in this Agreement have been met, each Lender shall make its participation in each Loan available by the Utilisation Date through its Facility Office.
- (b) The amount of each Lender's participation in each Loan will be equal to the proportion borne by its Available Commitment to the relevant Available Facility immediately prior to making the Loan.
- (c) The Agent shall determine the Base Currency Amount of each Loan which is to be made in an Optional Currency and shall notify each Lender of the amount, currency and the Base Currency Amount of each Loan and the amount of its participation in that Loan, in each case by the Specified Time.

**6. OPTIONAL CURRENCIES**

**6.1 Selection of currency**

The Company shall select the currency of each Loan in a Utilisation Request.

**6.2 Unavailability of a currency**

If before the Specified Time on any Quotation Day:

- (a) a Lender notifies the Agent that the Optional Currency requested is not readily available to it in the amount required, and provides in writing an objectively justified reason therefor; or
- (b) a Lender notifies the Agent that compliance with its obligation to participate in a Loan in the proposed Optional Currency would contravene a law or regulation applicable to it,

the Agent will give notice to the Company to that effect by the Specified Time on that day. In this event, any Lender that gives notice pursuant to this Clause 6.2 will be required to participate in the Loan in the Base Currency (in an amount equal to that Lender's proportion of the Base Currency Amount, or in respect of a Rollover Loan, an amount equal to that Lender's proportion of the Base Currency Amount of the Rollover Loan that is due to be made) and its participation will be treated as a separate Loan denominated in the Base Currency during that Interest Period.

**6.3 Agent's calculations**

Each Lender's participation in a Loan will be determined in accordance with paragraph (b) of Clause 5.4 (*Lenders' participation*).

**SECTION 4  
REPAYMENT, PREPAYMENT AND CANCELLATION**

**7. REPAYMENT**

The Borrowers shall repay each Loan on the last day of its Interest Period. If such Loan is to be refinanced with a Rollover Loan, the amount of each Loan required to be repaid shall be set off against the amount of the applicable Rollover Loan, provided that all Loans shall be repaid on, or prior to the Termination Date relating thereto.

**8. EXTENSION OF FACILITY C**

**8.1 Request for Extension**

- (a) The Company may request, by notifying the Agent in writing (the "**First Extension Request**") not earlier than 60 days and not later than 45 days before the first anniversary of the date of the Amendment and Restatement Agreement, the extension of the Termination Date of Facility C by an additional 365 day period.
- (b) Without prejudice to paragraph (a) above, the Company may request, by notifying the Agent in writing (the "**Second Extension Request**") not earlier than 60 days and not later than 45 days before the second anniversary of the date of the Amendment and Restatement Agreement, the extension of the Termination Date of Facility C (as may have been extended pursuant to the First Extension Request) by an additional 365 day period.
- (c) Upon notification by the Agent that it has received an Extension Request from the Company, each Lender shall freely determine whether or not it shall extend its Facility C Commitments in accordance with the relevant Extension Request and shall, within 10 Business Days of receipt of such notification from the Agent, notify the Agent of its own decision to accept or decline the request set out in the Extension Request.
- (d) The Agent shall, as soon as reasonably practicable after it has received all the Lenders' respective decisions in accordance with paragraph (c) above, notify the Company and the Lenders of the level of acceptances.

**8.2 Acceptance of Extension Request**

- (a) Any agreement by a Lender to an Extension Request shall extend that Lender's Facility C Commitments by an additional 365 day period only and shall be binding on each such Lender only.
- (b) A Lender who has declined the First Extension Request shall not be precluded from receiving notice of the Second Extension Request and may, if it so chooses, agree to the Second Extension Request, which shall extend the Facility C Commitments of that Lender by an additional 365 day period from the Initial Facility C Termination Date.

**8.3 Reduced Facility C Commitments**

In the event that a Lender declines to extend its Facility C Commitments pursuant to the First Extension Request and/or the Second Extension Request, the amount of the Total Facility C Commitments shall, following the Initial Facility C Termination Date, reduce by the amount of that declining Lender's Facility C Commitments accordingly. For the avoidance of doubt, Facility C shall continue to be available until the end of its Availability Period reflecting the Commitments of those Lenders who have agreed to the requests contained in the First Extension Request and/or the Second Extension Request.

**8.4 Reduction of Facility B Commitments**

The Total Facility B Commitments shall reduce on 24 March 2008, 24 September 2008, 24 March 2009 and 24 September 2009 in each case by an amount equal to 25 per cent of the amount of the Total Facility B Commitments as at 24 March 2008, such reduction to be applied *pro rata* to the Facility B Commitment of each Lender on the date of each such reduction.

**9. PREPAYMENT AND CANCELLATION**

**9.1 Illegality of a Lender**

If, at any time, it is or will become unlawful in any applicable jurisdiction for a Lender to perform any of its obligations as contemplated by this Agreement or to fund or maintain its participation in any Utilisation:

- (a) that Lender shall promptly notify the Agent upon becoming aware of that event and in any event at a time which permits the Company to repay that Lender's participation on the date such repayment is required to be made;
- (b) upon the Agent notifying the Company, the Commitment of that Lender will be immediately cancelled; and
- (c) the Company shall, on the last day of the Interest Period for each Loan occurring after the Agent has notified the Company or, if earlier, the date specified by the Lender in the notice delivered to the Agent (being no earlier than the last day of any applicable grace period permitted by law), repay that Lender's participation in the Loans together with accrued interest on and all other amounts owing to that Lender under the Finance Documents.

**9.2 Voluntary cancellation**

The Company may if it gives the Agent not less than five Business Days' (or such shorter period as the Majority Lenders in respect of the Facility to which such cancellation relates may agree) prior notice, cancel the whole or any part (being a minimum amount of US\$50,000,000) of any Facility. Any cancellation under this Clause 9.2 shall reduce rateably the Commitments of the Lenders under that Facility.

**9.3 Automatic Cancellation**

At the close of business on the last day of the Availability Period in respect of each Facility, the Available Commitment of each Lender under such Facility shall be (if it has not already been) cancelled and reduced to zero.

**9.4 Voluntary prepayment of Loans**

A Borrower may, if the Company gives the Agent not less than five Business Days' (or such shorter period as the Majority Lenders in respect of the relevant Facility may agree) prior notice, prepay the whole or any part of any Loan (but, if in part, being an amount that reduces the Base Currency Amount of that Loan by a minimum amount of US\$50,000,000).

**9.5 Right of repayment and cancellation in relation to a single Lender**

(a) If:

(i) any sum payable to any Lender by an Obligor is required to be increased under paragraph (c) of Clause 14.2 (*Tax gross-up*); or

(ii) any Lender claims indemnification from an Obligor under Clause 14.3 (*Tax indemnity*) or Clause 15.1 (*Increased costs*),

the Company may, whilst the circumstance giving rise to the requirement or indemnification continues, give the Agent notice of cancellation of the Commitment of that Lender and its intention to procure the repayment of that Lender's participation in the Loans.

(b) On receipt of a notice referred to in paragraph (a) above, the relevant Commitment of that Lender shall immediately be reduced to zero.

(c) On the last day of each Interest Period which ends after the Company has given notice under paragraph (a) above (or, if earlier, the date specified by the Company in that notice), each Borrower shall repay that Lender's participation in the Loans to which such Interest Period relates.

**9.6 Restrictions**

(a) Any notice of cancellation or prepayment given by any Party under this Clause 9 shall 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.

(b) Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and, subject to any Break Costs (if any), without premium or penalty.

(c) Unless a contrary indication appears in this Agreement, any part of Facility A, Facility B or Facility C which is prepaid may be reborrowed in accordance with the terms of this Agreement.

- (d) No Borrower shall repay or prepay all or any part of the Loans or cancel all or any part of the Commitments except at the times and in the manner expressly provided for in this Agreement.
- (e) No amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.
- (f) If the Agent receives a notice under this Clause 9 it shall promptly forward a copy of that notice to either the relevant Borrower or the affected Lenders, as appropriate.

**SECTION 5  
COSTS OF UTILISATION**

**10. INTEREST**

**10.1 Calculation of interest**

The rate of interest on each Loan for each Interest Period is the percentage rate per annum which is the aggregate of the applicable:

- (a) Margin;
- (b) LIBOR or, in relation to any Loan in euro, EURIBOR; and
- (c) Mandatory Cost, if any.

**10.2 Payment of interest**

On the last day of each Interest Period relating to a Loan each Borrower shall pay accrued interest on the Loan to which that Interest Period relates (and, if the Interest Period is longer than six Months, on the dates falling at six Monthly intervals after the first day of that Interest Period).

**10.3 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 two 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 in the currency of the overdue amount for successive Interest Periods, each of a duration of one Month. Any interest accruing under this Clause 10.3 shall be immediately payable by the Obligor on demand by the Agent.
- (b) If any overdue amount consists of all or part of a Loan which became due on a day which was not the last day of an Interest Period relating to that Loan:
  - (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; and
  - (ii) the rate of interest applying to the overdue amount during that first Interest Period shall be two 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.

**10.4 Notification of rates of interest**

The Agent shall promptly notify the Lenders and the relevant Borrower of the determination of a rate of interest under this Agreement.

11. **INTEREST PERIODS**

11.1 **Selection of Interest Periods**

- (a) The Company may select an Interest Period for a Loan in the Utilisation Request for that Loan.
- (b) Subject to this Clause 11, the Company may select an Interest Period of one, two, three or six Months, or any other period agreed between the Company and the Agent (acting on the instructions of all the Lenders participating in the relevant Facility).
- (c) An Interest Period for a Loan shall not extend beyond the Termination Date applicable to its Facility.

11.2 **Non-Business Days**

If an Interest Period would otherwise end on a day which is not a Business Day, that Interest Period will instead end on the next Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not).

12. **CHANGES TO THE CALCULATION OF INTEREST**

12.1 **Absence of quotations**

Subject to Clause 12.2 (*Market disruption*), if LIBOR or, if applicable, EURIBOR is to be determined by reference to the Reference Banks but a Reference Bank does not supply a quotation by the Specified Time on the Quotation Day, the applicable LIBOR or EURIBOR shall be determined on the basis of the quotations of the remaining Reference Banks.

12.2 **Market disruption**

- (a) If a Market Disruption Event occurs in relation to a Loan for any Interest Period, then the rate of interest on each Lender's share of that Loan for the Interest Period shall be the rate per annum which is the sum of:
  - (i) the Margin;
  - (ii) the rate notified to the Agent by that Lender as soon as practicable and in any event before interest is due to be paid in respect of that Interest Period, to be that which expresses as a percentage rate per annum the cost to that Lender of funding its participation in that Loan from whatever source it may reasonably select; and
  - (iii) the Mandatory Cost, if any, applicable to that Lender's participation in that Loan.
- (b) In this Agreement "**Market Disruption Event**" means:
  - (i) at or about noon on the Quotation Day for the relevant Interest Period the Screen Rate not being available and none or only one of the Reference Banks supplying a rate to the Agent to determine LIBOR or, if applicable, EURIBOR for the relevant currency and Interest Period; or



- (ii) before close of business in London on the Quotation Day for the relevant Interest Period, the Agent receiving notifications from a Lender or Lenders (in either case whose participations in a Loan exceed 50 per cent. of that Loan) that the cost to it or them of obtaining matching deposits in the Relevant Interbank Market would be in excess of LIBOR or, if applicable, EURIBOR.

**12.3 Alternative basis of interest or funding**

- (a) If a Market Disruption Event occurs and the Agent or the Company so requires, the Agent and the Company shall enter into negotiations (for a period of not more than thirty days) with a view to agreeing a substitute basis for determining the rate of interest in respect of the relevant Loan.
- (b) Any alternative basis agreed pursuant to paragraph (a) above shall, with the prior consent of all the Lenders participating in the relevant Loan and the Company, be binding on all Parties.

**12.4 Break Costs**

- (a) Each Borrower shall, within three Business Days of demand by a Lender, pay to that Lender 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 Lender shall, as soon as reasonably practicable after a demand by the Agent, provide a certificate confirming in reasonable detail the amount of its Break Costs for any Interest Period in which they accrue.

**13. FEES**

**13.1 Commitment fee**

- (a) The Company shall pay to the Agent (for the account of each Lender) a commitment fee in respect of each Facility in the Base Currency computed at the rate of 30 per cent. of the applicable Margin from time to time per annum on that Lender's Available Commitment under each Facility for the period commencing on the Effective Date under (and as defined in) the Amendment and Restatement Agreement and ending on the last day of the Availability Period applicable to that Facility;
- (b) The accrued commitment fees set out above are payable on the last day of each successive period of three Months which ends during the Availability Period, on the last day of the Availability Period and, if cancelled in full, on the cancelled amount of the relevant Lender's Commitment at the time the cancellation is effective.

**13.2 Arrangement fee**

The Company shall pay to the Arranger an arrangement fee in the amount and at the times agreed in the Fees Letter.

13.3 **Agency fee**

The Company shall pay to (or procure payment to) the Agent (for its own account) an agency fee in the amount and at the times agreed in the Fees Letter.

13.4 **Extension fee**

The Company shall pay to the Agent (for the account of each Lender extending its Facility C Commitments) such extension fee (if any) and at such time as is agreed between the Company and the extending Lenders on the extension of Facility C pursuant to Clause 8 (*Extension of Facility C*).

13.5 **Amendment fee**

The Company shall pay to the Agent (for the account of each Lender participating in the Facilities (as amended and restated by the Amendment and Restatement Agreement)) an amendment fee in the amount and at the times agreed in the Fees Letter.

**SECTION 6  
ADDITIONAL PAYMENT OBLIGATIONS**

**14. TAX GROSS UP AND INDEMNITIES**

**14.1 Definitions**

(a) In this Clause 14:

"**Protected Party**" means a Finance Party which is or will be subject to any liability or required to make any payment, for or on account of Tax, in relation to a sum received or receivable (or any sum deemed for the purposes of Tax to be received or receivable) under a Finance Document.

"**Qualifying Lender**" means:

- (i) any legal person or entity (including, for the avoidance of doubt, any securitisation trust or fund) habitually resident for taxation purposes in a Qualifying State which is not acting through a territory considered as a tax haven pursuant to Spanish laws and regulations (currently set out in Royal Decree 1080/1991 of 5 July (*Real Decreto 1080/1991 de 5 de julio*)) or through a permanent establishment in Spain; or
- (ii) any legal person or entity (including, for the avoidance of doubt, any securitisation trust or fund) resident in a country which, as a result of any applicable double taxation treaty, would not require any payments made by a Borrower to such financial institution hereunder to be subject to any deduction or withholding in Spain; or
- (iii) any Domestic Lender.

"**Qualifying State**" means a member state of the European Union (other than Spain).

"**Tax Deduction**" means a deduction or withholding for or on account of Tax from a payment made under a Finance Document.

"**Tax Payment**" means either the increase in a payment made by an Obligor to a Finance Party under Clause 14.2 (*Tax gross-up*) or a payment under Clause 14.3 (*Tax indemnity*).

(b) Unless a contrary indication appears, in this Clause 14 a reference to "**determines**" or "**determined**" means a determination made in the absolute good faith discretion of the person making the determination.

**14.2 Tax gross-up**

- (a) Each Obligor shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law or regulation.
- (b) The Company or a Lender 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) notify the Agent accordingly. If the Agent receives such notification from a Lender it shall notify the Company and that Obligor.

- (c) If a Tax Deduction is required by law or regulation to be made by an Obligor, the amount of the payment due from that Obligor shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due and payable if no Tax Deduction had been required.
- (d) If an Obligor is required to make a Tax Deduction, that Obligor shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law or regulation.
- (e) Within thirty days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Obligor making that Tax Deduction shall deliver to the Agent for the Finance Party entitled to the payment an original receipt (or certified copy thereof) or if unavailable such other evidence as is reasonably satisfactory to that Finance Party that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

**14.3 Tax indemnity**

- (a) The Company shall (within five Business Days of demand by the Agent) pay to a Protected Party an amount equal to the amount of any Tax assessed on that Protected Party (together with any interest, costs or expenses payable, directly or indirectly, or incurred in connection therewith) 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.
- (b) Paragraph (a) of this Clause 14.3 shall not apply with respect to any Tax assessed on a Finance Party:
  - (i) under the laws and regulations 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
  - (ii) under the laws and regulations 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 (but not on any sum deemed to be received or receivable in respect of any payment made under Clause 14.2 (*Tax gross-up*)) of that Finance Party.
- (c) A Protected Party making, or intending to make a claim pursuant to paragraph (a) of this Clause 14.3 shall promptly notify the Agent of the event which will give, or has given, rise to the claim, following which the Agent shall notify the Company.

- (d) A Protected Party shall, on receiving a payment from an Obligor under this Clause 14.3, notify the Agent.

**14.4 Tax Certificates**

- (a) Without prejudice to the other provisions of this Clause 14, in relation to any exemption from or application of a rate lower than that of general application pursuant to any legislation in Spain or any double taxation treaty, or pursuant to any other cause relating to residence status, any Lender which is not a Domestic Lender shall supply the Company, through the Agent, prior to the interest payment date with a certificate of residence issued by the pertinent fiscal administration, in the case of a Qualifying Lender which is not a Domestic Lender, accrediting such Qualifying Lender as resident for tax purposes in a Qualifying State or, as the case may be, accrediting such Lender as resident for tax purposes in a State which has signed and ratified a double taxation treaty with Spain.
- (b) As such certificates referred to in paragraph (a) of this Clause 14.4 are, at the date hereof, only valid for a period of one year, each such Lender will be required to so supply a further such certificate upon expiry of the previous certificate in relation to any further payment of interest.

**14.5 Stamp Taxes**

The Company shall pay and, within five Business Days of demand, indemnify each Finance Party against any cost, loss or liability that Finance Party incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Finance Document except for any such tax payable in connection with the entering into of a Transfer Certificate.

**14.6 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.

15. **INCREASED COSTS**

15.1 **Increased costs**

- (a) Subject to Clause 15.2 (*Increased Cost Claims*) and Clause 15.3 (*Exceptions*) the Company shall, within three Business Days of a demand by the Agent, pay for the account of a Finance Party the amount of any Increased Costs incurred by that Finance Party or any of its Affiliates as a result of:
- (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation; or
  - (ii) compliance with any law or regulation,
- in each case made after the date of this Agreement.
- (b) In this Agreement "**Increased Costs**" means, without duplication:
- (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 Commitments or funding or performing its obligations under any Finance Document.

15.2 **Increased cost claims**

- (a) A Finance Party intending to make a claim pursuant to Clause 15.1 (*Increased costs*) shall notify the Agent of the event giving rise to the claim and a calculation evidencing in reasonable detail the amount of such Increased Costs to be claimed by such Finance Party, following which the Agent shall promptly notify the Company and provide the Company with such calculations.
- (b) Each Finance Party shall, as soon as practicable after a demand by the Agent provide a certificate confirming the amount of its Increased Costs.

15.3 **Exceptions**

- (a) Clause 15.1 (*Increased costs*) does not apply to the extent any Increased Cost is:
- (i) attributable to a Tax Deduction required by law or regulation to be made by an Obligor;
  - (ii) compensated for by Clause 14.3 (*Tax indemnity*) (or would have been compensated for under Clause 14.3 (*Tax indemnity*) but was not so compensated solely because any of the exclusions in paragraph (b) of Clause 14.3 (*Tax indemnity*) applied);

- (iii) compensated for by the payment of the Mandatory Cost; or
- (iv) attributable to the breach by the relevant Finance Party or its Affiliates of any law or regulation.

(b) In this Clause 15.3, a reference to a "**Tax Deduction**" has the same meaning given to the term in Clause 14.1 (*Definitions*).

## 16. OTHER INDEMNITIES

### 16.1 Currency indemnity

(a) If any sum due from an Obligor under the Finance Documents (a "**Sum**"), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the "**First Currency**") in which that Sum is payable into another currency (the "**Second Currency**") for the purpose of:

- (i) making or filing a claim or proof against that Obligor; or
- (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

that Obligor shall as an independent obligation, within three Business Days of demand, indemnify each Finance Party to whom that Sum is due against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

(b) Each Obligor waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency or currency unit other than that in which it is expressed to be payable.

### 16.2 Other indemnities

(a) Each Obligor shall, within five Business Days of demand, indemnify each Finance Party against any cost, loss or liability not otherwise compensated under the provisions of this Agreement and excluding any lost profits, consequential or indirect damages (other than interest or default interest) incurred by that Finance Party as a result of its Commitment or the making of any Loan under the Finance Documents 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 29 (*Sharing among the Finance Parties*);

- (iii) funding, or making arrangements to fund, its participation in a Loan requested by the Company in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by that Finance Party alone); or
  - (iv) a Loan (or part of a Loan) not being prepaid in accordance with a notice of prepayment given by the Company.
- (b) The Company shall procure that an Obligor will indemnify and hold harmless each Finance Party and each of their 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 (only in so far as such claim, investigation, litigation or proceeding relates to the use of proceeds of the Facilities towards the acquisition by the Company or Cemex UK or any person acting in concert with the Company or Cemex UK of any of the ordinary shares of RMC Group PLC) except to the extent such Losses or claims result from such Indemnified Person's negligence or misconduct or a breach of any Finance Document by an Indemnified Person **provided that:**
- (i) the Indemnified Party shall as soon as reasonably practicable inform the Cemex Parent of any circumstances of which it is aware and which would be reasonably likely to give rise to any such investigation, litigation or proceeding (whether or not an investigation, litigation or proceeding has occurred or been threatened);
  - (ii) the Indemnified Party will, where reasonable and practicable, and taking into account the provisions of this Agreement, give Cemex Parent an opportunity to consult with it with respect to the conduct or settlement of any such investigation, litigation or proceeding;
  - (iii) an Indemnified Party will provide the Company on request (and, to the extent practicable without any waiver of legal professional privilege or breach of confidentiality obligation) with copies of material correspondence in relation to the Losses and allow the Company to attend all material meetings in relation to the Losses, receive copies of material legal advice obtained by the Indemnified Party in relation to the Losses;
  - (iv) the Company will keep strictly confidential all information received by it in connection with the Losses and will not disclose any information to any third party without the prior written consent of the Indemnified Party;



- (v) no Obligor shall be liable for any settlement of the Losses unless the Company has consented to that settlement; and
- (vi) no Indemnified Party shall be required to comply with paragraphs (i) or (ii) or (iii) nor shall paragraph (v) apply unless the Indemnified Party is and continues to be indemnified on a current basis for its costs and expenses.

Any third party referred to in this paragraph (b) may rely on this Clause 16.2 subject to Clause 1.4 (*Third Party Rights*) and the provisions of the Third Parties Act.

**16.3 Indemnity to the Agent**

The Company shall (or shall procure that another Obligor will) promptly indemnify the Agent against any cost, loss or liability directly related to this Agreement incurred by the Agent (acting reasonably and otherwise than by reason of the Agent's gross negligence or wilful misconduct) as a result of:

- (a) investigating any event which it reasonably believes (acting prudently and, if possible, following consultation with the Company) 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.

**17. MITIGATION BY THE LENDERS**

**17.1 Mitigation**

- (a) Each Finance Party shall, in consultation with the Company, take all reasonable steps to mitigate any circumstances which arise after the date of this Agreement and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 9.1 (*Illegality of a Lender*), Clause 14 (*Tax Gross-up and Indemnities*) or Clause 15 (*Increased Costs*) or paragraph 3 of Schedule 4 (*Mandatory Cost Formulae*) 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.

17.2 **Limitation of liability**

- (a) The Company shall (or shall procure that another Obligor will) indemnify each Finance Party for all costs and expenses reasonably incurred by that Finance Party as a result of steps taken by it under Clause 17.1 (*Mitigation*).
- (b) A Finance Party is not obliged to take any steps under Clause 17.1 (*Mitigation*) if, in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it.

18. **COSTS AND EXPENSES**

18.1 **Transaction expenses**

The Company shall pay the Agent and the Arranger the amount of all transaction costs and expenses as set out in the Costs and Expenses Letter.

18.2 **Amendment costs**

If (a) an Obligor requests an amendment, waiver or consent or (b) an amendment is required pursuant to Clause 30.9 (*Change of currency*), the Company shall, within three Business Days of demand, reimburse the Agent, the Arranger and each Lender for the amount of all costs and expenses (including legal fees, but in this case, only the legal fees of one law firm in each relevant jurisdiction acting on behalf of all the Lenders) reasonably incurred by such parties in responding to, evaluating, negotiating or complying with that request or requirement.

18.3 **Enforcement costs**

The Company shall, within three Business Days of demand, pay to each Finance Party the amount of all costs and expenses (including legal fees) incurred by that Finance Party in connection with the enforcement of, or the preservation of any rights under, any Finance Document.

**SECTION 7  
GUARANTEE**

**19. GUARANTEE AND INDEMNITY**

**19.1 Guarantee and indemnity**

Each Guarantor irrevocably and unconditionally jointly and severally:

- (a) guarantees to each Finance Party punctual performance by each Borrower of that Borrower's obligations under the Finance Documents;
- (b) undertakes with each Finance Party that whenever a Borrower 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 was 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. 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.

**19.2 Continuing Guarantee**

This guarantee is a continuing guarantee and will extend to the ultimate balance of sums payable by each Borrower under the Finance Documents, regardless of any intermediate payment or discharge in whole or in part.

**19.3 Reinstatement**

If any payment by any Borrower or any discharge given by a Finance Party (whether in respect of the obligations of any Borrower 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 Borrower 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 Borrower, as if the payment, discharge, avoidance or reduction had not occurred.

**19.4 Waiver of defences**

The obligations of each Guarantor under this Clause 19 will not be affected by an act, omission, matter or thing which, but for this Clause 19, would reduce, release or prejudice any of its obligations under this Clause 19 (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 Borrower or other person;
- (b) the release of any Borrower 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 Borrower 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 a Borrower 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; or
- (g) any insolvency or similar proceedings.

19.5 **Immediate recourse**

Each Guarantor 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 19. 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.

19.6 **Appropriations**

Until all amounts which may be or become payable by a Borrower 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 19.

Provided that the operation of this Clause 19.6 shall not be deemed to create any Security.

19.7 **Deferral of Guarantors' rights**

Until all amounts which may be or become payable by a Borrower under or in connection with the Finance Documents have been irrevocably paid in full and unless the Agent otherwise directs, no Guarantor will exercise any rights which it may have by reason of performance by it of its obligations under the Finance Documents:

- (a) to be indemnified by a Borrower;
- (b) to claim any contribution from any other guarantor of any Borrower'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.

19.8 **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.

**SECTION 8  
REPRESENTATION, UNDERTAKINGS AND EVENTS OF DEFAULT**

**20. REPRESENTATIONS**

Each Obligor makes the representations and warranties set out in this Clause 20 to each Finance Party.

**20.1 Status**

- (a) It is a corporation, duly organised and validly existing under the laws and regulations of its jurisdiction of incorporation.
- (b) It has the power to own its assets and carry on its business as it is being conducted.

**20.2 Binding obligations**

The obligations expressed to be assumed by it in each Finance Document are, subject to any reservations which are specifically referred to in any Legal Opinion, legal, valid, binding and enforceable obligations.

**20.3 Non-conflict with other obligations**

The entry into and performance by it of, and the transactions contemplated by, the Finance Documents do not and will not conflict with:

- (a) any law or regulation applicable to it;
- (b) its constitutional documents; or
- (c) any agreement or instrument binding upon it or any of its assets.

**20.4 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.

**20.5 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 in 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.

**20.6 Governing law and enforcement**

- (a) The choice of English law as the governing law of the Finance Documents will be recognised and enforced in its jurisdiction of incorporation subject to any reservations which are specifically referred to in any legal opinion.
- (b) Any judgment obtained in England in relation to a Finance Document will be recognised and enforced in its jurisdiction of incorporation, subject to any reservations which are specifically referred to in any Legal Opinion.

**20.7 Deduction of Tax**

It is not 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 Qualifying Lender.

**20.8 No filing or stamp taxes**

Under the laws and regulations of its jurisdiction of incorporation it is not necessary that the Finance Documents be filed, recorded or enrolled with any court or other authority in that jurisdiction or 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.

**20.9 No default**

- (a) No Default or Event of Default is continuing or might reasonably be expected to result from the making of any Utilisation.
- (b) No other event or circumstance is outstanding which constitutes a default under any other agreement or instrument which is binding on it or any of its Subsidiaries or to which its (or its Subsidiaries') assets are subject which might have a Material Adverse Effect.

**20.10 No misleading information**

- (a) Any factual information provided by the Company for the purposes of the Information Memorandum was true and accurate in all material respects as at the date it was provided or as at the date (if any) at which it is stated.
- (b) The financial projections contained in the Information Memorandum have been prepared in good faith on the basis of recent historical information and on the basis of the assumptions stated therein, which assumptions were fair in the light of conditions existing at the time of delivery of such forecasts, and represented, at the time of delivery, the Company's best estimate of its future performance.
- (c) So far as the Company is aware, after reasonable enquiry, nothing has occurred or been omitted from the Information Memorandum and no information has been given or withheld that results in the information contained in the Information Memorandum being untrue or misleading in any material respect.
- (d) All material written information (other than the Information Memorandum) supplied by any member of the Group is true, complete and accurate in all material respects as at the date it was given and is not misleading in any material respect.

**20.11 Financial statements**

- (a) Its Original Financial Statements were prepared in accordance with GAAP 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.
- (c) For the purposes of any repetition of the representation contained in paragraphs (a) and (b) of this Clause 20.11 (pursuant to Clause 20.20 (*Times on which representations are made*)) the representations will be made in respect of the latest consolidated financial statements of each Obligor instead of the Original Financial Statements.

**20.12 Pari passu ranking**

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.

**20.13 No proceedings pending or threatened**

No litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency which are likely to be adversely determined and which, if so determined, would be reasonably likely to have a Material Adverse Effect or purports to affect the legality, validity or enforceability of any of the obligations under the Finance Documents have been started or threatened against any Obligor or any Material Subsidiary.

**20.14 No winding-up**

No legal proceedings or other procedures or steps have been taken or, to the Company'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).

**20.15 Material Adverse Change**

There has been no material adverse change in the Company'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.

**20.16 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.



**20.17 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.

**20.18 No Immunity**

In any proceedings taken in its jurisdiction of incorporation in relation to this Agreement, it will not be entitled to claim for itself or any of its assets immunity from suit, execution, attachment or other legal process.

**20.19 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.

**20.20 Times on which representations are made**

- (a) All the representations and warranties in this Clause 20 are made to each Finance Party on the date of this Agreement except for the representations and warranties set out in Clause 20.10 (*No misleading information*) which are deemed to be made by each Obligor on the date that the Information Memorandum was approved by Cemex UK and on the date the Facilities were primarily syndicated (and for this purpose, the Information Memorandum referred to therein shall be the Information Memorandum as updated in accordance with the principles agreed between the Arranger and Cemex UK).
- (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 and each of the representations and warranties set out in Clause 20.5 (*Validity and admissibility in evidence*), Clause 20.6 (*Governing law and enforcement*), Clause 20.9 (*No default*) and paragraph (b) of Clause 20.10 (*No misleading information*) (in respect only of information given by it) 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.

**21. INFORMATION UNDERTAKINGS**

The undertakings in this Clause 21 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

21.1 **Financial statements**

The Company shall supply to the Agent:

- (a) as soon as the same become available, but in any event within 180 days after the end of each of such Obligor's respective financial years:
  - (i) the Company's audited consolidated and unconsolidated financial statements for that financial year; and
  - (ii) each Guarantor's respective audited consolidated (to the extent available) and unconsolidated financial statements for that financial year; and
- (b) as soon as the same become available, but in any event within 90 days after the end of the first half of each of its financial years its unaudited consolidated financial statements for that period.

**21.2 Compliance Certificate**

- (a) The Company shall supply to the Agent, with each set of consolidated financial statements delivered pursuant to paragraphs (a) (i) and (b) of Clause 21.1 (*Financial statements*), a Compliance Certificate setting out (in reasonable detail) computations as to compliance with Clause 22 (*Financial Covenants*) as at the date as at which those financial statements were drawn up.
- (b) Each Compliance Certificate shall be signed by an Authorised Signatory of the Company and, if required to be delivered with the consolidated financial statements delivered pursuant to paragraph (a) (i) of Clause 21.1 (*Financial statements*), by the Company's auditors.

**21.3 Requirements as to financial statements**

- (a) Each set of financial statements delivered by the Company pursuant to Clause 21.1 (*Financial statements*) shall be certified by an Authorised Signatory of the relevant company as fairly representing its financial condition as at the date as at which those financial statements were drawn up.
- (b) The Company shall procure that each set of financial statements delivered pursuant to Clause 21.1 (*Financial statements*) is prepared using GAAP and accounting practices and financial reference periods consistent with those applied in the preparation of the Original Financial Statements for that Obligor unless, in relation to any set of financial statements, it notifies the Agent that there has been a change in GAAP, or the accounting practices or reference periods and, unless amendments are agreed in accordance with paragraph (c) of this Clause 21.3, its auditors (or, if appropriate, the auditors of the Obligor) deliver to the Agent:
  - (i) a description of any change necessary for those financial statements to reflect the GAAP, accounting practices and reference periods upon which that Obligor's Original Financial Statements were prepared; and
  - (ii) sufficient information, in form and substance as may be reasonably required by the Agent, to enable the Lenders to determine whether Clause 22 (*Financial covenants*) has been complied with and make an accurate comparison between the financial position indicated in those financial statements and that Obligor's Original Financial Statements.

- (c) If the Company adopts International Accounting Standards or, subject to paragraph (b) above, there are changes to GAAP, or the accounting practices or reference periods the Company and the Agent shall, at the Company's request, negotiate in good faith with a view to agreeing such amendments to the financial covenants in Clause 22 (*Financial Covenants*) and the ratios used to calculate the Margin and, in each case, the definitions used therein as may be necessary to ensure that the criteria for evaluating the Group's financial condition grant to the Lenders protection equivalent to that which would have been enjoyed by them had the Company not adopted International Accounting Standards or had there not been a change in GAAP, or the accounting practices or reference periods (subject to compliance with paragraph (b) above). Any amendments agreed will take effect on the date agreed between the Agent and the Company subject to the consent of the Majority Lenders. If no such agreement is reached within 90 days of the Company's request, the Company will remain subject to the obligation to deliver the information specified in paragraph (b) of this Clause 21.3.

21.4 **Information: miscellaneous**

The Company shall supply to the Agent:

- (a) all documents dispatched by the Company to its shareholders (or any class of them) or its creditors generally at the same time as they are dispatched;
- (b) promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings which are current, or which, to the Company'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 Company, are not spurious or vexatious, and which might, if adversely determined, have a Material Adverse Effect;
- (c) promptly, such further information regarding the financial condition, assets and business of any Obligor or member of the Group as the Agent (or any Lender through the Agent) may reasonably request (including, but not limited to, information on Ratings, if such credit rating has not been publicly announced) other than any information the disclosure of which would result in a breach of any applicable law or regulation or confidentiality agreement entered into in good faith **provided that** the Company shall use reasonable efforts to be released from any such confidentiality agreement; and
- (d) 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 23.12 (*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;

**21.5 Notification of default**

- (a) Each Obligor shall notify the Agent of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence (unless that Obligor is aware that a notification has already been provided by another Obligor).
- (b) Promptly upon a request by the Agent, the Company shall supply to the Agent a certificate signed by an Authorised Signatory on its behalf certifying that no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).

**21.6 "Know your client" checks**

- (a) Each Obligor shall promptly upon the request of the Agent or any Lender and each Lender shall promptly upon the request of the Agent supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Lender) or any Lender (for itself or on behalf of any prospective New Lender) in order for the Agent, such Lender or any prospective New Lender 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 transactions contemplated in the Finance Documents. For the avoidance of doubt, a Lender will have no obligation towards the Agent to evidence that it has complied with any "know your client" or similar checks in relation to the Obligors.
- (b) The Company shall, by not less than five Business Days' written notice to the Agent, notify the Agent (which shall promptly notify the Lenders) of its intention to request that one of its Subsidiaries becomes an Additional Obligor pursuant to Clause 26 (*Changes to the Obligors*).
- (c) Following the giving of any notice pursuant to paragraph (b) above, the Company shall promptly upon the request of the Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Lender) or any Lender (for itself or on behalf of any prospective New Lender) in order for the Agent, such Lender or any prospective New Lender 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 Obligor to this Agreement.

**21.7 Notarisations**

Each Obligor shall notify the Agent of any Notarisations referred to in paragraph (a)(iv) of Clause 23.5 (*Notarisation*) promptly upon such Notarisations taking place.

22. **FINANCIAL COVENANTS**

22.1 **Financial definitions**

In this Clause 22:

"**Adjusted EBITDA**" means, for any Relevant Period, the sum of (a) EBITDA and (b) with respect to any business acquired during such period, the sum of (i) the operating income and (ii) depreciation and amortization expense for such business, as determined in accordance with GAAP for such Relevant Period, **provided that** the Company need only make the adjustments contemplated by "(b)" above if the operating income and depreciation and amortization expense of the acquired business in the 12 Months prior to its acquisition amount to US\$10,000,000 or more.

"**Cemex Capital Contributions**" means contributions in cash to the capital of the Company by CEMEX S.A. de C.V. or by any of its Subsidiaries not being a Subsidiary of the Company made after 1 January 2004.

"**EBITDA**" means for the Relevant Period immediately preceding the date on which it is to be calculated, operating profit plus annual depreciation for fixed assets plus annual amortisation of intangible assets plus annual amortisation of start-up costs of the Group plus dividends received from non-consolidated companies and from companies consolidated by the equity method plus an amount equal to the amount of Cemex Capital Contributions made during such period immediately preceding the date on which it is to be calculated (up to an amount equal to the amount of Royalty Expenses made in such period). Such calculation shall be made in accordance with GAAP.

"**Finance Charges**" means for any Relevant Period, the sum (without duplication) of (a) all interest expense in respect of Financial Indebtedness (including imputed interest on Capital Leases) for such period plus (b) all debt discount and expense (including, without limitation, expenses relating to the issuance of instruments representing Financial Indebtedness) amortized during such period plus (c) amortization of discounts on sales of receivables during such period plus (d) all factoring charges for such period plus (e) all guarantee charges for such period plus (f) any charges analogous to the foregoing relating to Off-Balance-Sheet Transactions for such period, all determined on a consolidated basis in accordance with GAAP.

"**Guarantees**" means any guarantee or indemnity of Financial Indebtedness of another person (in the case of the latter for any specified amount or otherwise in the amount specified in or for which provision has been made in the accounts of the indemnifier) in any form made other than in the ordinary course of business of the guarantor.

"**Intellectual Property Rights**" means all copyrights (including rights in computer software), trade marks, service marks, business names, patents, rights in inventions, registered designs, design rights, database rights and similar rights, rights in trade secrets or other confidential information and any other intellectual property rights and any interests (including by way of license) in any of the foregoing (in each case whether registered or not and including all applications for the same) which may subsist in any given jurisdiction.

**"Net Borrowings"** means, at any time, the remainder of (a) Total Borrowings at such time less (b) the aggregate amount of the following items held by the Company and its Subsidiaries at such time: cash on hand, marketable securities, investments in money market funds, banker's acceptances, short-term deposits and other liquid investments.

**"Off-Balance-Sheet Transactions"** means any present or future financing transaction not reflected as indebtedness on the consolidated balance sheet of the Company, but being structured in a way that may result in payment obligations by any Group member, excluding any financing transaction in the form of:

- (a) interest rate and currency exchange rate hedging agreements to hedge risks arising in the normal course of business;
- (b) transactions containing potential payments by any Group member (e.g. via a put-option agreement or similar structures) under which payments are incapable of being triggered until three days after the Termination Date in relation to Facility C; or
- (c) any supply arrangement or equipment lease in respect of energy or raw material sourcing containing contingent obligations to directly or indirectly purchase (including through the purchase of shares or other equity participation) the underlying operations or assets up to an aggregate maximum of \$100,000,000.

**"Relevant Period"** means each period of twelve Months ending on the last day of the first half of the Company's financial year and each period of twelve Months ending on the last day of the Company's financial year.

**"Rolling Basis"** means the calculation of a ratio or an amount made at the end of a financial half year in respect of that financial half year and the one immediately preceding 6 month period.

**"Royalty Expenses"** means expenses incurred by the Company or any of its Subsidiaries to CEMEX S.A. de C.V. or any of its Subsidiaries not being a Subsidiary of the Company as (a) consideration for the granting to the Company or any Subsidiary of a licence to use, exploit and enjoy Intellectual Property Rights and any other intangible assets such as, but not limited to, know-how, formulae, process technology and other forms of intellectual and industrial property, whether or not registered, held by CEMEX S.A. de C.V. or any of its Subsidiaries not being a Subsidiary of the Company; or (b) fees, commissions or other amounts accrued in respect of any management contract, services contract, overhead expenses allocation arrangement or any other similar transaction; **provided that** in paragraphs (a) and (b) such amounts shall have been taken into consideration in the calculation of operating profit under Spanish GAAP.

**"Subordinated Debt"** means debt granted by CEMEX S.A. de C.V. (a company registered in Mexico) or any of its Subsidiaries not being a member of the Group to the Company or any of its Subsidiaries on terms such that no payments of principal may be made thereunder (including but not limited to following any winding up, *concurso de acreedores* or other like event of the Company) until the Agent has confirmed in writing that all amounts outstanding hereunder have been paid in full.

"**Total Borrowings**" means without duplication, in respect of any person all Guarantees granted by such person, plus all Off-Balance-Sheet Transactions entered into by such person, plus all such person's Financial Indebtedness, but excluding any Subordinated Debt.

**22.2 Financial condition**

The Company shall ensure that in respect of any Relevant Period:

- (a) the ratio of Net Borrowings to Adjusted EBITDA calculated on a Rolling Basis shall be less than or equal to 3.5:1; and
- (b) the ratio of EBITDA to Finance Charges calculated on a Rolling Basis shall be greater than or equal to 3:1.

**22.3 Financial testing**

The financial covenants set out in Clause 22.2 (*Financial condition*) shall be tested semi-annually by reference to each of the Company's consolidated financial statements delivered pursuant to and/or each Compliance Certificate delivered with respect to any such consolidated financial statements pursuant to Clause 21.1 (*Financial statements*) and Clause 21.2 (*Compliance Certificate*).

**22.4 Accounting terms**

All accounting expressions which are not otherwise defined herein shall have the meaning ascribed thereto in GAAP.

**23. GENERAL UNDERTAKINGS**

The undertakings in this Clause 23 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

**23.1 Authorisations**

Each Obligor shall promptly:

- (a) obtain, comply with and do all that is necessary to maintain in full force and effect; and
- (b) supply certified copies to the Agent of,

any Authorisation required under any law or regulation of its jurisdiction of incorporation to enable it to perform its obligations under the Finance Documents and to ensure the legality, validity, enforceability or admissibility in evidence in its jurisdiction of incorporation of any Finance Document.



**23.2 Preservation of corporate existence**

Subject to Clause 23.8 (*Merger*), each Obligor shall (and the Company shall ensure that each of its Material Subsidiaries will), preserve and maintain its corporate existence and rights.

**23.3 Preservation of properties**

Each Obligor shall (and the Company shall ensure that each of its Material Subsidiaries will) maintain and preserve all of its properties that are used or useful in the conduct of its business in good working order and condition, ordinary wear and tear excepted.

**23.4 Compliance with laws and regulations**

- (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, if failure to so comply would be likely to have a Material Adverse Effect.
- (b) The Company shall (and shall procure that each of its Subsidiaries 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 failure to make such contributions would not reasonably be expected to have a Material Adverse Effect.

**23.5 Notarisation**

- (a) Subject to paragraph (b) of this Clause 23.5, the Company shall not (and shall procure that none of its Subsidiaries will) permit any of its unsecured indebtedness to be notarised as a Spanish Public Document (any such notarisation, a "**Notarisation**"), other than the following permitted Notarisations ("**Permitted Notarisations**"):
  - (i) any Permitted Notarisations listed in Schedule 11 (*Existing Notarisations*) and any amendments or modifications thereof, **provided that** any such amendment or modification shall not result in the increase of the principal amount of the relevant indebtedness nor the extension of the maturity thereof nor, for the avoidance of doubt, relate to any refinancing of the relevant indebtedness;
  - (ii) Notarisations which are required by applicable law or regulation or which arise by operation of law other than pursuant to any issue of debt securities in accordance with Article 285 of the Spanish Corporations Law (*Ley de Sociedades Anónimas*);
  - (iii) Notarisations with the prior written consent of the Majority Lenders;
  - (iv) any Notarisations securing indebtedness the principal amount of which (when aggregated with the principal amount of any other Notarisations other than any Permitted Notarisations under paragraphs (i) or (iii) above) do not exceed US\$100,000,000 (or its equivalent in another currency or currencies); and

- (v) any Notarisations relating to indebtedness in respect of any sale and purchase agreement customarily registered in a public register in Spain and payment of which indebtedness is made within seven days of the date of such agreement.
- (b) Paragraph (a) of this Clause 23. shall not apply if the Company, concurrently with any such Notarisation (not being a Permitted Notarisation) referred to in paragraph (a) of this Clause 23.5 and at its own cost and expense, causes this Agreement to be the subject of a Notarisation.

23.6 **Negative pledge**

The Company shall not and shall not permit any of its Subsidiaries 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, other than the following 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 GAAP shall have been made;
- (b) 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;
- (c) liens incurred or deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security;
- (d) any 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;
- (e) Security existing on the date of this Agreement as described in Schedule 10 (*Existing Security*) **provided that** the principal amount secured thereby is not increased;
- (f) any Security on property acquired by the Company or any of its Subsidiaries after the date of this Agreement that was existing on the date of acquisition of such property **provided that** such Security was not incurred in anticipation of such acquisition; and any Security created to secure all or any payment of the purchase price, or to secure indebtedness incurred or assumed to pay all or any part of the purchase price, of property acquired by the Company or any of its Subsidiaries after the date of this Agreement **provided, further, that** (i) any such Security permitted pursuant to this paragraph (f) 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 by which the acquired Subsidiary will be directly or indirectly controlled) and, if required by the terms of the instrument originally creating such Security, other property which is an improvement to, or is acquired for specific use with, such acquired property; (ii) if applicable, any such Security shall be created within nine Months after, in the case of property, its acquisition, or, in the case of improvements, their Completion; and (iii) no such Security shall be made in respect of any indebtedness in relation to repayment of which recourse may be had to any member of the Group (in the form of Security) other than in relation to the item or items as referred to in (i) above;

- (g) any Security renewing, extending or refinancing the indebtedness to which any Security permitted by paragraph (f) above relates; **provided that** the principal amount of indebtedness secured by such Security immediately prior thereto is not increased and such Security is not extended to other property;
- (h) any Security created on shares representing no more than a Stake in the capital stock of any of the Company's Subsidiaries solely as a result of the deposit or transfer of such shares into a trust or a special purpose corporation (including any entity with legal personality) of which such shares constitute the sole assets **provided that** the proceeds from the deposit or transfer of such shares into such trust, corporation or entity and from any transfer of or distributions in respect of the Company's or any Subsidiary's interest in such trust, corporation or entity are applied as provided under Clause 23.7 (*Disposals*) and **provided further that** such Security may not secure Financial Indebtedness of the Company or any Subsidiary unless otherwise permitted under this Clause 23.6 and that the economic and voting rights in such capital stock is maintained by the Company in its Subsidiaries;
- (i) any Security permitted by the Agent, acting on the instructions of the Majority Lenders;
- (j) any securitisation of receivables notwithstanding that it is made at discount from the amount due on such receivables and **provided that** it is made on a non recourse basis or that recourse is directly or indirectly limited to collection of the receivables plus related interest and financial and collection costs and expenses; and
- (k) in addition to the Security permitted by the foregoing paragraphs (a) to (k), Security securing indebtedness of the Company and its Subsidiaries (taken as a whole) not in excess of an amount equal to 5% of the Adjusted Consolidated Net Tangible Assets of the Group, as determined in accordance with GAAP,

unless, in each case, the Obligors have made or caused to be made effective provision whereby the obligations hereunder are secured equally and rateably with, or prior to, the indebtedness secured by such Security (other than Permitted Security) for so long as such indebtedness is so secured.

For the purposes of paragraph (l) of this Clause 23.6, "**Adjusted Consolidated Net Tangible Assets**" means, with respect to any person, the total assets of such person and its Subsidiaries (less applicable depreciation, amortisation and other valuation reserves), including any write-ups or restatements required under GAAP (other than with respect to items referred to in (ii) below), minus (i) all current liabilities of such person and its Subsidiaries (excluding the current portion of long-term debt) and (ii) all goodwill, trade names, trademarks, licences, concessions, patents, un-amortised debt discount and expense and other intangibles, all as determined on a consolidated basis in accordance with GAAP.

23.7 **Disposals**

- (a) Subject to paragraph (b) of this Clause 23.7, the Company shall not (and the Company shall ensure that none of its Subsidiaries will), without the prior written consent of the Majority Lenders, 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 all its assets or a substantial part of its assets representing more than 5 per cent. in aggregate of the total consolidated assets of the Group, calculated by reference to the latest consolidated financial statements of the Company, delivered pursuant to paragraph (a) (i) of Clause 21.1 (*Financial statements*), unless (i) full value for such assets is received by the Company or its Subsidiaries; (ii) an amount equal to the net proceeds of any such sale, lease, transfer or other disposal is reinvested within twelve Months of receipt by the Company or its Subsidiaries in the business of the Group; and (iii) neither such sale, lease, transfer or other disposal nor such reinvestment directly results in a downgrade from the then current Ratings of the Company.
- (b) Paragraph (a) of this Clause 23.7 does not apply to any sale, lease, transfer or other disposal of assets:
  - (i) made on arm's length terms and for fair market value in the ordinary course of business of the disposing entity;
  - (ii) in respect of any securitisation of receivables notwithstanding that it is made at discount from the amount due on such receivables and **provided that** it is made on a non-recourse basis or that recourse is directly or indirectly limited to collection of the receivables plus related interest and financial and collection costs and expenses;
  - (iii) from any member of the Group to another member of the Group on arm's length terms and for fair market or book value **provided that** the exception contained in this paragraph (iii) shall not apply to any sale, lease, transfer or other disposal of an asset:

- (A) from any Obligor to another member of the Group which is neither an Obligor nor a subsidiary of an Obligor unless the person to whom such sale, lease, transfer or other disposal is made (the "Transferee") or its direct or indirect parent company (as the case may be) becomes a Guarantor; or
- (B) from any Material Subsidiary to another member of the Group which is not a Material Subsidiary unless the person making such sale, lease, transfer or other disposal does not cease to be a Material Subsidiary or, if it ceases to be a Material Subsidiary, any Transferee shall be deemed to be a Material Subsidiary;
- (iv) in respect of which the net proceeds are used to repay any amounts outstanding hereunder in an amount equal to such net proceeds and if the Available Commitments in an amount equal thereto are cancelled; or
- (v) in respect of which the proceeds are applied pursuant to any prepayment requirement included as at the date hereof in existing loan agreements of any Subsidiary in relation to the use of proceeds received from the disposal of any assets.

23.8 **Merger**

- (a) Subject to paragraphs (b) and (c) of this Clause 23.8, unless it has obtained the prior written approval of the Majority Lenders, no Obligor shall (and the Company shall ensure that none of its Subsidiaries will) enter into any amalgamation, demerger, merger or other corporate reconstruction (a "**Reconstruction**"), other than (i) a Reconstruction relating only to the Company's Subsidiaries inter se; (ii) a Reconstruction between the Company and any of its Subsidiaries; or (iii) a solvent reorganisation or liquidation of any of the Subsidiaries not being 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 Security (if any) granted to the Lenders 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) Subject to paragraph (c) of this Clause 23.8, the Obligors may merge with any other person if the book value of such person's assets prior to the merger does not exceed 3 per cent. of the book value of the Group's assets taken as a whole considered on a consolidated basis.
- (c) In paragraphs (a) and (b) of this Clause 23.8, the then existing Ratings of the Company shall not be downgraded whether at the time of, or within 3 Months of, the date of announcement of a Reconstruction, directly as a result of any merger involving the Company, and the resulting entity, if it is not an Obligor, shall assume the obligations of the Obligor the subject of the merger.

**23.9 Change of business**

- (a) None of the Obligors 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 Company which shall in no event cease or substantially change its business) unless another Obligor continues to operate any such business).
- (b) The Company shall procure that no substantial change is made to the general nature of the business of any of its Material Subsidiaries (other than a Guarantor) from that carried on at the date of this Agreement and that there shall be no cessation of such business.

**23.10 Insurance**

The Obligors shall (and the Company shall ensure that each of its Material Subsidiaries (other than the Obligors) 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.

**23.11 Environmental Compliance**

The Company shall (and the Company 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.

**23.12 Environmental Claims**

The Company shall inform the Agent in writing as soon as reasonably practicable upon becoming aware of the same:

- (a) if any Environmental Claim has been commenced or (to the best of the Company'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.

**23.13 Transactions with Affiliates**

Each Obligor shall (and the Company shall ensure that its Subsidiaries will) ensure that any transactions with respective Affiliates 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.

**23.14 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.

**23.15 Subsidiary Financial Indebtedness incurrence**

If, at any time, the aggregate outstanding principal amount of Subsidiary Financial Indebtedness exceeds 15% of the Consolidated Total Assets of the Company and its Subsidiaries, then for so long as such remains the case, no Subsidiary of the Company (except Subsidiaries described in paragraph (f) of the definition of "Subsidiary Financial Indebtedness" below) may, directly or indirectly, create, incur, assume or otherwise become liable with respect to any other Financial Indebtedness.

"**Subsidiary Financial Indebtedness**" means Financial Indebtedness of a Subsidiary of the Company other than:

- (a) Financial Indebtedness of a Subsidiary that is an Excluded Subsidiary Guarantor;
- (b) Financial Indebtedness of a Subsidiary as disclosed in Schedule 13 (*Existing Financial Indebtedness*) **provided that:**
  - (i) the principal amount of such Financial Indebtedness shall not be increased above the principal amount thereof outstanding immediately prior to any extension, refunding or refinancing; and
  - (ii) the aggregate amount of all Financial Indebtedness that has been extended, refunded or refinanced under this paragraph (b) shall not exceed \$250,000,000 (or the equivalent thereof if denominated in another currency),for the avoidance of doubt, it is understood that:
  - (X) if any such Financial Indebtedness is successively extended, refinanced or refunded, only the Financial Indebtedness outstanding after giving effect to all such successive extensions, refinancing and refundings shall be counted against the foregoing amount; and
  - (Y) any Financial Indebtedness incurred in a currency other than dollars pursuant to this paragraph (b) shall continue to be permitted under this paragraph (b), notwithstanding any fluctuation in currency values, as long as the outstanding principal amount of such Financial Indebtedness (denominated in its original currency) does not exceed the maximum amount of such Financial Indebtedness (denominated in such currency) permitted to be outstanding on the date such Financial Indebtedness was incurred);

- (c) Financial Indebtedness of a Subsidiary owed to the Company or another Subsidiary;
- (d) Financial Indebtedness of a Subsidiary that is:
  - (i) outstanding at the time such Subsidiary became a Subsidiary or;
  - (ii) contractually required to be incurred by such Subsidiary at such time,  
**provided that** such Financial Indebtedness shall not have been incurred in contemplation of such Subsidiary becoming a Subsidiary and **provided that** there is no recourse to any member of the Group other than such Subsidiary following the date falling 60 days after such Subsidiary became a Subsidiary;
- (e) any Financial Indebtedness extending the maturity of the Financial Indebtedness referred to in paragraph (d) above, or any refunding or refinancing of the same, **provided that** the principal amount of such Financial Indebtedness shall not be increased above the principal amount thereof outstanding immediately prior to such extension, refunding or refinancing;
- (f) Financial Indebtedness of a Subsidiary which:
  - (i) has been formed for the purpose of, and whose primary activities are, the issuance or other incurrence of debt obligations to Persons other than Affiliates of the Company and the lending or other advance of the net proceeds of such debt obligations (whether directly or indirectly) to the Company or any Guarantor which is a Holding Company (as defined in sub-Clause 26.3 (*Additional Guarantors*)); and
  - (ii) has no significant assets other than promissory notes and other contract rights in respect of funds advanced to the Company or such Guarantors; and
- (g) Financial Indebtedness of a Subsidiary incurred pursuant to or in connection with any pooling agreements in place within a bank or financial institution, but only to the extent of offsetting credit balances of the Company or its Subsidiaries pursuant to such pooling arrangement.

For the purposes of this Clause 23.15 (*Subsidiary Financial Indebtedness incurrence*):

"**Excluded Subsidiary Guarantor**" means any of the Subsidiaries that are Guarantors (of all amounts owed under this Agreement on an unconditional and unrestricted basis) on the date of this Agreement; **provided that** any other Subsidiary that becomes a Guarantor (of all amounts owed under the Facilities Agreement on an unconditional and unrestricted basis) shall be treated as an Excluded Subsidiary Guarantor for the purposes of this Agreement if legal opinions and other evidence are delivered to the Agent sufficient to establish to the reasonable satisfaction of the Agent and its legal adviser that the obligations of such Guarantor under this Agreement ranks and will continue to rank at least *pari passu* with all other unsecured and unsubordinated Financial Indebtedness of such Guarantor, including in a bankruptcy or insolvency proceeding.



"**Consolidated Total Assets**" means, at any time, the total assets of the Company and its Subsidiaries, as determined in accordance with Spanish GAAP by reference to the most recent financial statements supplied by the Company pursuant to Clause 21.1 (*Financial Statements*), provided that such financial statements shall be adjusted to reflect the acquisition of any Subsidiary.

**23.16 Payment restrictions affecting Subsidiaries**

The Company 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 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 (other than in relation to the Asia Fund as at the date hereof) entered into by a person prior to such person becoming a Subsidiary, in which case the Company shall use its reasonable endeavours to remove such limitations. If however, such limitations are reasonably likely to affect the ability of the Company to satisfy its payment obligations under this Agreement, the Company 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 23.16.

**23.17 Indebtedness of Guarantors**

None of the Guarantors (other than the Company) shall incur or permit to exist any Financial Indebtedness other than:

- (a) Financial Indebtedness in respect of its taxes or costs, incurred pursuant to legal requirements;
- (b) Financial Indebtedness owed to another member of the Group;
- (c) Financial Indebtedness of another member of the Group guaranteed by a Guarantor;
- (d) Financial Indebtedness in relation to the Loan Notes; and
- (e) Financial Indebtedness not falling within paragraphs (a) to (d) above, in an aggregate amount not exceeding EUR3,000,000 (or the equivalent thereof in any other currency).

23.18 **Notification of adverse change in Ratings**

The Company shall promptly notify the Agent of any change in its Ratings or Outlook.

24. **EVENTS OF DEFAULT**

Each of the events or circumstances set out in this Clause 24 is an Event of Default.

24.1 **Non-payment**

An Obligor does not pay on the due date any amount payable 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.

24.2 **Financial Covenants**

Any requirement of Clause 22 (*Financial Covenants*) is not satisfied.

24.3 **Other obligations**

- (a) An Obligor does not comply with any provision of the Finance Documents (other than those referred to in Clause 24.1 (*Non-payment*) and Clause 22 (*Financial covenants*)).
- (b) No Event of Default under paragraph (a) of this Clause 24.3 above will occur if the failure to comply is capable of remedy and is remedied within fifteen Business Days of the Agent giving written notice to the Company or the Company becoming aware of the failure to comply whichever is the earlier.

24.4 **Misrepresentation**

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.

24.5 **Cross acceleration**

- (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) No Event of Default will occur under this Clause 24.5 if the aggregate amount of Financial Indebtedness falling within paragraphs (a) and (b) of this Clause 24.5 above is less than \$50,000,000 (or its equivalent in any other currency or currencies).

**24.6 Insolvency**

- (a) Any of the Obligors or Material Subsidiaries is unable or admits inability to pay its debts as they fall due or, by reason of actual or anticipated financial difficulties, suspends making payments on any of its debts or commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness.
- (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).
- (c) A moratorium is declared in respect of any indebtedness of any of the Obligors or Material Subsidiaries.

**24.7 Insolvency proceedings**

Any corporate action, legal proceedings or other procedure or step is taken in relation to:

- (a) a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any of the Obligors or Material Subsidiaries other than a solvent liquidation or reorganisation of any of the Material Subsidiaries not being Obligors;
- (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 not being Obligors), receiver, administrator, 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 which is frivolous or vexatious and is discharged, stayed or dismissed within 60 days of commencement.

**24.8 Expropriation and sequestration**

Any expropriation or sequestration affects any asset or assets of any Obligor or any Material Subsidiary and has a Material Adverse Effect.

**24.9 Creditors' process and enforcement of Security**

- (a) Any Security is enforced against any Obligor or any Material Subsidiary.
- (b) Any attachment, distress or execution affects any asset or assets of any Obligor or any Material Subsidiary which is reasonably likely to cause a Material Adverse Effect.

- (c) No Event of Default under paragraphs (a) or (b) of this Clause 24.9 above will occur if:
- (i) the action is being contested in good faith by appropriate proceedings;
  - (ii) the principal amount of the indebtedness secured by such Security or in respect of which such attachment, distress or execution is carried out represents less than \$50,000,000 (or its equivalent in any other currency or currencies); and
  - (iii) the enforcement proceedings, attachment, distress or execution is or are discharged within 60 days of commencement.

**24.10 Failure to comply with judgment**

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 save unless payment of any such sum is suspended pending an appeal.

**24.11 Unlawfulness**

It is or becomes unlawful for an Obligor to perform any of its obligations under the Finance Documents where non-performance is reasonably likely to cause a Material Adverse Effect.

**24.12 Repudiation**

An Obligor repudiates a Finance Document or evidences an intention to repudiate a Finance Document.

**24.13 Change of Control**

If CEMEX, S.A. de C.V. ceases to:

- (a) be entitled to (whether by way of ownership of shares (directly or indirectly), proxy, contract, agency or otherwise):
  - (i) cast, or control the casting of, at least 51 per cent. of the maximum number of votes that might be cast at a general meeting of the Company;
  - (ii) appoint or remove all, or the majority, of the directors or other equivalent officers of the Company;
  - (iii) give directions with respect to the operating and financial policies of the Company which the directors or other equivalent officers of the Company are obliged to comply with; or
- (b) hold at least 51 per cent. of the common shares in the Company.

**24.14 Material adverse change**

Any material adverse change arises in the financial condition of the Group taken as a whole which the Majority Lenders reasonably determine would result in the failure by any Obligor to perform its payment obligations under any of the Finance Documents.

24.15 **Acceleration**

On and at any time after the occurrence of an Event of Default the Agent may, while such Event of Default is continuing and shall if so directed by the Majority Lenders, by notice to the Company:

- (a) cancel the Total Commitments whereupon they shall immediately be cancelled;
- (b) declare that all or part of the Loans, together with accrued interest, and all other amounts accrued under the Finance Documents be immediately due and payable, whereupon they shall become immediately due and payable; and/or

declare that all or part of the Loans be payable on demand, whereupon they shall immediately become payable on demand by the Agent on the instructions of the Majority Lenders.

**SECTION 9  
CHANGES TO PARTIES**

**25. CHANGES TO THE LENDERS**

**25.1 Assignments and transfers by the Lenders**

Subject to this Clause 25, a Lender (the "**Existing Lender**") may:

- (a) assign any of its rights and benefits in respect of any Utilisation; or
- (b) transfer by novation any of its rights, benefits and obligations in respect of any Commitment or any Utilisation,  
to another bank or financial institution or to a securitisation trust or fund or (subject to paragraph (a) of Clause 25.2 (*Conditions of assignment or transfer*)) other entity (the "**New Lender**").

**25.2 Conditions of assignment or transfer**

- (a) The Borrower must be given prior notification of any assignment or transfer becoming effective under Clause 25.1 (*Assignments and transfers by the Lenders*) and the consent of the Company is required for an assignment or transfer to an entity which is not a bank or financial institution or a securitisation trust or fund.
- (b) The consent of the Company to an assignment or transfer must not be unreasonably withheld or delayed. The Company will be deemed to have given its consent five Business Days after the Existing Lender has requested it unless consent is expressly refused by the Company within that time.
- (c) An assignment will only be effective on:
  - (i) receipt by the Agent of written confirmation from the New Lender that the New Lender will assume the same obligations to the other Finance Parties as it would have been under if it was an Original Lender; and
  - (ii) the satisfaction of the Agent with the results of all "know your client" or other checks relating to the identity of any person that it is required by law to carry out in relation to such assignment to a New Lender, the completion of which the Agent shall promptly notify to the Existing Lender and the New Lender.
- (d) A transfer will only be effective if the procedure set out in Clause 25.5 (*Procedure for transfer*) is complied with.
- (e) If:
  - (i) a Lender assigns or transfers any of its rights, benefits or obligations under the Finance Documents or changes its Facility Office; and

- (ii) as a result of circumstances existing at the date the assignment, transfer or change occurs, an Obligor would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office under Clause 14 (*Tax gross-up and indemnities*) or Clause 15 (*Increased costs*),

then the New Lender or Lender acting through its new Facility Office is only entitled to receive payment under those Clauses to the same extent as the Existing Lender or Lender acting through its previous Facility Office would have been if the assignment, transfer or change had not occurred.

- (f) In addition to the other assignment rights provided in this Clause 25, each Lender may assign, as collateral or otherwise, any of its rights under this Agreement (including rights to payments of principal or interest on the Loans) to any trustee for the benefit of the holders of such Lender's securities **provided that** no such assignment shall release the assigning Lender from any of its obligations under this Agreement.

**25.3 Assignment or transfer fee**

The New Lender shall, on the date upon which an assignment or transfer takes effect, pay to the Agent (for its own account) a fee of US\$2,000, except no such fee shall be payable in connection with an assignment or transfer to a New Lender upon primary syndication of the Facilities.

**25.4 Limitation of responsibility of Existing Lenders**

- (a) Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:
  - (i) the legality, validity, effectiveness, adequacy or enforceability of the Finance Documents 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 Lender confirms to the Existing Lender, and the other Finance 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 this Agreement and has not relied exclusively on any information provided to it by the Existing Lender in connection with any Finance Document; and

- (ii) will continue to make its own independent appraisal of the creditworthiness of each Obligor and its related entities whilst any amount is or may be outstanding under the Finance Documents or any Commitment is in force.
- (c) Nothing in any Finance Document obliges an Existing Lender to:
  - (i) accept a re-transfer from a New Lender of any of the rights and obligations assigned or transferred under this Clause 25; or
  - (ii) support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by any Obligor of its obligations under the Finance Documents or otherwise.

**25.5 Procedure for transfer**

- (a) Subject to the conditions set out in Clause 25.2 (*Conditions of assignment or transfer*) a transfer is effected in accordance with paragraph (b) below when the Agent executes an otherwise duly completed Transfer Certificate delivered to it by the Existing Lender and the New Lender. The Agent shall, as soon as reasonably practicable after receipt by it of a duly completed Transfer Certificate appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Transfer Certificate and send a copy to the Company.
- (b) On the Transfer Date:
  - (i) to the extent that in the Transfer Certificate the Existing Lender seeks to transfer by novation its rights, and obligations under the Finance Documents each of the Obligors and the Existing Lender shall be released from further obligations towards one another under the Finance Documents and their respective rights against one another under the Finance Documents shall be cancelled (being the "**Discharged Rights and Obligations**");
  - (ii) each of the Obligors and the New Lender shall assume obligations towards one another and/or acquire rights against one another which differ from the Discharged Rights and Obligations only insofar as that Obligor and the New Lender have assumed and/or acquired the same in place of that Obligor and the Existing Lender;
  - (iii) the Agent, the Arranger, the New Lender and the other Lenders, shall acquire the same rights and assume the same obligations between themselves as they would have acquired and assumed had the New Lender been an Original Lender with the rights, and/or obligations acquired or assumed by it as a result of the transfer and to that extent the Agent, the Arranger and the Existing Lender shall each be released from further obligations to each other under the Finance Documents; and



- (iv) the New Lender shall become a Party as a "Lender".

**25.6 Copy of Transfer Certificate to Borrower**

The Agent shall, as soon as reasonably practicable after it has received a Transfer Certificate, send to the Company a copy of that Transfer Certificate.

**25.7 Disclosure of information**

- (a) Any Lender may disclose to any of its Affiliates and any other person:

- (i) to (or through) whom that Lender assigns or transfers (or may potentially assign or transfer) all or any of its rights and obligations under the Finance Documents;
- (ii) with (or through) whom that Lender 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; or
- (iii) to whom, and to the extent that, information is required to be disclosed by any applicable law or regulation,

any information about any Obligor, the Group and the Finance Documents as that Lender shall consider appropriate **provided that** the person to whom the information is to be given has entered into a Confidentiality Undertaking.

**25.8 Interest**

All interest accrued in the Interest Period in which a transfer is effective shall be paid to the Existing Lender.

**26. CHANGES TO THE OBLIGORS**

**26.1 Assignment and Transfers by Obligors**

No Obligor may assign any of its rights or transfer any of its rights or obligations under the Finance Documents.

**26.2 Additional Borrowers**

- (a) Subject to compliance with the provisions of paragraphs (b) and (c) of Clause 21.6 ("*Know your client*" checks), the Company may request that any of its wholly owned Subsidiaries which is not a dormant Subsidiary becomes an Additional Borrower. That Subsidiary shall become an Additional Borrower if:
  - (i) all the Lenders approve the addition of that Subsidiary;
  - (ii) the Company and that Subsidiary deliver to the Agent a duly completed and executed Accession Letter;

- (iii) the Subsidiary is (or becomes) a Guarantor prior to becoming a Borrower;
  - (iv) the Company confirms that no Default is continuing or would occur as a result of that Subsidiary becoming an Additional Borrower; and
  - (v) the Agent has received all of the documents and other evidence listed in Part II of Schedule 2 (*Conditions precedent to be delivered by an Additional Obligor*) in relation to that Additional Borrower, each in form and substance satisfactory to the Agent.
- (b) The Agent shall notify the Company and the Lenders promptly upon being satisfied that it has received (in form and substance satisfactory to it) all the documents and other evidence listed in Part II of Schedule 2 (*Conditions precedent to be delivered by an Additional Obligor*).

**26.3 Additional Guarantors**

- (a) Subject to compliance with the provisions of paragraphs (b) and (c) of Clause 21.6 (*"Know your client" checks*), the Company may request that any of its wholly owned Subsidiaries become an Additional Guarantor.

**ROLE OF THE AGENT AND THE ARRANGER**

- (b) The Company shall procure that in respect of (i) each of its Subsidiaries to whom a sale, lease, transfer or other disposal is made by an Obligor pursuant to paragraph (b)(iii)(A) of Clause 23.7 (*Disposals*); (ii) each of its Subsidiaries which is or which is deemed to be a Material Subsidiary, whether pursuant to paragraph (b)(iii)(B) of Clause 23.7 (*Disposals*) or otherwise, such Subsidiary or the Holding Company of such Material Subsidiary (at the election of the Company) or such person respectively become an Additional Guarantor (unless such Subsidiary or such Material Subsidiary (in the case of (i) and (ii) respectively) is already a Guarantor) by:
- (A) the Company delivering to the Agent a duly-completed and executed Accession Letter; and
  - (B) the Agent receiving from the Company all of the documents and other evidence referred to in Part II of Schedule 2 (*Conditions Precedent required to be delivered by an Additional Obligor*) in relation to that Additional Guarantor.
- (c) The Agent shall notify the Guarantors and the Lenders promptly upon being satisfied that it has received all the documents and other evidence listed in Part II of Schedule 2 (*Conditions Precedent required to be delivered by an Additional Obligor*).
- (d) For the purposes of this Clause 26.3 only, a "Holding Company" means, in relation to a Material Subsidiary, any company or corporation in respect of which it is a Subsidiary and which is not in turn a Subsidiary of a Holding Company (as defined in Clause 1.1 (*Definitions*)).

**26.4 Resignation of Guarantor**

A Guarantor (a "**Resigning Guarantor**") will cease to be a Guarantor if:

- (a) it makes a sale, lease, transfer or other disposal of all or substantially all (but not a part only) of its assets to another member of the Group which is or becomes a Guarantor in accordance with paragraph (a) (i) of Clause 26.3 (*Additional Obligors*); or
- (b) its Holding Company becomes a Guarantor; or
- (c) it notifies the Agent that it has no assets and provides the Agent with a certificate signed by a director of the Company confirming that it has no assets,

**provided that:**

- (i) such Resigning Guarantor also, if applicable, ceases concurrently to be a guarantor in respect of any other indebtedness of the Group or of any member of the Group;
- (ii) such Resigning Guarantor notifies the Agent of any sale, lease, transfer or other disposal in accordance with paragraph (a) of this Clause 26.4; and
- (iii) the Company may not resign as a Guarantor without the consent of all Lenders.

**26.5 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.

**SECTION 10  
THE FINANCE PARTIES**

**27. ROLE OF THE AGENT AND THE ARRANGER**

**27.1 Appointment of the Agent**

- (a) Each of the Arranger and the Lenders appoints the Agent to act as its agent under and in connection with the Finance Documents.
- (b) Each of the Arranger and the Lenders, authorises the Agent to exercise the rights, powers, authorities and discretions specifically given to the Agent under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions.

**27.2 Duties of the Agent**

- (a) The Agent shall promptly forward to a Party the original or a copy of any document (including, but not limited to, the Company's annual financial statements) which is delivered to the Agent for that Party by any other Party.
- (b) The Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (c) If the Agent receives notice from a Party referring to this Agreement, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the other Finance Parties.
- (d) If the Agent is aware of the non-payment of any principal, interest or fee payable to a Finance Party (other than the Agent or the Arranger) under this Agreement it shall promptly notify the other Finance Parties.
- (e) The Agent's duties under the Finance Documents are solely mechanical and administrative in nature.

**27.3 Role of the Arranger**

Except as specifically provided in the Finance Documents, the Arranger has no obligations of any kind to any other Party under or in connection with any Finance Document.

**27.4 No fiduciary duties**

- (a) Nothing in this Agreement constitutes the Agent and/or the Arranger, as a trustee or fiduciary of any other person.
- (b) Neither the Agent nor the Arranger shall be bound to account to any Lender for any sum or the profit element of any sum received by it for its own account.

**27.5 Business with the Group**

The Agent and the Arranger may accept deposits from, lend money to and generally engage in any kind of banking or other business with any member of the Group.

**27.6 Rights and discretions**

- (a) The Agent may rely on:
  - (i) any representation, notice or document (including, for the avoidance of doubt, any representation, notice or document communicating the consent of the Majority Lenders pursuant to Clause 36.1 (*Required consents*)) believed by it to be genuine, correct and appropriately authorised; and
  - (ii) any statement made by a director, authorised signatory or employee of any person regarding any matters which may reasonably be assumed to be within his knowledge or within his power to verify.
- (b) The Agent may assume (unless it has received notice to the contrary in its capacity as agent for the Lenders) that:
  - (i) no Default has occurred (unless it has actual knowledge of a Default arising under Clause 24.1 (*Non-payment*));
  - (ii) any right, power, authority or discretion vested in any Party or the Majority Lenders has not been exercised; and
  - (iii) any notice or request made by the Company (other than a Utilisation Request) is made on behalf of and with the consent and knowledge of all the Obligor.
- (c) The Agent may engage, pay for and rely on the advice or services of any lawyers, accountants, surveyors or other experts.
- (d) The Agent may act in relation to the Finance Documents through its personnel and agents.
- (e) The 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 to the contrary, neither the Agent nor the Arranger, is 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.

**27.7 Majority Lenders' instructions**

- (a) Unless a contrary indication appears in a Finance Document, the Agent shall (i) exercise any right, power, authority or discretion vested in it as Agent in accordance with any instructions given to it by the Majority Lenders (or, if so instructed by the Majority Lenders, refrain from exercising any right, power, authority or discretion vested in it as Agent) and (ii) not be liable for any act (or omission) if it acts (or refrains from taking any action) in accordance with an instruction of the Majority Lenders.

- (b) Unless a contrary indication appears in a Finance Document, any instructions given by the Majority Lenders will be binding on all the Finance Parties.
- (c) The Agent may refrain from acting in accordance with the instructions of the Majority Lenders (or, if appropriate, the Lenders) 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 Lenders, (or, if appropriate, the Lenders) the Agent may act (or refrain from taking action) as it considers to be in the best interest of the Lenders.
- (e) The Agent is not authorised to act on behalf of a Lender (without first obtaining that Lender's consent) in any legal or arbitration proceedings relating to any Finance Document.

**27.8 Responsibility for documentation**

Neither the Agent nor the Arranger:

- (a) is responsible for the adequacy, accuracy and/or completeness of any information (whether oral or written) supplied by the Agent, the Arranger, an Obligor or any other person given in or in connection with any Finance Document or the Information Memorandum; or
- (b) is responsible for the legality, validity, effectiveness, adequacy or enforceability of any Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of or in connection with any Finance Document.

**27.9 Exclusion of liability**

- (a) Without limiting paragraph (b) below, neither the Agent nor the Arranger will be liable for any action taken by it under or in connection with any Finance Document, unless directly caused by its gross negligence or wilful misconduct or wilful breach of any Finance Document.
- (b) No Party (other than the Agent) may take any proceedings against any officer, employee or agent of the Agent in respect of any claim it might have against the Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document and any officer, employee or agent of the Agent may rely on this Clause 27 subject to Clause 1.4 (*Third Party Rights*) and the provisions of the Third Parties Act.
- (c) The Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by the Agent if the Agent has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Agent for that purpose.

- (d) Nothing in this Agreement shall oblige the Agent or the Arranger to carry out any checks pursuant to any laws or regulations relating to money laundering in relation to any person on behalf of any Lender and each Lender confirms to the Agent and the Arranger that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Agent or the Arranger.

**27.10 Lenders' indemnity to the Agent**

Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Agent, within three Business Days of demand, against any cost, loss or liability incurred by the Agent (otherwise than by reason of the Agent's gross negligence or wilful misconduct) in acting as Agent under the Finance Documents (unless the Agent has been reimbursed by an Obligor pursuant to a Finance Document).

**27.11 Resignation of the Agent**

- (a) The Agent may resign and appoint one of its Affiliates acting through an office in the European Union as successor by giving notice to the other Finance Parties and the Company.
- (b) Alternatively the Agent may resign by giving notice to the other Finance Parties and the Company, in which case the Majority Lenders (after consultation with the Company) may appoint a successor Agent.
- (c) If the Majority Lenders have not appointed a successor Agent in accordance with paragraph (b) above within 30 days after notice of resignation was given, the Agent (after consultation with the Company) may appoint a successor Agent (acting through an office in the European Union).
- (d) The retiring Agent shall, at its own cost, make available to the successor Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents.
- (e) The Agent's resignation notice shall only take effect upon the appointment of a successor.
- (f) Upon the appointment of a successor, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents but shall remain entitled to the benefit of this Clause 27.11. 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 Company, the Majority Lenders may, by notice to the Agent, require it to resign in accordance with paragraph (b) above. In this event, the Agent shall resign in accordance with paragraph (b) above.

**27.12 Confidentiality**

- (a) In acting as agent for the Finance Parties, the Agent shall be regarded as acting through its agency division which shall be treated as a separate entity from any other of its divisions or departments.
- (b) If information is received by another division or department of the Agent, it may be treated as confidential to that division or department and the Agent shall not be deemed to have notice of it.
- (c) Notwithstanding any other provision of any Finance Document to the contrary, none of the Agent and the Arranger are 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.

**27.13 Relationship with the Lenders**

- (a) The Agent may treat each Lender as a Lender, entitled to payments under this Agreement and acting through its Facility Office unless it has received not less than five Business Days prior notice from that Lender to the contrary in accordance with the terms of this Agreement.
- (b) Each Lender shall supply the Agent with any information required by the Agent in order to calculate the Mandatory Cost in accordance with Schedule 4 (*Mandatory Cost Formulae*).

**27.14 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 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 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 any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;
- (c) whether that Finance 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 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; and
- (d) the adequacy, accuracy and/or completeness of the Information Memorandum, and any other information provided by the Agent, any Party or by any other person under or in connection with any Finance Document, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document.



**27.15 Reference Banks**

If a Reference Bank (or, if a Reference Bank is not a Lender, the Lender of which it is an Affiliate) ceases to be a Lender, the Agent shall (in consultation with the Company) appoint another Lender or an Affiliate of a Lender to replace that Reference Bank.

**27.16 Agent's Management Time**

Any amount payable to the Agent under Clause 16.3 (*Indemnity to the Agent*) and Clause 27.10 (*Lenders' indemnity to the Agent*) shall include the cost of utilising the Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Agent may notify to the Company and the Lenders, and is in addition to any fee paid or payable to the Agent under Clause 13 (*Fees*).

**27.17 Deduction from amounts payable by the Agent**

If any Party owes an amount to the Agent under the Finance Documents the Agent may, after giving notice to that Party, deduct an amount not exceeding that amount from any payment to that Party which the Agent would otherwise be obliged to make under the Finance Documents and apply the amount deducted in or towards satisfaction of the amount owed. For the purposes of the Finance Documents that Party shall be regarded as having received any amount so deducted.

**28. 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.

**29. SHARING AMONG THE FINANCE PARTIES**

**29.1 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 30 (*Payment mechanics*) (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 Agent;

- (b) the Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Finance Party would have been paid had the receipt or recovery been received or made by the Agent and distributed in accordance with Clause 30 (*Payment mechanics*), without taking account of any Tax which would be imposed on the Agent in relation to the receipt, recovery or distribution; and
- (c) the Recovering Finance Party shall, within three Business Days of demand by the Agent, pay to the Agent an amount (the "**Sharing Payment**") equal to such receipt or recovery less any amount which the Agent determines may be retained by the Recovering Finance Party as its share of any payment to be made, in accordance with Clause 30.5 (*Partial payments*).

**29.2 Redistribution of payments**

The Agent shall treat the Sharing Payment as if it had been paid by the relevant Obligor and distribute it between the Finance Parties (other than the Recovering Finance Party) in accordance with Clause 30.5 (*Partial payments*).

**29.3 Recovering Finance Party's rights**

- (a) On a distribution by the Agent under Clause 29.2 (*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.

**29.4 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 29.2 (*Redistribution of payments*) shall, upon request of the Agent, pay to the 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.

**29.5 Exceptions**

- (a) This Clause 29 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.

**SECTION 11  
ADMINISTRATION**

**30. PAYMENT MECHANICS**

**30.1 Payments to the Agent**

- (a) On each date on which an Obligor or a Lender is required to make a payment under a Finance Document, that Obligor or Lender shall make the same available to the Agent (unless a contrary indication appears in a Finance Document) for value on the due date at the time and in such funds specified by the Agent as being customary at the time for settlement of transactions in the relevant currency in the place of payment.
- (b) Payments by Obligors or Lenders shall be made to such account in the principal financial centre of the country of that currency (or, in relation to euro, in a principal financial centre in a Participating Member State or London) with such bank as the Agent specifies.

**30.2 Distributions by the Agent**

Each payment received by the Agent under the Finance Documents for another Party shall, subject to Clause 30.3 (*Distributions to an Obligor*), Clause 30.4 (*Clawback*) and Clause 27.17 (*Deduction from amounts payable by the Agent*) be made available by the Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement (in the case of a Lender, for the account of its Facility Office), to such account as that Party may notify to the Agent by not less than five Business Days' notice with a bank in the principal financial centre of the country of that currency (or, in relation to euro, in a principal financial centre in a Participating Member State or London).

**30.3 Distributions to an Obligor**

The Agent may (with the consent of the Obligor or in accordance with Clause 31 (*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.

**30.4 Clawback**

- (a) Where a sum is to be paid to the Agent under the Finance Documents for another Party, the Agent is not obliged to pay that sum to that other Party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.
- (b) If the Agent pays an amount to another Party and it proves to be the case that the Agent had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by the Agent shall on demand refund the same to the Agent together with interest on that amount from the date of payment to the date of receipt by the Agent, calculated by the Agent to reflect its cost of funds.

**30.5 Partial payments**

- (a) If the Agent receives a payment that is insufficient to discharge all the amounts then due and payable by an Obligor under the Finance Documents, the Agent shall apply that payment towards the obligations of that Obligor under the Finance Documents in the following order:
  - (i) **first**, in or towards payment pro rata of any unpaid fees, costs and expenses of the Agent and the Arranger under the Finance Documents;
  - (ii) **secondly**, in or towards payment pro rata of any accrued interest, fee or commission due but unpaid under this Agreement;
  - (iii) **thirdly**, in or towards payment pro rata of any principal due but unpaid under this Agreement; and
  - (iv) **fourthly**, in or towards payment pro rata of any other sum due but unpaid under the Finance Documents.
- (b) The Agent shall, if so directed by the Majority Lenders, vary the order set out in paragraphs (a)(ii) to (iv) above.
- (c) Paragraphs (a) and (b) above will override any appropriation made by an Obligor.
- (d) The Lenders hereby expressly agree that the Agent shall not apply any amount received in accordance with paragraph (a) above to discharge the obligations of an Obligor owed to a Lender if such partial payment received by the Agent is as a result of that Lender being considered as a subordinated creditor by operation of any insolvency law.

**30.6 No set-off by Obligor**

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.

**30.7 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.

**30.8 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 a Utilisation or Unpaid Sum or a part of a Utilisation or Unpaid Sum shall be made in the currency in which that Utilisation or Unpaid Sum is denominated on its due date.
- (c) Each payment of interest shall be made in the currency in which the sum in respect of which the interest is payable was denominated when that interest accrued.
- (d) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.
- (e) Any amount expressed to be payable in a currency other than the Base Currency shall be paid in that other currency.

**30.9 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 Agent (after consultation with the Company); and
  - (ii) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other rounded up or down by the Agent (acting reasonably).
- (b) If a change in any currency of a country occurs, this Agreement will, to the extent the Agent (acting reasonably and after consultation with the Company) 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.

**31. 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.

**32. NOTICES**

**32.1 Communications in writing**

Any communication to be made under or in connection with the Finance Documents shall be made in writing and, unless otherwise stated, may be made by fax or letter or (in accordance with Clause 32.5 (*Electronic Communication*)) by email.

**32.2 Addresses**

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with the Finance Documents is:

- (a) in the case of the Company, that identified with its name below;
- (b) in the case of each Lender, or any other Obligor, that notified in writing to the Agent on or prior to the date on which it becomes a Party; and
- (c) in the case of the Agent, that identified with its name below,

or any substitute address or fax number or department or officer as the Party may notify to the Agent (or the Agent may notify to the other Parties, if a change is made by the Agent) by not less than five Business Days' notice.

**32.3 Delivery**

- (a) Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective:
  - (i) if by way of fax, when received in legible form; or
  - (ii) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under Clause [32.2](#) (*Addresses*), if addressed to that department or officer.

- (b) Any communication or document to be made or delivered to the Agent will be effective only when actually received by the Agent and then only if it is expressly marked for the attention of the department or officer identified with the Agent's signature below (or any substitute department or officer as the Agent shall specify for this purpose).
- (c) All notices from or to an Obligor shall be sent through the Agent. The Company 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 Company in accordance with this Clause 32.3 will be deemed to have been made or delivered to each of the Obligors.

**32.4 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 [32.2](#) (*Addresses*) or changing its own address or fax number, the Agent shall notify the other Parties.

**32.5 Electronic communication**

- (a) Any communication to be made between the Agent and a Lender and/or any member of the Group under or in connection with the Finance Documents may be made by electronic mail or other electronic means, if the Agent and the relevant Lender and/or member of the Group:
  - (i) agree that, unless and until notified to the contrary, this is to be an accepted form of communication;
  - (ii) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
  - (iii) notify each other of any change to their address or any other such information supplied by them.
- (b) Any electronic communication made between the Agent and a Lender 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 Lender and/or any member of the Group to the Agent only if it is addressed in such a manner as the Agent shall specify for this purpose.

**32.6 English language**

- (a) Any notice given under or in connection with any Finance Document must be in English.
- (b) All other documents provided under or in connection with any Finance Document must be:
  - (i) in English or Spanish; or
  - (ii) if not in English or Spanish, and if so required by the Agent, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

**32.7 Obligor Agent**

- (a) Each Obligor (other than the Company) by its execution of this Agreement or an Accession Letter (as the case may be) irrevocably appoints the Company to act on its behalf as its agent in relation to the Finance Documents and irrevocably authorises (i) the Company on its behalf to supply all information concerning itself contemplated by this Agreement to the Finance Parties and to give all notices and instructions (including, in the case of a Borrower, Utilisation Requests or Extension Requests), to execute on its behalf any documents required hereunder and to make such agreements capable of being given or made by any Obligor notwithstanding that they may affect such Obligor, without further reference to or consent of such Obligor; and (ii) each Finance Party to give any notice, demand or other communication to such Obligor pursuant to the Finance Documents to the Company on its behalf, and in each case such Obligor shall be bound thereby as though such Obligor itself had given such notices and instructions (including, without limitation, any Utilisation Requests or Extension Requests) 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 Company, or given to the Company, in its capacity as agent in accordance with paragraph (a) of this Clause 32.7, in connection with this Agreement shall be binding for all purposes on such Obligor as if the other Obligor had expressly made, given or concurred with the same. In the event of any conflict between any notices or other communications of the Company and any other Obligor, those of the Company shall prevail.

32.8 **Use of Websites**

- (a) The Company may satisfy its obligation under this Agreement to deliver any information in relation to those Lenders (the "**Website Lenders**") who accept this method of communication by posting this information onto an electronic website designated by the Company and the Agent (the "**Designated Website**") if:

- (i) the Agent expressly agrees (after consultation with each of the Lenders) that it will accept communication of the information by this method;
- (ii) both the Company and the Agent are aware of the address of and any relevant password specifications for the Designated Website; and
- (iii) the information is in a format previously agreed between the Company and the Agent.

If any Lender (a "**Paper Form Lender**") does not agree to the delivery of information electronically then the Agent shall notify the Company accordingly and the Company shall supply the information to the Agent in paper form. In any event the Company shall supply the Agent with at least one copy in paper form of any information required to be provided by it.

- (b) The Agent shall supply each Website Lender with the address of and any relevant password specifications for the Designated Website following designation of that website by the Company and the Agent.
- (c) The Company shall promptly upon becoming aware of its occurrence notify the Agent if:
  - (i) the Designated Website cannot be accessed due to technical failure;
  - (ii) the password specifications for the Designated Website change;
  - (iii) any new information which is required to be provided under this Agreement is posted onto the Designated Website;

- (iv) any existing information which has been provided under this Agreement and posted onto the Designated Website is amended; or
- (v) the Company 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 Company notifies the Agent under paragraph (c)(i) or paragraph (c)(v) above, all information to be provided by the Company under this Agreement after the date of that notice shall be supplied in paper form unless and until the Agent and each Website Lender is satisfied that the circumstances giving rise to the notification are no longer continuing.

- (d) Any Website Lender may request, through the Agent, one paper copy of any information required to be provided under this Agreement which is posted onto the Designated Website. The Company shall comply with any such request within ten Business Days.

### 33. CALCULATIONS AND CERTIFICATES

#### 33.1 Accounts

In any litigation or arbitration proceedings arising out of or in connection with a Finance Document, the entries made in the accounts maintained by a Finance Party are *prima facie* evidence of the matters to which they relate.

#### 33.2 Certificates and Determinations

Any certification or determination by a Finance Party of a rate or amount under any Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

#### 33.3 Day count convention

Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 360 days, or where the interest, commission or fee is to accrue in respect of any amount denominated in sterling, 365 days or, in any case where the practice in the Relevant Interbank Market differs, in accordance with that market practice.

#### 33.4 Spanish Civil Procedure

In the event that this Agreement is raised to a Spanish Public Documents, 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 Lenders will be the amount specified in a certificate issued by the Agent (and/or any Lender) in accordance with Clause 33.2 (*Certificates and Determinations*) as representative of the Lenders reflecting the balance of the accounts referred to in Clause 33.1 (*Accounts*).

#### 33.5 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.

34. **PARTIAL INVALIDITY**

If, at any time, any provision of the Finance Documents is or becomes illegal, invalid or unenforceable in any respect under any law or regulation of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the laws or regulations of any other jurisdiction will in any way be affected or impaired.

35. **REMEDIES AND WAIVERS**

No failure to exercise, nor any delay in exercising, on the part of any Finance Party or Finance Party, any right or remedy under the 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.

36. **AMENDMENTS AND WAIVERS**

36.1 **Required consents**

- (a) Subject to Clause 36.2 (*Exceptions*) any term of the Finance Documents may be amended or waived only with the consent of the Majority Lenders and the Company and any such amendment or waiver will be binding on all Parties.
- (b) The Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause 36.
- (c) The Company may effect, as agent of each Obligor, any amendment or waiver permitted by this Clause 36.

36.2 **Exceptions**

- (a) An amendment or waiver that has the effect of changing or which relates to:
  - (i) the definition of "Majority Lenders" or "Optional Currency" in Clause 1.1 (*Definitions*);
  - (ii) an extension to the Availability Period or to the date of any scheduled payment of any amount under the Finance Documents;
  - (iii) a reduction in the Margin or a reduction in the amount of any payment of principal, interest, fees or commission payable;
  - (iv) a change in currency of payment of any amount under the Finance Documents;
  - (v) an increase in or an extension of any Commitment;

- (vi) a change to the Borrowers or any of the Guarantors other than in accordance with Clause 26 (*Changes to the Obligors*);
- (vii) any provision which expressly requires the consent of all the Lenders; or
- (viii) Clause 2.2 (*Finance Parties' Rights and Obligations*), Clause 19 (*Guarantee and Indemnity*), Clause 25 (*Changes to the Lenders*), Clause 26 (*Changes to the Obligors*) or this Clause 36,

shall not be made without the prior consent of all the Lenders.

- (b) An amendment or waiver which relates to the rights or obligations of the Agent or the Arranger, may not be effected without the consent of the Agent or the Arranger at such time.

37. **COUNTERPARTS**

Each Finance Document may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Finance Document.

**SECTION 12  
GOVERNING LAW AND ENFORCEMENT**

**38. GOVERNING LAW**

This Agreement is governed by English law.

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.

**39. ENFORCEMENT**

**39.1 Jurisdiction of English Courts**

- (a) The courts of England have exclusive 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) (a "**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.
- (c) This Clause 39.1 is for the benefit of the Finance Parties only. As a result, no Finance 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 may take concurrent proceedings in any number of jurisdictions.

**39.2 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 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.

**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  
(as at the date of the Amendment and Restatement Agreement)**

<b>Name of Original Borrower</b>	<b>Registration number (or equivalent, if any)</b>
Cemex España, S.A.	Nº Hoja-Registro Mercantil, Madrid: M- 156542 NIF: A46/004214
<b>Name of Guarantor</b>	<b>Registration number (or equivalent, if any)</b>
Cemex España, S.A.	Nº Hoja-Registro Mercantil, Madrid: M- 156542 NIF: A46/004214
	<i>Trade Register of the Chamber of Commerce and Industry in Amsterdam (The Netherlands)</i>
Cemex Caracas Investments B.V.	34121194
Cemex Caracas II Investments B.V.	34159953
Cemex Egyptian Investments B.V.	34108365
Cemex Manila Investments B.V.	34108359
Cemex American Holdings B.V.	34213058
Cemex Shipping B.V.	34213063

**Part II**  
**The Original Lenders**  
**(as at the date of the Amendment and Restatement Agreement)**

<b><u>Original Lender</u></b>	<b><u>Facility A Commitment (US\$)</u></b>	<b><u>Facility B Commitment (US\$)</u></b>	<b><u>Facility C Commitment (US\$)</u></b>
<b>Joint Bookrunners</b>			
Banco Bilbao Vizcaya Argentaria S.A.	29,577,408.50	59,154,817.00	29,577,408.50
Banco Santander Central Hispano, S.A.	29,577,408.50	59,154,817.00	29,577,408.50
Calyon Corporate and Investment Bank	29,577,408.50	59,154,817.00	29,577,408.50
Citibank International PLC	29,577,408.50	59,154,817.00	29,577,408.50
<b>Mandated Lead Arrangers</b>			
BNP Paribas	25,375,000.00	50,750,000.00	25,375,000.00
Banco Espanol de Credito S.A.	25,375,000.00	50,750,000.00	25,375,000.00
Fortis Bank N.V.	25,375,000.00	50,750,000.00	25,375,000.00
HSBC Bank plc	25,375,000.00	50,750,000.00	25,375,000.00
Instituto de Credito Oficial	25,375,000.00	50,750,000.00	25,375,000.00
JPMorgan Chase Bank	25,375,000.00	50,750,000.00	25,375,000.00
Mizuho Corporate Bank Nederland N.V.	25,375,000.00	50,750,000.00	25,375,000.00
The Royal Bank of Scotland plc	25,375,000.00	50,750,000.00	25,375,000.00
Westdeutsche Landesbank Girozentrale	25,375,000.00	50,750,000.00	25,375,000.00
<b>Other Lenders</b>			
ABN AMRO Bank N.V.	16,988,309.00	33,976,618.00	16,988,309.00
Bank of America, NA	16,988,309.00	33,976,618.00	16,988,309.00
Barclays Bank plc	16,988,309.00	33,976,618.00	16,988,309.00
ING Bank N.V.	14,850,229.00	29,700,458.00	14,850,229.00
Lloyds TSB Bank plc	14,322,978.00	28,645,956.00	14,322,978.00
Scotiabank Europe plc	12,070,725.00	24,141,450.00	12,070,725.00
The Bank of Tokyo-Mitsubishi, Ltd	11,104,669.00	22,209,338.00	11,104,669.00
Bayerische Landesbank Girozentrale	11,104,669.00	22,209,338.00	11,104,669.00

<b>Original Lender</b>	<b>Facility A Commitment (US\$)</b>	<b>Facility B Commitment (US\$)</b>	<b>Facility C Commitment (US\$)</b>
Deutsche Bank Luxembourg S.A.	11,104,669.00	22,209,338.00	11,104,669.00
Banca di Roma S.p.A.	10,000,000.00	20,000,000.00	10,000,000.00
Bank of China (Luxembourg) S.A.	10,000,000.00	20,000,000.00	10,000,000.00
The Governor and Company of the Bank of Ireland	10,000,000.00	20,000,000.00	10,000,000.00
SANPAOLO IMI S.p.A.	9,722,500.00	19,445,000.00	9,722,500.00
Caja Madrid	9,072,500.00	18,145,000.00	9,072,500.00
Credit Industriel et Commercial	8,750,000.00	17,500,000.00	8,750,000.00
Dresdner Bank AG	5,000,000.00	10,000,000.00	5,000,000.00
Société Générale	5,000,000.00	10,000,000.00	5,000,000.00
Banco de Galicia, S.A.	4,860,000.00	9,720,000.00	4,860,000.00
Caja de Ahorros del Mediterraneo	4,860,000.00	9,720,000.00	4,860,000.00
IKB International S.A.	4,487,500.00	8,975,000.00	4,487,500.00
Caja de Ahorros de Asturias	4,050,000.00	8,100,000.00	4,050,000.00
Banca Intesa S.p.A.	3,750,000.00	7,500,000.00	3,750,000.00
Banca Nazionale Del Lavoro, S.p.A.	3,750,000.00	7,500,000.00	3,750,000.00
BRED Banque Populaire	3,750,000.00	7,500,000.00	3,750,000.00
Banco de Sabadell, S.A.	2,500,000.00	5,000,000.00	2,500,000.00
Banco Popular Espanol, S.A.	1,620,000.00	3,240,000.00	1,620,000.00
Montes De Piedad Y Caja De Ahorros De Ronda, Cadiz, Almeria Malaga Y Antequera (Unicaja)	1,620,000.00	3,240,000.00	1,620,000.00
<b>Total</b>	<b>575,000,000.00</b>	<b>1,150,000,000.00</b>	<b>575,000,000.00</b>



**SCHEDULE 2**  
**Conditions Precedent**

**Part I**  
**Conditions Precedent to Initial Utilisation<sup>1</sup>**  
**[N.B. all now satisfied]**

**1. Obligors**

- (a) A copy of the current constitutional documents of each Original Obligor.
- (b) A power of attorney granting a specific individual or individuals sufficient power to sign the Finance Documents on behalf of each Original Obligor and a copy of a resolution of the board of directors of each Original Obligor:
- (i) approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute the Finance Documents to which it is a party;
- (ii) authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf; and
- (iii) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant, any Utilisation Request) to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party.
- (c) A specimen of the signature of each person authorised by the resolution referred to in paragraph (b) above in relation to the Finance Documents.
- (d) A certificate of the Company (signed by an Authorised Signatory) confirming that borrowing or guaranteeing, as appropriate, the Total Commitments would not cause any borrowing, guarantee, security or similar limit binding on any Original Obligor to be exceeded.
- (e) 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. Transaction Documents and related documents**

A copy of the Company/Bidco Intercompany Loan Agreement in the agreed form.

<sup>1</sup> Defined terms used in this Part 1 of Schedule 2 have the same meanings given to such term in the Original Facility Agreement (as defined in the Amendment and Restatement Agreement).

3. **Finance Documents**

- (a) This Agreement executed by the members of the Group party to this Agreement.
- (b) The Syndication and Fee Letter, the Sub Underwriter Fee Letter and the Costs and Expenses Letter, each executed by all parties thereto.

4. **Legal Opinions**

- (a) A legal opinion of Clifford Chance LLP, legal advisers to the Arranger and the Agent in England, as to English law substantially in the form distributed to the Original Lenders prior to signing this Agreement satisfactory to the Lenders.
- (b) An opinion with respect to the laws and regulations of the Kingdom of Spain from Clifford Chance, substantially in the form distributed to the Original Lenders prior to signing this Agreement.
- (c) An opinion with respect to the laws and regulations of The Netherlands from Warendorf, substantially in the form distributed to the Original Lenders prior to signing this Agreement.
- (d) An opinion from in-house counsel of the Company, substantially in the form distributed to the Original Lenders prior to signing this Agreement.

5. **Offer Related Conditions**

- (a) A copy, certified as being a true and complete copy by an Authorised Signatory of Bidco, of the Press Release, in substantially the form distributed to the Agent prior to signing of this Agreement (where any changes are not relevant to the interests of the Finance Parties).
- (b) Copies, certified as being true and complete copies by an Authorised Signatory of Bidco, of each Offer Document incorporating the terms set out in the Press Release or any subsequent press announcements released by Bidco in connection with the Offer or such other changes to reflect the Offer (in each case, which are not relevant to the interests of the Finance Parties) and any other terms required by the Code or the Panel.
- (c) A copy, certified as being a true and complete copy by an Authorised Signatory of Bidco, of the announcement that each Offer has become or has been declared unconditional in all respects together with a certificate from an Authorised Signatory of Bidco that in having declared each Offer unconditional it is not in breach of [Clause 23.18 (*The Offer*)].

6. **Other Documents and Evidence**

- (a) The Group Structure Chart.
- (b) The Funds Flow Statement.
- (c) The Original Financial Statements of each Obligor.
- (d) A certificate of the Company (signed by a director) certifying that the Company/Bidco Intercompany Loan Agreement is in full force and effect.
- (e) Copies of forms PE 1 and PE 3 stamped by the Bank of Spain (*Banco de España*), whereby it assigns a Financial Operation Number ("**NOF**") to the Facilities and to the Company/Bidco Intercompany Loan.

**Part II**  
**Conditions Precedent Required to be**  
**Delivered by an Additional Obligor**

**Obligors:**

1. An Accession Letter, duly executed by the Additional Obligor and the Company.
  - (a) A copy of the constitutional documents of the Additional Obligor.
  - (b) A copy of a resolution of the board of directors of the Additional Obligor:
    - (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; and
    - (iii) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant, any Utilisation Request) to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party.
  - (c) A specimen of the signature of each person authorised by the resolution referred to in paragraph (b) above.
  - (d) Should the legal advisers of the Lenders consider it advisable, a copy of a resolution signed by all the holders of the issued shares of the Additional Obligor, approving the terms of, and the transactions contemplated by, the Finance Documents to which the Additional Obligor is a party.
  - (e) A certificate of the Additional Obligor (signed by an Authorised Signatory) confirming that guaranteeing the Total Commitments would not cause any guaranteeing or similar limit binding on it to be exceeded.
  - (f) A certificate of an Authorised Signatory of the Additional Obligor 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 Obligor in form and substance reasonably satisfactory to the legal advisers of the Lenders.
  - (b) A legal opinion of Clifford Chance, or other firm that can opine for the Additional Obligor if not Clifford Chance, legal advisers to the Lenders.

3. **Other documents and evidence**

- (a) Evidence that any process agent referred to in Clause 39.2 (*Service of process*) has accepted its appointment.
- (b) In relation to any Additional Borrower incorporated in Spain, a copy of form PE-1 stamped by the Bank of Spain (*Banco de España*), whereby it assigns a Financial Operation Number ("NOF") to the accession of the such Additional Borrower.
- (c) A copy of any other Authorisation or other document, opinion or assurance which the Agent considers (after having taken appropriate legal advice) to be necessary or desirable (if it has notified the Additional Obligor and the Company 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.
- (d) The Original Financial Statements of the Additional Guarantor.

**SCHEDULE 3  
Utilisation Request**

From: [Borrower]

To: [Agent]

Dated:

Dear Sirs

**Cemex – US\$2,300,000,000 Revolving Facilities Agreement  
dated 24 September 2004 (as amended and restated on [•] 2005) (the "Facilities Agreement")**

1. We refer to the Facilities Agreement. This is a Utilisation Request. Terms defined in the Facilities Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.
2. [We wish to borrow a Loan on the following terms:
  - (a) Proposed Utilisation Date: [•] (or, if that is not a Business Day, the next Business Day)
  - (b) Borrower [•]
  - (c) Facility to be utilised: [Facility A] [Facility B] [Facility C] \*\*
  - (d) Currency of Loan: [•]
  - (e) Amount: [•] or, if less, the relevant Available Facility
  - (f) Interest Period: [•]
3. We confirm that, to the extent applicable, each condition specified in Clause 4.2 (*Further Conditions Precedent*) is satisfied or waived on the date of this Utilisation Request.
4. The proceeds of this Loan should be credited to [account].
5. This Utilisation Request is irrevocable.
6. Terms used in this Utilisation Request which are not defined in this Utilisation Request but are defined in the Facilities Agreement shall have the meaning given to those terms in the Facilities Agreement.

Yours faithfully

.....  
authorised signatory for  
[the Borrower]

NOTES:

\*\* Select the Facility to be utilised and delete references to the other Facilities.

**SCHEDULE 4**  
**Mandatory Cost Formulae**

1. The Mandatory Cost is an addition to the interest rate to compensate Lenders for the cost of compliance with (a) the requirements of the Bank of England and/or the Financial Services Authority (or, in either case, any other authority which replaces all or any of its functions) or (b) the requirements of the European Central Bank.
2. On the first day of each Interest Period (or as soon as possible thereafter) the Agent shall calculate, as a percentage rate, a rate (the "**Additional Cost Rate**") for each Lender, in accordance with the paragraphs set out below. The Mandatory Cost will be calculated by the Agent as a weighted average of the Lenders' Additional Cost Rates (weighted in proportion to the percentage participation of each Lender in the relevant Loan) and will be expressed as a percentage rate per annum.
3. The Additional Cost Rate for any Lender lending from a Facility Office in a Participating Member State will be the percentage notified by that Lender to the Agent. This percentage will be certified by that Lender in its notice to the Agent to be its reasonable determination of the cost (expressed as a percentage of that Lender's participation in all Loans made from that Facility Office) of complying with the minimum reserve requirements of the European Central Bank in respect of loans made from that Facility Office.
4. The Additional Cost Rate for any Lender lending from a Facility Office in the United Kingdom will be calculated by the Agent as follows:

(a) in relation to a sterling Loan:

$$\frac{AB + C(B - D) + E \times 0.01}{100 - (A + C)} \text{ per cent. per annum}$$

(b) in relation to a Loan in any currency other than sterling:

$$\frac{E \times 0.01}{300} \text{ per cent. per annum}$$

Where:

- A is the percentage of Eligible Liabilities (assuming these to be in excess of any stated minimum) which that Lender is from time to time required to maintain as an interest free cash ratio deposit with the Bank of England to comply with cash ratio requirements.
- B is the percentage rate of interest (excluding the Margin and the Mandatory Cost and, if the Loan is an Unpaid Sum, the additional rate of interest specified in paragraph (a) of Clause 10.3 (*Default interest*)) payable for the relevant Interest Period on the Loan.

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- C is the percentage (if any) of Eligible Liabilities which that Lender is required from time to time to maintain as interest bearing Special Deposits with the Bank of England.
- D is the percentage rate per annum payable by the Bank of England to the Agent on interest bearing Special Deposits.
- E is designed to compensate Lenders for amounts payable under the Fees Rules and is calculated by the Agent as being the average of the most recent rates of charge supplied by the Reference Banks to the Agent pursuant to paragraph 7 below and expressed in pounds per £1,000,000.
5. For the purposes of this Schedule:
- (a) "**Eligible Liabilities**" and "**Special Deposits**" have the meanings given to them from time to time under or pursuant to the Bank of England Act 1998 or (as may be appropriate) by the Bank of England;
  - (b) "**Fees Rules**" means the rules on periodic fees contained in the FSA Supervision Manual or such other law or regulation as may be in force from time to time in respect of the payment of fees for the acceptance of deposits;
  - (c) "**Fee Tariffs**" means the fee tariffs specified in the Fees Rules under the activity group A.1 Deposit acceptors (ignoring any minimum fee or zero rated fee required pursuant to the Fees Rules but taking into account any applicable discount rate); and
  - (d) "**Tariff Base**" has the meaning given to it in, and will be calculated in accordance with, the Fees Rules.
6. In application of the above formulae, A, B, C and D will be included in the formulae as percentages (i.e. 5 per cent. will be included in the formula as 5 and not as 0.05). A negative result obtained by subtracting D from B shall be taken as zero. The resulting figures shall be rounded to four decimal places.
7. If requested by the Agent, each Reference Bank shall, as soon as practicable after publication by the Financial Services Authority, supply to the Agent, the rate of charge payable by that Reference Bank to the Financial Services Authority pursuant to the Fees Rules in respect of the relevant financial year of the Financial Services Authority (calculated for this purpose by that Reference Bank as being the average of the Fee Tariffs applicable to that Reference Bank for that financial year) and expressed in pounds per £1,000,000 of the Tariff Base of that Reference Bank.



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8. Each Lender shall supply any information required by the Agent for the purpose of calculating its Additional Cost Rate. In particular, but without limitation, each Lender shall supply the following information on or prior to the date on which it becomes a Lender:
- (a) the jurisdiction of its Facility Office; and
  - (b) any other information that the Agent may reasonably require for such purpose.

Each Lender shall promptly notify the Agent of any change to the information provided by it pursuant to this paragraph.

9. The percentages of each Lender for the purpose of A and C above and the rates of charge of each Reference Bank for the purpose of E above shall be determined by the Agent based upon the information supplied to it pursuant to paragraphs 7 and 8 above and on the assumption that, unless a Lender notifies the Agent to the contrary, each Lender's obligations in relation to cash ratio deposits and Special Deposits are the same as those of a typical bank from its jurisdiction of incorporation with a Facility Office in the same jurisdiction as its Facility Office.
10. The Agent shall have no liability to any person if such determination results in an Additional Cost Rate which over or under compensates any Lender and shall be entitled to assume that the information provided by any Lender or Reference Bank pursuant to paragraphs 3, 7 and 8 above is true and correct in all respects.
11. The Agent shall distribute the additional amounts received as a result of the Mandatory Cost to the Lenders on the basis of the Additional Cost Rate for each Lender based on the information provided by each Lender and each Reference Bank pursuant to paragraphs 3, 7 and 8 above.
12. Any determination by the Agent pursuant to this Schedule in relation to a formula, the Mandatory Cost, an Additional Cost Rate or any amount payable to a Lender shall, in the absence of manifest error, be conclusive and binding on all Parties.
13. The Agent may from time to time, after consultation with the Company and the Lenders, determine and if so requested by any Lender, notify to all Parties any amendments which are required by such Lender to be made to this Schedule in order to comply with any change in law or regulation or any requirements from time to time imposed by the Bank of England, the Financial Services Authority or the European Central Bank (or, in any case, any other authority which replaces all or any of its functions) and any such determination shall, in the absence of manifest error, be conclusive and binding on all Parties.

**SCHEDULE 5  
Form Of Transfer Certificate**

To: [Agent]

From: [The Existing Lender] (the "Existing Lender") and [The New Lender] (the "New Lender")

Dated:

**Cemex – US\$2,300,000,000 Revolving Facilities Agreement  
dated 24 September 2004 (as amended and restated on [•] 2005) (the "Facilities Agreement")**

1. We refer to the Facilities Agreement. This is a Transfer Certificate. Terms defined in the Facilities Agreement have the same meaning in this Transfer Certificate unless given a different meaning in this Transfer Certificate.
2. We refer to Clause 25.5 (*Procedure for transfer*):
  - (a) The Existing Lender and the New Lender agree to the Existing Lender transferring to the New Lender by novation all or part of the Existing Lender's Commitment, rights and obligations referred to in the schedule to this certificate in accordance with Clause 25.5 (*Procedure for transfer*).
  - (b) The proposed Transfer Date is [•].
  - (c) The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 32.2 (*Addresses*) are set out in the schedule to this certificate.
3. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in paragraph (c) of Clause 25.4(c) (*Limitation of responsibility of Existing Lenders*).
4. This Transfer Certificate 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 Transfer Certificate.
5. 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.
6. This Transfer Certificate is governed by English law.

**THE SCHEDULE**  
**Commitment/rights and obligations to be transferred**

*[insert relevant details]*

*[Facility Office address, email, fax number and attention details for notices and account details for payments,]*

[Existing Lender]

[New Lender]

By:

By:

This Transfer Certificate is accepted by the Agent and the Transfer Date is confirmed as [•].

[Agent]

By:

**SCHEDULE 6  
Form Of Accession Letter**

To: [Agent]

From: [Subsidiary] and [Company]

Dated:

Dear Sirs

**Cemex – US\$2,300,000,000 Revolving Facilities Agreement  
dated 24 September 2004 (as amended and restated on [•] 2005) (the "Facilities Agreement")**

1. [Subsidiary] agrees to become an [Additional Guarantor/Additional Borrower] and to be bound by the terms of the Facilities Agreement and the other Finance Documents as an [Additional Guarantor/Additional Borrower] pursuant to Clause 26.3 (Additional Guarantors) of the 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 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 Facilities Agreement shall have the meaning given to those terms in the Facilities Agreement.

[This Accession Letter is entered into by deed.]\*

Signed by: ..... ..

[Company]

[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 Obligor. This can be overcome by acceding by way of deed.

**SCHEDULE 7  
Form Of Compliance Certificate**

To: [•] as Agent

From: [Company]

Dated:

Dear Sirs

**Cemex – US\$2,300,000,000 Revolving Facilities Agreement  
dated 24 September 2004 (as amended and restated on [•] 2005) (the "Facilities Agreement")**

1. We refer to the Facilities Agreement. This is a Compliance Certificate. Terms defined in the 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) Pursuant to Clause 22.2 (*Financial condition*) the financial condition of the Group as of [ ] evidenced by the consolidated financial statements for the financial year/four quarters then ended comply with the following conditions:

(i) **Net Borrowings** EUR \_\_\_\_\_ ("A")

comprising EUR [*Guarantees*]

EUR [*Off-Balance-Sheet Transactions*]

EUR [*Financial Indebtedness*]

EUR [*Liquid Investments*]

**Adjusted EBITDA**

comprising:

EUR [*operating profit*]

EUR [*annual depreciation for fixed assets*]

EUR [*annual amortisation of intangible assets*]

EUR [*annual amortisation of start-up costs of the Group*]

EUR [*dividends received from non-consolidated companies*]

EUR [*dividends received from companies consolidated by the equity method*]

EUR [*Cemex Capital Contributions*]

EUR [*acquired business* (i) operating income and (ii) depreciation and amortisation expense]

EUR \_\_\_\_\_ ("B")

A:B to be less than or equal to

3.5:1

(ii) **EBITDA**

EUR \_\_\_\_\_ ("B")

**Finance Charges**

comprising EUR [*interest expenses*]

EUR [*other expenses*]

EUR \_\_\_\_\_ ("C")

B:C to be greater than or equal to

3:1

(b) As at the date of this Certificate the following Subsidiaries of the Group fall within the definition of Material Subsidiaries as set out in Clause 1.1 (*Definitions*):

3. We confirm that no Default is continuing.

Signed: .....

Authorised Signatory

of

Company

[insert applicable certification language]

.....  
For and on behalf of  
[name of auditors of the Company]

**SCHEDULE 8  
Timetables**

	<b>Loans in euro, dollars or yen</b>	<b>Loans in sterling</b>
Agent notifies the Company if a currency is approved as an Optional Currency in accordance with Clause 4.3 ( <i>Conditions relating to Optional Currencies</i> )	-	-
Delivery of a duly completed Utilisation Request (Clause 5.1 ( <i>Delivery of a Utilisation Request</i> ))	U-3 11.00am	U-1 11.00am
Agent determines (in relation to a Utilisation) the Base Currency Amount of the Loan, if required under paragraph (c) of Clause 5.4 ( <i>Lenders' participation</i> ) and notifies the Lenders of the Loan in accordance with Clause 5.4 ( <i>Lenders' participation</i> )	U-3 3.00pm	U-1 3.00pm
Agent receives a notification from a Lender under Clause 6.2 ( <i>Unavailability of a currency</i> )	U-2 9.30am	U 9.30am
Agent gives notice in accordance with Clause 6.2 ( <i>Unavailability of a currency</i> )	U-2 10.30am	U 10.30am
LIBOR or EURIBOR is fixed	Quotation Day as of 11:00 a.m. London time in respect of LIBOR and as of 11.00 a.m. Brussels time in respect of EURIBOR	Quotation Day as of 11:00 a.m.

"U" = date of utilisation  
"U - X" = X Business Days prior to date of utilisation

**SCHEDULE 9**

**Form of LMA Confidentiality Undertaking**

**[Letterhead of Existing Bank]**

To:

--

*[insert name of Potential Lender]*

Re: **The Facilities**

<b><i>Borrower:</i></b> <b><i>Amount:</i></b> <b><i>Agent:</i></b>
--

Dear Sirs

We understand that you are considering participating in the Facilities. In consideration of us agreeing to make available to you certain information, by your signature of a copy of this letter you agree as follows:

1. *Confidentiality Undertaking* You undertake:
  - (a) to keep the Confidential Information confidential and not to disclose it to anyone except as provided for by paragraph 2 below and to ensure that the Confidential Information is protected with security measures and a degree of care that would apply to your own confidential information;
  - (b) to keep confidential and not disclose to anyone 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 Facilit[y/ies];
  - (c) to use the Confidential Information only for the Permitted Purpose;
  - (d) to use all reasonable endeavours to ensure that any person to whom you pass any Confidential Information (unless disclosed under paragraph 2(b) below) acknowledges and complies with the provisions of this letter as if that person were also a party to it; and
  - (e) not to make enquiries of any member of the Group or any of their officers, directors, employees or professional advisers relating directly or indirectly to the Facilities.



2. *Permitted Disclosure* We agree that you may disclose Confidential Information:

- (a) to members of the Participant Group and their officers, directors, employees and professional advisers to the extent necessary for the Permitted Purpose and to any auditors of members of the Participant Group;
  - (b) (i) where requested or required by any court of competent jurisdiction or any competent judicial, governmental, supervisory or regulatory body, (ii) where required by the rules of any stock exchange on which the shares or other securities of any member of the Participant Group are listed or (iii) where required by the laws or regulations of any country with jurisdiction over the affairs of any member of the Participant Group; or
  - (c) with the prior written consent of us and the Company.
3. *Notification of Required or Unauthorised Disclosure* You agree (to the extent permitted by law) to inform us of the full circumstances of any disclosure under paragraph 2(b) or upon becoming aware that Confidential Information has been disclosed in breach of this letter.
4. *Return of Copies* If we so request in writing, you shall return all Confidential Information supplied to you by us and destroy or permanently erase all copies of Confidential Information made by you and use all reasonable endeavours to ensure that anyone to whom you have supplied any Confidential Information destroys or permanently erases such Confidential Information and any copies made by them, in each case save to the extent that you 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 paragraph 2(b) above.
5. *Continuing Obligations* The obligations in this letter are continuing and, in particular, shall survive the termination of any discussions or negotiations between you and us. Notwithstanding the previous sentence, the obligations in this letter shall cease (a) if you become a party to or otherwise acquire (by assignment or sub-participation) an interest, direct or indirect, in the Facilities or (b) twelve months after you have returned all Confidential Information supplied to you by us and destroyed or permanently erased all copies of Confidential Information made by you (other than any such Confidential Information or copies which have been disclosed under paragraph 2 above (other than sub-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* You acknowledge and agree that:
- (a) neither we, nor any member of the Group, nor any of our 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 us or any member of the Group 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 us or any member of the Group or be otherwise liable to you or any other person in respect to the Confidential Information or any such information; and

- (b) we 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 you.
- 7. *No Waiver; Amendments, etc* This letter sets out the full extent of your obligations of confidentiality owed to us in relation to the information the subject of this letter. No failure or delay in exercising any right, power or privilege under this letter will operate as a waiver thereof nor will any single or partial exercise of any right, power or privilege preclude any further exercise thereof or the exercise of any other right, power or privileges under this letter. The terms of this letter and your obligations under this letter may only be amended or modified by written agreement between us.
- 8. *Inside Information* You 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 relating to insider dealing and you undertake not to use any Confidential Information for any unlawful purpose.
- 9. *No Front Running*
  - (a) You agree that until primary syndication of the Facility has been completed and allocations released, you will not, and will procure that no other member of the Participation Group will:
    - (i) undertake any Front Running;
    - (ii) enter into (or agree to enter into) any agreement with any bank, financial institution or other third party which to your knowledge may be approached to become a syndicate member, under which that bank, financial institution or other third party shares any risk or participates in any exposure of any Lender under the Facility; or
    - (iii) offer to make any payment or other compensation of any kind to any bank, financial institution or third party for its participation (direct or indirect) in the Facility.
  - (b) Neither you nor any other member of the Participant Group has engaged in any Front Running:
    - (i) if you or any other member of the Participant Group engages in any Front Running before the close of primary syndication we may suffer loss or damage and your position in future financings with us and the Company may be prejudiced; and

- (ii) if you or any other member of the Participant Group engages in any Front Running before the close of primary syndication we retain the right not to allocate to you a commitment under the Facility.

For the purpose "**Front Running**" means the process of:

- (a) communicating with any bank, financial institution or third party which, to its knowledge, may be approached to become a syndicate member with a view of encouraging, or with the result that such bank or financial institution is encouraged, to await the secondary market in respect of participation in the Facility; and/or
  - (b) actually making a price (generally or to a specific bank, financial institution or third party) in respect of a participation in the Facility.
10. *Nature of Undertakings* The undertakings given by you under this letter are given to us and (without implying any fiduciary obligations on our part) are also given for the benefit of the Company and each other member of the Group.
11. *Third party rights*
- (a) Subject to paragraph 6 and paragraph 9 the terms of this letter may be enforced and relied upon only by you and us and the operation of the Contracts (Rights of Third Parties) Act 1999 is excluded.
  - (b) 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.
  - (c) Notwithstanding any provisions of this letter, the parties to this letter do not require the consent of any Relevant Person or any member of the Group to rescind or vary this letter at any time.
12. *Governing Law and Jurisdiction* This letter (including the agreement constituted by your acknowledgement of its terms) shall be governed by and construed in accordance with the laws of England and the parties submit to the non-exclusive jurisdiction of the English courts.
13. *Definitions* In this letter (including the acknowledgement set out below):
- "Confidential Information"** means any information relating to the Company, the Group, and the Facilities including, without limitation, the information memorandum, provided to you by us or any of our 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 knowledge other than as a direct or indirect result of any breach of this letter or (b) is known by you before the date the information is disclosed to you by us or any of our affiliates or advisers or is lawfully obtained by you after that date, other than from a source which is connected with the Group and which, in either case, as far as you are aware, has not been obtained in violation of, and is not otherwise subject to, any obligation of confidentiality;

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“**Group**” means the Company and each of its holding companies and subsidiaries and each subsidiary of each of its holding companies (as each such term is defined in the Companies Act 1985);

“**Participant Group**” means you, each of your holding companies and subsidiaries and each subsidiary of each of your holding companies (as each such term is defined in the Companies Act 1985); and

“**Permitted Purpose**” means considering and evaluating whether to enter into the Facilities.

Please acknowledge your agreement to the above by signing and returning the enclosed copy.

Yours faithfully

.....  
For and on behalf of

[Existing Lender]

To: [Existing Lender]  
The Company and each other member of the Group

We acknowledge and agree to the above:

.....  
For and on behalf of  
[Potential New Lender]

**SCHEDULE 10**  
**Existing Security**

<b>Company</b>	<b>Lender</b>	<b>Security</b>	<b>Total Principal Amount of Indebtedness Secured as of 30 June 2004 (millions of euro)</b>
1. CEMEX Construction Materials, L.P.	GE Capital (FKIT 279,280)	Equipment related with the Credit	1.263
2. CEMEX Construction Materials, L.P.	Hampton	Land related with the Credit	0.338
3. Kosmos Cement Company	First Corp (FKIT 101649)	Equipment related with the Credit	0.035
4. Mineral Resource Technologies, Inc.	Met-South, Inc.	Ash storage facility	0.248
5. Any security existing at the date of this Agreement constituted by the transfer of shares or any other instrument of title representing an equity participation in the Asia Fund into a trust			
			1.883 and the security under item 5

**SCHEDULE 11**  
**Existing Notarisations**

<b>Type of Agreement</b>	<b>Borrower/Guarantor</b>	<b>Maturity Date</b>	<b>Total Principal Amount of Indebtedness notarised as of 30 June 2004</b>
Bilateral lines	Cemex España, S.A./n.a.	Between Jan. and Dec. 2005	EUR 51,086,029 <sup>2</sup>
Deferred purchase price	Aricemex S.A./n.a.	July, 2005	EUR 961,619

Corresponds to the total committed amount under the facilities. Amount drawn as of 06.30.04: EUR 18,712,797.

**SCHEDULE 12**  
**Material Subsidiaries**

Cemex Inc.

Cemex Corp.

Cemex Venezuela SACA

Vencement Investments

Construction Funding Corporation

**SCHEDULE 13**  
**Existing Financial Indebtedness**

As of 03.31.05

Figures in millions of €\*

BORROWER	INSTRUMENT	OUTSTANDING AMOUNT	FINAL MATURITY
<b>CEMEX UK, LTD</b>	Loan Notes <sup>(1)</sup>	33	June 2005 - December
	<b>SUBTOTAL</b>	<b>33</b>	
	Priv. Plac. (£70 M) <sup>(2)</sup>	102	Between 2009-2019
	Priv. Plac (\$75 M) <sup>(3)</sup>	58	July 2006
<b>RMC GROUP, LTD</b>	Priv. Plac. (\$225 M) <sup>(4)</sup>	197	Between 2010-2020
	Priv. Plac (\$222 M) <sup>(5)</sup>	171	Between 2009-2014
	Other debt <sup>(6)</sup>	100	Between 2005-2014
<b>RMC USA</b>	Priv. Plac (\$155 M) <sup>(7)</sup>	120	Between 2008-2018
	Line of Credit	5	December 2005
	Other debt at RMC subsidiary	66	Between 2005-2016
	<b>SUBTOTAL</b>	<b>819</b>	
	Priv. Plac. (€50 M)	50	March 2006
<b>CEMEX, INC.</b>	Priv. Plac (\$315 M)	244	March 2006
	Priv. Plac. (\$396 M)	306	March 2008
	SBLC <sup>(8)</sup>	38	Dec 2006 - April 2025
	<b>SUBTOTAL</b>	<b>638</b>	
<b>PUERTO RICAN CEMENT COMPANY</b>	\$40 M Credit Line	23	June 2005
	\$50 M Credit Line	21	January 2006
	<b>SUBTOTAL</b>	<b>44</b>	
<b>APO CEMENT CORP.</b>	ECA Loan	10	July 2005 - March 2006
	<b>SUBTOTAL</b>	<b>10</b>	
<b>OTHER COMPANIES</b>	Credit Lines	30	---
	<b>SUBTOTAL</b>	<b>30</b>	
	<b>TOTAL DEBT</b>	<b>1,574</b>	

\* Exchange rates:

\$/€ = 1.2965

¥/€ = 138.97

€/£ = 1.4575

- (1) Held by RMC Shareholders who elected to receive Loan Notes instead of cash as payment for their RMC's shares.
- (2) On May 17, 2005 this issuance was fully prepaid.
- (3) On May 17, 2005 Notes for an amount of \$55.0 M were prepaid.
- (4) On May 17, 2005 Notes for an amount of \$0.7 M were prepaid.
- (5) On May 17, 2005 Notes for an amount of \$119.5 M were prepaid.
- (6) This caption basically includes Bank Loans, Overdraft Facilities and Financial Leases.
- (7) On May 17, 2005 Notes for an amount of \$11.0 M were prepaid.
- (8) Stand By Letters of Credit over tax-exempt bonds. Maturities shown correspond to these bonds. SBLC renewed on an annual basis.



**SIGNATURES**

**THE COMPANY**

**CEMEX ESPAÑA, S.A.**

By: **RAMIRO VILLARREAL MORALES**

Address: Ave. Ricardo Margáin Zozaya # 325  
Col. Valle del Campestre  
San Pedro Garza García, N.L.  
Mexico 66265

Fax: (52 81) 8888-4415

Attention: Humberto Lozano/Ramiro Villarreal

**THE ORIGINAL GUARANTORS**

**CEMEX ESPAÑA, S.A.**

By: **RAMIRO VILLARREAL MORALES**

Address: Ave. Ricardo Margáin Zozaya # 325  
Col. Valle del Campestre  
San Pedro Garza García, N.L.  
Mexico 66265

Fax: (52 81) 8888-4415

Attention: Humberto Lozano/Ramiro Villarreal

**CEMEX CARACAS INVESTMENTS B.V.**

By: **RAMIRO VILLARREAL MORALES**

Address: Ave. Ricardo Margáin Zozaya # 325  
Col. Valle del Campestre  
San Pedro Garza García, N.L.  
Mexico 66265

Fax: (52 81) 8888-4415

Attention: Humberto Lozano/Ramiro Villarreal

**CEMEX CARACAS II INVESTMENTS B.V.**

By: **RAMIRO VILLARREAL MORALES**

Address: Ave. Ricardo Margáin Zozaya # 325  
Col. Valle del Campestre  
San Pedro Garza García, N.L.  
Mexico 66265

Fax: (52 81) 8888-4415

Attention: Humberto Lozano/Ramiro Villarreal

**CEMEX EGYPTIAN INVESTMENTS B.V.**

By: **RAMIRO VILLARREAL MORALES**

Address: Ave. Ricardo Margáin Zozaya # 325  
Col. Valle del Campestre  
San Pedro Garza García, N.L.  
Mexico 66265

Fax: (52 81) 8888-4415

Attention: Humberto Lozano/Ramiro Villarreal

**CEMEX MANILA INVESTMENTS B.V.**

By: **RAMIRO VILLARREAL MORALES**

Address: Ave. Ricardo Margáin Zozaya # 325  
Col. Valle del Campestre  
San Pedro Garza García, N.L.  
Mexico 66265

Fax: (52 81) 8888-4415

Attention: Humberto Lozano/Ramiro Villarreal

**CEMEX AMERICAN HOLDINGS B.V.**

By: **RAMIRO VILLARREAL MORALES**

Address: Ave. Ricardo Margáin Zozaya # 325  
Col. Valle del Campestre  
San Pedro Garza García, N.L.  
Mexico 66265

Fax: (52 81) 8888-4415

Attention: Humberto Lozano/Ramiro Villarreal

**THE ARRANGER**

**CITIGROUP GLOBAL MARKETS LIMITED**

By: **CARLOS BARONA**

Address: Citigroup Centre, 33 Canada Square, Canary Wharf, London E14 5LB

Fax: + 44 20 7986 8278

**GOLDMAN SACHS INTERNATIONAL**

By: **JAVIER LAZARO**  
Address: Peterborough Court, 133 Fleet Street, London EC4A 2BB  
Fax: + 44 (20) 7774 4477  
Attention: Javier Lazaro

**THE AGENT**

**CITIBANK INTERNATIONAL PLC**

By: **CARLOS BARONA**  
Address: Loans Agency Office, 2<sup>nd</sup> Floor,  
4 Harbour Exchange Square, London E14 9GE  
Fax: 00 44 208 636 3824/3825  
Attention: Ian Hayton

**THE LENDERS**

**CITIBANK INTERNATIONAL PLC, SUCURSAL EN ESPAÑA**

By: **CARLOS BARONA**  
Address: C/José Ortega v Gasset 29, Madrid 28006, Spain  
Fax: + 34 91 435 2811

**CITIBANK, N.A.**

By: **CARLOS BARONA**  
Address: Citigroup Centre, 33 Canada Square, Canary Wharf, London E14 5LB  
Fax: + 44 20 7986 8278

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**GOLDMAN SACHS CREDIT PARTNERS, L.P.**

By: **JAVIER LAZARO**

Address: 85 Broad Street, New York, NY 10004, United States of America

Fax: + 44 (20) 7774 4477

DATED 30 JUNE 2006

**CEMEX ESPAÑA, S.A.**

AS COMPANY

**BANCO BILBAO VIZCAYA ARGENTARIA S.A.**  
**BANCO SANTANDER CENTRAL HISPANO, S.A.**

**CALYON SUCURSAL EN ESPAÑA**  
**CITIGROUP GLOBAL MARKETS LIMITED**  
AS ARRANGERS AND BOOKRUNNERS

AND

**CITIBANK INTERNATIONAL PLC**

AS AGENT

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GLOBAL TRANSFER, RETRANCHING AND AMENDMENT  
AGREEMENT RELATING TO

A US\$2,300,000,000 (ORIGINALLY US\$3,800,000,000)  
TERM AND REVOLVING FACILITIES AGREEMENT  
DATED 24 SEPTEMBER 2004

(AS AMENDED ON 8 NOVEMBER 2004  
AND 25 FEBRUARY 2005 AND AS AMENDED  
AND RESTATED ON 7 JULY 2005)

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**THIS AGREEMENT** is made on 30 June 2006

### **BETWEEN**

- (1) **CEMEX ESPAÑA, S.A.**, a company (*sociedad anónima*) incorporated under the laws of Spain, registered in the Commercial Registry *Registro Mercanti* under Volumes (*Tomos*) 9743 and 9744, Section 8 of the Company's Book (*Libro de Sociedades*), Folios (*Folios*) 1 and 166, Page: M-156542, NIF A46/004214 (the "**Company**" or the "**Borrower**");
- (2) **THE SUBSIDIARIES** of the Company listed in Part A of Schedule 1 as guarantors (the "**Guarantors**");
- (3) **CITIBANK INTERNATIONAL PLC** as facility agent for the Lenders (the "**Agent**");
- (4) **BANCO BILBAO VIZCAYA ARGENTARIA S.A., BANCO SANTANDER CENTRAL HISPANO, S.A., CALYON SUCURSAL EN ESPAÑA** and **CITIGROUP GLOBAL MARKETS LIMITED** as arrangers and bookrunners (the "**Arrangers**");
- (5) **THE FINANCIAL INSTITUTIONS** named in Part B of Schedule 1 as remaining lenders (the "**Remaining Lenders**"); and
- (6) **THE FINANCIAL INSTITUTIONS** named in Part C of Schedule 1 as transferring lenders (the "**Transferring Lenders**").

**IT IS AGREED** as follows.

### 1. **DEFINITIONS AND INTERPRETATION**

#### 1.1 **Definitions**

In this Agreement:

**"Amended Agreement"** means the Original Facilities Agreement as amended by this Agreement.

**"Continuing Loans"** means the Loans specified as Continuing Loans and detailed in Schedule 2 (*Effective Date Facilities, Commitments and Loans Outstanding*) representing amounts owed to the Remaining Lenders prior to the Effective Date which remain owing to the Remaining Lenders following the retransching effected on the Effective Date pursuant to Clause 4 (*Global Transfer, Retransching and Amendment*).

**"Counterparty"** means each of the Obligors and the Agent.

**"Effective Date"** means 5 July 2006, on which date the Agent shall confirm to the Lenders that it has received each of the documents listed in Schedule 3 (*Conditions Precedent*) in a form and substance satisfactory to the Agent.

**"Effective Date Loans"** means the Loans owed to the Remaining Lenders as at the Effective Date which are specified as Effective Date Loans and detailed in Schedule 2 (*Effective Date Facilities, Commitments and Loans Outstanding*) representing amounts owed to Transferring Lenders prior to the Effective Date which are transferred to the Remaining Lenders on the Effective Date pursuant to Clause 4 (*Global Transfer, Retransching and Amendment*).

"**Effective Date Rate**" means the LIBOR or EURIBOR (as the case may be) applicable to an Effective Date Loan from the Effective Date, as calculated by the Agent in accordance with Clause 4.3.1 of this Agreement and communicated by the Agent to the Company and the Remaining Lenders prior to the Effective Date.

"**Original Facilities Agreement**" means the US\$2,300,000,000 (originally US\$3,800,000,000) multicurrency term and revolving credit facility made between (amongst others) the Company and Citigroup Global Markets Limited and Goldman Sachs International dated 24 September 2004 (as amended on 8 November 2004 and 25 February 2005 and as amended and restated on 7 July 2005).

"**Transferring Lenders**" means the Lenders listed in Part C of Schedule 1 (*The Parties*).

## 1.2 **Incorporation of Defined Terms**

1.2.1 Terms defined in the Original Facilities Agreement shall, unless otherwise defined herein, have the same meaning herein.

1.2.2 The principles of construction set out in the Original Facilities 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 hereof. Clause headings are for ease of reference only.

## 1.4 **Third Party Rights**

A person who is not a party to this Agreement has no rights under the Contract (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

## 2. **CONDITIONS PRECEDENT**

The provisions of Clause 4 (*Global Transfer, Retrenching and Amendment*) shall be effective only if, not later than 9.30 am in London two Business Days before the Effective Date, the Agent has received all the documents and other evidence listed in Schedule 3 (*Conditions Precedent*) in form and substance satisfactory to the Agent. The Agent shall notify the Company, the Remaining Lenders and the Transferring Lenders upon being so satisfied.



3. **REPEATING REPRESENTATIONS**

3.1 The Repeating Representations (as defined in the Original Facilities Agreement) are deemed to be made by each Obligor (by reference to the facts and circumstances then existing) on:

3.1.1 the date of this Agreement; and

3.1.2 the Effective Date.

4. **GLOBAL TRANSFER, RETRANCHING AND AMENDMENT**

4.1 **Simultaneous occurrences on Effective Date**

On the Effective Date, the following shall occur simultaneously:

4.1.1 all of the rights, benefits and obligations of the Transferring Lenders under the Original Facilities Agreement shall be transferred to the Remaining Lenders and for the avoidance of doubt, the Transferring Lenders shall be paid all amounts of principal and interest outstanding on the Effective Date;

4.1.2 the Facilities and the Loans outstanding thereunder shall be retranching and split so that they are as set out in Schedule 2 (*Effective Date Facilities, Commitments and Loans Outstanding*); and

4.1.3 the Original Facilities Agreement shall be amended as set out in Schedule 5 (*Amendments to the Original Facilities Agreement*).

4.2 **Break Costs**

4.2.1 Each Transferring Lender shall, as soon as reasonably practicable after receiving a demand delivered by the Agent on or prior to the Effective Date, provide a certificate to the Agent and the Company confirming in reasonable detail the amount of any break funding costs which will be incurred by it pursuant to the transfers made under Clause 4.1.1 above (on the same basis as would have been due under Clause 12.4 (*Break Costs*) of the Original Facilities Agreement) if the Loans owed to the Transferring Lenders had been repaid in full by the Company on the Effective Date.

4.2.2 The Company shall, within three Business Days of demand by a Transferring Lender, pay to that Transferring Lender any break funding costs due under Clause 4.2.1 above and any amounts owed to the Transferring Lenders under the Finance Documents other than principal and interest claims transferred under Clause 4.1.1 above.

4.3 **Interest on Effective Date Loans**

4.3.1 For the purposes of calculating the rate of interest payable by the Company to the Remaining Lenders on any Effective Date Loan for the Interest Period beginning on the Effective Date pursuant to Clause 10.1 (*Calculation of Interest*) of the Amended Agreement, the LIBOR or EURIBOR (as the case may be) to be used in such calculations shall be the Effective Date Rate applicable to such Effective Date Loan.

4.3.2 Each Effective Date Rate shall be calculated by the Agent by applying the Screen Rate definition in the Amended Agreement and, where necessary, by interpolating on a linear basis between the rate quoted in respect of the longest period (for which a rate is quoted) which is less than the Relevant Period and that quoted in respect of the shortest period (for which a rate is quoted) which exceeds the Relevant Period on the appropriate Telerate screen selected by the Agent (or if there is no Telerate screen, such other appropriate screen as the Agent may select); and

(a) For the purposes of this Clause 4.3, "**Relevant Period**" shall mean the period from the Effective Date to the next occurring last day of the Interest Period for a Continuing Loan outstanding under the relevant Facility and denominated in the same currency as the relevant Effective Date Loan.

4.3.3 For the avoidance of doubt, interest on any Continuing Loans shall continue to be calculated on the same basis as applies prior to the Effective Date for the remainder of the applicable Interest Period following the Effective Date.

#### 4.4 Exclusion of Liability

4.4.1 The Agent, the Arrangers and the Transferring Lenders make no representation or warranty and assume no responsibility with respect to the legality, validity, effectiveness, adequacy or enforceability of the Amended Agreement or any document relating thereto and assume no responsibility for the financial condition of the Obligors or for the performance and observance by the Obligors of any of their respective obligations under or for the accuracy of any statements (whether written or oral) made in or in connection with any Finance Documents to which they are party or any document relating thereto and any and all such conditions and warranties, whether express or implied by law or otherwise, are hereby excluded.

4.4.2 Nothing in any Finance Document obliges a Transferring Lender to support any losses directly or indirectly incurred by the Remaining Lenders by reason of the non-performance by any Obligor of its obligation under the Finance Documents or otherwise.

#### 5. NON-CONSENTING LENDERS

All Lenders to this Agreement hereby acknowledge that some Lenders may not wish to continue in their role as Lenders under the Original Facilities Agreement as amended by this Agreement (each a "**Non-Consenting Lender**"). On this basis, all Lenders, by their execution of this Agreement, give their irrevocable consent that should the Borrower so choose, it may repay the outstanding principal amount owing to each such Non-Consenting Lender, together with all accrued interest, fees and other amounts payable to that Non-Consenting Lender at the time of repayment, pursuant to the provisions of the Original Facilities Agreement.

6. **CONTINUITY AND FURTHER ASSURANCE**

6.1 **Consent**

Each Counterparty and the Arrangers hereby consent to the transfers made pursuant to Clause 4 (*Global Transfer, Retrenching and Amendment*).

6.2 **Continuing Obligations**

The provisions of the Finance Documents shall, save as amended hereby, continue in full force and effect.

6.3 **Further Assurance**

Each Obligor shall, at the reasonable request of the Agent and at its own expense, do all such acts and things, as permitted under applicable laws, necessary or desirable to give effect to the amendments effected or to be effected pursuant to this Agreement.

6.4 **Guarantee Confirmation**

Each Guarantor hereby agrees, acknowledges and confirms for the benefit of each Finance Party that its guarantee given under the Original Facilities Agreement will remain in full force and effect notwithstanding amendments effected by this Agreement.

6.5 **Agent's Waiver**

The Agent waives the requirement for the payment of the fee referred to in Clause 25.3 (*Assignment or transfer fee*) of the Original Facilities Agreement in respect of the transfers effected pursuant to this Agreement.

7. **INDEMNITY**

7.1 **Indemnity for Remaining Lenders**

If, as a result of the operation of Clause 2 (*Conditions Precedent*), the transfers contemplated by Clause 4 (*Global Transfer, Retrenching and Amendment*) are not effective on the Effective Date, the Company shall, within three Business Days of demand, indemnify each Remaining Lender against any cost, loss or liability incurred by that Remaining Lender as a result of funding or making arrangements to fund the portion of any Effective Date Loan which would otherwise have been transferred to such Remaining Lender in accordance with Clause 4 *Global Transfer, Retrenching and Amendment*).

8. **MISCELLANEOUS**

8.1 **Incorporation of terms**

The provisions of Clause 32 (*Notices*), Clause 34 (*Partial invalidity*), Clause 35 (*Remedies and waivers*), Clause 38 (*Governing law*) and Clause 39 (*Enforcement*) of the Original Facilities Agreement shall be incorporated into this Agreement as if set out in full in this Agreement, as if references in those clauses to "this Agreement" are references to this Agreement and as if references in those clauses to "Party" and "Lender" include the Remaining Lenders.

## 8.2 Designation as Finance Document

The Borrower and the Agent designate this Agreement as a Finance Document by execution of this Agreement for the purposes of the definition of Finance Document in the Original Facilities Agreement.

## 8.3 Counterparts

This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument.

AS WITNESS the hands of duly authorised representatives of the parties hereto the day and year first before written.

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### SCHEDULE 1 THE PARTIES

#### Part A The Obligors

##### Name of Original Borrower

Cemex España, S.A.

##### Registration Number (or equivalent, if any)

No. Hoja-Registro Mercantil, Madrid: M- 156542, NIF A46/004214

##### Name of Guarantor

##### Registration Number (or equivalent, if any)

No. Hoja-Registro Mercantil, Madrid: M- 156542, NIF A46/004214

##### Trade Register of the Chamber of Commerce and Industry in Amsterdam (The Netherlands)

Cemex Caracas Investments B.V.

34121194

Cemex Caracas II Investments B.V.

34159953

Cemex Egyptian Investments B.V.

34108365

Cemex Asia B.V.

34228466

Cemex American Holdings B.V.

34213058

Cemex Shipping B.V.

34213063

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## **Part B**

### **The Remaining Lenders**

#### **Joint Bookrunners**

Banco Bilbao Vizcaya Argentaria S.A.  
Banco Santander Central Hispano, S.A.  
Calyon Sucursal en España  
Citigroup Global Markets Limited

#### **Mandated Lead Arrangers**

Banco Español de Crédito S.A.  
BNP Paribas  
Fortis Bank S.A., Sucursal en España  
HSBC Bank plc, Sucursal en España  
Instituto de Crédito Oficial  
JPMorgan Chase Bank N.A., Sucursal en España  
The Royal Bank of Scotland plc  
West LB, AG Sucursal en España

#### **Other Lenders**

Banco Nazionale del Lavoro, S.p.A., Sucursal en España  
Banca di Roma, S.p.A.  
Barclays Bank PLC  
Bayerische Landesbank  
BoA Netherlands Coöperatieve, U.A.  
BRED Banque Populaire  
Caja de Ahorros de Asturias  
Caja de Ahorros de Galicia  
Caja de Ahorros y Monte de Piedad de Madrid  
Deutsche Bank Luxembourg S.A.  
Dresdner Bank AG, New York Branch  
IKB International S.A.  
ING Belgium, S.A., Sucursal en España  
Lloyds TSB Bank plc  
SANPAOLO IMI S.p.A.  
Scotiabank Europe plc  
Société Générale  
The Bank of Tokyo - Mitsubishi UFJ, Ltd., Sucursal en España  
The Governor and Company of the Bank of Ireland

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## **Part C**

### **The Transferring Lenders**

ABN AMRO Bank N.V., Sucursal en España  
Bankinter S.A.  
Banca Intesa S.p.A.  
Banco de Galicia, S.A.  
Banco de Sabadell, S.A.  
Banco Popular Español, S.A.  
Bank of China (Luxembourg) S.A.  
Caja de Ahorros del Mediterraneo  
Centrobanca S.p.A.  
Credit Industriel et Commercial  
Mizuho Corporate Bank Nederland N.V.  
Montes de Piedad y Caja de Ahorros de Ronda, Cadiz, Almería, Málaga y Antequera (UNICAJA)

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**SCHEDULE 2**  
**EFFECTIVE DATE FACILITIES, COMMITMENTS AND LOANS OUTSTANDING**

**Part A**  
**Effective Date Facilities**

Facility	Amount (\$)	Type	Termination Date
Facility A	525,000,000	Multicurrency Revolving	36 months after 24 September 2004
Facility B	1,050,000,000	Multicurrency Revolving	60 months after 24 September 2004
Facility C	525,000,000	Multicurrency Revolving	60 months after 1 July 2006 (subject to extension option)
Total Facilities	2,100,000,000		

**Part B**  
**Commitments**

	Facility A (US\$)	Facility B (US\$)	Facility C (US\$)	
<b>Joint Bookrunners</b>				
Banco Bilbao Vizcaya Argentaria S.A.	42,516,397.50	90,032,795.00	45,568,732.00	178,117,924.50
Banco Santander Central Hispano, S.A.	29,577,408.50	59,154,817.00	29,577,408.50	118,309,634.00
Calyon Sucursal en España	29,577,408.50	59,154,817.00	29,577,408.50	118,309,634.00
Citibank International PLC, Sucursal en España	42,561,397.50	90,032,795.00	45,568,732.00	178,117,924.50
<b>Mandated Lead Arrangers</b>				
Banco Español de Credito S.A.	25,375,000.00	50,750,000.00	25,375,000.00	101,500,000.00
BNP Paribas	25,375,000.00	50,750,000.00	25,375,000.00	101,500,000.00
Fortis Bank S.A., Sucursal en España	32,000,000.00	64,000,000.00	32,000,000.00	128,000,000.00

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	Facility A (US\$)	Facility B (US\$)	Facility C (US\$)	Total Facilities (US\$)
HSBC Bank plc, Sucursal en España	22,875,000.00	45,750,000.00	22,875,000.00	91,500,000.00
Instituto de Credito Oficial	31,250,000.00	62,500,000.00	31,250,000.00	125,000,000.00
JPMorgan Chase Bank N.A., Sucursal en España	25,375,000.00	50,750,000.00	25,375,000.00	101,500,000.00
The Royal Bank of Scotland plc	25,375,000.00	50,750,000.00	25,375,000.00	101,500,000.00
West LB, AG Sucursal en España	25,375,000.00	50,750,000.00	25,375,000.00	101,500,000.00

<b>Other Lenders</b>				
Banca Nazionale del Lavoro, S.p.A., Sucursal en España	3,750,000.00	7,500,000.00	3,750,000.00	15,000,000.00
Banca di Roma, S.p.A.	10,000,000.00	20,000,000.00	10,000,000.00	40,000,000.00
Barclays Bank PLC	16,988,309.00	33,976,618.00	16,988,309.00	67,953,236.00
Bayerische Landesbank	11,104,669.00	22,209,338.00	11,104,669.00	44,418,676.00
BoA Netherlands Coöperatieve, U.A.	8,988,309.00	17,976,618.01	8,988,309.00	35,953,236.01
BRED Banque Populaire	8,750,000.00	7,500,000.00	13,750,000.00	30,000,000.00
Caja de Ahorros de Asturias	4,050,000.00	8,100,000.00	4,050,000.00	16,200,000.00
Caja de Ahorros de Galicia	2,500,000.00	5,000,000.00	2,500,000.00	10,000,000.00
Caja de Ahorros y Monte de Piedad de Madrid	9,072,500.00	18,145,000.00	9,072,500.00	36,290,000.00
Deutsche Bank Luxembourg S.A.	11,104,669.00	22,209,338.00		33,314,007.00
Dresdner Bank AG, New York Branch	5,000,000.00	10,000,000.00	5,000,000.00	20,000,000.00
IKB International S.A.	4,987,500.00	9,975,000.00	4,987,500.00	19,950,000.00
ING Belgium, S.A., Sucursal en España	14,850,229.00	29,700,458.00	14,850,229.00	59,400,916.00
Lloyds TSB Bank plc	14,322,978.00	28,645,956.00	14,322,978.00	57,291,912.00
SANPAOLO IMI S.p.A.	9,722,500.00	19,445,000.00	9,722,500.00	38,890,000.00
Scotiabank Europe plc	12,070,725.00	24,141,450.00	12,070,725.00	48,282,900.00
Société Générale	5,000,000.00	10,000,000.00	5,000,000.00	20,000,000.00

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	<b>Facility A (US\$)</b>	<b>Facility B (US\$)</b>	<b>Facility C (US\$)</b>	<b>Total Facilities (US\$)</b>
The Bank of Tokyo-Mitsubishi, UFJ, Ltd., Sucursal en España	5,550,000.00	11,100,000.00	5,550,000.00	22,200,000.00
The Governor and Company of the Bank of Ireland	10,000,000.00	20,000,000.00	10,000,000.00	40,000,000.00
	<b>525,000,000.00</b>	<b>1,050,000,000.00</b>	<b>525,000,000.00</b>	<b>2,100,000,000.00</b>
<b>Transferring Lenders</b>				
ABN AMRO Bank N.V., Sucursal en España	16,988,309.00	33,976,618.00	16,988,309.00	67,953,236.00
Bankinter S.A.	3,750,000.00	7,500,000.00	3,750,000.00	15,000,000.00
Banca Intesa S.p.A.	3,750,000.00	7,500,000.00	3,750,000.00	15,000,000.00
Banco de Galicia, S.A.	4,860,000.00	9,720,000.00	4,860,000.00	19,440,000.00
Banco de Sabadell, S.A.	5,000,000.00	10,000,000.00	5,000,000.00	20,000,000.00
Banco Popular Español, S.A.	1,620,000.00	3,240,000.00	1,620,000.00	6,480,000.00
Bank of China (Luxembourg) S.A.	5,000,000.00	20,000,000.00		25,000,000.00
Caja de Ahorros del Mediterraneo	4,860,000.00	9,720,000.00	4,860,000.00	19,440,000.00
Centrobanca S.p.A.	15,000,000.00	10,000,000.00	5,000,000.00	30,000,000.00

Credit Industriel et Commercial	11,250,000.00	22,500,000.00	11,250,000.00	45,000,000.00
Mizuho Corporate Bank Nederland N.V.	15,375,000.00	50,750,000.00	25,375,000.00	91,500,000.00
Montes de Piedad y Caja de Ahorros de Ronda, Cadiz, Almeria, Malaga y Antequeria (UNICAJA)	1,620,000.00	3,240,000.00	1,620,000.00	6,480,000.00

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## Part C

### Loans Outstanding

#### Facility A Loans

		1		2	
		Continuing Loans	Effective Date Loans	Continuing Loans	Effective Date Loans
		EUR 60,000,000.00 USD 1.2555 USD 75,330,000.01	EUR 54,782,608.70 USD 1.2555 USD 68,779,565.22	EUR 168,779,630.75 USD 1.2805 USD 216,122,317.18	EUR 154,103,141.12 USD 1.2805 USD 197,329,072.20
<b>Bookrunners</b>					
1	Bilbao Vizcaya Argentaria, S.A.	3,875,266.16	5,570,017.78	11,118,166.75	15,980,421.47
2	CALYON, Secursal en España	3,875,266.16	3,874,897.71	11,118,166.75	11,117,109.67
3	Citibank International PLC Sucursal en España	3,056,383.95	5,570,017.78	8,768,787.76	15,980,421.47
4	Banco Santander Central Hispano, S.A.	3,875,266.16	3,874,897.71	11,118,166.75	11,117,109.67
<b>Other Lenders</b>					
5	ABN AMRO Bank N.V., Sucursal en España	2,225,827.83	0.00	6,385,916.20	0.00
6	BoA Netherlands Coöperatieve, U.A.	1,177,658.61	1,177,546.64	3,378,711.09	3,378,389.86
7	Barclays Bank PLC	2,225,827.83	2,225,616.20	6,385,916.20	6,385,309.05
8	BNP Paribas	3,324,661.75	3,324,345.65	9,538,478.71	9,537,571.82
9	Caja Ahorros y Monte de Piedad de Madrid	1,188,689.41	1,188,576.39	3,410,358.55	3,410,034.30
10	Dresdner Bank AG, New York Branch	655,105.76	655,043.48	1,879,503.19	1,879,324.50
11	Fortis Bank S.A., Sucursal en España	3,324,661.75	4,192,278.26	9,538,478.71	12,027,676.78
12	HSBC Bank plc, Sucursal en España	2,997,108.87	2,996,823.91	8,598,727.11	8,597,909.57
13	ING Belgium S.A., Sucursal en España	1,945,694.12	1,945,509.13	5,582,210.57	5,581,679.83
14	JPMorgan Chase Bank N.A., Sucursal en España	3,324,661.75	3,324,345.65	9,538,478.71	9,537,571.82
15	Mizuho Corporate Bank Netherland N.V.	2,014,450.22	0.00	5,779,472.32	0.00
16	Société Générale	655,105.76	655,043.48	1,879,503.19	1,879,324.50
17	The Royal Bank of Scotland plc	3,324,661.75	3,324,345.65	9,538,478.71	9,537,571.82
18	Scotiabank Europe plc	1,581,520.30	1,581,369.94	4,537,393.24	4,536,961.84
19	West LB AG Sucursal en España	3,324,661.75	3,324,345.65	9,538,478.71	9,537,571.82
20	Banco Español de Credito S.A.	3,324,661.75	3,324,345.65	9,538,478.71	9,537,571.82
21	Bayerische Landesbank	1,454,946.53	1,454,808.20	4,174,252.17	4,173,855.30
22	Deutsche Bank Luxembourg S.A.	1,454,946.53	1,454,808.20	4,174,252.17	4,173,855.30
23	Lloyds TSB Bank plc	1,876,613.09	1,876,434.67	5,384,016.58	5,383,504.69
24	The Bank of Tokyo Mitsubishi UFJ, Ltd., Sucursal en España	1,447,783.74	727,098.26	4,153,702.06	2,086,050.19
25	Instituto de Credito Oficial	3,324,661.75	4,094,021.74	9,538,478.71	11,745,778.11
26	SANPAOLO IMI S.p.A.	1,273,853.16	1,273,732.04	3,654,693.96	3,654,346.48
27	Banca di Roma S.p.A.	1,310,211.53	1,310,086.96	3,759,006.39	3,758,648.99
28	Bank of China (Luxembourg) S.A.	655,105.76	0.00	1,879,503.19	0.00
29	Banco de Galicia, S.A.	636,762.80	0.00	1,826,877.10	0.00
30	Banco Popular Español, S.A.	212,254.27	0.00	608,959.03	0.00
31	The Governor and Company of the Bank of Ireland	1,310,211.53	1,310,086.96	3,759,006.39	3,758,648.99
32	Caja de Ahorros del Mediterraneo	636,762.80	0.00	1,826,877.10	0.00
33	Credit Industriel et Commercial	1,473,987.97	0.00	4,228,882.19	0.00



34	Caja de Ahorros de Asturias	530,635.67	530,585.22	1,522,397.59	1,522,252.84
35	IKB International S.A.	653,468.00	653,405.87	1,874,804.44	1,874,626.19
36	BRED Banque Populaire	1,146,435.09	1,146,326.09	3,289,130.59	3,288,817.87
37	Banca Nazionale Del Lavoro, S.p.A., Sucursal en España	491,329.32	491,282.61	1,409,627.40	1,409,493.37
38	Banca Intesa S.p.A.	491,329.32	0.00	1,409,627.40	0.00
39	Montes de Piedad y Caja de Ahorros de Ronda, Cadiz, Almeria Malaga y Antequera (UNICAJA)	212,254.27	0.00	608,959.03	0.00
40	Banco de Sabadell, S.A.	655,105.76	0.00	1,879,503.19	0.00
41	Bankinter S.A.	491,329.32	0.00	1,409,627.40	0.00
42	Centrobanca S.p.A.	1,965,317.29	0.00	5,638,509.58	0.00
43	Caja de Ahorros de Galicia	327,552.88	327,521.74	939,751.60	939,662.25
		<b>75,330,000.00</b>	<b>68,779,565.22</b>	<b>216,122,317.18</b>	<b>197,329,072.20</b>

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## Facility A Loans

		3		4	
		Continuing Loans	Effective Date Loans	Continuing Loans	Effective Date Loans
		USD 87,575,000.00	USD 79,959,782.61	EUR 63,682,956.97 USD 1.2805	EUR 58,145,308.53 USD 1.2805
		USD 87,575,000.00	USD 79,959,782.61	USD 81,546,026.40	USD 74,455,067.58
<b>Bookrunners</b>					
1	Bilbao Vizcaya Argentaria, S.A.	4,505,196.25	6,475,432.19	4,195,042.56	6,029,640.47
2	CALYON, Sucursal en Espana	4,505,196.25	4,504,767.91	4,195,042.56	4,194,643.71
3	Citibank International PLC Sucursal en España	3,553,203.56	6,475,432.19	3,308,588.43	6,029,640.47
4	Banco Santander Central Hispano, S.A.	4,505,196.25	4,504,767.91	4,195,042.56	4,194,643.71
<b>Other Lenders</b>					
5	ABN AMRO Bank N.V., Sucursal en España	2,587,639.35	0.00	2,409,497.08	0.00
6	BoA Netherlands Coöperatieve, U.A.	1,369,088.71	1,368,958.54	1,274,835.79	1,274,714.58
7	Barclays Bank PLC	2,587,639.35	2,587,393.32	2,409,497.08	2,409,267.99
8	BNP Paribas	3,865,090.31	3,864,722.83	3,599,003.78	3,598,661.60
9	Caja Ahorros y Monte de Piedad de Madrid	1,381,912.58	1,381,781.20	1,286,776.82	1,286,654.48
10	Dresdner Bank AG, New York Branch	761,594.15	761,521.74	709,163.31	709,095.88
11	Fortis Bank S.A., Sucursal en España	3,865,090.31	4,873,739.13	3,599,003.78	4,538,213.64
12	HSBC Bank plc, Sucursal en España	3,484,392.23	3,483,961.96	3,244,422.13	3,244,113.66
13	ING Belgium S.A., Sucursal en España	2,261,969.50	2,261,754.44	2,106,247.50	2,106,047.25
14	JPMorgan Chase Bank N.A., Sucursal en España	3,865,090.31	3,864,722.83	3,599,003.78	3,598,661.60
15	Mizuho Corporate Bank Netherland N.V.	2,341,902.01	0.00	2,180,677.17	0.00
16	Société Général	761,594.15	761,521.74	709,163.31	709,095.88
17	The Royal Bank of Scotland plc	3,865,090.31	3,864,722.83	3,599,003.78	3,598,661.60
18	Scotiabank Europe plc	1,838,598.71	1,838,423.90	1,712,023.05	1,711,860.28
19	West LB AG Sucursal en España	3,865,090.31	3,864,722.83	3,599,003.78	3,598,661.60
20	Banco Español de Credito S.A.	3,865,090.31	3,864,722.83	3,599,003.78	3,598,661.60
21	Bayerische Landesbank	1,691,450.19	1,691,289.37	1,575,004.76	1,574,855.01
22	Duetsche Bank Luxembourg S.A.	1,691,450.19	1,691,289.37	1,575,005.76	1,574,855.01
23	Lloyds TSB Bank plc	2,181,659.25	2,181,451.82	2,031,466.09	2,031,272.94
24	The Bank ofTokyo Mitsubishi UFJ, Ltd., Sucursal en España	1,683,123.07	845,289.13	1,567,250.91	787,096.43
25	Instituto de Credito Oficial	3,865,090.31	4,759,510.87	3,599,003.78	4,431,849.26
26	SANPAOLO IMI S.p.A.	1,480,919.82	1,480,779.02	1,378,968.05	1,378,836.94
27	Banca di Roma S.p.A.	1,523,188.30	1,523,043.48	1,418,326.61	1,418,191.76
28	Bank of China (Luxembourg) S.A.	761,594.15	0.00	709,163.31	0.00
29	Banco de Galicia, S.A.	740,269.51	0.00	689,306.73	0.00
30	Banco Popular Español, S.A.	246,756.50	0.00	229,768.91	0.00
31	The Governor and Company of the Bank of Ireland	1,523,188.30	1,523,043.48	1,418,326.61	1,418,191.76
32	Caja de Ahorros del Mediterraneo	740,269.51	0.00	689,306.73	0.00

33	Credit Industriel et Commercial	1,713,586.83	0.00	1,595,617.44	0.00
34	Caja de Ahorros de Asturias	616,891.26	616,832.61	574,422.28	574,367.66
35	IKB International S.A.	759,690.16	759,617.93	707,390.40	707,323.14
36	BRED Banque Populaire	1,332,789.76	1,332,663.04	1,241,035.79	1,240,917.79
37	Banca Nazionale Del Lavoro, S.p.A. Sucursal en España	571,195.61	571,141.30	531,872.48	531,821.91
38	Banca Intesa S.p.A.	571,195.61	0.00	531,872.48	0.00
39	Montes de Piedad y Caja de Ahorros de Ronda, Cadiz, Almeria Malaga y Antequera (UNICAJA)	246,756.50	0.00	229,768.91	0.00
40	Banco de Sabadell, S.A.	761,594.15	0.00	709,163.31	0.00
41	Bankinter S.A.	571,195.61	0.00	531,872.48	0.00
42	Centrobanca S.p.A.	2,284,782.45	0.00	2,127,489.92	0.00
43	Caja de Ahorros de Galicia	380,797.07	380,760.87	354,581.65	354,547.94
		<b>87,575,000.00</b>	<b>79,959,782.61</b>	<b>81,546,026.40</b>	<b>74,455,067.58</b>

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#### Facility A Loans

		5		6	
		Continuing Loans	Effective Date Loans	Continuing Loans	Effective Date Loans
		EUR 17,000,000.00	EUR 15,521,739.13	EUR 4,005,000.00	EUR 3,656,739.13
		USD 1.2805	USD 1.2805	USD 1.2805	USD 1.2805
		USD 21,768,500.00	USD 19,875,586.96	USD 5,128,402.50	USD 4,682,454.46
<b>Bookrunners</b>					
1	Bilbao Vizcaya Argentaria, S.A.	1,119,855.72	1,609,596.87	263,824.83	379,202.09
2	CALYON, Sucursal en Espana	1,119,855.72	1,119,749.25	263,824.83	263,799.75
3	Citibank International PLC Sucursal en España	883,219.09	1,609,596.87	208,076.03	379,202.09
4	Banco Santander Central Hispano, S.A.	1,119,855.72	1,119,749.25	263,824.83	263,799.75
<b>Other Lenders</b>					
5	ABN AMRO Bank N.V., Sucursal en España	643,208.99	0.00	151,532.47	0.00
6	BoA Netherlands Coöperatieve, U.A.	340,314.10	340,281.75	80,174.00	80,166.38
7	Barclays Bank PLC	643,208.99	643,147.83	151,532.47	151,518.06
8	BNP Paribas	906,744.71	960,653.37	226,340.15	226,318.63
9	Caja Ahorros y Monte de Piedad de Madrid	343,501.73	343,469.07	80,924.97	80,917.27
10	Dresdner Bank AG, New York Branch	189,309.30	189,291.30	44,599.04	44,594.80
11	Fortis Bank S.A., Sucursal en España	960,744.71	1,211,464.35	226,340.15	285,406.75
12	HSBC Bank plc, Sucursal en España	866,090.06	866,007.72	204,040.63	204,021.23
13	ING Belgium S.A., Sucursal en España	562,257.30	562,203.84	132,461.21	132,448.61
14	JPMorgan Chase Bank N.A., Sucursal en España	960,744.71	960,653.37	226,340.15	226,318.63
15	Mizuho Corporate Bank Netherland N.V.	582,126.11	0.00	137,142.06	0.00
16	Société Général	189,309.30	189,291.30	44,599.04	44,594.80
17	The Royal Bank of Scotland plc	960,744.71	960,653.37	226,340.15	226,318.63
18	Scotiabank Europe plc	457,020.11	456,976.66	107,668.56	107,658.32
19	West LB AG Sucursal en España	960,744.71	960,653.37	226,340.15	226,318.63
20	Banco Español de Credito S.A.	960,744.71	960,653.37	226,340.15	226,318.63
21	Bayerische Landesbank	420,443.43	420,403.46	99,051.53	99,042.11
22	Duetsche Bank Luxembourg S.A.	420,443.43	420,403.46	99,051.53	99,042.11
23	Lloyds TSB Bank plc	542,294.60	542,243.04	127,758.23	127,746.08
24	The Bank of Tokyo Mitsubishi UFJ, Ltd., Sucursal en España	418,373.56	210,113.35	98,563.89	49,500.23
25	Instituto de Credito Oficial	960,744.71	1,183,070.65	226,340.15	278,717.53
26	SANPAOLO IMI S.p.A.	368,111.94	368,076.94	86,722.84	86,714.60
27	Banca di Roma S.p.A.	378,618.61	378,582.61	89,198.09	89,189.61
28	Bank of China (Luxembourg) S.A.	189,309.30	0.00	44,599.04	0.00
29	Banco de Galicia, S.A.	184,008.64	0.00	43,350.27	0.00
30	Banco Popular Español, S.A.	61,336.21	0.00	14,450.09	0.00
31	The Governor and Company of the Bank of Ireland	378,618.61	378,582.61	89,198.09	89,189.61

32	Caja de Ahorros del Mediterraneo	184,008.64	0.00	43,350.27	0.00
33	Credit Industriel et Commercial	425,945.93	0.00	100,347.85	0.00
34	Caja de Ahorros de Asturias	153,340.54	153,325.96	36,125.23	36,121.79
35	IKB International S.A.	188,836.03	188,818.08	44,487.55	44,483.32
36	BRED Banque Populaire	331,291.28	331,259.78	78,048.33	78,040.91
37	Banca Nazionale Del Lavoro, S.p.A. Sucursal en España	141,981.98	141,968.48	33,449.28	33,446.10
38	Banca Intesa S.p.A.	141,981.98	0.00	33,449.28	0.00
39	Montes de Piedad y Caja de Ahorros de Ronda, Cadiz, Almeria Malaga y Antequera (UNICAJA)	61,336.21	0.00	14,450.09	0.00
40	Banco de Sabadell, S.A.	189,309.30	0.00	44,599.04	0.00
41	Bankinter S.A.	141,981.98	0.00	33,449.28	0.00
42	Centrobanca S.p.A.	567,927.91	0.00	133,797.13	0.00
43	Caja de Ahorros de Galicia	94,654.65	94,645.65	22,299.52	22,297.40
		<b>21,768,500.00</b>	<b>19,875,586.96</b>	<b>5,128,402.50</b>	<b>4,682,454.46</b>

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## Facility A Loans

		7	
		Continuing Loans	Effective Date Loans
		EUR 52,000,000.00	EUR 47,478,260.87
		USD 1.2555 USD 65,286,000.00	USD 1.2555 USD 59,608,956.52
<b>Bookrunners</b>			
1	Bilbao Vizcaya Argentaria, S.A.	3,358,564.00	4,827,348.74
2	CALYON, Sucursal en Espana	3,358,564.00	3,358,244.68
3	Citibank International PLC Sucursal en España	2,648,866.09	4,827,348.74
4	Banco Santander Central Hispano, S.A.	3,358,564.00	3,358,244.68
<b>Other Lenders</b>			
5	ABN AMRO Bank N.V., Sucursal en España	1,929,050.78	0.00
6	BoA Netherlands Coöperatieve, U.A.	1,020,637.46	1,020,540.42
7	Barclays Bank PLC	1,929,050.78	1,928,867.38
8	BNP Paribas	2,881,373.52	2,881,099.57
9	Caja Ahorros y Monte de Piedad de Madrid	1,030,197.49	1,030,099.54
10	Dresdner Bank AG, New York Branch	567,758.33	567,704.35
11	Fortis Bank S.A., Sucursal en España	2,881,373.52	3,633,307.83
12	HSBC Bank plc, Sucursal en España	2,597,494.35	2,597,247.39
13	ING Belgium S.A., Sucursal en España	1,686,268.24	1,686,107.91
14	JPMorgan Chase Bank N.A., Sucursal en España	2,881,373.52	2,881,099.57
15	Mizuho Corporate Bank Netherland N.V.	1,745,856.86	0.00
16	Société Générale	567,758.33	567,704.35
17	The Royal Bank of Scotland plc	2,881,373.52	2,881,099.57
18	Scotiabank Europe plc	1,370,650.93	1,370,520.61
19	West LB AG Sucursal en España	2,881,373.52	2,881,099.57
20	Banco Español de Credito S.A.	2,881,373.52	2,881,099.57
21	Bayerische Landesbank	1,260,953.66	1,260,833.77
22	Duetsche Bank Luxembourg S.A.	1,260,953.66	1,260,833.77
23	Lloyds TSB Bank plc	1,626,398.01	1,626,243.38
24	The Bank of Tokyo Mitsubishi UFJ, Ltd., Sucursal en España	1,254,745.91	630,151.83
25	Instituto de Credito Oficial	2,881,373.52	3,548,152.17
26	SANPAOLO IMI S.p.A.	1,104,006.07	1,103,901.10
27	Banca di Roma S.p.A.	1,135,516.66	1,135,408.70

28	Bank of China (Luxembourg) S.A.	567,758.33	0.00
29	Banco de Galicia, S.A.	551,861.10	0.00
30	Banco Popular Español, S.A.	183,953.70	0.00
31	The Governor and Company of the Bank of Ireland	1,135,516.66	1,135,408.70
32	Caja de Ahorros del Mediterraneo	551,861.10	0.00
33	Credit Industriel et Commercial	1,277,456.24	0.00
34	Caja de Ahorros de Asturias	459,884.25	459,840.52
35	IKB International S.A.	566,338.93	566,285.09
36	BRED Banque Populaire	993,577.07	993,482.61
37	Banca Nazionale Del Lavoro, S.p.A. Sucursal en España	425,818.75	425,778.26
38	Banca Intesa S.p.A.	425,818.75	0.00
39	Montes de Piedad y Caja de Ahorros de Ronda, Cadiz, Almeria Malaga y Antequera (UNICAJA)	183,953.70	0.00
40	Banco de Sabadell, S.A.	567,758.33	0.00
41	Bankinter S.A.	425,818.75	0.00
42	Centrobanca S.p.A.	1,703,274.98	0.00
43	Caja de Ahorros de Galicia	283,879.16	283,852.17
		<b>65,286,000.00</b>	<b>59,608,956.52</b>

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### Facility B Loans

		1		2		3	
		Continuing Loans	Effective Date Loans	Continuing Loans	Effective Date Loans	Continuing Loans	Effective Date Loans
		USD	USD	USD	USD	USD	USD
		400,000,000.00	300,000,000.00	194,312,128.02	194,312,128.02	555,687,871.98	555,687,871.98
		USD	USD	USD	USD	USD	USD
		400,000,000.00	300,000,000.00	194,312,128.02	194,312,128.02	555,687,871.98	555,687,871.98
<b>Bookrunners</b>							
1	Bilbao Vizcaya Argentaria, S.A.	20,575,588.52	25,723,655.71	9,995,215.98	16,661,394.27	28,584,012.50	47,647,745.01
2	CALYON, Sucursal en España	20,575,588.52	16,901,376.29	9,995,215.98	10,947,141.31	28,584,012.50	31,306,299.41
3	Citibank International PLC Sucursal en España	16,227,762.43	25,723,655.71	7,883,127.63	16,661,394.27	22,543,926.94	47,647,745.01
4	Banco Santander Central Hispano, S.A.	20,575,588.52	16,901,376.29	9,995,215.98	10,947,141.31	28,584,012.50	31,306,299.41
<b>Other Lenders</b>							
5	ABN AMRO Bank N.V., Sucursal en España	11,817,954.09	0.00	5,740,929.52	0.00	16,417,734.39	0.00
6	BoA Netherlands Coöperatieve, U.A.	6,252,736.70	5,136,176.57	3,037,456.43	3,326,738.00	8,686,424.88	9,513,703.44
7	Barclays Bank PLC	11,817,954.09	9,707,605.14	5,740,929.52	6,287,684.71	16,417,734.39	17,981,328.15
8	BNP Paribas	17,652,173.91	14,500,000.00	8,575,078.69	9,391,752.85	24,522,747.39	26,858,247.15
9	Caja Ahorros y Monte de Piedad de Madrid	6,311,304.35	5,184,285.71	3,065,907.45	3,357,898.63	8,767,788.21	9,602,815.65
10	Dresdner Bank AG, New York Branch	3,478,260.87	2,857,142.86	1,689,670.68	1,850,591.70	4,832,068.45	5,292,265.45
11	Fortis Bank S.A., Sucursal en España	17,652,173.91	18,285,714.29	8,575,078.69	11,843,786.85	24,522,747.39	33,870,498.86
12	HSBC Bank plc, Sucursal en España	15,913,043.48	13,071,428.57	7,730,243.35	8,466,457.01	22,106,713.17	24,212,114.42
13	ING Belgium S.A., Sucursal en España	10,330,594.09	8,485,845.14	5,018,399.30	5,496,342.09	14,351,464.61	15,718,270.76
14	JPMorgan Chase Bank N.A., Sucursal en España	17,652,173.91	14,500,000.00	8,575,078.69	9,391,752.85	24,522,747.39	26,858,247.15
15	Mizuho Corporate Bank Netherland N.V.	17,652,173.91	0.00	8,575,078.69	0.00	24,522,747.39	0.00
16	Société Générale	3,478,260.87	2,857,142.86	1,689,670.68	1,850,591.70	4,832,068.45	5,292,265.45
17	The Royal Bank of Scotland	17,652,173.91	14,500,000.00	8,575,078.69	9,391,752.85	24,522,747.39	26,858,247.15

18	pic Scotiabank Europe plc	8,397,026.09	6,897,557.14	4,079,110.02	4,467,596.69	11,665,313.89	12,776,296.17
19	West LB AG Sucursal en España	17,652,173.91	14,500,000.00	8,575,078.69	9,391,752.85	24,522,747.39	26,858,247.15
20	Banco Español de Credito S.A.	17,652,173.91	14,500,000.00	8,575,078.69	9,391,752.85	24,522,747.39	26,858,247.15
21	Bayerische Landesbank	7,724,987.13	6,345,525.14	3,752,646.72	4,110,041.65	10,731,704.15	11,753,771.21
22	Duetsche Bank Luxembourg S.A.	7,724,987.13	6,345,525.14	3,752,646.72	4,110,041.65	10,731,704.15	11,753,771.21
23	Lloyds TSB Bank plc	9,963,810.78	8,184,558.86	4,840,223.19	5,301,196.83	13,841,922.03	15,160,200.31
24	The Bank of Tokyo Mitsubishi UFJ, Ltd., Sucursal en España	7,724,987.13	3,171,428.57	3,752,646.72	2,054,156.78	10,731,704.15	5,874,414.65
25	Instituto de Credito Oficial	17,652,173.91	17,857,142.86	8,575,078.69	11,566,198.10	24,522,747.39	33,076,659.05
26	SANPAOLO IMI S.p.A.	6,763,478.26	5,555,714.29	3,285,564.63	3,398,475.55	9,395,957.10	10,290,810.16
27	Banca di Roma S.p.A.	6,956,521.74	5,714,285.71	3,379,341.36	3,701,183.39	9,664,136.90	10,584,530.89
28	Bank of China (Luxembourg) S.A.	6,956,521.74	0.00	3,379,341.36	0.00	9,664,136.90	0.00
29	Banco de Galicia, S.A.	3,380,869.57	0.00	1,642,359.90	0.00	4,696,770.54	0.00
30	Banco Popular Español, S.A.	1,126,956.52	0.00	547,453.30	0.00	1,565,590.18	0.00
31	The Governor and Company of the Bank of Ireland	6,956,521.74	5,714,285.71	3,379,341.36	3,701,183.39	9,664,136.90	10,584,530.89
32	Caja de Ahorros del Mediterraneo	3,380,869.57	0.00	1,642,359.90	0.00	4,696,770.54	0.00
33	Credit Industriel et Commercial	7,826,086.96	0.00	3,801,759.03	0.00	10,872,154.02	0.00
34	Caja de Ahorros de Asturias	2,817,391.30	2,314,285.71	1,368,633.25	1,498,979.27	3,913,975.45	4,286,735.01
35	IKB International S.A.	3,469,565.22	2,850,000.00	1,685,446.50	1,845,965.22	4,819,988.28	5,279,034.78
36	BRED Banque Populaire	2,608,695.65	2,142,857.14	1,267,253.01	1,387,943.77	3,624,051.34	3,969,199.09
37	Banca Nazionale Del Lavoro, S.p.A. Sucursal en España	2,608,695.65	2,142,857.14	1,267,253.01	1,387,943.77	3,624,051.34	3,969,199.09
38	Banca Intesa S.p.A.	2,608,695.65	0.00	1,267,253.01	0.00	3,624,051.34	0.00
39	Montes de Piedad y Caja de Ahorros de Ronda, Cadiz, Almeria Malaga y Antequera (UNICAJA)	1,126,956.52	0.00	547,453.30	0.00	1,565,590.18	0.00
40	Banco de Sabadell, S.A.	3,478,260.87	0.00	1,689,670.68	0.00	4,832,068.45	0.00
41	Bankinter S.A.	2,608,695.65	0.00	1,267,253.01	0.00	3,624,051.34	0.00
42	Centrobanca S.p.A.	3,478,260.87	0.00	1,689,670.68	0.00	4,832,068.45	0.00
43	Caja de Ahorros de Galicia	1,739,130.43	1,428,571.43	844,835.34	925,295.85	2,416,034.23	2,646,132.72
		<b>400,000,000.00</b>	<b>300,000,000.00</b>	<b>194,312,128.02</b>	<b>194,312,128.02</b>	<b>555,687,871.98</b>	<b>555,687,871.98</b>

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## Facility C Loans

		1		2		3	
		Continuing Loans	Effective Date Loans	Continuing Loans	Effective Date Loans	Continuing Loans	Effective Date Loans
		EUR	EUR	EUR	EUR	EUR	EUR
		63,682,956.97	58,145,308.54	197,058,000.00	179,922,521.74	162,531,000.00	148,397,869.57
		USD 1.2805	USD 1.2805	USD 1.2805	USD 1.2805	USD 1.2805	USD 1.2805
		USD	USD	USD	USD	USD	USD
		81,546,026.40	74,455,067.58	252,332,769.00	230,390,789.09	208,120,945.51	190,023,471.99
<b>Bookrunners</b>							
1	Bilbao Vizcaya Argentaria, S.A.	4,194,643.71	6,462,520.04	12,979,738.06	19,997,364.04	10,705,527.34	16,493,578.42
2	CALYON, Sucursal en España	4,194,643.71	4,194,643.71	12,979,738.06	12,979,738.06	10,705,527.34	10,705,527.34
3	Citibank International PLC Sucursal en España	3,308,273.86	6,462,520.04	10,236,990.57	19,997,364.04	8,443,343.15	16,493,578.42
4	Banco Santander Central Hispano, S.A.	4,194,643.71	4,194,643.71	12,979,738.06	12,979,738.06	10,705,527.34	10,705,527.34
<b>Other Lenders</b>							
5	ABN AMRO Bank N.V.,	2,409,267.99	0.00	7,455,142.70	0.00	6,148,909.45	0.00

6	Sucursal en España BoA Netherlands Coöperatieve, U.A.	1,274,714.58	1,274,714.58	3,944,425.91	3,944,425.91	3,253,313.68	3,253,313.68
7	Barclays Bank PLC	2,409,267.99	2,409,267.99	7,455,142.70	7,455,142.70	6,148,909.45	6,148,909.45
8	BNP Paribas	3,598,661.60	3,598,661.60	11,135,554.81	11,135,554.81	9,184,467.81	9,184,467.81
9	Caja Ahorros y Monte de Piedad de Madrid	1,286,654.48	1,286,654.48	3,981,372.26	3,981,372.26	3,283,786.57	3,283,780.57
10	Dresdner Bank AG, New York Branch	709,095.88	709,095.88	2,194,197.99	2,194,197.99	1,809,747.35	1,809,747.35
11	Fortis Bank S.A., Sucursal en España	3,598,661.60	4,538,213.64	11,135,554.81	14,042,867.14	9,184,467.81	11,582,383.05
12	HSBC Bank plc, Sucursal en España	3,244,113.66	3,244,113.66	10,038,455.81	10,038,455.81	8,279,594.14	8,279,594.14
13	ING Belgium S.A., Sucursal en España	2,106,047.25	2,106,047.25	6,516,868.53	6,516,868.53	5,375,032.52	5,375,032.52
14	JPMorgan Chase Bank N.A., Sucursal en España	3,598,661.60	3,598,661.60	11,135,554.81	11,135,554.81	9,184,467.81	9,184,467.81
15	Mizuho Corporate Bank Netherlands N.V.	3,598,661.60	0.00	11,135,554.81	0.00	9,184,467.81	0.00
16	Société Générale	709,095.88	709,095.88	2,194,197.99	2,194,197.99	1,809,747.35	1,809,747.35
17	The Royal Bank of Scotland plc	3,598,661.60	3,598,661.60	11,135,554.81	11,135,554.81	9,184,467.81	9,184,467.81
18	Scotiabank Europe plc	1,711,860.28	1,711,860.28	5,297,112.11	5,297,112.11	4,368,992.52	4,368,992.52
19	West LB AG Sucursal en España	3,598,661.60	3,598,661.60	11,135,554.81	11,135,554.81	9,184,467.81	9,184,467.81
20	Banco Español de Credito S.A.	3,598,661.60	3,598,661.60	11,135,554.81	11,135,554.81	9,184,467.81	9,184,467.81
21	Bayerische Landesbank	1,574,855.01	1,574,855.01	4,873,168.48	4,873,168.48	4,019,329.06	4,019,329.06
22	Duetsche Bank Luxembourg S.A.	1,574,855.01	0.00	4,873,168.48	0.00	4,019,329.06	0.00
23	Lloyds TSB Bank plc	2,031,272.94	2,031,272.94	6,285,489.91	6,285,489.91	5,184,194.30	5,184,194.30
24	The Bank of Tokyo Mitsubishi UFJ, Ltd., Sucursal en España	1,574,855.01	787,096.43	4,873,168.48	2,435,559.77	4,019,329.06	2,008,819.56
25	Instituto de Credito Oficial	3,598,661.60	4,431,849.26	11,135,554.81	13,713,737.45	9,184,467.81	11,310,920.95
26	SANPAOLO IMI S.p.A.	1,378,836.94	1,378,836.94	4,266,617.99	4,266,617.99	3,519,053.73	3,519,053.73
27	Banca di Roma S.p.A.	1,418,191.76	1,418,191.76	4,388,395.98	4,388,395.98	3,619,494.70	3,619,494.70
28	Bank of China (Luxembourg) S.A.	0.00	0.00	0.00	0.00	0.00	0.00
29	Banco de Galicia, S.A.	689,241.20	0.00	2,132,760.45	0.00	1,759,074.43	0.00
30	Banco Popular Español, S.A.	229,747.07	0.00	710,920.15	0.00	586,358.14	0.00
31	The Governor and Company of the Bank of Ireland	1,418,191.76	1,418,191.76	4,388,395.98	4,388,395.98	3,619,494.70	3,619,494.70
32	Caja de Ahorros del Mediterraneo	689,241.20	0.00	2,132,760.45	0.00	1,759,074.43	0.00
33	Credit Industriel et Commercial	1,595,465.73	0.00	4,936,945.48	0.00	4,071,931.54	0.00
34	Caja de Ahorros de Asturias	574,367.66	574,367.66	1,777,300.37	1,777,300.37	1,465,895.36	1,465,895.36
35	IKB International S.A.	707,323.14	707,323.14	2,188,712.50	2,188,712.50	1,805,222.98	1,805,222.98
36	BRED Banque Populaire	1,950,013.67	1,950,013.67	6,034,044.48	6,034,044.48	4,976,805.22	4,976,805.22
37	Banca Nazionale Del Lavoro, S.p.A. Sucursal en España	531,821.91	531,821.91	1,645,648.49	1,645,648.49	1,357,310.51	1,357,310.51
38	Banca Intesa S.p.A.	531,821.91	0.00	1,645,648.49	0.00	1,357,310.51	0.00
39	Montes de Piedad y Caja de Ahorros de Ronda, Cadiz, Almeria Malaga y Antequera (UNICAJA)	229,747.07	0.00	710,920.15	0.00	586,358.14	0.00
40	Banco de Sabadell, S.A.	709,095.88	0.00	2,194,197.99	0.00	1,809,747.35	0.00
41	Bankinter S.A.	531,821.91	0.00	1,645,648.49	0.00	1,357,310.51	0.00
42	Centrobanca S.p.A.	709,095.88	0.00	2,194,197.99	0.00	1,809,747.35	0.00
43	Caja de Ahorros de Galicia	354,547.94	354,547.94	1,097,099.00	1,097,099.00	904,873.68	904,873.68
		<b>81,546,026.40</b>	<b>74,455,067.58</b>	<b>252,332,769.00</b>	<b>230,390,789.09</b>	<b>\$208,120,945.1</b>	<b>190,023,471.99</b>

**SCHEDULE 3**  
**CONDITIONS PRECEDENT**

**1. Obligors**

- (a) A copy of the constitutional documents of each Obligor or a certificate of an authorised signatory of each relevant Obligor certifying that the constitutional documents previously delivered to the Agent for the purposes of the Original Facilities Agreement have not been amended and remain in full force and effect.
- (b) A copy of a resolution of the board of directors of each Obligor:
  - (i) approving the terms of, and the transactions contemplated by, this Agreement and resolving that it execute this Agreement; and
  - (ii) authorising a specified person or persons to execute this Agreement on its behalf.
- (c) A specimen of the signature of each person authorised by the resolution referred to in paragraph (b) above.
- (d) A certificate of the Company (signed by an Authorised Signatory) confirming that borrowing or guaranteeing, as appropriate, the Total Commitments would not cause any borrowing, guarantee, security or similar limit binding on any Obligor to be exceeded.
- (e) A certificate of an Authorised Signatory of the relevant Obligor certifying that each copy document relating to it specified in this Schedule 3 is correct, complete and in full force and effect as at a date no earlier than the date of this Agreement.

**2. Legal Opinions**

- (a) A legal opinion of Clifford Chance LLP, legal advisers to the Arranger and the Agent in England, substantially in the form distributed to the Lenders prior to signing this Agreement.
- (b) An opinion with respect to the laws and regulations of the Kingdom of Spain from Clifford Chance, substantially in the form distributed to the Lenders prior to the signing of this Agreement.
- (c) An opinion with respect to the laws and regulations of The Netherlands from Warendorf, substantially in the form distributed to the Lenders prior to signing this Agreement.
- (d) An opinion from in-house counsel of the Company, substantially in the form distributed to the Lenders prior to signing this Agreement.

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**3. Fees Letter**

Payment in full of all fees and expenses due under the Fees Letter.

**4. NOF Letter**

A copy of a letter from the Company to the Bank of Spain, complementary to the Financial Operation Numbers obtained in relation to the Original Facilities Agreement and explaining the amendments to the Original Facilities Agreement effected pursuant to this Agreement.

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**SCHEDULE 4**

**CONFIRMATION NOTICE**

[On *Cemex España, S.A. Letterhead*]

From: Cemex España, S.A.

To: Citibank International PLC

Dated:

Dear Sirs

**Cemex – US\$3,800,000,000 Facilities Agreement dated 24 September 2004  
(as amended on 8 November 2004, 25 February 2005  
and as amended and restated on 7 July 2005)  
(the "Facilities Agreement")**

We refer to the Facilities Agreement and to the amendment agreement dated [•] 2006 between, amongst others, Cemex España, S.A. and Citibank International PLC as Agent (the "**Global Transfer, Retrenching and Amendment Agreement**"). This is a Confirmation Notice. Terms defined in the Global Transfer, Retrenching and Amendment Agreement have the same meaning in this Confirmation Notice unless given a different meaning herein.

1. We confirm that the proposed Effective Date is [•] 2006.
2. We further confirm that to the extent applicable, each condition specified in Schedule 3 (*Conditions Precedent*) of the Global Transfer, Retrenching and Amendment Agreement is satisfied or waived on the date of this Confirmation Notice.
3. This Confirmation Notice is irrevocable.
4. This Confirmation Notice is governed by English law.

Yours faithfully

.....  
Authorised signatory for  
**Cemex España, S.A.**



## SCHEDULE 5

### AMENDMENTS TO THE ORIGINAL FACILITIES AGREEMENT

With effect from the Effective Date, the Original Facilities Agreement will be amended in the following ways:

1. adding the following definitions of "CO2 Emission Rights" and "Directive" to clause 1.1 of clause 1 (*Definitions and Interpretation*) of the Original Facilities Agreement:
  - (a) "**CO2 Emission Rights**" means any emission rights or allowance allocated to a member of the Group to emit one tonne of carbon dioxide equivalent (as defined in the Directive) during a specified period which is valid and/or transferable under the Directive and any other type of allowance recognised by the Directive in connection to the Kyoto Protocol on climate change.
  - (b) "**Directive**" means Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the European Community (as amended by Directive 2004/101/EC of the European Parliament and of the Council of 27 October 2004).
2. deleting the definitions of "Guarantors", "Initial Facility C Termination Date" and "Margin" in clause 1.1 of clause 1 (*Definitions and Interpretation*) of the Original Facilities Agreement and replacing them with the following:
  - (a) "**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 26.4 (*Resignation of Guarantor*) or been removed as a Guarantor pursuant to Clause 26.5 (*Removal of Guarantor*) and has not subsequently become an Additional Guarantor pursuant to Clause 26.3 (*Additional Guarantors*) and "**Guarantor**" means any of them.
  - (c) "**Initial Facility C Termination Date**" means 4 July 2011.
  - (d) "**Margin**" means:
    - (i) subject to paragraph (c) below, in relation to any Loan the percentage rate per annum determined pursuant to the table set out below:

Facility	Margin % p.a.
Facility A	0.150
Facility B	0.200
Facility C	0.225

- (ii) in relation to any Unpaid Sum the percentage rate per annum specified above applicable to the Facility in relation to which the Unpaid Sum arises, or if such Unpaid Sum does not arise in relation to a particular Facility, the rate per annum specified above applicable to the Facility to which the Agent reasonably determines the Unpaid Sum most closely relates, or if none, the highest rate per annum specified above,
- (iii) but if at any time after the first Utilisation Date following the date of the Amendment and Restatement Agreement:
- (iv) no Default has occurred and is continuing; and
- (v) the Net Borrowings to Adjusted EBITDA ratio in respect of the most recently completed Relevant Period is within a range set out below,

then the Margin for each Loan under each Facility will be the percentage rate per annum set out below opposite that range:

Net Borrowings to Adjusted EBITDA	Margin % p.a.		
	Facility A	Facility B	Facility C
Greater than or equal to 3.0:1	0.250	0.300	0.325
Less than 3.0:1 but greater than or equal to 2.5:1	0.200	0.250	0.275
Less than 2.5:1 but greater than or equal to 2.0:1	0.150	0.200	0.225
Less than 2.0:1	0.100	0.150	0.175

- (a) However any increase or decrease in the Margin shall take effect on the date (the "**reset date**") which is five Business Days after receipt by the Agent of the Compliance Certificate for that Relevant Period pursuant to Clause 21.2 (*Compliance Certificate*) and in the case of a then current Interest Period will apply to the whole of such Interest Period unless any payments of interest have already been made in which case any adjustments to the Margin will apply only from the date of such payment. For the purpose of determining the Margin, Net Borrowings to Adjusted EBITDA ratio and Relevant Period shall be determined in accordance with Clause 22.1 (*Financial definitions*).

3. deleting Clause 8 (*Extension of Facility C*) of the Original Facilities Agreement and replacing it with the following:

8. **EXTENSION OF FACILITY C**

8.1 **Request for Extension**

- (a) The Company may request, by notifying the Agent in writing (the "**Second Extension Request**") not earlier than 60 days and not later than 45 days before 4 July 2007, the extension of the Termination Date of Facility C by an additional 365 day period.
- (b) Upon notification by the Agent that it has received a Second Extension Request from the Company, each Lender shall freely determine whether or not it shall extend its Facility C Commitments in accordance with the relevant Extension Request and shall, within 10 Business Days of receipt of such notification from the Agent, notify the Agent of its own decision to accept or decline the request set out in the Second Extension Request.
- (c) The Agent shall, as soon as reasonably practicable after it has received all the Lenders' respective decisions in accordance with paragraph (b) above, notify the Company and the Lenders of the level of acceptances.

8.2 **Acceptance of Extension Request**

Any agreement by a Lender to a Second Extension Request shall extend that Lender's Facility C Commitments by an additional 365 day period only and shall be binding on each such Lender only.

8.3 **Reduced Facility C Commitments**

In the event that a Lender declines to extend its Facility C Commitments pursuant to the Second Extension Request, the amount of the Total Facility C Commitments shall, following the Initial Facility C Termination Date, reduce by the amount of that declining Lender's Facility C Commitments accordingly. For the avoidance of doubt, Facility C shall continue to be available until the end of its Availability Period reflecting the Commitments of those Lenders who have agreed to the requests contained in the Second Extension Request.

8.4 **Reduction of Facility B Commitments**

The Total Facility B Commitments shall reduce on 24 March 2008, 24 September 2008, 24 March 2009 and 24 September 2009 in each case by an amount equal to 25 per cent of the amount of the Total Facility B Commitments as at 24 March 2008, such reduction to be applied *pro rata* to the Facility B Commitment of each Lender on the date of each such reduction.

4. deleting the definition of "**EBITDA**" in Clause 22.1 (*Financial Definitions*) of the Original Facilities Agreement and replacing with the following:

"**EBITDA**" means for the Relevant Period immediately preceding the date on which it is to be calculated, operating profit plus annual depreciation for fixed assets plus annual amortisation of intangible assets plus annual amortisation of start-up costs of the Group plus dividends received from non-consolidated companies and from companies consolidated by the equity method plus an amount equal to the amount of Cemex Capital Contributions made during such period immediately preceding the date on which it is to be calculated (up to an amount equal to the amount of Royalty Expenses made in such period) plus the income recorded during such period for the use of CO<sub>2</sub> Emission Rights (to the extent not already included in the calculation of operating profit). Such calculation shall be made in accordance with GAAP.

5. re-numbering the existing clause 26.5 of clause 26 (*Changes to the Obligors*) of the Original Facilities Agreement as clause 26.6 and adding a new clause 26.5, worded as follows:

**26.5 Removal of Guarantor**

- (b) In the event that the Company delivers to the Agent a certificate ("**Guarantor Removal Certificate**") signed by two authorised signatories of the Company confirming that (as at the date of the Guarantor Removal Certificate) a substantial part of the Net Borrowings of the Group:
- (i) is guaranteed only by the Company and/or any other guarantors which are not Guarantors (whether, for the avoidance of doubt, as a result of the repayment, redemption, maturity or cancellation of any Financial Indebtedness, or any agreement with any creditor of the Group or as a result of any other reason); and/or
  - (ii) (A) is subject to provisions in any agreements or documents (including this Agreement) with any creditor of the Group (or any other party) relating to any Financial Indebtedness of the Group, which allow for the removal of all or any of the Guarantors as guarantors pursuant to such agreements or documents (other than the Company, such that the only remaining guarantors of such Financial Indebtedness would in each case be the Company and/or any other guarantors which are not Guarantors), and (B) the conditions (if any) to such removal pursuant to such agreements or documents have been met by the relevant Guarantor, and (C) any or all of the Guarantors (other than the Company) has or have been removed (or will be so removed at a date which is not later than the date scheduled for removal of the relevant Guarantor pursuant to the relevant Guarantor Removal Certificate) as guarantors of the relevant Financial Indebtedness pursuant to such agreements or other documents,

the obligations of the relevant Guarantor(s) (other than the Company) under the guarantee and indemnity contained in Clause 19 (*Guarantee and Indemnity*) shall terminate and such Guarantor(s) shall be deemed to be discharged in full, and shall cease to be Guarantor(s), effective as at the date

indicated in the Guarantor Removal Certificate, which date shall not be earlier than 10 days of receipt by the Agent of the Guarantor Removal Certificate, **provided always that** any such termination and discharge pursuant to this Clause 26.5 would not result in a downgrading of the then current Rating of the Company assigned by S&P or Fitch Investors Service, Inc.

- (e) For the purposes of this Clause 26.5, a "**substantial part**" shall mean an aggregate amount equal to or greater than 85 per cent. of the aggregate value of the Net Borrowings of the Group.

The "**Net Borrowings**" of the Group referred to in this Clause shall be determined by reference to the most recent Compliance Certificate delivered to the Agent pursuant to Clause 21.2 (*Compliance Certificate*) at the date of the relevant Guarantor Removal Certificate.

- (f) For the avoidance of doubt, the Guarantor Removal Certificate shall also:
- (iii) specify the percentage of the Net Borrowings of the Group which is guaranteed only by the Company and/or any other guarantors which are not Guarantors;
  - (iv) specify the percentage of the Net Borrowings of the Group which is subject to provisions in agreements or documents which allow for the removal of the Guarantors (other than the Company); and
  - (v) certify that the conditions (if any) to the removal of such Guarantors in such agreements or documents have been met by the relevant member of the Group as at the date of the Guarantor Removal Certificate;
  - (vi) certify that the relevant Guarantor(s) has or have been removed (or will be so removed at a date which is not later than the date scheduled for removal of the relevant Guarantor pursuant to the relevant Guarantor Removal Certificate) as Guarantor(s) of the relevant Financial Indebtedness; and
  - (vii) confirm that neither S&P nor Fitch Investors Service, Inc will downgrade the then current Rating assigned to the Company as a result of the removal of the relevant Guarantor(s) as Guarantor(s) under this Agreement.
- (g) Following delivery of the Guarantor Removal Certificate to the Agent, the Company shall provide notice of the removal, and termination of the obligations of the Guarantors (other than the Company) to the Finance Parties, in accordance with Clause 32 (*Notices*) of the Agreement.

#### SIGNATURES

**This is a signature page for the Global Transfer, Retranching and Amendment Agreement dated as of 30 June 2006**

**As Guarantor**

**CEMEX ESPAÑA,  
S.A.**

By: JAVIER GARCIA RUIZ DE  
MORALES

Name: JAVIER GARCIA RUIZ DE  
MORALES

Title: ATTORNEY-IN-FACT

**This is a signature page for the Global Transfer, Retranching and Amendment Agreement dated as of 30 June 2006**

**As Guarantor**

**CEMEX CARACAS INVESTMENTS B.V.**

By: JAVIER GARCIA RUIZ DE MORALES  
Name: JAVIER GARCIA RUIZ DE MORALES  
Title: ATTORNEY-IN-FACT

**This is a signature page for the Global Transfer, Retranching and Amendment Agreement dated as of 30 June 2006**

**As Guarantor**

**CEMEX CARACAS INVESTMENTS B.V.**

By: ANGEL MÉNDEZ  
Name: ANGEL MÉNDEZ  
Title: ATTORNEY-IN-FACT

**This is a signature page for the Global Transfer, Retranching and Amendment Agreement dated as of 30 June 2006**

**As Guarantor**

**CEMEX CARACAS II INVESTMENTS B.V.**

By: ANGEL MÉNDEZ  
Name: ANGEL MÉNDEZ  
Title: ATTORNEY-IN-FACT

**This is a signature page for the Global Transfer, Retranching and Amendment Agreement dated as of 30 June 2006**

**As Guarantor**

**CEMEX EGYPTIAN INVESTMENTS B.V.**

By: ANGEL MÉNDEZ  
Name: ANGEL MÉNDEZ  
Title: ATTORNEY-IN-FACT

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**This is a signature page for the Global Transfer, Retrenching and Amendment Agreement dated as of 30 June 2006**

**As Guarantor**

**CEMEX ASIA B.V.**

By: ANGEL MÉNDEZ  
Name: ANGEL MÉNDEZ  
Title: ATTORNEY-IN-FACT

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**This is a signature page for the Global Transfer, Retrenching and Amendment Agreement dated as of 30 June 2006**

**As Guarantor**

**CEMEX AMERICAN HOLDINGS B.V.**

By: ANGEL MÉNDEZ  
Name: ANGEL MÉNDEZ  
Title: ATTORNEY-IN-FACT

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**This is a signature page for the Global Transfer, Retrenching and Amendment Agreement dated as of 30 June 2006**

**As Guarantor**

**CEMEX SHIPPING B.V.**

By: ANGEL MÉNDEZ  
Name: ANGEL MÉNDEZ  
Title: ATTORNEY-IN-FACT

**This is a signature page for the Global Transfer, Retranching and Amendment Agreement dated as of 30 June 2006**

**As Arranger**

**BANCO BILBAO VIZCAYA ARGENTARIA S.A.** ASIER GONZALEZ  
By: VINCENTE RODRIGUEZ ASIER GONZALEZ  
Name: VINCENTE RODRIGUEZ  
Title: SYNDICATED LOANS SYNDICATED LOANS

**This is a signature page for the Global Transfer, Retranching and Amendment Agreement dated as of 30 June 2006**

**As Arranger**

**BANCO SANTANDER CENTRAL HISPANO, S.A.**  
By: JAVIER VISEDO CARLOS DE PEDROSO  
Name: JAVIER VISEDO CARLOS DE PEDROSO  
Title: EXECUTIVE DIRECTOR VICE PRESIDENT

**This is a signature page for the Global Transfer, Retranching and Amendment Agreement dated as of 30 June 2006**

**As Arranger**

**CALYON SUCURSAL EN ESPAÑA**  
By: JAVIER ALVAREZ-RENDUELES BRUNO MATA  
Name: JAVIER ALVAREZ-RENDUELES BRUNO MATA  
Title: EXECUTIVE DIRECTOR SENIOR BANKER

**This is a signature page for the Global Transfer, Retranching and Amendment Agreement dated as of 30 June 2006**



**As Arranger**

**CITIGROUP GLOBAL MARKETS LIMITED**

By: ALAN GREEN  
Name: ALAN GREEN  
Title: DIRECTOR

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**This is a signature page for the Global Transfer, Retranching and Amendment Agreement dated as of 30 June 2006**

**As Agent**

**CITIBANK INTERNATIONAL PLC**

By: ALAN GREEN  
Name: ALAN GREEN  
Title: DIRECTOR

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**This is a signature page for the Global Transfer, Retranching and Amendment Agreement dated as of 30 June 2006**

**As Remaining Lender**

**BANCO BILBAO VIZCAYA ARGENTARIA S.A.**

By:	J.M. SAGARDOY	ALVARO BAREZ
Name:	J.M. SAGARDOY	ALVARO BAREZ
Title:	HEAD OF SYNDICATED LOANS	CORPORATE BANKING

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**This is a signature page for the Global Transfer, Retranching and Amendment Agreement dated as of 30 June 2006**

**As Remaining Lender**

**BANCO SANTANDER CENTRAL HISPANO, S.A.**

By:	JAVIER VISEDO	CARLOS DE PEDROSO
Name:	JAVIER VISEDO	CARLOS DE PEDROSO
Title:	EXECUTIVE DIRECTOR	VICE PRESIDENT

**This is a signature page for the Global Transfer, Retranching and Amendment Agreement dated as of 30 June 2006**

**As Remaining Lender**

**CALYON SUCURSAL EN ESPAÑA**

By: JAVIER ALVAREZ-RENDUELES BRUNO MATA  
Name: JAVIER ALVAREZ-RENDUELES BRUNO MATA  
Title: EXECUTIVE DIRECTOR SENIOR BANKER

**This is a signature page for the Global Transfer, Retranching and Amendment Agreement dated as of 30 June 2006**

**As Remaining Lender**

**CITIBANK INTERNATIONAL PLC, SUCURSAL EN ESPAÑA**

By: ALAN GREEN  
Name: ALAN GREEN  
Title: DIRECTOR

**This is a signature page for the Global Transfer, Retranching and Amendment Agreement dated as of 30 June 2006**

**As Remaining Lender**

**BANCO ESPANOL DE CREDITO S.A.**

By:	JOSE IGNACIO MARTÍN AGUIRRE	JOSE MIGUEL ALONSO DE OZALLA BORRÁS
Name:	JOSE IGNACIO MARTÍN AGUIRRE	JOSE MIGUEL ALONSO DE OZALLA BORRÁS
Title:	DR. BANCA CORPORATIVA	DR. BANCA CORPORATIVA

**This is a signature page for the Global Transfer, Retranching and Amendment Agreement dated as of 30 June 2006**

**As Remaining Lender**

**BNP PARIBAS**

By:	GENOVEVA RAMON-BORJA	MARCOS MONTEJO
Name:	GENOVEVA RAMON-BORJA	MARCOS MONTEJO
Title:	DIRECTOR	DIRECTOR

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**This is a signature page for the Global Transfer, Retranching and Amendment Agreement dated as of 30 June 2006**

**As Remaining Lender**

**FORTIS BANK S.A., SUCURSAL EN ESPAÑA**

By:	GUTIERREZ BUENO CARMEN	FERNANDO ALFARO DE HERRÁN
Name:	GUTIERREZ BUENO CARMEN	FERNANDO ALFARO DE HERRÁN
Title:	MIDDLE OFFICE	SENIOR CORPORATE MANAGER

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**This is a signature page for the Global Transfer, Retranching and Amendment Agreement dated as of 30 June 2006**

**As Remaining Lender**

**HSBC BANK PLC, SUCURSAL EN ESPAÑA**

By:	FRANCISCO NEIRA
Name:	FRANCISCO NEIRA
Title:	DIRECTOR

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**This is a signature page for the Global Transfer, Retranching and Amendment Agreement dated as of 30 June 2006**

**As Remaining Lender**

MONYMO DE CREDITO CREDITO

**INSTITUTO DE CREDITO OFICIAL**

By: MIGUEL LÓPEZ DE FORONDA PÉREZ  
Name: MIGUEL LÓPEZ DE FORONDA PÉREZ  
Title: HEAD OF INTERNATIONAL FINANCE

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**This is a signature page for the Global Transfer, Retranching and Amendment Agreement dated as of 30 June 2006**

**As Remaining Lender**

**JPMORGAN CHASE BANK N.A., SUCURSAL EN ESPAÑA**

By:	ROSA P. GARCIA MARTINEZ	CARLOS ZULOAGA
Name:	ROSA P. GARCIA MARTINEZ	CARLOS ZULOAGA
Title:	VICE PRESIDENT	VICE PRESIDENT

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**As Remaining Lender**

**THE ROYAL BANK OF SCOTLAND PLC**

By:	JAVIER SIERRA	GUILLERMO POGGIO
Name:	JAVIER SIERRA	GUILLERMO POGGIO
Title:	SR. CORPORATE DIRECTOR	ASSOCIATE DIRECTOR

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**As Remaining Lender**

**WEST LB, AG SUCURSAL EN ESPAÑA**

By:	MANUEL LÓPEZ RODRIGUEZ	RAUL CALVO TUDELA
Name:	MANUEL LÓPEZ RODRIGUEZ	RAUL CALVO TUDELA
Title:	DIRECTOR	ASSOCIATE DIRECTOR

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**As Remaining Lender**

**BANCA NAZIONALE DEL LAVORO, S.P.A. SUCURSAL EN ESPAÑA**

By:	ENRIQUE SALOMONE MERELLO	IGNACIO SANZ SERRANO
Name:	ENRIQUE SALOMONE MERELLO	IGNACIO SANZ SERRANO
Title:	RELATIONSHIP MANAGER	CORPORATE BANKING DIRECTOR

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**As Remaining Lender**

**BANCA S.P.A.**

By:	ARMANDO BALBOA	JOAQUÍN CALVO-SOTELO
Name:	ARMANDO BALBOA	JOAQUÍN CALVO-SOTELO
Title:	ASSISTANT VICE-PRESIDENT	ASSISTANT GENERAL MANAGER

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**As Remaining Lender**

**BARCLAYS BANK PLC**

By:	NICHOLAS A. BELL
Name:	NICHOLAS A. BELL
Title:	DIRECTOR

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**As Remaining Lender**

**BAYERISCHE LANDESBANK**

By: NIKOLAI VON MENGDEN  
Name: NIKOLAI VON MENGDEN  
Title: SENIOR VICE PRESIDENT

By: GEORGE J. SCHNEPF  
Name: GEORGE J. SCHNEPF  
Title: VICE PRESIDENT

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**As Remaining Lender**

**BoA NETHERLANDS COÖPERATIEVE, U.A.**

By:	JOANNE R. GOODSSELL	EDWIN J. BROUWER
Name:	JOANNE R. GOODSSELL	EDWIN J. BROUWER
Title:	DIRECTOR	DIRECTOR

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**As Remaining Lender**

**BRED BANQUE POPULAIRE**

By: JEAN MICHEL LATY  
Name: JEAN MICHEL LATY  
Title: EXECUTIVE CHIEF MANAGER

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**As Remaining Lender**

**DRESDNER BANK AG, NEW YORK BRANCH**

By: BRIAN SMITH  
Name: BRIAN SMITH  
Title: MANAGING DIRECTOR

By: MARK McGUIGAN  
Name: MARK McGUIGAN  
Title: VICE PRESIDENT

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**As Remaining Lender**

**CAJA DE AHORROS DE ASTURIAS**

By: JORGE DIEZ FERNANDEZ  
Name: JORGE DIEZ FERNANDEZ  
Title: DIRECTOR DE TESORERÍA Y MERCADO DE CAPITALS

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**As Remaining Lender**

**CAJA DE AHORROS DE GALICIA**

By:	ARTURO BERMÚDEZ	JOSE DE PABLO
Name:	ARTURO BERMÚDEZ	JOSE DE PABLO
Title:	JEFE DE SINDICACIONES	SUBD. MECARDO CAPITALS

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**As Remaining Lender**

**CAJA AHORROS Y MONTE DE PIEDAD DE MADRID**

By:	PAUL BARRABÉS	PEDRO LALANDA
Name:	PAUL BARRABÉS	PEDRO LALANDA
Title:	DIRECTOR	DIRECTOR

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**As Remaining Lender**

**DUETSCHKE BANK LUXEMBOURG S.A.**

By:	FRANZ-JOSEF EWERHARDY	KARLINA BELHOSTE
Name:	FRANZ-JOSEF EWERHARDY	KARLINA BELHOSTE
Title:		

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**As Remaining Lender**

**IKB INTERNATIONAL S.A.**

By:	EWA SZCZYCINSKI	GINA CENTI
Name:	EWA SZCZYCINSKI	GINA CENTI
Title:	FONDÉ DE POUVOIR	MANDATAIRE

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**As Remaining Lender**

**ING BELGIUM, S.A., SUCURSAL EN ESPAÑA**

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By: GUSTAVO DE ROSA ASUNCION GOMEZA  
Name: GUSTAVO DE ROSA ASUNCION GOMEZA  
Title:

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**As Remaining Lender**

**LLOYDS TSB BANK PLC**

By: CHRIS SPEDDING  
Name: CHRIS SPEDDING  
Title: CORPORATE MANAGER S069

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**As Remaining Lender**

**SANPAOLO IMI S.P.A.**

By: MARCO SILVIO PIZZI  
Name: MARCO SILVIO PIZZI  
Title: GENERAL MANAGER

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**As Remaining Lender**

**SCOTIABANK EUROPE PLC**

By: GERRY JONES  
Name: GERRY JONES  
Title: MANAGER

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**As Remaining Lender**

**SOCIÉTÉ GÉNÉRALE**

By: ALVARO COROMINAS CARLOS SORIANO  
Name: ALVARO COROMINAS CARLOS SORIANO  
Title:

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**As Remaining Lender**

**THE BANK OF TOKYO-MITSUBISHI UFJ, LTD., SUCURSAL EN ESPAÑA**

By: IGNACIO ASÍN LAPIQUE  
Name: IGNACIO ASÍN LAPIQUE  
Title: HEAD OF CORPORATE BANKING

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**As Remaining Lender**

**THE GOVERNOR AND COMPANY OF THE BANK OF IRELAND**

By: PAUL COSTELLO KEVIN MURRAY  
Name: PAUL COSTELLO KEVIN MURRAY  
Title: DEPUTY MANAGER ASSOCIATE DIRECTOR

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**As Transferring Lender**

**ABN AMRO BANK N.V. SUCURSAL EN ESPAÑA**

By: MIGUEL ANGEL BELEÑA EMILIO GOMEZ  
Name: MIGUEL ANGEL BELEÑA EMILIO GOMEZ  
Title:

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**As Transferring Lender**

**BANKINTER S.A.**

By: CARLOS RODRIGUEZ UGARTE MIGUEL ANGEL TAPIA ALONSO  
Name: CARLOS RODRIGUEZ UGARTE MIGUEL ANGEL TAPIA ALONSO  
Title: AREA MANAGER ACCOUNT MANAGER

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**As Transferring Lender**

**BANCO DE SABADELL, S.A.**

By: FRANCISCO JAVIER GONZÁLEZ GUSTAVO MANUEL GUTIÉRREZ LEÓN  
Name: FRANCISCO JAVIER GONZÁLEZ GUSTAVO MANUEL GUTIÉRREZ LEÓN  
Title: DIRECTOR DIRECTOR

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**As Transferring Lender**

**BANCO DE GALICIA, S.A.**

By: FERNANDO SANMARTIN FILGUEIRA CLOTILDE SUAREZ ARIAS  
Name: FERNANDO SANMARTIN FILGUEIRA CLOTILDE SUAREZ ARIAS  
Title:

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**As Transferring Lender**

**BANCO POPULAR ESPAÑOL, S.A.**

By: MIGUEL A. PERÉZ SAMUEL SERRANO  
Name: MIGUEL A. PERÉZ SAMUEL SERRANO  
Title: MANAGER MANAGER

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**As Transferring Lender**

**BANK OF CHINA (LUXEMBOURG) S.A.**

By: TANG MAOHENG  
Name: TANG MAOHENG  
Title: DEPUTY GENERAL MANAGER

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**As Transferring  
Lender**

**CAJA DE AHORROS DEL MEDITERRANEO**

By: JOSÉ RAFAEL PASTOR LLUCH  
Name: JOSÉ RAFAEL PASTOR LLUCH  
Title: JÉFÉ DEPRÉSTAMOS SINDICADOS

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Lender**

**CENTROBANCA S.P.A.**

By: DANIELE QUARTIERI  
Name: DANIELE QUARTIERI  
Title: SENIOR DIRECTOR

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Agreement dated as of 30 June 2006**

**As Transferring  
Lender**

**CREDIT INDUSTRIEL ET COMMERCIAL**

By:	P.L. KITCHING	T.D. PRESTWICH
Name:	P.L. KITCHING	T.D. PRESTWICH
Title:		DIRECTOR, CORPORATE BANKING

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Agreement dated as of 30 June 2006**

**As Transferring  
Lender**

**MIZUHO CORPORATE BANK NEDERLAND N.V.**

By:	Mr. H. TAKAHASHI	Mr. P. KOENDERS
Name:	Mr. H. TAKAHASHI	Mr. P. KOENDERS
Title:	MANAGING DIRECTOR	SENIOR MANAGER

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**As Transferring  
Lender**

**MONTES DE PIEDAD Y CAJA DE AHORROS DE RONDA,  
CADIZ, ALMERIA MALAGA Y ANTEQUERA (UNICAJA)**

By:	ANTONIO AVILÉS
Name:	ANTONIO AVILÉS
Title:	DE ÀREA

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