



Registration of a Charge

Company name: **CEMEX UK OPERATIONS LIMITED**

Company number: **00658390**



X35JWF2R

Received for Electronic Filing: **11/04/2014**

Details of Charge

Date of creation: **07/04/2014**

Charge code: **0065 8390 0005**

Persons entitled: **CEMEX UK OPERATIONS LIMITED**

Brief description: **FREEHOLD LAND BEING LAND ON THE NORTH SIDE OF CUTHEDGE LANE, COGGESHALL, TITLE NUMBER EX465219. FREEHOLD LAND BEING THE SITE OF AN ACCESS ROAD ON THE SOUTH SIDE OF STONE STREET, COGGESHALL, TITLE NUMBER EX367772. FREEHOLD LAND BEING LAND ON THE NORTH AND SOUTH SIDES OF CHURCH ROAD, BRADWELL, BRAINTREE, TITLE NUMBER EX622909.**

Contains fixed charge(s).

Contains negative pledge.

Authentication of Form

This form was authorised by: **a person with an interest in the registration of the charge.**

Authentication of Instrument

Certification statement: **I CERTIFY THAT SAVE FOR MATERIAL REDACTED PURSUANT TO S.859G OF THE COMPANIES ACT 2006 THE ELECTRONIC**

**COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION
FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL
INSTRUMENT.**

Certified by:

TASLIMA SALAM



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 658390

Charge code: 0065 8390 0005

The Registrar of Companies for England and Wales hereby certifies that a charge dated 7th April 2014 and created by CEMEX UK OPERATIONS LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 11th April 2014 .

Given at Companies House, Cardiff on 11th April 2014

The above information was communicated by electronic means and authenticated by the Registrar of Companies under section 1115 of the Companies Act 2006



Companies House



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES



Dated

7 APRIL

2014

- (1) CEMEX UK Operations Limited and Gent Fairhead Aggregates Limited in partnership under the name of Blackwater Aggregates
- (2) CEMEX UK Operations Limited
- (3) Gent Fairhead Aggregates Limited
- (4) CEMEX UK Operations Limited

Security Agreement

Eversheds LLP
Eversheds House
70 Great Bridgewater Street
Manchester
M1 5ES

Tel 0845 497 9797
Fax 0845 497 8888
Int +44 161 831 8000
DX 14344 Manchester
www.eversheds.com

man_002\5040159\5
25 March 2014 salamt

I certify this document as a true copy of the original.
Save for material redacted pursuant to
S. 859A Companies Act 2006
Date: 10-4-14
on behalf of Eversheds LLP *Eversheds LLP*

CONTENTS

Clause	Page
1 INTERPRETATION	1
2 COVENANT TO PAY	5
3 SECURITY	6
4 FURTHER ASSURANCE	7
5 NEGATIVE PLEDGE AND DISPOSAL RESTRICTIONS	7
6 REPRESENTATIONS AND WARRANTIES	8
7 UNDERTAKINGS	8
8 ENFORCEABILITY	11
9 ENFORCEMENT OF SECURITY	11
10 PAYMENTS, ACCOUNTS AND APPLICATION OF PROCEEDS	12
11 PROTECTION OF THIRD PARTIES	14
12 PROTECTION OF LENDER	14
13 POWER OF ATTORNEY	15
14 APPLICATION, VARIATION AND EXTENSION OF STATUTORY PROVISIONS	15
15 OTHER MISCELLANEOUS PROVISIONS	16
16 THIS DEED	19
17 GOVERNING LAW	20
18 JURISDICTION	20
SCHEDULE 1 Details of Property	21
SCHEDULE 2 Notices	22
SCHEDULE 3 Property undertakings	24
SCHEDULE 4 Receiver's specific powers	27

This Deed is made on

7 APRIL 2014

between:

- (1) **CEMEX UK Operations Limited**, a company Incorporated in England and Wales with company number 00658390 (the "**CEMEX Partner**") and **Gent Fairhead Aggregates Limited**, a company Incorporated in England and Wales with company number 02546446 ("**GFA**"), carrying on a business in partnership at Bradwell Quarry, Church Road, Bradwell, Essex, CM77 8EP under the name of **Blackwater Aggregates**, (the "**Borrower**");
- (2) **CEMEX UK Operations Limited**, a company Incorporated in England and Wales with company number 00658390 (the "**CEMEX Partner**");
- (3) **Gent Fairhead Aggregates Limited**, a company Incorporated in England and Wales with company number 02546446 ("**GFA**"); and
- (4) **CEMEX UK Operations Limited**, a company Incorporated in England and Wales with company number 00658390, (the "**Lender**").

1. INTERPRETATION

1.1 Expressly defined terms

In this Deed, the following words and phrases have the specified meanings.

"**Associated Rights**" means, in relation to any Secured Asset, all proceeds of sale of such asset, all rights, powers, benefits, covenants, warranties, guarantees or Security given or implied in respect of such asset, all rights under any agreement for sale, agreement for lease or licence of or in respect of such asset, and any monies and proceeds paid or payable in respect of such asset.

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

"**Business Day**" means a day, other than a Saturday or a Sunday, on which banks are open for general business in London in the principal financial centre in the jurisdiction in which the relevant communication is delivered.

"**Chargors**" means the Borrower, the CEMEX Partner and GFA.

"**COMI**" means centre of main interests (as that term is used in Article 3(1) of the EC Regulation).

"**Companies Act**" means the Companies Act 1985.

"**Default Rate**" means the rate determined in accordance with the provisions of clause 4.2 of the Loan Agreement.

"**Delegate**" means any delegate, agent, attorney or trustee appointed by the Lender.

"**Derivative Payment**" means, in relation to a Secured Asset, any damages, compensation, remuneration, profit, bonus, royalties, fee, rent, income or other benefit which the relevant Chargor may derive from or be awarded or entitled to in respect of such asset.

"**Discharge Date**" means the date with effect from which the Lender confirms to the Borrower that all the Secured Obligations have been unconditionally and

irrevocably paid and discharged in full and all relevant commitments of the Lender cancelled.

"EC Regulation" means The Council of the European Union Regulation No. 1346/2000 on Insolvency Proceedings.

"Enforcement Party" means any of the Lender, a Receiver or a Delegate.

"Establishment " means, in relation to any Chargor, an establishment as that term is defined in relation to a debtor in Article 2 (h) of the EC Regulation.

"Event of Default" means the occurrence of any of the events or circumstances defined in the Loan Agreement as an **"Event of Default"** but shall also include any breach by the Chargor of, or non-compliance by the Chargor with, the provisions of this Deed or of any other Finance Document.

"Finance Documents" has the meaning set out in the Loan Agreement and **"Finance Document"** shall mean any one of them.

"Fixtures" means any fixtures (but excluding landlord's fixtures), fittings, fixed plant or machinery from time to time situated on or forming part of any Property.

"Insolvency Act" means the Insolvency Act 1986.

"Insurances" means all contracts or policies of insurance of whatever nature relating to the Secured Assets which, from time to time, are taken out or maintained by or on behalf of any Chargor or (to the extent of its relevant interest) in which any Chargor has an interest.

"Insurance Proceeds" means the proceeds of any claim in relation to any Insurance received by any Chargor (after deduction of (a) any reasonable expenses incurred in relation to the relevant claim and payable by such Chargor and (b) amounts paid to meet third party claims), together with the benefit of all bonuses, profits, returns of premium and other benefits of whatever nature, arising in any case by virtue of any Chargor's ownership of any Insurances and all interest in any of the foregoing.

Loan Agreement" means a loan agreement made on or around the date hereof between the Chargors and the Lender.

"LPA" means the Law of Property Act 1925.

"Option Agreements" has the meaning given to that term in the Loan Agreement.

"Party" means a party to this Deed.

"Permitted Security" means the Security referred to in Clause 7.3.5.3 of the Loan Agreement.

"Plant" means the sand and gravel processing plant located within the demise of the lease referred to in paragraph (d) of the definition of Lender Leases in the Loan Agreement and shall include any additions, modifications and/or equipment ancillary to it.

"Property" means the property identified in Schedule 2 (Details of Property) together with any buildings, fixtures, fittings, fixed plant or machinery owned by the Borrower from time to time situated or forming part of that property (but for the avoidance of doubt the Security created by this agreement shall be subject to any easement or any other rights or interests in relation to the Property granted on or prior to the date of this Deed).

"Receiver" means any one or more receivers and managers or (if the Lender so specifies in the relevant appointment) receivers appointed by the Lender pursuant to this Deed in respect of any Chargor or in respect of the Secured Assets of any Chargor.

"Secured Assets" means the assets the subject of any Security created by this Deed.

"Secured Obligations" means all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or in any other capacity whatsoever) of each Chargor to the Lender under any Finance Document, whatever their nature or basis, in any currency or currencies, and however they are described, together with all costs, charges and expenses incurred by the Lender in connection with the protection, preservation or enforcement of its rights under the Finance Documents or any other document evidencing or securing any such liabilities.

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

"Security Agreements" has the meaning set out in the Loan Agreement, together with any other agreement, instrument, deed or document entered into by any Chargor creating or expressed to create any Security over all or any part of its assets in respect of the Secured Obligations.

"Security Period" means the period beginning on the date of this Deed and ending on the Discharge Date.

"Subsidiary" means a subsidiary undertaking within the meaning of section 1162 of the Companies Act 2006.

"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).

"Third Parties Act" means the Contracts (Rights of Third Parties) Act 1999.

1.2 Definitions contained in Loan Agreement

Unless a contrary indication appears each term used in this Deed which is defined in the Loan Agreement shall have the same meaning as in the Loan Agreement.

1.3 Construction

In this Deed:

1.3.1 unless a contrary indication appears, a reference to:

- 1.3.1.1 **"assets"** includes present and future properties, revenues, rights and interests of every kind and reference to an **"asset"** includes any part or parts of such asset;
- 1.3.1.2 **"guarantee"** includes any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to pay any deposit on behalf of, or make an investment in, or loan to, any person or to purchase assets of any person, where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;
- 1.3.1.3 **"indebtedness"** includes any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- 1.3.1.4 **"person"** includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);
- 1.3.1.5 **"regulation"** includes any regulation, rule, official directive, request or guideline (in each case, whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
- 1.3.1.6 **"set-off"** includes analogous rights and obligations in jurisdictions other than England and Wales; and
- 1.3.1.7 the **"Borrower"**, the **"Lender"** or any **"Chargor"** or **"Party"**, shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
- 1.3.2 where something (or a list of things) is introduced by the word **"including"**, or by the phrase **"in particular"**, or is followed by the phrase **"or otherwise"**, the intention is to state an example (or examples) and not to be exhaustive (and the same applies when other similar words or phrases are used);
- 1.3.3 unless this Deed expressly states otherwise or the context requires otherwise, (a) each reference in this Deed to any provision of any statute or of any subordinate legislation means, at any time, the relevant provision as in force at that time (even if it has been amended or re-enacted since the date of this Deed) and (b) each reference in this Deed to any provision of any statute at any time includes any subordinate legislation made pursuant to or in respect of such provisions as in force at such time (whether made before or after the date of this Deed and whether amended or re-enacted since the date of this Deed);
- 1.3.4 each reference to this Deed (or to any other agreement, instrument or deed) means, at any time, this Deed (or as applicable such other agreement, instrument or deed) as amended, novated, supplemented,

extended, or restated, at that time, provided that the relevant amendment, novation, supplement, extension, substitution or restatement does not breach any term of this Deed or of any of the Finance Documents;

- 1.3.5 the index and Clause and Schedule headings are for ease of reference only;
- 1.3.6 an Event of Default is "**continuing**" if it has not been waived in writing by the Lender; and
- 1.3.7 references to any Security "**created by this Deed**" are to be deemed to include such Security created, constituted, given, made or extended by, under or pursuant to this Deed.

1.4 **Third Party Rights**

No person has any right under the Third Parties Act to enforce or enjoy the benefit of any term of this Deed, other than an Enforcement Party, which may do so, or any other person, to the extent that this Deed or any other of the Finance Documents expressly provides for it to do so. No consent of any person who is not a Party is required to rescind or vary this Deed at any time. This Clause 1.4 does not affect any right or remedy of any person which exists, or is available, otherwise than pursuant to the Third Parties Act.

1.5 **Incorporation of other terms**

The terms of the other Finance Documents under which the Secured Obligations arise and of any side letters between any Chargor and the Lender relating to the Secured Obligations are incorporated into this Deed to the extent required for any purported disposition of the Secured Assets contained in this Deed to be a valid disposition in accordance with section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989.

2. **COVENANT TO PAY**

2.1 **Covenant**

Each Chargor, as primary obligor and not merely as surety, covenants with the Lender that it will pay, discharge and perform the Secured Obligations on demand and in the manner provided in the Finance Documents.

2.2 **Default interest**

Any amount which is not paid under this Deed on the due date shall bear interest (both before and after judgment) payable on demand at the Default Rate from time to time from the due date until the date of actual unconditional and irrevocable payment and discharge of such amount in full, save to the extent that interest at such rate on such amount and for such period is charged pursuant to the Finance Documents relevant to that liability and itself constitutes part of the Secured Obligations.

3. **SECURITY**

3.1 **Fixed charges**

Each Chargor, as a continuing security for the payment, discharge and performance of the Secured Obligations, charges in favour of the Lender its right, title and interest in the following assets:

- 3.1.1 **First legal mortgage on specified Property** - by way of first legal mortgage, the Property and all Associated Rights;
- 3.1.2 **First fixed charges in respect of the Plant** - by way of first fixed charge, (a) the Plant, and (b) all Associated rights in relation to the Plant;
- 3.1.3 **First fixed charges in respect of Insurances** - to the extent that the Insurances and/or the Insurance Proceeds are incapable for any reason of being effectively assigned pursuant to Clause 3.2.1 but are capable of being effectively charged, by way of first fixed charge, the Insurances owned by or written in favour of such Chargor and all Insurance Proceeds either now or in the future held by or payable to such Chargor or in which such Chargor otherwise has an interest (to the extent of such interest);
- 3.1.4 **First Fixed Charge on Derivative Payments** - to the extent that any Derivative Payments are incapable for any reason of being effectively assigned pursuant to Clause 3.2.2 but are capable of being effectively charged by way of first fixed charge the right to recover and receive all Derivative Payments.

3.2 **Assignments by way of Security**

As further continuing security for the payment of the Secured Obligations, each Chargor assigns absolutely to the Lender all (if any) its right, title and interest in and to the following assets:

- 3.2.1 **Insurances and Insurance Proceeds** - the Insurances and the benefit of all Insurance Proceeds;
- 3.2.2 **Associated Rights and Derivative Payments** - any Associated Rights or Derivative Payment which are not the subject of a valid fixed charge pursuant to Clause 3.1 (*Fixed charges*) of this Deed.

3.3 **Notice of charge or assignment**

- 3.3.1 Each Chargor shall, promptly upon receiving a request to that effect from the Lender, give notice of each charge or assignment of all (if any) its right, title and interest in and to the Insurances and Insurance Proceeds, by sending a notice in the form of Part 1 of Schedule 2 (*Notices*) (with such amendments as the Lender may agree and/or require) duly completed to each of the other parties to the Insurances.
- 3.3.2 Each Chargor shall use its reasonable endeavours to procure that, within 14 days of the date of its receiving a request under Clause 3.3.1 to give notice to the relevant other party, each such other party delivers an acknowledgement to the Lender substantially in the form of

the acknowledgement of notice endorsed on a copy of the relevant notice as set out in Schedule 3 (*Notices*).

3.4 Continuing security

The provisions of this Deed will apply at all times (a) regardless of the date on which any of the Secured Obligations was incurred and (b) in respect of the full amount of the Secured Obligations at the relevant time even if, at some other time, the amount of the Secured Obligations has been less than the amount at the relevant time or there has been no part of the Secured Obligations outstanding.

3.5 Miscellaneous

3.5.1 All the Security created by this Deed by each Chargor is made with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994.

3.5.2 Clauses 3.1.2 to 3.1.4 inclusive shall be read and construed as if each asset described, and each asset comprised within any category of asset described, in each such Clause were expressed, separately and specifically, to have been made subject to a first fixed charge; and the validity and effectiveness of each such fixed charge will not be prejudiced by any other such first fixed charge being found not to be fully valid or effective as such.

3.5.3 The fact that no, or incomplete, details of any particular Secured Assets are included or inserted in any relevant Schedule shall not affect the validity or enforceability of the charges created by this Deed.

4. FURTHER ASSURANCE

The Borrower shall (and the Borrower shall procure that each other Chargor will):

4.1 promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Lender may reasonably specify (and in such form as the Lender may reasonably require) in favour of the Lender or its nominee(s) (a) to perfect the Security created or intended to be created or evidenced by this Deed or for the exercise of any rights, powers and remedies of the Lender provided by or pursuant to this Deed; and/or (b) to facilitate the realisation of the assets which are, or are intended to be, the subject of this Deed; and

4.2 take all such action as is available to it (including making all filings and registrations and the payment of all fees and taxes) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Lender by or pursuant to this Deed.

5. NEGATIVE PLEDGE AND DISPOSAL RESTRICTIONS

5.1 Negative pledge

During the Security Period, no Chargor shall:

5.1.1 create, extend or permit to subsist any Security over any of the Secured Assets; nor

- 5.1.2 (a) execute, or agree to grant, vary, or accept any surrender of, any conveyance, transfer, lease, or assignment, or any other right of occupation or use, of the Secured Assets, (b) create any legal or equitable estate, or other interest, in, over, or relating to, the Secured Assets, or (c) (except as permitted pursuant to the Loan Agreement) sell, transfer or otherwise dispose of any of the Secured Assets.

5.2 Exceptions

Clause 5.1 (*Negative pledge*) does not apply to (a) the Security created or required to be created pursuant to this Deed, nor (b) the Permitted Security, nor (c) any Security, arrangement or transaction to which the Lender has given its written consent.

6. REPRESENTATIONS AND WARRANTIES

Each Chargor represents and warrants to the Lender on the date of this Deed in the terms of the representations and warranties set out in Clause 7 of the Loan agreement which shall be deemed to be repeated on each Payment Date which falls during the Security Period.

7. UNDERTAKINGS

Throughout the Security Period, each Chargor undertakes to the Lender in the terms of the following provisions of this Clause 7.

- 7.1 **Perform** - It will at all times comply with the terms (express or implied) of
- 7.1.1 this Deed; and
- 7.1.2 of all contracts relating to the Secured Obligations where failure to do so would result in a Material Adverse Effect.
- 7.2 **Not jeopardise Security** - It will not (and will procure that no nominee will) do or omit to do anything, or allow anything to be done or omitted, the result of which may be in any way to depreciate, jeopardise or otherwise prejudice the value to the Lender of the Security created by this Deed or the priority of its ranking as expressed in this Deed.
- 7.3 **Maintenance** - It will keep the Property and such Secured Assets in a good and substantial state of repair, working order and condition and will remedy any defect or want of repair within a reasonable period of time from receiving written notice from the Lender specifying the relevant defect or want of repair.
- 7.4 **Observe covenants** - It will observe and perform all covenants and stipulations from time to time on its part to be performed or observed and affecting any of the Secured Assets where failure to do so would have a Material Adverse Effect.
- 7.5 **Observe laws** - It will not do or omit to do or allow anything to be done in relation to the Secured Assets which would infringe any laws which (whether directly or indirectly) the Secured Assets and will comply with all notices, orders, injunctions and mandatory proposals served on it, issued or made by any local or other authority or governmental agency, or by its landlords relating to any of the Secured Assets or its use of them, and will serve within any relevant time limit any counter-notice necessary or desirable to preserve the value of any such Secured Assets.

- 7.6 **Effect registrations** - It will effect all registrations, make all filings or applications and pay all taxes, rents, fees or dues necessary to keep in full force and effect, and where necessary to renew or extend, all the Secured Assets and such Chargor's right to make full use and enjoy the full benefit of the Secured Assets.
- 7.7 **Proceedings** - at its own cost and expense, it will use its reasonable endeavours to enforce, institute, continue or defend all proceedings affecting the Secured Assets, their state or condition or continued use or value so as to preserve to the fullest extent the value to the Lender of the Security created by this Deed.
- 7.8 **Insurance** - Except to the extent that it is provided otherwise in paragraph 7 (*Insurance*) of Part 2 of Schedule 3 (*Property undertakings*), in respect of such of the Secured Assets as are of an insurable nature, it will obtain, maintain and renew (all at its own expense) insurance, indemnity or similar cover with reputable, independent, insurance companies or underwriters, against those risks and to the extent as is usual for companies carrying on the same or substantially similar business, provided that (a) if required by the Lender, in respect of all or any of the Insurances required by this Deed, it will procure and promptly produce to the Lender evidence satisfactory to the Lender that the Lender is named as sole loss payee in respect of all claims under such Insurances and (b) it will promptly pay all premiums and other sums necessary to effect and maintain the Insurances required by this Deed and will, on demand, produce to the Lender such Insurances and evidence that such premiums and other sums have been paid.
- 7.9 **Property** - in respect of its Property it will comply with the provisions of Part 2 of Schedule 3 (*Property undertakings*).
- 7.10 **Land Registry** -
- 7.10.1 In relation to all registered Property (and any unregistered Property subject to compulsory first registration at the date of this Deed), it will apply to the Land Registrar to enter on the register against the title number of or to be allocated to the relevant Property a restriction in the following terms:
- "No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the proprietor for the time being of the charge dated [*date of this Deed*] in favour of CEMEX UK Operations Limited (company number 00658390) referred to in the charges register or, if appropriate, signed on such proprietor's behalf by one of its directors."
- and, where applicable, notice of an obligation to make further advances.
- 7.10.2 It shall submit the relevant applications no later than the date of submission of the initial application for registration of the Security created by this Deed (or, in the case of The Land Registry form CH2, where applicable, promptly following its later receipt of such form duly completed by the Lender), and pay all fees, costs and expenses incurred in connection with the applications.
- 7.10.3 The Lender, in its absolute discretion, may make any of the applications referred to in this Clause 7.10 in place of such Chargor. In

such a case, such Chargor consents to the entry of the relevant restriction and will pay all fees, costs and expenses properly incurred in connection with the application.

- 7.11 **Access** – unless prohibited by law, it will (at the risk and cost of such Chargor where, prior to an Event of Default, such costs are to be approved by the Borrower acting reasonably) permit the Lender and its professional advisers, agents and contractors and, where required by the Lender, Independent valuers free access at all reasonable times and on reasonable notice and for all reasonable purposes (including carrying out physical inspections, valuations and/or the preparation or making of inventories and/or schedules and/or other records or copies) (a) to the premises, assets, books, accounts and records of such Chargor and (b) to meet and discuss matters with such senior employees as the Lender may reasonably require, and will provide and will procure that any occupiers of such premises and such employees provide all reasonable assistance to the Lender and such other persons in connection with the access obligations imposed by this Clause 12.
- 7.12 **Centre of main interests** - It will not move its COMI, nor have any Establishment, outside England and Wales.
- 7.13 **Deposit of documents**
- 7.13.1 It will promptly at the Lender's request deposit with the Lender (or as the Lender directs) (a) all deeds and documents of title relating to the Property, including counterpart leases, licences and any other deeds or documents necessary or desirable to assist the Lender to enforce the Security created by this Deed, (b) all policies of insurance in respect of which the proceeds of any claims are assigned or charged pursuant to this Deed and (c) all such other documents relating to the Secured Assets as the Lender may from time to time reasonably require.
- 7.13.2 The Lender agrees that the documents referred to in 7.13.1 may be held by the Borrower's lawyers pursuant to an undertaking from the Borrower's lawyers to the Lender in a form satisfactory to the Lender.
- 7.14 **Retention of documents** - The Lender may retain any document delivered to it pursuant to Clause 7.13 (*Deposit of documents*) or otherwise until the Discharge Date and if, for any reason, the Lender ceases to hold any such document before such time, it may, by notice to such Chargor, require that the relevant document be redelivered to it and such Chargor shall immediately comply (or procure compliance) with such notice.
- 7.15 **Power to remedy** - If such Chargor fails to comply with any of the covenants and undertakings set out or referred to in Clauses 7.1 (*Perform*) to 7.11 (*Access*) (inclusive), 7.13 (*Deposit of Documents*) and 7.14 (*Retention of documents*) and Part 2 of Schedule 3 (*Property undertakings*), it will allow (and irrevocably authorises) the Lender and/or such persons as the Lender nominates to take on behalf of such Chargor such action (including the making of payments) as is necessary to protect any relevant assets against the consequences of such failure to comply and/or to ensure compliance with such covenants and undertakings.
- 7.16 **Indemnity** - It will indemnify the Lender and will keep the Lender indemnified against all costs, taxes, losses and liabilities incurred by the Lender as a result of any default by such Chargor in the performance of any of the obligations expressed to be assumed by it in this Deed and in connection with the exercise

by the Lender of its rights contained in Clause 7.15 (*Power to remedy*). All sums the subject of this indemnity will be payable by such Chargor to the Lender on demand.

8. ENFORCEABILITY

For the purposes of all powers implied by the LPA or any other applicable legislation, the Secured Obligations shall be deemed to have become due and payable and this Deed will become immediately enforceable and the powers of the Lender and any Receiver will become exercisable on the date of this Deed, but, as between the Lender and each Chargor, the power of the Lender to enforce the Security created by this Deed shall be exercisable only upon the occurrence of an Event of Default and for so long as it is continuing (unless there has been a request from such Chargor to the Lender for the appointment of a Receiver, in which case it will be exercisable at any time following the making of such request).

9. ENFORCEMENT OF SECURITY

- 9.1 At any time after the Lender's power of sale has become exercisable, the Lender may, without further notice, (a) appoint one or more than one person to be Receiver in respect of the Secured Assets or any of them and, if more than one person is appointed as Receiver, such appointees may act jointly and severally or individually, (b) take possession of the Secured Assets, and/or (c) in its absolute discretion enforce all or any part of the Security created by this Deed in such other lawful manner as it thinks fit. The Lender may remove any person from appointment as Receiver and may appoint another person as Receiver. The Lender may also appoint an additional Receiver.
- 9.2 The Receiver will, so far as the law permits, be the agent of each Chargor in respect of which the Receiver is appointed and each such Chargor alone will be responsible for the acts or defaults of the Receiver and will be liable on any contracts or obligations made or entered into by the Receiver. The Lender will not be responsible for any misconduct, negligence or default of the Receiver. The powers of the Receiver will continue in full force and effect following any liquidation of the relevant Chargor.
- 9.3 The remuneration of the Receiver may be fixed by the Lender but will be payable by the relevant Chargor. The amount of the remuneration will form part of the Secured Obligations.
- 9.4 The Receiver will have the power, on behalf and at the cost of each Chargor in respect of which the Receiver is appointed, (a) to do or omit to do anything which he considers appropriate in relation to the Secured Assets and (b) to exercise all or any of the powers conferred on the Receiver or the Lender under this Deed or conferred upon administrative receivers by the Insolvency Act (even if he is not an administrative receiver), or upon receivers by the LPA or any other statutory provision (even if he is not appointed under the LPA or such other statutory provision) but so that if there is any ambiguity or conflict between the powers contained in such legislation and those contained in this Deed, those contained in this Deed shall prevail.
- 9.5 Without prejudice to the general powers set out in Clause 9.4, a Receiver will also have the powers and discretions set out in Schedule 4 (*Receiver's specific powers*).

- 9.6 The Lender or any Receiver may sever any Fixtures from the Property and sell them apart from the Property without taking possession of the Property and apply the net proceeds of such sale in or towards satisfaction of the Secured Obligations.
- 9.7 If the Lender or the Receiver obtains possession of the Property, the Lender or the Receiver may use and remove, store or sell any chattels on the Property, whether or not forming part of the Secured Assets, without being under any liability to any Chargor other than to account for their net proceeds of the sale. All costs, losses and liabilities incurred by the Lender or the Receiver in connection with the removal, storage and sale of such chattels will form part of the Secured Obligations.
- 9.8 If (notwithstanding any representation or warranty to the contrary contained in this Deed) there shall be any Security affecting the Secured Assets or any of them which ranks in priority to the Security created by this Deed and the holder of such prior Security takes any steps to enforce such Security, the Lender or any Receiver may, at its option, take a transfer of, or repay the indebtedness secured by, such Security.
- 9.9 The Lender may, at any time after this Deed has become enforceable pursuant to Clause 8 (*Enforceability*), exercise, to the fullest extent permitted by law, all or any of the powers, authorities and discretions conferred on a Receiver by this Deed, whether as attorney of any Chargor or otherwise and whether or not a Receiver has been appointed.
- 9.10 The Lender may, in writing, either in its appointment of a Receiver or by subsequent notice to that Receiver, restrict the right of such Receiver to exercise all or any of the powers conferred on a Receiver by this Deed.
- 9.11 Paragraph 14 of Schedule B1 to the Insolvency Act applies to the floating charges created under this Deed.

10. **PAYMENTS, ACCOUNTS AND APPLICATION OF PROCEEDS**

- 10.1 **Right of appropriation** - Subject to the provisions of Clause 10.8 (*Recoveries by Receiver*), the Lender is entitled to appropriate money and/or assets to the Secured Obligations in such manner or order as it thinks fit and any such appropriation shall override any appropriation by the Chargor.
- 10.2 **No set-off by Chargors** - No Chargor shall exercise any right of set-off or counterclaim which it might have in respect of any payment due to the Lender under this Deed.
- 10.3 **Lender's rights of set-off** - The Lender may, at any time after this Deed has become enforceable, and without notice (a) combine or consolidate all or any of a Chargor's then existing accounts with, and liabilities to, the Lender, (b) set-off or transfer any sums standing to the credit of any one or more of such accounts, and/or (c) set-off any other obligation owed by the Lender to any such Chargor (whether or not matured at such time), in or towards satisfaction of any of the Secured Obligations; and if any amount is in a different currency from the amount against which it is to be set-off, the Lender may convert either amount (or both) at any reasonable time and at any reasonable rate. The Lender shall notify such Chargor in writing that any such transaction has taken place.
- 10.4 **Suspense Account** - The Lender may, at any time, credit to a suspense account any money received by it under this Deed, to be held for so long as and on such

terms as the Lender may determine pending its application towards discharging the Secured Obligations.

- 10.5 **New account** - If the Lender receives notice of a subsequent mortgage or charge relating to the Secured Assets, it will be entitled to close any account and to open a new account in respect of the closed account. If the Lender does not open such new account, it will in any event be treated as if it had done so at the time when it received such notice.
- 10.6 **Time deposit** - Without prejudice to the provisions of Clause 10.3 (*Lender's rights of set-off*), if at any time any Chargor has made a deposit with the Lender on terms that it will be repaid on a specified date (a "**Time Deposit**") then: (a) if the Lender has made any demand under Clause 2.1 (*Covenant*), it may vary the terms of such Time Deposit so that it becomes repayable immediately or on any other date before such specified date; or (b) if an Event of Default has arisen which is continuing but no amount of Secured Obligations has fallen due before such specified date, the Lender may renew such Time Deposit for such further maturity as the Lender in its absolute discretion determines.
- 10.7 **Calculations** - The Lender's calculation of any amount payable by any Chargor under this Deed at any time will be conclusive (unless it has made an obvious mistake).
- 10.8 **Recoveries by Receiver** - The proceeds arising from the exercise of the powers of the Receiver will, subject to any claims ranking in priority to the Secured Obligations, be applied by or at the direction of the Receiver in or towards discharging or satisfying the following amounts in the following order of priority: (a) the costs, charges and expenses of and incidental to the Receiver's appointment and the payment of his remuneration; (b) any costs, charges, expenses and liabilities of or incurred by any Enforcement Party in the exercise of any of its powers including all rents, Taxes, rates and outgoings whatever affecting the Secured Assets; all premiums on Insurances properly payable under this Deed or any applicable legislation, the cost of executing necessary or proper repairs to the Secured Assets, and the payment of annual sums or other payments, and the interest on all principal sums, having priority to the Secured Obligations; (c) the remaining Secured Obligations, in accordance with the provisions of the Finance Documents; and (d) the claims of those persons entitled to any surplus.
- 10.9 **Insurances** - All Insurance Proceeds shall be paid to the Lender (or if not paid by the insurers directly to the Lender shall be held on trust for the Lender) and shall (subject as otherwise provided in the Finance Documents) be applied in replacing or reinstating the property or assets destroyed, damaged or lost (any deficiency being made good by the relevant Chargor) or (if an Event of Default has arisen which is continuing) as the Lender otherwise directs.
- 10.10 **Currency of payment** - No payment to the Lender (whether under any judgment or court order or otherwise) shall discharge the obligation or liability of the Chargor in respect of which it was made unless and until the Lender shall have received payment in full in the currency in which the obligation or liability was incurred. To the extent that the amount of any such payment shall, on actual conversion into such currency, fall short of such obligation or liability expressed in that currency, the Lender shall have a further separate cause of action against the Chargor and shall be entitled to enforce the Security created by this Deed to recover the amount of the shortfall.

- 10.11 **Currency conversion** - All money received or held by the Lender or any Receiver under this Deed may be converted into such other currency as the Lender considers necessary or desirable to cover the obligations and liabilities comprised in the Secured Obligations in that other currency at the Lender's spot rate of exchange then prevailing for purchasing that other currency with the existing currency.

11. **PROTECTION OF THIRD PARTIES**

- 11.1 **No duty to enquire** - A buyer from, or other person dealing with, any Enforcement Party will not be concerned to enquire whether any of the powers which such Enforcement Party has exercised or purported to exercise has arisen or become exercisable and may assume that it is acting in accordance with this Deed.

- 11.2 **Receipt conclusive** - The receipt of the Lender or any Receiver shall be an absolute and conclusive discharge to a purchaser of the Secured Assets and shall relieve him of any obligation to see to the application of any monies paid to or by the direction of the Lender or any Receiver.

12. **PROTECTION OF LENDER**

- 12.1 **Lender's receipts** - The Lender shall not be obliged to account to the Chargor, nor to any other person, for anything other than its own actual receipts which have not been distributed or paid to the person entitled (or whom the Lender, acting reasonably, believes to be entitled) in accordance with the requirements of this Deed.

12.2 **Exclusion of liability** -

- 12.2.1 No Enforcement Party will be liable to any Chargor for any expense, loss, liability or damage incurred by such Chargor arising out of the exercise by such Enforcement Party of its rights or powers or any attempt or failure to exercise those rights or powers, except for any expense, loss, liability or damage arising from its gross negligence, fraud or wilful misconduct.

- 12.2.2 No Chargor may take any proceedings against any officer, employee or agent of any Enforcement Party in respect of any claim it might have against such Enforcement Party or in respect of any act or omission of any kind by that officer, employee or agent in relation to this Deed.

- 12.2.3 Any officer, employee or agent of any Enforcement Party may rely on this Clause 12 under the Third Parties Act.

- 12.3 **Effect of possession** - If the Lender or any Receiver enters into possession of the Secured Assets or any of them, this will not oblige either the Lender or the Receiver to account as mortgagee in possession, and if at any time the Lender enters into possession of the Secured Assets or any of them it may at any time at its discretion go out of such possession.

- 12.4 **Chargors' indemnity** - Each Chargor agrees with the Lender to indemnify the Lender and any Receiver or Delegate on demand against any costs, Taxes, losses, liabilities or damage suffered by any of them in respect of (a) the taking, holding, protection or enforcement of the Security created by this Deed, (b) any exercise of the rights, powers, discretions or remedies of, or vested in, any Enforcement Party or any attempt or failure to exercise those rights, powers,

discretions or remedies and (c) anything done or omitted to be done in the exercise or purported exercise of the powers under this Deed or under any appointment duly made under the provisions of this Deed.

13. POWER OF ATTORNEY

- 13.1 Each Chargor Irrevocably and by way of security appoints the Lender and each Receiver and any person nominated for the purpose by the Lender or the Receiver (in writing, under hand, signed by an officer of the Lender or by the Receiver) severally to be the attorney of the Chargor (with full power of substitution and delegation) for the purposes set out in Clause 13.2.
- 13.2 The power of attorney granted in Clause 13.1 allows the Lender, the Receiver or the relevant nominee, in the name of the relevant Chargor, on its behalf, as its act and deed and at its expense to perfect the Security created by such Chargor under this Deed and to execute and deliver (using such Chargor's seal where appropriate) any document or do any act or thing which such Chargor may, ought or has agreed to execute or do under this Deed or which the attorney may in its absolute discretion consider appropriate in connection with the exercise of any of the rights, powers, authorities or discretions of the Lender or the Receiver under, or otherwise for the purposes of, this Deed.
- 13.3 Each Chargor covenants with the Lender to ratify and confirm all acts or things made, done or executed by any attorney exercising or purporting to exercise the powers conferred in accordance with this Clause 13.

14. APPLICATION, VARIATION AND EXTENSION OF STATUTORY PROVISIONS

- 14.1 The covenants set out in sections 2 to 5 of the Law of Property (Miscellaneous Provisions) Act 1994 shall extend to bind a Chargor only if, in any case, the relevant covenant imposes upon such Chargor a burden, liability or obligation that would not otherwise arise under this Deed.
- 14.2 For the purposes only of section 101 of the LPA, (but otherwise subject to the provisions of Clause 8 (*Enforceability*)), the conditions set out in that section, as to when the powers conferred on a mortgagee by that section arise, do not apply and the Secured Obligations become due and the statutory power of sale and other powers of enforcement arise immediately following the execution of this Deed. The Lender and any Receiver may exercise the statutory power of sale conferred by the LPA free from the restrictions imposed by section 103 of the LPA, which shall not apply to this Deed.
- 14.3 The power of sale and the other powers conferred by the LPA or otherwise are extended and varied to authorise the Lender in its absolute discretion to do all or any of the things or exercise all or any of the powers which a Receiver is empowered to do or exercise under this Deed.
- 14.4 The restriction on the consolidation of mortgages in section 93 of the LPA does not apply to this Deed nor to any Security given to the Lender pursuant to this Deed. Section 109(1) of the LPA shall not apply to this Deed. Sections 105, 107(2), 109(6) and 109(8) of the LPA will not apply to the Lender nor to a Receiver appointed under this Deed.
- 14.5 The statutory and other powers of leasing, letting, entering into agreements for leases or lettings and accepting or agreeing to accept surrenders of leases or tenancies shall not be exercisable by any Chargor in relation to the Secured

Assets or any part of them. The restrictions on the powers of the Lender or the Receiver to grant leases or to accept the surrender of leases in sections 99 and 100 of the LPA do not apply to this Deed.

15. OTHER MISCELLANEOUS PROVISIONS

- 15.1 Except where expressly stated to the contrary, the powers, rights and remedies provided in this Deed are in addition to (and not instead of) powers, rights and remedies under law.
- 15.2 If an Enforcement Party fails to exercise any power, right or remedy under this Deed or delays its exercise of any power, right or remedy, this does not mean that it waives that power, right or remedy. If an Enforcement Party exercises, or partly exercises, a power, right or remedy once, this does not mean that it cannot exercise such power right or remedy again, fully or in part.
- 15.3 The Lender may decide when and how to apply any payments and distributions received for its own account under this Deed, and also, as between the Lender and any Chargor, whether and, if so, when, how and to what extent (a) to exercise its rights under this Deed and (b) to exercise any other right it might have in respect of any Chargor (or otherwise) without, in any case, any Chargor having the right to control or restrict the Lender's exercise of this discretion.
- 15.4 No provision of this Deed will interfere with the Lender's right to arrange its affairs as it may in its absolute discretion decide (nor oblige it to disclose any information relating to its affairs), except as expressly stated.
- 15.5 Each Chargor authorises the holder of any prior or subsequent Security to provide to the Lender, and the Lender to receive from such holder, details of the state of account between such holder and the Chargor.
- 15.6 No Chargor shall assign, novate or otherwise deal with its rights or obligations under or interests in this Deed, except with the prior written consent of the Lender.
- 15.7 The Lender may not, at any time, assign, novate and otherwise deal with any rights, interests or obligations under this deed unless the assignment, novation or other dealing is with any person to whom the Lender has assigned, transferred or novated its rights or obligations under the Loan Agreement pursuant to Clause 12.2 of the Loan Agreement.
- 15.8 The Lender may disclose any information about any Chargor, the Secured Assets and/or this Deed to any person to whom it proposes to assign, novate or transfer (or has assigned, novated or transferred) any rights or obligations under or interests in this Deed, or with whom it proposes to enter into (or has entered into) any other dealings in relation to any such rights, obligations or interests and any person to whom the benefit of all such rights has been transferred, subject to such obligations, may enforce this Deed in the same way as if it had been an original party to this Deed.
- 15.9 If, at any time, there has been a release, settlement or discharge of the Chargor's obligations under this Deed and, as a consequence of any insolvency proceedings (or analogous proceedings) or for any other reason, (a) any payment made to any person in respect of any of the Secured Obligations is required to be repaid and/or (b) any such payment or any Security (or other right) held by the Lender in respect of any of the Secured Obligations (whether under this Deed or otherwise) is void, is set aside or is otherwise affected, then

the Chargor's obligations under this Deed shall continue in effect as if there had been no such release, settlement or discharge and as if the relevant payment had not been made and/or (as applicable) the relevant Security (or other right) had not been held by the Lender; and accordingly (but without limiting the Lender's other rights under this Deed) the Lender shall be entitled to recover from the Chargor the value which the Lender has placed upon such Security or the amount of any such payment as if such payment, settlement or discharge had not occurred.

- 15.10 If the Lender, acting reasonably, considers that any amount paid by the Chargor in respect of the Secured Obligations is likely to be avoided or ordered to be refunded or reduced for the reasons set out in Clause 15.9, then for the purposes of this Deed such amount shall not be considered to have been irrevocably paid.
- 15.11 To the extent that any Chargor may be entitled in any jurisdiction to claim for itself or its assets immunity from suit, execution, attachment (whether in aid of execution, before judgment or otherwise) or other legal process of any kind wherever it might originate, or to the extent that in any such jurisdiction there may be attributed to such Chargor or its assets such immunity (whether or not claimed), it irrevocably agrees not to claim and irrevocably waives such immunity to the fullest extent permitted by the laws of such jurisdiction.
- 15.12 The perpetuity period applicable to the trusts created by this Deed is 80 years.
- 15.13 On the Discharge Date (but subject to Clauses 15.9 and 15.10) and in accordance with Clause 5.5 (*Release*) of the Loan Agreement the Lender shall, at the request and cost of each Chargor, execute and do all deeds, acts and things as may be necessary to release the Secured Assets from the Security created by this Deed (including the assignment of any Secured Asset assigned to the Lender under this Deed back to the relevant Chargor).
- 15.14 Each Chargor (other than the Borrower) by its execution of this Deed irrevocably appoints the Borrower to act on its behalf as its agent in relation to any Security Document and irrevocably authorises:
- 15.14.1 the Borrower on behalf of such Chargor to supply to the Lender all information concerning such Chargor contemplated by this Deed and to complete and give all notices, requests and instructions, any Security Document, to make such agreements and to effect the relevant amendments, supplements and variations capable of being given, made or effected by such Chargor, notwithstanding that they may affect such Chargor, without (in any case) further reference to or the consent of such Chargor; and
- 15.14.2 the Lender to give or make to the Borrower (and not to such Chargor) any notice, demand or other communication concerning such Chargor pursuant to the Security Documents;
- and in each case such Chargor shall be bound as though such Chargor itself had given the information, notices, requests and instructions or executed or made such Security Documents or such agreements, or effected the amendments, supplements or variations, or received the relevant notice, demand or other communication.
- 15.15 Every act, omission, agreement, undertaking, settlement, waiver, amendment, supplement, variation, notice or other communication given or made by the

Borrower or given to the Borrower under or in connection with any Security Document on behalf of another Chargor (whether or not known to any other Chargor and whether occurring before or after such other Chargor became a Chargor under this Deed) shall be binding for all purposes on that Chargor as if that Chargor had expressly made, given or concurred with it. In the event of any conflict between any notices or other communications of the Borrower and any other Chargor, those of the Borrower shall prevail.

- 15.16 The obligations of each Chargor under Clause 2 (*Covenant to pay*) are unconditional and neither the provisions of this Deed nor the obligations of any Chargor will be affected by the occurrence or existence at any time of any of the following events or circumstances or by any person's knowledge or lack of knowledge as to any such matter: (a) any person's insolvency or lack of capacity, power or authority; (b) any unenforceability, illegality or invalidity of any obligation of any person; (c) any change in the constitution, membership, ownership, legal form, name or status of any person; (d) the making, amendment or termination of any other deed or agreement; (e) any amendment, novation, re-statement or substitution of, or any supplement to, any other deed or agreement; (f) any increase or reduction in the amount of any person's indebtedness or any alteration of any term, condition or arrangement in respect of any person's indebtedness; (g) any person taking or omitting to take any steps in relation to (i) any Chargor or any other person, (ii) any of the Secured Obligations, (iii) any Security, guarantee or other financial support in respect of any indebtedness and/or (iv) any other asset; or (h) anything else which, although it could affect the liability of a surety, would not affect the liability of a principal debtor.
- 15.17 Any obligation on the Borrower to do or refrain from doing any act shall be a reference to each partner of the Borrower (being the CEMEX Partner and GFA) procuring that the Borrower does or refrains from doing such act.
- 15.18 **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 this Deed are:
- 15.18.1 In the case of each of the Chargors and the Lender, those given for it in the signature pages of this Deed;
- 15.18.2 In the case of each Receiver and each Delegate, those notified in writing to the Lender by such Receiver or Delegate as soon as practicable after its respective appointment,
- or any substitute address, fax number or department or officer as the relevant person may notify to the Lender (or as the Lender may notify to the other Parties, if a change is made by the Lender) by not less than 5 Business Days' notice.
- 15.19 **Delivery** -
- 15.19.1 Any communication or document made or delivered by one person to another under or in connection with the Security Documents will only be effective (a) if by way of fax, when received in legible form, or (b) if by way of letter, when it has been left at the relevant address or 5 Business Days after being deposited in the post, postage prepaid, in an envelope addressed to it at that address, and, in any case, if a particular department or officer is specified as part of its address

details provided under Clause 15.18 (*Addresses*), if addressed to that department or officer.

15.19.2 Any communication or document to be made or delivered to the Lender will be effective only when actually received by the Lender and then only if it is expressly marked for the attention of the department or officer identified in accordance with Clause 15.18 (*Addresses*).

15.19.3 Any communication or document made or delivered to the Borrower in accordance with this Clause 15.19 will be deemed to have been made or delivered to each of the Chargors.

15.20 **Notification of address and fax number** - Promptly upon receipt of notification of an address and fax number or change of address or fax number pursuant to Clause 15.18 (*Addresses*) or changing its own address or fax number, the Lender shall notify the Chargors.

15.21 **Communications in writing** - Any communication to be made under or in connection with the Security Documents shall be made in writing and, unless otherwise stated, may be made by fax or letter.

15.22 **English language** -

15.22.1 Any notice given under or in connection with any Security Document must be in English.

15.22.2 All other documents provided under or in connection with any Security Document must be in English or, if not in English, and if so required by the Lender, 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.

16. **THIS DEED**

16.1 The Chargor has entered into this Deed in consideration of the Lender agreeing to provide (or to continue to provide) finance facilities to it on the terms agreed in the Finance Documents.

16.2 If the Parties execute this Deed in separate counterparts, this Deed will take effect as if they had all executed a single copy.

16.3 This Deed is intended to be a deed even if either Party's execution is not in accordance with the formalities required for the execution of deeds.

16.4 If there is any conflict between the provisions of this Deed and the provisions of any other Finance Document, the provisions of the Loan Agreement shall prevail.

16.5 If, at any time, any provision of this Deed is or is found to have been illegal, invalid or unenforceable in any respect under the law of any jurisdiction, this does not affect the legality, validity or enforceability of the other provisions of this Deed, nor the legality, validity or enforceability of the affected provision under the law of any other jurisdiction.

16.6 If either Party is not bound by this Deed (or any part of it) for any reason, this does not affect the obligations of the other Party under this Deed (or under the relevant part).

- 16.7 This Deed is in addition to, and does not operate so as in any way to prejudice or affect, or be prejudiced or affected by, any other Security or guarantee which the Lender may now or at any time after the date of this Deed hold for or in respect of the Secured Obligations.
- 16.8 On each occasion that the Chargor submits this Deed or any counterpart to The Land Registry, the Chargor shall also submit a certified copy of this Deed and request the return of the original and upon the return of the original it shall deliver such original to the Lender.
- 16.9 This Deed and every counterpart is the property of the Lender.

17. **GOVERNING LAW**

This Deed and any non-contractual obligations arising out of or in connection with it are governed by English law.

18. **JURISDICTION**

18.1 **Jurisdiction of English courts**

The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute regarding the existence, validity or termination of this Deed) (a "**Dispute**"). The Parties agree that the courts of England are the most appropriate and convenient courts to settle any Dispute and accordingly no Party will argue to the contrary. This Clause 18.1 is for the benefit of the Enforcement Parties only. As a result, no Enforcement Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, each Enforcement Party may take concurrent proceedings in any number of jurisdictions.

This Deed is made and delivered as a deed on the date given on page 1.

SCHEDULE 1

Details of Property

1. The freehold land being land on the North side of Cuthedge Lane, Coggeshall registered at the Land Registry under title number EX465219;
2. The freehold land being the site of an access road on the South side of Stone Street, Coggeshall registered at the Land Registry under title number EX367772;
3. The freehold land being land on the North and South sides of Church Road, Bradwell, Braintree registered under title number EX622909.

SCHEDULE 2

Notices

Notice to insurer

(For attachment by way of endorsement to the Insurances)

To: *[name and address of insurer]*

Dated: *[date]*

Dear Sirs,

Re: The policies of insurance referred to in the Schedule below (the "Policies")

We, *[Chargor]* (the "**Chargor**"), give you notice that, by a security agreement dated *[date]* (the "**Security Agreement**") and made by [(amongst others)] ourselves in favour of *[Lender]* (the "**Lender**"), we have [charged by way of fixed charge] [and] [assigned] to the Lender, as first priority [chargee] [and] [assignee], all of the Policies as are capable of being [charged] [and/or] [assigned] by law.

The assets [charged] [and] [assigned] include all our right, title and interest in and to the Policies (including, but not limited to, the benefit of all sums assured by the Policies and all bonuses, profits, returns of premium and other benefits of whatever nature arising by virtue of our ownership of the Policies and all interest on any of the secured money).

We irrevocably and unconditionally authorise and request you:

1. to note the Lender's interest as first [chargee][,] [assignee] and sole loss payee of the proceeds of such Policies; and
2. to give the acknowledgement, undertakings and agreements required by the Lender and to act on the instructions of the Lender without any further reference to or authorisation from us.

Please sign the enclosed copy of this notice and deliver it to the Lender at *[address]* (with a further copy to us).

This notice is governed by English law.

Yours faithfully,

For and on behalf of *[Chargor]*:

By:.....

THE SCHEDULE

The Policies*

***To be completed by the Chargor and approved by the Lender and to include all relevant policies with the named insurer**

	Policy number	Name and address of Insurer	Name and address of broker	Brief description of assets insured	Date of expiry of policy#
1.	[number]				
2.	[number]				
3.	[number]				
4.	[number]				
5.	[number]				

#Not required if policies are annually renewable
Dated [date]

[to be included on copy notice]

To: [name and address of Lender]

Copy to:[name and address of Chargor]

We [name of insurer] acknowledge receipt of the above notice. We:

1. agree to note your interest as first [chargee] [assignee] and sole loss payee of the proceeds of such Policies;
2. undertake to disclose to you, promptly following request, without any reference to or further authority from the Chargor, such information relating to the Policies as you may at any time reasonably request;
3. confirm that we have not received notice of any previous assignment or charge by the Chargor of or over any of its rights, title, interests or benefits referred to in the notice[.]; and]
4. [agree promptly to notify you of our intention to cancel or decline renewal of any of the Policies; and]
5. [agree promptly to notify you of any request made, or notification given, by the Chargor to us, to cancel the Policies, or to allow the Policies to lapse.]

Terms defined in the notice apply to this endorsement, which is governed by English law.

Signed:.....

for and on behalf of [name of insurer]

Dated: [date]

SCHEDULE 3

Property undertakings

Part 1

Definitions and interpretation applicable to this Schedule 3

1. Expressly defined terms

In this Schedule, the following words and phrases have the specified meanings.

"Granted Lease" means any lease, agreement for lease, tenancy, contractual licence or other document which gives a person who is not the Borrower the right to occupy, use or enjoy the Property.

"Planning Acts" means the Town and Country Planning Acts 1990 and the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Hazardous Substances) Act 1990, the Planning (Consequential Provisions) Act 1990, the Planning and Compensation Act 1991 and any order, regulations or permission made or granted under or by virtue of such Acts or any of them.

"Relevant Lease" means any lease, agreement for lease, tenancy, contractual licence or other document which gives the Borrower the right to occupy, use or enjoy the Property.

2. Construction

In this Schedule, unless a contrary indication appears:

- 2.1 reference in any Part of this Schedule to matters, events or circumstances having an Adverse Property Effect are to be construed as if such matters, events or circumstances were taken together with all other matters, events or circumstances arising under any paragraph of such Part of this Schedule which would, on such construction, in aggregate have an Adverse Property Effect; and
- 2.2 a reference to the **"Property"** is a reference to the Property to which Clause 7.9 applies.

Part 2

Property undertakings

3. NO CHANGES TO THE PROPERTY

It will not, without the prior written consent of the Lender (such consent not to be unreasonably withheld or delayed):

- 3.1 in relation to the Property, make any application for the grant of planning permission, within the meaning of the Planning Acts (provided always that the Lender shall consent to any application for the grant of planning permission which the Borrower makes in compliance with (or is required to make under) the terms of the Overarching Agreement);
- 3.2 make any additions or structural or other material alteration to the Property;
- 3.3 create or permit to arise any overriding interest, easement or right over the Property;
- 3.4 enter into negotiations with any competent agency of local or national government with a view to the compulsory acquisition of the Property nor consent to such acquisition;
- 3.5 in relation to the Property, enter into any agreement under section 106 of the Town and Country Planning Act 1990, section 33 of the Local Government (Miscellaneous Provisions) Act 1982 or any other agreement with any local government, planning or regulatory authority to build roads or carry out other works;
- 3.6 change the use of the Property or do or suffer to be done anything in relation to the Property which constitutes development (as that expression is defined in the Town and Country Planning Act 1990).

4. COMPLY WITH COVENANTS

It will observe and perform all material covenants, agreements, restrictions, stipulations and conditions from time to time affecting its interest in the Property or the mode of user or the enjoyment of it and will promptly pay all present and future tax, rates, assessments and outgoings of any kind imposed upon or payable in respect of the Property, or by the owner or occupier of the Property.

5. COMPLY WITH AUTHORISATIONS

It will observe and comply with the terms of all authorisations, consents, approvals, resolutions, licences, exemptions, filings, notarisations or registrations relating to the Property.

6. REPAIR

If, following any inspection of the Property by the Lender or any of its professional advisors, the Lender considers that the Property is suffering any defect or want of repair the Lender may serve a notice specifying the relevant defect or want of repair, and the relevant Chargor shall without delay promptly remedy such defect or want of repair.

7. DISPOSALS OF FIXTURES

It will not, otherwise than in the ordinary course of maintenance or replacement or as permitted under the Loan Agreement, sever or dispose of any Fixtures which are now, or which at any time after the date of this Deed may be, affixed to the Property.

8. GRANTED LEASES

- 8.1 It will not grant any Granted Lease or otherwise part with or share possession of the Property (except where the prior written consent of the Lender has been obtained).

9. INSURANCE

Save in respect of any leasehold property which is insured by the relevant landlord pursuant to an obligation arising under a Relevant Lease, it will insure and keep insured the Property with a reputable independent insurance company or underwriter previously approved by the Lender in writing:

- 9.1 on the basis that the relevant policies of insurance contain an endorsement (in form and substance satisfactory to the Lender) naming the Lender as sole loss payee in respect of all claims arising under such policies;
- 9.2 against such risks and contingencies as the Lender from time to time reasonably requires;
- 9.3 in a value equal to the full cost of reinstatement from time to time including proper provision for cost inflation over any period that might be required for planning and negotiation and the reconstruction period plus the cost of demolition and debris removal and architects', surveyors' and all other professional fees and the cost of complying with local authority and other statutory requirements; and
- 9.4 otherwise in such form and upon such terms as the Lender agrees (such agreement not to be unreasonably withheld or delayed).

10. EXEMPT INFORMATION DOCUMENT

- 10.1 It shall, at its own expense, do whatever the Lender may reasonably require in connection with (a) any application by the Lender to have this Deed designated an exempt information document under Land Registration Rules 2003 rule 136 and (b) any person's application under Land Registration Rules 2003 rule 137 for disclosure of this Deed following its designation as an exempt information document.

- 10.2 It shall notify the Lender in writing:

- 10.2.1 before making any application to have this Deed designated an exempt information document under Land Registration Rules 2003 rule 136;
- 10.2.2 as soon as it receives notice of any person's application under Land Registration Rules 2003 rule 137 for disclosure of this Deed following its designation as an exempt information document; and
- 10.2.3 before making any application under Land Registration Rules 2003 rule 138 for removal of any such designation.

SCHEDULE 4

Receiver's specific powers

The Receiver will have full power and authority:

11. to enter upon, and to take possession of, the Secured Assets;
12. to collect and get in all rents, fees, charges or other income of the Secured Assets;
13. generally to manage the Secured Assets and to manage or carry on, reconstruct, amalgamate, diversify or concur in carrying on the business of the relevant Chargor or any part of it as he may think fit;
14. without restriction, to sell, charge, grant, vary the terms or accept surrenders of, leases or tenancies of, licences to occupy, or options or franchises over or otherwise deal with and dispose of the Secured Assets or any property acquired in exercise of its powers under this Deed;
15. to purchase or acquire any land and purchase, acquire or grant any interest in or right over land;
16. to take a lease or tenancy of any property required or convenient for the business of the relevant Chargor or the exercise of the Receiver's powers under this Deed;
17. to exercise on behalf of the relevant Chargor and without the consent of or notice to such Chargor all the powers conferred on a landlord or a tenant by any legislation from time to time in force in any relevant jurisdiction relating to leasehold property, landlord and tenant, rents, housing or agriculture in respect of the Property;
18. for the purpose of exercising any of the rights, powers, authorities and discretions conferred on the Receiver by or pursuant to this Deed and/or for defraying any costs, losses or liabilities which may be incurred by him in their exercise or for any other purpose, to raise or borrow moneys from the Lender or others or incur any other liability on such terms, whether secured or unsecured, as he may think fit, and whether to rank in priority to this Deed or not;
19. to appoint and discharge employees, officers, consultants, advisers, managers, agents, solicitors, accountants or other professionally qualified persons, workmen and others for any of the purposes of this Deed or to guard or protect the Secured Assets upon such terms as to remuneration or otherwise as he may think fit and to discharge any such persons appointed by the relevant Chargor prior to his appointment;
20. in the name of the relevant Chargor, to bring, prosecute, enforce, defend and discontinue all such actions, suits and proceedings, in relation to the Chargor, the business of such Chargor or the Secured Assets as in any case he thinks fit;
21. to settle, adjust, refer to arbitration or expert determination, compromise and arrange any claims, accounts, disputes, questions and demands with or by any

person or body who is or claims to be a creditor of the relevant Chargor or relating in any way to the Secured Assets;

22. to give valid receipts for all moneys and execute all assurances and things which may be proper or desirable for realising the Secured Assets;
23. to obtain Authorisations for and to carry out on the Property any new works or complete any unfinished works of development, building, reconstruction, maintenance, repair, renewal, improvement, furnishing or equipment;
24. to enter into, vary, cancel or waive any of the provisions of any contracts which he shall in any case think expedient in the interests of the relevant Chargor or the Lender;
25. to purchase materials, tools, equipment, goods or supplies on such terms and at such price as the Receiver in the Receiver's absolute determination thinks fit;
26. to insure the Secured Assets, any assets acquired by the Receiver in exercise of his powers, and any business or works, and effect indemnity insurance or other similar insurance, in every case in such amounts, against such risks and with such offices as the Receiver thinks fit, and obtain bonds and give guarantees and Security to any bondsmen;
27. to remove, store, sell or otherwise deal with any chattels located at the Property;
28. to promote or establish any company or to acquire shares in any company (whether as a Subsidiary of the relevant Chargor or otherwise) to facilitate the exercise of his powers under this Deed, to transfer to any such company all or any of the Secured Assets or other assets acquired by the Receiver in exercise of his powers and to exercise or cause to be exercised all voting and other rights attaching to, and to charge, sell or otherwise transfer any shares in any such company;
29. to make, or require the directors of the relevant Chargor to make, calls conditionally or unconditionally on the members of such Chargor in respect of uncalled capital; and take action to enforce payment of unpaid calls;
30. to carry into effect and complete any transaction;
31. to redeem any prior Security (or procure the transfer of such Security to an Enforcement Party) and settle and pass the accounts of the person entitled to the prior Security so that any accounts so settled and passed shall (subject to any manifest error) be conclusive and binding on the relevant Chargor and the money so paid shall be deemed to be an expense properly incurred by the Receiver;
32. either in the name of the relevant Chargor or in the name of the Receiver to execute documents and do all other acts or things which the Receiver may consider to be incidental or conducive to any of the Receiver's powers or to the realisation or use of the Secured Assets.

EXECUTION

The Chargors

Executed as a deed by **CEMEX UK OPERATIONS LIMITED** in its capacity as partner of **BLACKWATER AGGREGATES**, acting by a director

Communications to be delivered to:

Address:

Fax number:

Attention:

Director

In the presence of:

Witness Signature:

Witness Name:

Witness Address:

Executed as a deed by **GENT FAIRHEAD AGGREGATES LIMITED** in its capacity as partner of **BLACKWATER AGGREGATES**, acting by a director

Communications to be delivered to:


Address:

Fax number:

Attention:

Director

In the presence of: *STEPHEN HORNCASTLE*

Witness Signature: 

Witness Name: *STEPHEN HORNCASTLE*

Witness Address: *BLP LLC, Adelaide House
London Bridge, LONDON EC4R 9HA*

Executed as a deed by **CEMEX UK OPERATIONS LIMITED**, in its own capacity acting by a director

Communications to be delivered to:

Address:

Fax number:

Attention:

Director

In the presence of:

Witness Signature:

Witness Name:

Witness Address:

Executed as a deed by **GENT FAIRHEAD
AGGREGATES LIMITED**, in its own capacity
acting by a director

[Redacted Signature]

Director

In the presence of:

Witness Signature:

[Redacted Signature]

Witness Name: *STEPHEN HORNBY*

Witness Address: *21P L1B, Adelaide House
London Bridge, London EC4R 9HA*

The Lender

Executed as a deed by **CEMEX UK
OPERATIONS LIMITED** as Lender,
acting by a director

Director

In the presence of:

Witness Signature:

Witness Name:

Witness Address:

Communications to be delivered to:

Address:

Fax number:

Attention:

Communications to be delivered to:

Address:

Fax number:

Attention:



Dated

7th April

2014

- (1) CEMEX UK Operations Limited and Gent Fairhead Aggregates Limited in partnership under the name of Blackwater Aggregates
- (2) CEMEX UK Operations Limited
- (3) Gent Fairhead Aggregates Limited
- (4) CEMEX UK Operations Limited

Security Agreement

Eversheds LLP
Eversheds House
70 Great Bridgewater Street
Manchester
M1 5ES

Tel 0845 497 9797
Fax 0845 497 8888
Int +44 161 831 8000
DX 14344 Manchester
www.eversheds.com

man_002\5040159\5
25 March 2014 salamt

I certify this document as a true copy of the original. Save for material redacted pursuant to S. 859A Companies Act 2006 Date: 10-4-14 on behalf of Eversheds LLP <i>[Signature]</i>

CONTENTS

Clause	Page
1 INTERPRETATION	1
2 COVENANT TO PAY	5
3 SECURITY	6
4 FURTHER ASSURANCE	7
5 NEGATIVE PLEDGE AND DISPOSAL RESTRICTIONS	7
6 REPRESENTATIONS AND WARRANTIES	8
7 UNDERTAKINGS	8
8 ENFORCEABILITY	11
9 ENFORCEMENT OF SECURITY	11
10 PAYMENTS, ACCOUNTS AND APPLICATION OF PROCEEDS	12
11 PROTECTION OF THIRD PARTIES	14
12 PROTECTION OF LENDER	14
13 POWER OF ATTORNEY	15
14 APPLICATION, VARIATION AND EXTENSION OF STATUTORY PROVISIONS	15
15 OTHER MISCELLANEOUS PROVISIONS	16
16 THIS DEED	19
17 GOVERNING LAW	20
18 JURISDICTION	20
SCHEDULE 1 Details of Property	21
SCHEDULE 2 Notices	22
SCHEDULE 3 Property undertakings	24
SCHEDULE 4 Receiver's specific powers	27

This Deed is made on

7th April 2014

between:

- (1) **CEMEX UK Operations Limited**, a company incorporated in England and Wales with company number 00658390 (the "**CEMEX Partner**") and **Gent Fairhead Aggregates Limited**, a company incorporated in England and Wales with company number 02546446 ("**GFA**"), carrying on a business in partnership at Bradwell Quarry, Church Road, Bradwell, Essex, CM77 8EP under the name of **Blackwater Aggregates**, (the "**Borrower**");
- (2) **CEMEX UK Operations Limited**, a company incorporated in England and Wales with company number 00658390 (the "**CEMEX Partner**");
- (3) **Gent Fairhead Aggregates Limited**, a company incorporated in England and Wales with company number 02546446 ("**GFA**"); and
- (4) **CEMEX UK Operations Limited**, a company incorporated in England and Wales with company number 00658390, (the "**Lender**").

1. INTERPRETATION

1.1 Expressly defined terms

In this Deed, the following words and phrases have the specified meanings.

"**Associated Rights**" means, in relation to any Secured Asset, all proceeds of sale of such asset, all rights, powers, benefits, covenants, warranties, guarantees or Security given or implied in respect of such asset, all rights under any agreement for sale, agreement for lease or licence of or in respect of such asset, and any monies and proceeds paid or payable in respect of such asset.

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

"**Business Day**" means a day, other than a Saturday or a Sunday, on which banks are open for general business in London in the principal financial centre in the jurisdiction in which the relevant communication is delivered.

"**Chargors**" means the Borrower, the CEMEX Partner and GFA.

"**COMI**" means centre of main interests (as that term is used in Article 3(1) of the EC Regulation).

"**Companies Act**" means the Companies Act 1985.

"**Default Rate**" means the rate determined in accordance with the provisions of clause 4.2 of the Loan Agreement.

"**Delegate**" means any delegate, agent, attorney or trustee appointed by the Lender.

"**Derivative Payment**" means, in relation to a Secured Asset, any damages, compensation, remuneration, profit, bonus, royalties, fee, rent, income or other benefit which the relevant Chargor may derive from or be awarded or entitled to in respect of such asset.

"**Discharge Date**" means the date with effect from which the Lender confirms to the Borrower that all the Secured Obligations have been unconditionally and

irrevocably paid and discharged in full and all relevant commitments of the Lender cancelled.

"EC Regulation" means The Council of the European Union Regulation No. 1346/2000 on Insolvency Proceedings.

"Enforcement Party" means any of the Lender, a Receiver or a Delegate.

"Establishment " means, in relation to any Chargor, an establishment as that term is defined in relation to a debtor in Article 2 (h) of the EC Regulation.

"Event of Default" means the occurrence of any of the events or circumstances defined in the Loan Agreement as an **"Event of Default"** but shall also include any breach by the Chargor of, or non-compliance by the Chargor with, the provisions of this Deed or of any other Finance Document.

"Finance Documents" has the meaning set out in the Loan Agreement and **"Finance Document"** shall mean any one of them.

"Fixtures" means any fixtures (but excluding landlord's fixtures), fittings, fixed plant or machinery from time to time situated on or forming part of any Property.

"Insolvency Act" means the Insolvency Act 1986.

"Insurances" means all contracts or policies of insurance of whatever nature relating to the Secured Assets which, from time to time, are taken out or maintained by or on behalf of any Chargor or (to the extent of its relevant interest) in which any Chargor has an interest.

"Insurance Proceeds" means the proceeds of any claim in relation to any Insurance received by any Chargor (after deduction of (a) any reasonable expenses incurred in relation to the relevant claim and payable by such Chargor and (b) amounts paid to meet third party claims), together with the benefit of all bonuses, profits, returns of premium and other benefits of whatever nature, arising in any case by virtue of any Chargor's ownership of any Insurances and all interest in any of the foregoing.

"Loan Agreement" means a loan agreement made on or around the date hereof between the Chargors and the Lender.

"LPA" means the Law of Property Act 1925.

"Option Agreements" has the meaning given to that term in the Loan Agreement.

"Party" means a party to this Deed.

"Permitted Security" means the Security referred to in Clause 7.3.5.3 of the Loan Agreement.

"Plant" means the sand and gravel processing plant located within the demise of the lease referred to in paragraph (d) of the definition of Lender Leases in the Loan Agreement and shall include any additions, modifications and/or equipment ancillary to it.

"Property" means the property identified in Schedule 2 (Details of Property) together with any buildings, fixtures, fittings, fixed plant or machinery owned by the Borrower from time to time situated or forming part of that property (but for the avoidance of doubt the Security created by this agreement shall be subject to any easement or any other rights or interests in relation to the Property granted on or prior to the date of this Deed).

"Receiver" means any one or more receivers and managers or (if the Lender so specifies in the relevant appointment) receivers appointed by the Lender pursuant to this Deed in respect of any Chargor or in respect of the Secured Assets of any Chargor.

"Secured Assets" means the assets the subject of any Security created by this Deed.

"Secured Obligations" means all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or in any other capacity whatsoever) of each Chargor to the Lender under any Finance Document, whatever their nature or basis, in any currency or currencies, and however they are described, together with all costs, charges and expenses incurred by the Lender in connection with the protection, preservation or enforcement of its rights under the Finance Documents or any other document evidencing or securing any such liabilities.

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

"Security Agreements" has the meaning set out in the Loan Agreement, together with any other agreement, instrument, deed or document entered into by any Chargor creating or expressed to create any Security over all or any part of its assets in respect of the Secured Obligations.

"Security Period" means the period beginning on the date of this Deed and ending on the Discharge Date.

"Subsidiary" means a subsidiary undertaking within the meaning of section 1162 of the Companies Act 2006.

"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).

"Third Parties Act" means the Contracts (Rights of Third Parties) Act 1999.

1.2 **Definitions contained in Loan Agreement**

Unless a contrary indication appears each term used in this Deed which is defined in the Loan Agreement shall have the same meaning as in the Loan Agreement.

1.3 **Construction**

In this Deed:

1.3.1 unless a contrary indication appears, a reference to:

- 1.3.1.1 "assets" includes present and future properties, revenues, rights and interests of every kind and reference to an "asset" includes any part or parts of such asset;
- 1.3.1.2 "guarantee" includes any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to pay any deposit on behalf of, or make an investment in, or loan to, any person or to purchase assets of any person, where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;
- 1.3.1.3 "indebtedness" includes any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- 1.3.1.4 "person" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);
- 1.3.1.5 "regulation" includes any regulation, rule, official directive, request or guideline (in each case, whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
- 1.3.1.6 "set-off" includes analogous rights and obligations in jurisdictions other than England and Wales; and
- 1.3.1.7 the "Borrower", the "Lender" or any "Chargor" or "Party", shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
- 1.3.2 where something (or a list of things) is introduced by the word "including", or by the phrase "in particular", or is followed by the phrase "or otherwise", the intention is to state an example (or examples) and not to be exhaustive (and the same applies when other similar words or phrases are used);
- 1.3.3 unless this Deed expressly states otherwise or the context requires otherwise, (a) each reference in this Deed to any provision of any statute or of any subordinate legislation means, at any time, the relevant provision as in force at that time (even if it has been amended or re-enacted since the date of this Deed) and (b) each reference in this Deed to any provision of any statute at any time includes any subordinate legislation made pursuant to or in respect of such provisions as in force at such time (whether made before or after the date of this Deed and whether amended or re-enacted since the date of this Deed);
- 1.3.4 each reference to this Deed (or to any other agreement, instrument or deed) means, at any time, this Deed (or as applicable such other agreement, instrument or deed) as amended, novated, supplemented,

extended, or restated, at that time, provided that the relevant amendment, novation, supplement, extension, substitution or restatement does not breach any term of this Deed or of any of the Finance Documents;

1.3.5 the index and Clause and Schedule headings are for ease of reference only;

1.3.6 an Event of Default is "**continuing**" if it has not been waived in writing by the Lender; and

1.3.7 references to any Security "**created by this Deed**" are to be deemed to include such Security created, constituted, given, made or extended by, under or pursuant to this Deed.

1.4 **Third Party Rights**

No person has any right under the Third Parties Act to enforce or enjoy the benefit of any term of this Deed, other than an Enforcement Party, which may do so, or any other person, to the extent that this Deed or any other of the Finance Documents expressly provides for it to do so. No consent of any person who is not a Party is required to rescind or vary this Deed at any time. This Clause 1.4 does not affect any right or remedy of any person which exists, or is available, otherwise than pursuant to the Third Parties Act.

1.5 **Incorporation of other terms**

The terms of the other Finance Documents under which the Secured Obligations arise and of any side letters between any Chargor and the Lender relating to the Secured Obligations are incorporated into this Deed to the extent required for any purported disposition of the Secured Assets contained in this Deed to be a valid disposition in accordance with section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989.

2. **COVENANT TO PAY**

2.1 **Covenant**

Each Chargor, as primary obligor and not merely as surety, covenants with the Lender that it will pay, discharge and perform the Secured Obligations on demand and in the manner provided in the Finance Documents.

2.2 **Default interest**

Any amount which is not paid under this Deed on the due date shall bear interest (both before and after judgment) payable on demand at the Default Rate from time to time from the due date until the date of actual unconditional and irrevocable payment and discharge of such amount in full, save to the extent that interest at such rate on such amount and for such period is charged pursuant to the Finance Documents relevant to that liability and itself constitutes part of the Secured Obligations.

3. SECURITY

3.1 Fixed charges

Each Chargor, as a continuing security for the payment, discharge and performance of the Secured Obligations, charges in favour of the Lender its right, title and interest in the following assets:

- 3.1.1 **First legal mortgage on specified Property** - by way of first legal mortgage, the Property and all Associated Rights;
- 3.1.2 **First fixed charges in respect of the Plant** - by way of first fixed charge, (a) the Plant, and (b) all Associated rights in relation to the Plant;
- 3.1.3 **First fixed charges in respect of Insurances** - to the extent that the Insurances and/or the Insurance Proceeds are incapable for any reason of being effectively assigned pursuant to Clause 3.2.1 but are capable of being effectively charged, by way of first fixed charge, the Insurances owned by or written in favour of such Chargor and all Insurance Proceeds either now or in the future held by or payable to such Chargor or in which such Chargor otherwise has an interest (to the extent of such interest);
- 3.1.4 **First Fixed Charge on Derivative Payments** - to the extent that any Derivative Payments are incapable for any reason of being effectively assigned pursuant to Clause 3.2.2 but are capable of being effectively charged by way of first fixed charge the right to recover and receive all Derivative Payments.

3.2 Assignments by way of Security

As further continuing security for the payment of the Secured Obligations, each Chargor assigns absolutely to the Lender all (if any) its right, title and interest in and to the following assets:

- 3.2.1 **Insurances and Insurance Proceeds** - the Insurances and the benefit of all Insurance Proceeds;
- 3.2.2 **Associated Rights and Derivative Payments** - any Associated Rights or Derivative Payment which are not the subject of a valid fixed charge pursuant to Clause 3.1 (*Fixed charges*) of this Deed.

3.3 Notice of charge or assignment

- 3.3.1 Each Chargor shall, promptly upon receiving a request to that effect from the Lender, give notice of each charge or assignment of all (if any) its right, title and interest in and to the Insurances and Insurance Proceeds, by sending a notice in the form of Part 1 of Schedule 2 (*Notices*) (with such amendments as the Lender may agree and/or require) duly completed to each of the other parties to the Insurances.
- 3.3.2 Each Chargor shall use its reasonable endeavours to procure that, within 14 days of the date of its receiving a request under Clause 3.3.1 to give notice to the relevant other party, each such other party delivers an acknowledgement to the Lender substantially in the form of

the acknowledgement of notice endorsed on a copy of the relevant notice as set out in Schedule 3 (*Notices*).

3.4 Continuing security

The provisions of this Deed will apply at all times (a) regardless of the date on which any of the Secured Obligations was incurred and (b) in respect of the full amount of the Secured Obligations at the relevant time even if, at some other time, the amount of the Secured Obligations has been less than the amount at the relevant time or there has been no part of the Secured Obligations outstanding.

3.5 Miscellaneous

- 3.5.1 All the Security created by this Deed by each Chargor is made with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994.
- 3.5.2 Clauses 3.1.2 to 3.1.4 inclusive shall be read and construed as if each asset described, and each asset comprised within any category of asset described, in each such Clause were expressed, separately and specifically, to have been made subject to a first fixed charge; and the validity and effectiveness of each such fixed charge will not be prejudiced by any other such first fixed charge being found not to be fully valid or effective as such.
- 3.5.3 The fact that no, or incomplete, details of any particular Secured Assets are included or inserted in any relevant Schedule shall not affect the validity or enforceability of the charges created by this Deed.

4. FURTHER ASSURANCE

The Borrower shall (and the Borrower shall procure that each other Chargor will):

- 4.1 promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Lender may reasonably specify (and in such form as the Lender may reasonably require) in favour of the Lender or its nominee(s) (a) to perfect the Security created or intended to be created or evidenced by this Deed or for the exercise of any rights, powers and remedies of the Lender provided by or pursuant to this Deed; and/or (b) to facilitate the realisation of the assets which are, or are intended to be, the subject of this Deed; and
- 4.2 take all such action as is available to it (including making all filings and registrations and the payment of all fees and taxes) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Lender by or pursuant to this Deed.

5. NEGATIVE PLEDGE AND DISPOSAL RESTRICTIONS

5.1 Negative pledge

During the Security Period, no Chargor shall:

- 5.1.1 create, extend or permit to subsist any Security over any of the Secured Assets; nor

- 5.1.2 (a) execute, or agree to grant, vary, or accept any surrender of, any conveyance, transfer, lease, or assignment, or any other right of occupation or use, of the Secured Assets, (b) create any legal or equitable estate, or other interest, in, over, or relating to, the Secured Assets, or (c) (except as permitted pursuant to the Loan Agreement) sell, transfer or otherwise dispose of any of the Secured Assets.

5.2 **Exceptions**

Clause 5.1 (*Negative pledge*) does not apply to (a) the Security created or required to be created pursuant to this Deed, nor (b) the Permitted Security, nor (c) any Security, arrangement or transaction to which the Lender has given its written consent.

6. **REPRESENTATIONS AND WARRANTIES**

Each Chargor represents and warrants to the Lender on the date of this Deed in the terms of the representations and warranties set out in Clause 7 of the Loan agreement which shall be deemed to be repeated on each Payment Date which falls during the Security Period.

7. **UNDERTAKINGS**

Throughout the Security Period, each Chargor undertakes to the Lender in the terms of the following provisions of this Clause 7.

- 7.1 **Perform** - It will at all times comply with the terms (express or implied) of
- 7.1.1 this Deed; and
- 7.1.2 of all contracts relating to the Secured Obligations where failure to do so would result in a Material Adverse Effect.
- 7.2 **Not jeopardise Security** - It will not (and will procure that no nominee will) do or omit to do anything, or allow anything to be done or omitted, the result of which may be in any way to depreciate, jeopardise or otherwise prejudice the value to the Lender of the Security created by this Deed or the priority of its ranking as expressed in this Deed.
- 7.3 **Maintenance** - It will keep the Property and such Secured Assets in a good and substantial state of repair, working order and condition and will remedy any defect or want of repair within a reasonable period of time from receiving written notice from the Lender specifying the relevant defect or want of repair.
- 7.4 **Observe covenants** - It will observe and perform all covenants and stipulations from time to time on its part to be performed or observed and affecting any of the Secured Assets where failure to do so would have a Material Adverse Effect.
- 7.5 **Observe laws** - It will not do or omit to do or allow anything to be done in relation to the Secured Assets which would infringe any laws which (whether directly or indirectly) the Secured Assets and will comply with all notices, orders, injunctions and mandatory proposals served on it, issued or made by any local or other authority or governmental agency, or by its landlords relating to any of the Secured Assets or its use of them, and will serve within any relevant time limit any counter-notice necessary or desirable to preserve the value of any such Secured Assets.

- 7.6 **Effect registrations** - It will effect all registrations, make all filings or applications and pay all taxes, rents, fees or dues necessary to keep in full force and effect, and where necessary to renew or extend, all the Secured Assets and such Chargor's right to make full use and enjoy the full benefit of the Secured Assets.
- 7.7 **Proceedings** - at its own cost and expense, it will use its reasonable endeavours to enforce, institute, continue or defend all proceedings affecting the Secured Assets, their state or condition or continued use or value so as to preserve to the fullest extent the value to the Lender of the Security created by this Deed.
- 7.8 **Insurance** - Except to the extent that it is provided otherwise in paragraph 7 (*Insurance*) of Part 2 of Schedule 3 (*Property undertakings*), in respect of such of the Secured Assets as are of an insurable nature, it will obtain, maintain and renew (all at its own expense) insurance, indemnity or similar cover with reputable, independent, insurance companies or underwriters, against those risks and to the extent as is usual for companies carrying on the same or substantially similar business, provided that (a) if required by the Lender, in respect of all or any of the Insurances required by this Deed, it will procure and promptly produce to the Lender evidence satisfactory to the Lender that the Lender is named as sole loss payee in respect of all claims under such Insurances and (b) it will promptly pay all premiums and other sums necessary to effect and maintain the Insurances required by this Deed and will, on demand, produce to the Lender such Insurances and evidence that such premiums and other sums have been paid.
- 7.9 **Property** - in respect of its Property it will comply with the provisions of Part 2 of Schedule 3 (*Property undertakings*).
- 7.10 **Land Registry** -
- 7.10.1 In relation to all registered Property (and any unregistered Property subject to compulsory first registration at the date of this Deed), it will apply to the Land Registrar to enter on the register against the title number of or to be allocated to the relevant Property a restriction in the following terms:
- "No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the proprietor for the time being of the charge dated [*date of this Deed*] in favour of CEMEX UK Operations Limited (company number 00658390) referred to in the charges register or, if appropriate, signed on such proprietor's behalf by one of its directors."
- and, where applicable, notice of an obligation to make further advances.
- 7.10.2 It shall submit the relevant applications no later than the date of submission of the initial application for registration of the Security created by this Deed (or, in the case of The Land Registry form CH2, where applicable, promptly following its later receipt of such form duly completed by the Lender), and pay all fees, costs and expenses incurred in connection with the applications.
- 7.10.3 The Lender, in its absolute discretion, may make any of the applications referred to in this Clause 7.10 in place of such Chargor. In

such a case, such Chargor consents to the entry of the relevant restriction and will pay all fees, costs and expenses properly incurred in connection with the application.

- 7.11 **Access** – unless prohibited by law, it will (at the risk and cost of such Chargor where, prior to an Event of Default, such costs are to be approved by the Borrower acting reasonably) permit the Lender and its professional advisers, agents and contractors and, where required by the Lender, independent valuers free access at all reasonable times and on reasonable notice and for all reasonable purposes (including carrying out physical inspections, valuations and/or the preparation or making of inventories and/or schedules and/or other records or copies) (a) to the premises, assets, books, accounts and records of such Chargor and (b) to meet and discuss matters with such senior employees as the Lender may reasonably require, and will provide and will procure that any occupiers of such premises and such employees provide all reasonable assistance to the Lender and such other persons in connection with the access obligations imposed by this Clause 12.
- 7.12 **Centre of main interests** - It will not move its COMI, nor have any Establishment, outside England and Wales.
- 7.13 **Deposit of documents**
- 7.13.1 It will promptly at the Lender's request deposit with the Lender (or as the Lender directs) (a) all deeds and documents of title relating to the Property, including counterpart leases, licences and any other deeds or documents necessary or desirable to assist the Lender to enforce the Security created by this Deed, (b) all policies of insurance in respect of which the proceeds of any claims are assigned or charged pursuant to this Deed and (c) all such other documents relating to the Secured Assets as the Lender may from time to time reasonably require.
- 7.13.2 The Lender agrees that the documents referred to in 7.13.1 may be held by the Borrower's lawyers pursuant to an undertaking from the Borrower's lawyers to the Lender in a form satisfactory to the Lender.
- 7.14 **Retention of documents** - The Lender may retain any document delivered to it pursuant to Clause 7.13 (*Deposit of documents*) or otherwise until the Discharge Date and if, for any reason, the Lender ceases to hold any such document before such time, it may, by notice to such Chargor, require that the relevant document be redelivered to it and such Chargor shall immediately comply (or procure compliance) with such notice.
- 7.15 **Power to remedy** - If such Chargor fails to comply with any of the covenants and undertakings set out or referred to in Clauses 7.1 (*Perform*) to 7.11 (*Access*) (inclusive), 7.13 (*Deposit of Documents*) and 7.14 (*Retention of documents*) and Part 2 of Schedule 3 (*Property undertakings*), it will allow (and irrevocably authorises) the Lender and/or such persons as the Lender nominates to take on behalf of such Chargor such action (including the making of payments) as is necessary to protect any relevant assets against the consequences of such failure to comply and/or to ensure compliance with such covenants and undertakings.
- 7.16 **Indemnity** - It will indemnify the Lender and will keep the Lender indemnified against all costs, taxes, losses and liabilities incurred by the Lender as a result of any default by such Chargor in the performance of any of the obligations expressed to be assumed by it in this Deed and in connection with the exercise

by the Lender of its rights contained in Clause 7.15 (*Power to remedy*). All sums the subject of this indemnity will be payable by such Chargor to the Lender on demand.

8. ENFORCEABILITY

For the purposes of all powers implied by the LPA or any other applicable legislation, the Secured Obligations shall be deemed to have become due and payable and this Deed will become immediately enforceable and the powers of the Lender and any Receiver will become exercisable on the date of this Deed, but, as between the Lender and each Chargor, the power of the Lender to enforce the Security created by this Deed shall be exercisable only upon the occurrence of an Event of Default and for so long as it is continuing (unless there has been a request from such Chargor to the Lender for the appointment of a Receiver, in which case it will be exercisable at any time following the making of such request).

9. ENFORCEMENT OF SECURITY

- 9.1 At any time after the Lender's power of sale has become exercisable, the Lender may, without further notice, (a) appoint one or more than one person to be Receiver in respect of the Secured Assets or any of them and, if more than one person is appointed as Receiver, such appointees may act jointly and severally or individually, (b) take possession of the Secured Assets, and/or (c) in its absolute discretion enforce all or any part of the Security created by this Deed in such other lawful manner as it thinks fit. The Lender may remove any person from appointment as Receiver and may appoint another person as Receiver. The Lender may also appoint an additional Receiver.
- 9.2 The Receiver will, so far as the law permits, be the agent of each Chargor in respect of which the Receiver is appointed and each such Chargor alone will be responsible for the acts or defaults of the Receiver and will be liable on any contracts or obligations made or entered into by the Receiver. The Lender will not be responsible for any misconduct, negligence or default of the Receiver. The powers of the Receiver will continue in full force and effect following any liquidation of the relevant Chargor.
- 9.3 The remuneration of the Receiver may be fixed by the Lender but will be payable by the relevant Chargor. The amount of the remuneration will form part of the Secured Obligations.
- 9.4 The Receiver will have the power, on behalf and at the cost of each Chargor in respect of which the Receiver is appointed, (a) to do or omit to do anything which he considers appropriate in relation to the Secured Assets and (b) to exercise all or any of the powers conferred on the Receiver or the Lender under this Deed or conferred upon administrative receivers by the Insolvency Act (even if he is not an administrative receiver), or upon receivers by the LPA or any other statutory provision (even if he is not appointed under the LPA or such other statutory provision) but so that if there is any ambiguity or conflict between the powers contained in such legislation and those contained in this Deed, those contained in this Deed shall prevail.
- 9.5 Without prejudice to the general powers set out in Clause 9.4, a Receiver will also have the powers and discretions set out in Schedule 4 (*Receiver's specific powers*).

- 9.6 The Lender or any Receiver may sever any Fixtures from the Property and sell them apart from the Property without taking possession of the Property and apply the net proceeds of such sale in or towards satisfaction of the Secured Obligations.
- 9.7 If the Lender or the Receiver obtains possession of the Property, the Lender or the Receiver may use and remove, store or sell any chattels on the Property, whether or not forming part of the Secured Assets, without being under any liability to any Chargor other than to account for their net proceeds of the sale. All costs, losses and liabilities incurred by the Lender or the Receiver in connection with the removal, storage and sale of such chattels will form part of the Secured Obligations.
- 9.8 If (notwithstanding any representation or warranty to the contrary contained in this Deed) there shall be any Security affecting the Secured Assets or any of them which ranks in priority to the Security created by this Deed and the holder of such prior Security takes any steps to enforce such Security, the Lender or any Receiver may, at its option, take a transfer of, or repay the indebtedness secured by, such Security.
- 9.9 The Lender may, at any time after this Deed has become enforceable pursuant to Clause 8 (*Enforceability*), exercise, to the fullest extent permitted by law, all or any of the powers, authorities and discretions conferred on a Receiver by this Deed, whether as attorney of any Chargor or otherwise and whether or not a Receiver has been appointed.
- 9.10 The Lender may, in writing, either in its appointment of a Receiver or by subsequent notice to that Receiver, restrict the right of such Receiver to exercise all or any of the powers conferred on a Receiver by this Deed.
- 9.11 Paragraph 14 of Schedule B1 to the Insolvency Act applies to the floating charges created under this Deed.

10. **PAYMENTS, ACCOUNTS AND APPLICATION OF PROCEEDS**

- 10.1 **Right of appropriation** - Subject to the provisions of Clause 10.8 (*Recoveries by Receiver*), the Lender is entitled to appropriate money and/or assets to the Secured Obligations in such manner or order as it thinks fit and any such appropriation shall override any appropriation by the Chargor.
- 10.2 **No set-off by Chargors** - No Chargor shall exercise any right of set-off or counterclaim which it might have in respect of any payment due to the Lender under this Deed.
- 10.3 **Lender's rights of set-off** - The Lender may, at any time after this Deed has become enforceable, and without notice (a) combine or consolidate all or any of a Chargor's then existing accounts with, and liabilities to, the Lender, (b) set-off or transfer any sums standing to the credit of any one or more of such accounts, and/or (c) set-off any other obligation owed by the Lender to any such Chargor (whether or not matured at such time), in or towards satisfaction of any of the Secured Obligations; and if any amount is in a different currency from the amount against which it is to be set-off, the Lender may convert either amount (or both) at any reasonable time and at any reasonable rate. The Lender shall notify such Chargor in writing that any such transaction has taken place.
- 10.4 **Suspense Account** - The Lender may, at any time, credit to a suspense account any money received by it under this Deed, to be held for so long as and on such

terms as the Lender may determine pending its application towards discharging the Secured Obligations.

- 10.5 **New account** - If the Lender receives notice of a subsequent mortgage or charge relating to the Secured Assets, it will be entitled to close any account and to open a new account in respect of the closed account. If the Lender does not open such new account, it will in any event be treated as if it had done so at the time when it received such notice.
- 10.6 **Time deposit** - Without prejudice to the provisions of Clause 10.3 (*Lender's rights of set-off*), if at any time any Chargor has made a deposit with the Lender on terms that it will be repaid on a specified date (a "**Time Deposit**") then: (a) if the Lender has made any demand under Clause 2.1 (*Covenant*), it may vary the terms of such Time Deposit so that it becomes repayable immediately or on any other date before such specified date; or (b) if an Event of Default has arisen which is continuing but no amount of Secured Obligations has fallen due before such specified date, the Lender may renew such Time Deposit for such further maturity as the Lender in its absolute discretion determines.
- 10.7 **Calculations** - The Lender's calculation of any amount payable by any Chargor under this Deed at any time will be conclusive (unless it has made an obvious mistake).
- 10.8 **Recoveries by Receiver** - The proceeds arising from the exercise of the powers of the Receiver will, subject to any claims ranking in priority to the Secured Obligations, be applied by or at the direction of the Receiver in or towards discharging or satisfying the following amounts in the following order of priority: (a) the costs, charges and expenses of and incidental to the Receiver's appointment and the payment of his remuneration; (b) any costs, charges, expenses and liabilities of or incurred by any Enforcement Party in the exercise of any of its powers including all rents, Taxes, rates and outgoings whatever affecting the Secured Assets, all premiums on Insurances properly payable under this Deed or any applicable legislation, the cost of executing necessary or proper repairs to the Secured Assets, and the payment of annual sums or other payments, and the interest on all principal sums, having priority to the Secured Obligations; (c) the remaining Secured Obligations, in accordance with the provisions of the Finance Documents; and (d) the claims of those persons entitled to any surplus.
- 10.9 **Insurances**- All Insurance Proceeds shall be paid to the Lender (or if not paid by the insurers directly to the Lender shall be held on trust for the Lender) and shall (subject as otherwise provided in the Finance Documents) be applied in replacing or reinstating the property or assets destroyed, damaged or lost (any deficiency being made good by the relevant Chargor) or (if an Event of Default has arisen which is continuing) as the Lender otherwise directs.
- 10.10 **Currency of payment** - No payment to the Lender (whether under any judgment or court order or otherwise) shall discharge the obligation or liability of the Chargor in respect of which it was made unless and until the Lender shall have received payment in full in the currency in which the obligation or liability was incurred. To the extent that the amount of any such payment shall, on actual conversion into such currency, fall short of such obligation or liability expressed in that currency, the Lender shall have a further separate cause of action against the Chargor and shall be entitled to enforce the Security created by this Deed to recover the amount of the shortfall.

- 10.11 **Currency conversion** - All money received or held by the Lender or any Receiver under this Deed may be converted into such other currency as the Lender considers necessary or desirable to cover the obligations and liabilities comprised in the Secured Obligations in that other currency at the Lender's spot rate of exchange then prevailing for purchasing that other currency with the existing currency.

11. **PROTECTION OF THIRD PARTIES**

- 11.1 **No duty to enquire** - A buyer from, or other person dealing with, any Enforcement Party will not be concerned to enquire whether any of the powers which such Enforcement Party has exercised or purported to exercise has arisen or become exercisable and may assume that it is acting in accordance with this Deed.

- 11.2 **Receipt conclusive** - The receipt of the Lender or any Receiver shall be an absolute and conclusive discharge to a purchaser of the Secured Assets and shall relieve him of any obligation to see to the application of any monies paid to or by the direction of the Lender or any Receiver.

12. **PROTECTION OF LENDER**

- 12.1 **Lender's receipts** - The Lender shall not be obliged to account to the Chargor, nor to any other person, for anything other than its own actual receipts which have not been distributed or paid to the person entitled (or whom the Lender, acting reasonably, believes to be entitled) in accordance with the requirements of this Deed.

12.2 **Exclusion of liability** -

- 12.2.1 No Enforcement Party will be liable to any Chargor for any expense, loss, liability or damage incurred by such Chargor arising out of the exercise by such Enforcement Party of its rights or powers or any attempt or failure to exercise those rights or powers, except for any expense, loss, liability or damage arising from its gross negligence, fraud or wilful misconduct.

- 12.2.2 No Chargor may take any proceedings against any officer, employee or agent of any Enforcement Party in respect of any claim it might have against such Enforcement Party or in respect of any act or omission of any kind by that officer, employee or agent in relation to this Deed.

- 12.2.3 Any officer, employee or agent of any Enforcement Party may rely on this Clause 12 under the Third Parties Act.

- 12.3 **Effect of possession** - If the Lender or any Receiver enters into possession of the Secured Assets or any of them, this will not oblige either the Lender or the Receiver to account as mortgagee in possession, and if at any time the Lender enters into possession of the Secured Assets or any of them it may at any time at its discretion go out of such possession.

- 12.4 **Chargors' indemnity** - Each Chargor agrees with the Lender to indemnify the Lender and any Receiver or Delegate on demand against any costs, Taxes, losses, liabilities or damage suffered by any of them in respect of (a) the taking, holding, protection or enforcement of the Security created by this Deed, (b) any exercise of the rights, powers, discretions or remedies of, or vested in, any Enforcement Party or any attempt or failure to exercise those rights, powers,

discretions or remedies and (c) anything done or omitted to be done in the exercise or purported exercise of the powers under this Deed or under any appointment duly made under the provisions of this Deed.

13. POWER OF ATTORNEY

- 13.1 Each Chargor irrevocably and by way of security appoints the Lender and each Receiver and any person nominated for the purpose by the Lender or the Receiver (in writing, under hand, signed by an officer of the Lender or by the Receiver) severally to be the attorney of the Chargor (with full power of substitution and delegation) for the purposes set out in Clause 13.2.
- 13.2 The power of attorney granted in Clause 13.1 allows the Lender, the Receiver or the relevant nominee, in the name of the relevant Chargor, on its behalf, as its act and deed and at its expense to perfect the Security created by such Chargor under this Deed and to execute and deliver (using such Chargor's seal where appropriate) any document or do any act or thing which such Chargor may, ought or has agreed to execute or do under this Deed or which the attorney may in its absolute discretion consider appropriate in connection with the exercise of any of the rights, powers, authorities or discretions of the Lender or the Receiver under, or otherwise for the purposes of, this Deed.
- 13.3 Each Chargor covenants with the Lender to ratify and confirm all acts or things made, done or executed by any attorney exercising or purporting to exercise the powers conferred in accordance with this Clause 13.

14. APPLICATION, VARIATION AND EXTENSION OF STATUTORY PROVISIONS

- 14.1 The covenants set out in sections 2 to 5 of the Law of Property (Miscellaneous Provisions) Act 1994 shall extend to bind a Chargor only if, in any case, the relevant covenant imposes upon such Chargor a burden, liability or obligation that would not otherwise arise under this Deed.
- 14.2 For the purposes only of section 101 of the LPA, (but otherwise subject to the provisions of Clause 8 (*Enforceability*)), the conditions set out in that section, as to when the powers conferred on a mortgagee by that section arise, do not apply and the Secured Obligations become due and the statutory power of sale and other powers of enforcement arise immediately following the execution of this Deed. The Lender and any Receiver may exercise the statutory power of sale conferred by the LPA free from the restrictions imposed by section 103 of the LPA, which shall not apply to this Deed.
- 14.3 The power of sale and the other powers conferred by the LPA or otherwise are extended and varied to authorise the Lender in its absolute discretion to do all or any of the things or exercise all or any of the powers which a Receiver is empowered to do or exercise under this Deed.
- 14.4 The restriction on the consolidation of mortgages in section 93 of the LPA does not apply to this Deed nor to any Security given to the Lender pursuant to this Deed. Section 109(1) of the LPA shall not apply to this Deed. Sections 105, 107(2), 109(6) and 109(8) of the LPA will not apply to the Lender nor to a Receiver appointed under this Deed.
- 14.5 The statutory and other powers of leasing, letting, entering into agreements for leases or lettings and accepting or agreeing to accept surrenders of leases or tenancies shall not be exercisable by any Chargor in relation to the Secured

Assets or any part of them. The restrictions on the powers of the Lender or the Receiver to grant leases or to accept the surrender of leases in sections 99 and 100 of the LPA do not apply to this Deed.

15. OTHER MISCELLANEOUS PROVISIONS

- 15.1 Except where expressly stated to the contrary, the powers, rights and remedies provided in this Deed are in addition to (and not instead of) powers, rights and remedies under law.
- 15.2 If an Enforcement Party fails to exercise any power, right or remedy under this Deed or delays its exercise of any power, right or remedy, this does not mean that it waives that power, right or remedy. If an Enforcement Party exercises, or partly exercises, a power, right or remedy once, this does not mean that it cannot exercise such power right or remedy again, fully or in part.
- 15.3 The Lender may decide when and how to apply any payments and distributions received for its own account under this Deed, and also, as between the Lender and any Chargor, whether and, if so, when, how and to what extent (a) to exercise its rights under this Deed and (b) to exercise any other right it might have in respect of any Chargor (or otherwise) without, in any case, any Chargor having the right to control or restrict the Lender's exercise of this discretion.
- 15.4 No provision of this Deed will interfere with the Lender's right to arrange its affairs as it may in its absolute discretion decide (nor oblige it to disclose any information relating to its affairs), except as expressly stated.
- 15.5 Each Chargor authorises the holder of any prior or subsequent Security to provide to the Lender, and the Lender to receive from such holder, details of the state of account between such holder and the Chargor.
- 15.6 No Chargor shall assign, novate or otherwise deal with its rights or obligations under or interests in this Deed, except with the prior written consent of the Lender.
- 15.7 The Lender may not, at any time, assign, novate and otherwise deal with any rights, interests or obligations under this deed unless the assignment, novation or other dealing is with any person to whom the Lender has assigned, transferred or novated its rights or obligations under the Loan Agreement pursuant to Clause 12.2 of the Loan Agreement.
- 15.8 The Lender may disclose any information about any Chargor, the Secured Assets and/or this Deed to any person to whom it proposes to assign, novate or transfer (or has assigned, novated or transferred) any rights or obligations under or interests in this Deed, or with whom it proposes to enter into (or has entered into) any other dealings in relation to any such rights, obligations or interests and any person to whom the benefit of all such rights has been transferred, subject to such obligations, may enforce this Deed in the same way as if it had been an original party to this Deed.
- 15.9 If, at any time, there has been a release, settlement or discharge of the Chargor's obligations under this Deed and, as a consequence of any insolvency proceedings (or analogous proceedings) or for any other reason, (a) any payment made to any person in respect of any of the Secured Obligations is required to be repaid and/or (b) any such payment or any Security (or other right) held by the Lender in respect of any of the Secured Obligations (whether under this Deed or otherwise) is void, is set aside or is otherwise affected, then

the Chargor's obligations under this Deed shall continue in effect as if there had been no such release, settlement or discharge and as if the relevant payment had not been made and/or (as applicable) the relevant Security (or other right) had not been held by the Lender; and accordingly (but without limiting the Lender's other rights under this Deed) the Lender shall be entitled to recover from the Chargor the value which the Lender has placed upon such Security or the amount of any such payment as if such payment, settlement or discharge had not occurred.

15.10 If the Lender, acting reasonably, considers that any amount paid by the Chargor in respect of the Secured Obligations is likely to be avoided or ordered to be refunded or reduced for the reasons set out in Clause 15.9, then for the purposes of this Deed such amount shall not be considered to have been irrevocably paid.

15.11 To the extent that any Chargor may be entitled in any jurisdiction to claim for itself or its assets immunity from suit, execution, attachment (whether in aid of execution, before judgment or otherwise) or other legal process of any kind wherever it might originate, or to the extent that in any such jurisdiction there may be attributed to such Chargor or its assets such immunity (whether or not claimed), it irrevocably agrees not to claim and irrevocably waives such immunity to the fullest extent permitted by the laws of such jurisdiction.

15.12 The perpetuity period applicable to the trusts created by this Deed is 80 years.

15.13 On the Discharge Date (but subject to Clauses 15.9 and 15.10) and in accordance with Clause 5.5 (*Release*) of the Loan Agreement the Lender shall, at the request and cost of each Chargor, execute and do all deeds, acts and things as may be necessary to release the Secured Assets from the Security created by this Deed (including the assignment of any Secured Asset assigned to the Lender under this Deed back to the relevant Chargor).

15.14 Each Chargor (other than the Borrower) by its execution of this Deed irrevocably appoints the Borrower to act on its behalf as its agent in relation to any Security Document and irrevocably authorises:

15.14.1 the Borrower on behalf of such Chargor to supply to the Lender all information concerning such Chargor contemplated by this Deed and to complete and give all notices, requests and instructions, any Security Document, to make such agreements and to effect the relevant amendments, supplements and variations capable of being given, made or effected by such Chargor, notwithstanding that they may affect such Chargor, without (in any case) further reference to or the consent of such Chargor; and

15.14.2 the Lender to give or make to the Borrower (and not to such Chargor) any notice, demand or other communication concerning such Chargor pursuant to the Security Documents;

and in each case such Chargor shall be bound as though such Chargor itself had given the information, notices, requests and instructions or executed or made such Security Documents or such agreements, or effected the amendments, supplements or variations, or received the relevant notice, demand or other communication.

15.15 Every act, omission, agreement, undertaking, settlement, waiver, amendment, supplement, variation, notice or other communication given or made by the

Borrower or given to the Borrower under or in connection with any Security Document on behalf of another Chargor (whether or not known to any other Chargor and whether occurring before or after such other Chargor became a Chargor under this Deed) shall be binding for all purposes on that Chargor as if that Chargor had expressly made, given or concurred with it. In the event of any conflict between any notices or other communications of the Borrower and any other Chargor, those of the Borrower shall prevail.

15.16 The obligations of each Chargor under Clause 2 (*Covenant to pay*) are unconditional and neither the provisions of this Deed nor the obligations of any Chargor will be affected by the occurrence or existence at any time of any of the following events or circumstances or by any person's knowledge or lack of knowledge as to any such matter: (a) any person's insolvency or lack of capacity, power or authority; (b) any unenforceability, illegality or invalidity of any obligation of any person; (c) any change in the constitution, membership, ownership, legal form, name or status of any person; (d) the making, amendment or termination of any other deed or agreement; (e) any amendment, novation, re-statement or substitution of, or any supplement to, any other deed or agreement; (f) any increase or reduction in the amount of any person's indebtedness or any alteration of any term, condition or arrangement in respect of any person's indebtedness; (g) any person taking or omitting to take any steps in relation to (i) any Chargor or any other person, (ii) any of the Secured Obligations, (iii) any Security, guarantee or other financial support in respect of any indebtedness and/or (iv) any other asset; or (h) anything else which, although it could affect the liability of a surety, would not affect the liability of a principal debtor.

15.17 Any obligation on the Borrower to do or refrain from doing any act shall be a reference to each partner of the Borrower (being the CEMEX Partner and GFA) procuring that the Borrower does or refrains from doing such act.

15.18 **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 this Deed are:

15.18.1 in the case of each of the Chargors and the Lender, those given for it in the signature pages of this Deed;

15.18.2 in the case of each Receiver and each Delegate, those notified in writing to the Lender by such Receiver or Delegate as soon as practicable after its respective appointment,

or any substitute address, fax number or department or officer as the relevant person may notify to the Lender (or as the Lender may notify to the other Parties, if a change is made by the Lender) by not less than 5 Business Days' notice.

15.19 **Delivery** -

15.19.1 Any communication or document made or delivered by one person to another under or in connection with the Security Documents will only be effective (a) if by way of fax, when received in legible form, or (b) if by way of letter, when it has been left at the relevant address or 5 Business Days after being deposited in the post, postage prepaid, in an envelope addressed to it at that address, and, in any case, if a particular department or officer is specified as part of its address

details provided under Clause 15.18 (*Addresses*), if addressed to that department or officer.

15.19.2 Any communication or document to be made or delivered to the Lender will be effective only when actually received by the Lender and then only if it is expressly marked for the attention of the department or officer identified in accordance with Clause 15.18 (*Addresses*).

15.19.3 Any communication or document made or delivered to the Borrower in accordance with this Clause 15.19 will be deemed to have been made or delivered to each of the Chargors.

15.20 **Notification of address and fax number** - Promptly upon receipt of notification of an address and fax number or change of address or fax number pursuant to Clause 15.18 (*Addresses*) or changing its own address or fax number, the Lender shall notify the Chargors.

15.21 **Communications in writing** -Any communication to be made under or in connection with the Security Documents shall be made in writing and, unless otherwise stated, may be made by fax or letter.

15.22 **English language** -

15.22.1 Any notice given under or in connection with any Security Document must be in English.

15.22.2 All other documents provided under or in connection with any Security Document must be in English or, if not in English, and if so required by the Lender, 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.

16. **THIS DEED**

16.1 The Chargor has entered into this Deed in consideration of the Lender agreeing to provide (or to continue to provide) finance facilities to it on the terms agreed in the Finance Documents.

16.2 If the Parties execute this Deed in separate counterparts, this Deed will take effect as if they had all executed a single copy.

16.3 This Deed is intended to be a deed even if either Party's execution is not in accordance with the formalities required for the execution of deeds.

16.4 If there is any conflict between the provisions of this Deed and the provisions of any other Finance Document, the provisions of the Loan Agreement shall prevail.

16.5 If, at any time, any provision of this Deed is or is found to have been illegal, invalid or unenforceable in any respect under the law of any jurisdiction, this does not affect the legality, validity or enforceability of the other provisions of this Deed, nor the legality, validity or enforceability of the affected provision under the law of any other jurisdiction.

16.6 If either Party is not bound by this Deed (or any part of it) for any reason, this does not affect the obligations of the other Party under this Deed (or under the relevant part).

16.7 This Deed is in addition to, and does not operate so as in any way to prejudice or affect, or be prejudiced or affected by, any other Security or guarantee which the Lender may now or at any time after the date of this Deed hold for or in respect of the Secured Obligations.

16.8 On each occasion that the Chargor submits this Deed or any counterpart to The Land Registry, the Chargor shall also submit a certified copy of this Deed and request the return of the original and upon the return of the original it shall deliver such original to the Lender.

16.9 This Deed and every counterpart is the property of the Lender.

17. **GOVERNING LAW**

This Deed and any non-contractual obligations arising out of or in connection with it are governed by English law.

18. **JURISDICTION**

18.1 **Jurisdiction of English courts**

The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute regarding the existence, validity or termination of this Deed) (a "**Dispute**"). The Parties agree that the courts of England are the most appropriate and convenient courts to settle any Dispute and accordingly no Party will argue to the contrary. This Clause 18.1 is for the benefit of the Enforcement Parties only. As a result, no Enforcement Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, each Enforcement Party may take concurrent proceedings in any number of jurisdictions.

This Deed is made and delivered as a deed on the date given on page 1.

SCHEDULE 1

Details of Property

1. The freehold land being land on the North side of Cuthedge Lane, Coggeshall registered at the Land Registry under title number EX465219;
2. The freehold land being the site of an access road on the South side of Stone Street, Coggeshall registered at the Land Registry under title number EX367772;
3. The freehold land being land on the North and South sides of Church Road, Bradwell, Braintree registered under title number EX622909.

SCHEDULE 2

Notices

Notice to insurer

(For attachment by way of endorsement to the Insurances)

To: *[name and address of insurer]*

Dated: *[date]*

Dear Sirs,

Re: The policies of insurance referred to in the Schedule below (the "Policies")

We, *[Chargor]* (the "**Chargor**"), give you notice that, by a security agreement dated *[date]* (the "**Security Agreement**") and made by [(amongst others)] ourselves in favour of *[Lender]* (the "**Lender**"), we have [charged by way of fixed charge] [and] [assigned] to the Lender, as first priority [chargee] [and] [assignee], all of the Policies as are capable of being [charged] [and/or] [assigned] by law.

The assets [charged] [and] [assigned] include all our right, title and interest in and to the Policies (including, but not limited to, the benefit of all sums assured by the Policies and all bonuses, profits, returns of premium and other benefits of whatever nature arising by virtue of our ownership of the Policies and all interest on any of the secured money).

We irrevocably and unconditionally authorise and request you:

1. to note the Lender's interest as first [chargee][,] [assignee] and sole loss payee of the proceeds of such Policies; and
2. to give the acknowledgement, undertakings and agreements required by the Lender and to act on the instructions of the Lender without any further reference to or authorisation from us.

Please sign the enclosed copy of this notice and deliver it to the Lender at *[address]* (with a further copy to us).

This notice is governed by English law.

Yours faithfully,

For and on behalf of *[Chargor]*:

By:.....

THE SCHEDULE

The Policies*

***To be completed by the Chargor and approved by the Lender and to include all relevant policies with the named insurer**

	Policy number	Name and address of Insurer	Name and address of broker	Brief description of assets insured	Date of expiry of policy#
1.	[number]				
2.	[number]				
3.	[number]				
4.	[number]				
5.	[number]				

#Not required if policies are annually renewable
Dated [date]

[to be included on copy notice]

To: [name and address of Lender]

Copy to:[name and address of Chargor]

We [name of insurer] acknowledge receipt of the above notice. We:

1. agree to note your interest as first [chargee] [assignee] and sole loss payee of the proceeds of such Policies;
2. undertake to disclose to you, promptly following request, without any reference to or further authority from the Chargor, such information relating to the Policies as you may at any time reasonably request;
3. confirm that we have not received notice of any previous assignment or charge by the Chargor of or over any of its rights, title, interests or benefits referred to in the notice[.]; and]
4. [agree promptly to notify you of our intention to cancel or decline renewal of any of the Policies; and]
5. [agree promptly to notify you of any request made, or notification given, by the Chargor to us, to cancel the Policies, or to allow the Policies to lapse.]

Terms defined in the notice apply to this endorsement, which is governed by English law.

Signed:.....

for and on behalf of [name of insurer]

Dated: [date]

SCHEDULE 3

Property undertakings

Part 1

Definitions and interpretation applicable to this Schedule 3

1. Expressly defined terms

In this Schedule, the following words and phrases have the specified meanings.

"Granted Lease" means any lease, agreement for lease, tenancy, contractual licence or other document which gives a person who is not the Borrower the right to occupy, use or enjoy the Property.

"Planning Acts" means the Town and Country Planning Acts 1990 and the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Hazardous Substances) Act 1990, the Planning (Consequential Provisions) Act 1990, the Planning and Compensation Act 1991 and any order, regulations or permission made or granted under or by virtue of such Acts or any of them.

"Relevant Lease" means any lease, agreement for lease, tenancy, contractual licence or other document which gives the Borrower the right to occupy, use or enjoy the Property.

2. Construction

In this Schedule, unless a contrary indication appears:

- 2.1 reference in any Part of this Schedule to matters, events or circumstances having an Adverse Property Effect are to be construed as if such matters, events or circumstances were taken together with all other matters, events or circumstances arising under any paragraph of such Part of this Schedule which would, on such construction, in aggregate have an Adverse Property Effect; and
- 2.2 a reference to the **"Property"** is a reference to the Property to which Clause 7.9 applies.

Part 2

Property undertakings

3. NO CHANGES TO THE PROPERTY

It will not, without the prior written consent of the Lender (such consent not to be unreasonably withheld or delayed):

- 3.1 in relation to the Property, make any application for the grant of planning permission, within the meaning of the Planning Acts (provided always that the Lender shall consent to any application for the grant of planning permission which the Borrower makes in compliance with (or is required to make under) the terms of the Overarching Agreement);
- 3.2 make any additions or structural or other material alteration to the Property;
- 3.3 create or permit to arise any overriding interest, easement or right over the Property;
- 3.4 enter into negotiations with any competent agency of local or national government with a view to the compulsory acquisition of the Property nor consent to such acquisition;
- 3.5 in relation to the Property, enter into any agreement under section 106 of the Town and Country Planning Act 1990, section 33 of the Local Government (Miscellaneous Provisions) Act 1982 or any other agreement with any local government, planning or regulatory authority to build roads or carry out other works;
- 3.6 change the use of the Property or do or suffer to be done anything in relation to the Property which constitutes development (as that expression is defined in the Town and Country Planning Act 1990).

4. COMPLY WITH COVENANTS

It will observe and perform all material covenants, agreements, restrictions, stipulations and conditions from time to time affecting its interest in the Property or the mode of user or the enjoyment of it and will promptly pay all present and future tax, rates, assessments and outgoings of any kind imposed upon or payable in respect of the Property, or by the owner or occupier of the Property.

5. COMPLY WITH AUTHORISATIONS

It will observe and comply with the terms of all authorisations, consents, approvals, resolutions, licences, exemptions, filings, notarisations or registrations relating to the Property.

6. REPAIR

If, following any inspection of the Property by the Lender or any of its professional advisors, the Lender considers that the Property is suffering any defect or want of repair the Lender may serve a notice specifying the relevant defect or want of repair, and the relevant Chargor shall without delay promptly remedy such defect or want of repair.

7. DISPOSALS OF FIXTURES

It will not, otherwise than in the ordinary course of maintenance or replacement or as permitted under the Loan Agreement, sever or dispose of any Fixtures which are now, or which at any time after the date of this Deed may be, affixed to the Property.

8. GRANTED LEASES

- 8.1 It will not grant any Granted Lease or otherwise part with or share possession of the Property (except where the prior written consent of the Lender has been obtained).

9. INSURANCE

Save in respect of any leasehold property which is insured by the relevant landlord pursuant to an obligation arising under a Relevant Lease, it will insure and keep insured the Property with a reputable independent insurance company or underwriter previously approved by the Lender in writing:

- 9.1 on the basis that the relevant policies of insurance contain an endorsement (in form and substance satisfactory to the Lender) naming the Lender as sole loss payee in respect of all claims arising under such policies;
- 9.2 against such risks and contingencies as the Lender from time to time reasonably requires;
- 9.3 in a value equal to the full cost of reinstatement from time to time including proper provision for cost inflation over any period that might be required for planning and negotiation and the reconstruction period plus the cost of demolition and debris removal and architects', surveyors' and all other professional fees and the cost of complying with local authority and other statutory requirements; and
- 9.4 otherwise in such form and upon such terms as the Lender agrees (such agreement not to be unreasonably withheld or delayed).

10. EXEMPT INFORMATION DOCUMENT

- 10.1 It shall, at its own expense, do whatever the Lender may reasonably require in connection with (a) any application by the Lender to have this Deed designated an exempt information document under Land Registration Rules 2003 rule 136 and (b) any person's application under Land Registration Rules 2003 rule 137 for disclosure of this Deed following its designation as an exempt information document.
- 10.2 It shall notify the Lender in writing:
- 10.2.1 before making any application to have this Deed designated an exempt information document under Land Registration Rules 2003 rule 136;
- 10.2.2 as soon as it receives notice of any person's application under Land Registration Rules 2003 rule 137 for disclosure of this Deed following its designation as an exempt information document; and
- 10.2.3 before making any application under Land Registration Rules 2003 rule 138 for removal of any such designation.

SCHEDULE 4

Receiver's specific powers

The Receiver will have full power and authority:

11. to enter upon, and to take possession of, the Secured Assets;
12. to collect and get in all rents, fees, charges or other income of the Secured Assets;
13. generally to manage the Secured Assets and to manage or carry on, reconstruct, amalgamate, diversify or concur in carrying on the business of the relevant Chargor or any part of it as he may think fit;
14. without restriction, to sell, charge, grant, vary the terms or accept surrenders of, leases or tenancies of, licences to occupy, or options or franchises over or otherwise deal with and dispose of the Secured Assets or any property acquired in exercise of its powers under this Deed;
15. to purchase or acquire any land and purchase, acquire or grant any interest in or right over land;
16. to take a lease or tenancy of any property required or convenient for the business of the relevant Chargor or the exercise of the Receiver's powers under this Deed;
17. to exercise on behalf of the relevant Chargor and without the consent of or notice to such Chargor all the powers conferred on a landlord or a tenant by any legislation from time to time in force in any relevant jurisdiction relating to leasehold property, landlord and tenant, rents, housing or agriculture in respect of the Property;
18. for the purpose of exercising any of the rights, powers, authorities and discretions conferred on the Receiver by or pursuant to this Deed and/or for defraying any costs, losses or liabilities which may be incurred by him in their exercise or for any other purpose, to raise or borrow moneys from the Lender or others or incur any other liability on such terms, whether secured or unsecured, as he may think fit, and whether to rank in priority to this Deed or not;
19. to appoint and discharge employees, officers, consultants, advisers, managers, agents, solicitors, accountants or other professionally qualified persons, workmen and others for any of the purposes of this Deed or to guard or protect the Secured Assets upon such terms as to remuneration or otherwise as he may think fit and to discharge any such persons appointed by the relevant Chargor prior to his appointment;
20. in the name of the relevant Chargor, to bring, prosecute, enforce, defend and discontinue all such actions, suits and proceedings, in relation to the Chargor, the business of such Chargor or the Secured Assets as in any case he thinks fit;
21. to settle, adjust, refer to arbitration or expert determination, compromise and arrange any claims, accounts, disputes, questions and demands with or by any

person or body who is or claims to be a creditor of the relevant Chargor or relating in any way to the Secured Assets;

22. to give valid receipts for all moneys and execute all assurances and things which may be proper or desirable for realising the Secured Assets;
23. to obtain Authorisations for and to carry out on the Property any new works or complete any unfinished works of development, building, reconstruction, maintenance, repair, renewal, improvement, furnishing or equipment;
24. to enter into, vary, cancel or waive any of the provisions of any contracts which he shall in any case think expedient in the interests of the relevant Chargor or the Lender;
25. to purchase materials, tools, equipment, goods or supplies on such terms and at such price as the Receiver in the Receiver's absolute determination thinks fit;
26. to insure the Secured Assets, any assets acquired by the Receiver in exercise of his powers, and any business or works, and effect indemnity insurance or other similar insurance, in every case in such amounts, against such risks and with such offices as the Receiver thinks fit, and obtain bonds and give guarantees and Security to any bondsmen;
27. to remove, store, sell or otherwise deal with any chattels located at the Property;
28. to promote or establish any company or to acquire shares in any company (whether as a Subsidiary of the relevant Chargor or otherwise) to facilitate the exercise of his powers under this Deed, to transfer to any such company all or any of the Secured Assets or other assets acquired by the Receiver in exercise of his powers and to exercise or cause to be exercised all voting and other rights attaching to, and to charge, sell or otherwise transfer any shares in any such company;
29. to make, or require the directors of the relevant Chargor to make, calls conditionally or unconditionally on the members of such Chargor in respect of uncalled capital; and take action to enforce payment of unpaid calls;
30. to carry into effect and complete any transaction;
31. to redeem any prior Security (or procure the transfer of such Security to an Enforcement Party) and settle and pass the accounts of the person entitled to the prior Security so that any accounts so settled and passed shall (subject to any manifest error) be conclusive and binding on the relevant Chargor and the money so paid shall be deemed to be an expense properly incurred by the Receiver;
32. either in the name of the relevant Chargor or in the name of the Receiver to execute documents and do all other acts or things which the Receiver may consider to be incidental or conducive to any of the Receiver's powers or to the realisation or use of the Secured Assets.

EXECUTION

The Chargors

Executed as a deed by **CEMEX UK OPERATIONS LIMITED** in its capacity as partner of **BLACKWATER AGGREGATES**, acting by a director


Director

in the presence of: 

Witness Signature:

Witness Name: VISHAL PURI

Witness Address: CEMEX HOUSE
Coldharbour Lane, Thorpe, Egham

Executed as a deed by **GENT FAIRHEAD AGGREGATES LIMITED** in its capacity as partner of **BLACKWATER AGGREGATES**, acting by a director

Director

in the presence of:

Witness Signature:

Witness Name:

Witness Address:

Communications to be delivered to:

Address: CEMEX HOUSE
Coldharbour Lane
Fax number: Thorpe, Egham, Surrey
01932 583032

Attention: JASON SMALLOE
LEGAL DIRECTOR

Communications to be delivered to:

Address:

Fax number:

Attention:

Executed as a deed by **CEMEX UK OPERATIONS LIMITED**, in its own capacity acting by a director


Director

in the presence of: 

Witness Signature:

Witness Name: CEMEX HOUSE

Coldharbour Lane
Thorpe, Egham Surrey

Communications to be delivered to:

Address: CEMEX HOUSE
Coldharbour Lane
Fax number: Thorpe, Egham, Surrey
01932 583032
Attention: JASON SMALLOE
Legal Director

Witness Address:

Executed as a deed by **GENT FAIRHEAD AGGREGATES LIMITED**, in its own capacity acting by a director

Director

in the presence of:

Witness Signature:

Witness Name:

Witness Address:

Communications to be delivered to:

Address:

Fax number:

Attention:

The Lender

Executed as a deed by **CEMEX UK OPERATIONS LIMITED** as Lender, acting by a director

Director

in the presence of:

Witness Signature:

Witness Name: *VISHAL PURI*

Witness Address:

*CEMEX House
Coldharbour Lane
Thorpe Egham
Surrey TW20 8TD*

Communications to be delivered to:

Address:

*CEMEX House
Coldharbour Lane
Thorpe, Egham, Surrey*

Fax number:

01932 583032.

Attention:

JASON SMALLEY