

**AGREEMENT AND SETTLEMENT BETWEEN THE COMMUNITY OF TABACO AND
CARBONES DEL CERREJÓN LIMITED - CERREJÓN**

The undersigned, on the one hand **JOSE JULIO PEREZ-DIAZ**, holder of citizenship card No. 5.176.576 of Albania, La Guajira, President of the **TABACO RELOCATION SOCIAL COMMITTEE**, and **ARMANDO PEREZ ARAUJO**, a practicing lawyer, holder of citizenship card No. 17.171.492 of Bogota, who are acting on behalf and in representation of the majority of the Tabaco community in accordance with broad and sufficient proxies granted under public deeds Nos. 511, 512 and 513 of 1 December 2008 of the Single Notary of Barrancas, La Guajira, hereinafter referred to as **THE COMMITTEE** and, on the other, **LEON TEICHER**, holder of citizenship card No. 14.991.634 of Cali, acting in his capacity as President and, as such, legal representative of **CARBONES DEL CERREJÓN LIMITED**, hereinafter referred to as **CERREJÓN**, have agreed to sign this **AGREEMENT AND SETTLEMENT**,

WHEREAS

1. For the purposes of reaching an agreement that is satisfactory to the parties, **THE COMMITTEE** and **CERREJÓN** agreed to commence a phase of discussions in order to reach a direct, concerted agreement on the facts which have been under discussion between the parties in the Tabaco Case.
2. For the purposes of accompanying the discussions, **THE COMMITTEE** and **CERREJÓN** have agreed upon facilitation provided by Mr. **JOHN HARKER**, President of Cape Breton University in Canada, who, in turn, presided over the Independent Panel of Experts which reviewed and evaluated **CERREJÓN's** social responsibility programmes between September 2007 and February 2008.
3. Likewise, **THE COMMITTEE** and **CERREJÓN** agreed that all the matters under discussion and involved in the agreement would be discussed on the basis of the principles of justice and equity, in accordance with good international practices and, in particular, the provisions of the International Finance Corporation (CFI) and the World Bank (WB) which provide operational guidelines for the purpose. The intention was

therefore to ensure that the agreements would guarantee: (i) Integral, fair indemnities; (ii) The participation and adequate representation of persons with legitimate rights to such indemnities and, consequently, (iii) Improvement in the standard of living of the former residents of Tabaco. The foregoing is on the understanding that **CERREJÓN** will continue working with the Tabaco community to promote sustainable development.

4. For the foregoing purposes, **THE COMMITTEE** and **CERREJÓN** agreed that the agreement should cover the following aspects, as set forth in this document: i) Indemnities, ii) reconstruction of Tabaco and iii) termination of the Tabaco case in accordance with the contents of the Outline Agreement dated 1 October 2008.
5. Last 7 November 2008 and pursuant to the foregoing, **THE COMMITTEE** and **CERREJÓN** signed a Cooperation Agreement with the MUNICIPALITY OF HATONUEVO under which they would join forces in the Tabaco reconstruction process, in compliance with the order issued by the Supreme Court of Justice in its ruling of 7 May 2002.
6. Likewise, **THE COMMITTEE** and **CERREJÓN** have reached an integral agreement, satisfactory to the parties, to terminate, completely and definitively, all the disputes which arose in relation to the Tabaco Case, as follows:

AGREEMENT AND SETTLEMENT

FIRST.- INDEMNITIES: Having studied and analysed the legitimacy of the right recognised and the amount to be paid, in accordance with the typology, criteria and methodology set forth below, **THE COMMITTEE** and **CERREJÓN** have agreed that the latter will pay the indemnities set out as follows:

- 1.1 The following groups have been defined for the purposes of the individual indemnities based on the criteria agreed upon by **THE COMMITTEE** and **CERREJÓN**:
 - 1.1.1. **GROUP I:** A group of persons in expropriation actions and/or mining easement who did not reach prior agreements with the company. It includes the group of

persons who claim indemnities for fully identified rural properties, whether or not they have been subject to mining easement or expropriation.

- 1.1.2. GROUP II:** The group of persons who, through a validation between **THE COMMITTEE** and **CERREJÓN**, were shown to possess lots of land with or without improvements in Tabaco.
 - 1.1.3. GROUP III:** The group of persons who negotiated directly with INTERCOR (now **CERREJÓN**) between 1998 and 2002.
 - 1.1.4. GROUP IV:** the group of persons who negotiated directly with **CERREJÓN** between 2003 and 2005, after the expropriation actions and/or mining easement were completed.
 - 1.1.5. GROUP V:** The group of persons who received indemnities under family agreements with INTERCOR prior to 2002 and with **CERREJÓN** between 2004 and 2005.
 - 1.1.6. GROUP VI:** The group of persons who lived in Tabaco and had neither improvements nor rights of ownership of land.
- 1.2. THE COMMITTEE and CERREJÓN** agree that the indemnities paid on the basis of this **AGREEMENT AND SETTLEMENT** comprise and compensate in an integral manner all the material damages (consequential damages and loss of profits to both goods and persons) and all immaterial damages (moral and physiological damages) which may have been caused by or have arisen from the Tabaco Case.
 - 1.3.** As a result of the foregoing, **THE COMMITTEE** and **CERREJÓN** expressly agree that **CERREJÓN** will pay to the members of the Tabaco community, in accordance with the distribution by groups set forth in numeral 1.1., the sum of money agreed upon with **THE COMMITTEE**, on an individual basis, whose global value is the sum of **FOUR THOUSAND AND FIFTY-THREE MILLION TWO HUNDRED AND SEVENTY-SEVEN THOUSAND THREE HUNDRED AND TWENTY-FIVE COLOMBIAN PESOS (COL\$ 4,053,277,325)**, equivalent to **ONE MILLION SEVEN HUNDRED AND SEVENTY-NINE THOUSAND AND EIGHTY-SEVEN AMERICAN DOLLARS AND FIFTY-THREE CENTS OF A DOLLAR (USD \$1,779,087.53)** at the exchange rate in effect on the date of signature hereof (**\$3,278.29**) **PARAGRAPH:** The aforesaid is a net amount and, therefore, the respective taxes shall be payable by **CERREJÓN**.

- 1.4. **FORM OF PAYMENT: CERREJÓN** will, at its own cost, set up a TRUST with a local banking entity in which it will deposit the money referred to in section 1.3 above, so that, on the basis of the list which will also be delivered to THE TRUST, containing the names, identifications and the respective amounts of money, make the corresponding payments individually to each beneficiary. The said list has been approved and signed by both the representatives of **CERREJÓN** and those of **THE COMMITTEE. PARAGRAPH:** For the purposes of the corresponding payments by the TRUST, each beneficiary must sign, in addition to the documents required by this entity, a document declaring that he/she defines and extinguishes all the obligations that existed or might come to exist between him(her) and **CERREJÓN** by reason or as a result of the Tabaco Case claim and, moreover, shall desist and/or request termination of all the processes and actions brought by reason of this same Case.
- 1.5. **THE COMMITTEE** and **CERREJÓN** have agreed that if after signature of this **AGREEMENT AND SETTLEMENT** any claim(s) should be made by any person(s) alleging that they were omitted from the previous lists, **CERREJÓN** will proceed to validate the legitimacy or otherwise of the right claimed and will either pay or not pay the respective indemnity under the same conditions as those according to which it was calculated and agreed upon with **THE COMMITTEE** for all cases, according to the groups. **PARAGRAPH:** A maximum term of two (2) months following signature of this **AGREEMENT AND SETTLEMENT** is established for the foregoing purposes.

SECOND.- RECONSTRUCTION OF TABACO:

- 2.1. As stated in section 5 of the whereas clauses of this **AGREEMENT AND SETTLEMENT** and in the Cooperation Agreement signed between **CERREJÓN, THE COMMITTEE** and the **MUNICIPALITY OF HATONUEVO** last 7 November 2008, **CERREJÓN** will support the reconstruction of Tabaco and, therefore, ratifies the following commitments included in the said Agreement, as follows: (i) **CERREJÓN** will acquire and hand over to the **MUNICIPALITY OF HATONUEVO** an appropriate area of land located in the jurisdiction of that Municipality to be used exclusively for the reconstruction of the Village of Tabaco. (ii) **CERREJÓN** will carry out the adaptation works of the plots of land and roads. (iii) **CERREJÓN** will build at its own responsibility in an exclusive manner, one (1)

Community Centre, whose design will be agreed upon with **THE COMMITTEE** and other members of the community of Tabaco who wish to participate in the project. **PARAGRAPH: CERREJÓN** will spend the sum of **THREE THOUSAND MILLION COLOMBIAN PESOS (COL\$ 3,000,000,000)** for the purposes of fulfilling the commitments referred to herein.

- 2.2. For its part, **THE COMMITTEE's** obligations regarding the reconstruction of Tabaco, which are ratified in this **AGREEMENT AND SETTLEMENT**, are the following: i) **THE COMMITTEE** will lead, together with the **MUNICIPALITY OF HATONUEVO**, the actions required to undertake the project of such reconstruction, which includes the participation of other entities, such as La Guajira Department. ii) **THE COMMITTEE** will provide the **MUNICIPALITY OF HATONUEVO** and the other entities interested in the Tabaco reconstruction project with all information which may be useful to them. iii) **THE COMMITTEE** will participate in the construction of the houses, as agreed, within the framework of the Consensus Table set up between **CERREJÓN** and **THE COMMITTEE** and, iv) **THE COMMITTEE** will call upon the former residents, as necessary, to guarantee their participation in the Tabaco reconstruction process.

THIRD: TERMINATION OF THE TABACO CASE: THE COMMITTEE and **CERREJÓN** hereby agree that, once the commitments assumed have been fulfilled, this **AGREEMENT AND SETTLEMENT** shall have the effects of *res judicata* according to the provisions of Article 2483 of the Colombian Civil Code. Consequently, **THE COMMITTEE** and **CERREJÓN** declare that they hereby define and extinguish all the obligations which existed or might come to exist between them by reason or as a result of the Tabaco Case claim which gave rise to this **AGREEMENT AND SETTLEMENT**, consequent upon the payments of the indemnities, and the contribution for the reconstruction of Tabaco, within which the construction of the community centre and the mutual recognitions herein are included.

To this effect, **THE COMMITTEE** hereby undertakes to desist from and/or request the termination of all the processes or actions involved in the Tabaco Case and to make the result of this **AGREEMENT AND SETTLEMENT** known to all the national and international instances to whose attention the matter was brought.

This **AGREEMENT AND SETTLEMENT** is signed in three (3) identical copies for each of the parties in Albania, La Guajira, on the twelfth day of the month of December 2008.

FOR THE COMMITTEE	FOR CERREJÓN
<p>(signed) _____ JOSE JULIO PEREZ (President)</p> <p>(signed) _____ ARMANDO PEREZ ARAUJO Holder of Power of Attorney</p>	<p>(signed) _____ LEON TEICHER President</p>
<p>Representatives of CERREJÓN in the discussions</p> <p>(signed) _____ JULIAN B. GONZALEZ</p> <p>(signed) _____ EDGAR SARMIENTO M.</p> <p>(signed) _____ EDUARDO LOZANO</p>	
<p>FACILITATOR</p> <p>(signed) _____ JOHN HARKER</p>	