

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

IN RE: § **Case No. 05-21207**
§
ASARCO LLC, et al. § **Chapter 11**
§
Debtors. § **(Jointly Administered)**
§

**ASARCO INCORPORATED'S AND AMERICAS MINING
CORPORATION'S SUPPLEMENT TO JOINT DISCLOSURE
STATEMENT IN SUPPORT OF THE RESPECTIVE PLANS OF
REORGANIZATION PROPOSED BY (1) THE DEBTORS; (2) ASARCO
INCORPORATED AND AMERICAS MINING CORPORATION; AND (3)
HARBINGER CAPITAL PARTNERS MASTER FUND I, LTD.**

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Dated: July 30, 2009

DISCLOSURE STATEMENT SUPPLEMENT

ASARCO Incorporated and Americas Mining Corporation (collectively, the “Parent”) have filed a Modified Sixth Amended Plan of Reorganization for the Debtors Under Chapter 11 of the United States Bankruptcy Code (the “Parent’s Sixth Amended Plan”).¹ The Parent hereby submits for creditors’ consideration this Supplement to the Disclosure Statement (the “Supplement”) that introduces and describes the Parent’s Sixth Amended Plan, and requests that creditors vote to accept the Parent’s Sixth Amended Plan. In addition, the Supplement asks any party that has already voted on the Parent’s Fifth Amended Plan to carefully weigh the improved value and possibilities offered by the Parent’s Sixth Amended Plan, and to re-cast such vote to accept the Parent’s Sixth Amended Plan.

The Parent’s Sixth Amended Plan contains several very important and valuable enhancements for holders of Priority Claims, Secured Claims, General Unsecured Claims, and Environmental Claims, including the following:

Priority Claims. Under the Parent’s Sixth Amended Plan, holders of Priority Claims will receive Cash in the Allowed Amount of their Claims **and** will receive a pro rata share in recoveries realized by the Litigation Trust and the SCC Litigation Trust until the holders are Paid in Full, including Post-Petition Interest.

Secured Claims. Under the Parent’s Sixth Amended Plan, holders of Security Claims, at the election of the Parent, shall either (1) receive Cash in the Allowed Amount of their claims **and** will receive a pro rata share in recoveries realized by the Litigation Trust and the SCC Litigation Trust until the holder are Paid in Full, including Post-Petition Interest; (2) be Reinstated; (3) receive from Reorganized ASARCO all Collateral securing such Allowed Secured Claim; or (4) receive such other treatment as may be agreed upon between the Parent and the holder of such Allowed Secured Claim.

General Unsecured Claims. As noted above, under the Parent’s Sixth Amended Plan, each holder of an Allowed General Unsecured Claim will have the right to elect one of three treatments:

Treatment A: (i) Cash in the amount of a pro rata share of a pool consisting of the Net Distributable Cash,² the Tax Refund and **\$1.4625 billion** (estimated to be approximately 97% of such holder Allowed Claim in Cash); **plus** (ii) a pro rata share of the Distributed Litigation Trust Interests. The pro rata share allocable to each Claim shall be determined

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Parent’s Sixth Amended Plan (which is included with this Supplement as **Supplement Exhibit A**) and the Supplemental Glossary (which is included with this Supplement as **Supplement Exhibit C**).

² “Net Distributable Cash” means the Distributable Cash remaining after the Parent’s Plan Administrator has made all distributions required under the Parent’s Plan on account of Administrative Claims, Priority Tax Claims, Class 1 Claims and Class 2 Claims, and fully funded the Section 524(g) Trust, the Environmental Custodial Trust, the SCC Litigation Trust Expense Fund, and the Working Capital Reserve.

as if all holders of Claims in Class 3 were receiving Treatment A. Class 3 Claimants electing Treatment A will receive higher Cash Payments on the Effective Date in exchange for granting the ASARCO Protected Parties a full release with respect to the SCC Litigation, and will not be entitled to receive Post-Petition Interest. Additionally, depending upon the number of creditors that elect to receive Treatment B or Treatment C, below, excess cash may be available such that creditors electing to receive Treatment A will receive payment in full of 100% of each Holder's Allowed Claim in Cash.

Treatment B: (i) Cash in the amount of a pro rata share of a pool consisting of the Net Distributable Cash, the Tax Refund and **\$1.15 billion** from the Parent Contribution; plus (ii) a pro rata share of the Parent's Copper Note; (iii) a pro rata share of the Distributed Litigation Trust Interests; and (iv) a pro rata share of the SCC Litigation Trust Interests. The pro rata share allocable to each Claim shall be determined as if all holders of Claims in the same Class were receiving Treatment B. Class 3 Claimants electing Treatment B will have the opportunity to receive Payment in Full, including Post-Petition Interest if recoveries by the Litigation Trust and SCC Litigation Trust are sufficient to fund such payments, but not more than Payment in Full.

Treatment C: (i) Cash in the amount of a pro rata share of a pool consisting of the Net Distributable Cash, the Tax Refund, and **\$1.4578 billion** from the Parent Contribution; plus (ii) a pro rata share of the Distributed Litigation Trust Interests to which such holder is entitled pursuant to Article 5.6 hereunder; and (iii) a pro rata share of the SCC Litigation Trust Interests. The pro rata share allocable to each Claim shall be determined as if all holders of Claims in the same Class were receiving Treatment B. Class 3 Claimants electing Treatment C will have the opportunity to receive Payment in Full, including Post-Petition Interest if recoveries by the Litigation Trust and SCC Litigation Trust are sufficient to fund such payments, but not more than Payment in Full.

General Unsecured Creditors may elect to receive Treatment A, B or C under the Parent's Plan even if they do not vote to accept the Parent's Plan and even if they do not express a preference for the Parent's Plan, however, General Unsecured Creditors must make such election on the attached ballot and return the ballot by the voting deadline. ***Holders of General Unsecured Claims that fail to elect Treatment A, B or C and timely return the attached ballot will receive Treatment A under the Parent's Plan.***

The Parent has further modified the Sixth Amended Plan to provide that, if the Parent's Sixth Amended Plan is confirmed, the Parent will withdraw its appeals with respect to the Environmental Custodial Trusts and the Environmental Unsecured Claims. Thus, Governmental Environmental Claimants will receive the treatment they negotiated with the Debtors and that has been approved by the Bankruptcy Court. Note, however, that if the Parent's Plan is not confirmed, the Parent will continue to pursue its objections to, and/or any then pending appeals of, the Debtors' Environmental 9019 Motion and the District Court Order denying withdrawal of the reference to the Bankruptcy Court as to the Residual Superfund and the Custodial Trust Settlement Agreements.

Post-Petition Interest. Under the Parent's Sixth Amended Plan, creditors entitled to receive Post-Petition Interest will receive interest payments calculated at the federal judgment

rate for claims other than Secured Claims. Post-Petition Interest for Secured Claims will be calculated at the rate provided by § 506(b) of the Bankruptcy Code for secured claims. Moreover, claimants shall have the opportunity to seek payment of Post-Petition Interest at a rate other than the federal judgment rate or reimbursement of attorneys' fees and other costs and expenses associated with a Claim, by filing a motion within 30 days after the Effective Date.

SCC Litigation Trust. The SCC Litigation will be transferred to an SCC Litigation Trust, which shall also be funded with a \$20 million SCC Litigation Trust Expense Fund any unused portion of which will be distributed to creditors if needed to achieve payment in full of principal plus Post-Petition Interest. The SCC Litigation Trust will pursue and seek recoveries on the SCC Litigation Trust Claims. Any net recoveries by the SCC Litigation Trust will be distributed to holders of Priority Claims, Secured Claims, General Unsecured Claims electing Treatment B or C, and potentially to holders of Late-Filed and Subordinated Claims, until such holders are paid in full, *including Post-Petition Interest*.³

Under the Parent's Sixth Amended Plan, the SCC Litigation Trust shall be completely independent from Reorganized ASARCO and the Parent, and will be governed by a Trustee and Board, selected ably by creditor representatives, that will not report to Reorganized ASARCO or the Parent and will have no fiduciary duties to Reorganized ASARCO or the Parent.

The tax treatment of the SCC Litigation Trust and the SCC Litigation Trust Beneficiaries will be the same as described for the Litigation Trust and the Litigation Trust Beneficiaries, respectively, in the Disclosure Statement.

Certainty of Closing

- To ensure that the Parent is capable of meeting its funding requirements under the Parent's Plan on the Effective Date, Grupo and the Parent have entered into a Support Agreement under which Grupo has agreed to promptly provide the Parent with funds in an amount equal to the amount required to permit the Parent to deliver the Parent Contribution in full and fund the Working Capital Facility.
- To demonstrate its intention and ability to fully and timely consummate the Parent's Plan, the Parent has established an Escrow Account funded with 67,280,000 shares of stock of SCC.

³ Under the SCC Litigation Trust Agreement, the SCC Litigation Trustee and the SCC Litigation Trust Beneficiaries will agree that the escrow agreement between the Debtors and Parent with respect to the SCC Stock subject of the SCC Final Judgment (the "SCC Litigation Escrow Agreement"), save and except the requirements of ¶ 3(c) in the SCC Litigation Escrow Agreement, is and shall be adequate security to stay execution of the SCC Final Judgment for so long as the SCC Litigation Trust shall remain unliquidated, it being expressly agreed and understood that the Parent may seek, from a court having jurisdiction with respect to the SCC Final Judgment, relief from the obligations in ¶ 3(c) of the Escrow Agreement including, without limitation, the posting of a supersedeas bond, and the SCC Litigation Trust Beneficiaries shall be deemed to have consented to such relief.

- Before the Parent's Plan is confirmed, stock in the Escrow Account worth \$125 million will act as a forfeitable deposit, ensuring that the Parent's Plan is not withdrawn prior to the conclusion of the Confirmation Hearing.
- After the Parent's Plan is confirmed, stock in the Escrow Account worth \$1.3 billion will act as forfeitable deposit, ensuring that the Parent will timely consummate the confirmed Parent's Plan.
- Entry of a Final Order is not a condition to the Parent's Obligation to close; the Parent will close even if an unstayed appeal of confirmation of the Parent's Plan is pending.

The foregoing description summarizes only certain aspects of the Parent's Sixth Amended Plan and is intended to supplement the Disclosure Statement approved by the Court. Creditors should read the Plans and the Disclosure Statement (including, without limitation, all of the risk factors set forth therein) in their entirety before voting on the Plans.

Creditors will be provided with a Ballot which allows them to (1) vote to accept or reject the Parent's Plan, the Debtors' Plan, and Harbinger's Plan, (2) express a preference among the Plans, and (3) if such creditor holds a general unsecured claim, elect treatment A, B, or C.

In order to have a creditors' vote, preferences and election to be counted, such creditor must complete and return the Ballot in accordance with the procedure described therein and in the Disclosure Statement. PLEASE READ THE DIRECTIONS ON THE BALLOT CAREFULLY AND COMPLETE YOUR BALLOT IN ITS ENTIRETY BEFORE RETURNING IT TO THE DEBTORS' BALLOTING AGENT.

The Parent believe that the Parent's Plan provides an equitable means for paying creditor claims and offers creditors the ability to select a treatment that best fits their needs and expectation, including options providing for superior immediate cash recovery and longer term ability to recover 100% of their principal plus Post-Petition Interest. The Debtor's Plan and the Harbinger Plan, on the other hand, provide significantly smaller initial distributions to creditors on the effective date and include prolonged litigation and payment risks. Accordingly, the Parent recommends that, even if creditors have already submitted a ballot, that they complete and submit the enclosed ballot(s) and (1) vote to accept the Parent's Plan, (2) electing one of the three Treatments available exclusively under the Parent's Plan, (3) indicate a preference for the Parent's Plan, and (4) vote to reject the Debtor's Plan and Harbinger's Plan.

The text of a letter to creditors that will accompany the revised ballots is attached hereto as **Supplement Exhibit I**.

Attached to this Disclosure Statement Supplement are the following exhibits:

- A. The Parent's Sixth Amended Plan.
- B. A version highlighting the changes in the Parent's Sixth Amended Plan.
- C. The Supplemental Glossary.

- D. The Form of SCC Litigation Trust Agreement (Parent's Plan Exhibit 24).
- E. The form of Parent's Copper Note (Parent's Plan Exhibit 25).
- F. The fully executed Support Agreement (Parent's Plan Exhibit 26).
- G. The list of litigations released under the Parent's Plan, revised to remove the SCC Litigation (Parent's Plan Exhibit 2).
- H. The form of the Escrow Agreement (DS Exhibit S).
- I. The text of a solicitation letter from the Parent regarding the Sixth Amended Plan

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The undersigned have executed this Disclosure Statement Supplement as of the 30th day of July, 2009.

Respectfully submitted,

ASARCO INCORPORATED, a Delaware corporation

By: /s/ Jaime F. Collazo Gonzalez
Name: Jaime F. Collazo Gonzalez
Title: President

By: /s/ Jorge Lazalde Psihas
Name: Jorge Lazalde Psihas
Title: Vice President and General Counsel

AMERICAS MINING CORPORATION, a Delaware corporation

By: /s/ Alberto de la Parra Zavala
Name: Alberto de la Parra Zavala
Title: General Counsel

By: /s/ Jorge Lazalde Psihas
Name: Jorge Lazalde Psihas
Title: Assistant Secretary

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**ASARCO INCORPORATED AND AMERICAS MINING CORPORATION'S
MODIFIED SIXTH AMENDED PLAN OF REORGANIZATION FOR THE DEBTORS
UNDER CHAPTER 11 OF THE UNITED STATES BANKRUPTCY CODE**

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Co-Counsel to ASARCO Incorporated and Americas Mining Corporation

Dated: July 30, 2009

INJUNCTIONS

This plan of reorganization provides for the issuance of a channeling injunction regarding asbestos claims and demands asserted against the ASARCO Protected Parties (see Article 11.3(a)) and the issuance of an injunction in favor of Settling Asbestos Insurance Companies (see Article 11.3(b)).

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EXHIBITS TO THE PARENT’S PLAN

<u>Exhibit Designation</u>	<u>Exhibit Title</u>
Parent’s Plan Exhibit 1	Schedule of ASARCO Protected Non-Debtor Affiliates
Parent’s Plan Exhibit 2	Schedule of Released Litigation
Parent’s Plan Exhibit 3	Schedule of Executory Contracts and Unexpired Leases to be Rejected Under the Parent’s Plan
Parent’s Plan Exhibit 4	Form of Parent’s Plan Administration Agreement
Parent’s Plan Exhibit 5	Schedule of Subsidiary Debtor Assets To Be Transferred to Reorganized ASARCO
Parent’s Plan Exhibit 6	Schedule of Asbestos Insurance Policies
Parent’s Plan Exhibit 7	Schedule of Class 2 Secured Claims
Parent’s Plan Exhibit 8	Schedule of Directors, Officers & Administrators
Parent’s Plan Exhibit 9	Schedule of Litigation Trust Claims

Parent's Plan Exhibit 10	Form of Working Capital Facility
Parent's Plan Exhibit 11	Form of Section 524(g) Trust Agreement
Parent's Plan Exhibit 12	Form of ASARCO Security Agreement
Parent's Plan Exhibit 13	Form of ASARCO Deed of Trust
Parent's Plan Exhibit 14	Form of Parent Pledge Agreement
Parent's Plan Exhibit 15	Schedule of Owned Strategic Properties
Parent's Plan Exhibit 16	Form of Litigation Trust Agreement
Parent's Plan Exhibit 17	Amended Agreement in Principle
Parent's Plan Exhibit 18	List of Designated Properties to be Transferred to Environmental Custodial Trusts and Schedule of Environmental Custodial Trust Funding
Parent's Plan Exhibit 19	List of Sites Related to Environmental Claims
Parent's Plan Exhibit 20	List of Previously Settled Environmental Claims and Miscellaneous Federal and State Environmental Claims
Parent's Plan Exhibit 21	List of Asbestos Insurance Settlement Agreements
Parent's Plan Exhibit 22	Mission Mine Settlement Agreement
Parent's Plan Exhibit 23	Form of ASARCO Note and Guarantee
Parent's Plan Exhibit 24	Form of SCC Litigation Trust Agreement
Parent's Plan Exhibit 25	Form of Parent's Copper Note
Parent's Plan Exhibit 26	Support Agreement

ASARCO Incorporated and Americas Mining Corporation (“AMC” and, together with ASARCO Incorporated, the “Parent”) respectfully propose the following joint plan of reorganization (the “Parent’s Plan”) for the Debtors pursuant to section 1121(a) of the Bankruptcy Code.

ARTICLE I

DEFINITIONS, RULES OF INTERPRETATION, AND COMPUTATION OF TIME

1.1 Defined Terms. Capitalized terms used in the Parent’s Plan have the meanings set forth in the Uniform Glossary of Defined Terms for Plan Documents (the “Glossary”), which is **DS Exhibit A-2**. Capitalized terms used in the Parent’s Plan which are not defined in the Glossary but which are defined in the Bankruptcy Code shall have the respective meanings specified in the Bankruptcy Code.

1.2 Rules of Interpretation. Unless otherwise provided herein for purposes of the Parent’s Plan: (a) whenever it is appropriate from the context, each term, whether stated in the singular or the plural, will include both the singular and the plural; (b) any reference in the Parent’s Plan to a contract, instrument, release, or other agreement or document being in a particular form or on particular terms and conditions means that such document will be substantially in such form or substantially on such terms and conditions; (c) any reference in the Parent’s Plan to an existing document or exhibit filed or to be filed means such document or exhibit, as it may have been or may be amended, modified, or supplemented pursuant to the Parent’s Plan; (d) any reference to any Entity as a holder of a Claim includes that Entity’s successors and assigns; (e) all references in the Parent’s Plan to sections, Articles, and exhibits are references to sections, Articles, and exhibits of or to the Parent’s Plan; (f) the words “herein,” “hereof,” “hereunder,” “hereto” and others of similar import refer to the Parent’s Plan in its entirety rather than to a particular portion of the Parent’s Plan; (g) captions and headings to Articles and sections are inserted for convenience of reference only and are not intended to be a part of, or to affect the interpretation of, the Parent’s Plan; and (h) the rules of construction set forth in section 102 of the Bankruptcy Code will apply. Notwithstanding anything in the Parent’s Plan to the contrary, any Claim against any Debtor asserted by an Affiliate of any Debtor shall be deemed disallowed in its entirety upon entry of the Confirmation Order.

1.3 Computation of Time. In computing any period of time prescribed or allowed by the Parent’s Plan, the provisions of Bankruptcy Rule 9006(a) will apply.

ARTICLE II

TREATMENT OF ADMINISTRATIVE CLAIMS, PRIORITY TAX CLAIMS AND DEMANDS

2.1 Administrative Claims. Each holder of an Allowed Administrative Claim (except any holder that agrees to lesser or otherwise different treatment) shall be Paid in Full, in Cash, in full satisfaction, settlement, release, extinguishment, and discharge of such Claim, on the later of the Effective Date or the date on which such Administrative Claim becomes an Allowed Claim; provided, however, that (a) Allowed Administrative Claims representing

(1) post-petition liabilities incurred in the ordinary course of business by any Debtor or (2) post-petition contractual liabilities arising under loans or advances to any Debtor, whether or not incurred in the ordinary course of business, shall be paid by Reorganized ASARCO in accordance with the terms and conditions of the particular transactions relating to such liabilities and any agreements relating thereto; and (b) the Allowed Administrative Claims of Professional Persons shall be paid pursuant to a Final Order of the Bankruptcy Court. Chase shall receive the Allowed Amount of any Administrative Claim under the Credit Facility in Cash, on the Effective Date, in full satisfaction, settlement, release, extinguishment, and discharge of such Claim. The Settled Asbestos Insurance Companies shall each have an Allowed Administrative Claim for the Pre-524(g) Indemnity, in accordance with the terms and conditions of the Asbestos Insurance Settlement Agreement.

The Environmental Custodial Trust Agreements and the trust created by the Residual Environmental Settlement Agreement shall be implemented exactly in accordance with the Debtors' Environmental 9019 Motion and orders approving such motion except for ministerial non-substantive changes. By way of example but not limitation, the Parent shall have no standing to challenge any disbursements by the trustees, nor shall the Parent have standing to challenge the sale or disposition of any of the properties by the trustees. On the Effective Date, (i) title to the Designated Properties shall be conveyed and transferred into the Environmental Custodial Trusts and the trust created by the Residual Environmental Settlement Agreement for the sole benefit of the beneficiaries thereof; (ii) the Environmental Custodial Trust Claims and the Administrative Claim under the Residual Environmental Settlement Agreement shall be treated as Administrative Claims and the trusts shall be funded in cash in full in such amount as set forth in the Debtors' Plan and the environmental settlement agreements; and (iii) the Parent shall withdraw its objections to, and/or any then pending appeals of, the Debtors' Environmental 9019 Motion and the District Court Order denying withdrawal of the reference to the Bankruptcy Court as to the Residual Superfund Settlement Agreement and the Custodial Trust Settlement Agreements; it being understood that any such appeal shall be stayed as soon as possible after the Parent's Plan is Confirmed until the earlier of the Effective Date (upon which the appeal shall be dismissed with prejudice) or the date upon which a plan of reorganization other than the Parent's Plan is Confirmed, and that such stay shall be without prejudice to the rights of any party thereto including the right to assert such appeal is moot. The Administrative Claims of the United States or any individual state under civil Environmental Laws relating to the Designated Properties shall, as contemplated by and to the same extent set forth in the Environmental 9019 Motion, be addressed through the Environmental Custodial Trust Settlement Agreements, the Environmental Custodial Trust Funding, and the Environmental Custodial Trust Administration Funding, which funding shall be paid by the Parent's Plan Administrator to the Environmental Custodial Trusts.

2.2 Priority Tax Claims. Each holder of an Allowed Priority Tax Claim (except any holder that agrees to lesser or otherwise different treatment), at the election of the Parent, shall (1) be Paid in Full, in Cash, in full satisfaction, settlement, release, extinguishment, and discharge of such Claim, on the later of the Effective Date or the date upon which such Priority Tax Claim becomes an Allowed Claim, or (2) receive treatment in any other manner such that its Allowed Priority Tax Claim shall not be impaired pursuant to section 1124 of the Bankruptcy Code, including, but not limited to, payment in accordance with the provisions of section 1129(a)(9)(C) of the Bankruptcy Code.

2.3 Demands. Demands shall be accorded the Section 524(g) Treatment provided to Class 4 Asbestos Personal Injury Claims, and shall be determined, processed, liquidated and paid pursuant to the terms and conditions of the Section 524(g) Trust Distribution Procedures and the Section 524(g) Trust Agreement.

The FCR is entitled to make an election regarding whether to accept or reject the Section 524(g) Treatment, provided, however, that, under the Amended Agreement in Principle, the FCR and the Asbestos Claimants' Committee have agreed to support the Parent's Plan including the Section 524(g) Treatment.

ARTICLE III

CLASSIFICATION OF CLAIMS AND INTERESTS

3.1 Generally. Pursuant to section 1122 of the Bankruptcy Code, Claims and Interests, other than Administrative Claims and Priority Tax Claims, shall be divided into the Classes set forth in Article 3.2 of the Parent's Plan. A Claim or Interest is classified in a particular Class only to the extent that the Claim or Interest falls within the description of that Class and is classified in a different Class to the extent that the Claim or Interest is within the description of that different Class.

3.2 Classes. The following constitute the Classes of Claims and Interests addressed by the Parent's Plan. All Classes of Claims shall be deemed divided into Subclasses (and sub-Subclasses, as applicable) of Claims against each of the Debtors.

(a) Class 1 – Priority Claims. Class 1 consists of all Priority Claims against each of the Debtors.

(b) Class 2 – Secured Claims. Class 2 consists of all Secured Claims against each of the Debtors.

(c) Class 3 – General Unsecured Claims. Class 3 consists of all General Unsecured Claims, including Bondholder Claims and Environmental Unsecured Claims, against each of the Debtors.

(d) Class 4 – Asbestos Personal Injury Claims. Class 4 consists of all Asbestos Personal Injury Claims against each of the Debtors.

(e) Class 5 – Convenience Claims. Class 5 consists of all Convenience Claims against each of the Debtors.

(f) Class 6 – Late-Filed Claims. Class 6 consists of all Late-Filed Claims against each of the Debtors.

(g) Class 7 – Subordinated Claims. Class 7 consists of all Subordinated Claims against each of the Debtors.

(h) Class 8 – Environmental Reinstated Claims. Class 8 consists of all Environmental Reinstated Claims against each of the Debtors.

(i) Class 9 – Interests in ASARCO. Class 9 consists of all Interests in ASARCO.

ARTICLE IV

TREATMENT OF CLAIMS AND INTERESTS

4.1 Unclassified Claims. Each holder of an Allowed Administrative Claim, an Allowed Priority Tax Claim, or a Demand shall receive the treatment set forth respectively for each such category in Article II of the Parent's Plan.

4.2 Classes of Claims and Interests.

(a) *Class 1 – Priority Claims.*

Each holder of an Allowed Priority Claim (except any holder that agrees to lesser or otherwise different treatment), in full satisfaction, settlement, release, extinguishment, and discharge of such Claim, shall receive (i) Cash in an amount equal to the principal amount of such Allowed Priority Claim plus Post-Petition Interest on such Claim.

This Class is unimpaired. Class 1, and holders of Priority Claims in Class 1, are conclusively presumed to have accepted the Parent's Plan and, accordingly, are not entitled to vote on the Parent's Plan.

(b) *Class 2 – Secured Claims.*

Each holder of an Allowed Secured Claim, at the election of the Parent, in full satisfaction, settlement, release, extinguishment and discharge of such Claim, shall either (1) receive (i) Cash in an amount equal to the principal amount of such Allowed Secured Claim, and (ii) a Pro Rata share in recoveries realized by the Litigation Trust and the SCC Litigation Trust until the holder of such Allowed Secured Claim has received payment in full of Post-Petition Interest on such Claim; (2) be Reinstated; (3) receive from Reorganized ASARCO all Collateral securing such Allowed Secured Claim; or (4) receive such other treatment as may be agreed upon between the Parent and the holder of such Allowed Secured Claim.

The Secured Claims of the United States relating to the East Helena, Montana facility and the Globe, Colorado facility, and any Secured Claims relating to the Prepetition ASARCO Environmental Trust shall be satisfied by having the holders of such Claims retain the Liens securing such Claims, unless a holder agrees to different treatment. In addition, upon the Effective Date, the causes of action asserted by the Debtors against the United States of America on behalf of the EPA, the USDA, the Interior, and the International Boundary and Water Commission in Adversary Proceeding No. 07-02076 (and only those causes of action) shall be dismissed without prejudice.

Except as otherwise provided herein, any Asbestos Personal Injury Claimant with a Lien against any property of the Debtors, other than proceeds of an Asbestos Insurance Policy, shall retain the Lien securing such Claim, subject to the Parent's election in this Article 4.2(b). Secured Asbestos Personal Injury Claims which are secured by Liens against proceeds of an Asbestos Insurance Policy shall be included in the treatment accorded Class 4 Asbestos Personal Injury Claims, as set forth in Article 4.2(d) of the Parent's Plan, and shall be determined, processed, liquidated, and paid pursuant to the terms and conditions of the Asbestos TDP and the Asbestos Trust Agreement; provided, however, that the Asbestos Trust may assert any rights (including, but not limited to, avoidance rights and rights of setoff and recoupment), defenses (including, but not limited to, affirmative defenses), and objections that the Debtors have against or with respect to such Claims, which rights, defenses, and objections are transferred to the Asbestos Trust pursuant to the Parent's Plan.

Each Secured Claim shall be deemed to be in a separate sub-Class of Class 2 for all purposes hereunder, and treated as a separate sub-Class for voting and solicitation purposes. **Parent's Plan Exhibit 7** attached hereto lists the Class 2 Secured Claims (as such list may be amended, supplemented, or modified up to and including the Confirmation Date).

The Parent shall make its election prior to the Confirmation Hearing. The Parent shall solicit the votes of each sub-Class of Secured Claims. If the Parent elects to Reinstate a particular Secured Claim, that sub-Class shall be unimpaired, and that sub-Class's vote shall not be counted. If the Parent elects a payment option as to a particular Secured Claim, that sub-Class shall be deemed impaired, and that sub-Class's vote shall be counted.

(c) *Class 3 – General Unsecured Claims.*

Each holder of an Allowed General Unsecured Claim (except any holder that agrees to lesser or otherwise different treatment), in full satisfaction, settlement, release, extinguishment, and discharge of such Claim, on the later of the Effective Date or the date on which such General Unsecured Claim becomes an Allowed Claim, shall receive Treatment A (as set forth below) unless such holder elects Treatment B or Treatment C (as set forth below). In this sub-article, "Net Distributable Cash" means the Distributable Cash remaining after the Parent's Plan Administrator has made all distributions required under the Parent's Plan on account of Administrative Claims, Priority Tax Claims, Class 1 Claims and Class 2 Claims, and fully funded the Section 524(g) Trust, the Environmental Custodial Trust, the SCC Litigation Trust Expense Fund, and the Working Capital Reserve.

Treatment A: Each holder of a Claim in Class 3 that receives Treatment A shall receive (i) Cash in the amount of a Pro Rata share of a pool consisting of the Net Distributable Cash, the Tax Refund and \$1.4625 billion, plus (ii) a Pro Rata share of the Distributed Litigation Trust Interests to which such holder is entitled pursuant to Article 5.6 hereunder; provided, that the Pro Rata share allocable to each Claim shall be determined as if all holders of Claims in Class 3 were receiving Treatment A; and

provided further, that in no event shall a holder of a Claim that elects or receives Treatment A receive more than an amount equal to the principal Allowed Amount of such Claim with no Post-Petition Interest (as that term is defined in Article 4.4). Each holder of a Claim in Class 3 that elects or receives Treatment A shall grant the ASARCO Protected Parties a full release with respect to the SCC Litigation, as provided by Article XI hereunder, and shall have no claim against the SCC Litigation Trust Proceeds.

Treatment B: Each holder of a Claim in Class 3 that elects Treatment B shall receive (i) Cash in the amount of a Pro Rata share of a pool consisting of the Net Distributable Cash, the Tax Refund and \$1.15 billion from the Parent Contribution; (ii) a Pro Rata share of the Parent's Copper Note; and (iii) to the extent that consideration under clauses (i) and (ii) is insufficient to provide for Payment in Full of such Claim, a Pro Rata share of the Distributed Litigation Trust Interests to which such holder is entitled pursuant to Article 5.6 hereunder and the SCC Litigation Trust Interests; provided, that the Pro Rata share allocable to each Claim shall be determined as if all holders of Claims in Class 3 were receiving Treatment B; and provided further, that in no event shall a holder of a Claim that elects Treatment B receive more than an amount equal to the principal Allowed Amount of such Claim plus Post-Petition Interest determined as set forth in Article 4.4. For purposes hereunder, the present value of the Parent's Copper Note as of the Effective Date shall be deemed to be \$308.7 million.

Treatment C: Each holder of a Claim in Class 3 that elects Treatment C shall receive (i) Cash in the amount of a Pro Rata share of a pool consisting of the Net Distributable Cash, the Tax Refund and \$1.4587 billion from the Parent Contribution; and (ii) to the extent that consideration under clause (i) is insufficient to provide for Payment in Full of such Claim, a Pro Rata share of the Distributed Litigation Trust Interests to which such holder is entitled pursuant to Article 5.6 hereunder and the SCC Litigation Trust Interests to which such holder is entitled pursuant to Article 5.6 hereunder; provided, that the Pro Rata share allocable to each Claim shall be determined as if all holders of Claims in the Class 3 were receiving Treatment C; and provided further, that in no event shall a holder of a Claim that elects Treatment C receive more than an amount equal to the principal Allowed Amount of such Claim plus Post-Petition Interest determined as set forth in Article 4.4.

Any objection by the Parent to the ability of a holder of an Environmental Unsecured Claim to receive Post-Petition Interest or to share in the SCC Litigation Trust Proceeds is waived.

This Class is impaired. Holders of Allowed General Unsecured Claims in Class 3 are entitled to vote to accept or reject the Parent's Plan and are entitled to elect to receive Treatment A, B or C.

Holders of Claims in Class 3 that fail to make an election among Treatment A, B or C shall receive Treatment A. Any holder of a Claim in Class 3 that elects two or more Treatments shall receive the alphabetically first Treatment elected by such holder.

(d) *Class 4 – Asbestos Personal Injury Claims.*

Asbestos Personal Injury Claims and Demands against any of the Debtors shall together be allowed in the aggregate amount of one billion dollars (\$1.0 billion). On the Effective Date, the Section 524(g) Trust shall be established and funded with the Section 524(g) Trust Assets, and liability of the Debtors for all Asbestos Personal Injury Claims and Demands shall be assumed by, and channeled to, the Section 524(g) Trust without further act or deed, and satisfied as set forth herein. The Section 524(g) Trust is described in Article VI below. All Asbestos Personal Injury Claims and Demands shall be processed, liquidated and paid pursuant to the terms and provisions of the Section 524(g) Trust Distribution Procedures and the Section 524(g) Trust Agreement. The sole recourse of the holder of an Asbestos Personal Injury Claim or Demand shall be to the Section 524(g) Trust and the Section 524(g) Trust Distribution Procedures, and such holder shall have no rights whatsoever at any time to assert such holder's Claim or Demand against any Debtor, Reorganized ASARCO, or any ASARCO Protected Party. Without limiting the foregoing, on the Effective Date, all Persons shall be permanently and forever stayed, restrained and enjoined from taking any enjoined actions against any ASARCO Protected Party (or against the property or interest in property of the Debtors and their Estates or of any ASARCO Protected Party, or against any Designated Property) for the purpose of, directly or indirectly, collecting, recovering, or receiving payment of, on or with respect to any Asbestos Personal Injury Claim or Demand.

This Class is impaired. Holders of Allowed Asbestos Personal Injury Claims in Class 4 are entitled to vote to accept or reject the Parent's Plan.

(e) *Class 5 – Convenience Claims.*

On the Effective Date, each holder of a Convenience Claim shall receive the Allowed Amount of such holder's Claim, in Cash, in full satisfaction, settlement, release, extinguishment, and discharge of such Claim. Election by the holder of an Allowed General Unsecured Claim otherwise treated under Class 3 of this Plan to reduce the Claim of such holder to \$1,000 and to receive distribution as a Class 5 Convenience Claim shall constitute acceptance of the Parent's Plan and a waiver of the right to recover any amount in excess of \$1,000 from any of the Debtors.

This Class is unimpaired. Class 5, and holders of Convenience Claims in Class 5, are conclusively presumed to have accepted the Parent's Plan and, accordingly, are not entitled to vote on the Parent's Plan.

(f) *Class 6 – Late-Filed Claims.*

Each holder of a Late-Filed Claim shall not receive or retain any property under the Parent's Plan on account of such Claim, except to the extent that Distributed Litigation Trust Interests are distributed to such holder pursuant to Article 5.6(a) hereunder, SCC Litigation Trust Proceeds are distributed to such holder pursuant to Article 5.19 hereunder, and/or funds from the Disputed Claims Reserve are distributed to such holders pursuant to Article 13.8(f) hereunder; provided, however, that in no event

shall any holder of a Class 6 Claim receive distributions in excess of the principal Allowed Amount of such Late-Filed Claim plus Post-Petition Interest on such Claim.

This Class is impaired. Class 6 is deemed to have rejected the Parent's Plan and, accordingly, holders of Claims in Class 6 are not entitled to vote on the Parent's Plan.

(g) *Class 7 – Subordinated Claims.*

Each holder of a Subordinated Claim shall not receive or retain any property under the Parent's Plan on account of such Claim, except to the extent that Distributed Litigation Trust Interests are distributed to such holder pursuant to Article 5.6(a) hereunder, SCC Litigation Trust Proceeds are distributed to such holder pursuant to Article 5.19 hereunder, and/or funds from the Disputed Claims Reserve are distributed to such holders pursuant to Article 13.8(f) hereunder; provided, however, that in no event shall any holder of a Class 7 Claim receive distributions in excess of the principal Allowed Amount of such Subordinated Claim plus Post-Petition Interest on such Claim.

This Class is impaired. Class 7 is deemed to have rejected the Parent's Plan and, accordingly, holders of Claims in Class 7 are not entitled to vote on the Parent's Plan.

(h) *Class 8 – Environmental Reinstated Claims.*

On the Effective Date, Environmental Reinstated Claims shall be Reinstated and, from and after the Effective Date, Reorganized ASARCO shall assume, pay, perform and discharge when due all of its Assumed Environmental Liabilities. For the avoidance of doubt, any claims of Montana Resources, Inc. arising as a result of adversary proceeding no. 07-02024 shall be classified as Environmental Reinstated Claims and receive the treatment hereunder.

This Class is unimpaired. Class 8, and holders of Environmental Reinstated Claims in Class 8, are conclusively presumed to have accepted the Parent's Plan and, accordingly, are not entitled to vote on the Parent's Plan.

(i) *Class 9 – Interests in ASARCO.*

The Interests in ASARCO shall be deemed cancelled, and the holder of such Interests shall not receive or retain any property under the Parent's Plan on account of such Interests.

In exchange for the Parent Contribution, ASARCO USA Incorporated or its designee shall receive the New Equity Interests on the Effective Date.

This Class is impaired. Class 9 is deemed to have rejected the Parent's Plan and, accordingly, is not entitled to vote on the Parent's Plan.

4.3 Cramdown. If all applicable requirements for Confirmation of the Parent's Plan are met as set forth in section 1129(a)(1) through (13) of the Bankruptcy Code except subsection (8) thereof, the Parent's Plan shall be treated as a request by the Parent for Confirmation of the Parent's Plan in accordance with the "cramdown" provisions of section 1129(b) of the Bankruptcy Code, notwithstanding the failure to satisfy the requirements of section 1129(a)(8), on the basis that the Parent's Plan is fair and equitable and does not discriminate unfairly with respect to each Class of Claims and Interests that is impaired under, and has not accepted, the Parent's Plan. In addition, in the event Class 3 votes to reject the Parent's Plan, the Parent reserves the right to modify the Parent's Plan to the extent necessary to render the Parent's Plan confirmable.

4.4 Post-Petition Interest and Payment in Full Plus Interest.

Under the Parent's Plan, "Post-Petition Interest" shall mean interest on the Allowed Amount of a Claim from August 10, 2005 to and including five business days immediately prior to the date a distribution is made on account of such Claim, and after the Effective Date, interest on any unpaid portion of such Allowed Amount and any unpaid post-petition interest ("Post-Petition Interest"). Post-Petition Interest on Claims other than Class 2 Secured Claims shall be calculated at the federal judgment rate in accordance with section 1961 of title 28 of the United States Code (the "Plan Rate") and on Claims in Class 2 at the rate provided by section 506(b) of the Bankruptcy Code.

Any Claimant seeking (a) payment of Post-Petition Interest on such holder's Claim at a rate other than the Plan Rate or (b) reimbursement of attorneys' fees and other costs and expenses associated with such holder's Claim (or both) shall file a motion seeking such relief within 30 days after the Effective Date. Any such motion must include all of the documentation upon which the Claimant relies to establish the Claimant's entitlement to (a) Post-Petition Interest at a rate other than the Plan Rate and (b) attorneys' fees and other costs and expenses. **THE INCLUSION OF THE ENTITLEMENT TO THESE TYPES OF CLAIMS IN PROOFS OF CLAIM SHALL NOT BE SUFFICIENT TO ESTABLISH SUCH CLAIMS WITHOUT A SUPPLEMENTAL FILING BY A CLAIMANT WITHIN THE SPECIFIED TIME PERIOD.** The Parent's Plan Administrator shall have 60 days after the Effective Date to resolve any such objection without need of Bankruptcy Court approval in which case the Parent's Plan Administrator shall file with the Bankruptcy Court a notice that the matter has been resolved; *provided, however*, that the Bankruptcy Court retains jurisdiction to resolve such matters in the event the Parent's Plan Administrator and the Claimant cannot reach an agreement.

ARTICLE V

LITIGATION TRUST AND SCC LITIGATION TRUST

A. The Litigation Trust.

5.1 Creation of the Litigation Trust. On the Effective Date, the Litigation Trust shall be created as provided in the Litigation Trust Agreement. Prior to the Effective Date, the Litigation Trust Agreement may be amended to include new or different terms in order to

comply with the requirements of the Bankruptcy Code, including, without limitation, section 1129(a) and (b) thereof.

5.2 Appointment of Litigation Trustee and the Litigation Trust Board.

(a) The Litigation Trustee shall be selected by the Parent. Upon approval by the Bankruptcy Court in the Confirmation Order, the Litigation Trustee shall be appointed.

(b) The Parent (if prior to the Effective Date) or Reorganized ASARCO (if after the Effective Date) shall designate the Person who shall initially serve as Delaware Trustee of the Litigation Trust.

(c) The Litigation Trustee shall report to and consult with the Litigation Trust Board, which shall consist of three members selected by the Parent. Successors to the members of the Litigation Trust Board shall be selected by Reorganized ASARCO.

(d) The Litigation Trustee and the Delaware Trustee shall each have and perform all of the rights, powers, and duties set forth in the Litigation Trust Agreement.

5.3 Purpose of the Litigation Trust. The Litigation Trust shall be established as a statutory trust for the purpose of pursuing the Litigation Trust Claims, liquidating all assets of the Litigation Trust for the benefit of the Litigation Trust Beneficiaries, receiving all Litigation Trust Claim recoveries, and distributing the resulting proceeds and other Cash of the Litigation Trust to the Litigation Trust Beneficiaries after payment of all expenses of the Litigation Trust. The primary purpose of the Litigation Trust is to liquidate its assets, and the Litigation Trust shall have no objective or authority to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Litigation Trust. Accordingly, the Litigation Trustee shall, in an expeditious but orderly manner, prosecute, settle, or otherwise dispose of Litigation Trust Claims, make timely distributions in accordance with the terms of the Litigation Trust Agreement, and not unduly prolong the Litigation Trust's duration.

5.4 Transfer of Litigation Trust Claims to the Litigation Trust. On the Effective Date, Reorganized ASARCO shall transfer to the Litigation Trust, for the benefit of the Litigation Trust Beneficiaries, (a) all of the Debtors' and Reorganized ASARCO's respective rights, title, and interests in the Litigation Trust Claims free and clear of any and all Liens, Claims, encumbrances, or interests of any kind in such property of any other Person or Entity, other than Liens or encumbrances arising under the Bankruptcy Code or other applicable law; and (b) all of the Debtors' and Reorganized ASARCO's respective Privileges associated with the Litigation Trust Claims. The Litigation Trust Claims are listed on **Parent's Plan Exhibit 9**; the Parent expressly reserves the right to amend such list from time to time up until the Effective Date of the Parent's Plan. As soon as practicable after the Effective Date, Reorganized ASARCO shall transfer or make available to the Litigation Trustee, for the benefit of the Litigation Trust Beneficiaries, all documents in Reorganized ASARCO's possession, custody, or control in connection with the Litigation Trust Claims. For the avoidance of doubt, all of the causes of action arising under chapter 5 of the Bankruptcy Code are included as Litigation Trust Claims, with the exception of those avoidance actions against the Parent and its Affiliates that

are specifically identified on **Parent's Plan Exhibit 2**, which are released by Article 10.5 of the Parent's Plan. Such avoidance causes of action shall continue to be pursued by the Litigation Trust unless the Litigation Trustee determines that the costs of pursuing a particular avoidance action are not warranted.

5.5 The Litigation Trust.

(a) The Litigation Trust Agreement, substantially in the form of **Parent's Plan Exhibit 16**, contains provisions customary to trust agreements utilized in comparable circumstances, including, without limitation, provisions to ensure the continued existence of the Litigation Trust as a grantor trust and the Litigation Trust Beneficiaries as grantors and owners thereof for federal income tax purposes. Reorganized ASARCO, the Litigation Trustee, the Litigation Trust Beneficiaries, and the Delaware Trustee shall execute any document or other instrument as necessary to cause all of Reorganized ASARCO's respective rights, title, and interests in and to the Litigation Trust Claims to be transferred to the Litigation Trust.

(b) The Litigation Trustee shall have full authority to take any steps necessary to administer the Litigation Trust Claims, including, without limitation, the duty and obligation to liquidate the Litigation Trust Claims. Without limitation, the Litigation Trustee may object pursuant to section 502(d) of the Bankruptcy Code to any Proof of Claim filed by a defendant in any of the Litigation Trust Claims. Both Reorganized ASARCO and the Litigation Trustee have the right to prosecute objections to any Proof of Claim filed by a defendant in any of the Litigation Trust Claims.

(c) All costs and expenses associated with the administration of the Litigation Trust shall be advanced by Reorganized ASARCO in the ordinary course, provided, however, that Reorganized ASARCO shall be reimbursed for such funds from the proceeds of the Litigation Trust, if any. Reorganized ASARCO, the Parent's Plan Administrator, and the Parent shall cooperate with the Litigation Trustee in pursuing the Litigation Trust Claims and shall provide reasonable access to personnel and books and records of Reorganized ASARCO, the Parent's Plan Administrator, and the Parent relating to the Litigation Trust Claims to representatives of the Litigation Trust to enable the Litigation Trustee to perform the Litigation Trustee's tasks under the Litigation Trust Agreement and the Parent's Plan; provided, however, that any requests to obtain access to the Parent's personnel or books and records shall be made through Reorganized ASARCO or its representatives.

(d) The Litigation Trustee may retain such law firms, accounting firms, experts, advisors, consultants, investigators, appraisers, agents, employees, or other professionals and third parties as he may deem necessary or appropriate, with the prior approval of Reorganized ASARCO, to aid in the performance of the Litigation Trustee's responsibilities pursuant to the terms of the Parent's Plan, including, without limitation, the liquidation and distribution of Litigation Trust Claims.

(e) Solely for tax purposes, it is intended that the Litigation Trust be classified as a liquidating trust under section 301.7701-4(d) of the Treasury Regulations, and the Litigation Trust Beneficiaries will be treated as the owners of their proportionate share of the assets of the Litigation Trust. Accordingly, for federal income tax purposes, the Parent intends that all parties

(including, without limitation, the Litigation Trustee, the Litigation Trust Beneficiaries, and the transferors, for tax purposes, of any assets transferred to the Litigation Trust) will take the position, subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary, that the transfer of assets to the Litigation Trust is a deemed transfer to the Litigation Trustee for the benefit of the Litigation Trust Beneficiaries (as of the Initial Distribution Date), and all income and gain of the Litigation Trust which is earned after such deemed transfer will be taxed to the Litigation Trust Beneficiaries on a current basis. In addition, the investment powers of the Litigation Trustee will be limited to those powers that are consistent with the treatment of the Litigation Trust as a liquidating trust.

(f) The fair market value of the portion of the Litigation Trust assets that is treated for federal income tax purposes as having been transferred for the benefit of each Litigation Trust Beneficiary as described in the preceding paragraph, and the fair market value of the portion of the Litigation Trust assets that is treated for federal income tax purposes as having been transferred to the Litigation Trustee for the benefit of any Litigation Trust Beneficiary as a result of a distribution of Litigation Trust Interests from the Disputed Claims Reserve, will be determined by the Litigation Trustee, and all parties (including, without limitation, the Litigation Trustee, the Litigation Trust Beneficiaries, and the transferors, for tax purposes, of any assets transferred to the Litigation Trust) will utilize such fair market value determined by the Litigation Trustee for all federal income tax purposes.

(g) The Litigation Trustee will be responsible for filing all federal, state, and local tax returns for the Litigation Trust and paying any taxes imposed on the Litigation Trust. The Litigation Trustee will comply with all withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority, and all distributions made by the Litigation Trustee will be subject to any such withholding and reporting requirements. Any amount so withheld from a distribution to a Claimant or other distributee of the Litigation Trust will be treated as having been paid to, and received by, such distributee for purposes of the Parent's Plan and the Parent's Plan Documents.

(h) Any items of income, deduction, credit, or loss of the Litigation Trust will be allocated by the Litigation Trustee for federal income tax purposes among current or former Litigation Trust Beneficiaries, such allocation will be binding on all parties for all federal, state, local, and foreign income tax purposes, and such current or former Litigation Trust Beneficiaries will be responsible for the payment of any federal, state, local, and foreign income tax due on the income and gain so allocated to them.

(i) In the event that one or more of the Debtors obtains approval, pursuant to Bankruptcy Rule 9019, of a settlement prior to the Effective Date of a cause of action that would have been transferred to the Litigation Trust on the Effective Date, the proceeds of the settlement shall be distributed to the Litigation Trust Beneficiaries in the same manner as the Litigation Trust Interests. In the event of such a settlement, the Debtors that are parties to the settlement shall hold the proceeds in escrow for distribution on the Effective Date. If the First L/C is collected, the proceeds of that First L/C will be contributed to the Litigation Trust and available for distribution pursuant to Article 5.7.

(j) The Litigation Trust shall be deemed a “successor to the debtor” for purposes of section 1145 of the Bankruptcy Code and not necessarily for any other purpose.

5.6 Litigation Trust Interests.

(a) *Distributions of Litigation Trust Interests.*

On the Effective Date, the Litigation Trustee shall distribute 100% of the Litigation Trust Interests (the “Distributed Litigation Trust Interests”), Pro Rata, to holders of Claims in Classes 2 and 3.

Upon Payment in Full of all Allowed Claims in Classes 2 and 3, whether from the Litigation Trust or otherwise (and the resolution of all Disputed Claims in such Classes), the Litigation Trustee shall remove such Class 2 and 3 Claimants from the Trust Register and shall redistribute the Distributed Litigation Trust Interests, Pro Rata, to the holders of Allowed Class 6 Claims (and, pending resolution of Disputed Claims in Class 6, the Disputed Claims Reserve). Upon Payment in Full of all Allowed Claims in Class 6, the Litigation Trustee shall remove Class 6 Claimants from the Trust Register and redistribute the Distributed Litigation Trust Interests, Pro Rata, to the holders of Allowed Class 7 Claims (and, pending resolution of Disputed Claims in Class 7, the Disputed Claims Reserve). Upon Payment in Full of all Allowed Claims in Class 7, the Litigation Trustee shall remove Class 7 Claimants from the Trust Register and redistribute the Distributed Litigation Trust Interests to Reorganized ASARCO.

(b) *Interests Beneficial Only.*

The ownership of a Litigation Trust Interest shall not entitle any Litigation Trust Beneficiary to (1) any title in or to the assets of the Litigation Trust as such (which title shall be vested in the Litigation Trustee) or to any right to call for a partition or division of the assets of the Litigation Trust or to require an accounting; or (2) any voting rights with respect to the administration of the Litigation Trust and the actions of the Litigation Trustee in connection therewith.

(c) *Maintenance of Register.*

The Litigation Trustee shall at all times maintain a Trust Register of the names, addresses, and number of Litigation Trust Interests of the Litigation Trust Beneficiaries.

(d) *Evidence of Litigation Trust Interests.*

The Litigation Trustee shall have full power, authority, and discretion to determine whether ownership of any Litigation Trust Interest shall be represented by physical certificates, by book entries in lieu of physical certificates, or in any other form or manner. Regardless of such determination, the record holders of the Litigation Trust Interests shall be recorded and set forth in the Trust Register.

(e) *Inapplicability of the Securities Exchange Act and the Trust Indenture Act.*

Beneficial interests in the Litigation Trust either (1) are not “securities” within the meaning of the federal and state securities laws or (2) may be issued without securities registration or licensing in reliance upon the exemption afforded by section 1145(a)(1) of the Bankruptcy Code. Without limitation to the foregoing, beneficial interests in any such Litigation Trust do not constitute “a class of equity securities” within the meaning of the Securities Exchange Act of 1934, as amended, and such Litigation Trust Interests shall not be subject to registration under such act. Without limitation to the foregoing, beneficial interests in the Litigation Trust are not “evidences of indebtedness” within the meaning of the Trust Indenture Act of 1939, as amended, and may be issued without qualification of an indenture under such act.

5.7 Distributions of Litigation Proceeds and Other Property. The Litigation Trustee shall apply all proceeds of the litigations transferred to the Litigation Trust, and any other Cash of the Litigation Trust in the following order: first, to pay all costs and expenses of the Litigation Trust, including, without limitation, compensation payable to the Litigation Trustee; second, to reimburse Reorganized ASARCO for any funds provided to the Litigation Trust or paid on its behalf by Reorganized ASARCO; third, to the Litigation Trust Beneficiaries. In no event shall any holder of an Allowed Claim in Class 2, 3, 6, or 7 receive distributions from the Litigation Trust which, when combined with Available Parent’s Plan Funds or other forms of consideration provided to such holder with respect such Claim, exceed the Allowed amount of such Claim together with Post-Petition Interest. Upon Payment in Full of all Allowed Claims in Classes 2, 3, 6, and 7, all remaining proceeds or other Cash of the Litigation Trust, if any, shall be distributed to Reorganized ASARCO.

5.8 Termination of the Litigation Trust.

(a) The Litigation Trust shall terminate on the earlier of: (1) 30 days after the distribution of all of the assets of the Litigation Trust in accordance with the terms of the Litigation Trust Agreement and the Parent’s Plan; or (2) the fifth anniversary of the Effective Date; provided, however, that, on or prior to a date less than six months (but not less than three months) prior to such termination, the Bankruptcy Court, upon motion by a party in interest, may extend the term of the Litigation Trust for a finite period if, based on the facts and circumstances, the Bankruptcy Court finds that such extension is necessary to the liquidating purpose of the Litigation Trust. The Bankruptcy Court may approve multiple extensions of the term of the Litigation Trust, provided that (i) any such extension is so approved on or prior to a date less than six months (but not less than three months) prior to termination of the immediately preceding extended term, and (ii) the Litigation Trustee receives an opinion of counsel or a favorable ruling from the IRS that any further extension would not adversely affect the status of the Litigation Trust as a grantor trust for federal income tax purposes.

(b) The Litigation Trustee shall not unduly prolong the duration of the Litigation Trust and shall at all times endeavor to resolve, settle, or otherwise dispose of all of the Litigation Trust Claims and to effect the distribution of the assets of the Litigation Trust to the holders of the Litigation Trust Interests in accordance with the terms hereof and terminate the Litigation Trust as soon as practicable.

5.9 Termination of the Litigation Trustee and the Delaware Trustee. The duties, responsibilities, rights, and obligations of the Litigation Trustee and the Delaware Trustee for the Litigation Trust shall terminate in accordance with the terms of the Litigation Trust Agreement.

5.10 Claims Against Montana Resources Reserved for Reorganized ASARCO. The Debtors' claims against Montana Resources, Inc., including those asserted in Adv. No. 07-02024, pending in the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division, are not Litigation Trust Claims under the Parent's Plan, and shall not be transferred to the Litigation Trust. Rather, the Debtors' claims against Montana Resources, Inc., are expressly reserved for Reorganized ASARCO to pursue in the ordinary course.

B. The SCC Litigation Trust.

5.11 Creation of the SCC Litigation Trust. In accordance with the SCC Litigation Trust Agreement (the form of which is attached hereto as **Parent's Plan Exhibit 24**, the "SCC Litigation Trust Agreement"), the SCC Litigation Trust shall be established on the Effective Date. Prior to the Effective Date, the SCC Litigation Trust Agreement may be amended to include new or different terms in order to comply with the requirements of the Bankruptcy Code, including, without limitation, section 1129(a) and (b) of the Bankruptcy Code. In the event of any discrepancies between Articles 5.11 through 5.20 of the Parent's Plan and the SCC Litigation Trust Agreement, the SCC Litigation Trust Agreement shall govern.

5.12 Appointment of Trustees. The SCC Litigation Trustee shall be selected by the SCC Litigation Trust Board and appointed upon approval by the Bankruptcy Court in the Confirmation Order, in accordance with the SCC Litigation Trust Agreement.

The duties, responsibilities, rights, and obligations of the SCC Litigation Trustee are set forth in the SCC Litigation Trust Agreement and shall terminate in accordance with the terms of the SCC Litigation Trust Agreement. The SCC Litigation Trustee shall report to the SCC Litigation Trust Board. For the avoidance of doubt, the SCC Litigation Trustee shall not report to the Parent or Reorganized ASARCO and shall have no fiduciary duties to the Parent or Reorganized ASARCO.

5.13 SCC Litigation Trust Board. The SCC Litigation Trust Board shall consist of three members initially selected as follows: (1) one member selected by the ASARCO Committee; (2) one member selected by the DOJ (in consultation with the states that have Allowed Unsecured Environmental Claims); and (3) one member jointly selected by the other two members.

The duties, responsibilities, rights, and obligations of the SCC Litigation Trust Board are set forth in the SCC Litigation Trust Agreement and shall terminate in accordance with the terms of the SCC Litigation Trust Agreement. For the avoidance of doubt, the SCC Litigation Trust Board shall not report to the Parent or Reorganized ASARCO and shall have no fiduciary duties to the Parent or Reorganized ASARCO.

Successors to the members of the SCC Litigation Trust Board shall be selected as follows: (1) in the case of the member originally selected by the DOJ, by the DOJ (in

consultation with the states that have Allowed Unsecured Environmental Claims); and (2) in the case of either of the other two members, by the remaining members.

5.14 Purpose of the SCC Litigation Trust. The SCC Litigation Trust shall be established as a statutory trust for the purpose of pursuing the SCC Litigation Trust Claims, liquidating all assets of the SCC Litigation Trust for the benefit of the SCC Litigation Trust Beneficiaries, receiving all SCC Litigation Trust Claims recoveries not in excess of the Maximum Recovery (defined below), and distributing the resulting SCC Litigation Trust Proceeds and other Cash of the SCC Litigation Trust to the SCC Litigation Trust Beneficiaries after payment of all expenses of the SCC Litigation Trust. The primary purpose of the SCC Litigation Trust is to liquidate its assets, and the SCC Litigation Trust shall have no objective or authority to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the SCC Litigation Trust.

5.15 Transfer of SCC Litigation Trust Claims to the SCC Litigation Trustee. On the Effective Date, the Reorganized Debtors shall transfer, assign, and deliver to the SCC Litigation Trustee for the benefit of the SCC Litigation Trust Beneficiaries (1) all of the Debtors' respective rights, title, and interests in the SCC Litigation Trust Claims, subject to the Maximum Recovery, free and clear of any and all Liens, Claims, encumbrances, or interests of any kind in such property of any Person or Entity, other than Liens or encumbrances arising under the Bankruptcy Code or other applicable law; (2) all of the Debtors' respective rights, title, and interest in the Debtors' Privileges associated with the SCC Litigation Trust Claims; and (3) the \$20 million SCC Litigation Trust Expense Fund. The SCC Litigation Trust shall not be entitled to recover from the defendants named in the SCC Litigation Trust Claims or any ASARCO Protected Party any amount in connection with the SCC Litigation Trust Claims in excess of the amount necessary to provide, as of any date of determination, Payment in Full to all holders of Allowed Claims in Classes 1, 2, 6, and 7, and holders of Allowed Claims in Class 3 that elected Treatment B or Treatment C as set forth in Article 4.2(c) plus the SCC Litigation Trust's aggregate administrative expenses minus the SCC Litigation Trust Expense Fund (the "Maximum Recovery"). If the SCC Litigation Trust sells, transfers or otherwise disposes of its interests in the SCC Litigation Trust Claims, any purchaser, transferee and/or successor-in-interest shall not be entitled to recover from the defendants named in the SCC Litigation Trust Claims or any ASARCO Protected Party in connection with the SCC Litigation Trust Claims any amount in excess of the Maximum Recovery. For the avoidance of doubt, no purchaser, transferee, or successor-in-interest of the SCC Litigation Trust's interests in the SCC Litigation Trust Claims shall be entitled to recover from the defendants named in the SCC Litigation Trust Claims or any ASARCO Protected Party any fees, costs or expenses including, without limitation, attorney's fees or litigation costs and expenses.

The Parent's Plan Administrator shall calculate the Maximum Recovery, initially no later than thirty days after the Effective Date, and thereafter quarterly, and shall provide such calculation to the SCC Litigation Trust Board and the DOJ, and shall make a good faith effort to consensually resolve any disagreements with the SCC Litigation Trust Board or the DOJ regarding the amount of the Maximum Recovery. Any disputes regarding the Maximum Recovery shall be presented to the Bankruptcy Court for resolution.

The SCC Litigation Trustee shall be granted the rights and powers of a debtor in possession under section 1107 of the Bankruptcy Code, including, without limitation, the duty to prosecute the SCC Litigation Trust Claims and distribute the proceeds of such claims, and such other rights and powers as set forth in the SCC Litigation Trust Agreement; subject to the Maximum Recovery.

5.16 The SCC Litigation Trust Agreement. The SCC Litigation Trust Agreement shall contain provisions customary to trust agreements utilized in comparable circumstances. The Reorganized Debtors, the SCC Litigation Trustee, the SCC Litigation Trust Beneficiaries, and the Delaware Trustee shall execute any document or other instrument as necessary to cause all of the Debtors' respective rights, title, and interests in pursuing the SCC Litigation Trust Claims to be transferred to the SCC Litigation Trust, subject to the Maximum Recovery.

The SCC Litigation Trustee shall have full authority (subject, in certain instances, to approval by the SCC Litigation Trust Board) to take any steps necessary to administer the SCC Litigation Trust Claims, subject to the Maximum Recovery, including, without limitation, the duty and obligation to liquidate the SCC Litigation Trust Claims.

All costs and expenses associated with the administration of the SCC Litigation Trust shall be the responsibility of and paid by the SCC Litigation Trust. Notwithstanding the foregoing, each of Reorganized ASARCO and the Parent's Plan Administrator shall cooperate with the SCC Litigation Trustee in pursuing the SCC Litigation Trust Claims and shall provide reasonable access to their respective personnel and books and records relating to the SCC Litigation Trust Claims to representatives of the SCC Litigation Trust for the purpose of enabling the SCC Litigation Trustee to perform the SCC Litigation Trustee's tasks under the SCC Litigation Trust Agreement and this Plan.

The SCC Litigation Trustee may retain such law firms, accounting firms, experts, advisors, consultants, investigators, appraisers, agents, employees, or other professionals and third parties as the SCC Litigation Trustee and the SCC Litigation Trust Board may deem necessary or appropriate, and at the sole expense of the SCC Litigation Trust, to aid in the performance of the SCC Litigation Trustee's responsibilities pursuant to the terms of this Plan, including, without limitation, the liquidation and distribution of SCC Litigation Trust Claims.

Except as otherwise provided herein, the SCC Litigation Trust shall be deemed a "successor to the debtor" for purposes of sections 1123(b)(3) and 1145 of the Bankruptcy Code and not necessarily for any other purpose.

The SCC Litigation Trustee and the SCC Litigation Trust Beneficiaries shall agree that the escrow agreement between the Debtors and Parent with respect to the SCC Stock subject of the SCC Final Judgment (the "SCC Litigation Escrow Agreement"), save and except the requirements of ¶ 3(c) in the SCC Litigation Escrow Agreement, is and shall be adequate security to stay execution of the SCC Final Judgment for so long as the SCC Litigation Trust shall remain unliquidated, it being expressly agreed and understood that the Parent may seek, from a court having jurisdiction with respect to the SCC Final Judgment, relief from the obligations in ¶ 3(c) of the Escrow Agreement including, without limitation, the posting of a

supersedeas bond, and the SCC Litigation Trust Beneficiaries shall be deemed to have consented to such relief.

5.17 Tax Matters. Solely for tax purposes, it is intended that the SCC Litigation Trust be classified as a liquidating trust under section 301.7701-4(d) of the Treasury Regulations, and the SCC Litigation Trust Beneficiaries will be treated as the owners of their proportionate share of the assets of the SCC Litigation Trust. Accordingly, for federal income tax purposes, the Reorganized Debtors intend that all parties (including, without limitation, the SCC Litigation Trustee, the SCC Litigation Trust Beneficiaries, and the transferors, for tax purposes, of any assets transferred to the SCC Litigation Trust) shall take the position, subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary, that the transfer of assets to the SCC Litigation Trust is a deemed transfer to the SCC Litigation Trust Beneficiaries (as of the Initial Distribution Date), followed by a deemed transfer by such SCC Litigation Trust Beneficiaries to the SCC Litigation Trust, and all income and gain of the SCC Litigation Trust which is earned after such deemed transfer shall be taxed to the SCC Litigation Trust Beneficiaries on a current basis. In addition, the investment powers of the SCC Litigation Trustee shall be limited to those powers that are consistent with the treatment of the SCC Litigation Trust as a liquidating trust.

The fair market value of the portion of the SCC Litigation Trust assets that is treated for federal income tax purposes as having been transferred to each SCC Litigation Trust Beneficiary as described in the preceding paragraph, and the fair market value of the portion of the SCC Litigation Trust assets that is treated for federal income tax purposes as having been transferred to the SCC Litigation Trustee for the benefit of any SCC Litigation Trust Beneficiary as a result of a distribution of SCC Litigation Trust Interests from the Disputed Claims Reserve, shall be determined by the SCC Litigation Trustee, and all parties (including, without limitation, the SCC Litigation Trustee, the SCC Litigation Trust Beneficiaries, and the transferors, for tax purposes, of any assets transferred to the SCC Litigation Trust) shall utilize such fair market value determined by the SCC Litigation Trustee for all federal income tax purposes.

The SCC Litigation Trustee shall be responsible for filing all federal, state, and local tax returns for the SCC Litigation Trust and paying any taxes imposed on the SCC Litigation Trust. The SCC Litigation Trustee shall comply with all withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority, and all distributions made by the SCC Litigation Trustee shall be subject to any such withholding and reporting requirements. Any amount so withheld from a distribution to an SCC Litigation Trust Beneficiary (or its designee) shall be treated as having been paid to, and received by, such SCC Litigation Trust Beneficiary for purposes of the Parent's Plan and the Parent's Plan Documents.

Any items of income, deduction, credit, or loss of the SCC Litigation Trust shall be allocated by the SCC Litigation Trustee for federal income tax purposes among current or former SCC Litigation Trust Beneficiaries, such allocation shall be binding on all parties for all federal, state, local, and foreign income tax purposes, and such current or former SCC Litigation Trust Beneficiaries shall be responsible for the payment of any federal, state, local, and foreign income tax due on the income and gain so allocated to them.

5.18 SCC Litigation Trust Interests.

(1) *Issuance of SCC Litigation Trust Interests.*

On the Effective Date, the SCC Litigation Trustee shall distribute 100% of the SCC Litigation Trust Interests, Pro Rata, to holders of Claims in Class 2 and to holders of Claims in Class 3 that elected Treatment B or Treatment C (as set forth in Article 4.2(c)) (the “SCC Litigation Trust Initial Beneficiaries”).

Upon Payment in Full of all Allowed Claims of the SCC Litigation Trust Initial Beneficiaries, whether from the SCC Litigation Trust or otherwise (and the resolution of all Disputed Claims held by SCC Litigation Trust Initial Beneficiaries), the SCC Litigation Trustee shall remove such SCC Litigation Trust Initial Beneficiaries from the SCC Litigation Trust Register and shall redistribute the SCC Litigation Trust Interests, Pro Rata, to the holders of Allowed Class 6 Claims (and, pending resolution of Disputed Claims in Class 6, the Disputed Claims Reserve). Upon Payment in Full of all Allowed Claims in Class 6, the SCC Litigation Trustee shall remove Class 6 Claimants from the SCC Litigation Trust Register and redistribute the Distributed Litigation Trust Interests, Pro Rata, to the holders of Allowed Class 7 Claims (and, pending resolution of Disputed Claims in Class 7, the Disputed Claims Reserve). Upon Payment in Full of all Allowed Claims in Class 7, the Litigation Trustee shall remove Class 7 Claimants from the SCC Litigation Trust Register. Thereafter, the SCC Litigation Trust shall cease to be entitled to pursue or recover upon the SCC Litigation Trust Claims, and any surplus funds in the SCC Litigation Trust shall be returned to the Parent or other applicable defendant.

(2) *Interests Beneficial Only.*

The ownership of a SCC Litigation Trust Interest shall not entitle any SCC Litigation Trust Beneficiary to any title in or to the assets of the SCC Litigation Trust as such (which title shall be vested in the SCC Litigation Trustee) or to any right to call for a partition or division of the assets of the SCC Litigation Trust or to require an accounting.

(3) *Maintenance of SCC Litigation Trust Register.*

The SCC Litigation Trustee shall appoint an SCC Litigation Trust Registrar, which may be the SCC Litigation Trustee, for the purpose of recording ownership of the SCC Litigation Trust Interests. The SCC Litigation Trust Register shall contain the names, addresses for payment and notice, and class and number of SCC Litigation Trust Interests of each of the SCC Litigation Trust Beneficiaries. The SCC Litigation Trust Registrar, if other than the SCC Litigation Trustee, may be such other institution acceptable to the SCC Litigation Trustee and shall be entitled to receive reasonable compensation from the SCC Litigation Trust as an expense of the SCC Litigation Trust.

(4) *Evidence of SCC Litigation Trust Interests.*

The SCC Litigation Trustee shall have full power, authority, and discretion to determine whether ownership of any SCC Litigation Trust Interest shall be represented by physical certificates, by book entries in lieu of physical certificates, or in any other form or manner. Regardless of such determination, the record holders of the SCC Litigation Trust Interests shall be recorded and set forth in the SCC Litigation Trust Register.

5.19 Distributions of SCC Litigation Trust Proceeds and Other Property. The SCC Litigation Trustee shall apply all SCC Litigation Trust Proceeds, any proceeds therefrom, and any other Cash of the SCC Litigation Trust (other than the SCC Litigation Trust Expense Fund) in the following order:

(1) first, to pay all costs and expenses of the SCC Litigation Trust to the extent not paid by or from the SCC Litigation Trust Expense Fund, including, without limitation, compensation payable to the SCC Litigation Trustee, to satisfy other liabilities incurred or assumed by the SCC Litigation Trust (or to which the assets are otherwise subject) in accordance with the Parent's Plan or the SCC Litigation Trust Agreement, to hold such amounts in reserve as the SCC Litigation Trustee deems reasonably necessary to meet future expenses and contingent liabilities, to maintain the value of the SCC Litigation Trust Assets (including the SCC Litigation Trust Expense Fund), and to pay the Plan Administrator such amounts as the Plan Administrator designates from time to time for the purpose of paying, or indemnifying Reorganized ASARCO for, any taxes incurred or expected to be incurred by Reorganized ASARCO in connection with the SCC Litigation Trust as a result of the allocation of tax items by the SCC Litigation Trustee or the allowance or disallowance of Disputed Claims; and

(2) second, to pay any remaining amounts to the SCC Litigation Trust Beneficiaries (including to the Plan Administrator for deposit into the Disputed Claims Reserve on account of the Claims of any Claimant that would be an SCC Litigation Trust Beneficiary absent such objection) Pro Rata based on their SCC Litigation Trust Interests; provided, however, that (a) in no event shall any holder of a Claim in Class 2, 6 or 7 or a Claim in Class 3 as to which the holder has elected Treatment B or Treatment C (as set forth in Article 4.2(c)) receive aggregate distributions in excess of Payment in Full on account of such Claim and (b) in no event shall any holder of a Claim in Class 3 receiving Treatment A receive any SCC Litigation Trust Proceeds on account of such Claim. If the Plan Administrator holds proceeds of the SCC Litigation Trust in the Disputed Claims Reserve on account of a Disputed Claim that is finally determined adversely to such Claimant, in whole or in part, the Plan Administrator shall return to the SCC Litigation Trust the disallowed portion that the Plan Administrator received from the SCC Litigation Trust on account of such Claim and shall pay any Allowed portion to such Claimant.

(3) Third, upon termination of the SCC Litigation Trust, if the SCC Litigation Trust Expense Fund has funds remaining after the payment of all of the SCC Litigation Trust's expenses, such remaining funds shall be distributed as set forth in clause (2).

(4) Fourth, any funds remaining after all Claims entitled to share in the SCC Litigation Trust have been Paid in Full and all expenses of the SCC Litigation Trust have been satisfied, shall be distributed to Parent or other applicable defendant.

5.20 Termination of the SCC Litigation Trust. The SCC Litigation Trust shall terminate on the earlier of: (1) 30 days after the distribution of all of the assets of the SCC Litigation Trust in accordance with the terms of the SCC Litigation Trust Agreement and the Parent's Plan; or (2) the fifth anniversary of the Effective Date; provided, however, that, on or prior to a date less than six months (but not less than three months) prior to such termination, the Bankruptcy Court, upon motion by a party in interest, may extend the term of the SCC Litigation Trust for a finite period if, based on the facts and circumstances, the Bankruptcy Court finds that

such extension is necessary to the liquidating purpose of the SCC Litigation Trust. The Bankruptcy Court may approve multiple extensions of the term of the SCC Litigation Trust; provided that any such extension is so approved on or prior to a date less than six months (but not less than three months) prior to termination of the immediately preceding extended term.

The SCC Litigation Trustee shall not unduly prolong the duration of the SCC Litigation Trust and shall endeavor to resolve, settle, or otherwise dispose of all of the SCC Litigation Trust Claims and to effect the distribution of the assets of the SCC Litigation Trust to the holders of SCC Litigation Trust Interests in accordance with the terms hereof and terminate the SCC Litigation Trust as soon as practicable.

ARTICLE VI

SECTION 524(G) TRUST

6.1 Establishment and Purpose of the Section 524(g) Trust. On the Effective Date, the Section 524(g) Trust shall be established in accordance with the Parent's Plan Documents. When established, the Section 524(g) Trust shall be empowered in accordance with the Parent's Plan and the Parent's Plan Documents. The Section 524(g) Trust will be a "qualified settlement fund" within the meaning of Treasury Regulation section 1.468B-1. The purposes of the Section 524(g) Trust shall be to, among other things, (i) liquidate, resolve, pay, and satisfy all Asbestos Personal Injury Claims and Demands in accordance with the Parent's Plan, the Section 524(g) Trust Distribution Procedures, the Section 524(g) Trust Agreement, and the Confirmation Order, (ii) receive, preserve, hold, manage, and maximize the Section 524(g) Trust Assets for use in paying and satisfying Allowed Asbestos Personal Injury Claims and Demands in accordance with the terms of the Section 524(g) Trust Agreement, and (iii) take other actions deemed by the Section 524(g) Trustees to be in the best interests of the holders of the Asbestos Personal Injury Claims and Demands, who are the sole beneficiaries of the Section 524(g) Trust.

6.2 Section 524(g) Trust Agreement. The Section 524(g) Trust Agreement shall be substantially in the form of the "Section 524(g) Trust Agreement" attached as **Parent's Plan Exhibit 11** to the Parent's Plan, which contains provisions customary to documents utilized in comparable circumstances, and shall be subject to the reasonable approval of the FCR and the Asbestos Claimants' Committee.

6.3 Transfers and Assignments to the Section 524(g) Trust. On the Effective Date, the Parent's Plan Administrator shall transfer and assign to the Section 524(g) Trust for the benefit of the Section 524(g) Trust Beneficiaries the Section 524(g) Trust Assets.

6.4 Control of the Asbestos Insurance Actions and Asbestos Insurance Recoveries. The right to control the Asbestos Insurance Actions and all Asbestos Insurance Recoveries, including negotiations relating thereto and settlements thereof, shall be vested in the Section 524(g) Trust on and after the Effective Date. Notwithstanding the foregoing, Reorganized ASARCO, the Parent's Plan Administrator and the Parent shall cooperate with the Section 524(g) Trustees in pursuing the Asbestos Insurance Actions through such means, and shall provide reasonable access to personnel and books and records of Reorganized ASARCO

relating to the Asbestos Insurance Actions to representatives of the Section 524(g) Trust, to enable the Section 524(g) Trustees to perform the Section 524(g) Trustees' tasks under the Section 524(g) Trust Agreement and the Parent's Plan, as set forth in the Section 524(g) Trust Cooperation Agreement and as is discussed below in Article 6.11 in regards to Reorganized ASARCO.

Notwithstanding the foregoing, Reorganized ASARCO reserves the right to retain the Asbestos Insurance Recoveries and pay the net proceeds of such recoveries (after the deduction of the reasonable and necessary unreimbursed costs and expenses associated with obtaining such proceeds) to the Section 524(g) Trust if, after consultation with the Section 524(g) Trust, it is determined that such retention better preserves these assets.

6.5 Assumption of Liabilities by the Section 524(g) Trust. On the Effective Date, in exchange for funding in accordance with Article 6.3 of the Parent's Plan, the Section 524(g) Trust shall be deemed, without need for further action, to have assumed responsibility and liability for all Asbestos Personal Injury Claims and Demands.

6.6 Tax Matters. No election will be made to treat the Section 524(g) Trust as a grantor trust for U.S. federal income tax purposes. The Section 524(g) Trust is intended to be treated as a "qualified settlement fund" within the meaning of Treasury Regulation section 1.468B-1, and hence as a taxable entity for federal income tax purposes, and the Section 524(g) Trustees shall be the "administrators" of the Section 524(g) Trust pursuant to Treasury Regulation section 1.468B-2(k)(3). The Section 524(g) Trustees shall cause all taxes imposed on the Section 524(g) Trust to be paid using assets of the Section 524(g) Trust and shall comply with all tax reporting and withholding requirements imposed on the Section 524(g) Trust under applicable tax laws, and in particular the rules applicable to a qualified settlement fund.

6.7 Section 524(g) Trust Expenses. The Section 524(g) Trust shall initially be funded in the amount of \$27.5 million, which amount shall be deemed an Administrative Expense, to pay Section 524(g) Trust Expenses (including applicable taxes). Following such initial funding, neither the Debtors, the Parent, the Parent's Plan Administrator, nor Reorganized ASARCO shall have any obligation to pay or reimburse any Section 524(g) Trust Expenses. However, nothing shall preclude the Section 524(g) Trustees from seeking reimbursement of such expenses from any Asbestos Insurance Company.

6.8 Initial Section 524(g) Trustees. The initial Section 524(g) Trustees shall be those Persons nominated by the Asbestos Claimants' Committee and the FCR, if the Asbestos Claimants' Committee and the FCR are willing to make such nominations, or otherwise nominated by the Parent, and designated in the Confirmation Order.

6.9 The FCR. On and after the Effective Date, Judge Robert C. Pate shall serve as the FCR, as such term is defined in the Section 524(g) Trust Agreement, and shall have and exercise the functions, rights, duties, powers and privileges provided in the Section 524(g) Trust Documents, if Judge Robert C. Pate is willing to so serve. If not, the Bankruptcy Court will appoint his replacement.

6.10 Section 524(g) Trust Advisory Committee. The initial members of the Section 524(g) Trust Advisory Committee shall be those Persons nominated by the Asbestos Claimants' Committee if the Asbestos Claimants' Committee is willing to make such nominations, or otherwise nominated by the Parent, and designated in the Confirmation Order. They shall consult with and advise the Section 524(g) Trustees regarding the administration of the Section 524(g) Trust and the liquidation and resolution of Asbestos Personal Injury Claims and Demands in accordance with the provisions of the Parent's Plan and the Section 524(g) Trust Documents.

6.11 Asbestos Books.

(a) Subject to the conditions set forth herein and as more fully described in the Section 524(g) Cooperation Agreement, the Section 524(g) Trust, through its duly authorized representatives, shall have the right, upon reasonable prior written notice to Reorganized ASARCO, to either, at the election of Reorganized ASARCO in its sole discretion: (i) have Reorganized ASARCO transfer into the Section 524(g) Trust's possession all or part of the Asbestos Books in their current condition upon request of the Section 524(g) Trust and on the condition that the Section 524(g) Trust will incur all costs and expenses of the transfer; or (ii) to inspect and, at the sole expense of the Section 524(g) Trust, make copies of the Asbestos Books on any Business Day and as often as may reasonably be desired; provided that, if so requested, the Section 524(g) Trust shall have entered into a reasonable confidentiality agreement satisfactory in form and substance to Reorganized ASARCO. All costs and expenses associated with the storage of and access to any Asbestos Books that remain in the possession of Reorganized ASARCO shall be the responsibility of, and paid by, Reorganized ASARCO. All costs and expenses associated with the storage of and access to any Asbestos Books that are transferred to the Section 524(g) Trust shall be the responsibility of, and paid by, the Section 524(g) Trust. Reorganized ASARCO, the Parent's Plan Administrator and the Parent shall cooperate with the Section 524(g) Trust in transferring or providing access to the Asbestos Books in their current condition, and shall also provide reasonable access to necessary or appropriate personnel and the Asbestos Books as contemplated herein and in the Section 524(g) Cooperation Agreement. Subject to the conditions set forth herein and in the Section 524(g) Cooperation Agreement, the Section 524(g) Trust, through its duly authorized representatives, shall also have the right, upon reasonable prior written notice, to conduct reasonable interviews of employees and other representatives of Reorganized ASARCO concerning matters reasonably related to the Asbestos Books. Reorganized ASARCO shall provide the Section 524(g) Trust with advance notice of any proposed disposition of any of the Asbestos Books and a reasonable opportunity to segregate and remove such Asbestos Books as the Section 524(g) Trust may select.

(b) If the Section 524(g) Trust obtains from Reorganized ASARCO or its representatives any documents or communications (whether written or oral) to which any attorney-client, work-product privilege or other privilege or immunity attaches, the Section 524(g) Trust shall be deemed a privilege holder for purposes of preserving the privilege, shall be required to take all reasonable steps to maintain any such privilege, and may not waive any such privilege without the consent of Reorganized ASARCO, which consent shall not be unreasonably withheld. Production of materials to the Section 524(g) Trust does not constitute a waiver or an impairment of any privilege held by Reorganized ASARCO or ASARCO. Unless

otherwise ordered by the Bankruptcy Court, in processing and determination of, objection to, or otherwise in connection with Asbestos Personal Injury Claims or in connection with any Asbestos Insurance Recovery, as determined by the Section 524(g) Trust, the information contained in the Asbestos Books shall be treated as confidential. Except as otherwise provided herein, in the event that any third party challenges any such privilege or confidentiality, Reorganized ASARCO may seek protection from a court of competent jurisdiction. References in this Article 6.11 to Reorganized ASARCO shall also include its successors in interest.

6.12 Cooperation with Respect to Insurance Matters. Reorganized ASARCO and the Parent shall cooperate with the Section 524(g) Trust and use commercially reasonable efforts to take or cause to be taken all appropriate actions and to do or cause to be done all things necessary or appropriate to effectuate all transfers and assignments identified herein to the Section 524(g) Trust. By way of enumeration and not of limitation, Reorganized ASARCO and ASARCO each shall be obligated, without limitation, (a) to provide the Section 524(g) Trust with copies of insurance policies and settlement agreements included within or relating to the Asbestos Personal Injury Claims and Demands; (b) to provide the Section 524(g) Trust with information necessary or helpful to the Section 524(g) Trust in connection with its efforts to obtain insurance coverage for the Asbestos Personal Injury Claims and Demands as well as other recoveries, including, without limitation, recoveries of extracontractual damages; (c) to execute assignments or allow the Section 524(g) Trust to pursue claims in its own name (subject to appropriate disclosure of the fact that the Section 524(g) Trust is doing so and the reasons why it is doing so), including by means of arbitration, alternative dispute resolution proceedings or litigation, to the extent necessary or helpful to the efforts of the Section 524(g) Trust to obtain insurance coverage for the Asbestos Personal Injury Claims and Demands as well as other recoveries, including, without limitation, recoveries of extracontractual damages; and (d) to pursue and recover insurance coverage for the Asbestos Personal Injury Claims and Demands as well as other recoveries, including, without limitation, recoveries of extracontractual damages, in its own name or right to the extent that any or all of the transfers, assignments and assumptions identified herein are not able to be fully effectuated, with any and all recoveries therefrom to be turned over to the Section 524(g) Trust. The Section 524(g) Trust shall be obligated to compensate Reorganized ASARCO and ASARCO for all costs and expenses reasonably incurred in connection with providing assistance to the Section 524(g) Trust under this Article 6.12, including, without limitation, out-of-pocket costs and expenses, consultant fees and attorneys' fees.

6.13 Indemnification by the Section 524(g) Trust.

(a) The Section 524(g) Trust shall indemnify, defend (and, where applicable, pay the defense costs for), and hold harmless each of the ASARCO Protected Parties from any and all liabilities associated with an Asbestos Personal Injury Claim or Demand that a third party seeks to impose upon any of the ASARCO Protected Parties, or that are imposed upon any of the ASARCO Protected Parties.

(b) In the event that the Section 524(g) Trust makes a payment to any of the ASARCO Protected Parties hereunder, and the liability on account of which such payment was made is subsequently diminished, either directly or through a third-party recovery, the applicable ASARCO Protected Party shall promptly repay the Section 524(g) Trust the amount by which

the payment made by the Section 524(g) Trust exceeds the actual cost of such indemnified liability.

ARTICLE VII

ENVIRONMENTAL CUSTODIAL TRUSTS

7.1 Environmental Custodial Trusts. The Environmental Custodial Trusts and the trust created by the Residual Environmental Settlement Agreement shall be implemented on or before the Effective Date exactly in accordance with the Debtors' Environmental 9019 Motion and orders approving such motion except for ministerial non-substantive changes. By way of example but not limitation, the Parent shall have no standing to challenge any disbursements by the trustees, nor shall the Parent have standing to challenge the sale or disposition of any of the properties by the trustees. In particular, the organization, operative documents and funding amounts of the Environmental Custodial Trusts and the trust created by the Residual Environmental Settlement Agreement under the Parent's Plan shall be identical to those which the Debtors and the applicable governmental agencies agreed upon and sought approval of in connection with the Environmental 9019 Motion, except for ministerial non-substantive changes. The forms of the Trust Agreements as agreed to by the Debtors and the applicable government agencies, including the Montana Custodial Trust Settlement Agreement filed March 13, 2009 (Docket No. 10539-4), the Texas Custodial Trust Agreement filed March 19, 2009 (Docket No. 10567-4), the Multi-State Custodial Trust Settlement Agreement filed March 13, 2009 (Docket No. 10542-4), and the Residual Environmental Settlement Agreement shall be implemented with only such ministerial non-substantive changes as are required to reflect the Parent's Plan and to protect the Parent and Reorganized ASARCO as may be negotiated with the holders of Allowed Environmental Trust Claims regarding the Designated Properties prior to the Effective Date. All environmental settlement agreements approved by the Court, including but not limited to the Environmental Custodial Trust Settlement Agreements, the Residual Environmental Settlement Agreement, and the Miscellaneous Site Settlement Agreements shall be recognized and adhered to under the Parent Plan.

7.2 Environmental Custodial Trustees. Not less than the commencement of the Confirmation Hearing, the DOJ, if it is so willing, and in consultation with the states that have Allowed Environmental Trust Claims with respect to any Designated Elected Properties, shall designate the Persons who shall initially serve as the Environmental Custodial Trustees. The Environmental Custodial Trustees shall be appointed upon approval by the Bankruptcy Court in the Confirmation Order.

7.3 Tax Matters. The Environmental Custodial Trusts are intended to be treated as qualified settlement funds (for which no grantor trust election has been made) within the meaning of Treasury Regulation section 1.468B-1, and hence as taxable entities for federal income tax purposes, and each respective Custodial Trustee will be the "administrator" of its respective Environmental Custodial Trust pursuant to Treasury Regulation section 1.468B-2(k)(3). Each Custodial Trustee will cause all taxes imposed on the relevant Environmental Custodial Trust to be paid using assets of the Environmental Custodial Trust and will comply with all tax reporting and withholding requirements imposed on the Environmental Custodial

Trust under applicable tax laws, and in particular the rules applicable to a qualified settlement fund.

ARTICLE VIII

OTHER MATTERS

8.1 Assumption or Rejection of Unexpired Leases and Executory Contracts. On the Effective Date, except as otherwise provided in the Parent's Plan, any unexpired lease or executory contract that has not been previously assumed or rejected by any Debtor pursuant to an order of the Bankruptcy Court shall be deemed assumed by such Debtor under sections 365(a) and 1123 of the Bankruptcy Code, other than those executory contracts and unexpired leases that are (a) listed on **Parent's Plan Exhibit 3** hereto (as such list may be amended, supplemented or modified on or before the Effective Date) or (b) subject to a motion to reject that is pending on the Effective Date. Entry of the Confirmation Order shall constitute approval of such assumptions, and the rejection of the executory contracts or unexpired leases listed in **Parent's Plan Exhibit 3** hereto (as such list may be amended, supplemented or modified on or before the Effective Date), pursuant to sections 365(a) and 1123 of the Bankruptcy Code. Any motions to reject executory contracts and unexpired leases pending on the Effective Date shall be subject to approval by the Bankruptcy Court on or after the Effective Date by a Final Order.

8.2 Approval of Assumption or Rejection of Executory Contracts and Unexpired Leases. Entry of the Confirmation Order shall, subject to and upon the occurrence of the Effective Date, constitute (a) the approval, pursuant to sections 365(a), 365(f) and 1123 of the Bankruptcy Code, of the assumption of the executory contracts and unexpired leases assumed pursuant to Article 8.1 of the Parent's Plan; (b) the extension of time, pursuant to section 365(d)(4) of the Bankruptcy Code, within which the Debtors or Reorganized ASARCO may assume, assume and assign, or reject the unexpired leases specified in Article 8.1 of the Parent's Plan through the date of entry of an order approving the assumption, assumption and assignment, or rejection of such unexpired leases; and (c) the approval, pursuant to sections 365(a) and 1123 of the Bankruptcy Code, of the rejection of the executory contracts and unexpired leases rejected pursuant to Article 8.1 of the Parent's Plan.

8.3 Inclusiveness. Unless otherwise specified on **Parent's Plan Exhibit 3** hereto, each executory contract and unexpired lease listed or to be listed on **Parent's Plan Exhibit 3** shall include modifications, amendments, supplements, restatements or other agreements made directly or indirectly by any agreement, instrument, or other document that in any manner affects such executory contract or unexpired lease, without regard to whether such agreement, instrument or other document is listed on **Parent's Plan Exhibit 3**.

8.4 Rejection Damages. The Bankruptcy Court shall determine the amount, if any, of the Claim of any Entity seeking damages by reason of the rejection of any executory contract or unexpired lease to which it is a counterparty.

8.5 Rejection Damages Bar Date. If the rejection by a Debtor, pursuant to Article 8.1 of the Parent's Plan, of an executory contract or unexpired lease results in a Claim, then such Claim shall be forever barred and discharged and shall not be enforceable against the

Debtors, Reorganized ASARCO, or their respective properties, unless a Proof of Claim is filed and served upon the Parent's Plan Administrator within thirty days after the later of the Effective Date or the date of entry of an order approving such rejection. To the extent any such Claim is Allowed by the Bankruptcy Court by Final Order, such Claim shall become, and shall be treated for all purposes under the Parent's Plan as, a General Unsecured Claim, and the holder thereof shall receive distributions as a holder of an Allowed General Unsecured Claim, pursuant to the Parent's Plan.

8.6 Payments Related to Assumption of Executory Contracts and Unexpired Leases. To the extent that Cure Amount Claims constitute monetary defaults, such Cure Amount Claims shall be satisfied by Reorganized ASARCO, pursuant to section 365(b)(1) of the Bankruptcy Code: (1) by payment of the Cure Amount Claim on the Effective Date; or (2) on such other terms as are agreed to by the Parent and the non-debtor parties to the executory contract or unexpired lease. In the event of a dispute regarding (A) the amount of any Cure Amount Claim or (B) any other matter pertaining to assumption and assignment of such contract or lease, the payment of any Cure Amount Claim required by section 365(b)(1) of the Bankruptcy Code shall be made following the entry of a Final Order resolving the dispute and approving the assumption and assignment.

8.7 Employee Benefit Plans and Other Benefits.

(a) Effective as of the Effective Date, Reorganized ASARCO shall be responsible for all benefits and liabilities with respect to the Employee Benefit Plans.

(b) All of the applicable Debtors' liabilities and obligations arising under the Employee Benefit Plans and workers' compensation benefits, even if such liability or obligation relates to Claims incurred (whether or not reported or paid) prior to the Effective Date, shall be deemed to be, and shall be treated as though they are, executory contracts that are deemed assumed under the Parent's Plan pursuant to sections 365(a), 365(f) and 1123 of the Bankruptcy Code.

(c) Reorganized ASARCO shall be responsible for all of each Debtor's obligations under the Coal Act, including the obligations (1) to provide retiree health benefits to eligible beneficiaries and their dependents pursuant to section 9711 of the Coal Act, 26 U.S.C. § 9711; (2) to pay the annual prefunding premium and the monthly per beneficiary premium required pursuant to section 9712(d)(1)(A) and (B) of the Coal Act, 26 U.S.C. § 9712(d)(1)(A) and (B); and (3) to provide security to the UMWA 1992 Benefit Plan pursuant to section 9712(d)(1)(C) of the Coal Act, 26 U.S.C. § 9712(d)(1)(C).

(d) Reorganized ASARCO shall assume and be responsible for all of the Debtors' obligations to pay retiree benefits, as defined in section 1114 of the Bankruptcy Court, for the duration of the period the applicable Debtor has obligated itself to provide such benefits. After the Effective Date, Reorganized ASARCO shall retain their rights to amend, modify or terminate retiree benefits in accordance with all relevant agreements and applicable law, including any collective bargaining agreement that may be entered into between the USW and Reorganized ASARCO.

8.8 Surety Bonds. All Surety Bonds shall be retained or deemed Reinstated, as the case may be, on the Effective Date and shall revert to the benefit of Reorganized ASARCO.

8.9 Defined Benefit Plans. ASARCO sponsors two defined benefit pension plans, the Retirement Income Plan for Hourly-Rated Employees of ASARCO, Inc. and the Retirement Income Plan for Salaried Employees of ASARCO, Inc. (collectively, the "Pension Plans"), which are covered by Title IV of the Employee Retirement Income Security Act of 1974 ("ERISA"). The Parent understands that ASARCO will satisfy its legal obligations to the Pension Plans during the pendency of this proceeding, and through the Effective Date. The Parent further understands that ASARCO does not intend to terminate the Pension Plans prior to the Effective Date. After the Effective Date, Reorganized ASARCO shall continue to sponsor the Pension Plans. Accordingly, after the Effective Date, Reorganized ASARCO shall continue to be required to make contributions to the Pension Plans in the amounts necessary to meet the minimum funding standards prescribed by 29 U.S.C. § 1082 and 26 U.S.C. § 412, and for the payment of any PBGC premiums prescribed by 29 U.S.C. §§ 1306 and 1307.

ARTICLE IX

CONDITIONS PRECEDENT

9.1 Conditions to Confirmation. Notwithstanding any other provision of the Parent's Plan or any order entered in connection with the Reorganization Cases, the Confirmation Date shall not occur until and unless each of the following conditions to effectiveness has been satisfied or waived pursuant to Article 9.2:

(a) *Disclosure Statement*.

The Bankruptcy Court has approved the Disclosure Statement.

(b) *Confirmation Findings and Conclusions*.

The District Court makes or affirms the following findings of fact and conclusions of law:

(1) As of the Petition Date, one or more of the Debtors has been named as a defendant in personal injury, wrongful death, or property damage actions seeking recovery for damages allegedly caused by the presence of, or exposure to, asbestos or asbestos-containing products;

(2) The Section 524(g) Treatment has been approved by creditors in Class 4 under the Parent's Plan in the requisite numbers and amounts required by sections 524(g), 1126, and 1129 of the Bankruptcy Code and by the FCR;

(3) On the Effective Date, the Section 524(g) Trust shall assume the liabilities of the Debtors with respect to the Asbestos Personal Injury Claims and Demands and shall receive all transfers and assignments set forth herein;

(4) As of the Effective Date, there were no pending or known property damage actions seeking damages as a result of property damage allegedly caused by or arising out of asbestos or asbestos-containing products;

(5) The Section 524(g) Trust is to be funded in part by securities of Reorganized ASARCO and by the obligation of Reorganized ASARCO to make future payments;

(6) The Section 524(g) Trust shall be entitled to own, if specified contingencies occur, a majority of the voting shares of Reorganized ASARCO;

(7) The Section 524(g) Trust shall use its assets and income to pay the Asbestos Personal Injury Claims and Demands;

(8) The Debtors are likely to be subject to substantial future Demands for payment arising out of the same or similar conduct or events that gave rise to the Asbestos Personal Injury Claims, which are addressed by the Permanent Channeling Injunction and the Asbestos Insurance Company Injunction;

(9) The actual amounts, numbers, and timing of future Demands cannot be determined;

(10) Pursuit of Demands outside the procedures prescribed by the Parent's Plan is likely to threaten the Parent's Plan's purpose to deal equitably with Claims and future Demands;

(11) The terms of the Permanent Channeling Injunction and the Asbestos Insurance Company Injunction, including any provisions barring actions against third parties, are set out in the Parent's Plan and in the Disclosure Statement;

(12) The Section 524(g) Trust shall operate through mechanisms such as structured, periodic, or supplemental payments, pro rata distributions, matrices, or periodic review of estimates of the numbers and values of Asbestos Personal Injury Claims and Demands, or other comparable mechanisms, that provide reasonable assurance that the Section 524(g) Trust will value, and be in a financial position to pay, all Asbestos Personal Injury Claims and Demands in substantially the same manner;

(13) The FCR was appointed by the Bankruptcy Court as part of the proceedings leading to the issuance of the Permanent Channeling Injunction and the Asbestos Insurance Company Injunction for the purpose of, among other things, protecting the rights of persons that might subsequently assert Demands of the kind that are addressed in the Permanent Channeling Injunction and/or the Asbestos Insurance Company Injunction and that are to be assumed and paid by the Section 524(g) Trust in accordance with the Section 524(g) Trust Documents;

(14) In light of the respective benefits provided, or to be provided, to the Section 524(g) Trust by, or on behalf of, each ASARCO Protected Party, the

Permanent Channeling Injunction is fair and equitable with respect to the persons that might subsequently assert Demands against any ASARCO Protected Party;

(15) In light of the respective benefits provided, or to be provided, to the Section 524(g) Trust by a Settling Asbestos Insurance Company in order to receive the benefits of the Asbestos Insurance Company Injunction, the Asbestos Insurance Company Injunction is fair and equitable with respect to the persons who might subsequently assert Demands against any Settling Asbestos Insurance Company;

(16) The Settling Asbestos Insurance Companies are alleged to be directly or indirectly liable for the Asbestos Personal Injury Claims and Demands for one or more of the reasons set forth in section 524(g)(4)(A)(ii) of the Bankruptcy Code;

(17) The Permanent Channeling Injunction and the Asbestos Insurance Company Injunction are integral parts of the Parent's Plan and may not be vacated, amended or modified after Confirmation except to the extent expressly provided in Article 11.3(a)(2) and 11.3(b)(2) of the Parent's Plan;

(18) The Parent's Plan complies with all applicable sections of the Bankruptcy Code, including, to the extent the Section 524(g) Treatment goes into effect, section 524(g) of the Bankruptcy Code;

(19) The Parent's Plan Documents which relate to the Section 524(g) Treatment are approved in all respects, and all parties thereto are authorized and directed to perform all their obligations thereunder; and

(20) Approval of all settlements and compromises embodied in the Section 524(g) Treatment is appropriate under Bankruptcy Rule 9019 and applicable law governing approval of such settlements and compromises and shall be ordered as part of the Confirmation Order.

(c) *Confirmation Order.*

(1) The Confirmation Date shall have occurred no later than August 31, 2009, except as may be otherwise agreed by the Parent, the Asbestos Representatives and the ASARCO Committee.

(2) The Confirmation Order entered or affirmed by the District Court is acceptable to the Parent. Within two business days after entry of the Confirmation Order, the Parent will notify the ASARCO Committee, the Asbestos Representatives and the DOJ of whether or not the Confirmation Order is acceptable to the Parent.

(d) *Parent's Plan Documents.*

(1) The Parent's Plan Documents necessary or appropriate to implement the Parent's Plan, other than those which relate to the Section 524(g) Treatment, shall be in a form acceptable to the Parent, and the Parent shall have so notified the ASARCO Committee and the DOJ prior to the Bankruptcy Court's

recommendation to the District Court that the District Court confirm the Parent's Plan, and the Confirmation Order shall so provide.

(2) The Bankruptcy Court has approved the Parent's Plan Documents, other than those which relate to the Section 524(g) Treatment, in all respects and authorized and directed all parties thereto to perform all their obligations thereunder.

(e) *Approval of Parent's Plan Settlements.*

The Bankruptcy Court has approved all settlements and compromises embodied in the Parent's Plan, and has found that such settlements and compromises are appropriate under Bankruptcy Rule 9019 and applicable law governing such approval and such settlements and compromises shall be approved as part of the Confirmation Order.

9.2 Waiver of Conditions to Confirmation. The Parent, in its sole discretion, may waive any condition to confirmation in Article 9.1 of the Parent's Plan by filing a notice of such waiver with the clerk of the Bankruptcy Court and by serving a copy of such notice on the U.S. Trustee, the Debtors, the Committees, the FCR, and the DOJ.

9.3 Conditions to Effectiveness. Notwithstanding any other provision of the Parent's Plan or any order entered in connection with the Reorganization Cases, the Effective Date shall not occur until and unless each of the following conditions to effectiveness has been satisfied:

(a) *No Stay.*

The Confirmation Order is not stayed pursuant to an order issued by a court of competent jurisdiction.

(b) *Parent's Plan Documents.*

The Parent's Plan Documents necessary or appropriate to implement the Parent's Plan, other than those which relate to the Section 524(g) Treatment, have been executed, delivered and, where applicable, filed with the appropriate governmental or supervisory authorities; provided, that the Parent may waive this condition in its sole discretion.

(c) *Funding and New Equity Interests.*

The Parent has delivered the Parent Contribution to the Parent's Plan Administrator, ASARCO has transferred the Distributable Cash to the Parent's Plan Administrator, all interests in the Debtors have been canceled, and the New Equity Interests have been delivered to ASARCO USA Incorporated or its designee. It is understood that the failure of the Parent to provide the Parent Contribution will not relieve the Parent of its funding obligations under the Parent's Plan.

(d) *U.S. Trustee's Fees.*

Any fees owed to the U.S. Trustee by the Debtors as of the Effective Date have been paid in full.

9.4 Closing Obligation.

The Parent's Plan shall close and become effective within thirty days after the Parent's Plan is Confirmed if no stay of the Confirmation Order is then in effect; provided, however, that if the Parent has not received executed, delivered or filed Parent's Plan Documents from a third party because of circumstances beyond the reasonable control of the Parent, the Parent shall use its best efforts to obtain such Parent's Plan Documents to close as expeditiously as possible upon receipt of such executed Parent's Plan Documents.

9.5 Notice of Effective Date. Reorganized ASARCO shall give notice of the Effective Date within five (5) Business Days after its occurrence.

9.6 Non-Occurrence of Effective Date. In the event that the Effective Date does not occur, all parties shall be returned to the position they would have held had the Confirmation Order not been entered except as set forth in Article 10.2, and nothing in the Parent's Plan, Disclosure Statement, or any Parent's Plan Document, or any pleading or statement in court shall be deemed to constitute an admission or waiver of any sort or in any way to limit, impair, or alter the rights of any Entity.

9.7 Collective Bargaining Agreement Not a Condition. For the avoidance of doubt, it is not a condition to Confirmation of the Parent's Plan nor to Consummation of the Parent's Plan that the Parent and Reorganized ASARCO have entered into a CBA for the period following the Effective Date.

ARTICLE X

IMPLEMENTATION OF THE PARENT'S PLAN

10.1 Sources of Cash and Other Consideration for Distributions. On the Effective Date, (i) the Parent Contribution shall be delivered to the Parent's Plan Administrator; (ii) Reorganized ASARCO shall transfer the Distributable Cash to the Parent's Plan Administrator; and (iii) the Environmental Custodial Trusts shall be established and funded pursuant to Article 7.1.

On the Effective Date or as soon thereafter as practicable (i) the Tax Refund shall be delivered to the Parent's Plan Administrator in accordance with Article 10.8; (ii) Reorganized ASARCO shall deliver the ASARCO Note, the ASARCO Security Agreement and the ASARCO Deed of Trust to the Section 524(g) Trust; (iii) Reorganized ASARCO shall set the final principal amount of the Parent's Copper Note based upon the Treatment B elections of Class 3 Claim holders (as set forth in Article 4.2(c)); (iv) the Parent shall deliver its guarantees of the ASARCO Note and the Parent's Copper Note; and (v) ASARCO USA Incorporated or its designee that holds the equity interests in Reorganized ASARCO shall deliver the Parent Pledge Agreement to the Section 524(g) Trust.

On the Effective Date, as further consideration for the New Equity Interests, the Parent and the Parent's Affiliates shall waive all Administrative and General Unsecured Claims held by the Parent or the Parent's Affiliates against the Debtors through the Effective Date, including, for the avoidance of doubt, Claims for reimbursement pursuant to the Tax Sharing Agreement for any period prior to the Effective Date.

On the Effective Date, the Parent and Reorganized ASARCO shall enter into the Working Capital Facility. Proceeds drawn from the Working Capital Facility and the Working Capital Reserve, and proceeds of Reorganized ASARCO's Litigation Trust Interests, if any, shall be used to fund Reorganized ASARCO's working capital needs.

Claims that will be Reinstated under the Parent's Plan shall be paid out of Reorganized ASARCO's operating cash flows unless otherwise provided in the Parent's Plan. For the avoidance of doubt, it is not a condition to the confirmation or effectiveness of the Parent's Plan that any particular Claim or Class has been Allowed by Final Order.

10.2 Support Agreement, Escrow Agreement and Deposit.

To ensure that the Parent is capable of meeting its funding requirements under the Parent's Plan on the Effective Date, Grupo and the Parent have entered into a Support Agreement under which Grupo has agreed to promptly provide the Parent with funds in an amount equal to the amount required to permit the Parent to deliver the Parent Contribution in full and fund the Working Capital Facility (attached hereto as **Parent's Plan Exhibit 26**, the "**Support Agreement**").

Furthermore, to demonstrate its intention and ability to fully and timely consummate the Parent's Plan, the Parent has established an Escrow Account funded with 67,280,000 shares of stock of SCC (the "**SCC Shares**") and has put in place that certain Amended and Restated Escrow Agreement (attached, in final form, to the Disclosure Statement Supplement as **DS Exhibit S**, the "**Escrow Agreement**") with respect to the Escrow Account. Notwithstanding anything to the contrary in the Parent's Plan, in the event of any inconsistency(s) between the Parent's Plan and the Escrow Agreement, the Escrow Agreement shall govern.

10.3 Appointment of Parent's Plan Administrator and Funding of Miscellaneous Parent's Plan Administration Accounts.

(a) On or prior to the Confirmation Date, the Parent shall designate the Entity that shall initially serve as the Parent's Plan Administrator. Upon approval by the Bankruptcy Court in the Confirmation Order, the Parent's Plan Administrator shall be appointed. The Parent's Plan Administrator shall have and perform all of the duties, responsibilities, rights and obligations set forth in the Parent's Plan Administration Agreement. The Parent's Plan Administrator shall serve without bond, may employ or contract with other Persons to assist in the performance of the Parent's Plan Administrator's duties, which shall be set forth in the Parent's Plan Administration Agreement. The Parent's Plan Administrator shall receive, without further Bankruptcy Court approval, reasonable compensation for such services and reimbursement of reasonable out-of-pocket expenses incurred in connection with such services.

(b) On the Effective Date (or as soon thereafter as is reasonably practicable), the Parent's Plan Administrator shall establish and fund the Parent's Plan Administration Account with sufficient Cash to pay the Parent's Plan Administrator's estimated compensation and expenses, and all other anticipated costs of administration of the Parent's Plan. The Parent's Plan Administrator shall also establish and fund Miscellaneous Parent's Plan Administration Accounts, including the Disputed Claims Reserve, and the Undeliverable and Unclaimed Distribution Reserve, and may also establish such general accounts as the Parent's Plan Administrator deems necessary and appropriate.

(c) On the Effective Date (or as soon thereafter as is reasonably practicable), the Parent's Plan Administrator shall (i) fund the Section 524(g) Trust with the Section 524(g) Trust Assets, (ii) fund the Environmental Custodial Trusts with the Environmental Custodial Trust Assets, (iii) fund the Disputed Claims Reserve as provided for in Article 13.8 hereof, (iv) fund the Litigation Trust with the Litigation Trust Assets; and (v) fund the SCC Litigation Trust with the SCC Litigation Trust Expense Fund.

(d) The Parent's Plan Administrator shall allocate the funds in the Parent's Plan Administration Account to subaccounts corresponding to the enumerated functions of the Parent's Plan Administrator. Until the Parent's Plan Administrator has discharged its obligations, the funds in those subaccounts and the Miscellaneous Parent's Plan Administration Accounts may only be used for the purpose designated for that particular account or subaccount.

(e) To the extent there are any excess funds in the Parent's Plan Administration Account (or any subaccount thereof) or any Miscellaneous Parent's Plan Administration Account, the Parent's Plan Administrator shall distribute such funds, Pro Rata, *first* to holders of Claims in Class 3 that receive Treatment A until such Claims are paid in full, *second* to holders of Claims in Class 6 until such Claims are Paid in Full, *third* to holders of Claim in Class 7 until such Claims are paid in full, and *fourth* to Reorganized ASARCO to fund its working capital needs.

10.4 Distributions To Allowed Claims; Parent's Copper Note.

(a) On the Effective Date, the Parent's Plan Administrator shall pay the Allowed Claims that are to be paid on the Effective Date. No later than ten days prior to the anticipated Effective Date, the Parent's Plan Administrator shall distribute to the ASARCO Committee a schedule of anticipated distributions on the Effective Date, including a detailed report on the holders of Class 3 Claims that elected Treatment A, B or C. The Parent, the Parent's Plan Sponsor, the Debtors and the ASARCO Committee shall attempt to resolve any discrepancies or disputes. No later than five days prior to the anticipated Effective Date, the Parent's Plan Administrator shall file such report with the Bankruptcy Court. Any disputes shall be present to the Bankruptcy Court for resolution.

(b) On or as soon as practicable after the Effective Date, the Plan Administrator shall establish the principal amount of the Parent's Copper Note, in the same principal amount as would pertain for setting the principal amount of the "Plan Sponsor Promissory Note", as that term is defined in the Debtors' Plan, which amount shall be no less than \$770 million. The Plan Administrator shall establish a register based upon the number and

amount of holders of Claims in Class 3 that elected Treatment B (it being the intent of this provision that the holders of such Claims shall receive the same share in the Parent's Copper Note to which they would have been entitled if all Class 3 Claims had elected Treatment B). The remaining interests in the Parent's Copper Note shall be held by Reorganized ASARCO. The Plan Administrator shall provide such calculation and register to Reorganized ASARCO, the SCC Litigation Trust Board and the DOJ, and shall make a good faith effort to consensually resolve any disagreements with Reorganized ASARCO, the SCC Litigation Trust Board and/or the DOJ regarding the principal amount of the Parent's Copper Note and the allocation of interests thereunder. Any disputes regarding the principal amount of, or the allocation of interests in, the Parent's Copper Note shall be presented to the Bankruptcy Court for resolution. Upon resolution of any disputes, Reorganized ASARCO shall then promptly execute the final form of the Parent's Copper Note.

(c) The Plan Administrator shall maintain the register of holders of Claims entitled to distributions from the proceeds of the Parent's Copper Note, and shall make distributions to such holders as and when such proceeds are received. No less than three months before any payment date under the Parent's Copper Note, the Plan Administrator shall revisit the register of interests in the Parent's Copper Note to take into account any Class 3 Claims that have been disallowed, in whole or in part, since the date of the previous calculation. The Plan Administrator shall provide such register to Reorganized ASARCO, the SCC Litigation Trust Board and the DOJ, and shall make a good faith effort to consensually resolve any disagreements with Reorganized ASARCO, the SCC Litigation Trust Board and/or the DOJ regarding the allocation of interests thereunder. Any disputes regarding the allocation of interests in the Parent's Copper Note shall be presented to the Bankruptcy Court for resolution.

(d) To the extent that a Class 3 Claim as to which the holder has elected Treatment B is a Disputed Claim, then the portion of such proceeds of the Parent's Copper Note attributable to such Disputed Claim shall be maintained in the Disputed Claims Reserve until the allowance of such Claim has been determined by Final Order. When and to the extent that such Claim is Allowed, the portion of the Parent's Copper Note proceeds attributable to such Allowed portion shall be distributed to the holder and the disallowed portion, if any, shall be reallocated to other holders of Class 3 Claims as to which the holder has elected Treatment B.

10.5 Release of Litigations. On the Effective Date, all causes of action identified in the Schedule of Released Litigation (attached hereto as **Parent's Plan Exhibit 2**, which Schedule may be amended or modified by the Parent prior to the Confirmation Date, provided that in no event shall the SCC Litigation Trust Claims be added to the Schedule of Released Litigation) shall be deemed, without any notice, the entry of any other order, or any other action by any party to have been released and dismissed or withdrawn with prejudice. All other causes of action or counts thereof of the Debtors and their estates, including, without limitation, those under chapter 5 of the Bankruptcy Code (or similar state or federal law), and the Asbestos Insurance Actions, shall continue and be pursued as provided in Article 10.13 but subject to Article 6.4 and 5.17 as applicable.

10.6 Prepetition ASARCO Environmental Trust.

(a) The Prepetition ASARCO Environmental Trust shall remain in existence, and shall be unaffected by the Reorganization Cases or any related settlements. The Parent's Plan Administrator shall succeed to ASARCO's administrative role, and will, in its sole discretion, act as Performing Entity (as defined in the Prepetition ASARCO Environmental Trust) from time to time, but will assume no affirmative liabilities or obligations associated with that role. In accordance with the documents governing it, the funds in the Prepetition ASARCO Environmental Trust shall continue to be available for, among other things, (i) identified work sites; (ii) interim costs prior to the effectiveness of the Parent's Plan; and (iii) any shortfalls or unanticipated costs or any other use permitted by the terms of the Prepetition ASARCO Environmental Trust (it being understood that the terms of certain environmental settlements were based on the assumption that certain previously identified, additional environmental response actions to be performed by ASARCO, the Parent's Plan Administrator or the United States would be reimbursed from the Prepetition ASARCO Environmental Trust). The Parent will make any remaining required contributions to the Prepetition ASARCO Environmental Trust in the ordinary course.

(b) The funds remaining in the Prepetition ASARCO Environmental Trust shall be separate from and without prejudice to the distributions to be made to holders of Claims, as described in Article IV of the Parent's Plan.

10.7 Operations and Settlements Between the Confirmation Date and the Effective Date. Except as set forth herein with respect to the appointment of the Parent's Plan Administrator, during the period from the Confirmation Date through and until the Effective Date, the Debtors shall continue to operate as debtors-in-possession, subject to the oversight of the Bankruptcy Court as provided in the Bankruptcy Code, the Bankruptcy Rules, and all orders of the Bankruptcy Court that are then in full force and effect. During the period from the Confirmation Date through and until the Effective Date, the Debtors shall not enter into or seek approval of any settlement(s) of any Claim(s) where the amount of such settlement, or the Allowed amount of such Claims, individually or in the aggregate, would be in excess of \$10 million, without prior written approval of the Parent.

10.8 Tax Refund. Unless the Tax Refund Adversary Proceeding has been determined by Final Order prior to the Effective Date, on the Effective Date or as soon thereafter as reasonably practicable, the Tax Refund shall be transferred to the Plan Administrator. For the avoidance of doubt, the Parent will, on the Effective Date, waive its claim to collect the Tax Refund for its own account and shall cooperate with Reorganized ASARCO to cause the Internal Revenue Service to pay the Tax Refund to the Plan Administrator for distribution to holders of Allowed Claims. To the extent that, on the Effective Date, the DOJ or any agency represented by the DOJ maintains a claim that it is entitled to setoff environmental claims held by such agency against the Tax Refund, then the Plan Administrator shall include the Tax Refund in the Environmental Custodial Trust Assets, releasing an equivalent amount of Cash to fund other distributions required under the Parent's Plan.

10.9 Limited Liability Company Agreement. On or as soon as reasonably practicable after the Effective Date, Reorganized ASARCO shall file an amended LLC

Agreement (the “Amended LLC Agreement”) with the Secretary of State of the State of Delaware. The Amended LLC Agreement shall, in compliance with section 1123 of the Bankruptcy Code, prohibit the issuance of nonvoting equity securities and provide for an appropriate distribution of voting powers among classes of securities.

10.10 Management of Reorganized ASARCO. Pursuant to section 1129(a)(5) of the Bankruptcy Code, the Parent shall disclose, by filing, on or prior to the Confirmation Date, a document disclosing the identity and affiliations of any person proposed to serve on the initial board of directors of Reorganized ASARCO or as an officer of Reorganized ASARCO. To the extent any such person is an insider, the nature of any compensation payable to such person shall be disclosed at such time. Reorganized ASARCO shall have a five-person board of directors, each of them nominated by the Parent. Each director and officer shall serve from and after the Effective Date pursuant to the terms of the amended Limited Liability Company Agreement, and applicable law.

10.11 Issuance of New Equity Interests in Reorganized ASARCO. On the Effective Date, in exchange for the Parent Contribution, the New Equity Interests shall be issued and delivered to ASARCO USA Incorporated or its designee. Except as otherwise provided in this Article X, Reorganized ASARCO shall continue its existence after the Effective Date.

10.12 Revesting. Except as otherwise expressly provided in the Parent’s Plan, on the Effective Date, all of ASARCO’s and its Estate’s property and assets shall vest in Reorganized ASARCO, free and clear of all Liens, Claims, charges and other encumbrances.

10.13 Vesting and Enforcement of Causes of Action. Any and all claims and causes of action that were owned by ASARCO or its Estate as of the Effective Date, other than the Asbestos Insurance Actions, the Litigation Trust Claims and the SCC Litigation Trust Claims, including, without limitation, for indemnity and contribution for environmental damages, harm or injury, which PRP claims have not been discharged or settled as of the Effective Date, shall vest in Reorganized ASARCO on the Effective Date, and Reorganized ASARCO shall be the only Entity entitled to pursue such claims or causes of action. The Asbestos Insurance Actions shall vest in the Section 524(g) Trust and may be pursued or compromised as deemed fit by the Section 524(g) Trustees, in their sole discretion, without need for approval of the Bankruptcy Court. The Litigation Trust Claims, including, without limitation, all rights and interests in actions and/or claims against third parties (“potentially responsible parties” or “PRP”), shall vest in the Litigation Trust and may be pursued or compromised as deemed fit by the Litigation Trustee, in its sole discretion, without need for approval of the Bankruptcy Court. The SCC Litigation Trust Claims shall vest in the SCC Litigation Trust subject to the Maximum Recovery and in accordance with the SCC Litigation Trust Agreement and may be pursued or compromised as deemed fit by the SCC Litigation Trustee and the SCC Litigation Trust Board without need for approval of the Bankruptcy Court.

10.14 Further Authorizations. Reorganized ASARCO, the Parent’s Plan Administrator, or the Parent may seek such orders, judgments, injunctions, and rulings as any one or more of them deem necessary to further carry out the intentions and purposes of, and give full effect to the provisions of, the Parent’s Plan.

10.15 Effectuating Documents and Further Transactions. The chief executive officer, president, chief financial officer, general counsel, secretary, treasurer, any vice president, or managing member (if applicable) of Reorganized ASARCO shall be authorized, to the extent consistent with Reorganized ASARCO's constituent documents, to execute, deliver, file, or record such contracts, instruments, settlement agreements, releases, indentures, and other agreements or documents and to take or direct such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of the Parent's Plan. The secretary or any assistant secretary of each Debtor and Reorganized ASARCO shall be authorized to certify or attest to any of the foregoing actions.

10.16 Corporate Action. All matters provided for under the Parent's Plan involving the corporate structure of the Debtors or Reorganized ASARCO, or any corporate action to be taken by, or required of the Debtors or Reorganized ASARCO, shall be deemed to have occurred and be effective as provided herein, and shall be authorized and approved in all respects without any requirement for further action by the holders of Interests in, or directors of, any of such entities.

10.17 Execution of Parent's Plan Documents. On the Effective Date, Reorganized ASARCO and other parties thereto shall execute and deliver the Parent's Plan Documents, as applicable.

10.18 Approval of Section 524(g) Trust Documents. Confirmation of the Parent's Plan shall constitute approval pursuant to Bankruptcy Rule 9019 of the Section 524(g) Trust Documents, as evidenced by entry of the Confirmation Order.

10.19 Option to Create Work Trusts. The DOJ may at its option elect to establish work trusts for the purpose of receiving distributions made with respect to Allowed Claims that relate to specified environmental sites.

10.20 Approval of Mission Mine Settlement Agreement. Confirmation of the Parent's Plan shall cause the Mission Mine Settlement Agreement to be binding upon all landowners and allottees who own interests in the lands affected by the Mission Mine Settlement Agreement. Nothing in this Parent's Plan, including any provisions of Article XI hereunder, shall in any way limit or affect the rights or obligations of any party to the Mission Mine Settlement as provided therein.

10.21 Deemed Consolidation of Debtors for Plan Purposes Only. Subject to the occurrence of the Effective Date, the Debtors shall be deemed consolidated under the Parent's Plan, solely for the limited purposes of voting and distribution under the Parent's Plan. Each and every Claim filed or to be filed against any of the Debtors shall be deemed filed against the deemed consolidated Debtors and shall be deemed one Claim against all Debtors and (a) any obligation of any Debtor and all guarantees thereof executed by one or more of the Debtors shall be deemed to be one obligation of all of the consolidated Debtors; (b) any Claims filed or to be filed in connection with any such obligation and such guarantees shall be deemed one Claim against the consolidated Debtors; (c) all duplicative Claims (identical in amount and subject matter) filed against one or more of the Debtors will be automatically expunged so that only one Claim survives against the consolidated Debtors; and (d) the consolidated Debtors will be

deemed, for purposes of determining the availability of the right of set-off under section 553 of the Bankruptcy Code, to be one entity, so that, subject to other provisions of section 553 of the Bankruptcy Code, the debts due to a particular Debtor may be offset against the Claims against such Debtor or Debtors. Such deemed consolidation, however, shall not (other than for purposes related to funding distributions under this Plan and as set forth above in this section) affect: (i) any guarantees, liens, and security interests that are required to be maintained under this Plan; or (ii) distributions out of any insurance policies or proceeds of such policies.

10.22 Wind Down of Subsidiary Debtors. On the Effective Date (or as soon thereafter as is reasonably practicable) and concurrently with payment of all Allowed Claims that are to be paid on the Effective Date and funding of the Disputed Claims Reserve, (a) the Subsidiary Debtor Assets shall be transferred to Reorganized ASARCO free and clear of any and all Liens, Claims, encumbrances, or interests of any kind in such property of any Person or Entity except as provided in the Parent's Plan, (b) all assets of the Subsidiary Debtors other than the Subsidiary Debtor Assets shall be transferred to the Plan Administrator for the benefit of Reorganized ASARCO, free and clear of any and all Liens, Claims, encumbrances, or interests of any kind in such property of any Person or Entity except as provided in the Parent's Plan, and (c) all Interests in the Subsidiary Debtors shall be canceled. As soon as practicable after the Effective Date, the Plan Administrator shall liquidate all assets of the Subsidiary Debtors other than the Subsidiary Debtor Assets and shall transfer the proceeds of such liquidation to Reorganized ASARCO free and clear of any and all Liens, Claims, encumbrances, or interests of any kind in such proceeds of any Person or Entity except as provided in the Parent's Plan. For avoidance of doubt, the wind down of the Subsidiary Debtors shall not affect the treatment of Claims against the Subsidiary Debtors provided by the Parent's Plan.

ARTICLE XI

INJUNCTIONS, RELEASES, AND DISCHARGE

11.1 Discharge and Release. Except as otherwise expressly provided in the Parent's Plan, the rights afforded in the Parent's Plan and the treatment of all Claims, Demands, and Interests shall be in exchange for and in complete satisfaction, discharge, and release of all Claims, Demands, and Interests of any nature whatsoever, against any Debtor or its Estate, assets, properties or interests in property. Except as otherwise provided herein, on the Effective Date, all Claims and Demands against and Interests in the Debtors shall be satisfied, discharged, and released in full. The ASARCO Protected Parties shall not be responsible for any obligations of the Debtors except those expressly assumed by them in the Parent's Plan, provided, however, that if the Parent and Grupo México do not receive all protections provided for in the Parent's Plan, including, without limitation, those described in this Article and Article 11.9, then the protections in this Article with respect to ASARCO Protected Parties other than Reorganized ASARCO shall not go into effect.

11.2 Discharge Injunction. Except as otherwise expressly provided in the Parent's Plan, the discharge and release set forth in Article 11.1 shall also operate as an injunction permanently prohibiting and enjoining the commencement or continuation of any action or the employment of process with respect to, or any act to collect, recover from, or offset (a) any Claim or Demand discharged and released in Article 11.1 and (b) any cause of action,

whether known or unknown, based on the same subject matter as any Claim or Demand discharged and released in Article 11.1. Except as otherwise expressly provided in the Parent's Plan, all Persons and Entities shall be precluded and forever barred from asserting against the ASARCO Protected Parties, their successors or assigns, or their assets, properties, or interests in property any other or further Claims or Demands, or any other right to legal or equitable relief regardless of whether such right can be reduced to a right to payment, based upon any act or omission, transaction, or other activity of any kind or nature that occurred prior to the Effective Date, whether or not the facts of or legal bases therefor were known or existed prior to the Effective Date, provided, however, that if the Parent and Grupo México do not receive all protections provided for in the Parent's Plan, including, without limitation, those described in this Article and Article 11.9, then the protections in this Article with respect to ASARCO Protected Parties other than Reorganized ASARCO shall not go into effect.

11.3 The Permanent Channeling Injunction and the Asbestos Insurance Company Injunction. In order to supplement the injunctive effect of the Discharge Injunction, and pursuant to the exercise of the legal and equitable jurisdiction and power set forth in section 524(g) of the Bankruptcy Code, the Confirmation Order shall provide for issuance of the following injunctions to take effect as of the Effective Date:

(a) *Permanent Channeling Injunction.*

(1) Terms. In order to induce, preserve and promote the settlements contemplated by and provided for in the Parent's Plan, and pursuant to section 524(g) of the Bankruptcy Code, all Asbestos Personal Injury Claims and Demands shall be channeled to the Section 524(g) Trust for a remedy under the Section 524(g) Trust Distribution Procedures, and all holders of Asbestos Personal Injury Claims and Demands and all Entities which have held or asserted, which hold or assert, or which may in the future hold or assert, any Asbestos Personal Injury Claim or Demand shall be permanently and forever stayed, restrained, and enjoined from taking any action against any ASARCO Protected Party (or any property or interest in property of an ASARCO Protected Party) with respect to such Asbestos Personal Injury Claim or Demand, including, without limitation, for the purpose of directly or indirectly obtaining a judgment, collecting, recovering, or receiving payments, satisfaction, or recovery with respect to such Asbestos Personal Injury Claim or Demand, including, without limitation:

(A) commencing, conducting, or continuing in any manner, directly or indirectly, any suit, action, or other proceeding of any kind (including a judicial, arbitration, administrative, or other proceeding) in any forum with respect to any Asbestos Personal Injury Claim or Demand against any of the ASARCO Protected Parties, or against the property or interests in property of any ASARCO Protected Parties;

(B) enforcing, levying, attaching (including by prejudgment attachment), collecting, or otherwise recovering, by any manner or means, whether directly or indirectly, any judgment, award, decree, or other order against any of the ASARCO Protected Parties, or against the property or interests in

property of any ASARCO Protected Parties, with respect to any Asbestos Personal Injury Claim or Demand;

(C) creating, perfecting, or otherwise enforcing in any manner, directly or indirectly, any Lien of any kind against any ASARCO Protected Parties, or the property or interests in property of any ASARCO Protected Parties, with respect to any Asbestos Personal Injury Claim or Demand;

(D) except as otherwise specifically provided in the Parent's Plan, asserting or accomplishing any setoff, right of subrogation, indemnity, contribution, reimbursement, or recoupment of any kind and in any manner, directly or indirectly against any obligation due any ASARCO Protected Parties, or against the property or interests in property of any ASARCO Protected Parties, with respect to any Asbestos Personal Injury Claim or Demand; and

(E) proceeding or taking any action, in any manner, in any place whatsoever, that does not conform to, or comply with, the provisions of the Parent's Plan, the Parent's Plan Documents or the Section 524(g) Trust Documents relating to any Asbestos Personal Injury Claim or Demand.

(2) Reservations. Notwithstanding anything to the contrary above or in the Parent's Plan, neither this Permanent Channeling Injunction nor the Parent's Plan shall enjoin, alter, diminish, or impair:

(A) the rights of Entities to the treatment accorded them under Articles II and IV of the Parent's Plan, as applicable, including the rights of Entities with Asbestos Personal Injury Claims or Demands to assert such Asbestos Personal Injury Claims or Demands in accordance with the Section 524(g) Trust Distribution Procedures;

(B) the rights of Entities to assert any Claim, Demand, debt, obligation, or liability for payment of Section 524(g) Trust Expenses against the Section 524(g) Trust;

(C) the enforceability of any of the Asbestos Insurance Policies or any Asbestos Insurance Settlement Agreement;

(D) the rights of the Section 524(g) Trust, if any, with regard to any Asbestos Insurance Company that is not a Settling Asbestos Insurance Company (with the Section 524(g) Trust being, and deemed to be, for all purposes of insurance and indemnity, the successor to the Debtors in respect of all Asbestos Personal Injury Claims and Demands and other recoveries from an Asbestos Insurance Company, in its capacity as such); or

(E) the rights of Entities to assert any Claim, Demand, debt, obligation, or liability for payment against an Asbestos Insurance Company that is not an ASARCO Protected Party unless otherwise enjoined by order of the

Bankruptcy Court or the District Court or estopped by a provision of the Parent's Plan.

(b) *Asbestos Insurance Company Injunction.*

(1) Terms. In order to preserve and promote the property of the Estate, as well as the settlements contemplated by and provided for in the Parent's Plan, and to supplement where necessary the injunctive effect of the discharge and releases provided for in the Parent's Plan, pursuant to sections 524(g) and 105(a) of the Bankruptcy Code, all Entities which have held or asserted, which hold or assert, or which may in the future hold or assert any Claim, Demand or cause of action (including, without limitation, any Asbestos Personal Injury Claim or Demand or any Claim for or respecting any Section 524(g) Trust Expense) against a Settling Asbestos Insurance Company based upon, relating to, arising out of, attributable to, or in any way connected with any Asbestos Personal Injury Claim or Demand, Asbestos In-Place Insurance Coverage or an Asbestos Insurance Policy, shall be permanently and forever stayed, restrained, and enjoined from taking any action against such Settling Asbestos Insurance Company for the purpose of directly or indirectly collecting, recovering, or receiving payments, satisfaction, or recovery with respect to any such Claim, Demand or cause of action, including, without limitation:

(A) commencing, conducting, or continuing, in any manner, directly or indirectly, any suit, action, or other proceeding of any kind (including a judicial, arbitration, administrative, or other proceeding) in any forum with respect to any such Claim, Demand or cause of action against any Settling Asbestos Insurance Company, or against the property or interests in property of any Settling Asbestos Insurance Company;

(B) enforcing, levying, attaching, collecting, or otherwise recovering, by any manner or means, whether directly or indirectly, any judgment, award, decree, or order against any Settling Asbestos Insurance Company or against the property or interests in property of any Settling Asbestos Insurance Company with respect to any such Claim, Demand or cause of action;

(C) creating, perfecting, or otherwise enforcing, in any manner, directly or indirectly, any Lien of any kind against any Settling Asbestos Insurance Company or the property or interests in property of any Settling Asbestos Insurance Company with respect to any such Claim, Demand or cause of action;

(D) except as otherwise specifically provided in the Parent's Plan, asserting or accomplishing any setoff, right of subrogation, indemnity, contribution, reimbursement, or recoupment of any kind and in any manner, directly or indirectly, against any obligation due any Settling Asbestos Insurance Company or against the property or interests in property of any Settling Asbestos Insurance Company with respect to any such Claim, Demand or cause of action; and

(E) taking any act, in any manner, in any place whatsoever, that does not conform to, or comply with, the provisions of the Parent's Plan Documents relating to such Claim, Demand or cause of action.

(2) Reservations. Notwithstanding anything to the contrary above or in the Parent's Plan, neither this Asbestos Insurance Company Injunction nor the Parent's Plan shall enjoin, alter, diminish or impair:

(A) the rights of Entities to the treatment accorded them under Articles II and IV of the Parent's Plan, as applicable, including the rights of Entities with Asbestos Personal Injury Claims or Demands to assert Asbestos Personal Injury Claims or Demands against the Section 524(g) Trust in accordance with the Section 524(g) Trust Distribution Procedures;

(B) the rights of Entities to assert any Claim, Demand, debt, obligation, or liability for payment of Section 524(g) Trust Expenses against the Section 524(g) Trust;

(C) the enforceability of any of the Asbestos Insurance Policies or any Asbestos Insurance Settlement Agreement;

(D) the rights of the Section 524(g) Trust, if any, with regard to any Asbestos Insurance Company that is not a Settling Asbestos Insurance Company (with the Section 524(g) Trust being, and deemed to be, for all purposes of insurance and indemnity, the successor to the Debtors in respect of all Asbestos Personal Injury Claims, Demands, and other recoveries from an Asbestos Insurance Company, in its capacity as such);

(E) the rights of Entities to assert any Claim, Demand, debt, obligation or liability for payment against an Asbestos Insurance Company that is not an ASARCO Protected Party unless otherwise enjoined by order of the Bankruptcy Court or the District Court or estopped by a provision of the Parent's Plan; or

(F) the rights of the Section 524(g) Trust or the Section 524(g) Trustees to seek relief from the Asbestos Insurance Company Injunction should a Settling Asbestos Insurance Company fail to fulfill all obligations under an Asbestos Insurance Settlement Agreement.

11.4 Limitation of Injunctions. Notwithstanding any other provision of the Parent's Plan to the contrary, the releases set forth in Article 11.1 and the Injunctions set forth in Articles 11.2 and 11.3, respectively, shall not serve to satisfy, discharge, release, or enjoin Claims by any Entity against the Section 524(g) Trust for payment of (a) Asbestos Personal Injury Claims and Demands in accordance with the Section 524(g) Trust Distribution Procedures, or (b) Section 524(g) Trust Expenses, and such releases and/or Injunctions shall not enjoin Reorganized ASARCO or the Section 524(g) Trust from enforcing any Asbestos Insurance Policy or any Asbestos Insurance Settlement Agreement.

11.5 Exoneration and Reliance. To the extent allowable by law, none of the ASARCO Protected Parties shall be liable (other than for criminal liability, willful misconduct or bad faith, or ultra vires acts) to any holder of a Claim, Demand, or Interest or any other Entity with respect to any action, omission, forbearance from action, decision, or exercise of discretion taken at any time through the Effective Date in connection with (a) the management or operation of any of the Debtors or the discharge of its duties under the Bankruptcy Code, (b) the solicitation, negotiation, or implementation of any of the transactions provided for, or contemplated in, the Parent's Plan or other Parent's Plan Documents, (c) any action taken in connection with either the enforcement of the rights of the Debtors against any Entities or the defense of Claims or Demands asserted against the Debtors with regard to the Reorganization Cases, (d) any action taken in the negotiation, formulation, preparation, development, proposal, solicitation, disclosure, Confirmation, or implementation of the Parent's Plan, other Parent's Plan Documents, or related agreements, instruments or other documents, (e) the administration of the Parent's Plan or the assets and property to be distributed pursuant to the Parent's Plan or (f) the administration of any of the Debtors' Estates. The ASARCO Protected Parties shall be deemed to have participated in each of the Reorganization Cases in good faith and in compliance with all applicable provisions of the Bankruptcy Code. Nothing in this Article shall prevent the enforcement of the terms of the Parent's Plan.

11.6 Post-524(g) Indemnity. The Post-524(g) Indemnity (as such term is defined in the Asbestos Insurance Settlement Agreement) shall go into effect on the Effective Date. Reorganized ASARCO shall indemnify and hold harmless, but not defend, the Settled Asbestos Insurance Companies, as provided in paragraph III.C of the Asbestos Insurance Settlement Agreement.

11.7 Additional Releases. Other than the SCC Litigation Trust Claims (which are not released except as specifically set forth in compliance with Article V hereunder), to the extent allowable by law, on, and as of, the Effective Date and for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the ASARCO Protected Parties (acting in any capacity whatsoever) shall be forever released and discharged from any and all Claims, Demands, obligations, actions, suits, rights, debts, accounts, causes of action, remedies, avoidance actions, agreements, promises, damages, judgments, demands, defenses, or claims in respect of equitable subordination, and liabilities through the Effective Date (including all Claims and Demands based on or arising out of facts or circumstances that existed as of or prior to the Parent's Plan in any of the Reorganization Cases, including Claims and Demands based on negligence or strict liability, and further including any derivative claims asserted on behalf of any of the Debtors, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity or otherwise, that any of the Debtors, their respective Estates, or Reorganized ASARCO would have been legally entitled to assert in its own right, whether individually or collectively) which any of the Debtors, their respective Estates, Reorganized ASARCO, Claimants, holders of Demands or other Persons receiving or who are entitled to receive distributions under the Parent's Plan may have against any of them in any way related to the Reorganization Cases or any of the Debtors (or their respective predecessors or Affiliates); provided, however, the releases provided for in this paragraph shall not extend to any claims by any governmental agency with respect to criminal liability, willful misconduct or bad faith, or ultra vires acts; and provided further, that if the Parent and Grupo México do not receive all protections provided for in the Parent's Plan, including, without limitation, those described in

this Article and Articles 11.1 and 11.9, then the protections in this Article with respect to ASARCO Protected Parties other than the Debtors and Reorganized ASARCO shall not go into effect.

11.8 Exculpation. Other than the SCC Litigation Trust Claims (which are not released except as specifically set forth in compliance with Article V hereunder), to the extent allowable by law, except in the case of a judicial finding by a Final Order of willful misconduct or bad faith, or any criminal liability or liability for ultra vires acts asserted by any Governmental Unit, no ASARCO Protected Party (acting in any capacity whatsoever) shall be liable to any Person or Entity for any action, failure or omission to act or other matter related to the Debtors or any of the Reorganization Cases, including those activities described in Article 11.5 of the Parent's Plan, through and including the Effective Date. All parties are permanently enjoined from initiating a suit against any ASARCO Protected Party, except in the case of a judicial finding by a Final Order of actions for willful misconduct or bad faith, or any criminal liability or liability for ultra vires acts asserted by any Governmental Unit. Any such action by a non-Governmental Unit shall be brought in the Bankruptcy Court within 90 days after the Effective Date; provided, however, that if the Parent and Grupo México do not receive all protections provided for in the Parent's Plan, including, without limitation, those described in Article 11.8, then the protections in Article 11.8 with respect to ASARCO Protected Parties other than the Debtors and Reorganized ASARCO will not go into effect. Nothing in Article 11.8 will prevent the enforcement of the terms of the Parent's Plan.

11.9 Consensual Releases by Holders of Claims, Demands, and Interests. Other than the SCC Litigation Trust Claims (which are not released except as specifically set forth in compliance with Article V hereunder), to the fullest extent allowable by law, on the Effective Date, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, holders of Claims and Interests voting to accept the Parent's Plan and holders of Demands shall be deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged each of the ASARCO Protected Parties from any and all Claims, Demands, Interests, obligations, rights, suits, damages, causes of action, remedies and liabilities whatsoever relating to the Debtors, the Debtors' property, events giving rise to the Debtors' Reorganization Cases, the Debtors' Reorganization Cases, the Parent's Plan and any plans of reorganization proposed by the Parent, including, without limitation, Claims and Demands based on breach of contract, negligence, or strict liability, and including, without limitation, any derivative claims asserted on behalf of any of the Debtors, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity or otherwise, that such holder of a Claim, Demand, or Interest would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, (1) any of the Debtors, (2) any of the Reorganization Cases, (3) the subject matter of, or the transactions or events giving rise to, any Claim, Demand, or Interest, (4) the business or contractual arrangements between any of the Debtors and any ASARCO Protected Party, (5) the restructuring of Claims, Demands, and Interests prior to or in the Reorganization Cases, (6) the negotiation, formulation, or preparation of the Parent's Plan, the Parent's Plan Documents or related agreements, instruments or other documents, or (7) any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date, other than Claims, Demands, or liabilities arising out of or relating to any action or omission of an ASARCO Protected Party that constitutes a failure to perform the duty to act in good faith, with

the care of an ordinarily prudent person and in a manner the ASARCO Protected Party reasonably believed to be in the best interests of the Debtors (to the extent such duty is imposed by applicable non-bankruptcy law) where such failure to perform constitutes willful misconduct or gross negligence, provided that the above described releases shall apply to all holders of Claims and Interests irrespective of how such parties vote (or whether such parties vote) in connection with the Plan, to the extent that such release relates to any of the above described conduct by any ASARCO Protected Party that has been the subject of a release which has been approved by the Bankruptcy Court; provided, further, that if the Parent and Grupo México do not receive all protections provided for in the Parent's Plan, including, without limitation, those described in this Article and Article 1.1, then the protections in this Article with respect to ASARCO Protected Parties other than the Debtors and Reorganized ASARCO shall not go into effect.

11.10 Release of Fraudulent Transfer Claims Against Settling Asbestos Insurance Companies. All fraudulent transfer claims against any Settling Asbestos Insurance Company arising under sections 544(b), 548, 549, or 550 of the Bankruptcy Code or otherwise with respect to the Claims, rights or interests released under the Asbestos Insurance Settlement Agreement shall be released, and the Section 524(g) Trust shall have no authority to bring any fraudulent transfer actions arising under any applicable state or other non-bankruptcy law against any Settling Asbestos Insurance Company with respect to the Claims, rights and interests released under the Asbestos Insurance Settlement Agreement. This Article does not apply to any of the existing Avoidance Actions against certain Asbestos Insurance Companies that entered into prepetition settlement agreements.

11.11 No Release With Respect to Pension Plans and Other Employee Benefit Plans. Notwithstanding any provision in this Article, or otherwise in the Parent's Plan, or in the Confirmation Order, no claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action or liabilities whatsoever against any entity with respect to statutory liabilities arising under ERISA concerning the Pension Plans or fiduciary liabilities arising under ERISA concerning other Employee Benefit Plans shall be released, exculpated, discharged, enjoined, or otherwise affected by the Parent's Plan, nor shall the entry of the Confirmation Order constitute the approval of any release, exculpation, discharge, injunction, or other impairment of any claims obligations, suits, judgments, damages, demands, debts, rights, cause of action or liabilities whatsoever against any entity with respect to statutory liabilities arising under ERISA concerning the Pension Plans or fiduciary liabilities arising under ERISA concerning other Employee Benefit Plans.

ARTICLE XII

MATTERS INCIDENT TO PARENT'S PLAN CONFIRMATION

12.1 Term of Certain Injunctions and Automatic Stay.

(a) All of the injunctions and/or stays provided for in or in connection with these Reorganization Cases, whether pursuant to section 105, section 362, section 524, or any other provision of the Bankruptcy Code, other applicable law, or court order, in effect immediately prior to Confirmation shall remain in full force and effect until the Injunctions

become effective and thereafter if so provided by the Parent's Plan, the Confirmation Order, or by their own terms. In addition, on and after the Confirmation Date, the Parent may seek such further orders as it may deem necessary to preserve the status quo during the time between the Confirmation Date and the Effective Date.

(b) Each of the Injunctions shall become effective on the Effective Date and shall continue in effect at all times thereafter, and may not be vacated, amended or modified after the Effective Date, except as otherwise provided herein. Notwithstanding anything to the contrary contained in the Parent's Plan, all actions in the nature of those to be enjoined by the Injunctions shall be enjoined during the period between the Confirmation Date and the Effective Date.

12.2 No Liability for Tax Claims. Unless a taxing authority has asserted a Claim against any of the Debtors prior to the applicable Bar Date, no Claim of such taxing authority shall be Allowed against such Debtor or Reorganized ASARCO for taxes, penalties, interest, additions to tax, or other charges arising out of the failure, if any, of the applicable Debtor or Reorganized ASARCO, or any other Entity to have paid taxes or to have filed any tax return (including, without limitation, any income tax return or franchise tax return) in or for any taxable period ending before the Petition Date or arising out of an audit of any return for a taxable period ending before the Petition Date.

12.3 No Successor Liability.

(a) Except as otherwise expressly provided in the Parent's Plan, none of the ASARCO Protected Parties shall be deemed a successor or successor-in-interest to any of the Debtors or to any Entity for which the Debtors may be held legally responsible, by reason of any theory of law or equity, and none shall be responsible for any successor or transferee liability of any kind or character, except to the extent that the Section 524(g) Trust, Reorganized ASARCO, or both, is or are the successor or successor in interest to ASARCO solely with regard to the Asbestos Insurance Policies, the Asbestos Insurance Settlement Agreements, the Asbestos In-Place Insurance Coverage, the Asbestos Insurance Actions, or the Asbestos Insurance Recoveries.

(b) Except as otherwise expressly provided in the Parent's Plan, none of the ASARCO Protected Parties shall have any obligations to perform, pay, indemnify creditors for, or otherwise have any responsibilities for any liabilities or obligations of the Debtors or Reorganized ASARCO, whether arising before, on, or after the Confirmation Date.

12.4 Insurance Neutrality.

(a) Confirmation of the Parent's Plan shall not be binding upon, and shall not have any res judicata or collateral estoppel effect on or against, any Asbestos Insurance Company that is subject to insurance neutrality under the Bankruptcy Court's May 29, 2008 Order Extending Scope of Insurance Neutrality Addendum Attached to Order Approving Compromise and Settlement Regarding Resolution of Derivative Asbestos Claims (the "Insurance Neutrality Order") regarding its insurance coverage obligations in any pending or subsequent insurance coverage litigation, arbitration, ADR-type proceeding or other dispute

concerning the existence and/or scope of its rights and/or obligations regarding asbestos-related liabilities, if any, and shall not have any impact, effect or consequence in any such other context.

(b) Neither the Debtors, the Asbestos Subsidiary Debtors, the Asbestos Claimants' Committee, the ASARCO Committee, the FCR, an Asbestos Insurance Company nor the Section 524(g) Trust may argue or assert, in any court proceeding, arbitration, ADR-type proceeding or other dispute involving an Asbestos Insurance Company that is subject to insurance neutrality under the Bankruptcy Court's Insurance Neutrality Order and concerning issues related to insurance coverage, that any findings or conclusions concerning 11 U.S.C. § 524(g) and/or constituting any estimation of asbestos-related liabilities contained in or referenced in any decision, order, finding, conclusion or judgment of the Bankruptcy Court relating to Confirmation of the Parent's Plan: (1) constitutes a "judgment," "adjudication," "final order," "settlement," or "finding of liability" related to, based on or relying on the principles enunciated in *UNR Indus., Inc. v. Continental Cas. Co.*, 942 F.2d 1101 (7th Cir. 1991) and/or *Fuller-Austin Insulation Co. v. Fireman's Fund Ins. Co.*, 2002 WL 31005090 (Cal. Super. Ct. Aug. 6, 2002); and (2) is binding upon such an Asbestos Insurance Company for any purpose concerning insurance coverage under any policies issued to any of the Debtors and transferred to the Section 524(g) Trustees in accordance with the provisions hereof. Nothing herein shall limit the ability of the Debtors, the Asbestos Subsidiary Debtors, the Asbestos Claimants' Committee, the ASARCO Committee, the FCR, an Asbestos Insurance Company or the Section 524(g) Trust to offer the Parent's Plan, any of the Parent's Plan Documents, the Confirmation Order or any part of the confirmation process (including, without limitation, any evidentiary hearings or any findings or conclusions therein) in any court, including any court resolving any insurance coverage litigation, as evidence that the Debtors, Reorganized ASARCO, or the Section 524(g) Trust are so bound.

(c) Nothing in the Parent's Plan shall operate to expand the rights of the Debtors, any of the Asbestos Subsidiary Debtors, the Asbestos Claimants' Committee, the ASARCO Committee, the FCR, an Asbestos Insurance Company or the Section 524(g) Trust, or diminish any of their respective duties and obligations as to those rights, duties and obligations that exist under any policies issued by an Asbestos Insurance Company that is subject to insurance neutrality under the Bankruptcy Court's Insurance Neutrality Order as of the Petition Date except as set out in Article 12.4(f) below. Moreover, nothing in the Confirmation process shall in any way operate to, or have the effect of, impairing, prejudicing or expanding such Asbestos Insurance Company's legal, equitable, or contractual rights in any respect, or of increasing, accelerating, creating, or triggering such Asbestos Insurance Company's insurance coverage obligations, if any, in comparison to what those respective rights or obligations would have been if the Parent's Plan had not been confirmed except as set out in Article 12.4(f) below; and all of such Asbestos Insurance Company's rights are expressly reserved and preserved. Such Asbestos Insurance Company's rights shall be determined pursuant to its insurance policies with the applicable Debtors, and under applicable law. Such Asbestos Insurance Company's rights to conduct discovery, either written or oral, in any future proceeding in any insurance coverage litigation relating to the Debtors' asbestos-related liabilities for or such Asbestos Insurance Company's obligations to indemnify the applicable Debtors on account of any or all of such asbestos-related liabilities, if any, shall not be affected, restricted, expanded, altered or modified by anything in or part of the Parent's Plan or the Confirmation process. An Asbestos Insurance Company shall have no such discovery rights in any of the Reorganization Cases; provided,

however, that such Asbestos Insurance Company shall have rights to conduct discovery in the Reorganization Cases on any issue that does not relate to an Asbestos Insurance Company's alleged obligations, if any, to indemnify the applicable Debtors on account of any asbestos-related liabilities. Without limiting the foregoing, except as set out in Article 12.4(f) below, no proceedings undertaken pursuant to or otherwise as part of the Confirmation process (including without limitation, any evidentiary hearings or any findings or conclusions constituting or relating to the determination of any Alter Ego Theories, contained in or referenced in any decision, order, finding, conclusion or judgment of the Bankruptcy Court) shall constitute a trial or hearing on the merits, or an adjudication, Final Order, settlement, or finding of liability binding on such Asbestos Insurance Company for any purpose concerning insurance coverage for asbestos-related liability, or be used as evidence or offered into evidence in any proceeding to prove that such Asbestos Insurance Company participated in and/or consented to the procedures undertaken pursuant to the Parent's Plan. Any ruling by the Bankruptcy Court on any issue upon which such Asbestos Insurance Company does not involve itself and the Confirmation Order shall not be binding on such Asbestos Insurance Company in any insurance coverage litigation. While the court and the finder of fact in any insurance coverage litigation may be advised of any of the proceedings and Confirmation Order in the Bankruptcy Court and while the Debtors, the Asbestos Subsidiary Debtors, the Asbestos Claimants' Committee, the ASARCO Committee, the FCR, an Asbestos Insurance Company or the Section 524(g) Trust may offer the Parent's Plan, any of the Parent's Plan Documents, any of the Confirmation proceedings, or the Confirmation Order as evidence of the reasonableness of a settlement between or among the Debtors, the ASARCO Committee, and the FCR, the court and the finder of fact in any insurance coverage litigation shall be informed or instructed that such proceedings and the Confirmation Order in the Bankruptcy Court are not binding on such Asbestos Insurance Company and that it is up to the court or the finder of fact in any insurance coverage litigation to make its own independent determination as to the reasonableness of that settlement as to such Asbestos Insurance Company.

(d) With regard to any Asbestos Insurance Company that is subject to insurance neutrality under the Bankruptcy Court's Insurance Neutrality Order, nothing in or part of the Parent's Plan and the Confirmation process shall be deemed to be an "adversarial process" as that concept was enunciated in *Gandy v. State Farm Fire & Cas. Co.*, 925 S.W.2d 696 (Tex. 1996). To the extent of any insurance coverage obligation under any policies issued by such Asbestos Insurance Company, all such Asbestos Insurance Companies reserve all of their rights, if any, to adjudicate in a fully "adversarial" trial or hearing on the merits any or all of the Debtors' asbestos-related liabilities, including, without limitation, any liability with respect to any individual asbestos claim; and any other party reserves all of its rights, if any, to oppose such Asbestos Insurance Company's assertion of any such right.

(e) That an Asbestos Insurance Company that is subject to insurance neutrality under the Bankruptcy Court's Insurance Neutrality Order does not participate in the negotiation, nor the Confirmation, of the Parent's Plan shall not be held against or in favor of any person or entity in any pending or subsequent insurance coverage litigation, arbitration, ADR-type proceeding, or other dispute concerning the existence and/or scope of such Asbestos Insurance Company's rights and/or obligations regarding asbestos-related liabilities, if any, except to rebut any argument affirmatively raised by such Asbestos Insurance Company that such Asbestos Insurance Company's absence from the reorganization proceedings reflects

collusion against and/or a lack of cooperation with such Asbestos Insurance Company. Notwithstanding the foregoing, such Asbestos Insurance Company may assert in any such pending or subsequent insurance coverage litigation, arbitration, ADR-type proceeding, or other dispute concerning the existence and/or scope of such Asbestos Insurance Company's rights and/or obligations regarding asbestos-related liabilities, if any, any coverage defenses based on collusion against and/or lack of cooperation with such Asbestos Insurance Company on any basis other than such Asbestos Insurance Company's absence from the Reorganization Cases.

(f) Any of the Debtors, the Asbestos Subsidiary Debtors, the Asbestos Claimants' Committee, the ASARCO Committee, the FCR, an Asbestos Insurance Company, or the Section 524(g) Trust may offer in any court, including any court resolving any insurance coverage litigation, any relevant portion of the Parent's Plan and any of the Parent's Plan Documents and/or the Confirmation Order for any purpose, including, without limitation, that the Parent's Plan was a reasonable settlement; provided, however, such offer shall be subject to the rights, defenses (including affirmative defenses) and objections, if any, of the Debtors, the Asbestos Subsidiary Debtors, the Asbestos Claimants' Committee, the ASARCO Committee, the FCR, an Asbestos Insurance Company and the Section 524(g) Trust.

ARTICLE XIII

PROVISIONS GOVERNING DISTRIBUTIONS

13.1 Plan Distributions. All distributions or payments required or permitted to be made on the Effective Date under the Parent's Plan, other than to holders of Asbestos Personal Injury Claims and Demands and/or Professional Persons, shall be made by the Parent's Plan Administrator on the Effective Date and thereafter by the Parent's Plan Administrator at the time or times and in the manner provided herein, unless otherwise ordered by the Bankruptcy Court. Distributions to holders of Asbestos Personal Injury Claims and Demands shall be made by the Section 524(g) Trust in accordance with the Section 524(g) Trust Documents. Distributions to Professional Persons shall be made by the Parent's Plan Administrator on the Effective Date and thereafter by the Parent's Plan Administrator pursuant to order of the Bankruptcy Court. Distributions to be made on the Effective Date shall be deemed actually made on the Effective Date if made either (a) on the Effective Date or (b) as soon as reasonably practicable thereafter.

13.2 Delivery of Distributions. Except as otherwise expressly provided in the Parent's Plan, distributions to holders of Allowed Claims shall be made at the address of the holder of such Claim as indicated in the claims register maintained by the Claims Agent. Nonetheless, if such holder holds such Claims through a Nominee, distributions with respect to such Claims shall be made to such Nominee, and such Nominee shall, in turn, make appropriate distributions and book entries to reflect such distributions to such holders.

All Cash distributions on account of Allowed Bondholder Claims shall be made to the appropriate Indenture Trustee and further distributions on account of such Claims by the Indenture Trustee to the record holders of Bondholder Claims shall be accomplished in accordance with the Indentures and the policies and procedures of the Depository Trust Company.

13.3 Distribution Record Date. Reorganized ASARCO and the Parent's Plan Administrator shall have no obligation to recognize the transfer of, or the sale of any participation in, any Allowed Claim that occurs after the Distribution Record Date and shall be entitled for all purposes herein to recognize and make distributions only to those holders of Allowed Claims that are holders of such Claims or participants therein, as of the Distribution Record Date. As of the close of business on the Distribution Record Date, each transfer register for the Bonds, as maintained by the applicable Indenture Trustee, shall be closed. Reorganized ASARCO and the Parent's Plan Administrator shall have no obligation, and are not permitted, to recognize the transfer or sale of any Bondholder Claim that occurs after the close of business on the Distribution Record Date and shall be entitled for all purposes herein to recognize and make distributions only to those holders who are holders of such Claims as of the close of business on the Distribution Record Date; provided, however, that with respect to Bondholder Claims, further distributions on account of such Claims by the Indenture Trustees to the record holders of the Bondholder Claims shall not be made as of the Distribution Record Date but rather shall be accomplished in accordance with the respective Indentures and the policies and procedures of DTC.

13.4 Unclaimed Property.

(a) *Distributions by the Section 524(g) Trust.*

Any Cash, assets, or other property to be distributed under the Parent's Plan by the Section 524(g) Trust that remains unclaimed (including by a Claimant's failure to draw upon a check issued to such Claimant) or otherwise is not deliverable to the Claimant entitled thereto one year after the initial distribution is made or attempted shall become vested in, and shall be transferred and delivered to, the Section 524(g) Trust for use in accordance with the terms of the Section 524(g) Trust Documents.

(b) *Distributions by the Parent's Plan Administrator.*

(1) If the distribution to any holder of an Allowed Claim is returned to Reorganized ASARCO or the Parent's Plan Administrator as undeliverable or is otherwise unclaimed (including by a Claimant's failure to draw upon a check issued to such Claimant), no further distributions shall be made to such holder unless the Parent's Plan Administrator is timely notified in writing of the holder's then current address, at which time, all missed distributions shall be made to such holder without interest. The amounts in respect of such undeliverable and/or unclaimed distributions shall be returned to the Parent's Plan Administrator until such distributions are claimed. The Parent's Plan Administrator shall segregate and deposit into an escrow account (the "Undeliverable and Unclaimed Distribution Reserve") all undeliverable and/or unclaimed distributions for the benefit of all such similarly situated Persons until such time as a distribution becomes deliverable or is claimed or such Claimant's right to the distribution is waived pursuant to Article 13.4(b)(2) below. Nothing contained in the Parent's Plan shall require Reorganized ASARCO or the Parent's Plan Administrator to attempt to locate any holder of an Allowed Claim.

(2) Any funds in the Undeliverable and Unclaimed Distribution Reserve that remain unclaimed (including by a Claimant's failure to negotiate a check issued to such Claimant) or otherwise are not deliverable to the Claimant entitled thereto one year after the initial distribution is made or attempted (the "Forfeited Distributions") shall become vested in, and shall be transferred and delivered to, the Parent's Plan Administrator. In such event, such Claimant shall be deemed to have waived its rights to such payments or distributions under the Parent's Plan pursuant to section 1143 of the Bankruptcy Code, shall have no further Claim in respect of such distribution, and shall not participate in any further distributions under the Parent's Plan with respect to such Claim. The Parent's Plan Administrator shall distribute the Forfeited Distributions to Reorganized ASARCO as a Subsequent Distribution.

13.5 Compliance with Tax Requirements. Reorganized ASARCO, the Parent's Plan Administrator and the Section 524(g) Trust shall comply with all applicable withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authorities, and all distributions hereunder or under any Parent's Plan Document shall be subject to such withholding and reporting requirements, if any. Notwithstanding any other provision of the Parent's Plan, each Person receiving a distribution pursuant to the Parent's Plan, or any other Parent's Plan Document, shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any Governmental Authority, including income and other tax obligations, on account of that distribution.

13.6 Setoffs and Recoupments. Subject to the limitations provided in section 553 of the Bankruptcy Code, Reorganized ASARCO or the Parent's Plan Administrator, as the case may be, may, but shall not be required to, offset against or recoup from the holder of any Allowed Claim on which payments or other distributions are to be made pursuant to the Parent's Plan any Claims of any nature whatsoever the Estate of the applicable Debtor may have against the holder of such Claim, but neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by Reorganized ASARCO or the Parent's Plan Administrator, as the case may be, of any such Claim against such holder or right of setoff or recoupment that the applicable Estate may have against the holder of such Allowed Claim.

13.7 No Distribution Pending Allowance. If a Claim or any portion of a Claim is disputed, no payment or distribution will be made on account of the disputed portion of such Claim (or the entire Claim, if the entire Claim is disputed), unless such Disputed Claim becomes an Allowed Claim. No estate funds will be expended by the Parent's Plan Administrator to support or defend settlements achieved by the Debtors prior to the Effective Date where the order approving such settlement has not become a final order.

13.8 Disputed Claims Reserve.

(a) The Parent's Plan Administrator shall maintain, in accordance with its powers and responsibilities under the Parent's Plan, a Disputed Claims Reserve.

(b) On the Effective Date (or as soon thereafter as is reasonably practicable), Reorganized ASARCO or the Parent's Plan Administrator, as the case may be, shall deposit Cash and/or other forms of consideration in the Disputed Claim Reserve that would have been

distributed to the holders of Disputed Claims if such Disputed Claims had been Allowed Claims on the Effective Date. This amount will be determined based on the lesser of (1) the asserted amount of the Disputed Claims in the applicable Proofs of Claim, (2) the amount, if any, estimated by the Bankruptcy Court for purposes of distribution pursuant to section 502(c) of the Bankruptcy Code, or (3) the amount otherwise agreed to by the applicable Debtor and the holders of such Disputed Claims.

(c) The Parent, Reorganized ASARCO, and/or the Parent's Plan Administrator may seek Bankruptcy Court approval to reduce the size of the Disputed Claims Reserve based upon the amount of the remaining Disputed Claims or other changed circumstances.

(d) In the case of objections to allegedly Secured Claims, any Lien asserted by the holder of such a Claim against assets that revert in or is transferred to Reorganized ASARCO shall remain in place, pending resolution of the objection to the allegedly Secured Claim.

(e) The Parent's Plan Administrator (at such time as determined to be practicable by the Parent's Plan Administrator) shall distribute from the Disputed Claims Reserve to the holder of any Disputed Claim that has become an Allowed Claim, not later than the tenth Business Day after the end of the calendar month in which such Disputed Claim becomes an Allowed Claim, an amount equal to such Claim as if such Claim had been an Allowed Claim on the Effective Date.

(f) If a Disputed Claim is disallowed, in whole or in part, the Parent's Plan Administrator shall (at such time as determined to be practicable by the Parent's Plan Administrator) distribute the Cash reserved in respect of such disallowed Disputed Claim, Pro Rata: first, to holders of Claims in Class 3 (and, pending resolution of Disputed Claims in Class 3, the Disputed Claims Reserve); second, upon Payment in Full of Claims in Class 3, to holders of Claims in Class 6 (and, pending resolution of Disputed Claims in Class 6, the Disputed Claims Reserve); third, upon Payment in Full of Claims in Class 6, to holders of Claims in Class 7 (and, pending resolution of Disputed Claims in Class 7, the Disputed Claims Reserve); and fourth, upon payment in Full of Claims in Class 7, to Reorganized ASARCO; provided that, in no event shall any holder of an Allowed Claim in Class 3, 6, or 7 receive distributions which exceed the Allowed amount of such Claim. To the extent there are any excess funds in Disputed Claims Reserve after all distributions required by the Parent's Plan have been made, the Parent's Plan Administrator shall make a Subsequent Distribution of such funds to Reorganized ASARCO.

(g) The Disputed Claims Reserve is intended to be treated as a "disputed ownership fund" within the meaning of Treasury Regulation section 1.468B-9(b)(1), and hence as a taxable entity for federal income tax purposes, and the Parent's Plan Administrator will be the "administrator" of the Disputed Claims Reserve pursuant to Treasury Regulation section 1.468B-9(b)(2). In general, the Disputed Claims Reserve will be treated in the same manner as a "qualified settlement fund" for federal income tax purposes. The Parent's Plan Administrator will cause all taxes imposed on the Disputed Claims Reserve to be paid using assets of the Disputed Claims Reserve and will comply with all tax reporting and withholding requirements imposed on the Disputed Claims Reserve under applicable tax laws, and in particular the rules applicable to a disputed ownership fund.

13.9 Surrender of Bondholder Certificates; Lost Certificates. With respect to each Allowed Bondholder Claim, each holder of an instrument evidencing such Allowed Bondholder Claim (a "Certificate") shall surrender such Certificate to the Indenture Trustee or the Parent's Plan Administrator, as the case may be, and such Certificate shall be cancelled solely with respect to the Debtors and such cancellation shall not alter the obligations or rights of any non-Debtor parties as between or among such persons pursuant to such instruments. No distribution of property hereunder shall be made to such holder unless and until such Certificate is received by the Indenture Trustee or the Parent's Plan Administrator, as the case may be, or the unavailability of such Certificate is established to the reasonable satisfaction of such Indenture Trustee or the Parent's Plan Administrator. Any holder who fails to surrender or cause the surrender of such Certificate, or fails to execute and deliver an affidavit of loss and indemnity reasonable satisfactory to the Indenture Trustee or the Parent's Plan Administrator, as the case may be, prior to the second anniversary of the Effective Date shall be deemed to have forfeited all rights and Claims in respect of such Certificate and shall not participate in any distribution under the Parent's Plan, and all property in respect of such forfeited distribution shall be subject to distribution to all other holders of Claims under such Indenture who have duly surrendered or caused the surrender of their Certificates or reasonably established the unavailability thereof.

Any holder of an Allowed Bondholder Claim with respect to which the underlying Certificate has been lost, stolen, mutilated or destroyed must, in lieu of surrendering such Certificate, deliver to the Indenture Trustee or the Parent's Plan Administrator, as the case may be: (i) evidence satisfactory to the Indenture Trustee or the Parent's Plan Administrator, as the case may be, of the loss, theft, mutilation or destruction; and (ii) such security or indemnity as may be required by the Indenture Trustee or the Parent's Plan Administrator, as the case may be, to hold it and the Debtors harmless from any damages, liabilities or costs incurred in treating such individual as a holder of such Certificate. Upon compliance with this Article by a holder of an Allowed Bondholder Claim, such holder shall, for all purposes under the Parent's Plan, be deemed to have surrendered the applicable Certificate.

Any holder of a Certificate that fails to surrender or is deemed not to have surrendered the applicable Certificate within the time prescribed in the second subparagraph of this Article shall be deemed to have had its right to distributions pursuant to the Parent's Plan on account thereof discharged, and shall be forever barred from asserting any such Claim against any of the Parent, the Debtors, Reorganized ASARCO, the Parent's Plan Administrator, the Indenture Trustees, or any of the foregoing's respective property.

Notwithstanding the foregoing, if the record holder of a Bondholder Claim is the Depository Trust Company or its nominee or such other securities depository or custodian thereof, or if a Bondholder Claim is held in book-entry or electronic form pursuant to a global security held by the Depository Trust Company, then the beneficial holder of such an Allowed Bondholder Claim shall be deemed to have surrendered such holder's security, note, debenture or other evidence of indebtedness upon surrender of such global security by the Depository Trust Company or such other securities depository or custodian thereof.

13.10 Cancellation of Instruments. When all Allowed Bondholder Claims with respect to any Bond Issuance are satisfied by the payment under the Parent's Plan, then, on the Effective Date, all promissory notes, instruments, indentures, bonds, agreements, or other

documents evidencing, giving rise to, or governing any Claim against any Debtor (including the applicable Indenture and the Bonds) with respect to such Bond Issuance shall be deemed cancelled and shall represent only the right to participate in the distributions hereunder. Notwithstanding the foregoing and anything else contained in the Parent's Plan, the Indentures for each Bond Issuance will continue in effect solely for the purposes of (i) allowing distributions to be made under the Parent's Plan pursuant to the Indentures and the Indenture Trustees to perform such other necessary functions with respect thereto and to have the benefit of all the protections and other provisions of the applicable Indentures in doing so; (ii) permitting an Indenture Trustee to maintain or assert any right or Charging Lien it may have with respect to distributions pursuant to the terms of the Parent's Plan for Indenture Trustee Fee Claims; (iii) permitting the Indenture Trustees to assert, in accordance with the terms of the Parent's Plan and Confirmation Order, any right to indemnification, contribution or other Claim any one of them may have under the applicable Indentures, subject to any and all defenses the Debtors may have under the Parent's Plan and applicable law to any such asserted right or Claims; and (iv) permitting each Indenture Trustee to exercise, in accordance with the terms of the Parent's Plan and Confirmation Order, its rights and obligations relating to the interests of the holders of Bondholder Claims and its relationship with the holders of Bondholder Claims pursuant to the applicable Indenture, including its right to appear and be heard in these chapter 11 cases and any appeals.

ARTICLE XIV

PROCEDURES FOR TREATING DISPUTED CLAIMS

14.1 Objections to Claims. After the Effective Date, Reorganized ASARCO and the Parent's Plan Administrator shall have the exclusive right to file objections to Claims (other than objections to Asbestos Personal Injury Claims and Demands, and objections to Claims that have been Allowed by Final Order) and litigate to judgment, settle, or withdraw such objections to Disputed Claims (including any Claims subject to a pending estimation motion). Without limiting the preceding, Reorganized ASARCO and the Parent's Plan Administrator shall have the right to litigate any Disputed Claim either in the Bankruptcy Court or in any court of competent jurisdiction. After the Effective Date, only the Section 524(g) Trust shall have the authority to file objections to Asbestos Personal Injury Claims and Demands and litigate to judgment, settle, or withdraw such objections, and Asbestos Personal Injury Claims and Demands, whether or not a Proof of Claim is filed, shall be satisfied exclusively in accordance with the Parent's Plan, the Section 524(g) Trust Agreement, and the Section 524(g) Trust Distribution Procedures. For the avoidance of doubt, no objection to Asbestos Personal Injury Claims or Demands shall be filed in the Bankruptcy Court.

14.2 Objection Deadline. Within the later of (a) 90 days after the Confirmation Date or (b) 90 days after a Proof of Claim is filed, objections to Claims (other than Asbestos Personal Injury Claims and Demands, which shall be Allowed or disallowed as provided in the Section 524(g) Trust Distribution Procedures) shall be filed with the Bankruptcy Court; provided, however, that Reorganized ASARCO and/or the Parent's Plan Administrator may seek to extend such period (or any extended period) for cause.

14.3 Disallowance of Improperly Filed Claims. Any Administrative Claim or other Claim (except for an Asbestos Personal Injury Claim or a Demand) for which the filing of a motion for allowance is required shall be disallowed if such filing is not timely and properly made, subject to the right of the Claimant to seek permission under applicable law to file a late claim. Any Administrative Claim timely filed on the Proof of Administrative Claim (found in Exhibit B to Docket #8549) pursuant to Docket #8549 shall not require a motion for allowance.

ARTICLE XV

MISCELLANEOUS

15.1 General Retention of Jurisdiction. Until the Reorganization Cases are closed, the Bankruptcy Court (and, with respect to the Permanent Channeling Injunction and the Asbestos Insurance Company Injunction, the District Court) shall retain the fullest and most extensive jurisdiction permissible, including, without limitation, that necessary (a) to ensure that the purposes and intent of the Parent's Plan are carried out, (b) to enforce and interpret the terms and conditions of the Parent's Plan Documents, and (c) to enter such orders or judgments, including, without limitation, injunctions necessary to enforce the rights, title, and powers of the Debtors, Reorganized ASARCO, a Settling Asbestos Insurance Company, the Parent and/or other ASARCO Protected Party. Except as otherwise provided in the Parent's Plan, the Bankruptcy Court shall retain jurisdiction to hear and determine all Claims against and Interests in the Debtors and to adjudicate and enforce all other causes of action that may exist on behalf of the Debtors. Nothing contained herein shall prevent Reorganized ASARCO, the Parent's Plan Administrator, the Parent, the Section 524(g) Trustees, the Litigation Trustees, or the Environmental Custodial Trustee (as appropriate) from taking such action as may be necessary in the enforcement of any cause of action that such Entity has or may have and that may not have been enforced or prosecuted by the applicable Debtor, which cause of action shall survive entry of the Confirmation Order and occurrence of the Effective Date and shall not be affected thereby except as specifically provided herein.

15.2 Jurisdiction Over the Section 524(g) Trust. The Section 524(g) Trust shall be subject to the continuing jurisdiction of the Bankruptcy Court in accordance with the requirements of section 468B of the Internal Revenue Code and the regulations issued pursuant thereto.

15.3 Specific Purposes. Without limiting the effect of Articles 15.1 and 15.2, the Bankruptcy Court shall retain jurisdiction after Confirmation to:

(a) modify the Parent's Plan after entry of the Confirmation Order, pursuant to the provisions of the Parent's Plan, the Bankruptcy Code, and the Bankruptcy Rules;

(b) correct any defect, cure any omission, reconcile any inconsistency, or make any other necessary changes or modifications in or to the Parent's Plan, the Parent's Plan Documents, or the Confirmation Order as may be necessary to carry out the purposes and intent of the Parent's Plan;

(c) hear and determine any cause of action, and to enter and implement such orders as may be necessary or appropriate, to execute, interpret, implement, consummate, or enforce the Parent's Plan, the Parent's Plan Documents and the transactions contemplated thereunder;

(d) hear and determine disputes arising in connection with the execution, interpretation, implementation, consummation, or enforcement of the Parent's Plan, including, without limitation, the Parent's Plan Documents, and to enforce, including by specific performance, the provisions of the Parent's Plan and the Parent's Plan Documents;

(e) hear and determine disputes arising in connection with the execution, interpretation, implementation, consummation, or enforcement of the settlement agreements, asset purchase agreements or other agreements entered into by any of the Debtors during the Reorganization Cases (the "Other Agreements"), or to enforce, including by specific performance, the provisions of the Other Agreements;

(f) enter and implement orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with the consummation or implementation of the Parent's Plan, including, without limitation, to issue, administer, and enforce injunctions, releases, assignments, transfers of property or property rights, or other obligations contained in the Parent's Plan and the Confirmation Order;

(g) assure the performance by Reorganized ASARCO, the Parent's Plan Administrator and the Trustees of their respective obligations to make distributions under the Parent's Plan and other Parent's Plan Documents;

(h) enter such orders or judgments, including injunctions, as necessary to enforce the title, rights, and powers of any of the Debtors, Reorganized ASARCO, the Parent, the Parent's Plan Administrator or the Trusts;

(i) hear and determine any and all motions, applications or adversary proceedings brought by or against the Trusts related to (1) enforcement or interpretation of the Trust Documents and (2) amendment, modification, alteration or repeal of any provision of the Trust Documents, if such hearing and determination by the Bankruptcy Court is required pursuant to the Parent's Plan;

(j) hear and determine any and all motions, applications or adversary proceedings brought by Reorganized ASARCO against Sterlite and Sterlite's affiliates;

(k) hear and determine any and all adversary proceedings, applications, and contested matters, including any remands after appeal;

(l) ensure that distributions to holders of Allowed Claims and Demands are accomplished as provided herein;

(m) alter the size of the Disputed Claims Reserve based upon the amount of the remaining Disputed Claims or other changed circumstances;

(n) hear and determine any timely objections to or motions or applications concerning Claims or the allowance, classification, priority, compromise, setoff, estimation, or payment of any Claim, to the fullest extent permitted by the provisions of section 157 of title 28 of the United States Code;

(o) enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified, reversed, or vacated;

(p) hear and determine any motions, contested matters or adversary proceedings involving taxes, tax refunds, tax attributes, tax benefits, and similar or related matters with respect to any of the Debtors, Reorganized ASARCO, the Parent's Plan Administrator and/or the Trusts arising on or prior to the Effective Date, arising on account of transactions contemplated by the Parent's Plan Documents, or relating to the period of administration of the Reorganization Cases;

(q) hear and determine all applications for compensation of Professional Persons and reimbursement of expenses under sections 330, 331, or 503(b) of the Bankruptcy Code;

(r) hear and determine any causes of action relating to any of the Debtors, Reorganized ASARCO or the Trusts to the fullest extent permitted by section 157 of title 28 of the United States Code;

(s) hear and determine any cause of action in any way related to the Parent's Plan Documents or the transactions contemplated thereby, against the ASARCO Protected Parties;

(t) recover all assets of each of the Debtors and property of their Estates, wherever located, including actions under chapter 5 of the Bankruptcy Code;

(u) hear and determine any and all motions pending as of the Confirmation Date for the rejection, assumption, or assignment of executory contracts or unexpired leases and the allowance of any Claim resulting therefrom;

(v) hear and determine such other matters and for such other purposes as may be provided in the Confirmation Order;

(w) consider and act on the compromise and settlement of any Claim against, or Interest in, any of the Debtors or their respective Estates including, without limitation, any disputes relating to any Administrative Claims, any Bar Date, or Bar Date Order;

(x) hear and determine all questions and disputes regarding title to the assets of any of the Debtors, their respective Estates or the Trusts;

(y) hear and determine any other matters related hereto, including the implementation and enforcement of all orders entered by the Bankruptcy Court in the Reorganization Cases;

(z) retain continuing jurisdiction with regard to the Section 524(g) Trust sufficient to satisfy the requirements of Treasury Regulation section 1.468B;

(aa) hear and determine any and all applications brought by the Section 524(g) Trustees to amend, modify, alter, or repeal any provision of the Section 524(g) Trust Agreement or the Section 524(g) Trust Distribution Procedures pursuant to the Section 524(g) Trust Agreement and to declare or resolve all issues or disputes contemplated by the Section 524(g) Trust Agreement;

(bb) enter and implement orders extending the Asbestos Insurance Company Injunction to insurance companies that become Settling Asbestos Insurance Companies after the Effective Date;

(cc) enter such orders as are necessary to implement and enforce the Injunctions;

(dd) hear and determine any other matter in connection with the Parent's Copper Note;

(ee) hear and determine any other matter in connection with the SCC Litigation Trust including, without limitation, resolving disputes regarding the Maximum Recovery and the amount of recovery to which any purchaser, transferee or successor-in-interest of the SCC Litigation Trust's interests in the SCC Litigation Trust Claims is entitled; and

(ff) hear and determine any other matter not inconsistent with the Bankruptcy Code and title 28 of the United States Code that may arise in connection with or are related to the Parent's Plan.

15.4 Exclusive Jurisdiction of District Court for Certain Matters.

(a) The District Court shall, without regard to the amount in controversy, retain exclusive jurisdiction after Confirmation over matters relating to section 524(g) of the Bankruptcy Code and the Permanent Channeling Injunction and the Asbestos Insurance Company Injunction, including, without limitation, the validity, application, or construction of the Permanent Channeling Injunction and the Asbestos Insurance Company Injunction, or of section 524(g) of the Bankruptcy Code with respect to the Permanent Channeling Injunction and the Asbestos Insurance Company Injunction; provided, however, that, from and after the Effective Date, the jurisdiction of the District Court shall be non-exclusive with respect to any Asbestos Insurance Action or Asbestos Insurance Recovery. Nothing contained herein shall be deemed a finding or conclusion that: (i) the Bankruptcy Court or District Court in fact have jurisdiction with respect to any Asbestos Insurance Action or Asbestos Insurance Recovery; (ii) any such jurisdiction is exclusive with respect to any Asbestos Insurance Action or Asbestos Insurance Recovery; or (iii) abstention or dismissal or reference of actions effecting the transfer of jurisdiction of any Asbestos Insurance Action or Asbestos Insurance Recovery pending in the Bankruptcy Court or District Court to another court is precluded, inadvisable or unwarranted. Any court other than the Bankruptcy Court or the District Court that has or is capable of having jurisdiction over any Asbestos Insurance Action or Asbestos Insurance Recovery shall have the right to exercise such jurisdiction.

(b) Notwithstanding entry of the Confirmation Order and/or the occurrence of the Effective Date, the reference to the Bankruptcy Court pursuant to the Reference Order shall continue, but subject to this Article 15.4 and any other modifications or withdrawals of the reference specified in the Confirmation Order, the Reference Order, any case management order or other order of the District Court.

15.5 Post-Effective Date Status of the Committees and the FCR. The Committees and the position of the FCR shall continue in existence until the Effective Date, with ASARCO to pay the reasonable fees and expenses of the Committees and the FCR through the Effective Date in accordance with the fee and expense procedures promulgated during the Reorganization Cases. The Committees and the FCR shall have standing to participate in proceedings brought by their respective professionals or, if applicable, members, for allowance of fees and/or reimbursement of expenses as permitted by law. On and after the Effective Date, Judge Robert C. Pate shall serve as the FCR, as such term is defined in the Section 524(g) Trust Agreement, and shall have and exercise the functions, rights, duties, powers and privileges provided in the Section 524(g) Trust Documents, if Judge Robert C. Pate is willing to so serve. If not, the Bankruptcy Court will appoint his replacement. Except as provided in this subsection or above, the Committees shall be dissolved on the Effective Date, and the members, attorneys, accountants, and other professionals thereof shall be released and discharged of and from all further authority, duties, responsibilities, liabilities, and obligations related to, or arising from, the Reorganization Cases.

15.6 Modification of Parent's Plan. The Parent may alter, amend or modify the Parent's Plan under section 1127(a) of the Bankruptcy Code at any time prior to the Confirmation Date. After the Confirmation Date, the Parent or Reorganized ASARCO, as the case may be, may, under section 1127(b) of the Bankruptcy Code, seek Bankruptcy Court

approval to remedy any defects or omissions or reconcile any inconsistencies in the Parent's Plan or the Confirmation Order in such manner as may be necessary to carry out the purposes and intent of the Parent's Plan, so long as the proposed alteration, amendment or modification does not adversely affect the treatment of Claims or Interests under the Parent's Plan.

15.7 Non-Consummation. If the Parent's Plan is not Confirmed, or if the Parent's Plan is Confirmed and does not become effective, the rights of all parties in interest in the Debtors' chapter 11 cases, including the Parent, are and will be reserved in full. Any concessions or settlements reflected herein (if any), are made for purposes of the Parent's Plan only, and if the Parent's Plan does not become effective, then (i) no party in interest shall be bound or deemed prejudiced by any such concession or settlement, (ii) the Parent's Plan shall be null and void in all respects other than Article 10.2, (iii) any settlement or compromise embodied in the Parent's Plan, assumption or rejection of executory contracts or leases affected by the Parent's Plan, and any document or agreement executed pursuant to the Parent's Plan shall be deemed null and void, (iv) nothing contained in the Parent's Plan, and no acts taken in preparation for consummation of the Parent's Plan, shall prejudice in any manner the rights of the Parent or constitute an admission or waiver of any sort by the Parent, and (v) the structure of the Parent's Plan and the classification of creditors or groups of creditors within one Class contained herein shall have no evidentiary or precedential effect.

15.8 Entire Agreement. Except as otherwise expressly provided in the Parent's Plan or the Parent's Plan Documents, the Parent's Plan and the Parent's Plan Documents set forth the entire agreement and undertakings relating to the subject matter thereof and supersede all prior discussions and documents.

15.9 Rules Governing Conflicts Between Documents. In the event of a conflict between the terms or provisions of the Parent's Plan and the Parent's Plan Documents, the terms of the Parent's Plan shall control over the Parent's Plan Documents. In the event of a conflict between the terms of the Parent's Plan or the Parent's Plan Documents, on the one hand, and the terms of the Confirmation Order, on the other hand, the terms of the Confirmation Order shall control.

15.10 Severability. In the event any provision in the Parent's Plan should be determined to be unenforceable either on its face or as applied to any Claim, Demand, Interest or transaction, the Parent may modify the Parent's Plan in accordance with Article 15.6 hereof so that such provision shall not be applicable to the holder of any Claim, Demand, Interest, or transaction. Such determination of unenforceability shall not (a) limit or affect the enforceability and operative effect of any other provision of the Parent's Plan or (b) require the re-solicitation of any acceptance or rejection of the Parent's Plan.

15.11 Headings. Headings are utilized in the Parent's Plan for convenience and reference only and shall not constitute a part of the Parent's Plan for any other purpose.

15.12 Bar Date for Compensation and Reimbursement Claims. All applications for final allowances of compensation or reimbursement of expenses under section 330 of the Bankruptcy Code or applications for allowance of Administrative Claims arising under subsections (b)(2) through (b)(6) of section 503(b) of the Bankruptcy Code must be filed on or

before 90 days after the Effective Date, unless otherwise ordered by the Bankruptcy Court; save and except that any application under section 503(b)(3)(D) of the Bankruptcy Code or any application for a fee enhancement or success fee under the Bankruptcy Code must be filed on or before 60 days after the Effective Date, unless otherwise ordered by the Bankruptcy Court. Objections to applications of such Professionals Persons or other Entities for compensation or reimbursement of costs and expenses or for substantial contribution Claims must be filed within twenty days after the applicable application for compensation or reimbursement was filed.

15.13 Subsequent Administrative Claims Bar Date. Claimants, other than Professionals Persons, holding Administrative Claims against any of the Debtors that arise after the Initial Administrative Claims Bar Date (a “Subsequent Administrative Claim”) that remain unpaid on the Effective Date must file a request for payment of Subsequent Administrative Claim on or before 45 days after the Effective Date, unless otherwise ordered by the Bankruptcy Court. Any holder of a Subsequent Administrative Claim that is required to file a request for payment of such Claim and that does not file such request prior to the Subsequent Administrative Claims Bar Date will be forever barred from asserting such Subsequent Administrative Claim against any of the Debtors, Reorganized ASARCO or their respective properties, and such Subsequent Administrative Claim will be deemed discharged as of the Effective Date. Objections to Subsequent Administrative Claims must be filed with the Bankruptcy Court within 20 days after the applicable Subsequent Administrative Claim was filed, unless such objection deadline is extended by the Bankruptcy Court. Any Subsequent Administrative Claims of the United States or any individual state under civil Environmental Laws relating to the Designated Properties shall be addressed through the Environmental Custodial Trusts.

15.14 Indenture Trustee Fee Claims.

(a) If, at least 20 days prior to the commencement of the Confirmation Hearing, the Parent receives from the Indenture Trustees statement(s) of their respective Indenture Trustee Fee Claims incurred through such date and projected to be incurred through the Effective Date, together with such detail as may be reasonably requested by the Parent, the Parent or Reorganized ASARCO, as appropriate, shall pay, on the Effective Date, the Indenture Trustee Fee Claims, in full, in Cash. Notwithstanding the foregoing, to the extent that the Parent disputes any portion of the Indenture Trustee Fee Claims, prior to the Effective Date the Debtors and/or the Parent shall file with the Bankruptcy Court and serve on the appropriate Indenture Trustee an objection to such Indenture Trustee Fee Claim stating with specificity the Parent’s objections to such Indenture Trustee Fee Claim. On the Effective Date, the Parent or Reorganized ASARCO, as appropriate, shall reserve an amount equal to the amount of disputed Indenture Trustee Fee Claims and such dispute shall be consensually resolved by the parties or presented to the Bankruptcy Court for adjudication. The Parent reserves the right to object to any such amounts on any applicable grounds.

(b) Subject to the payment of the non-disputed portion of the Indenture Trustee Fee Claims and the establishment of the reserve with respect to any disputed portion of the Indenture Trustee Fee Claims, and the payment of all other fees and expenses (including fees and expenses of counsel and other professionals) incurred by the Indenture Trustees in administering distributions to the Bondholders or responding to any objection by the Parent to an Indenture Trustee Fee Claim, to the extent payment of the foregoing fees and expenses is permitted by the

Indentures, all Charging Liens of the Indenture Trustees in any distributions shall be forever released and discharged. Once the Indenture Trustees have completed performance of all of their duties set forth in this Plan or in connection with any distributions to be made under this Plan, if any, the Indenture Trustees, and their successors and assigns, shall be relieved of all obligations as Indenture Trustees effective as of the Effective Date.

15.15 Governing Law. Except to the extent that federal law (including, without limitation, the Bankruptcy Code and the Bankruptcy Rules) is applicable or the Parent's Plan provides otherwise, the rights and obligations arising under the Parent's Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of New York without giving effect to its conflicts of law principles.

15.16 Consent to Jurisdiction. Except for the matters within the exclusive jurisdiction of the District Court as described in Article 15.4 hereof, the Debtors, the Parent, Reorganized ASARCO, the Parent's Plan Administrator, the Trustees, the Trusts, the Section 524(g) Trust Advisory Committee, and the FCR consent to the jurisdiction of the Bankruptcy Court, or any successor thereto, for all proceedings relating to the enforcement of the Parent's Plan and/or the Parent's Plan Documents, the Confirmation Order and the Asbestos Insurance Company Injunction. As to the matters within the exclusive jurisdiction of the District Court as described in Article 15.4 hereof, the Debtors, Reorganized ASARCO, the Parent's Plan Administrator, the Section 524(g) Trustees, the Section 524(g) Trust, the Section 524(g) Trust Advisory Committee, and the FCR consent to the jurisdiction of the District Court, or any successor thereto, and agree that it shall be the preferred forum for all matters within the exclusive jurisdiction of the District Court as described in Article 15.4.

15.17 Transfer Taxes. The issuance, transfer, or exchange of any of the securities issued under, or the transfer of any other assets or property pursuant to, or in connection with, the Parent's Plan or the making or delivery of an instrument of transfer under, or in connection with, the Parent's Plan shall not, pursuant to section 1146 of the Bankruptcy Code, be taxed under any law imposing a stamp tax, transfer tax, or other similar tax.

15.18 Recordable Order. The Confirmation Order shall be deemed to be in recordable form, and shall be accepted by any recording officer for filing and recording purposes without further or additional orders, certifications, or other supporting documents.

15.19 Successors and Assigns. The rights, duties, and obligations of any Entity named or referred to in the Parent's Plan shall be binding upon, and shall inure to the benefit of, the successors and assigns of such Entity.

15.20 Waiver of Rights. Holders of Claims, Demands or Interests shall have the right voluntarily to waive any rights, benefits or protections that are afforded to them under the provisions of the Parent's Plan or any order issued in furtherance of the Parent's Plan, and such waiver shall supersede such rights, benefits or protections. Any such waiver shall only be effective if such party expressly and specifically waives in writing one or more of such rights, benefits or protections.

15.21 Notices. All notices, requests, elections, or demands in connection with the Parent's Plan or the Parent's Plan Documents shall be in writing and shall be delivered by registered or certified mail, return receipt requested, by facsimile, by email, or by overnight mail to the following addresses unless a different address is designated in a notice served in accordance with this provision:

The Parent

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The undersigned have executed this Modified Sixth Amended Plan of Reorganization as of the 30th day of July, 2009.

Respectfully submitted,

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Name: Jaime P. Collazo Gonzales
Title: CEO and President

By: /s/ Jorge Lazalde Psihas
Name: Jorge Lazalde Psihas
Title: Vice President and General Counsel

AMERICAS MINING CORPORATION, a Delaware corporation

By: /s/ Alberto de la Parra Zavala
Name: Alberto de la Parra Zavala
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By: /s/ Jorge Lazalde Psihas
Name: Jorge Lazalde Psihas
Title: Assistant Secretary

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

IN RE: § Case No. 05-21207
§
ASARCO LLC, et al. § Chapter 11
§
Debtors. § (Jointly Administered)
§

**ASARCO INCORPORATED AND AMERICAS MINING CORPORATION'S
MODIFIED SIXTH AMENDED PLAN OF REORGANIZATION FOR THE DEBTORS
UNDER CHAPTER 11 OF THE UNITED STATES BANKRUPTCY CODE**

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Dated: July ~~26~~, 30, 2009

INJUNCTIONS

This plan of reorganization provides for the issuance of a channeling injunction regarding asbestos claims and demands asserted against the ASARCO Protected Parties (see Article 11.3(a)) and the issuance of an injunction in favor of Settling Asbestos Insurance Companies (see Article 11.3(b)).

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EXHIBITS TO THE PARENT’S PLAN

<u>Exhibit Designation</u>	<u>Exhibit Title</u>
Parent’s Plan Exhibit 1	Schedule of ASARCO Protected Non-Debtor Affiliates
Parent’s Plan Exhibit 2	Schedule of Released Litigation
Parent’s Plan Exhibit 3	Schedule of Executory Contracts and Unexpired Leases to be Rejected Under the Parent’s Plan
Parent’s Plan Exhibit 4	Form of Parent’s Plan Administration Agreement
Parent’s Plan Exhibit 5	Schedule of Subsidiary Debtor Assets To Be Transferred to Reorganized ASARCO
Parent’s Plan Exhibit 6	Schedule of Asbestos Insurance Policies
Parent’s Plan Exhibit 7	Schedule of Class 2 Secured Claims

Parent's Plan Exhibit 8	Schedule of Directors, Officers & Administrators
Parent's Plan Exhibit 9	Schedule of Litigation Trust Claims
Parent's Plan Exhibit 10	Form of Working Capital Facility
Parent's Plan Exhibit 11	Form of Section 524(g) Trust Agreement
Parent's Plan Exhibit 12	Form of ASARCO Security Agreement
Parent's Plan Exhibit 13	Form of ASARCO Deed of Trust
Parent's Plan Exhibit 14	Form of Parent Pledge Agreement
Parent's Plan Exhibit 15	Schedule of Owned Strategic Properties
Parent's Plan Exhibit 16	Form of Litigation Trust Agreement
Parent's Plan Exhibit 17	Amended Agreement in Principle
Parent's Plan Exhibit 18	List of Designated Properties to be Transferred to Environmental Custodial Trusts and Schedule of Environmental Custodial Trust Funding
Parent's Plan Exhibit 19	List of Sites Related to Environmental Claims
Parent's Plan Exhibit 20	List of Previously Settled Environmental Claims and Miscellaneous Federal and State Environmental Claims
Parent's Plan Exhibit 21	List of Asbestos Insurance Settlement Agreements
Parent's Plan Exhibit 22	Mission Mine Settlement Agreement
Parent's Plan Exhibit 23	Form of ASARCO Note and Guarantee
Parent's Plan Exhibit 24	Form of SCC Litigation Trust Agreement
Parent's Plan Exhibit 25	Form of Parent's Copper Note
Parent's Plan Exhibit 26	Support Agreement

ASARCO Incorporated and Americas Mining Corporation (“AMC” and, together with ASARCO Incorporated, the “Parent”) respectfully propose the following joint plan of reorganization (the “Parent’s Plan”) for the Debtors pursuant to section 1121(a) of the Bankruptcy Code.

ARTICLE I

DEFINITIONS, RULES OF INTERPRETATION, AND COMPUTATION OF TIME

1.1 Defined Terms. Capitalized terms used in the Parent’s Plan have the meanings set forth in the Uniform Glossary of Defined Terms for Plan Documents (the “Glossary”), which is **DS Exhibit A-2**. Capitalized terms used in the Parent’s Plan which are not defined in the Glossary but which are defined in the Bankruptcy Code shall have the respective meanings specified in the Bankruptcy Code.

1.2 Rules of Interpretation. Unless otherwise provided herein for purposes of the Parent’s Plan: (a) whenever it is appropriate from the context, each term, whether stated in the singular or the plural, will include both the singular and the plural; (b) any reference in the Parent’s Plan to a contract, instrument, release, or other agreement or document being in a particular form or on particular terms and conditions means that such document will be substantially in such form or substantially on such terms and conditions; (c) any reference in the Parent’s Plan to an existing document or exhibit filed or to be filed means such document or exhibit, as it may have been or may be amended, modified, or supplemented pursuant to the Parent’s Plan; (d) any reference to any Entity as a holder of a Claim includes that Entity’s successors and assigns; (e) all references in the Parent’s Plan to sections, Articles, and exhibits are references to sections, Articles, and exhibits of or to the Parent’s Plan; (f) the words “herein,” “hereof,” “hereunder,” “hereto” and others of similar import refer to the Parent’s Plan in its entirety rather than to a particular portion of the Parent’s Plan; (g) captions and headings to Articles and sections are inserted for convenience of reference only and are not intended to be a part of, or to affect the interpretation of, the Parent’s Plan; and (h) the rules of construction set forth in section 102 of the Bankruptcy Code will apply. Notwithstanding anything in the Parent’s Plan to the contrary, any Claim against any Debtor asserted by an Affiliate of any Debtor shall be deemed disallowed in its entirety upon entry of the Confirmation Order.

1.3 Computation of Time. In computing any period of time prescribed or allowed by the Parent’s Plan, the provisions of Bankruptcy Rule 9006(a) will apply.

ARTICLE II

TREATMENT OF ADMINISTRATIVE CLAIMS, PRIORITY TAX CLAIMS AND DEMANDS

2.1 Administrative Claims. Each holder of an Allowed Administrative Claim (except any holder that agrees to lesser or otherwise different treatment) shall be Paid in Full, in Cash, in full satisfaction, settlement, release, extinguishment, and discharge of such Claim, on

the later of the Effective Date or the date on which such Administrative Claim becomes an Allowed Claim; provided, however, that (a) Allowed Administrative Claims representing (1) post-petition liabilities incurred in the ordinary course of business by any Debtor or (2) post-petition contractual liabilities arising under loans or advances to any Debtor, whether or not incurred in the ordinary course of business, shall be paid by Reorganized ASARCO in accordance with the terms and conditions of the particular transactions relating to such liabilities and any agreements relating thereto; and (b) the Allowed Administrative Claims of Professional Persons shall be paid pursuant to a Final Order of the Bankruptcy Court. Chase shall receive the Allowed Amount of any Administrative Claim under the Credit Facility in Cash, on the Effective Date, in full satisfaction, settlement, release, extinguishment, and discharge of such Claim. The Settled Asbestos Insurance Companies shall each have an Allowed Administrative Claim for the Pre-524(g) Indemnity, in accordance with the terms and conditions of the Asbestos Insurance Settlement Agreement.

The ~~Parent shall cause the Plan Administrator to implement the~~ Environmental Custodial Trust Agreements ~~substantially in the form and manner as previously negotiated by the Debtors and the holders of Environmental Trust Claims and as set forth in the~~ and the trust created by the Residual Environmental Settlement Agreement shall be implemented exactly in accordance with the Debtors' Environmental 9019 Motion; (ii) and orders approving such motion except for ministerial non-substantive changes. By way of example but not limitation, the Parent shall have no standing to challenge any disbursements by the trustees, nor shall the Parent have standing to challenge the sale or disposition of any of the properties by the trustees. On the Effective Date, (i) title to the Designated Properties shall be conveyed and transferred into the Environmental Custodial Trusts and the trust created by the Residual Environmental Settlement Agreement for the sole benefit of the beneficiaries thereof; (iii) the Environmental Custodial Trust Claims and the Administrative Claim under the Residual Environmental Settlement Agreement shall be treated as Administrative Claims and the ~~Environmental Custodial Trusts~~ trusts shall be funded in cash in ~~the full~~ in such amount as set forth in the Debtors' Plan and the environmental settlement agreements; and (iv) the Parent shall withdraw its objections to, and/or any then pending appeals of, the Debtors' Environmental 9019 Motion and the District Court Order denying withdrawal of the reference to the Bankruptcy Court as to the Residual Superfund ~~and the Custodial Trust Settlement Agreements. The final form of the Environmental Custodial Trust Agreements shall be agreed upon by the Parent and the Environmental Trust Claim holders and shall contain non-substantive modifications to reflect the Parent's Plan Agreement and the Custodial Trust Settlement Agreements; it being understood that any such appeal shall be stayed as soon as possible after the Parent's Plan is Confirmed until the earlier of the Effective Date (upon which the appeal shall be dismissed with prejudice) or the date upon which a plan of reorganization other than the Parent's Plan is Confirmed, and that such stay shall be without prejudice to the rights of any party thereto including the right to assert such appeal is moot.~~ The Administrative Claims of the United States or any individual state under civil Environmental Laws relating to the Designated Properties shall, as contemplated by and to the same extent set forth in the Environmental 9019 Motion, be addressed through the Environmental Custodial Trust Settlement Agreements, the Environmental Custodial Trust Funding, and the Environmental Custodial Trust Administration Funding, which funding shall be paid by the Parent's Plan Administrator to the Environmental Custodial Trusts.

2.2 Priority Tax Claims. Each holder of an Allowed Priority Tax Claim (except any holder that agrees to lesser or otherwise different treatment), at the election of the Parent, shall (1) be Paid in Full, in Cash, in full satisfaction, settlement, release, extinguishment, and discharge of such Claim, on the later of the Effective Date or the date upon which such Priority Tax Claim becomes an Allowed Claim, or (2) receive treatment in any other manner such that its Allowed Priority Tax Claim shall not be impaired pursuant to section 1124 of the Bankruptcy Code, including, but not limited to, payment in accordance with the provisions of section 1129(a)(9)(C) of the Bankruptcy Code.

2.3 Demands. Demands shall be accorded the Section 524(g) Treatment provided to Class 4 Asbestos Personal Injury Claims, and shall be determined, processed, liquidated and paid pursuant to the terms and conditions of the Section 524(g) Trust Distribution Procedures and the Section 524(g) Trust Agreement.

The FCR is entitled to make an election regarding whether to accept or reject the Section 524(g) Treatment, provided, however, that, under the Amended Agreement in Principle, the FCR and the Asbestos Claimants' Committee have agreed to support the Parent's Plan including the Section 524(g) Treatment.

ARTICLE III

CLASSIFICATION OF CLAIMS AND INTERESTS

3.1 Generally. Pursuant to section 1122 of the Bankruptcy Code, Claims and Interests, other than Administrative Claims and Priority Tax Claims, shall be divided into the Classes set forth in Article 3.2 of the Parent's Plan. A Claim or Interest is classified in a particular Class only to the extent that the Claim or Interest falls within the description of that Class and is classified in a different Class to the extent that the Claim or Interest is within the description of that different Class.

3.2 Classes. The following constitute the Classes of Claims and Interests addressed by the Parent's Plan. All Classes of Claims shall be deemed divided into Subclasses (and sub-Subclasses, as applicable) of Claims against each of the Debtors.

(a) Class 1 – Priority Claims. Class 1 consists of all Priority Claims against each of the Debtors.

(b) Class 2 – Secured Claims. Class 2 consists of all Secured Claims against each of the Debtors.

(c) Class 3 – General Unsecured Claims. Class 3 consists of all General Unsecured Claims, including Bondholder Claims and Environmental Unsecured Claims, against each of the Debtors.

(d) Class 4 – Asbestos Personal Injury Claims. Class 4 consists of all Asbestos Personal Injury Claims against each of the Debtors.

(e) Class 5 – Convenience Claims. Class 5 consists of all Convenience Claims against each of the Debtors.

(f) Class 6 – Late-Filed Claims. Class 6 consists of all Late-Filed Claims against each of the Debtors.

(g) Class 7 – Subordinated Claims. Class 7 consists of all Subordinated Claims against each of the Debtors.

(h) Class 8 – Environmental Reinstated Claims. Class 8 consists of all Environmental Reinstated Claims against each of the Debtors.

(i) Class 9 – Interests in ASARCO. Class 9 consists of all Interests in ASARCO.

ARTICLE IV

TREATMENT OF CLAIMS AND INTERESTS

4.1 Unclassified Claims. Each holder of an Allowed Administrative Claim, an Allowed Priority Tax Claim, or a Demand shall receive the treatment set forth respectively for each such category in Article II of the Parent's Plan.

4.2 Classes of Claims and Interests.

(a) *Class 1 – Priority Claims.*

Each holder of an Allowed Priority Claim (except any holder that agrees to lesser or otherwise different treatment), in full satisfaction, settlement, release, extinguishment, and discharge of such Claim, shall receive (i) Cash in an amount equal to the principal amount of such Allowed Priority Claim, ~~and (ii) a Pro Rata share in recoveries realized by the Litigation Trust and the SCC Litigation Trust until the holder of such Allowed Priority Claim has received payment in full of~~ plus Post-Petition Interest on such Claim.

This Class is unimpaired. Class 1, and holders of Priority Claims in Class 1, are conclusively presumed to have accepted the Parent's Plan and, accordingly, are not entitled to vote on the Parent's Plan.

(b) *Class 2 – Secured Claims.*

Each holder of an Allowed Secured Claim, at the election of the Parent, in full satisfaction, settlement, release, extinguishment and discharge of such Claim, shall either (1) receive (i) Cash in an amount equal to the principal amount of such Allowed Secured Claim, and (ii) a Pro Rata share in recoveries realized by the Litigation Trust and the SCC Litigation Trust until the holder of such Allowed Secured Claim has received payment in full of Post-Petition Interest on such Claim; (2) be Reinstated; (3) receive

from Reorganized ASARCO all Collateral securing such Allowed Secured Claim; or (4) receive such other treatment as may be agreed upon between the Parent and the holder of such Allowed Secured Claim.

The Secured Claims of the United States relating to the East Helena, Montana facility and the Globe, Colorado facility, and any Secured Claims relating to the Prepetition ASARCO Environmental Trust shall be satisfied by having the holders of such Claims retain the Liens securing such Claims, unless a holder agrees to different treatment. In addition, upon the Effective Date, the causes of action asserted by the Debtors against the United States of America on behalf of the EPA, the USDA, the Interior, and the International Boundary and Water Commission in Adversary Proceeding No. 07-02076 (and only those causes of action) shall be dismissed without prejudice.

Except as otherwise provided herein, any Asbestos Personal Injury Claimant with a Lien against any property of the Debtors, other than proceeds of an Asbestos Insurance Policy, shall retain the Lien securing such Claim, subject to the Parent's election in this Article 4.2(b). Secured Asbestos Personal Injury Claims which are secured by Liens against proceeds of an Asbestos Insurance Policy shall be included in the treatment accorded Class 4 Asbestos Personal Injury Claims, as set forth in Article 4.2(d) of the Parent's Plan, and shall be determined, processed, liquidated, and paid pursuant to the terms and conditions of the Asbestos TDP and the Asbestos Trust Agreement; provided, however, that the Asbestos Trust may assert any rights (including, but not limited to, avoidance rights and rights of setoff and recoupment), defenses (including, but not limited to, affirmative defenses), and objections that the Debtors have against or with respect to such Claims, which rights, defenses, and objections are transferred to the Asbestos Trust pursuant to the Parent's Plan.

Each Secured Claim shall be deemed to be in a separate sub-Class of Class 2 for all purposes hereunder, and treated as a separate sub-Class for voting and solicitation purposes. **Parent's Plan Exhibit 7** attached hereto lists the Class 2 Secured Claims (as such list may be amended, supplemented, or modified up to and including the Confirmation Date).

The Parent shall make its election prior to the Confirmation Hearing. The Parent shall solicit the votes of each sub-Class of Secured Claims. If the Parent elects to Reinstate a particular Secured Claim, that sub-Class shall be unimpaired, and that sub-Class's vote shall not be counted. If the Parent elects a payment option as to a particular Secured Claim, that sub-Class shall be deemed impaired, and that sub-Class's vote shall be counted.

(c) *Class 3 – General Unsecured Claims.*

Each holder of an Allowed General Unsecured Claim (except any holder that agrees to lesser or otherwise different treatment), in full satisfaction, settlement, release, extinguishment, and discharge of such Claim, on the later of the Effective Date or the date on which such General Unsecured Claim becomes an Allowed Claim, shall receive Treatment A (as set forth below) unless such holder elects Treatment B or

Treatment C (as set forth below). In this sub-article, “Net Distributable Cash” means the Distributable Cash remaining after the Parent’s Plan Administrator has made all distributions required under the Parent’s Plan on account of Administrative Claims, Priority Tax Claims, Class 1 Claims and Class 2 Claims, and fully funded the Section 524(g) Trust, the Environmental Custodial Trust, the SCC Litigation Trust Expense Fund, and the Working Capital Reserve.

Treatment A: Each holder of a Claim in Class 3 that receives Treatment A shall receive (i) Cash in the amount of a Pro Rata share of a pool consisting of the Net Distributable Cash, the Tax Refund and \$1.4625 billion, plus (ii) a Pro Rata share of the Distributed Litigation Trust Interests to which such holder is entitled pursuant to Article 5.6 hereunder; provided, that the Pro Rata share allocable to each Claim shall be determined as if all holders of Claims in Class 3 were receiving Treatment A; and provided further, that in no event shall a holder of a Claim that elects or receives Treatment A receive more than an amount equal to the principal Allowed Amount of such Claim with no Post-Petition Interest (as that term is defined in Article 4.4). Each holder of a Claim in Class 3 that elects or receives Treatment A shall grant the ASARCO Protected Parties a full release with respect to the ~~Released~~ SCC Litigation, as provided by Article XI hereunder, and shall have no claim against the SCC Litigation Trust Proceeds.

Treatment B: Each holder of a Claim in Class 3 that elects Treatment B shall receive (i) Cash in the amount of a Pro Rata share of a pool consisting of the Net Distributable Cash, the Tax Refund and ~~\$1.40115~~ billion from the Parent Contribution; (ii) a Pro Rata share of the Parent’s Copper Note; ~~(iii) and (iii) to the extent that consideration under clauses (i) and (ii) is insufficient to provide for Payment in Full of such Claim,~~ a Pro Rata share of the Distributed Litigation Trust Interests to which such holder is entitled pursuant to Article 5.6 hereunder; ~~and (iv) to the extent that consideration under clauses (i), (ii) and (iii) is insufficient to provide for Payment in Full of such Claim, a Pro Rata share of~~ and the SCC Litigation Trust Interests; provided, that the Pro Rata share allocable to each Claim shall be determined as if all holders of Claims in Class 3 were receiving Treatment B; and provided further, that in no event shall a holder of a Claim that elects Treatment B receive more than an amount equal to the principal Allowed Amount of such Claim plus Post-Petition Interest determined as set forth in Article 4.4. For purposes hereunder, the present value of the Parent’s Copper Note as of the Effective Date shall be deemed to be \$308.7 million.

Treatment C: Each holder of a Claim in Class 3 that elects Treatment C shall receive (i) Cash in the amount of a Pro Rata share of a pool consisting of the Net Distributable Cash, the Tax Refund and ~~\$1.407814587~~ billion from the Parent Contribution; ~~(ii) and (ii) to the extent that consideration under clause (i) is insufficient to provide for Payment in Full of such Claim,~~ a Pro Rata share of the Distributed Litigation Trust Interests to which such holder is entitled pursuant to Article 5.6 hereunder; ~~and (iii) to the extent that consideration under clauses (i) and (ii) is insufficient to provide for Payment in Full of such Claim, a Pro Rata share of~~ and the SCC Litigation Trust Interests, to which such holder is entitled pursuant to Article 5.6 hereunder; provided, that the Pro Rata share allocable to each Claim shall be determined as if all holders of Claims in the

Class 3 were receiving Treatment C; and provided further, that in no event shall a holder of a Claim that elects Treatment C receive more than an amount equal to the principal Allowed Amount of such Claim plus Post-Petition Interest determined as set forth in Article 4.4.

Any objection by the Parent to the ability of a holder of an Environmental Unsecured Claim to receive Post-Petition Interest or to share in the SCC Litigation Trust Proceeds is waived.

This Class is impaired. Holders of Allowed General Unsecured Claims in Class 3 are entitled to vote to accept or reject the Parent's Plan and are entitled to elect to receive Treatment A, B or C.

Holders of Claims in Class 3 that fail to make an election among Treatment A, B or C shall receive Treatment A. Any holder of a Claim in Class 3 that elects two or more Treatments shall receive the alphabetically first Treatment elected by such holder.

(d) *Class 4 – Asbestos Personal Injury Claims.*

Asbestos Personal Injury Claims and Demands against any of the Debtors shall together be allowed in the aggregate amount of one billion dollars (\$1.0 billion). On the Effective Date, the Section 524(g) Trust shall be established and funded with the Section 524(g) Trust Assets, and liability of the Debtors for all Asbestos Personal Injury Claims and Demands shall be assumed by, and channeled to, the Section 524(g) Trust without further act or deed, and satisfied as set forth herein. The Section 524(g) Trust is described in Article VI below. All Asbestos Personal Injury Claims and Demands shall be processed, liquidated and paid pursuant to the terms and provisions of the Section 524(g) Trust Distribution Procedures and the Section 524(g) Trust Agreement. The sole recourse of the holder of an Asbestos Personal Injury Claim or Demand shall be to the Section 524(g) Trust and the Section 524(g) Trust Distribution Procedures, and such holder shall have no rights whatsoever at any time to assert such holder's Claim or Demand against any Debtor, Reorganized ASARCO, or any ASARCO Protected Party. Without limiting the foregoing, on the Effective Date, all Persons shall be permanently and forever stayed, restrained and enjoined from taking any enjoined actions against any ASARCO Protected Party (or against the property or interest in property of the Debtors and their Estates or of any ASARCO Protected Party, or against any Designated Property) for the purpose of, directly or indirectly, collecting, recovering, or receiving payment of, on or with respect to any Asbestos Personal Injury Claim or Demand.

This Class is impaired. Holders of Allowed Asbestos Personal Injury Claims in Class 4 are entitled to vote to accept or reject the Parent's Plan.

(e) *Class 5 – Convenience Claims.*

On the Effective Date, each holder of a Convenience Claim shall receive the Allowed Amount of such holder's Claim, in Cash, in full satisfaction, settlement,

release, extinguishment, and discharge of such Claim. Election by the holder of an Allowed General Unsecured Claim otherwise treated under Class 3 of this Plan to reduce the Claim of such holder to \$1,000 and to receive distribution as a Class 5 Convenience Claim shall constitute acceptance of the Parent's Plan and a waiver of the right to recover any amount in excess of \$1,000 from any of the Debtors.

This Class is ~~impaired~~unimpaired. Class 5, and holders of Convenience Claims in Class 5, are conclusively presumed to have accepted the Parent's Plan and, accordingly, are not entitled to vote on the Parent's Plan.

(f) *Class 6 – Late-Filed Claims.*

Each holder of a Late-Filed Claim shall not receive or retain any property under the Parent's Plan on account of such Claim, except to the extent that Distributed Litigation Trust Interests are distributed to such holder pursuant to Article 5.6(a) hereunder, SCC Litigation Trust Proceeds are distributed to such holder pursuant to Article 5.19 hereunder, and/or funds from the Disputed Claims Reserve are distributed to such holders pursuant to Article 13.8(f) hereunder; provided, however, that in no event shall any holder of a Class 6 Claim receive distributions in excess of the principal Allowed Amount of such Late-Filed Claim plus Post-Petition Interest on such Claim.

This Class is impaired. Class 6 is deemed to have rejected the Parent's Plan and, accordingly, holders of Claims in Class 6 are not entitled to vote on the Parent's Plan.

(g) *Class 7 – Subordinated Claims.*

Each holder of a Subordinated Claim shall not receive or retain any property under the Parent's Plan on account of such Claim, except to the extent that Distributed Litigation Trust Interests are distributed to such holder pursuant to Article 5.6(a) hereunder, SCC Litigation Trust Proceeds are distributed to such holder pursuant to Article 5.19 hereunder, and/or funds from the Disputed Claims Reserve are distributed to such holders pursuant to Article 13.8(f) hereunder; provided, however, that in no event shall any holder of a Class 7 Claim receive distributions in excess of the principal Allowed Amount of such Subordinated Claim plus Post-Petition Interest on such Claim.

This Class is impaired. Class 7 is deemed to have rejected the Parent's Plan and, accordingly, holders of Claims in Class 7 are not entitled to vote on the Parent's Plan.

(h) *Class 8 – Environmental Reinstated Claims.*

On the Effective Date, Environmental Reinstated Claims shall be Reinstated and, from and after the Effective Date, Reorganized ASARCO shall assume, pay, perform and discharge when due all of its Assumed Environmental Liabilities. For the avoidance of doubt, any claims of Montana Resources, Inc. arising as a result of

adversary proceeding no. 07-02024 shall be classified as Environmental Reinstated Claims and receive the treatment hereunder.

This Class is unimpaired. Class 8, and holders of Environmental Reinstated Claims in Class 8, are conclusively presumed to have accepted the Parent's Plan and, accordingly, are not entitled to vote on the Parent's Plan.

(i) *Class 9 – Interests in ASARCO.*

The Interests in ASARCO shall be deemed cancelled, and the holder of such Interests shall not receive or retain any property under the Parent's Plan on account of such Interests.

In exchange for the Parent Contribution, ASARCO USA Incorporated or its designee shall receive the New Equity Interests on the Effective Date.

This Class is impaired. Class 9 is deemed to have rejected the Parent's Plan and, accordingly, is not entitled to vote on the Parent's Plan.

4.3 Cramdown. If all applicable requirements for Confirmation of the Parent's Plan are met as set forth in section 1129(a)(1) through (13) of the Bankruptcy Code except subsection (8) thereof, the Parent's Plan shall be treated as a request by the Parent for Confirmation of the Parent's Plan in accordance with the "cramdown" provisions of section 1129(b) of the Bankruptcy Code, notwithstanding the failure to satisfy the requirements of section 1129(a)(8), on the basis that the Parent's Plan is fair and equitable and does not discriminate unfairly with respect to each Class of Claims and Interests that is impaired under, and has not accepted, the Parent's Plan. In addition, in the event Class 3 votes to reject the Parent's Plan, the Parent reserves the right to modify the Parent's Plan to the extent necessary to render the Parent's Plan confirmable.

4.4 Post-Petition Interest and Payment in Full Plus Interest.

Under the Parent's Plan, "Post-Petition Interest" shall mean interest on the Allowed Amount of a Claim from August 10, 2005 to and including five business days immediately prior to the date a distribution is made on account of such Claim, and after the Effective Date, interest on any unpaid portion of such Allowed Amount and any unpaid post-petition interest ("Post-Petition Interest"). Post-Petition Interest on Claims other than Class 2 Secured Claims shall be calculated at the federal judgment rate in accordance with section 1961 of title 28 of the United States Code (the "Plan Rate") and on Claims in Class 2 at the rate provided by section 506(b) of the Bankruptcy Code.

Any Claimant seeking (a) payment of Post-Petition Interest on such holder's Claim at a rate other than the Plan Rate or (b) reimbursement of attorneys' fees and other costs and expenses associated with such holder's Claim (or both) shall file a motion seeking such relief within 30 days after the Effective Date. Any such motion must include all of the documentation upon which the Claimant relies to establish the Claimant's entitlement to (a) Post-Petition Interest at a rate other than the Plan Rate and (b) attorneys' fees and other costs and expenses. **THE INCLUSION OF THE ENTITLEMENT TO THESE TYPES OF CLAIMS IN**

PROOFS OF CLAIM SHALL NOT BE SUFFICIENT TO ESTABLISH SUCH CLAIMS WITHOUT A SUPPLEMENTAL FILING BY A CLAIMANT WITHIN THE SPECIFIED TIME PERIOD. The Parent's Plan Administrator shall have 60 days after the Effective Date to resolve any such objection without need of Bankruptcy Court approval in which case the Parent's Plan Administrator shall file with the Bankruptcy Court a notice that the matter has been resolved; *provided, however*, that the Bankruptcy Court retains jurisdiction to resolve such matters in the event the Parent's Plan Administrator and the Claimant cannot reach an agreement.

ARTICLE V

LITIGATION TRUST AND SCC LITIGATION TRUST

A. The Litigation Trust.

5.1 Creation of the Litigation Trust. On the Effective Date, the Litigation Trust shall be created as provided in the Litigation Trust Agreement. Prior to the Effective Date, the Litigation Trust Agreement may be amended to include new or different terms in order to comply with the requirements of the Bankruptcy Code, including, without limitation, section 1129(a) and (b) thereof.

5.2 Appointment of Litigation Trustee and the Litigation Trust Board.

(a) The Litigation Trustee shall be selected by the Parent. Upon approval by the Bankruptcy Court in the Confirmation Order, the Litigation Trustee shall be appointed.

(b) The Parent (if prior to the Effective Date) or Reorganized ASARCO (if after the Effective Date) shall designate the Person who shall initially serve as Delaware Trustee of the Litigation Trust.

(c) The Litigation Trustee shall report to and consult with the Litigation Trust Board, which shall consist of three members selected by the Parent. Successors to the members of the Litigation Trust Board shall be selected by Reorganized ASARCO.

(d) The Litigation Trustee and the Delaware Trustee shall each have and perform all of the rights, powers, and duties set forth in the Litigation Trust Agreement.

5.3 Purpose of the Litigation Trust. The Litigation Trust shall be established as a statutory trust for the purpose of pursuing the Litigation Trust Claims, liquidating all assets of the Litigation Trust for the benefit of the Litigation Trust Beneficiaries, receiving all Litigation Trust Claim recoveries, and distributing the resulting proceeds and other Cash of the Litigation Trust to the Litigation Trust Beneficiaries after payment of all expenses of the Litigation Trust. The primary purpose of the Litigation Trust is to liquidate its assets, and the Litigation Trust shall have no objective or authority to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Litigation Trust. Accordingly, the Litigation Trustee shall, in an expeditious but orderly manner, prosecute, settle, or otherwise dispose of Litigation Trust

Claims, make timely distributions in accordance with the terms of the Litigation Trust Agreement, and not unduly prolong the Litigation Trust's duration.

5.4 Transfer of Litigation Trust Claims to the Litigation Trust. On the Effective Date, Reorganized ASARCO shall transfer to the Litigation Trust, for the benefit of the Litigation Trust Beneficiaries, (a) all of the Debtors' and Reorganized ASARCO's respective rights, title, and interests in the Litigation Trust Claims free and clear of any and all Liens, Claims, encumbrances, or interests of any kind in such property of any other Person or Entity, other than Liens or encumbrances arising under the Bankruptcy Code or other applicable law; and (b) all of the Debtors' and Reorganized ASARCO's respective Privileges associated with the Litigation Trust Claims. The Litigation Trust Claims are listed on **Parent's Plan Exhibit 9**; the Parent expressly reserves the right to amend such list from time to time up until the Effective Date of the Parent's Plan. As soon as practicable after the Effective Date, Reorganized ASARCO shall transfer or make available to the Litigation Trustee, for the benefit of the Litigation Trust Beneficiaries, all documents in Reorganized ASARCO's possession, custody, or control in connection with the Litigation Trust Claims. For the avoidance of doubt, all of the causes of action arising under chapter 5 of the Bankruptcy Code are included as Litigation Trust Claims, with the exception of those avoidance actions against the Parent and its Affiliates that are specifically identified on **Parent's Plan Exhibit 2**, which are released by Article 10.5 of the Parent's Plan. Such avoidance causes of action shall continue to be pursued by the Litigation Trust unless the Litigation Trustee determines that the costs of pursuing a particular avoidance action are not warranted.

5.5 The Litigation Trust.

(a) The Litigation Trust Agreement, substantially in the form of **Parent's Plan Exhibit 16**, contains provisions customary to trust agreements utilized in comparable circumstances, including, without limitation, provisions to ensure the continued existence of the Litigation Trust as a grantor trust and the Litigation Trust Beneficiaries as grantors and owners thereof for federal income tax purposes. Reorganized ASARCO, the Litigation Trustee, the Litigation Trust Beneficiaries, and the Delaware Trustee shall execute any document or other instrument as necessary to cause all of Reorganized ASARCO's respective rights, title, and interests in and to the Litigation Trust Claims to be transferred to the Litigation Trust.

(b) The Litigation Trustee shall have full authority to take any steps necessary to administer the Litigation Trust Claims, including, without limitation, the duty and obligation to liquidate the Litigation Trust Claims. Without limitation, the Litigation Trustee may object pursuant to section 502(d) of the Bankruptcy Code to any Proof of Claim filed by a defendant in any of the Litigation Trust Claims. Both Reorganized ASARCO and the Litigation Trustee have the right to prosecute objections to any Proof of Claim filed by a defendant in any of the Litigation Trust Claims.

(c) All costs and expenses associated with the administration of the Litigation Trust shall be advanced by Reorganized ASARCO in the ordinary course, provided, however, that Reorganized ASARCO shall be reimbursed for such funds from the proceeds of the Litigation Trust, if any. Reorganized ASARCO, the Parent's Plan Administrator, and the Parent shall cooperate with the Litigation Trustee in pursuing the Litigation Trust Claims and shall

provide reasonable access to personnel and books and records of Reorganized ASARCO, the Parent's Plan Administrator, and the Parent relating to the Litigation Trust Claims to representatives of the Litigation Trust to enable the Litigation Trustee to perform the Litigation Trustee's tasks under the Litigation Trust Agreement and the Parent's Plan; provided, however, that any requests to obtain access to the Parent's personnel or books and records shall be made through Reorganized ASARCO or its representatives.

(d) The Litigation Trustee may retain such law firms, accounting firms, experts, advisors, consultants, investigators, appraisers, agents, employees, or other professionals and third parties as he may deem necessary or appropriate, with the prior approval of Reorganized ASARCO, to aid in the performance of the Litigation Trustee's responsibilities pursuant to the terms of the Parent's Plan, including, without limitation, the liquidation and distribution of Litigation Trust Claims.

(e) Solely for tax purposes, it is intended that the Litigation Trust be classified as a liquidating trust under section 301.7701-4(d) of the Treasury Regulations, and the Litigation Trust Beneficiaries will be treated as the owners of their proportionate share of the assets of the Litigation Trust. Accordingly, for federal income tax purposes, the Parent intends that all parties (including, without limitation, the Litigation Trustee, the Litigation Trust Beneficiaries, and the transferors, for tax purposes, of any assets transferred to the Litigation Trust) will take the position, subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary, that the transfer of assets to the Litigation Trust is a deemed transfer to the Litigation Trustee for the benefit of the Litigation Trust Beneficiaries (as of the Initial Distribution Date), and all income and gain of the Litigation Trust which is earned after such deemed transfer will be taxed to the Litigation Trust Beneficiaries on a current basis. In addition, the investment powers of the Litigation Trustee will be limited to those powers that are consistent with the treatment of the Litigation Trust as a liquidating trust.

(f) The fair market value of the portion of the Litigation Trust assets that is treated for federal income tax purposes as having been transferred for the benefit of each Litigation Trust Beneficiary as described in the preceding paragraph, and the fair market value of the portion of the Litigation Trust assets that is treated for federal income tax purposes as having been transferred to the Litigation Trustee for the benefit of any Litigation Trust Beneficiary as a result of a distribution of Litigation Trust Interests from the Disputed Claims Reserve, will be determined by the Litigation Trustee, and all parties (including, without limitation, the Litigation Trustee, the Litigation Trust Beneficiaries, and the transferors, for tax purposes, of any assets transferred to the Litigation Trust) will utilize such fair market value determined by the Litigation Trustee for all federal income tax purposes.

(g) The Litigation Trustee will be responsible for filing all federal, state, and local tax returns for the Litigation Trust and paying any taxes imposed on the Litigation Trust. The Litigation Trustee will comply with all withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority, and all distributions made by the Litigation Trustee will be subject to any such withholding and reporting requirements. Any amount so withheld from a distribution to a Claimant or other distributee of the Litigation Trust will be

treated as having been paid to, and received by, such distributee for purposes of the Parent's Plan and the Parent's Plan Documents.

(h) Any items of income, deduction, credit, or loss of the Litigation Trust will be allocated by the Litigation Trustee for federal income tax purposes among current or former Litigation Trust Beneficiaries, such allocation will be binding on all parties for all federal, state, local, and foreign income tax purposes, and such current or former Litigation Trust Beneficiaries will be responsible for the payment of any federal, state, local, and foreign income tax due on the income and gain so allocated to them.

(i) In the event that one or more of the Debtors obtains approval, pursuant to Bankruptcy Rule 9019, of a settlement prior to the Effective Date of a cause of action that would have been transferred to the Litigation Trust on the Effective Date, the proceeds of the settlement shall be distributed to the Litigation Trust Beneficiaries in the same manner as the Litigation Trust Interests. In the event of such a settlement, the Debtors that are parties to the settlement shall hold the proceeds in escrow for distribution on the Effective Date. If the First L/C is collected, the proceeds of that First L/C will be contributed to the Litigation Trust and available for distribution pursuant to Article 5.7.

(j) The Litigation Trust shall be deemed a "successor to the debtor" for purposes of section 1145 of the Bankruptcy Code and not necessarily for any other purpose.

5.6 Litigation Trust Interests.

(a) *Distributions of Litigation Trust Interests.*

On the Effective Date, the Litigation Trustee shall distribute 100% of the Litigation Trust Interests (the "Distributed Litigation Trust Interests"), Pro Rata, to holders of Claims in Classes ~~1, 2~~ and 3.

Upon Payment in Full of all Allowed Claims in Classes ~~1, 2~~ and 3, whether from the Litigation Trust or otherwise (and the resolution of all Disputed Claims in such Classes), the Litigation Trustee shall remove such Class ~~1, 2~~ and 3 Claimants from the Trust Register and shall redistribute the Distributed Litigation Trust Interests, Pro Rata, to the holders of Allowed Class 6 Claims (and, pending resolution of Disputed Claims in Class 6, the Disputed Claims Reserve). Upon Payment in Full of all Allowed Claims in Class 6, the Litigation Trustee shall remove Class 6 Claimants from the Trust Register and redistribute the Distributed Litigation Trust Interests, Pro Rata, to the holders of Allowed Class 7 Claims (and, pending resolution of Disputed Claims in Class 7, the Disputed Claims Reserve). Upon Payment in Full of all Allowed Claims in Class 7, the Litigation Trustee shall remove Class 7 Claimants from the Trust Register and redistribute the Distributed Litigation Trust Interests to Reorganized ASARCO.

(b) *Interests Beneficial Only.*

The ownership of a Litigation Trust Interest shall not entitle any Litigation Trust Beneficiary to (1) any title in or to the assets of the Litigation Trust as such (which title shall be vested in the Litigation Trustee) or to any right to call for a partition or division of the assets of the Litigation Trust or to require an accounting; or (2) any voting rights with respect to the

administration of the Litigation Trust and the actions of the Litigation Trustee in connection therewith.

(c) *Maintenance of Register.*

The Litigation Trustee shall at all times maintain a Trust Register of the names, addresses, and number of Litigation Trust Interests of the Litigation Trust Beneficiaries.

(d) *Evidence of Litigation Trust Interests.*

The Litigation Trustee shall have full power, authority, and discretion to determine whether ownership of any Litigation Trust Interest shall be represented by physical certificates, by book entries in lieu of physical certificates, or in any other form or manner. Regardless of such determination, the record holders of the Litigation Trust Interests shall be recorded and set forth in the Trust Register.

(e) *Inapplicability of the Securities Exchange Act and the Trust Indenture Act.*

Beneficial interests in the Litigation Trust either (1) are not “securities” within the meaning of the federal and state securities laws or (2) may be issued without securities registration or licensing in reliance upon the exemption afforded by section 1145(a)(1) of the Bankruptcy Code. Without limitation to the foregoing, beneficial interests in any such Litigation Trust do not constitute “a class of equity securities” within the meaning of the Securities Exchange Act of 1934, as amended, and such Litigation Trust Interests shall not be subject to registration under such act. Without limitation to the foregoing, beneficial interests in the Litigation Trust are not “evidences of indebtedness” within the meaning of the Trust Indenture Act of 1939, as amended, and may be issued without qualification of an indenture under such act.

5.7 Distributions of Litigation Proceeds and Other Property. The Litigation Trustee shall apply all proceeds of the litigations transferred to the Litigation Trust, and any other Cash of the Litigation Trust in the following order: first, to pay all costs and expenses of the Litigation Trust, including, without limitation, compensation payable to the Litigation Trustee; second, to reimburse Reorganized ASARCO for any funds provided to the Litigation Trust or paid on its behalf by Reorganized ASARCO; third, to the Litigation Trust Beneficiaries. In no event shall any holder of an Allowed Claim in Class ~~1~~, 2, 3, 6, or 7 receive distributions from the Litigation Trust which, when combined with Available Parent’s Plan Funds or other forms of consideration provided to such holder with respect such Claim, exceed the Allowed amount of such Claim together with Post-Petition Interest. Upon Payment in Full of all Allowed Claims in Classes ~~1~~, 2, 3, 6, and 7, all remaining proceeds or other Cash of the Litigation Trust, if any, shall be distributed to Reorganized ASARCO.

5.8 Termination of the Litigation Trust.

(a) The Litigation Trust shall terminate on the earlier of: (1) 30 days after the distribution of all of the assets of the Litigation Trust in accordance with the terms of the Litigation Trust Agreement and the Parent’s Plan; or (2) the fifth anniversary of the Effective Date; provided, however, that, on or prior to a date less than six months (but not less than three

months) prior to such termination, the Bankruptcy Court, upon motion by a party in interest, may extend the term of the Litigation Trust for a finite period if, based on the facts and circumstances, the Bankruptcy Court finds that such extension is necessary to the liquidating purpose of the Litigation Trust. The Bankruptcy Court may approve multiple extensions of the term of the Litigation Trust, provided that (i) any such extension is so approved on or prior to a date less than six months (but not less than three months) prior to termination of the immediately preceding extended term, and (ii) the Litigation Trustee receives an opinion of counsel or a favorable ruling from the IRS that any further extension would not adversely affect the status of the Litigation Trust as a grantor trust for federal income tax purposes.

(b) The Litigation Trustee shall not unduly prolong the duration of the Litigation Trust and shall at all times endeavor to resolve, settle, or otherwise dispose of all of the Litigation Trust Claims and to effect the distribution of the assets of the Litigation Trust to the holders of the Litigation Trust Interests in accordance with the terms hereof and terminate the Litigation Trust as soon as practicable.

5.9 Termination of the Litigation Trustee and the Delaware Trustee. The duties, responsibilities, rights, and obligations of the Litigation Trustee and the Delaware Trustee for the Litigation Trust shall terminate in accordance with the terms of the Litigation Trust Agreement.

5.10 Claims Against Montana Resources Reserved for Reorganized ASARCO. The Debtors' claims against Montana Resources, Inc., including those asserted in Adv. No. 07-02024, pending in the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division, are not Litigation Trust Claims under the Parent's Plan, and shall not be transferred to the Litigation Trust. Rather, the Debtors' claims against Montana Resources, Inc., are expressly reserved for Reorganized ASARCO to pursue in the ordinary course.

B. The SCC Litigation Trust.

5.11 Creation of the SCC Litigation Trust. In accordance with the SCC Litigation Trust Agreement (the form of which is attached hereto as **Parent's Plan Exhibit 24**, the "SCC Litigation Trust Agreement"), the SCC Litigation Trust shall be established on the Effective Date. Prior to the Effective Date, the SCC Litigation Trust Agreement may be amended to include new or different terms in order to comply with the requirements of the Bankruptcy Code, including, without limitation, section 1129(a) and (b) of the Bankruptcy Code. In the event of any discrepancies between Articles 5.11 through 5.20 of the Parent's Plan and the SCC Litigation Trust Agreement, the SCC Litigation Trust Agreement shall govern.

5.12 Appointment of Trustees. The SCC Litigation Trustee shall be selected by the SCC Litigation Trust Board and appointed upon approval by the Bankruptcy Court in the Confirmation Order, in accordance with the SCC Litigation Trust Agreement.

The duties, responsibilities, rights, and obligations of the SCC Litigation Trustee are set forth in the SCC Litigation Trust Agreement and shall terminate in accordance with the terms of the SCC Litigation Trust Agreement. The SCC Litigation Trustee shall report to the SCC Litigation Trust Board. For the avoidance of doubt, the SCC Litigation Trustee shall not report

to the Parent or Reorganized ASARCO and shall have no fiduciary duties to the Parent or Reorganized ASARCO.

5.13 SCC Litigation Trust Board. The SCC Litigation Trust Board shall consist of three members initially selected as follows: (1) ~~two members~~one member selected by the ASARCO Committee; ~~and~~(2) one member selected by the DOJ (in consultation with the states that have Allowed Unsecured Environmental Claims); ~~and (3) one member jointly selected by the other two members.~~

The duties, responsibilities, rights, and obligations of the SCC Litigation Trust Board are set forth in the SCC Litigation Trust Agreement and shall terminate in accordance with the terms of the SCC Litigation Trust Agreement. For the avoidance of doubt, the SCC Litigation Trust Board shall not report to the Parent or Reorganized ASARCO and shall have no fiduciary duties to the Parent or Reorganized ASARCO.

Successors to the members of the SCC Litigation Trust Board shall be selected as follows: (1) in the case of ~~a member originally selected by the ASARCO Committee or successor to such member, by the then current holders of a majority of the SCC Litigation Trust Interests;~~ (2) ~~in the case of~~ the member originally selected by the DOJ, by the DOJ (in consultation with the states that have Allowed Unsecured Environmental Claims).~~Notwithstanding this section (c), the Parent may, prior to the Effective Date, amend the SCC Litigation Trust Agreement, in consultation with the ASARCO Committee and the DOJ, to do any of the following: increase or decrease the number of members of the SCC Litigation Trust Board, change the method by which such members are designated, or change the number of such members whose approval should be required for actions or omissions to be taken by the SCC Litigation Trustee.; and (2) in the case of either of the other two members, by the remaining members.~~

5.14 Purpose of the SCC Litigation Trust. The SCC Litigation Trust shall be established as a statutory trust for the purpose of pursuing the SCC Litigation Trust Claims, liquidating all assets of the SCC Litigation Trust for the benefit of the SCC Litigation Trust Beneficiaries, receiving all SCC Litigation Trust Claims recoveries not in excess of the Maximum Recovery (defined below), and distributing the resulting SCC Litigation Trust Proceeds and other Cash of the SCC Litigation Trust to the SCC Litigation Trust Beneficiaries after payment of all expenses of the SCC Litigation Trust. The primary purpose of the SCC Litigation Trust is to liquidate its assets, and the SCC Litigation Trust shall have no objective or authority to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the SCC Litigation Trust.

5.15 Transfer of SCC Litigation Trust Claims to the SCC Litigation Trustee. On the Effective Date, the Reorganized Debtors shall transfer, assign, and deliver to the SCC Litigation Trustee for the benefit of the SCC Litigation Trust Beneficiaries (1) all of the Debtors' respective rights, title, and interests in the SCC Litigation Trust Claims, subject to the Maximum Recovery, free and clear of any and all Liens, Claims, encumbrances, or interests of any kind in such property of any Person or Entity, other than Liens or encumbrances arising under the Bankruptcy Code or other applicable law; (2) all of the Debtors' respective rights, title, and interest in the Debtors' Privileges associated with the SCC Litigation Trust Claims; and (3) the

\$20 million SCC Litigation Trust Expense Fund. The SCC Litigation Trust shall not be entitled to recover from the defendants named in the SCC Litigation Trust Claims or any ASARCO Protected Party any amount in connection with the SCC Litigation Trust Claims in excess of the amount necessary to provide, as of any date of determination, Payment in Full to all holders of Allowed Claims in Classes 1, 2, 6, and 7, and holders of Allowed Claims in Class 3 that elected Treatment B or Treatment C as set forth in Article 4.2(c) plus the SCC Litigation Trust's aggregate administrative expenses minus the SCC Litigation Trust Expense Fund (the "Maximum Recovery"). If the SCC Litigation Trust sells, transfers or otherwise disposes of its interests in the SCC Litigation Trust Claims, any purchaser, transferee and/or successor-in-interest shall not be entitled to recover from the defendants named in the SCC Litigation Trust Claims or any ASARCO Protected Party in connection with the SCC Litigation Trust Claims any amount in excess of the Maximum Recovery. For the avoidance of doubt, no purchaser, transferee, or successor-in-interest of the SCC Litigation Trust's interests in the SCC Litigation Trust Claims shall be entitled to recover from the defendants named in the SCC Litigation Trust Claims or any ASARCO Protected Party any fees, costs or expenses including, without limitation, attorney's fees or litigation costs and expenses.

The Parent's Plan Administrator shall calculate the Maximum Recovery, initially no later than thirty days after the Effective Date, and thereafter quarterly, and shall provide such calculation to the ~~ASARCO Committee~~SCC Litigation Trust Board and the DOJ, and shall make a good faith effort to consensually resolve any disagreements with the ~~ASARCO Committee~~SCC Litigation Trust Board or the DOJ regarding the amount of the Maximum Recovery. Any disputes regarding the Maximum Recovery shall be presented to the Bankruptcy Court for resolution.

The SCC Litigation Trustee shall be granted the rights and powers of a debtor in possession under section 1107 of the Bankruptcy Code, including, without limitation, the duty to prosecute the SCC Litigation Trust Claims and distribute the proceeds of such claims, and such other rights and powers as set forth in the SCC Litigation Trust Agreement; subject to the Maximum Recovery.

5.16 The SCC Litigation Trust Agreement. The SCC Litigation Trust Agreement shall contain provisions customary to trust agreements utilized in comparable circumstances. The Reorganized Debtors, the SCC Litigation Trustee, the SCC Litigation Trust Beneficiaries, and the Delaware Trustee shall execute any document or other instrument as necessary to cause all of the Debtors' respective rights, title, and interests in pursuing the SCC Litigation Trust Claims to be transferred to the SCC Litigation Trust, subject to the Maximum Recovery.

The SCC Litigation Trustee shall have full authority (subject, in certain instances, to approval by the SCC Litigation Trust Board) to take any steps necessary to administer the SCC Litigation Trust Claims, subject to the Maximum Recovery, including, without limitation, the duty and obligation to liquidate the SCC Litigation Trust Claims.

All costs and expenses associated with the administration of the SCC Litigation Trust shall be the responsibility of and paid by the SCC Litigation Trust. Notwithstanding the foregoing, each of Reorganized ASARCO and the Parent's Plan Administrator shall cooperate

with the SCC Litigation Trustee in pursuing the SCC Litigation Trust Claims and shall provide reasonable access to their respective personnel and books and records relating to the SCC Litigation Trust Claims to representatives of the SCC Litigation Trust for the purpose of enabling the SCC Litigation Trustee to perform the SCC Litigation Trustee's tasks under the SCC Litigation Trust Agreement and this Plan.

The SCC Litigation Trustee may retain such law firms, accounting firms, experts, advisors, consultants, investigators, appraisers, agents, employees, or other professionals and third parties as the SCC Litigation Trustee and the SCC Litigation Trust Board may deem necessary or appropriate, and at the sole expense of the SCC Litigation Trust, to aid in the performance of the SCC Litigation Trustee's responsibilities pursuant to the terms of this Plan, including, without limitation, the liquidation and distribution of SCC Litigation Trust Claims.

Except as otherwise provided herein, the SCC Litigation Trust shall be deemed a "successor to the debtor" for purposes of sections 1123(b)(3) and 1145 of the Bankruptcy Code and not necessarily for any other purpose.

The SCC Litigation Trustee and the SCC Litigation Trust Beneficiaries shall agree that the escrow agreement between the Debtors and Parent with respect to the SCC Stock subject of the SCC Final Judgment (the "SCC Litigation Escrow Agreement"), save and except the requirements of ¶ 3(c) in the SCC Litigation Escrow Agreement, is and shall be adequate security to stay execution of the SCC Final Judgment for so long as the SCC Litigation Trust shall remain unliquidated, it being expressly agreed and understood that the Parent may seek, from a court having jurisdiction with respect to the SCC Final Judgment, relief from the obligations in ¶ 3(c) of the Escrow Agreement including, without limitation, the posting of a supersedeas bond, and the SCC Litigation Trust Beneficiaries shall be deemed to have consented to such relief.

5.17 Tax Matters. Solely for tax purposes, it is intended that the SCC Litigation Trust be classified as a liquidating trust under section 301.7701-4(d) of the Treasury Regulations, and the SCC Litigation Trust Beneficiaries will be treated as the owners of their proportionate share of the assets of the SCC Litigation Trust. Accordingly, for federal income tax purposes, the Reorganized Debtors intend that all parties (including, without limitation, the SCC Litigation Trustee, the SCC Litigation Trust Beneficiaries, and the transferors, for tax purposes, of any assets transferred to the SCC Litigation Trust) shall take the position, subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary, that the transfer of assets to the SCC Litigation Trust is a deemed transfer to the SCC Litigation Trust Beneficiaries (as of the Initial Distribution Date), followed by a deemed transfer by such SCC Litigation Trust Beneficiaries to the SCC Litigation Trust, and all income and gain of the SCC Litigation Trust which is earned after such deemed transfer shall be taxed to the SCC Litigation Trust Beneficiaries on a current basis. In addition, the investment powers of the SCC Litigation Trustee shall be limited to those powers that are consistent with the treatment of the SCC Litigation Trust as a liquidating trust.

The fair market value of the portion of the SCC Litigation Trust assets that is treated for federal income tax purposes as having been transferred to each SCC Litigation Trust Beneficiary as described in the preceding paragraph, and the fair market value of the portion of the SCC

Litigation Trust assets that is treated for federal income tax purposes as having been transferred to the SCC Litigation Trustee for the benefit of any SCC Litigation Trust Beneficiary as a result of a distribution of SCC Litigation Trust Interests from the Disputed Claims Reserve, shall be determined by the SCC Litigation Trustee, and all parties (including, without limitation, the SCC Litigation Trustee, the SCC Litigation Trust Beneficiaries, and the transferors, for tax purposes, of any assets transferred to the SCC Litigation Trust) shall utilize such fair market value determined by the SCC Litigation Trustee for all federal income tax purposes.

The SCC Litigation Trustee shall be responsible for filing all federal, state, and local tax returns for the SCC Litigation Trust and paying any taxes imposed on the SCC Litigation Trust. The SCC Litigation Trustee shall comply with all withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority, and all distributions made by the SCC Litigation Trustee shall be subject to any such withholding and reporting requirements. Any amount so withheld from a distribution to an SCC Litigation Trust Beneficiary (or its designee) shall be treated as having been paid to, and received by, such SCC Litigation Trust Beneficiary for purposes of the Parent's Plan and the Parent's Plan Documents.

Any items of income, deduction, credit, or loss of the SCC Litigation Trust shall be allocated by the SCC Litigation Trustee for federal income tax purposes among current or former SCC Litigation Trust Beneficiaries, such allocation shall be binding on all parties for all federal, state, local, and foreign income tax purposes, and such current or former SCC Litigation Trust Beneficiaries shall be responsible for the payment of any federal, state, local, and foreign income tax due on the income and gain so allocated to them.

5.18 SCC Litigation Trust Interests.

(1) *Issuance of SCC Litigation Trust Interests.*

On the Effective Date, the SCC Litigation Trustee shall distribute 100% of the SCC Litigation Trust Interests, Pro Rata, to holders of Claims in ~~Classes 1 and~~Class 2 and to holders of Claims in Class 3 that elected Treatment B or Treatment C (as set forth in Article 4.2(c)) (the "SCC Litigation Trust Initial Beneficiaries").

Upon Payment in Full of all Allowed Claims of the SCC Litigation Trust Initial Beneficiaries, whether from the SCC Litigation Trust or otherwise (and the resolution of all Disputed Claims held by SCC Litigation Trust Initial Beneficiaries), the SCC Litigation Trustee shall remove such SCC Litigation Trust Initial Beneficiaries from the SCC Litigation Trust Register and shall redistribute the SCC Litigation Trust Interests, Pro Rata, to the holders of Allowed Class 6 Claims (and, pending resolution of Disputed Claims in Class 6, the Disputed Claims Reserve). Upon Payment in Full of all Allowed Claims in Class 6, the SCC Litigation Trustee shall remove Class 6 Claimants from the SCC Litigation Trust Register and redistribute the Distributed Litigation Trust Interests, Pro Rata, to the holders of Allowed Class 7 Claims (and, pending resolution of Disputed Claims in Class 7, the Disputed Claims Reserve). Upon Payment in Full of all Allowed Claims in Class 7, the Litigation Trustee shall remove Class 7 Claimants from the SCC Litigation Trust Register. Thereafter, the SCC Litigation Trust shall

cease to be entitled to pursue or recover upon the SCC Litigation Trust Claims, and any surplus funds in the SCC Litigation Trust shall be returned to the Parent or other applicable defendant.

(2) *Interests Beneficial Only.*

The ownership of a SCC Litigation Trust Interest shall not entitle any SCC Litigation Trust Beneficiary to any title in or to the assets of the SCC Litigation Trust as such (which title shall be vested in the SCC Litigation Trustee) or to any right to call for a partition or division of the assets of the SCC Litigation Trust or to require an accounting; ~~no SCC Litigation Trust Beneficiary may transfer, assign, pledge, or hypothecate any SCC Litigation Trust Interests.~~

(3) *Maintenance of SCC Litigation Trust Register.*

The SCC Litigation Trustee shall appoint an SCC Litigation Trust Registrar, which may be the SCC Litigation Trustee, for the purpose of recording ownership of the SCC Litigation Trust Interests. The SCC Litigation Trust Register shall contain the names, addresses for payment and notice, and class and number of SCC Litigation Trust Interests of each of the SCC Litigation Trust Beneficiaries. The SCC Litigation Trust Registrar, if other than the SCC Litigation Trustee, may be such other institution acceptable to the SCC Litigation Trustee and shall be entitled to receive reasonable compensation from the SCC Litigation Trust as an expense of the SCC Litigation Trust.

(4) *Evidence of SCC Litigation Trust Interests.*

The SCC Litigation Trustee shall have full power, authority, and discretion to determine whether ownership of any SCC Litigation Trust Interest shall be represented by physical certificates, by book entries in lieu of physical certificates, or in any other form or manner. Regardless of such determination, the record holders of the SCC Litigation Trust Interests shall be recorded and set forth in the SCC Litigation Trust Register.

5.19 Distributions of SCC Litigation Trust Proceeds and Other Property. The SCC Litigation Trustee shall apply all SCC Litigation Trust Proceeds, any proceeds therefrom, and any other Cash of the SCC Litigation Trust (other than the SCC Litigation Trust Expense Fund) in the following order:

(1) first, to pay all costs and expenses of the SCC Litigation Trust to the extent not paid by or from the SCC Litigation Trust Expense Fund, including, without limitation, compensation payable to the SCC Litigation Trustee, to satisfy other liabilities incurred or assumed by the SCC Litigation Trust (or to which the assets are otherwise subject) in accordance with the Parent's Plan or the SCC Litigation Trust Agreement, to hold such amounts in reserve as the SCC Litigation Trustee deems reasonably necessary to meet future expenses and contingent liabilities, to maintain the value of the SCC Litigation Trust Assets (including the SCC Litigation Trust Expense Fund), and to pay the Plan Administrator such amounts as the Plan Administrator designates from time to time for the purpose of paying, or indemnifying Reorganized ASARCO for, any taxes incurred or expected to be incurred by Reorganized ASARCO in connection with the SCC Litigation Trust as a result of the allocation of tax items by the SCC Litigation Trustee or the allowance or disallowance of Disputed Claims; and

(2) second, to pay any remaining amounts to the SCC Litigation Trust Beneficiaries (including to the Plan Administrator for deposit into the Disputed Claims Reserve on account of the Claims of any Claimant that would be an SCC Litigation Trust Beneficiary absent such objection) Pro Rata based on their SCC Litigation Trust Interests; provided, however, that (a) in no event shall any holder of a Claim in Class ~~1~~, 2, 6 or 7 or a Claim in Class 3 as to which the holder has elected Treatment B or Treatment C (as set forth in Article 4.2(c)) receive aggregate distributions in excess of Payment in Full on account of such Claim and (b) in no event shall any holder of a Claim in Class 3 receiving Treatment A receive any SCC Litigation Trust Proceeds on account of such Claim. If the Plan Administrator holds proceeds of the SCC Litigation Trust in the Disputed Claims Reserve on account of a Disputed Claim that is finally determined adversely to such Claimant, in whole or in part, the Plan Administrator shall return to the SCC Litigation Trust the disallowed portion that the Plan Administrator received from the SCC Litigation Trust on account of such Claim and shall pay any Allowed portion to such Claimant.

~~¶(3) Third~~, upon termination of the SCC Litigation Trust, if the SCC Litigation Trust Expense Fund has funds remaining after the payment of all of the SCC Litigation Trust's expenses, such remaining funds shall be ~~returned to the~~ distributed as set forth in clause (2).

(4) Fourth, any funds remaining after all Claims entitled to share in the SCC Litigation Trust have been Paid in Full and all expenses of the SCC Litigation Trust have been satisfied, shall be distributed to Parent or other applicable defendant.

5.20 Termination of the SCC Litigation Trust. The SCC Litigation Trust shall terminate on the earlier of: (1) 30 days after the distribution of all of the assets of the SCC Litigation Trust in accordance with the terms of the SCC Litigation Trust Agreement and the Parent's Plan; or (2) the fifth anniversary of the Effective Date; provided, however, that, on or prior to a date less than six months (but not less than three months) prior to such termination, the Bankruptcy Court, upon motion by a party in interest, may extend the term of the SCC Litigation Trust for a finite period if, based on the facts and circumstances, the Bankruptcy Court finds that such extension is necessary to the liquidating purpose of the SCC Litigation Trust. The Bankruptcy Court may approve multiple extensions of the term of the SCC Litigation Trust; provided that ~~(1) any such extension is so approved on or prior to a date less than six months (but not less than three months) prior to termination of the immediately preceding extended term; and (2) the SCC Litigation Trustee receives an opinion of counsel or a favorable ruling from the IRS that any further extension would not adversely affect the status of the SCC Litigation Trust as a grantor trust for federal income tax purposes.~~

The SCC Litigation Trustee shall not unduly prolong the duration of the SCC Litigation Trust and shall endeavor to resolve, settle, or otherwise dispose of all of the SCC Litigation Trust Claims and to effect the distribution of the assets of the SCC Litigation Trust to the holders of SCC Litigation Trust Interests in accordance with the terms hereof and terminate the SCC Litigation Trust as soon as practicable.

ARTICLE VI

SECTION 524(G) TRUST

6.1 Establishment and Purpose of the Section 524(g) Trust. On the Effective Date, the Section 524(g) Trust shall be established in accordance with the Parent's Plan Documents. When established, the Section 524(g) Trust shall be empowered in accordance with the Parent's Plan and the Parent's Plan Documents. The Section 524(g) Trust will be a "qualified settlement fund" within the meaning of Treasury Regulation section 1.468B-1. The purposes of the Section 524(g) Trust shall be to, among other things, (i) liquidate, resolve, pay, and satisfy all Asbestos Personal Injury Claims and Demands in accordance with the Parent's Plan, the Section 524(g) Trust Distribution Procedures, the Section 524(g) Trust Agreement, and the Confirmation Order, (ii) receive, preserve, hold, manage, and maximize the Section 524(g) Trust Assets for use in paying and satisfying Allowed Asbestos Personal Injury Claims and Demands in accordance with the terms of the Section 524(g) Trust Agreement, and (iii) take other actions deemed by the Section 524(g) Trustees to be in the best interests of the holders of the Asbestos Personal Injury Claims and Demands, who are the sole beneficiaries of the Section 524(g) Trust.

6.2 Section 524(g) Trust Agreement. The Section 524(g) Trust Agreement shall be substantially in the form of the "Section 524(g) Trust Agreement" attached as **Parent's Plan Exhibit 11** to the Parent's Plan, which contains provisions customary to documents utilized in comparable circumstances, and shall be subject to the reasonable approval of the FCR and the Asbestos Claimants' Committee.

6.3 Transfers and Assignments to the Section 524(g) Trust. On the Effective Date, the Parent's Plan Administrator shall transfer and assign to the Section 524(g) Trust for the benefit of the Section 524(g) Trust Beneficiaries the Section 524(g) Trust Assets.

6.4 Control of the Asbestos Insurance Actions and Asbestos Insurance Recoveries. The right to control the Asbestos Insurance Actions and all Asbestos Insurance Recoveries, including negotiations relating thereto and settlements thereof, shall be vested in the Section 524(g) Trust on and after the Effective Date. Notwithstanding the foregoing, Reorganized ASARCO, the Parent's Plan Administrator and the Parent shall cooperate with the Section 524(g) Trustees in pursuing the Asbestos Insurance Actions through such means, and shall provide reasonable access to personnel and books and records of Reorganized ASARCO relating to the Asbestos Insurance Actions to representatives of the Section 524(g) Trust, to enable the Section 524(g) Trustees to perform the Section 524(g) Trustees' tasks under the Section 524(g) Trust Agreement and the Parent's Plan, as set forth in the Section 524(g) Trust Cooperation Agreement and as is discussed below in Article 6.11 in regards to Reorganized ASARCO.

Notwithstanding the foregoing, Reorganized ASARCO reserves the right to retain the Asbestos Insurance Recoveries and pay the net proceeds of such recoveries (after the deduction of the reasonable and necessary unreimbursed costs and expenses associated with obtaining such

proceeds) to the Section 524(g) Trust if, after consultation with the Section 524(g) Trust, it is determined that such retention better preserves these assets.

6.5 Assumption of Liabilities by the Section 524(g) Trust. On the Effective Date, in exchange for funding in accordance with Article 6.3 of the Parent's Plan, the Section 524(g) Trust shall be deemed, without need for further action, to have assumed responsibility and liability for all Asbestos Personal Injury Claims and Demands.

6.6 Tax Matters. No election will be made to treat the Section 524(g) Trust as a grantor trust for U.S. federal income tax purposes. The Section 524(g) Trust is intended to be treated as a "qualified settlement fund" within the meaning of Treasury Regulation section 1.468B-1, and hence as a taxable entity for federal income tax purposes, and the Section 524(g) Trustees shall be the "administrators" of the Section 524(g) Trust pursuant to Treasury Regulation section 1.468B-2(k)(3). The Section 524(g) Trustees shall cause all taxes imposed on the Section 524(g) Trust to be paid using assets of the Section 524(g) Trust and shall comply with all tax reporting and withholding requirements imposed on the Section 524(g) Trust under applicable tax laws, and in particular the rules applicable to a qualified settlement fund.

6.7 Section 524(g) Trust Expenses. The Section 524(g) Trust shall initially be funded in the amount of \$27.5 million, which amount shall be deemed an Administrative Expense, to pay Section 524(g) Trust Expenses (including applicable taxes). Following such initial funding, neither the Debtors, the Parent, the Parent's Plan Administrator, nor Reorganized ASARCO shall have any obligation to pay or reimburse any Section 524(g) Trust Expenses. However, nothing shall preclude the Section 524(g) Trustees from seeking reimbursement of such expenses from any Asbestos Insurance Company.

6.8 Initial Section 524(g) Trustees. The initial Section 524(g) Trustees shall be those Persons nominated by the Asbestos Claimants' Committee and the FCR, if the Asbestos Claimants' Committee and the FCR are willing to make such nominations, or otherwise nominated by the Parent, and designated in the Confirmation Order.

6.9 The FCR. On and after the Effective Date, Judge Robert C. Pate shall serve as the FCR, as such term is defined in the Section 524(g) Trust Agreement, and shall have and exercise the functions, rights, duties, powers and privileges provided in the Section 524(g) Trust Documents, if Judge Robert C. Pate is willing to so serve. If not, the Bankruptcy Court will appoint his replacement.

6.10 Section 524(g) Trust Advisory Committee. The initial members of the Section 524(g) Trust Advisory Committee shall be those Persons nominated by the Asbestos Claimants' Committee if the Asbestos Claimants' Committee is willing to make such nominations, or otherwise nominated by the Parent, and designated in the Confirmation Order. They shall consult with and advise the Section 524(g) Trustees regarding the administration of the Section 524(g) Trust and the liquidation and resolution of Asbestos Personal Injury Claims and Demands in accordance with the provisions of the Parent's Plan and the Section 524(g) Trust Documents.

6.11 Asbestos Books.

(a) Subject to the conditions set forth herein and as more fully described in the Section 524(g) Cooperation Agreement, the Section 524(g) Trust, through its duly authorized representatives, shall have the right, upon reasonable prior written notice to Reorganized ASARCO, to either, at the election of Reorganized ASARCO in its sole discretion: (i) have Reorganized ASARCO transfer into the Section 524(g) Trust's possession all or part of the Asbestos Books in their current condition upon request of the Section 524(g) Trust and on the condition that the Section 524(g) Trust will incur all costs and expenses of the transfer; or (ii) to inspect and, at the sole expense of the Section 524(g) Trust, make copies of the Asbestos Books on any Business Day and as often as may reasonably be desired; provided that, if so requested, the Section 524(g) Trust shall have entered into a reasonable confidentiality agreement satisfactory in form and substance to Reorganized ASARCO. All costs and expenses associated with the storage of and access to any Asbestos Books that remain in the possession of Reorganized ASARCO shall be the responsibility of, and paid by, Reorganized ASARCO. All costs and expenses associated with the storage of and access to any Asbestos Books that are transferred to the Section 524(g) Trust shall be the responsibility of, and paid by, the Section 524(g) Trust. Reorganized ASARCO, the Parent's Plan Administrator and the Parent shall cooperate with the Section 524(g) Trust in transferring or providing access to the Asbestos Books in their current condition, and shall also provide reasonable access to necessary or appropriate personnel and the Asbestos Books as contemplated herein and in the Section 524(g) Cooperation Agreement. Subject to the conditions set forth herein and in the Section 524(g) Cooperation Agreement, the Section 524(g) Trust, through its duly authorized representatives, shall also have the right, upon reasonable prior written notice, to conduct reasonable interviews of employees and other representatives of Reorganized ASARCO concerning matters reasonably related to the Asbestos Books. Reorganized ASARCO shall provide the Section 524(g) Trust with advance notice of any proposed disposition of any of the Asbestos Books and a reasonable opportunity to segregate and remove such Asbestos Books as the Section 524(g) Trust may select.

(b) If the Section 524(g) Trust obtains from Reorganized ASARCO or its representatives any documents or communications (whether written or oral) to which any attorney-client, work-product privilege or other privilege or immunity attaches, the Section 524(g) Trust shall be deemed a privilege holder for purposes of preserving the privilege, shall be required to take all reasonable steps to maintain any such privilege, and may not waive any such privilege without the consent of Reorganized ASARCO, which consent shall not be unreasonably withheld. Production of materials to the Section 524(g) Trust does not constitute a waiver or an impairment of any privilege held by Reorganized ASARCO or ASARCO. Unless otherwise ordered by the Bankruptcy Court, in processing and determination of, objection to, or otherwise in connection with Asbestos Personal Injury Claims or in connection with any Asbestos Insurance Recovery, as determined by the Section 524(g) Trust, the information contained in the Asbestos Books shall be treated as confidential. Except as otherwise provided herein, in the event that any third party challenges any such privilege or confidentiality, Reorganized ASARCO may seek protection from a court of competent jurisdiction. References in this Article 6.11 to Reorganized ASARCO shall also include its successors in interest.

6.12 Cooperation with Respect to Insurance Matters. Reorganized ASARCO and the Parent shall cooperate with the Section 524(g) Trust and use commercially reasonable efforts to take or cause to be taken all appropriate actions and to do or cause to be done all things

necessary or appropriate to effectuate all transfers and assignments identified herein to the Section 524(g) Trust. By way of enumeration and not of limitation, Reorganized ASARCO and ASARCO each shall be obligated, without limitation, (a) to provide the Section 524(g) Trust with copies of insurance policies and settlement agreements included within or relating to the Asbestos Personal Injury Claims and Demands; (b) to provide the Section 524(g) Trust with information necessary or helpful to the Section 524(g) Trust in connection with its efforts to obtain insurance coverage for the Asbestos Personal Injury Claims and Demands as well as other recoveries, including, without limitation, recoveries of extracontractual damages; (c) to execute assignments or allow the Section 524(g) Trust to pursue claims in its own name (subject to appropriate disclosure of the fact that the Section 524(g) Trust is doing so and the reasons why it is doing so), including by means of arbitration, alternative dispute resolution proceedings or litigation, to the extent necessary or helpful to the efforts of the Section 524(g) Trust to obtain insurance coverage for the Asbestos Personal Injury Claims and Demands as well as other recoveries, including, without limitation, recoveries of extracontractual damages; and (d) to pursue and recover insurance coverage for the Asbestos Personal Injury Claims and Demands as well as other recoveries, including, without limitation, recoveries of extracontractual damages, in its own name or right to the extent that any or all of the transfers, assignments and assumptions identified herein are not able to be fully effectuated, with any and all recoveries therefrom to be turned over to the Section 524(g) Trust. The Section 524(g) Trust shall be obligated to compensate Reorganized ASARCO and ASARCO for all costs and expenses reasonably incurred in connection with providing assistance to the Section 524(g) Trust under this Article 6.12, including, without limitation, out-of-pocket costs and expenses, consultant fees and attorneys' fees.

6.13 Indemnification by the Section 524(g) Trust.

(a) The Section 524(g) Trust shall indemnify, defend (and, where applicable, pay the defense costs for), and hold harmless each of the ASARCO Protected Parties from any and all liabilities associated with an Asbestos Personal Injury Claim or Demand that a third party seeks to impose upon any of the ASARCO Protected Parties, or that are imposed upon any of the ASARCO Protected Parties.

(b) In the event that the Section 524(g) Trust makes a payment to any of the ASARCO Protected Parties hereunder, and the liability on account of which such payment was made is subsequently diminished, either directly or through a third-party recovery, the applicable ASARCO Protected Party shall promptly repay the Section 524(g) Trust the amount by which the payment made by the Section 524(g) Trust exceeds the actual cost of such indemnified liability.

ARTICLE VII

ENVIRONMENTAL CUSTODIAL TRUSTS

7.1 Environmental Custodial Trusts. The Environmental Custodial Trusts ~~shall be established~~ and the trust created by the Residual Environmental Settlement Agreement shall be implemented on or before the Effective Date. ~~The Environmental Custodial Trusts~~

~~under the Parent's Plan shall be substantially identical to the environmental custodial trusts agreed upon by the Debtors and applicable governmental agencies with respect to the Designated Properties, which environmental custodial trusts the Debtors and the applicable governmental agencies sought approval of, from the Bankruptcy Court, pursuant to the~~ exactly in accordance with the Debtors' Environmental 9019 Motion and orders approving such motion except for ministerial non-substantive changes. By way of example but not limitation, the Parent shall have no standing to challenge any disbursements by the trustees, nor shall the Parent have standing to challenge the sale or disposition of any of the properties by the trustees. In particular, the organization, operative documents and funding amounts of the Environmental Custodial Trusts and the trust created by the Residual Environmental Settlement Agreement under the Parent's Plan shall be ~~substantially~~ identical to those which the Debtors and the applicable governmental agencies agreed upon and sought approval of in connection with the Environmental 9019 Motion, except for ministerial non-substantive changes. The forms of the ~~Environmental Custodial~~ Trust Agreements as agreed to by the Debtors and the applicable government agencies, including the Montana Custodial Trust Settlement Agreement filed March 13, 2009 (Docket No. 10539-4), the Texas Custodial Trust Agreement filed March 19, 2009 (Docket No. 10567-4), ~~and~~ the Multi-State Custodial Trust Settlement Agreement filed March 13, 2009 (Docket No. 10542-4), and the Residual Environmental Settlement Agreement shall be implemented with only such ministerial non-substantive changes as are required to reflect the Parent's Plan and to protect the Parent and Reorganized ASARCO as may be negotiated with the holders of Allowed Environmental Trust Claims regarding the Designated Properties prior to the Effective Date. All environmental settlement agreements approved by the Court, including but not limited to the Environmental Custodial Trust Settlement Agreements, the Residual Environmental Settlement Agreement, and the Miscellaneous Site Settlement Agreements shall be recognized and adhered to under the Parent Plan.

7.2 Environmental Custodial Trustees. Not less than ~~ten days prior to~~ the commencement of the Confirmation Hearing, the DOJ, if it is so willing, and in consultation with the states that have Allowed Environmental Trust Claims with respect to any Designated Elected Properties, shall designate the Persons who shall initially serve as the Environmental Custodial Trustees. The Environmental Custodial Trustees shall be appointed upon approval by the Bankruptcy Court in the Confirmation Order.

7.3 Tax Matters. The Environmental Custodial Trusts are intended to be treated as qualified settlement funds (for which no grantor trust election has been made) within the meaning of Treasury Regulation section 1.468B-1, and hence as taxable entities for federal income tax purposes, and each respective Custodial Trustee will be the "administrator" of its respective Environmental Custodial Trust pursuant to Treasury Regulation section 1.468B-2(k)(3). Each Custodial Trustee will cause all taxes imposed on the relevant Environmental Custodial Trust to be paid using assets of the Environmental Custodial Trust and will comply with all tax reporting and withholding requirements imposed on the Environmental Custodial Trust under applicable tax laws, and in particular the rules applicable to a qualified settlement fund.

ARTICLE VIII

OTHER MATTERS

8.1 Assumption or Rejection of Unexpired Leases and Executory Contracts.

On the Effective Date, except as otherwise provided in the Parent's Plan, any unexpired lease or executory contract that has not been previously assumed or rejected by any Debtor pursuant to an order of the Bankruptcy Court shall be deemed assumed by such Debtor under sections 365(a) and 1123 of the Bankruptcy Code, other than those executory contracts and unexpired leases that are (a) listed on **Parent's Plan Exhibit 3** hereto (as such list may be amended, supplemented or modified on or before the Effective Date) or (b) subject to a motion to reject that is pending on the Effective Date. Entry of the Confirmation Order shall constitute approval of such assumptions, and the rejection of the executory contracts or unexpired leases listed in **Parent's Plan Exhibit 3** hereto (as such list may be amended, supplemented or modified on or before the Effective Date), pursuant to sections 365(a) and 1123 of the Bankruptcy Code. Any motions to reject executory contracts and unexpired leases pending on the Effective Date shall be subject to approval by the Bankruptcy Court on or after the Effective Date by a Final Order.

8.2 Approval of Assumption or Rejection of Executory Contracts and Unexpired Leases.

Entry of the Confirmation Order shall, subject to and upon the occurrence of the Effective Date, constitute (a) the approval, pursuant to sections 365(a), 365(f) and 1123 of the Bankruptcy Code, of the assumption of the executory contracts and unexpired leases assumed pursuant to Article 8.1 of the Parent's Plan; (b) the extension of time, pursuant to section 365(d)(4) of the Bankruptcy Code, within which the Debtors or Reorganized ASARCO may assume, assume and assign, or reject the unexpired leases specified in Article 8.1 of the Parent's Plan through the date of entry of an order approving the assumption, assumption and assignment, or rejection of such unexpired leases; and (c) the approval, pursuant to sections 365(a) and 1123 of the Bankruptcy Code, of the rejection of the executory contracts and unexpired leases rejected pursuant to Article 8.1 of the Parent's Plan.

8.3 Inclusiveness.

Unless otherwise specified on **Parent's Plan Exhibit 3** hereto, each executory contract and unexpired lease listed or to be listed on **Parent's Plan Exhibit 3** shall include modifications, amendments, supplements, restatements or other agreements made directly or indirectly by any agreement, instrument, or other document that in any manner affects such executory contract or unexpired lease, without regard to whether such agreement, instrument or other document is listed on **Parent's Plan Exhibit 3**.

8.4 Rejection Damages.

The Bankruptcy Court shall determine the amount, if any, of the Claim of any Entity seeking damages by reason of the rejection of any executory contract or unexpired lease to which it is a counterparty.

8.5 Rejection Damages Bar Date.

If the rejection by a Debtor, pursuant to Article 8.1 of the Parent's Plan, of an executory contract or unexpired lease results in a Claim, then such Claim shall be forever barred and discharged and shall not be enforceable against the Debtors, Reorganized ASARCO, or their respective properties, unless a Proof of Claim is filed and served upon the Parent's Plan Administrator within thirty days after the later of the Effective

Date or the date of entry of an order approving such rejection. To the extent any such Claim is Allowed by the Bankruptcy Court by Final Order, such Claim shall become, and shall be treated for all purposes under the Parent's Plan as, a General Unsecured Claim, and the holder thereof shall receive distributions as a holder of an Allowed General Unsecured Claim, pursuant to the Parent's Plan.

8.6 Payments Related to Assumption of Executory Contracts and Unexpired Leases. To the extent that Cure Amount Claims constitute monetary defaults, such Cure Amount Claims shall be satisfied by Reorganized ASARCO, pursuant to section 365(b)(1) of the Bankruptcy Code: (1) by payment of the Cure Amount Claim on the Effective Date; or (2) on such other terms as are agreed to by the Parent and the non-debtor parties to the executory contract or unexpired lease. In the event of a dispute regarding (A) the amount of any Cure Amount Claim or (B) any other matter pertaining to assumption and assignment of such contract or lease, the payment of any Cure Amount Claim required by section 365(b)(1) of the Bankruptcy Code shall be made following the entry of a Final Order resolving the dispute and approving the assumption and assignment.

8.7 Employee Benefit Plans and Other Benefits.

(a) Effective as of the Effective Date, Reorganized ASARCO shall be responsible for all benefits and liabilities with respect to the Employee Benefit Plans.

(b) All of the applicable Debtors' liabilities and obligations arising under the Employee Benefit Plans and workers' compensation benefits, even if such liability or obligation relates to Claims incurred (whether or not reported or paid) prior to the Effective Date, shall be deemed to be, and shall be treated as though they are, executory contracts that are deemed assumed under the Parent's Plan pursuant to sections 365(a), 365(f) and 1123 of the Bankruptcy Code.

(c) Reorganized ASARCO shall be responsible for all of each Debtor's obligations under the Coal Act, including the obligations (1) to provide retiree health benefits to eligible beneficiaries and their dependents pursuant to section 9711 of the Coal Act, 26 U.S.C. § 9711; (2) to pay the annual prefunding premium and the monthly per beneficiary premium required pursuant to section 9712(d)(1)(A) and (B) of the Coal Act, 26 U.S.C. § 9712(d)(1)(A) and (B); and (3) to provide security to the UMWA 1992 Benefit Plan pursuant to section 9712(d)(1)(C) of the Coal Act, 26 U.S.C. § 9712(d)(1)(C).

(d) Reorganized ASARCO shall assume and be responsible for all of the Debtors' obligations to pay retiree benefits, as defined in section 1114 of the Bankruptcy Court, for the duration of the period the applicable Debtor has obligated itself to provide such benefits. After the Effective Date, Reorganized ASARCO shall retain their rights to amend, modify or terminate retiree benefits in accordance with all relevant agreements and applicable law, including any collective bargaining agreement that may be entered into between the USW and Reorganized ASARCO.

8.8 Surety Bonds. All Surety Bonds shall be retained or deemed Reinstated, as the case may be, on the Effective Date and shall revert to the benefit of Reorganized ASARCO.

8.9 Defined Benefit Plans. ASARCO sponsors two defined benefit pension plans, the Retirement Income Plan for Hourly-Rated Employees of ASARCO, Inc. and the Retirement Income Plan for Salaried Employees of ASARCO, Inc. (collectively, the "Pension Plans"), which are covered by Title IV of the Employee Retirement Income Security Act of 1974 ("ERISA"). The Parent understands that ASARCO will satisfy its legal obligations to the Pension Plans during the pendency of this proceeding, and through the Effective Date. The Parent further understands that ASARCO does not intend to terminate the Pension Plans prior to the Effective Date. After the Effective Date, Reorganized ASARCO shall continue to sponsor the Pension Plans. Accordingly, after the Effective Date, Reorganized ASARCO shall continue to be required to make contributions to the Pension Plans in the amounts necessary to meet the minimum funding standards prescribed by 29 U.S.C. § 1082 and 26 U.S.C. § 412, and for the payment of any PBGC premiums prescribed by 29 U.S.C. §§ 1306 and 1307.

ARTICLE IX

CONDITIONS ~~TO EFFECTIVENESS~~PRECEDENT

9.1 Conditions to ~~Effectiveness~~Confirmation. Notwithstanding any other provision of the Parent's Plan or any order entered in connection with the Reorganization Cases, the EffectiveConfirmation Date ~~of the Parent's Plan~~ shall not occur until and unless each of the following conditions to effectiveness has been satisfied or waived pursuant to Article 9.2 ~~of the Parent's Plan~~:

(a) *Disclosure Statement.*

The Bankruptcy Court has approved the Disclosure Statement.

(b) *Confirmation Findings and Conclusions.*

The District Court makes or affirms the following findings of fact and conclusions of law:

(1) As of the Petition Date, one or more of the Debtors has been named as a defendant in personal injury, wrongful death, or property damage actions seeking recovery for damages allegedly caused by the presence of, or exposure to, asbestos or asbestos-containing products;

(2) The Section 524(g) Treatment has been approved by creditors in Class 4 under the Parent's Plan in the requisite numbers and amounts required by sections 524(g), 1126, and 1129 of the Bankruptcy Code and by the FCR;

(3) On the Effective Date, the Section 524(g) Trust shall assume the liabilities of the Debtors with respect to the Asbestos Personal Injury Claims and Demands and shall receive all transfers and assignments set forth herein;

(4) As of the Effective Date, there were no pending or known property damage actions seeking damages as a result of property damage allegedly caused by or arising out of asbestos or asbestos-containing products;

(5) The Section 524(g) Trust is to be funded in part by securities of Reorganized ASARCO and by the obligation of Reorganized ASARCO to make future payments;

(6) The Section 524(g) Trust shall be entitled to own, if specified contingencies occur, a majority of the voting shares of Reorganized ASARCO;

(7) The Section 524(g) Trust shall use its assets and income to pay the Asbestos Personal Injury Claims and Demands;

(8) The Debtors are likely to be subject to substantial future Demands for payment arising out of the same or similar conduct or events that gave rise to the Asbestos Personal Injury Claims, which are addressed by the Permanent Channeling Injunction and the Asbestos Insurance Company Injunction;

(9) The actual amounts, numbers, and timing of future Demands cannot be determined;

(10) Pursuit of Demands outside the procedures prescribed by the Parent's Plan is likely to threaten the Parent's Plan's purpose to deal equitably with Claims and future Demands;

(11) The terms of the Permanent Channeling Injunction and the Asbestos Insurance Company Injunction, including any provisions barring actions against third parties, are set out in the Parent's Plan and in the Disclosure Statement;

(12) The Section 524(g) Trust shall operate through mechanisms such as structured, periodic, or supplemental payments, pro rata distributions, matrices, or periodic review of estimates of the numbers and values of Asbestos Personal Injury Claims and Demands, or other comparable mechanisms, that provide reasonable assurance that the Section 524(g) Trust will value, and be in a financial position to pay, all Asbestos Personal Injury Claims and Demands in substantially the same manner;

(13) The FCR was appointed by the Bankruptcy Court as part of the proceedings leading to the issuance of the Permanent Channeling Injunction and the Asbestos Insurance Company Injunction for the purpose of, among other things, protecting the rights of persons that might subsequently assert Demands of the kind that are addressed in the Permanent Channeling Injunction and/or the Asbestos Insurance

Company Injunction and that are to be assumed and paid by the Section 524(g) Trust in accordance with the Section 524(g) Trust Documents;

(14) In light of the respective benefits provided, or to be provided, to the Section 524(g) Trust by, or on behalf of, each ASARCO Protected Party, the Permanent Channeling Injunction is fair and equitable with respect to the persons that might subsequently assert Demands against any ASARCO Protected Party;

(15) In light of the respective benefits provided, or to be provided, to the Section 524(g) Trust by a Settling Asbestos Insurance Company in order to receive the benefits of the Asbestos Insurance Company Injunction, the Asbestos Insurance Company Injunction is fair and equitable with respect to the persons who might subsequently assert Demands against any Settling Asbestos Insurance Company;

(16) The Settling Asbestos Insurance Companies are alleged to be directly or indirectly liable for the Asbestos Personal Injury Claims and Demands for one or more of the reasons set forth in section 524(g)(4)(A)(ii) of the Bankruptcy Code;

(17) The Permanent Channeling Injunction and the Asbestos Insurance Company Injunction are integral parts of the Parent's Plan and may not be vacated, amended or modified after Confirmation except to the extent expressly provided in Article 11.3(a)(2) and 11.3(b)(2) of the Parent's Plan;

(18) The Parent's Plan complies with all applicable sections of the Bankruptcy Code, including, to the extent the Section 524(g) Treatment goes into effect, section 524(g) of the Bankruptcy Code;

(19) The Parent's Plan Documents which relate to the Section 524(g) Treatment are approved in all respects, and all parties thereto are authorized and directed to perform all their obligations thereunder; and

(20) Approval of all settlements and compromises embodied in the Section 524(g) Treatment is appropriate under Bankruptcy Rule 9019 and applicable law governing approval of such settlements and compromises and shall be ordered as part of the Confirmation Order.

(c) *Confirmation Order.*

(1) The Confirmation Date shall have occurred no later than August 31, 2009, except as may be otherwise agreed by the Parent, the Asbestos Representatives and the ASARCO Committee.

(2) The Confirmation Order entered or affirmed by the District Court is acceptable to the Parent. Within two business days after entry of the Confirmation Order, the Parent will notify the ASARCO Committee, the Asbestos Representatives and the DOJ of whether or not the Confirmation Order is acceptable to the Parent.

~~(d) No Stay.~~

~~The Confirmation Order is not stayed pursuant to an order issued by a court of competent jurisdiction.~~

(d) ~~(e) Parent's Plan Documents.~~

(1) The Parent's Plan Documents necessary or appropriate to implement the Parent's Plan, other than those which relate to the Section 524(g) Treatment, ~~have been executed, shall be~~ in a form acceptable to the Parent, ~~delivered and, where applicable, filed with the appropriate governmental or supervisory authorities and~~ the Parent shall have so notified the ASARCO Committee and the DOJ prior to the Bankruptcy Court's recommendation to the District Court that the District Court confirm the Parent's Plan, and the Confirmation Order shall so provide.

(2) The Bankruptcy Court has approved the Parent's Plan Documents, other than those which relate to the Section 524(g) Treatment, in all respects and authorized and directed all parties thereto to perform all their obligations thereunder.

~~(f) Funding and New Equity Interests.~~

~~The Parent has delivered the Parent Contribution to the Parent's Plan Administrator except as may be otherwise agreed by the Parent and the Asbestos Representatives, ASARCO has transferred the Distributable Cash to the Parent's Plan Administrator, all interests in the Debtors have been canceled, and the New Equity Interests have been delivered to ASARCO USA Incorporated or its designee; it being understood that the failure of the Parent to provide the Parent Contribution will not relieve the Parent of its funding obligations under the Parent's Plan.~~

~~(g) U.S. Trustee's Fees.~~

~~Any fees owed to the U.S. Trustee by the Debtors as of the Effective Date have been paid in full.~~

(e) ~~(h) Approval of Parent's Plan Settlements.~~

The Bankruptcy Court has approved all settlements and compromises embodied in the Parent's Plan, and has found that such settlements and compromises are appropriate under Bankruptcy Rule 9019 and applicable law governing such approval and such settlements and compromises shall be approved as part of the Confirmation Order.

9.2 Waiver of Conditions to Effectiveness Confirmation. The Parent, in its sole discretion, may waive any condition to effectiveness confirmation in Article 9.1 of the Parent's Plan by filing a notice of such waiver with the clerk of the Bankruptcy Court and by serving a copy of such notice on the U.S. Trustee, the Debtors, the Committees, the FCR, and the

~~DOJ; provided, however, that the Parent may not waive any condition to effectiveness in Articles 9.1(e)(1), 9.1(e)(2), or 9.1(f) without the consent of the Asbestos Representatives.~~

9.3 Conditions to Effectiveness. Notwithstanding any other provision of the Parent's Plan or any order entered in connection with the Reorganization Cases, the Effective Date shall not occur until and unless each of the following conditions to effectiveness has been satisfied:

(a) *No Stay.*

The Confirmation Order is not stayed pursuant to an order issued by a court of competent jurisdiction.

(b) *Parent's Plan Documents.*

The Parent's Plan Documents necessary or appropriate to implement the Parent's Plan, other than those which relate to the Section 524(g) Treatment, have been executed, delivered and, where applicable, filed with the appropriate governmental or supervisory authorities; provided, that the Parent may waive this condition in its sole discretion.

(c) *Funding and New Equity Interests.*

The Parent has delivered the Parent Contribution to the Parent's Plan Administrator, ASARCO has transferred the Distributable Cash to the Parent's Plan Administrator, all interests in the Debtors have been canceled, and the New Equity Interests have been delivered to ASARCO USA Incorporated or its designee. It is understood that the failure of the Parent to provide the Parent Contribution will not relieve the Parent of its funding obligations under the Parent's Plan.

(d) *U.S. Trustee's Fees.*

Any fees owed to the U.S. Trustee by the Debtors as of the Effective Date have been paid in full.

9.4 Closing Obligation.

The Parent's Plan shall close and become effective within thirty days after the Parent's Plan is Confirmed if no stay of the Confirmation Order is then in effect; provided, however, that if the Parent has not received executed, delivered or filed Parent's Plan Documents from a third party because of circumstances beyond the reasonable control of the Parent, the Parent shall use its best efforts to obtain such Parent's Plan Documents to close as expeditiously as possible upon receipt of such executed Parent's Plan Documents.

9.5 ~~9.3~~ Notice of Effective Date. Reorganized ASARCO shall give notice of the Effective Date within five (5) Business Days after its occurrence.

9.6 ~~9.4~~ Non-Occurrence of Effective Date. In the event that the Effective Date does not occur, all parties shall be returned to the position they would have held had the Confirmation Order not been entered except as set forth in Article 10.2, and nothing in the Parent's Plan, Disclosure Statement, or any Parent's Plan Document, or any pleading or statement in court shall be deemed to constitute an admission or waiver of any sort or in any way to limit, impair, or alter the rights of any Entity.

9.7 ~~9.5~~ Collective Bargaining Agreement Not a Condition. For the avoidance of doubt, it is not a condition to Confirmation of the Parent's Plan nor to Consummation of the Parent's Plan that the Parent and Reorganized ASARCO have entered into a CBA for the period following the Effective Date.

ARTICLE X

IMPLEMENTATION OF THE PARENT'S PLAN

10.1 Sources of Cash and Other Consideration for Distributions. On the Effective Date, (i) the Parent Contribution shall be delivered to the Parent's Plan Administrator; (ii) Reorganized ASARCO shall transfer the Distributable Cash to the Parent's Plan Administrator; and (iii) the Environmental Custodial Trusts shall be established and funded pursuant to Article 7.1.

~~—On the Effective Date or as soon thereafter as practicable, (i) the Parent Contribution shall be delivered to the Parent's Plan Administrator; (ii) Reorganized ASARCO shall transfer the Distributable Cash to the Parent's Plan Administrator; (iii) (i) the Tax Refund shall be delivered to the Parent's Plan Administrator in accordance with Article 10.8; (iv) Reorganized ASARCO shall deliver the ASARCO Note, the ASARCO Security Agreement and the ASARCO Deed of Trust to the Section 524(g) Trust; (v) Reorganized ASARCO shall set the final principal amount of the Parent's Copper Note based upon the Treatment B elections of Class 3 Claim holders (as set forth in Article 4.2(c)); (vi) the Parent shall deliver its guarantees of the ASARCO Note and the Parent's Copper Note; and (vii) ASARCO USA Incorporated or its designee that holds the equity interests in Reorganized ASARCO shall deliver the Parent Pledge Agreement to the Section 524(g) Trust.~~

On the Effective Date, as further consideration for the New Equity Interests, the Parent and the Parent's Affiliates shall waive all Administrative and General Unsecured Claims held by the Parent or the Parent's Affiliates against the Debtors through the Effective Date, including, for the avoidance of doubt, Claims for reimbursement pursuant to the Tax Sharing Agreement for any period prior to the Effective Date.

On the Effective Date, the Parent and Reorganized ASARCO shall enter into the Working Capital Facility. Proceeds drawn from the Working Capital Facility and the Working Capital Reserve, and proceeds of Reorganized ASARCO's Litigation Trust Interests, if any, shall be used to fund Reorganized ASARCO's working capital needs.

Claims that will be Reinstated under the Parent's Plan shall be paid out of Reorganized ASARCO's operating cash flows unless otherwise provided in the Parent's Plan.

For the avoidance of doubt, it is not a condition to the confirmation or effectiveness of the Parent's Plan that any particular Claim or Class has been Allowed by Final Order.

10.2 Support Agreement, Escrow Agreement and Deposit.

To ensure that the Parent is capable of meeting its funding requirements under the Parent's Plan on the Effective Date, Grupo and the Parent have entered into a Support Agreement under which Grupo has agreed to promptly provide the Parent with funds in an amount equal to the amount required to permit the Parent to deliver the Parent Contribution in full and fund the Working Capital ~~Reserve~~Facility (attached hereto as Parent's Plan Exhibit 26, the "Support Agreement").

Furthermore, to demonstrate its intention and ability to fully and timely consummate the Parent's Plan, the Parent has established an Escrow Account funded with 67,280,000 shares of stock of SCC (the "SCC Shares") and ~~intends to~~has put in place ~~an~~that certain Amended and Restated Escrow Agreement (attached, in final form, to the Disclosure Statement Supplement as DS Exhibit S, the "Escrow Agreement") with respect to the Escrow Account. Notwithstanding anything to the contrary in the Parent's Plan, in the event of any inconsistency(s) between the Parent's Plan and the Escrow Agreement, the Escrow Agreement shall govern.

~~Among other things, the Escrow Agreement provides for pre- and post-confirmation deposits, as follows:-~~

~~(a) If prior to the date upon which the Parent's Plan is Confirmed (i) the Parent withdraws and terminates the Parent's Plan without the written consent of the ASARCO Committee (provided, however, that this condition is not satisfied if either (A) at the time of such withdrawal, a plan other than the Parent's Plan was the subject of an entered Confirmation Order, or (B) the Debtors and the Parent have entered into a settlement agreement with Debtor ASARCO LLC with respect to the SCC Final Judgment and related litigation, and such settlement has been approved by an order entered in the Bankruptcy Case), or (ii) the Parent modifies or amends the Parent's Plan in a manner that would effect a material adverse change to the treatment proposed to be given unsecured creditors under the Modified Fifth Amended Plan as filed on July 2, 2009 (provided, however, that such modification or amendment that provides for the cure and reinstatement of any obligation, including but not limited to any series of bond indebtedness, consistent with 11 U.S.C. Section 1124(2) shall not be deemed to constitute a material adverse change to such Parent's Plan for purposes of the Escrow Agreement) then, in the case of (i) or (ii), the ASARCO Committee may deliver to the Parent and the Escrow Agent (as defined in the Escrow Agreement) a Creditors' Pre Confirmation Default Notice (as defined in the Escrow Agreement), and upon receipt of such notice by the Parent, the Parent may deliver \$125,000,000 in cash to the Escrow Agent for deposit in the Escrow Account, in exchange for the Segregated Shares (as defined in the Escrow Agreement) (such Segregated Shares and all other shares of SCC Stock on deposit and held by the Escrow Agent under the Escrow Agreement to be disbursed by the Escrow Agent to the Plan Sponsor as directed by the Parent), and the Escrow Agent shall deliver the \$125,000,000 in cash as separately directed in writing by the ASARCO Committee, for delivery to the estate of ASARCO LLC; provided that if the Parent fails to deliver the \$125,000,000 in cash to the Escrow Agent within 5 business days after receipt of the Creditors' Pre Confirmation Default Notice, the Escrow Agent shall deliver the~~

~~Segregated Shares as directed in writing by the ASARCO Committee, for delivery to the estate of ASARCO LLC, and shall disburse all other shares of SCC Stock on deposit and held by the Escrow Agent under the Escrow Agreement to the Parent as directed by the Parent; provided, however, that the ASARCO Committee shall not be entitled to deliver the Creditors' Pre Confirmation Default Notice if (x) the Parent terminates and withdraws the Parent's Plan with the consent of the ASARCO Committee, (y) the Parent terminates and withdraws the Parent's Plan after entry of an order in the Bankruptcy Case approving a settlement agreement with Debtor ASARCO LLC with respect to the SCC Final Judgment and related litigation, or (z) a plan other than the Parent's Plan is Confirmed pursuant to an entered Confirmation Order, and, in the case of (x), (y) or (z), the Plan Sponsor may deliver a Plan Sponsor's Pre Confirmation Termination Notice (as defined in the Escrow Agreement) to the Escrow Agent (a copy of which shall be simultaneously sent to the ASARCO Committee), and the Escrow Agent shall return the SCC Shares to the Parent as directed by the Parent. The ASARCO Committee shall give at least 10 days written notice to the Parent prior to delivery of the Creditors' Pre Confirmation Default Notice.~~

~~(b) If from and after the Confirmation Date of the Parent's Plan, (i) the Parent withdraws and terminates the Parent's Plan absent an order entered by the Bankruptcy Court authorizing such withdrawal or termination, (ii) the Parent's Plan is not Consummated by the date that is thirty days after the Confirmation Order with respect to the Parent's Plan becomes a Final Order with respect to the Parent's Plan if the conditions to the Effective Date (other than the conditions specified in Sections 9.1(f) and (g) herein) are all satisfied on or before November 30, 2009, or (iii) the Parent modifies or amends the Parent's Plan after the Confirmation Date of the Parent's Plan and before the Effective Date in a manner that would effect a material adverse change to the treatment proposed to be given unsecured creditors under the Parent's Plan, as Confirmed (provided, however, that such modification or amendment that provides for the cure and reinstatement of any obligation, including but not limited to any series of bond indebtedness, consistent with 11 U.S.C. Section 1124(2) shall not be deemed to constitute a material adverse change to the Parent's Plan for purposes of the Escrow Agreement) then, in the case of (i), (ii) or (iii), the ASARCO Committee may deliver to the Parent, the Debtors and the Escrow Agent a Creditors' Post Confirmation Default Notice (as defined in the Escrow Agreement), and upon receipt of such notice by the Escrow Agent, the Escrow Agent shall promptly disburse the SCC Shares as directed by the ASARCO Committee, for delivery to the estate of ASARCO LLC; provided, however, that the ASARCO Committee shall not be entitled to deliver the Creditors' Post Confirmation Default Notice if (x) from and after the Confirmation Date of the Parent's Plan, the Parent terminates and withdraws the Parent's Plan with the consent of the ASARCO Committee and in a manner consistent with an order entered by the Bankruptcy Court authorizing such withdrawal or termination, (y) all conditions to the Effective Date (other than the conditions specified in Sections 9.1(f) and (g) herein) have not occurred by November 30, 2009, or (z) the Effective Date has not occurred by December, 31, and, in the case of (x), (y) or (z), the Parent may deliver a Plan Sponsor's Post Confirmation Termination Notice (as defined in the Escrow Agreement) to the Escrow Agent (copies of which shall be simultaneously sent to the ASARCO Committee and the Debtors), and the Escrow Agent shall return the SCC Shares to the Parent as directed by the Parent. The ASARCO Committee shall give at least 10 days written notice to the Plan Sponsor prior to delivery of the Creditors' Post Confirmation Default Notice.~~

~~(e) Upon the Effective Date, the Parent may deliver a Final Notice (as defined in the Escrow Agreement) to the Escrow Agent, and the Escrow Agent shall return the SCC Shares to the Parent, as directed by the Parent.~~

~~(d) Notwithstanding anything to the contrary in the Parent's Plan, in the event of any inconsistency(s) between section 10.2 of the Parent's Plan and the Escrow Agreement, the Escrow Agreement shall govern.~~

10.3 Appointment of Parent's Plan Administrator and Funding of Miscellaneous Parent's Plan Administration Accounts.

(a) ~~Not less than ten days~~On or prior to ~~commencement of~~ the Confirmation ~~Hearing~~Date, the Parent shall designate the Entity that shall initially serve as the Parent's Plan Administrator. Upon approval by the Bankruptcy Court in the Confirmation Order, the Parent's Plan Administrator shall be appointed. The Parent's Plan Administrator shall have and perform all of the duties, responsibilities, rights and obligations set forth in the Parent's Plan Administration Agreement. The Parent's Plan Administrator shall serve without bond, may employ or contract with other Persons to assist in the performance of the Parent's Plan Administrator's duties, which shall be set forth in the Parent's Plan Administration Agreement. The Parent's Plan Administrator shall receive, without further Bankruptcy Court approval, reasonable compensation for such services and reimbursement of reasonable out-of-pocket expenses incurred in connection with such services.

(b) On the Effective Date (or as soon thereafter as is reasonably practicable), the Parent's Plan Administrator shall establish and fund the Parent's Plan Administration Account with sufficient Cash to pay the Parent's Plan Administrator's estimated compensation and expenses, and all other anticipated costs of administration of the Parent's Plan. The Parent's Plan Administrator shall also establish and fund Miscellaneous Parent's Plan Administration Accounts, including the Disputed Claims Reserve, and the Undeliverable and Unclaimed Distribution Reserve, and may also establish such general accounts as the Parent's Plan Administrator deems necessary and appropriate.

(c) On the Effective Date (or as soon thereafter as is reasonably practicable), the Parent's Plan Administrator shall (i) fund the Section 524(g) Trust with the Section 524(g) Trust Assets, (ii) fund the Environmental Custodial Trusts with the Environmental Custodial Trust Assets, (iii) fund the Disputed Claims Reserve as provided for in Article 13.8 hereof, (iv) fund the Litigation Trust with the Litigation Trust Assets; and (v) fund the SCC Litigation Trust with the SCC Litigation Trust Expense Fund.

(d) The Parent's Plan Administrator shall allocate the funds in the Parent's Plan Administration Account to subaccounts corresponding to the enumerated functions of the Parent's Plan Administrator. Until the Parent's Plan Administrator has discharged its obligations, the funds in those subaccounts and the Miscellaneous Parent's Plan Administration Accounts may only be used for the purpose designated for that particular account or subaccount.

(e) To the extent there are any excess funds in the Parent's Plan Administration Account (or any subaccount thereof) or any Miscellaneous Parent's Plan

Administration Account, the Parent's Plan Administrator shall distribute such funds, Pro Rata, *first* to holders of Claims in Class 3 that receive Treatment A until such Claims are paid in full, *second* to holders of Claims in Class 6 until such Claims are Paid in Full, *third* to holders of Claim in Class 7 until such Claims are paid in full, and *fourth* to Reorganized ASARCO to fund its working capital needs.

10.4 Distributions To Allowed Claims; Parent's Copper Note.

(a) On the Effective Date, the Parent's Plan Administrator shall pay the Allowed Claims that are to be paid on the Effective Date. No later than ten days prior to the anticipated Effective Date, the Parent's Plan Administrator shall distribute to the ASARCO Committee a schedule of anticipated distributions on the Effective Date, including a detailed report on the holders of Class 3 Claims that elected Treatment A, B or C. The Parent, the Parent's Plan Sponsor, the Debtors and the ASARCO Committee shall attempt to resolve any discrepancies or disputes. No later than five days prior to the anticipated Effective Date, the Parent's Plan Administrator shall file such report with the Bankruptcy Court. Any disputes shall be present to the Bankruptcy Court for resolution.

(b) On or as soon as practicable after the Effective Date, the Plan Administrator shall ~~calculate~~establish the principal amount of the Parent's Copper Note, in the same principal amount as would pertain for setting the principal amount of the "Plan Sponsor Promissory Note", as that term is defined in the Debtors' Plan, which amount shall be no less than \$770 million. The Plan Administrator shall establish a register based upon the number and amount of holders of Claims in Class 3 that elected Treatment B. ~~The principal amount shall be reduced from \$770 million to that number that is the aggregate value of the Pro Rata portion of all Class 3 Claims that elect Treatment B that is attributable to~~ (it being the intent of this provision that the holders of such Claims shall receive the same share in the Parent's Copper Note to which they would have been entitled if all Class 3 Claims had elected Treatment B). The remaining interests in the Parent's Copper Note. ~~No less than three months before any payment date under the Parent's Copper Note, the Plan Administrator shall revisit the calculation of the principal amount to take into account any Class 3 Claims that have been disallowed, in whole or in part, since the date of the previous calculation shall be held by Reorganized ASARCO.~~ The Plan Administrator shall provide ~~each~~ such calculation and register to Reorganized ASARCO, the ~~ASARCO Committee~~SCC Litigation Trust Board and the DOJ, and shall make a good faith effort to consensually resolve any disagreements with Reorganized ASARCO, the ~~ASARCO Committee~~SCC Litigation Trust Board and/or the DOJ regarding the principal amount of the Parent's Copper Note and the allocation of interests thereunder. Any disputes regarding the principal amount of, or the allocation of interests in, the Parent's Copper Note shall be presented to the Bankruptcy Court for resolution. Upon resolution of any disputes, Reorganized ASARCO shall then promptly execute the final form of the Parent's Copper Note.

(c) The Plan Administrator shall maintain the register of holders of Claims entitled to distributions from the proceeds of the Parent's Copper Note, and shall make distributions to such holders as and when such proceeds are received. No less than three months before any payment date under the Parent's Copper Note, the Plan Administrator shall revisit the register of interests in the Parent's Copper Note to take into account any Class 3 Claims that have been disallowed, in whole or in part, since the date of the previous calculation. The Plan

Administrator shall provide such register to Reorganized ASARCO, the SCC Litigation Trust Board and the DOJ, and shall make a good faith effort to consensually resolve any disagreements with Reorganized ASARCO, the SCC Litigation Trust Board and/or the DOJ regarding the allocation of interests thereunder. Any disputes regarding the allocation of interests in the Parent's Copper Note shall be presented to the Bankruptcy Court for resolution.

(d) To the extent that a Class 3 Claim as to which the holder has elected Treatment B is a Disputed Claim, then the portion of such proceeds of the Parent's Copper Note attributable to such Disputed Claim shall be maintained in the Disputed Claims Reserve until the allowance of such Claim has been determined by Final Order. When and to the extent that such Claim is Allowed, the portion of the Parent's Copper Note proceeds attributable to such Allowed portion shall be distributed to the holder and the disallowed portion, if any, shall be ~~returned to Reorganized ASARCO~~ reallocated to other holders of Class 3 Claims as to which the holder has elected Treatment B.

10.5 Release of Litigations. On the Effective Date, all causes of action identified in ~~Parent's Plan Exhibit 2~~ hereto the Schedule of Released Litigation (attached hereto as Parent's Plan Exhibit 2, which Schedule may be amended or modified by the Parent prior to the Confirmation Date, provided that in no event shall the SCC Litigation Trust Claims be added to the Schedule of Released Litigation) shall be deemed, without any notice, the entry of any other order, or any other action by any party to have been released and dismissed or withdrawn with prejudice. All other causes of action or counts thereof of the Debtors and their estates, including, without limitation, those under chapter 5 of the Bankruptcy Code (or similar state or federal law), and the Asbestos Insurance Actions, shall continue and be pursued as provided in Article 10.13 but subject to Article 6.4 and 5.17 as applicable.

10.6 Prepetition ASARCO Environmental Trust.

(a) The Prepetition ASARCO Environmental Trust shall remain in existence, and shall be unaffected by the Reorganization Cases or any related settlements. The Parent's Plan Administrator shall succeed to ASARCO's administrative role, and will, in its sole discretion, act as Performing Entity (as defined in the Prepetition ASARCO Environmental Trust) from time to time, but will assume no affirmative liabilities or obligations associated with that role. In accordance with the documents governing it, the funds in the Prepetition ASARCO Environmental Trust shall continue to be available for, among other things, (i) identified work sites; (ii) interim costs prior to the effectiveness of the Parent's Plan; and (iii) any shortfalls or unanticipated costs or any other use permitted by the terms of the Prepetition ASARCO Environmental Trust (it being understood that the terms of certain environmental settlements were based on the assumption that certain previously identified, additional environmental response actions to be performed by ASARCO, the Parent's Plan Administrator or the United States would be reimbursed from the Prepetition ASARCO Environmental Trust). The Parent will make any remaining required contributions to the Prepetition ASARCO Environmental Trust in the ordinary course.

(b) The funds remaining in the Prepetition ASARCO Environmental Trust shall be separate from and without prejudice to the distributions to be made to holders of Claims, as described in Article IV of the Parent's Plan.

10.7 Operations and Settlements Between the Confirmation Date and the Effective Date. Except as set forth herein with respect to the appointment of the Parent's Plan Administrator, during the period from the Confirmation Date through and until the Effective Date, the Debtors shall continue to operate as debtors-in-possession, subject to the oversight of the Bankruptcy Court as provided in the Bankruptcy Code, the Bankruptcy Rules, and all orders of the Bankruptcy Court that are then in full force and effect. During the period from the Confirmation Date through and until the Effective Date, the Debtors shall not enter into or seek approval of any settlement(s) of any Claim(s) where the amount of such settlement, or the Allowed amount of such Claims, individually or in the aggregate, would be in excess of \$10 million, without prior written approval of the Parent.

10.8 Tax Refund. Unless the Tax Refund Adversary Proceeding has been determined by Final Order prior to the Effective Date, on the Effective Date or as soon thereafter as reasonably practicable, the Tax Refund shall be transferred to the Plan Administrator. For the avoidance of doubt, the Parent will, on the Effective Date, waive its claim to collect the Tax Refund for its own account and shall cooperate with Reorganized ASARCO to cause the Internal Revenue Service to pay the Tax Refund to the Plan Administrator for distribution to holders of Allowed Claims. To the extent that, on the Effective Date, the DOJ or any agency represented by the DOJ maintains a claim that it is entitled to setoff environmental claims held by such agency against the Tax Refund, then the Plan Administrator shall include the Tax Refund in the Environmental Custodial Trust Assets, releasing an equivalent amount of Cash to fund other distributions required under the Parent's Plan.

10.9 Limited Liability Company Agreement. On or as soon as reasonably practicable after the Effective Date, Reorganized ASARCO shall file an amended LLC Agreement (the "Amended LLC Agreement") with the Secretary of State of the State of Delaware. The Amended LLC Agreement shall, in compliance with section 1123 of the Bankruptcy Code, prohibit the issuance of nonvoting equity securities and provide for an appropriate distribution of voting powers among classes of securities.

10.10 Management of Reorganized ASARCO. Pursuant to section 1129(a)(5) of the Bankruptcy Code, the Parent shall disclose, by filing, on or prior to the Confirmation Date, a document disclosing the identity and affiliations of any person proposed to serve on the initial board of directors of Reorganized ASARCO or as an officer of Reorganized ASARCO. To the extent any such person is an insider, the nature of any compensation payable to such person shall be disclosed at such time. Reorganized ASARCO shall have a five-person board of directors, each of them nominated by the Parent. Each director and officer shall serve from and after the Effective Date pursuant to the terms of the amended Limited Liability Company Agreement, and applicable law.

10.11 Issuance of New Equity Interests in Reorganized ASARCO. On the Effective Date, in exchange for the Parent Contribution, the New Equity Interests shall be issued

and delivered to ASARCO USA Incorporated or its designee. Except as otherwise provided in this Article X, Reorganized ASARCO shall continue its existence after the Effective Date.

10.12 Revesting. Except as otherwise expressly provided in the Parent's Plan, on the Effective Date, all of ASARCO's and its Estate's property and assets shall vest in Reorganized ASARCO, free and clear of all Liens, Claims, charges and other encumbrances.

10.13 Vesting and Enforcement of Causes of Action. Any and all claims and causes of action that were owned by ASARCO or its Estate as of the Effective Date, other than the Asbestos Insurance Actions, the Litigation Trust Claims and the SCC Litigation Trust Claims, including, without limitation, for indemnity and contribution for environmental damages, harm or injury, which PRP claims have not been discharged or settled as of the Effective Date, shall vest in Reorganized ASARCO on the Effective Date, and Reorganized ASARCO shall be the only Entity entitled to pursue such claims or causes of action. The Asbestos Insurance Actions shall vest in the Section 524(g) Trust and may be pursued or compromised as deemed fit by the Section 524(g) Trustees, in their sole discretion, without need for approval of the Bankruptcy Court. The Litigation Trust Claims, including, without limitation, all rights and interests in actions and/or claims against third parties ("potentially responsible parties" or "PRP"), shall vest in the Litigation Trust and may be pursued or compromised as deemed fit by the Litigation Trustee, in its sole discretion, without need for approval of the Bankruptcy Court. The SCC Litigation Trust Claims shall vest in the SCC Litigation Trust subject to the Maximum Recovery and in accordance with the SCC Litigation Trust Agreement and may be pursued or compromised as deemed fit by the SCC Litigation Trustee and the SCC Litigation Trust Board without need for approval of the Bankruptcy Court.

10.14 Further Authorizations. Reorganized ASARCO, the Parent's Plan Administrator, or the Parent may seek such orders, judgments, injunctions, and rulings as any one or more of them deem necessary to further carry out the intentions and purposes of, and give full effect to the provisions of, the Parent's Plan.

10.15 Effectuating Documents and Further Transactions. The chief executive officer, president, chief financial officer, general counsel, secretary, treasurer, any vice president, or managing member (if applicable) of Reorganized ASARCO shall be authorized, to the extent consistent with Reorganized ASARCO's constituent documents, to execute, deliver, file, or record such contracts, instruments, settlement agreements, releases, indentures, and other agreements or documents and to take or direct such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of the Parent's Plan. The secretary or any assistant secretary of each Debtor and Reorganized ASARCO shall be authorized to certify or attest to any of the foregoing actions.

10.16 Corporate Action. All matters provided for under the Parent's Plan involving the corporate structure of the Debtors or Reorganized ASARCO, or any corporate action to be taken by, or required of the Debtors or Reorganized ASARCO, shall be deemed to have occurred and be effective as provided herein, and shall be authorized and approved in all respects without any requirement for further action by the holders of Interests in, or directors of, any of such entities.

10.17 Execution of Parent's Plan Documents. On the Effective Date, Reorganized ASARCO and other parties thereto shall execute and deliver the Parent's Plan Documents, as applicable.

10.18 Approval of Section 524(g) Trust Documents. Confirmation of the Parent's Plan shall constitute approval pursuant to Bankruptcy Rule 9019 of the Section 524(g) Trust Documents, as evidenced by entry of the Confirmation Order.

10.19 Option to Create Work Trusts. The DOJ may at its option elect to establish work trusts for the purpose of receiving distributions made with respect to Allowed Claims that relate to specified environmental sites.

10.20 Approval of Mission Mine Settlement Agreement. Confirmation of the Parent's Plan shall cause the Mission Mine Settlement Agreement to be binding upon all landowners and allottees who own interests in the lands affected by the Mission Mine Settlement Agreement. Nothing in this Parent's Plan, including any provisions of Article XI hereunder, shall in any way limit or affect the rights or obligations of any party to the Mission Mine Settlement as provided therein.

10.21 Deemed Consolidation of Debtors for Plan Purposes Only. Subject to the occurrence of the Effective Date, the Debtors shall be deemed consolidated under the Parent's Plan, solely for the limited purposes of voting and distribution under the Parent's Plan. Each and every Claim filed or to be filed against any of the Debtors shall be deemed filed against the deemed consolidated Debtors and shall be deemed one Claim against all Debtors and (a) any obligation of any Debtor and all guarantees thereof executed by one or more of the Debtors shall be deemed to be one obligation of all of the consolidated Debtors; (b) any Claims filed or to be filed in connection with any such obligation and such guarantees shall be deemed one Claim against the consolidated Debtors; (c) all duplicative Claims (identical in amount and subject matter) filed against one or more of the Debtors will be automatically expunged so that only one Claim survives against the consolidated Debtors; and (d) the consolidated Debtors will be deemed, for purposes of determining the availability of the right of set-off under section 553 of the Bankruptcy Code, to be one entity, so that, subject to other provisions of section 553 of the Bankruptcy Code, the debts due to a particular Debtor may be offset against the Claims against such Debtor or Debtors. Such deemed consolidation, however, shall not (other than for purposes related to funding distributions under this Plan and as set forth above in this section) affect: (i) any guarantees, liens, and security interests that are required to be maintained under this Plan; or (ii) distributions out of any insurance policies or proceeds of such policies.

10.22 Wind Down of Subsidiary Debtors. On the Effective Date (or as soon thereafter as is reasonably practicable) and concurrently with payment of all Allowed Claims that are to be paid on the Effective Date and funding of the Disputed Claims Reserve, (a) the Subsidiary Debtor Assets shall be transferred to Reorganized ASARCO free and clear of any and all Liens, Claims, encumbrances, or interests of any kind in such property of any Person or Entity except as provided in the Parent's Plan, (b) all assets of the Subsidiary Debtors other than the Subsidiary Debtor Assets shall be transferred to the Plan Administrator for the benefit of Reorganized ASARCO, free and clear of any and all Liens, Claims, encumbrances, or interests of any kind in such property of any Person or Entity except as provided in the Parent's Plan, and (c) all Interests in the Subsidiary Debtors shall be canceled. As soon as practicable after the Effective Date, the Plan Administrator shall liquidate all assets of the Subsidiary Debtors other than the Subsidiary Debtor Assets and shall transfer the proceeds of such liquidation to Reorganized ASARCO free and clear of any and all Liens, Claims, encumbrances, or interests of any kind in such proceeds of any Person or Entity except as provided in the Parent's Plan. For avoidance of doubt, the wind down of the Subsidiary Debtors shall not affect the treatment of Claims against the Subsidiary Debtors provided by the Parent's Plan.

ARTICLE XI

INJUNCTIONS, RELEASES, AND DISCHARGE

11.1 Discharge and Release. Except as otherwise expressly provided in the Parent's Plan, the rights afforded in the Parent's Plan and the treatment of all Claims, Demands, and Interests shall be in exchange for and in complete satisfaction, discharge, and release of all Claims, Demands, and Interests of any nature whatsoever, against any Debtor or its Estate, assets, properties or interests in property. Except as otherwise provided herein, on the Effective Date, all Claims and Demands against and Interests in the Debtors shall be satisfied, discharged, and released in full. The ASARCO Protected Parties shall not be responsible for any obligations of the Debtors except those expressly assumed by them in the Parent's Plan, provided, however, that if the Parent and Grupo México do not receive all protections provided for in the Parent's Plan, including, without limitation, those described in this Article and Article 11.9, then the protections in this Article with respect to ASARCO Protected Parties other than Reorganized ASARCO shall not go into effect.

11.2 Discharge Injunction. Except as otherwise expressly provided in the Parent's Plan, the discharge and release set forth in Article 11.1 shall also operate as an injunction permanently prohibiting and enjoining the commencement or continuation of any action or the employment of process with respect to, or any act to collect, recover from, or offset (a) any Claim or Demand discharged and released in Article 11.1 and (b) any cause of action, whether known or unknown, based on the same subject matter as any Claim or Demand discharged and released in Article 11.1. Except as otherwise expressly provided in the Parent's Plan, all Persons and Entities shall be precluded and forever barred from asserting against the ASARCO Protected Parties, their successors or assigns, or their assets, properties, or interests in property any other or further Claims or Demands, or any other right to legal or equitable relief regardless of whether such right can be reduced to a right to payment, based upon any act or omission, transaction, or other activity of any kind or nature that occurred prior to the Effective

Date, whether or not the facts of or legal bases therefor were known or existed prior to the Effective Date, provided, however, that if the Parent and Grupo México do not receive all protections provided for in the Parent's Plan, including, without limitation, those described in this Article and Article 11.9, then the protections in this Article with respect to ASARCO Protected Parties other than Reorganized ASARCO shall not go into effect.

11.3 The Permanent Channeling Injunction and the Asbestos Insurance Company Injunction. In order to supplement the injunctive effect of the Discharge Injunction, and pursuant to the exercise of the legal and equitable jurisdiction and power set forth in section 524(g) of the Bankruptcy Code, the Confirmation Order shall provide for issuance of the following injunctions to take effect as of the Effective Date:

(a) *Permanent Channeling Injunction.*

(1) Terms. In order to induce, preserve and promote the settlements contemplated by and provided for in the Parent's Plan, and pursuant to section 524(g) of the Bankruptcy Code, all Asbestos Personal Injury Claims and Demands shall be channeled to the Section 524(g) Trust for a remedy under the Section 524(g) Trust Distribution Procedures, and all holders of Asbestos Personal Injury Claims and Demands and all Entities which have held or asserted, which hold or assert, or which may in the future hold or assert, any Asbestos Personal Injury Claim or Demand shall be permanently and forever stayed, restrained, and enjoined from taking any action against any ASARCO Protected Party (or any property or interest in property of an ASARCO Protected Party) with respect to such Asbestos Personal Injury Claim or Demand, including, without limitation, for the purpose of directly or indirectly obtaining a judgment, collecting, recovering, or receiving payments, satisfaction, or recovery with respect to such Asbestos Personal Injury Claim or Demand, including, without limitation:

(A) commencing, conducting, or continuing in any manner, directly or indirectly, any suit, action, or other proceeding of any kind (including a judicial, arbitration, administrative, or other proceeding) in any forum with respect to any Asbestos Personal Injury Claim or Demand against any of the ASARCO Protected Parties, or against the property or interests in property of any ASARCO Protected Parties;

(B) enforcing, levying, attaching (including by prejudgment attachment), collecting, or otherwise recovering, by any manner or means, whether directly or indirectly, any judgment, award, decree, or other order against any of the ASARCO Protected Parties, or against the property or interests in property of any ASARCO Protected Parties, with respect to any Asbestos Personal Injury Claim or Demand;

(C) creating, perfecting, or otherwise enforcing in any manner, directly or indirectly, any Lien of any kind against any ASARCO Protected Parties, or the property or interests in property of any ASARCO Protected Parties, with respect to any Asbestos Personal Injury Claim or Demand;

(D) except as otherwise specifically provided in the Parent's Plan, asserting or accomplishing any setoff, right of subrogation, indemnity, contribution, reimbursement, or recoupment of any kind and in any manner, directly or indirectly against any obligation due any ASARCO Protected Parties, or against the property or interests in property of any ASARCO Protected Parties, with respect to any Asbestos Personal Injury Claim or Demand; and

(E) proceeding or taking any action, in any manner, in any place whatsoever, that does not conform to, or comply with, the provisions of the Parent's Plan, the Parent's Plan Documents or the Section 524(g) Trust Documents relating to any Asbestos Personal Injury Claim or Demand.

(2) Reservations. Notwithstanding anything to the contrary above or in the Parent's Plan, neither this Permanent Channeling Injunction nor the Parent's Plan shall enjoin, alter, diminish, or impair:

(A) the rights of Entities to the treatment accorded them under Articles II and IV of the Parent's Plan, as applicable, including the rights of Entities with Asbestos Personal Injury Claims or Demands to assert such Asbestos Personal Injury Claims or Demands in accordance with the Section 524(g) Trust Distribution Procedures;

(B) the rights of Entities to assert any Claim, Demand, debt, obligation, or liability for payment of Section 524(g) Trust Expenses against the Section 524(g) Trust;

(C) the enforceability of any of the Asbestos Insurance Policies or any Asbestos Insurance Settlement Agreement;

(D) the rights of the Section 524(g) Trust, if any, with regard to any Asbestos Insurance Company that is not a Settling Asbestos Insurance Company (with the Section 524(g) Trust being, and deemed to be, for all purposes of insurance and indemnity, the successor to the Debtors in respect of all Asbestos Personal Injury Claims and Demands and other recoveries from an Asbestos Insurance Company, in its capacity as such); or

(E) the rights of Entities to assert any Claim, Demand, debt, obligation, or liability for payment against an Asbestos Insurance Company that is not an ASARCO Protected Party unless otherwise enjoined by order of the Bankruptcy Court or the District Court or estopped by a provision of the Parent's Plan.

(b) *Asbestos Insurance Company Injunction.*

(1) Terms. In order to preserve and promote the property of the Estate, as well as the settlements contemplated by and provided for in the Parent's Plan, and to supplement where necessary the injunctive effect of the discharge and releases provided for in the Parent's Plan, pursuant to sections 524(g) and 105(a) of the

Bankruptcy Code, all Entities which have held or asserted, which hold or assert, or which may in the future hold or assert any Claim, Demand or cause of action (including, without limitation, any Asbestos Personal Injury Claim or Demand or any Claim for or respecting any Section 524(g) Trust Expense) against a Settling Asbestos Insurance Company based upon, relating to, arising out of, attributable to, or in any way connected with any Asbestos Personal Injury Claim or Demand, Asbestos In-Place Insurance Coverage or an Asbestos Insurance Policy, shall be permanently and forever stayed, restrained, and enjoined from taking any action against such Settling Asbestos Insurance Company for the purpose of directly or indirectly collecting, recovering, or receiving payments, satisfaction, or recovery with respect to any such Claim, Demand or cause of action, including, without limitation:

(A) commencing, conducting, or continuing, in any manner, directly or indirectly, any suit, action, or other proceeding of any kind (including a judicial, arbitration, administrative, or other proceeding) in any forum with respect to any such Claim, Demand or cause of action against any Settling Asbestos Insurance Company, or against the property or interests in property of any Settling Asbestos Insurance Company;

(B) enforcing, levying, attaching, collecting, or otherwise recovering, by any manner or means, whether directly or indirectly, any judgment, award, decree, or order against any Settling Asbestos Insurance Company or against the property or interests in property of any Settling Asbestos Insurance Company with respect to any such Claim, Demand or cause of action;

(C) creating, perfecting, or otherwise enforcing, in any manner, directly or indirectly, any Lien of any kind against any Settling Asbestos Insurance Company or the property or interests in property of any Settling Asbestos Insurance Company with respect to any such Claim, Demand or cause of action;

(D) except as otherwise specifically provided in the Parent's Plan, asserting or accomplishing any setoff, right of subrogation, indemnity, contribution, reimbursement, or recoupment of any kind and in any manner, directly or indirectly, against any obligation due any Settling Asbestos Insurance Company or against the property or interests in property of any Settling Asbestos Insurance Company with respect to any such Claim, Demand or cause of action; and

(E) taking any act, in any manner, in any place whatsoever, that does not conform to, or comply with, the provisions of the Parent's Plan Documents relating to such Claim, Demand or cause of action.

(2) Reservations. Notwithstanding anything to the contrary above or in the Parent's Plan, neither this Asbestos Insurance Company Injunction nor the Parent's Plan shall enjoin, alter, diminish or impair:

(A) the rights of Entities to the treatment accorded them under Articles II and IV of the Parent's Plan, as applicable, including the rights of Entities with Asbestos Personal Injury Claims or Demands to assert Asbestos Personal Injury Claims or Demands against the Section 524(g) Trust in accordance with the Section 524(g) Trust Distribution Procedures;

(B) the rights of Entities to assert any Claim, Demand, debt, obligation, or liability for payment of Section 524(g) Trust Expenses against the Section 524(g) Trust;

(C) the enforceability of any of the Asbestos Insurance Policies or any Asbestos Insurance Settlement Agreement;

(D) the rights of the Section 524(g) Trust, if any, with regard to any Asbestos Insurance Company that is not a Settling Asbestos Insurance Company (with the Section 524(g) Trust being, and deemed to be, for all purposes of insurance and indemnity, the successor to the Debtors in respect of all Asbestos Personal Injury Claims, Demands, and other recoveries from an Asbestos Insurance Company, in its capacity as such);

(E) the rights of Entities to assert any Claim, Demand, debt, obligation or liability for payment against an Asbestos Insurance Company that is not an ASARCO Protected Party unless otherwise enjoined by order of the Bankruptcy Court or the District Court or estopped by a provision of the Parent's Plan; or

(F) the rights of the Section 524(g) Trust or the Section 524(g) Trustees to seek relief from the Asbestos Insurance Company Injunction should a Settling Asbestos Insurance Company fail to fulfill all obligations under an Asbestos Insurance Settlement Agreement.

11.4 Limitation of Injunctions. Notwithstanding any other provision of the Parent's Plan to the contrary, the releases set forth in Article 11.1 and the Injunctions set forth in Articles 11.2 and 11.3, respectively, shall not serve to satisfy, discharge, release, or enjoin Claims by any Entity against the Section 524(g) Trust for payment of (a) Asbestos Personal Injury Claims and Demands in accordance with the Section 524(g) Trust Distribution Procedures, or (b) Section 524(g) Trust Expenses, and such releases and/or Injunctions shall not enjoin Reorganized ASARCO or the Section 524(g) Trust from enforcing any Asbestos Insurance Policy or any Asbestos Insurance Settlement Agreement.

11.5 Exoneration and Reliance. To the extent allowable by law, none of the ASARCO Protected Parties shall be liable (other than for criminal liability, willful misconduct or bad faith, or ultra vires acts) to any holder of a Claim, Demand, or Interest or any other Entity with respect to any action, omission, forbearance from action, decision, or exercise of discretion taken at any time through the Effective Date in connection with (a) the management or operation of any of the Debtors or the discharge of its duties under the Bankruptcy Code, (b) the solicitation, negotiation, or implementation of any of the transactions provided for, or

contemplated in, the Parent's Plan or other Parent's Plan Documents, (c) any action taken in connection with either the enforcement of the rights of the Debtors against any Entities or the defense of Claims or Demands asserted against the Debtors with regard to the Reorganization Cases, (d) any action taken in the negotiation, formulation, preparation, development, proposal, solicitation, disclosure, Confirmation, or implementation of the Parent's Plan, other Parent's Plan Documents, or related agreements, instruments or other documents, (e) the administration of the Parent's Plan or the assets and property to be distributed pursuant to the Parent's Plan or (f) the administration of any of the Debtors' Estates. The ASARCO Protected Parties shall be deemed to have participated in each of the Reorganization Cases in good faith and in compliance with all applicable provisions of the Bankruptcy Code. Nothing in this Article shall prevent the enforcement of the terms of the Parent's Plan.

11.6 Post-524(g) Indemnity. The Post-524(g) Indemnity (as such term is defined in the Asbestos Insurance Settlement Agreement) shall go into effect on the Effective Date. Reorganized ASARCO shall indemnify and hold harmless, but not defend, the Settled Asbestos Insurance Companies, as provided in paragraph III.C of the Asbestos Insurance Settlement Agreement.

11.7 Additional Releases. Other than the SCC Litigation Trust Claims (which are not released except as specifically set forth in compliance with Article V hereunder), to the extent allowable by law, on, and as of, the Effective Date and for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the ASARCO Protected Parties (acting in any capacity whatsoever) shall be forever released and discharged from any and all Claims, Demands, obligations, actions, suits, rights, debts, accounts, causes of action, remedies, avoidance actions, agreements, promises, damages, judgments, demands, defenses, or claims in respect of equitable subordination, and liabilities through the Effective Date (including all Claims and Demands based on or arising out of facts or circumstances that existed as of or prior to the Parent's Plan in any of the Reorganization Cases, including Claims and Demands based on negligence or strict liability, and further including any derivative claims asserted on behalf of any of the Debtors, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity or otherwise, that any of the Debtors, their respective Estates, or Reorganized ASARCO would have been legally entitled to assert in its own right, whether individually or collectively) which any of the Debtors, their respective Estates, Reorganized ASARCO, Claimants, holders of Demands or other Persons receiving or who are entitled to receive distributions under the Parent's Plan may have against any of them in any way related to the Reorganization Cases or any of the Debtors (or their respective predecessors or Affiliates); provided, however, the releases provided for in this paragraph shall not extend to any claims by any governmental agency with respect to criminal liability, willful misconduct or bad faith, or ultra vires acts; and provided further, that if the Parent and Grupo México do not receive all protections provided for in the Parent's Plan, including, without limitation, those described in this Article and Articles 11.1 and 11.9, then the protections in this Article with respect to ASARCO Protected Parties other than the Debtors and Reorganized ASARCO shall not go into effect.

11.8 Exculpation. Other than the SCC Litigation Trust Claims (which are not released except as specifically set forth in compliance with Article V hereunder), to the extent allowable by law, except in the case of a judicial finding by a Final Order of willful misconduct

or bad faith, or any criminal liability or liability for ultra vires acts asserted by any Governmental Unit, no ASARCO Protected Party (acting in any capacity whatsoever) shall be liable to any Person or Entity for any action, failure or omission to act or other matter related to the Debtors or any of the Reorganization Cases, including those activities described in Article 11.5 of the Parent's Plan, through and including the Effective Date. All parties are permanently enjoined from initiating a suit against any ASARCO Protected Party, except in the case of a judicial finding by a Final Order of actions for willful misconduct or bad faith, or any criminal liability or liability for ultra vires acts asserted by any Governmental Unit. Any such action by a non-Governmental Unit shall be brought in the Bankruptcy Court within 90 days after the Effective Date; provided, however, that if the Parent and Grupo México do not receive all protections provided for in the Parent's Plan, including, without limitation, those described in Article 11.8, then the protections in Article 11.8 with respect to ASARCO Protected Parties other than the Debtors and Reorganized ASARCO will not go into effect. Nothing in Article 11.8 will prevent the enforcement of the terms of the Parent's Plan.

11.9 Consensual Releases by Holders of Claims, Demands, and Interests.

Other than the SCC Litigation Trust Claims (which are not released except as specifically set forth in compliance with Article V hereunder), to the fullest extent allowable by law, on the Effective Date, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, holders of Claims, ~~Demands,~~ and Interests ~~receiving distributions under~~ voting to accept the Parent's Plan and holders of Demands shall be deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged each of the ~~Debtors, Reorganized ASARCO, the ASARCO Protected Parties, the Parent, and Grupo México~~ from any and all Claims, Demands, Interests, obligations, rights, suits, damages, causes of action, remedies and liabilities whatsoever, ~~including relating to the Debtors, the Debtors' property, events giving rise to the Debtors' Reorganization Cases, the Debtors' Reorganization Cases, the Parent's Plan and any plans of reorganization proposed by the Parent, including, without limitation,~~ Claims and Demands based on breach of contract, negligence, or strict liability, and including, without limitation, any derivative claims asserted on behalf of any of the Debtors, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity or otherwise, that such holder of a Claim, Demand, or Interest would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, (1) any of the Debtors, (2) any of the Reorganization Cases, (3) the subject matter of, or the transactions or events giving rise to, any Claim, Demand, or Interest, (4) the business or contractual arrangements between any of the Debtors and any ASARCO Protected Party, (5) the restructuring of Claims, Demands, and Interests prior to or in the Reorganization Cases, (6) the negotiation, formulation, or preparation of the Parent's Plan, the Parent's Plan Documents or related agreements, instruments or other documents, or (7) any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date, other than Claims, Demands, or liabilities arising out of or relating to any action or omission of an ASARCO Protected Party that constitutes a failure to perform the duty to act in good faith, with the care of an ordinarily prudent person and in a manner the ASARCO Protected Party reasonably believed to be in the best interests of the Debtors (to the extent such duty is imposed by applicable non-bankruptcy law) where such failure to perform constitutes willful misconduct or gross negligence, ~~provided, however~~ provided that the above described releases shall apply to all holders of Claims and Interests irrespective of how such parties vote (or whether such parties vote) in connection with the Plan, to the extent that such

release relates to any of the above described conduct by any ASARCO Protected Party that has been the subject of a release which has been approved by the Bankruptcy Court; provided, further, that if the Parent and Grupo México do not receive all protections provided for in the Parent's Plan, including, without limitation, those described in this Article and Article 1.1, then the protections in this Article with respect to ASARCO Protected Parties other than the Debtors and Reorganized ASARCO shall not go into effect.

11.10 Release of Fraudulent Transfer Claims Against Settling Asbestos Insurance Companies. All fraudulent transfer claims against any Settling Asbestos Insurance Company arising under sections 544(b), 548, 549, or 550 of the Bankruptcy Code or otherwise with respect to the Claims, rights or interests released under the Asbestos Insurance Settlement Agreement shall be released, and the Section 524(g) Trust shall have no authority to bring any fraudulent transfer actions arising under any applicable state or other non-bankruptcy law against any Settling Asbestos Insurance Company with respect to the Claims, rights and interests released under the Asbestos Insurance Settlement Agreement. This Article does not apply to any of the existing Avoidance Actions against certain Asbestos Insurance Companies that entered into prepetition settlement agreements.

11.11 No Release With Respect to Pension Plans and Other Employee Benefit Plans. Notwithstanding any provision in this Article, or otherwise in the Parent's Plan, or in the Confirmation Order, no claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action or liabilities whatsoever against any entity with respect to statutory liabilities arising under ERISA concerning the Pension Plans or fiduciary liabilities arising under ERISA concerning other Employee Benefit Plans shall be released, exculpated, discharged, enjoined, or otherwise affected by the Parent's Plan, nor shall the entry of the Confirmation Order constitute the approval of any release, exculpation, discharge, injunction, or other impairment of any claims obligations, suits, judgments, damages, demands, debts, rights, cause of action or liabilities whatsoever against any entity with respect to statutory liabilities arising under ERISA concerning the Pension Plans or fiduciary liabilities arising under ERISA concerning other Employee Benefit Plans.

ARTICLE XII

MATTERS INCIDENT TO PARENT'S PLAN CONFIRMATION

12.1 Term of Certain Injunctions and Automatic Stay.

(a) All of the injunctions and/or stays provided for in or in connection with these Reorganization Cases, whether pursuant to section 105, section 362, section 524, or any other provision of the Bankruptcy Code, other applicable law, or court order, in effect immediately prior to Confirmation shall remain in full force and effect until the Injunctions become effective and thereafter if so provided by the Parent's Plan, the Confirmation Order, or by their own terms. In addition, on and after the Confirmation Date, the Parent may seek such further orders as it may deem necessary to preserve the status quo during the time between the Confirmation Date and the Effective Date.

(b) Each of the Injunctions shall become effective on the Effective Date and shall continue in effect at all times thereafter, and may not be vacated, amended or modified after the Effective Date, except as otherwise provided herein. Notwithstanding anything to the contrary contained in the Parent's Plan, all actions in the nature of those to be enjoined by the Injunctions shall be enjoined during the period between the Confirmation Date and the Effective Date.

12.2 No Liability for Tax Claims. Unless a taxing authority has asserted a Claim against any of the Debtors prior to the applicable Bar Date, no Claim of such taxing authority shall be Allowed against such Debtor or Reorganized ASARCO for taxes, penalties, interest, additions to tax, or other charges arising out of the failure, if any, of the applicable Debtor or Reorganized ASARCO, or any other Entity to have paid taxes or to have filed any tax return (including, without limitation, any income tax return or franchise tax return) in or for any taxable period ending before the Petition Date or arising out of an audit of any return for a taxable period ending before the Petition Date.

12.3 No Successor Liability.

(a) Except as otherwise expressly provided in the Parent's Plan, none of the ASARCO Protected Parties shall be deemed a successor or successor-in-interest to any of the Debtors or to any Entity for which the Debtors may be held legally responsible, by reason of any theory of law or equity, and none shall be responsible for any successor or transferee liability of any kind or character, except to the extent that the Section 524(g) Trust, Reorganized ASARCO, or both, is or are the successor or successor in interest to ASARCO solely with regard to the Asbestos Insurance Policies, the Asbestos Insurance Settlement Agreements, the Asbestos In-Place Insurance Coverage, the Asbestos Insurance Actions, or the Asbestos Insurance Recoveries.

(b) Except as otherwise expressly provided in the Parent's Plan, none of the ASARCO Protected Parties shall have any obligations to perform, pay, indemnify creditors for, or otherwise have any responsibilities for any liabilities or obligations of the Debtors or Reorganized ASARCO, whether arising before, on, or after the Confirmation Date.

12.4 Insurance Neutrality.

(a) Confirmation of the Parent's Plan shall not be binding upon, and shall not have any res judicata or collateral estoppel effect on or against, any Asbestos Insurance Company that is subject to insurance neutrality under the Bankruptcy Court's May 29, 2008 Order Extending Scope of Insurance Neutrality Addendum Attached to Order Approving Compromise and Settlement Regarding Resolution of Derivative Asbestos Claims (the "Insurance Neutrality Order") regarding its insurance coverage obligations in any pending or subsequent insurance coverage litigation, arbitration, ADR-type proceeding or other dispute concerning the existence and/or scope of its rights and/or obligations regarding asbestos-related liabilities, if any, and shall not have any impact, effect or consequence in any such other context.

(b) Neither the Debtors, the Asbestos Subsidiary Debtors, the Asbestos Claimants' Committee, the ASARCO Committee, the FCR, an Asbestos Insurance Company nor

the Section 524(g) Trust may argue or assert, in any court proceeding, arbitration, ADR-type proceeding or other dispute involving an Asbestos Insurance Company that is subject to insurance neutrality under the Bankruptcy Court's Insurance Neutrality Order and concerning issues related to insurance coverage, that any findings or conclusions concerning 11 U.S.C.

§ 524(g) and/or constituting any estimation of asbestos-related liabilities contained in or referenced in any decision, order, finding, conclusion or judgment of the Bankruptcy Court relating to Confirmation of the Parent's Plan: (1) constitutes a "judgment," "adjudication," "final order," "settlement," or "finding of liability" related to, based on or relying on the principles enunciated in *UNR Indus., Inc. v. Continental Cas. Co.*, 942 F.2d 1101 (7th Cir. 1991) and/or *Fuller-Austin Insulation Co. v. Fireman's Fund Ins. Co.*, 2002 WL 31005090 (Cal. Super. Ct. Aug. 6, 2002); and (2) is binding upon such an Asbestos Insurance Company for any purpose concerning insurance coverage under any policies issued to any of the Debtors and transferred to the Section 524(g) Trustees in accordance with the provisions hereof. Nothing herein shall limit the ability of the Debtors, the Asbestos Subsidiary Debtors, the Asbestos Claimants' Committee, the ASARCO Committee, the FCR, an Asbestos Insurance Company or the Section 524(g) Trust to offer the Parent's Plan, any of the Parent's Plan Documents, the Confirmation Order or any part of the confirmation process (including, without limitation, any evidentiary hearings or any findings or conclusions therein) in any court, including any court resolving any insurance coverage litigation, as evidence that the Debtors, Reorganized ASARCO, or the Section 524(g) Trust are so bound.

(c) Nothing in the Parent's Plan shall operate to expand the rights of the Debtors, any of the Asbestos Subsidiary Debtors, the Asbestos Claimants' Committee, the ASARCO Committee, the FCR, an Asbestos Insurance Company or the Section 524(g) Trust, or diminish any of their respective duties and obligations as to those rights, duties and obligations that exist under any policies issued by an Asbestos Insurance Company that is subject to insurance neutrality under the Bankruptcy Court's Insurance Neutrality Order as of the Petition Date except as set out in Article 12.4(f) below. Moreover, nothing in the Confirmation process shall in any way operate to, or have the effect of, impairing, prejudicing or expanding such Asbestos Insurance Company's legal, equitable, or contractual rights in any respect, or of increasing, accelerating, creating, or triggering such Asbestos Insurance Company's insurance coverage obligations, if any, in comparison to what those respective rights or obligations would have been if the Parent's Plan had not been confirmed except as set out in Article 12.4(f) below; and all of such Asbestos Insurance Company's rights are expressly reserved and preserved. Such Asbestos Insurance Company's rights shall be determined pursuant to its insurance policies with the applicable Debtors, and under applicable law. Such Asbestos Insurance Company's rights to conduct discovery, either written or oral, in any future proceeding in any insurance coverage litigation relating to the Debtors' asbestos-related liabilities for or such Asbestos Insurance Company's obligations to indemnify the applicable Debtors on account of any or all of such asbestos-related liabilities, if any, shall not be affected, restricted, expanded, altered or modified by anything in or part of the Parent's Plan or the Confirmation process. An Asbestos Insurance Company shall have no such discovery rights in any of the Reorganization Cases; provided, however, that such Asbestos Insurance Company shall have rights to conduct discovery in the Reorganization Cases on any issue that does not relate to an Asbestos Insurance Company's alleged obligations, if any, to indemnify the applicable Debtors on account of any asbestos-related liabilities. Without limiting the foregoing, except as set out in Article 12.4(f) below, no proceedings undertaken pursuant to or otherwise as part of the Confirmation process

(including without limitation, any evidentiary hearings or any findings or conclusions constituting or relating to the determination of any Alter Ego Theories, contained in or referenced in any decision, order, finding, conclusion or judgment of the Bankruptcy Court) shall constitute a trial or hearing on the merits, or an adjudication, Final Order, settlement, or finding of liability binding on such Asbestos Insurance Company for any purpose concerning insurance coverage for asbestos-related liability, or be used as evidence or offered into evidence in any proceeding to prove that such Asbestos Insurance Company participated in and/or consented to the procedures undertaken pursuant to the Parent's Plan. Any ruling by the Bankruptcy Court on any issue upon which such Asbestos Insurance Company does not involve itself and the Confirmation Order shall not be binding on such Asbestos Insurance Company in any insurance coverage litigation. While the court and the finder of fact in any insurance coverage litigation may be advised of any of the proceedings and Confirmation Order in the Bankruptcy Court and while the Debtors, the Asbestos Subsidiary Debtors, the Asbestos Claimants' Committee, the ASARCO Committee, the FCR, an Asbestos Insurance Company or the Section 524(g) Trust may offer the Parent's Plan, any of the Parent's Plan Documents, any of the Confirmation proceedings, or the Confirmation Order as evidence of the reasonableness of a settlement between or among the Debtors, the ASARCO Committee, and the FCR, the court and the finder of fact in any insurance coverage litigation shall be informed or instructed that such proceedings and the Confirmation Order in the Bankruptcy Court are not binding on such Asbestos Insurance Company and that it is up to the court or the finder of fact in any insurance coverage litigation to make its own independent determination as to the reasonableness of that settlement as to such Asbestos Insurance Company.

(d) With regard to any Asbestos Insurance Company that is subject to insurance neutrality under the Bankruptcy Court's Insurance Neutrality Order, nothing in or part of the Parent's Plan and the Confirmation process shall be deemed to be an "adversarial process" as that concept was enunciated in *Gandy v. State Farm Fire & Cas. Co.*, 925 S.W.2d 696 (Tex. 1996). To the extent of any insurance coverage obligation under any policies issued by such Asbestos Insurance Company, all such Asbestos Insurance Companies reserve all of their rights, if any, to adjudicate in a fully "adversarial" trial or hearing on the merits any or all of the Debtors' asbestos-related liabilities, including, without limitation, any liability with respect to any individual asbestos claim; and any other party reserves all of its rights, if any, to oppose such Asbestos Insurance Company's assertion of any such right.

(e) That an Asbestos Insurance Company that is subject to insurance neutrality under the Bankruptcy Court's Insurance Neutrality Order does not participate in the negotiation, nor the Confirmation, of the Parent's Plan shall not be held against or in favor of any person or entity in any pending or subsequent insurance coverage litigation, arbitration, ADR-type proceeding, or other dispute concerning the existence and/or scope of such Asbestos Insurance Company's rights and/or obligations regarding asbestos-related liabilities, if any, except to rebut any argument affirmatively raised by such Asbestos Insurance Company that such Asbestos Insurance Company's absence from the reorganization proceedings reflects collusion against and/or a lack of cooperation with such Asbestos Insurance Company. Notwithstanding the foregoing, such Asbestos Insurance Company may assert in any such pending or subsequent insurance coverage litigation, arbitration, ADR-type proceeding, or other dispute concerning the existence and/or scope of such Asbestos Insurance Company's rights and/or obligations regarding asbestos-related liabilities, if any, any coverage defenses based on

collusion against and/or lack of cooperation with such Asbestos Insurance Company on any basis other than such Asbestos Insurance Company's absence from the Reorganization Cases.

(f) Any of the Debtors, the Asbestos Subsidiary Debtors, the Asbestos Claimants' Committee, the ASARCO Committee, the FCR, an Asbestos Insurance Company, or the Section 524(g) Trust may offer in any court, including any court resolving any insurance coverage litigation, any relevant portion of the Parent's Plan and any of the Parent's Plan Documents and/or the Confirmation Order for any purpose, including, without limitation, that the Parent's Plan was a reasonable settlement; provided, however, such offer shall be subject to the rights, defenses (including affirmative defenses) and objections, if any, of the Debtors, the Asbestos Subsidiary Debtors, the Asbestos Claimants' Committee, the ASARCO Committee, the FCR, an Asbestos Insurance Company and the Section 524(g) Trust.

ARTICLE XIII

PROVISIONS GOVERNING DISTRIBUTIONS

13.1 Plan Distributions. All distributions or payments required or permitted to be made on the Effective Date under the Parent's Plan, other than to holders of Asbestos Personal Injury Claims and Demands and/or Professional Persons, shall be made by the Parent's Plan Administrator on the Effective Date and thereafter by the Parent's Plan Administrator at the time or times and in the manner provided herein, unless otherwise ordered by the Bankruptcy Court. Distributions to holders of Asbestos Personal Injury Claims and Demands shall be made by the Section 524(g) Trust in accordance with the Section 524(g) Trust Documents. Distributions to Professional Persons shall be made by the Parent's Plan Administrator on the Effective Date and thereafter by the Parent's Plan Administrator pursuant to order of the Bankruptcy Court. Distributions to be made on the Effective Date shall be deemed actually made on the Effective Date if made either (a) on the Effective Date or (b) as soon as reasonably practicable thereafter.

13.2 Delivery of Distributions. Except as otherwise expressly provided in the Parent's Plan, distributions to holders of Allowed Claims shall be made at the address of the holder of such Claim as indicated in the claims register maintained by the Claims Agent. Nonetheless, if such holder holds such Claims through a Nominee, distributions with respect to such Claims shall be made to such Nominee, and such Nominee shall, in turn, make appropriate distributions and book entries to reflect such distributions to such holders.

All Cash distributions on account of Allowed Bondholder Claims shall be made to the appropriate Indenture Trustee and further distributions on account of such Claims by the Indenture Trustee to the record holders of Bondholder Claims shall be accomplished in accordance with the Indentures and the policies and procedures of the Depository Trust Company.

13.3 Distribution Record Date. Reorganized ASARCO and the Parent's Plan Administrator shall have no obligation to recognize the transfer of, or the sale of any participation in, any Allowed Claim that occurs after the Distribution Record Date and shall be

entitled for all purposes herein to recognize and make distributions only to those holders of Allowed Claims that are holders of such Claims or participants therein, as of the Distribution Record Date. As of the close of business on the Distribution Record Date, each transfer register for the Bonds, as maintained by the applicable Indenture Trustee, shall be closed. Reorganized ASARCO and the Parent's Plan Administrator shall have no obligation, and are not permitted, to recognize the transfer or sale of any Bondholder Claim that occurs after the close of business on the Distribution Record Date and shall be entitled for all purposes herein to recognize and make distributions only to those holders who are holders of such Claims as of the close of business on the Distribution Record Date; provided, however, that with respect to Bondholder Claims, further distributions on account of such Claims by the Indenture Trustees to the record holders of the Bondholder Claims shall not be made as of the Distribution Record Date but rather shall be accomplished in accordance with the respective Indentures and the policies and procedures of DTC.

13.4 Unclaimed Property.

(a) *Distributions by the Section 524(g) Trust.*

Any Cash, assets, or other property to be distributed under the Parent's Plan by the Section 524(g) Trust that remains unclaimed (including by a Claimant's failure to draw upon a check issued to such Claimant) or otherwise is not deliverable to the Claimant entitled thereto one year after the initial distribution is made or attempted shall become vested in, and shall be transferred and delivered to, the Section 524(g) Trust for use in accordance with the terms of the Section 524(g) Trust Documents.

(b) *Distributions by the Parent's Plan Administrator.*

(1) If the distribution to any holder of an Allowed Claim is returned to Reorganized ASARCO or the Parent's Plan Administrator as undeliverable or is otherwise unclaimed (including by a Claimant's failure to draw upon a check issued to such Claimant), no further distributions shall be made to such holder unless the Parent's Plan Administrator is timely notified in writing of the holder's then current address, at which time, all missed distributions shall be made to such holder without interest. The amounts in respect of such undeliverable and/or unclaimed distributions shall be returned to the Parent's Plan Administrator until such distributions are claimed. The Parent's Plan Administrator shall segregate and deposit into an escrow account (the "Undeliverable and Unclaimed Distribution Reserve") all undeliverable and/or unclaimed distributions for the benefit of all such similarly situated Persons until such time as a distribution becomes deliverable or is claimed or such Claimant's right to the distribution is waived pursuant to Article 13.4(b)(2) below. Nothing contained in the Parent's Plan shall require Reorganized ASARCO or the Parent's Plan Administrator to attempt to locate any holder of an Allowed Claim.

(2) Any funds in the Undeliverable and Unclaimed Distribution Reserve that remain unclaimed (including by a Claimant's failure to negotiate a check issued to such Claimant) or otherwise are not deliverable to the Claimant entitled thereto one year after the initial distribution is made or attempted (the "Forfeited Distributions")

shall become vested in, and shall be transferred and delivered to, the Parent's Plan Administrator. In such event, such Claimant shall be deemed to have waived its rights to such payments or distributions under the Parent's Plan pursuant to section 1143 of the Bankruptcy Code, shall have no further Claim in respect of such distribution, and shall not participate in any further distributions under the Parent's Plan with respect to such Claim. The Parent's Plan Administrator shall distribute the Forfeited Distributions to Reorganized ASARCO as a Subsequent Distribution.

13.5 Compliance with Tax Requirements. Reorganized ASARCO, the Parent's Plan Administrator and the Section 524(g) Trust shall comply with all applicable withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authorities, and all distributions hereunder or under any Parent's Plan Document shall be subject to such withholding and reporting requirements, if any. Notwithstanding any other provision of the Parent's Plan, each Person receiving a distribution pursuant to the Parent's Plan, or any other Parent's Plan Document, shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any Governmental Authority, including income and other tax obligations, on account of that distribution.

13.6 Setoffs and Recoupments. Subject to the limitations provided in section 553 of the Bankruptcy Code, Reorganized ASARCO or the Parent's Plan Administrator, as the case may be, may, but shall not be required to, offset against or recoup from the holder of any Allowed Claim on which payments or other distributions are to be made pursuant to the Parent's Plan any Claims of any nature whatsoever the Estate of the applicable Debtor may have against the holder of such Claim, but neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by Reorganized ASARCO or the Parent's Plan Administrator, as the case may be, of any such Claim against such holder or right of setoff or recoupment that the applicable Estate may have against the holder of such Allowed Claim.

13.7 No Distribution Pending Allowance. If a Claim or any portion of a Claim is disputed, no payment or distribution will be made on account of the disputed portion of such Claim (or the entire Claim, if the entire Claim is disputed), unless such Disputed Claim becomes an Allowed Claim. No estate funds will be expended by the Parent's Plan Administrator to support or defend settlements achieved by the Debtors prior to the Effective Date where the order approving such settlement has not become a final order.

13.8 Disputed Claims Reserve.

(a) The Parent's Plan Administrator shall maintain, in accordance with its powers and responsibilities under the Parent's Plan, a Disputed Claims Reserve.

(b) On the Effective Date (or as soon thereafter as is reasonably practicable), Reorganized ASARCO or the Parent's Plan Administrator, as the case may be, shall deposit Cash and/or other forms of consideration in the Disputed Claim Reserve that would have been distributed to the holders of Disputed Claims if such Disputed Claims had been Allowed Claims on the Effective Date. This amount will be determined based on the lesser of (1) the asserted amount of the Disputed Claims in the applicable Proofs of Claim, (2) the amount, if any, estimated by the Bankruptcy Court for purposes of distribution pursuant to section 502(c) of the

Bankruptcy Code, or (3) the amount otherwise agreed to by the applicable Debtor and the holders of such Disputed Claims.

(c) The Parent, Reorganized ASARCO, and/or the Parent's Plan Administrator may seek Bankruptcy Court approval to reduce the size of the Disputed Claims Reserve based upon the amount of the remaining Disputed Claims or other changed circumstances.

(d) In the case of objections to allegedly Secured Claims, any Lien asserted by the holder of such a Claim against assets that revert in or is transferred to Reorganized ASARCO shall remain in place, pending resolution of the objection to the allegedly Secured Claim.

(e) The Parent's Plan Administrator (at such time as determined to be practicable by the Parent's Plan Administrator) shall distribute from the Disputed Claims Reserve to the holder of any Disputed Claim that has become an Allowed Claim, not later than the tenth Business Day after the end of the calendar month in which such Disputed Claim becomes an Allowed Claim, an amount equal to such Claim as if such Claim had been an Allowed Claim on the Effective Date.

(f) If a Disputed Claim is disallowed, in whole or in part, the Parent's Plan Administrator shall (at such time as determined to be practicable by the Parent's Plan Administrator) distribute the Cash reserved in respect of such disallowed Disputed Claim, Pro Rata: first, to holders of Claims in Class 3 (and, pending resolution of Disputed Claims in Class 3, the Disputed Claims Reserve); second, upon Payment in Full of Claims in Class 3, to holders of Claims in Class 6 (and, pending resolution of Disputed Claims in Class 6, the Disputed Claims Reserve); third, upon Payment in Full of Claims in Class 6, to holders of Claims in Class 7 (and, pending resolution of Disputed Claims in Class 7, the Disputed Claims Reserve); and fourth, upon payment in Full of Claims in Class 7, to Reorganized ASARCO; provided that, in no event shall any holder of an Allowed Claim in Class 3, 6, or 7 receive distributions which exceed the Allowed amount of such Claim. To the extent there are any excess funds in Disputed Claims Reserve after all distributions required by the Parent's Plan have been made, the Parent's Plan Administrator shall make a Subsequent Distribution of such funds to Reorganized ASARCO.

(g) The Disputed Claims Reserve is intended to be treated as a "disputed ownership fund" within the meaning of Treasury Regulation section 1.468B-9(b)(1), and hence as a taxable entity for federal income tax purposes, and the Parent's Plan Administrator will be the "administrator" of the Disputed Claims Reserve pursuant to Treasury Regulation section 1.468B-9(b)(2). In general, the Disputed Claims Reserve will be treated in the same manner as a "qualified settlement fund" for federal income tax purposes. The Parent's Plan Administrator will cause all taxes imposed on the Disputed Claims Reserve to be paid using assets of the Disputed Claims Reserve and will comply with all tax reporting and withholding requirements imposed on the Disputed Claims Reserve under applicable tax laws, and in particular the rules applicable to a disputed ownership fund.

13.9 Surrender of Bondholder Certificates; Lost Certificates. With respect to each Allowed Bondholder Claim, each holder of an instrument evidencing such Allowed Bondholder Claim (a “Certificate”) shall surrender such Certificate to the Indenture Trustee or the Parent’s Plan Administrator, as the case may be, and such Certificate shall be cancelled solely with respect to the Debtors and such cancellation shall not alter the obligations or rights of any non-Debtor parties as between or among such persons pursuant to such instruments. No distribution of property hereunder shall be made to such holder unless and until such Certificate is received by the Indenture Trustee or the Parent’s Plan Administrator, as the case may be, or the unavailability of such Certificate is established to the reasonable satisfaction of such Indenture Trustee or the Parent’s Plan Administrator. Any holder who fails to surrender or cause the surrender of such Certificate, or fails to execute and deliver an affidavit of loss and indemnity reasonable satisfactory to the Indenture Trustee or the Parent’s Plan Administrator, as the case may be, prior to the second anniversary of the Effective Date shall be deemed to have forfeited all rights and Claims in respect of such Certificate and shall not participate in any distribution under the Parent’s Plan, and all property in respect of such forfeited distribution shall be subject to distribution to all other holders of Claims under such Indenture who have duly surrendered or caused the surrender of their Certificates or reasonably established the unavailability thereof.

Any holder of an Allowed Bondholder Claim with respect to which the underlying Certificate has been lost, stolen, mutilated or destroyed must, in lieu of surrendering such Certificate, deliver to the Indenture Trustee or the Parent’s Plan Administrator, as the case may be: (i) evidence satisfactory to the Indenture Trustee or the Parent’s Plan Administrator, as the case may be, of the loss, theft, mutilation or destruction; and (ii) such security or indemnity as may be required by the Indenture Trustee or the Parent’s Plan Administrator, as the case may be, to hold it and the Debtors harmless from any damages, liabilities or costs incurred in treating such individual as a holder of such Certificate. Upon compliance with this Article by a holder of an Allowed Bondholder Claim, such holder shall, for all purposes under the Parent’s Plan, be deemed to have surrendered the applicable Certificate.

Any holder of a Certificate that fails to surrender or is deemed not to have surrendered the applicable Certificate within the time prescribed in the second subparagraph of this Article shall be deemed to have had its right to distributions pursuant to the Parent’s Plan on account thereof discharged, and shall be forever barred from asserting any such Claim against any of the Parent, the Debtors, Reorganized ASARCO, the Parent’s Plan Administrator, the Indenture Trustees, or any of the foregoing’s respective property.

Notwithstanding the foregoing, if the record holder of a Bondholder Claim is the Depository Trust Company or its nominee or such other securities depository or custodian thereof, or if a Bondholder Claim is held in book-entry or electronic form pursuant to a global security held by the Depository Trust Company, then the beneficial holder of such an Allowed Bondholder Claim shall be deemed to have surrendered such holder’s security, note, debenture or other evidence of indebtedness upon surrender of such global security by the Depository Trust Company or such other securities depository or custodian thereof.

13.10 Cancellation of Instruments. When all Allowed Bondholder Claims with respect to any Bond Issuance are satisfied by the payment under the Parent’s Plan, then, on the

Effective Date, all promissory notes, instruments, indentures, bonds, agreements, or other documents evidencing, giving rise to, or governing any Claim against any Debtor (including the applicable Indenture and the Bonds) with respect to such Bond Issuance shall be deemed cancelled and shall represent only the right to participate in the distributions hereunder. Notwithstanding the foregoing and anything else contained in the Parent's Plan, the Indentures for each Bond Issuance will continue in effect solely for the purposes of (i) allowing distributions to be made under the Parent's Plan pursuant to the Indentures and the Indenture Trustees to perform such other necessary functions with respect thereto and to have the benefit of all the protections and other provisions of the applicable Indentures in doing so; (ii) permitting an Indenture Trustee to maintain or assert any right or Charging Lien it may have with respect to distributions pursuant to the terms of the Parent's Plan for Indenture Trustee Fee Claims; (iii) permitting the Indenture Trustees to assert, in accordance with the terms of the Parent's Plan and Confirmation Order, any right to indemnification, contribution or other Claim any one of them may have under the applicable Indentures, subject to any and all defenses the Debtors may have under the Parent's Plan and applicable law to any such asserted right or Claims; and (iv) permitting each Indenture Trustee to exercise, in accordance with the terms of the Parent's Plan and Confirmation Order, its rights and obligations relating to the interests of the holders of Bondholder Claims and its relationship with the holders of Bondholder Claims pursuant to the applicable Indenture, including its right to appear and be heard in these chapter 11 cases and any appeals.

ARTICLE XIV

PROCEDURES FOR TREATING DISPUTED CLAIMS

14.1 Objections to Claims. After the Effective Date, Reorganized ASARCO and the Parent's Plan Administrator shall have the exclusive right to file objections to Claims (other than objections to Asbestos Personal Injury Claims and Demands, and objections to Claims that have been Allowed by Final Order) and litigate to judgment, settle, or withdraw such objections to Disputed Claims (including any Claims subject to a pending estimation motion). Without limiting the preceding, Reorganized ASARCO and the Parent's Plan Administrator shall have the right to litigate any Disputed Claim either in the Bankruptcy Court or in any court of competent jurisdiction. After the Effective Date, only the Section 524(g) Trust shall have the authority to file objections to Asbestos Personal Injury Claims and Demands and litigate to judgment, settle, or withdraw such objections, and Asbestos Personal Injury Claims and Demands, whether or not a Proof of Claim is filed, shall be satisfied exclusively in accordance with the Parent's Plan, the Section 524(g) Trust Agreement, and the Section 524(g) Trust Distribution Procedures. For the avoidance of doubt, no objection to Asbestos Personal Injury Claims or Demands shall be filed in the Bankruptcy Court.

14.2 Objection Deadline. Within the later of (a) 90 days after the Confirmation Date or (b) 90 days after a Proof of Claim is filed, objections to Claims (other than Asbestos Personal Injury Claims and Demands, which shall be Allowed or disallowed as provided in the Section 524(g) Trust Distribution Procedures) shall be filed with the Bankruptcy Court;

provided, however, that Reorganized ASARCO and/or the Parent's Plan Administrator may seek to extend such period (or any extended period) for cause.

14.3 Disallowance of Improperly Filed Claims. Any Administrative Claim or other Claim (except for an Asbestos Personal Injury Claim or a Demand) for which the filing of a motion for allowance is required shall be disallowed if such filing is not timely and properly made, subject to the right of the Claimant to seek permission under applicable law to file a late claim. Any Administrative Claim timely filed on the Proof of Administrative Claim (found in Exhibit B to Docket #8549) pursuant to Docket #8549 shall not require a motion for allowance.

ARTICLE XV

MISCELLANEOUS

15.1 General Retention of Jurisdiction. Until the Reorganization Cases are closed, the Bankruptcy Court (and, with respect to the Permanent Channeling Injunction and the Asbestos Insurance Company Injunction, the District Court) shall retain the fullest and most extensive jurisdiction permissible, including, without limitation, that necessary (a) to ensure that the purposes and intent of the Parent's Plan are carried out, (b) to enforce and interpret the terms and conditions of the Parent's Plan Documents, and (c) to enter such orders or judgments, including, without limitation, injunctions necessary to enforce the rights, title, and powers of the Debtors, Reorganized ASARCO, a Settling Asbestos Insurance Company, the Parent and/or other ASARCO Protected Party. Except as otherwise provided in the Parent's Plan, the Bankruptcy Court shall retain jurisdiction to hear and determine all Claims against and Interests in the Debtors and to adjudicate and enforce all other causes of action that may exist on behalf of the Debtors. Nothing contained herein shall prevent Reorganized ASARCO, the Parent's Plan Administrator, the Parent, the Section 524(g) Trustees, the Litigation Trustees, or the Environmental Custodial Trustee (as appropriate) from taking such action as may be necessary in the enforcement of any cause of action that such Entity has or may have and that may not have been enforced or prosecuted by the applicable Debtor, which cause of action shall survive entry of the Confirmation Order and occurrence of the Effective Date and shall not be affected thereby except as specifically provided herein.

15.2 Jurisdiction Over the Section 524(g) Trust. The Section 524(g) Trust shall be subject to the continuing jurisdiction of the Bankruptcy Court in accordance with the requirements of section 468B of the Internal Revenue Code and the regulations issued pursuant thereto.

15.3 Specific Purposes. Without limiting the effect of Articles 15.1 and 15.2, the Bankruptcy Court shall retain jurisdiction after Confirmation to:

(a) modify the Parent's Plan after entry of the Confirmation Order, pursuant to the provisions of the Parent's Plan, the Bankruptcy Code, and the Bankruptcy Rules;

(b) correct any defect, cure any omission, reconcile any inconsistency, or make any other necessary changes or modifications in or to the Parent's Plan, the Parent's Plan

Documents, or the Confirmation Order as may be necessary to carry out the purposes and intent of the Parent's Plan;

(c) hear and determine any cause of action, and to enter and implement such orders as may be necessary or appropriate, to execute, interpret, implement, consummate, or enforce the Parent's Plan, the Parent's Plan Documents and the transactions contemplated thereunder;

(d) hear and determine disputes arising in connection with the execution, interpretation, implementation, consummation, or enforcement of the Parent's Plan, including, without limitation, the Parent's Plan Documents, and to enforce, including by specific performance, the provisions of the Parent's Plan and the Parent's Plan Documents;

(e) hear and determine disputes arising in connection with the execution, interpretation, implementation, consummation, or enforcement of the settlement agreements, asset purchase agreements or other agreements entered into by any of the Debtors during the Reorganization Cases (the "Other Agreements"), or to enforce, including by specific performance, the provisions of the Other Agreements;

(f) enter and implement orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with the consummation or implementation of the Parent's Plan, including, without limitation, to issue, administer, and enforce injunctions, releases, assignments, transfers of property or property rights, or other obligations contained in the Parent's Plan and the Confirmation Order;

(g) assure the performance by Reorganized ASARCO, the Parent's Plan Administrator and the Trustees of their respective obligations to make distributions under the Parent's Plan and other Parent's Plan Documents;

(h) enter such orders or judgments, including injunctions, as necessary to enforce the title, rights, and powers of any of the Debtors, Reorganized ASARCO, the Parent, the Parent's Plan Administrator or the Trusts;

(i) hear and determine any and all motions, applications or adversary proceedings brought by or against the Trusts related to (1) enforcement or interpretation of the Trust Documents and (2) amendment, modification, alteration or repeal of any provision of the Trust Documents, if such hearing and determination by the Bankruptcy Court is required pursuant to the Parent's Plan;

(j) hear and determine any and all motions, applications or adversary proceedings brought by Reorganized ASARCO against Sterlite and Sterlite's affiliates;

(k) hear and determine any and all adversary proceedings, applications, and contested matters, including any remands after appeal;

(l) ensure that distributions to holders of Allowed Claims and Demands are accomplished as provided herein;

(m) alter the size of the Disputed Claims Reserve based upon the amount of the remaining Disputed Claims or other changed circumstances;

(n) hear and determine any timely objections to or motions or applications concerning Claims or the allowance, classification, priority, compromise, setoff, estimation, or payment of any Claim, to the fullest extent permitted by the provisions of section 157 of title 28 of the United States Code;

(o) enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified, reversed, or vacated;

(p) hear and determine any motions, contested matters or adversary proceedings involving taxes, tax refunds, tax attributes, tax benefits, and similar or related matters with respect to any of the Debtors, Reorganized ASARCO, the Parent's Plan Administrator and/or the Trusts arising on or prior to the Effective Date, arising on account of transactions contemplated by the Parent's Plan Documents, or relating to the period of administration of the Reorganization Cases;

(q) hear and determine all applications for compensation of Professional Persons and reimbursement of expenses under sections 330, 331, or 503(b) of the Bankruptcy Code;

(r) hear and determine any causes of action relating to any of the Debtors, Reorganized ASARCO or the Trusts to the fullest extent permitted by section 157 of title 28 of the United States Code;

(s) hear and determine any cause of action in any way related to the Parent's Plan Documents or the transactions contemplated thereby, against the ASARCO Protected Parties;

(t) recover all assets of each of the Debtors and property of their Estates, wherever located, including actions under chapter 5 of the Bankruptcy Code;

(u) hear and determine any and all motions pending as of the Confirmation Date for the rejection, assumption, or assignment of executory contracts or unexpired leases and the allowance of any Claim resulting therefrom;

(v) hear and determine such other matters and for such other purposes as may be provided in the Confirmation Order;

(w) consider and act on the compromise and settlement of any Claim against, or Interest in, any of the Debtors or their respective Estates including, without limitation, any disputes relating to any Administrative Claims, any Bar Date, or Bar Date Order;

(x) hear and determine all questions and disputes regarding title to the assets of any of the Debtors, their respective Estates or the Trusts;

(y) hear and determine any other matters related hereto, including the implementation and enforcement of all orders entered by the Bankruptcy Court in the Reorganization Cases;

(z) retain continuing jurisdiction with regard to the Section 524(g) Trust sufficient to satisfy the requirements of Treasury Regulation section 1.468B;

(aa) hear and determine any and all applications brought by the Section 524(g) Trustees to amend, modify, alter, or repeal any provision of the Section 524(g) Trust Agreement or the Section 524(g) Trust Distribution Procedures pursuant to the Section 524(g) Trust Agreement and to declare or resolve all issues or disputes contemplated by the Section 524(g) Trust Agreement;

(bb) enter and implement orders extending the Asbestos Insurance Company Injunction to insurance companies that become Settling Asbestos Insurance Companies after the Effective Date;

(cc) enter such orders as are necessary to implement and enforce the Injunctions;

(dd) hear and determine any other matter in connection with the Parent's Copper Note;

(ee) hear and determine any other matter in connection with the SCC Litigation Trust including, without limitation, resolving disputes regarding the Maximum Recovery and the amount of recovery to which any purchaser, transferee or successor-in-interest of the SCC Litigation Trust's interests in the SCC Litigation Trust Claims is entitled; and

(ff) hear and determine any other matter not inconsistent with the Bankruptcy Code and title 28 of the United States Code that may arise in connection with or are related to the Parent's Plan.

15.4 Exclusive Jurisdiction of District Court for Certain Matters.

(a) The District Court shall, without regard to the amount in controversy, retain exclusive jurisdiction after Confirmation over matters relating to section 524(g) of the Bankruptcy Code and the Permanent Channeling Injunction and the Asbestos Insurance Company Injunction, including, without limitation, the validity, application, or construction of the Permanent Channeling Injunction and the Asbestos Insurance Company Injunction, or of section 524(g) of the Bankruptcy Code with respect to the Permanent Channeling Injunction and the Asbestos Insurance Company Injunction; provided, however, that, from and after the Effective Date, the jurisdiction of the District Court shall be non-exclusive with respect to any Asbestos Insurance Action or Asbestos Insurance Recovery. Nothing contained herein shall be deemed a finding or conclusion that: (i) the Bankruptcy Court or District Court in fact have jurisdiction with respect to any Asbestos Insurance Action or Asbestos Insurance Recovery; (ii) any such jurisdiction is exclusive with respect to any Asbestos Insurance Action or Asbestos Insurance Recovery; or (iii) abstention or dismissal or reference of actions effecting the transfer of jurisdiction of any Asbestos Insurance Action or Asbestos Insurance Recovery pending in the Bankruptcy Court or District Court to another court is precluded, inadvisable or unwarranted. Any court other than the Bankruptcy Court or the District Court that has or is capable of having jurisdiction over any Asbestos Insurance Action or Asbestos Insurance Recovery shall have the right to exercise such jurisdiction.

(b) Notwithstanding entry of the Confirmation Order and/or the occurrence of the Effective Date, the reference to the Bankruptcy Court pursuant to the Reference Order shall continue, but subject to this Article 15.4 and any other modifications or withdrawals of the reference specified in the Confirmation Order, the Reference Order, any case management order or other order of the District Court.

15.5 Post-Effective Date Status of the Committees and the FCR. The Committees and the position of the FCR shall continue in existence until the Effective Date, with ASARCO to pay the reasonable fees and expenses of the Committees and the FCR through the Effective Date in accordance with the fee and expense procedures promulgated during the Reorganization Cases. The Committees and the FCR shall have standing to participate in proceedings brought by their respective professionals or, if applicable, members, for allowance of fees and/or reimbursement of expenses as permitted by law. On and after the Effective Date, Judge Robert C. Pate shall serve as the FCR, as such term is defined in the Section 524(g) Trust Agreement, and shall have and exercise the functions, rights, duties, powers and privileges provided in the Section 524(g) Trust Documents, if Judge Robert C. Pate is willing to so serve. If not, the Bankruptcy Court will appoint his replacement. Except as provided in this subsection or above, the Committees shall be dissolved on the Effective Date, and the members, attorneys, accountants, and other professionals thereof shall be released and discharged of and from all further authority, duties, responsibilities, liabilities, and obligations related to, or arising from, the Reorganization Cases.

15.6 Modification of Parent's Plan. The Parent may alter, amend or modify the Parent's Plan under section 1127(a) of the Bankruptcy Code at any time prior to the Confirmation Date. After the Confirmation Date, the Parent or Reorganized ASARCO, as the case may be, may, under section 1127(b) of the Bankruptcy Code, seek Bankruptcy Court

approval to remedy any defects or omissions or reconcile any inconsistencies in the Parent's Plan or the Confirmation Order in such manner as may be necessary to carry out the purposes and intent of the Parent's Plan, so long as the proposed alteration, amendment or modification does not adversely affect the treatment of Claims or Interests under the Parent's Plan.

15.7 Non-Consummation. If the Parent's Plan is not Confirmed, or if the Parent's Plan is Confirmed and does not become effective, the rights of all parties in interest in the Debtors' chapter 11 cases, including the Parent, are and will be reserved in full. Any concessions or settlements reflected herein (if any), are made for purposes of the Parent's Plan only, and if the Parent's Plan does not become effective, then (i) no party in interest shall be bound or deemed prejudiced by any such concession or settlement, (ii) the Parent's Plan shall be null and void in all respects other than Article 10.2, (iii) any settlement or compromise embodied in the Parent's Plan, assumption or rejection of executory contracts or leases affected by the Parent's Plan, and any document or agreement executed pursuant to the Parent's Plan shall be deemed null and void, (iv) nothing contained in the Parent's Plan, and no acts taken in preparation for consummation of the Parent's Plan, shall prejudice in any manner the rights of the Parent or constitute an admission or waiver of any sort by the Parent, and (v) the structure of the Parent's Plan and the classification of creditors or groups of creditors within one Class contained herein shall have no evidentiary or precedential effect.

15.8 Entire Agreement. Except as otherwise expressly provided in the Parent's Plan or the Parent's Plan Documents, the Parent's Plan and the Parent's Plan Documents set forth the entire agreement and undertakings relating to the subject matter thereof and supersede all prior discussions and documents.

15.9 Rules Governing Conflicts Between Documents. In the event of a conflict between the terms or provisions of the Parent's Plan and the Parent's Plan Documents, the terms of the Parent's Plan shall control over the Parent's Plan Documents. In the event of a conflict between the terms of the Parent's Plan or the Parent's Plan Documents, on the one hand, and the terms of the Confirmation Order, on the other hand, the terms of the Confirmation Order shall control.

15.10 Severability. In the event any provision in the Parent's Plan should be determined to be unenforceable either on its face or as applied to any Claim, Demand, Interest or transaction, the Parent may modify the Parent's Plan in accordance with Article 15.6 hereof so that such provision shall not be applicable to the holder of any Claim, Demand, Interest, or transaction. Such determination of unenforceability shall not (a) limit or affect the enforceability and operative effect of any other provision of the Parent's Plan or (b) require the re-solicitation of any acceptance or rejection of the Parent's Plan.

15.11 Headings. Headings are utilized in the Parent's Plan for convenience and reference only and shall not constitute a part of the Parent's Plan for any other purpose.

15.12 Bar Date for Compensation and Reimbursement Claims. All applications for final allowances of compensation or reimbursement of expenses under section 330 of the Bankruptcy Code or applications for allowance of Administrative Claims arising under subsections (b)(2) through (b)(6) of section 503(b) of the Bankruptcy Code must be filed on or

before 90 days after the Effective Date, unless otherwise ordered by the Bankruptcy Court; save and except that any application under section 503(b)(3)(D) of the Bankruptcy Code or any application for a fee enhancement or success fee under the Bankruptcy Code must be filed on or before 60 days after the Effective Date, unless otherwise ordered by the Bankruptcy Court. Objections to applications of such Professionals Persons or other Entities for compensation or reimbursement of costs and expenses or for substantial contribution Claims must be filed within twenty days after the applicable application for compensation or reimbursement was filed.

15.13 Subsequent Administrative Claims Bar Date. Claimants, other than Professionals Persons, holding Administrative Claims against any of the Debtors that arise after the Initial Administrative Claims Bar Date (a “Subsequent Administrative Claim”) that remain unpaid on the Effective Date must file a request for payment of Subsequent Administrative Claim on or before 45 days after the Effective Date, unless otherwise ordered by the Bankruptcy Court. Any holder of a Subsequent Administrative Claim that is required to file a request for payment of such Claim and that does not file such request prior to the Subsequent Administrative Claims Bar Date will be forever barred from asserting such Subsequent Administrative Claim against any of the Debtors, Reorganized ASARCO or their respective properties, and such Subsequent Administrative Claim will be deemed discharged as of the Effective Date. Objections to Subsequent Administrative Claims must be filed with the Bankruptcy Court within 20 days after the applicable Subsequent Administrative Claim was filed, unless such objection deadline is extended by the Bankruptcy Court. Any Subsequent Administrative Claims of the United States or any individual state under civil Environmental Laws relating to the Designated Properties shall be addressed through the Environmental Custodial Trusts.

15.14 Indenture Trustee Fee Claims.

(a) If, at least 20 days prior to the commencement of the Confirmation Hearing, the Parent receives from the Indenture Trustees statement(s) of their respective Indenture Trustee Fee Claims incurred through such date and projected to be incurred through the Effective Date, together with such detail as may be reasonably requested by the Parent, the Parent or Reorganized ASARCO, as appropriate, shall pay, on the Effective Date, the Indenture Trustee Fee Claims, in full, in Cash. Notwithstanding the foregoing, to the extent that the Parent disputes any portion of the Indenture Trustee Fee Claims, prior to the Effective Date the Debtors and/or the Parent shall file with the Bankruptcy Court and serve on the appropriate Indenture Trustee an objection to such Indenture Trustee Fee Claim stating with specificity the Parent’s objections to such Indenture Trustee Fee Claim. On the Effective Date, the Parent or Reorganized ASARCO, as appropriate, shall reserve an amount equal to the amount of disputed Indenture Trustee Fee Claims and such dispute shall be consensually resolved by the parties or presented to the Bankruptcy Court for adjudication. The Parent reserves the right to object to any such amounts on any applicable grounds.

(b) Subject to the payment of the non-disputed portion of the Indenture Trustee Fee Claims and the establishment of the reserve with respect to any disputed portion of the Indenture Trustee Fee Claims, and the payment of all other fees and expenses (including fees and expenses of counsel and other professionals) incurred by the Indenture Trustees in administering distributions to the Bondholders or responding to any objection by the Parent to an Indenture

Trustee Fee Claim, to the extent payment of the foregoing fees and expenses is permitted by the Indentures, all Charging Liens of the Indenture Trustees in any distributions shall be forever released and discharged. Once the Indenture Trustees have completed performance of all of their duties set forth in this Plan or in connection with any distributions to be made under this Plan, if any, the Indenture Trustees, and their successors and assigns, shall be relieved of all obligations as Indenture Trustees effective as of the Effective Date.

15.15 Governing Law. Except to the extent that federal law (including, without limitation, the Bankruptcy Code and the Bankruptcy Rules) is applicable or the Parent's Plan provides otherwise, the rights and obligations arising under the Parent's Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of New York without giving effect to its conflicts of law principles.

15.16 Consent to Jurisdiction. Except for the matters within the exclusive jurisdiction of the District Court as described in Article 15.4 hereof, the Debtors, the Parent, Reorganized ASARCO, the Parent's Plan Administrator, the Trustees, the Trusts, the Section 524(g) Trust Advisory Committee, and the FCR consent to the jurisdiction of the Bankruptcy Court, or any successor thereto, for all proceedings relating to the enforcement of the Parent's Plan and/or the Parent's Plan Documents, the Confirmation Order and the Asbestos Insurance Company Injunction. As to the matters within the exclusive jurisdiction of the District Court as described in Article 15.4 hereof, the Debtors, Reorganized ASARCO, the Parent's Plan Administrator, the Section 524(g) Trustees, the Section 524(g) Trust, the Section 524(g) Trust Advisory Committee, and the FCR consent to the jurisdiction of the District Court, or any successor thereto, and agree that it shall be the preferred forum for all matters within the exclusive jurisdiction of the District Court as described in Article 15.4.

15.17 Transfer Taxes. The issuance, transfer, or exchange of any of the securities issued under, or the transfer of any other assets or property pursuant to, or in connection with, the Parent's Plan or the making or delivery of an instrument of transfer under, or in connection with, the Parent's Plan shall not, pursuant to section 1146 of the Bankruptcy Code, be taxed under any law imposing a stamp tax, transfer tax, or other similar tax.

15.18 Recordable Order. The Confirmation Order shall be deemed to be in recordable form, and shall be accepted by any recording officer for filing and recording purposes without further or additional orders, certifications, or other supporting documents.

15.19 Successors and Assigns. The rights, duties, and obligations of any Entity named or referred to in the Parent's Plan shall be binding upon, and shall inure to the benefit of, the successors and assigns of such Entity.

15.20 Waiver of Rights. Holders of Claims, Demands or Interests shall have the right voluntarily to waive any rights, benefits or protections that are afforded to them under the provisions of the Parent's Plan or any order issued in furtherance of the Parent's Plan, and such waiver shall supersede such rights, benefits or protections. Any such waiver shall only be effective if such party expressly and specifically waives in writing one or more of such rights, benefits or protections.

15.21 Notices. All notices, requests, elections, or demands in connection with the Parent's Plan or the Parent's Plan Documents shall be in writing and shall be delivered by registered or certified mail, return receipt requested, by facsimile, by email, or by overnight mail to the following addresses unless a different address is designated in a notice served in accordance with this provision:

The Parent

Americas Mining Corporation
ASARCO Incorporated
Attn: Jorge Lazalde Psihas
11811 North Tatum Blvd.
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Phoenix, AZ 85028

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(202) 514-0097 (Mr. Tenenbaum)
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The undersigned have executed this Modified Sixth Amended Plan of Reorganization as of the ~~26~~30th day of July, 2009.

Respectfully submitted,

ASARCO INCORPORATED, a Delaware corporation

By: /s/ Jaime P. Collazo Gonzales
Name: Jaime P. Collazo Gonzales
Title: CEO and President

By: /s/ Jorge Lazalde Psihas
Name: Jorge Lazalde Psihas
Title: Vice President and General Counsel

AMERICAS MINING CORPORATION, a Delaware corporation

By: /s/ Alberto de la Parra Zavala
Name: Alberto de la Parra Zavala
Title: General Counsel

By: /s/ Jorge Lazalde Psihas
Name: Jorge Lazalde Psihas
Title: Assistant Secretary

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Supplement Exhibit C

Supplement to Uniform Glossary of Defined Terms for Plan Documents

This supplemental glossary (the “Parent’s Supplemental Glossary”) shall supplement the Parent’s Glossary which is attached to the Disclosure Statement as **Exhibit A-2**. To the extent any term in the Parent’s Supplement Glossary was previously defined by the Parent’s Glossary, the definition provided by the Parent’s Supplemental Glossary shall apply with respect to the Disclosure Statement, the Parent’s Plan, the Parent’s Plan Documents and related exhibits.

Supplemental Glossary of Terms:

1. “ASARCO Protected Parties” (each one, an “ASARCO Protected Party”) means (a) the Debtors and their respective predecessors; (b) Reorganized ASARCO; (c) the ASARCO Protected Non-Debtor Affiliates and their respective predecessors; (d) the Parent and its Affiliates and predecessors; (e) Grupo México and its Affiliates and predecessors; (f) the Trusts; (g) the Trustees; (h) the Section 524(g) Trust Advisory Committee; (i) the FCR; (j) the Asbestos Claimants’ Committee, including its members in their member capacities; (k) the Parent’s Plan Administrator; (l) the Examiner; (m) the ASARCO Committee, including its members in their member capacities; (n) the Settling Asbestos Insurance Companies; and (o) the present and former directors, officers, agents, attorneys, accountants, consultants, financial advisors, investment bankers, professionals, experts, and employees of any of the foregoing, in their respective capacities as such; provided, however, that, notwithstanding anything to the contrary in the Parent’s Plan or this Glossary, the ASARCO Protected Parties shall not include (i) Baker Botts L.L.P.; (ii) Jordan, Hyden, Womble, Culbreth & Holzer, P.C.; (iii) Barclays Capital, Inc.; (iv) H. Malcolm Lovett, Jr.; (v) Edward Caine; (v) Joseph F. Lapinski; (vi) Douglas E. McAllister; or in the case of parties identified in clauses (i) through (vi), any of their present and former partners, associates, directors, officers, agents, attorneys, accountants, consultants, financial advisors, investment bankers, professionals, experts, and employees.
2. “Maximum Recovery” means the amount necessary to provide, as of any date of determination, Payment in Full to all holders of Allowed Claims in Classes 2, 6, and 7, and holders of Allowed Claims in Class 3 that elected Treatment B or Treatment C (as set forth in Article 4.2(c) of the Parent’s Plan) plus the SCC Litigation Trust’s aggregate administrative expenses minus the SCC Litigation Trust Expense Fund.
3. “Paid in Full” or “Payment in Full” means, with respect to the Parent’s Plan, paid in Cash the Allowed Amount of the holder’s Claim and Post-Petition Interest.
4. “Parents Copper Note” means the promissory note to be issued on the Effective Date in the form attached to the Parent’s Plan as **Parent’s Plan Exhibit 25**.
5. “SCC Litigation Trust” means that certain litigation trust to be established on the Effective Date pursuant to the SCC Litigation Trust Agreement.
6. “SCC Litigation Trustee” means the person appointed as trustee of the SCC Litigation Trust under the SCC Litigation Trust Agreement and any successor thereto chosen in accordance with such agreement.

7. “SCC Litigation Trust Agreement” means the SCC Litigation Trust Agreement, the form of which is attached to the Parent’s Plan as **Parent’s Plan Exhibit 24**, as the same may be modified from time to time in accordance with Article V of the Parent’s Plan.
8. “SCC Litigation Trust Beneficiaries” means the holders of the SCC Litigation Trust Interests.
9. “SCC Litigation Trust Board” means the group of three Person selected in accordance with the SCC Litigation Trust Agreement.
10. “SCC Litigation Trust Claims” means the SCC Litigation claims and causes of action which shall be transferred to the SCC Litigation Trust in accordance with the SCC Litigation Trust Agreement.
11. “SCC Litigation Trust Expense Fund” means cash in the amount of \$20 million to be transferred to the SCC Litigation Trustee by the Reorganized Debtors or the Parent’s Plan Administrator on the Effective Date in order to fund the operations of the SCC Litigation Trust.
12. “SCC Litigation Trust Initial Beneficiaries” means the holders of Claims in Class 2 and the holders of Claims in Class 3 that elected Treatment B or Treatment C.
13. “SCC Litigation Trust Interests” means the beneficial interests in the SCC Litigation Trust.
14. “SCC Litigation Trust Proceeds” means any proceeds from the prosecution, compromise, and/or settlement of the SCC Litigation Trust Claims, not to exceed the Maximum Recovery, which shall be an asset of the SCC Litigation Trust and held as part thereof.
15. “SCC Litigation Trust Register” means the Entity appointed by the SCC Litigation Trustee for the purpose of recording ownership of the SCC Litigation Trust Interests.

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2. “Maximum Recovery” means the amount necessary to provide, as of any date of determination, Payment in Full to all holders of Allowed Claims in Classes ~~1~~, 2, 6, and 7, and holders of Allowed Claims in Class 3 that elected Treatment B or Treatment C (as set forth in Article 4.2(c) of the Parent’s Plan) plus the SCC Litigation Trust’s aggregate administrative expenses minus the SCC Litigation Trust Expense Fund.
3. “Paid in Full” or “Payment in Full” means, with respect to the Parent’s Plan, paid in Cash the Allowed Amount of the holder’s Claim and Post-Petition Interest.
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8. “SCC Litigation Trust Beneficiaries” means the holders of the SCC Litigation Trust Interests.
9. “SCC Litigation Trust Board” means the group of three Person selected in accordance with the SCC Litigation Trust Agreement.
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11. “SCC Litigation Trust Expense Fund” means cash in the amount of \$20 million to be transferred to the SCC Litigation Trustee by the Reorganized Debtors or the Parent’s Plan Administrator on the Effective Date in order to fund the operations of the SCC Litigation Trust.
12. “SCC Litigation Trust Initial Beneficiaries” means the holders of Claims in ~~Classes 1~~ and Class 2 and the holders of Claims in Class 3 that elected Treatment B or Treatment C.
13. “SCC Litigation Trust Interests” means the beneficial interests in the SCC Litigation Trust.
14. “SCC Litigation Trust Proceeds” means any proceeds from the prosecution, compromise, and/or settlement of the SCC Litigation Trust Claims, not to exceed the Maximum Recovery, which shall be an asset of the SCC Litigation Trust and held as part thereof.
15. “SCC Litigation Trust Register” means the Entity appointed by the SCC Litigation Trustee for the purpose of recording ownership of the SCC Litigation Trust Interests.

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PLAN EXHIBIT 24
FORM OF SCC LITIGATION TRUST AGREEMENT

DECLARATION OF TRUST

FOR THE

[Insert Name of Trust]

BY AND AMONG

ARSARCO LLC

AND

THE TRUSTEES (AS NAMED HEREIN)

Dated as of _____, 2009

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DECLARATION OF TRUST

This Declaration of Trust (this “Declaration”), dated as of [_____] [___], 2009, by and among ASARCO LLC (“Reorganized ASARCO”), [_____] [___], as the trustee (the “SCC Litigation Trustee”), and [_____] [___], as the Delaware trustee (the “Delaware Trustee”), is executed in order to establish a liquidating trust (the “SCC Litigation Trust”) in connection with the ASARCO Incorporated and Americas Mining Corporation’s Modified Sixth Amended Plan of Reorganization for the Debtors under Chapter 11 of the United States Bankruptcy Code, dated July 30, 2009 (as it may be amended, modified, or supplemented, the “Parent’s Plan”). Capitalized terms used in this Declaration and not otherwise defined herein shall have the respective meanings ascribed to them in the Glossary of Defined Terms for the Parent’s Plan Documents; all other capitalized terms used herein are defined in Section 11.8 hereof.

WITNESSETH

WHEREAS, the Debtors filed voluntary petitions pursuant to Chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division (the “Bankruptcy Court”), commencing the jointly administered cases known as In re ASARCO LLC, et al., Case No. 05-21207 (the “Bankruptcy Cases”):

WHEREAS, the Bankruptcy Court, through the Parent’s Plan, has ordered the establishment and creation of the SCC Litigation Trust to (a) in an expeditious but orderly manner, prosecute, settle, or otherwise dispose of the SCC Litigation Trust Claims, as successor to and representative of the estates of the Debtors in accordance with Sections 1145(a)(1) and 1123(b)(3)(B) of the Bankruptcy Code and (b) make timely distributions to the SCC Litigation Trust Beneficiaries;

WHEREAS, in fulfilling its purpose, the SCC Litigation Trust shall have no objective or authority to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the purpose of the SCC Litigation Trust;

WHEREAS, the SCC Litigation Trust is created for the benefit of the SCC Litigation Trust Beneficiaries;

WHEREAS, the SCC Litigation Trust is created pursuant to, and to effectuate, the Parent’s Plan.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein and in the Parent’s Plan, the Debtors and the Trustees agree as follows:

ARTICLE 1 ESTABLISHMENT OF THE SCC LITIGATION TRUST

1.1 Declaration of Trust.

(a) Pursuant to the Parent's Plan, the Debtors and the SCC Litigation Trustee hereby establish the SCC Litigation Trust, which shall be known as the "[*Insert Name of Trust*]" on behalf of the SCC Litigation Trust Beneficiaries and the Trustees hereby accept such rights and properties assigned and transferred to them and the trust imposed upon them pursuant to this Declaration.

(b) The principal office of the SCC Litigation Trust shall be in care of the SCC Litigation Trustee at [_____], or at such other address as the SCC Litigation Trustee may designate.

1.2 SCC Litigation Trust Assets.

(a) In accordance with the Parent's Plan and this Declaration, as of the Effective Date, the Reorganized Debtors, subject to the provisions of the Confirmation Order, hereby transfer, assign, and deliver to the SCC Litigation Trustee for the benefit of the SCC Litigation Trust Beneficiaries, and the SCC Litigation Trustee hereby accepts on behalf of the SCC Litigation Trust Beneficiaries, (i) all of the Debtors' respective rights, title, and interests in and to the SCC Litigation Trust Claims, subject to the Maximum Recovery, free and clear of any and all Liens, Claims, encumbrances, or interests of any kind in such property of any other Person or entity, other than Liens or encumbrances arising under the Bankruptcy Code or other applicable law; (ii) all of the Debtors' respective rights, title, and interest in the Debtors' Privileges associated with the SCC Litigation Trust Claims; and (iii) the \$[_____] million SCC Litigation Trust Expense Fund. Upon the transfer of the assets to the SCC Litigation Trust, the Debtors shall have no interest in or obligation with respect to such assets or, except as described in this Section 1.2, Section 1.3 or Section 1.4, the SCC Litigation Trust. The SCC Litigation Trust shall not be entitled to recover from the defendants named in the SCC Litigation Trust Claims or any ASARCO Protected Party any amount in connection with the SCC Litigation Trust Claims in excess of the amount necessary to provide, as of any date of determination, Payment in Full to all holders of Allowed Claims in Classes 2, 6, and 7, and holders of Allowed Claims in Class 3 that elected Treatment B or Treatment C as set forth in Article 4.2(c) of the Parent's Plan plus the SCC Litigation Trust's aggregate administrative expenses minus the SCC Litigation Trust Expense Fund (the "Maximum Recovery"). If the SCC Litigation Trust sells, transfers or otherwise disposes of its interests in the SCC Litigation Trust Claims, any purchaser, transferee and/or successor-in-interest shall not be entitled to recover from the defendants named in the SCC Litigation Trust Claims or any ASARCO Protected Party in connection with the SCC Litigation Trust Claims any amount in excess of the Maximum Recovery. For the avoidance of doubt, no purchaser, transferee, or successor-in-interest of the SCC Litigation Trust's interests in the SCC Litigation Trust Claims shall be entitled to recover from the defendants named in the SCC Litigation Trust Claims or any ASARCO Protected Party any fees, costs or expenses including, without limitation, attorney's fees or litigation costs and expenses.

(b) The SCC Litigation Trustee shall collect all income earned with respect to, and all SCC Litigation Proceeds attributable to, and all payments made on account of, the assets of the SCC Litigation Trust, which shall thereupon be added to the assets of the SCC Litigation Trust and held as a part thereof (and which title shall be vested in the SCC Litigation Trustee).

(c) On or as promptly as practicable after the Effective Date, Reorganized ASARCO shall provide reasonable access to the SCC Litigation Trustee and its advisors to such employees of the Debtors, their agents, advisors, attorneys, accountants, or any other professionals hired by the Debtors with knowledge of matters relevant to the SCC Litigation Trust Claims for the purpose of enabling the SCC Litigation Trustee to fulfill its obligations under this Declaration, including the prosecution of the SCC Litigation Trust Claims. Reorganized ASARCO shall, pursuant to and subject to the terms and conditions of the Parent's Plan, facilitate access to the SCC Litigation Trustee and its advisors to employees and books and records of Reorganized ASARCO in connection with the obligations of the SCC Litigation Trustee under this Declaration, including the prosecution of the SCC Litigation Trust Claims. Requests for such access shall be made through Reorganized ASARCO or its representatives.

(d) At any time and from time to time on and after the Effective Date, the Trustees and Reorganized ASARCO agree (i) at the reasonable request of the SCC Litigation Trustee to execute and/or deliver any instruments, documents, books, and records (including those maintained in electronic format and original documents as may be needed) and (ii) to take, or cause to be taken, all such further actions as the SCC Litigation Trustee may reasonably request, in each case, in order to evidence or effectuate the transfer of the SCC Litigation Trust Claims and the Privileges to the SCC Litigation Trustee and to otherwise carry out the intent of the Parent's Plan.

1.3 Funding of the SCC Litigation Trust.

(a) In accordance with the Parent's Plan, the Parent's Plan Administrator shall, on the Effective Date transfer to the SCC Litigation Trust the SCC Litigation Trust Expense Fund. Except pursuant to the terms of the Parent's Plan, none of the Debtors shall have any further obligation to provide any funding with respect to the SCC Litigation Trust. The SCC Litigation Trustee shall use the SCC Litigation Trust Expense Fund consistent with the purposes of the SCC Litigation Trust and subject to the terms and conditions of the Parent's Plan and this Declaration.

(b) All costs and expenses associated with the administration of the SCC Litigation Trust shall be the responsibility of and paid by the SCC Litigation Trust.

1.4 Tax Matters.

(a) Solely for tax purposes, the SCC Litigation Trust Beneficiaries and Reorganized ASARCO (to the extent of its retained interest in the SCC Litigation Trust for federal income tax purposes) (collectively, the "Trust Tax Owners") are treated as grantors and owners of the SCC Litigation Trust pursuant to Section 671 et seq. of the Internal Revenue Code and the Treasury Regulations promulgated thereunder (the "Treasury Regulations") and any similar provisions of state or local law. It is intended that the SCC Litigation Trust be classified as a liquidating trust under Section 301.7701-4(d) of the Treasury Regulations.

(b) For all federal, state and local income tax purposes, all persons (including, without limitation, the Debtors, the Trustees, and the Trust Tax Owners) shall take the position, subject to definitive guidance from the IRS or a court of competent jurisdiction to

the contrary, that the transfer of assets to the SCC Litigation Trust is a deemed transfer to the Trust Tax Owners (as of the Initial Distribution Date), followed by a deemed transfer by such Trust Tax Owners to the SCC Litigation Trust.

(c) The fair market value of the portion of the SCC Litigation Trust assets that is treated as having been transferred to each Trust Tax Owner pursuant to Section 1.4(b) hereof, and the fair market value of the portion of the SCC Litigation Trust assets that is treated for federal income tax purposes as having been transferred to any Trust Tax Owner or other distributee as a result of the allowance or disallowance of a Disputed Claim, shall be determined by the SCC Litigation Trustee, and all persons (including, without limitation, the SCC Litigation Trustee, the Trust Tax Owners, and the transferors, for tax purposes, of any assets transferred to the SCC Litigation Trust) shall utilize the fair market value determined by the SCC Litigation Trustee for all federal income tax purposes.

(d) The SCC Litigation Trustee shall allocate any items of income, gain, loss, deduction, and credit of the SCC Litigation Trust for federal income tax purposes among current and/or former Trust Tax Owners, such allocation shall be binding on all current and former Trust Tax Owners for all federal, state, and local income tax purposes and the current and former Trust Tax Owners shall be responsible (on a current basis) for the payment of any federal, state, and local income tax due on the income and gain so allocated to them.

1.5 Nature and Purpose of the SCC Litigation Trust.

(a) Purpose. Upon compliance with Section 3810 of the Delaware Statutory Trust Act, 12 Del. C., § 3801 et seq. (hereinafter the “Act”), the SCC Litigation Trust shall be organized and established as a statutory trust pursuant to which the SCC Litigation Trustee, subject to the terms and conditions contained herein and in the Parent’s Plan, is to (i) hold the assets of the SCC Litigation Trust and dispose of the same in accordance with this Declaration and the Parent’s Plan in accordance with Treasury Regulation Section 301.7701-4(d) and (ii) oversee and direct the expeditious but orderly liquidation of the assets of the SCC Litigation Trust. Accordingly, the primary purpose of the SCC Litigation Trust is to liquidate the SCC Litigation Trust Claims with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the SCC Litigation Trust.

(b) Relationship. This Declaration is intended to create a trust and a trust relationship and to be governed and construed in all respects as a trust. The SCC Litigation Trust is not intended to be, and shall not be deemed to be or treated as, a general partnership, limited partnership, joint venture, corporation, joint stock company or association, nor shall the SCC Litigation Trustee, the SCC Litigation Trust Board (or any of its members or ex officio members), or the SCC Litigation Trust Beneficiaries, or any of them, for any purpose be, or be deemed to be or treated in any way whatsoever to be, liable or responsible hereunder as partners or joint venturers. The relationship of the SCC Litigation Trust Beneficiaries to the SCC Litigation Trustee and the SCC Litigation Trust Board shall be solely that of beneficiaries of a trust and shall not be deemed a principal or agency relationship, and their rights shall be limited to those conferred upon them by this Declaration.

1.6 Incorporation of Parent's Plan. The Parent's Plan and the Confirmation Order are each hereby incorporated into this Declaration and made a part hereof by this reference; *provided, however*, to the extent that there is conflict between the provisions of this Declaration, the provisions of the Parent's Plan, and/or the Confirmation Order, each such document shall have controlling effect in the following rank order: (1) the Confirmation Order; (2) the Parent's Plan; and (3) this Declaration.

1.7 Appointment as Representative. Pursuant to section 1123(b)(3) of the Bankruptcy Code, the Parent's Plan appointed the SCC Litigation Trustee as the duly appointed representative of the Debtors' Estates, and, as such, the SCC Litigation Trustee succeeds to all of the rights and powers of a trustee in bankruptcy with respect to prosecution, sale, transfer, or other disposition, as applicable, of the SCC Litigation Trust Claims for the ratable benefit of the SCC Litigation Trust Beneficiaries. To the extent that any SCC Litigation Trust Claims cannot be transferred to the SCC Litigation Trust because of a restriction on transferability under applicable non-bankruptcy law that is not superseded or preempted by section 1123 of the Bankruptcy Code or any other provision of the Bankruptcy Code, such SCC Litigation Trust Claims shall be deemed to have been retained by Reorganized ASARCO, and the SCC Litigation Trustee shall be deemed to have been designated as a representative of the Estates pursuant to section 1123 (b)(3)(B) of the Bankruptcy Code to enforce, pursue, sale, transfer, or otherwise dispose of, as applicable, such SCC Litigation Trust Claims on behalf of the Estates.

ARTICLE 2 TRUSTEES

2.1 Delaware Trustee. In accordance with the Parent's Plan and subject to the Confirmation Order, [_____] of Delaware is hereby named, constituted, and appointed as Delaware Trustee effective as of the date hereof, to have all the rights, powers, and duties set forth herein and as otherwise provided by law. The Delaware Trustee is willing and does hereby accept the appointment to act and serve as Delaware Trustee of the SCC Litigation Trust.

2.2 SCC Litigation Trustee. In accordance with the Parent's Plan and subject to the Confirmation Order, the SCC Litigation Board shall name, constitute and appoint the SCC Litigation Trustee. The SCC Litigation Trustee will have all the rights, powers, and duties set forth herein and as otherwise provided by law.

2.3 Tenure, Removal, and Replacement of the SCC Litigation and Delaware Trustee.

(a) The SCC Litigation Trustee and the Delaware Trustee (each, a "Trustee" and, together, the "Trustees") will each serve until resignation and the appointment of a successor pursuant to subsection (b) below, removal pursuant to subsection (c) below, or death (if applicable).

(b) A Trustee may resign by giving not less than 90 days' prior written notice to the SCC Litigation Trust Board. Such resignation will become effective on the later to occur of: (i) the day specified in such notice and (ii) the appointment of a successor trustee as

provided herein and the acceptance by such successor trustee of such appointment. If a successor trustee is not appointed or does not accept its appointment within 90 days following delivery of notice of resignation, (i) in the case of the SCC Litigation Trustee, the SCC Litigation Trustee may file a motion with the Bankruptcy Court (at the expense of the SCC Litigation Trust), upon notice and hearing, for the appointment of a successor trustee and (ii) in the case of the Delaware Trustee, the Delaware Trustee may file a motion with the Delaware Court of Chancery (at the expense of the SCC Litigation Trust), upon notice and hearing, for the appointment of a successor trustee.

(c) A Trustee may be removed by order of the Bankruptcy Court on motion of any one of the members of the SCC Litigation Trust Board. Any motion to remove a Trustee shall be for cause shown.

(d) In the event of a vacancy in the position of a Trustee (whether by removal, resignation, or (if applicable) death), the vacancy will be filled by the appointment of a successor trustee by (i) majority vote and resolution of the SCC Litigation Trust Board, and the acceptance by the successor trustee in accordance with Section 2.3(e) or (ii) an order of the Bankruptcy Court after an opportunity for a hearing; *provided, however*, that only the SCC Litigation Trust Board shall have standing to seek such an order, except as provided in Section 2.3(b). If a successor trustee is appointed by resolution, as provided in clause (i) of the preceding sentence, and such appointment is accepted by the successor trustee, the SCC Litigation Trust Board shall file notice of such appointment and acceptance with the Bankruptcy Court, which notice will include the name, address, and telephone number of the successor trustee; provided that the filing of such notice shall not be a condition precedent to the vesting in the successor Trustee of all the estates, properties, rights, powers, trusts, and duties of its predecessor.

(e) Any successor trustee appointed hereunder shall execute an instrument accepting such appointment and assuming all of the obligations of the predecessor Trustee hereunder and thereupon the successor trustee shall, without any further act, become vested with all the estates, properties, rights, powers, privileges, authorities, and duties of its predecessor in the SCC Litigation Trust hereunder with like effect as if originally named herein and the successor trustee will not be liable personally for any act or omission of the predecessor Trustee.

(f) Upon the appointment of a successor trustee, the predecessor Trustee (or the duly appointed legal representative of a deceased Trustee) shall, if applicable, when requested in writing by the successor trustee, execute and deliver an instrument or instruments conveying and transferring to such successor trustee upon the trust herein expressed, without recourse to the predecessor Trustee, all the estates, properties, rights, powers, and trusts of such predecessor Trustee, and shall duly assign, transfer, and deliver to such successor trustee all property and money held hereunder, and all other assets and documents relating to the SCC Litigation Trust, the SCC Litigation Trust Claims, or the SCC Litigation Trust Interests then in its possession and held hereunder.

(g) During any period in which there is a vacancy in the position of a Trustee, the SCC Litigation Trust Board may (to the extent permitted by the Act) appoint one of

its members to serve as an interim Trustee, (the “Interim Trustee”). The Interim Trustee shall be subject to all the terms and conditions applicable to a SCC Litigation Trustee hereunder. Such Interim Trustee shall not be limited in any manner from exercising any rights or powers as a member of the SCC Litigation Trust Board merely by its appointment as Interim Trustee.

(h) The death, resignation, retirement, removal, bankruptcy, dissolution, liquidation, incompetence, or incapacity to perform the duties of a Trustee shall not operate to dissolve, terminate, or annul the SCC Litigation Trust.

2.4 Compensation of the Trustees.

(a) As compensation, the SCC Litigation Trustee shall be entitled to receive \$ _____ per annum (or such other amount as agreed to from time to time by the SCC Litigation Trustee and the SCC Litigation Trust Board), payable in advance in quarterly installments, for the performance of services provided under and pursuant to this Declaration, and shall be reimbursed for all reasonable and documented expenses incurred in connection with the performance of its services hereunder.

(b) The Delaware Trustee shall be entitled to receive \$ _____ per annum, payable on [_____], and shall be reimbursed for all reasonable and documented expenses incurred in connection with the performance of its services hereunder.

2.5 No Bond. The Trustees shall serve without bond.

2.6 Inquiries into Trustee’s Authority. Except as otherwise set forth in the SCC Litigation Trust or in the Parent’s Plan, no Person dealing with the SCC Litigation Trust shall be obligated to inquire into the authority of the SCC Litigation Trustee in connection with the prosecution, protection, conservation, sale, or other disposition, as applicable, of the SCC Litigation Trust Claims.

**ARTICLE 3
DUTIES AND LIMITATIONS OF TRUSTEES**

3.1 Role of the SCC Litigation Trustee. In furtherance of and consistent with the purpose of the SCC Litigation Trust and the Parent’s Plan, the SCC Litigation Trustee, subject to the terms and conditions contained herein and in the Parent’s Plan, shall, in an expeditious but orderly manner, liquidate and convert to Cash the assets of the SCC Litigation Trust, engage in acts that would constitute ordinary performance of the obligations of a trustee under a liquidating litigation trust, make timely distributions of such Cash and not unduly prolong the duration of the SCC Litigation Trust. The liquidation of the SCC Litigation Trust Claims may be accomplished either through the prosecution, compromise and settlement, abandonment, dismissal, or other disposition of any or all claims, rights, or causes of action, or otherwise. In all circumstances, the SCC Litigation Trustee shall act in the best interests of maximizing the value of the assets of the SCC Litigation Trust for the SCC Litigation Trust Beneficiaries and in furtherance of the purpose of the SCC Litigation Trust and shall, where required pursuant to the terms of this Declaration, consult with or obtain the required approval of the SCC Litigation Trust Board.

3.2 Authority of SCC Litigation Trustee. Subject to any limitations contained herein (including, without limitation, Article 4 hereof) or in the Parent's Plan, the SCC Litigation Trustee shall have the full power, authority, and discretion to take any and all actions as are necessary or advisable to carry out its responsibilities hereunder and to effectuate the purposes of the SCC Litigation Trust, including, without limitation:

(a) full power, authority, and discretion to interpret, construe, and decide all questions and issues arising under any provision of this Declaration or of any agreement, notification, certificate, or document relating to or evidencing a SCC Litigation Trust Interest (including, without limitation, the power, authority, and discretion to determine whether any particular holder or beneficial owner of a SCC Litigation Trust Interest shall be entitled to exercise any right conferred hereunder or under any other relevant agreement, notification, certificate, document, or similar instrument), and the decisions of the SCC Litigation Trustee with respect to all such matters shall be final, conclusive, and binding on all parties who have an interest in the SCC Litigation Trust or any SCC Litigation Trust Interest;

(b) receiving (and accepting), managing, supervising, and protecting the assets of the SCC Litigation Trust on behalf of and for the benefit of the SCC Litigation Trust Beneficiaries;

(c) holding legal title to any and all rights of the SCC Litigation Trust Beneficiaries in or arising from the assets of the SCC Litigation Trust, and, in consultation with and subject to the approval of the SCC Litigation Trust Board, protecting and enforcing the rights to the assets of the SCC Litigation Trust vested in the SCC Litigation Trustee by this Declaration by any method deemed appropriate, including, without limitation, by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium, or similar law, and general principles of equity;

(d) in consultation with and subject to the approval of the SCC Litigation Trust Board, filing, initiating, prosecuting, and if necessary and appropriate, selling, compromising and settling, abandoning, or dismissing the SCC Litigation Trust Claims;

(e) in consultation with and subject to the approval of the SCC Litigation Trust Board, commencing and/or pursuing any and all actions involving assets of the SCC Litigation Trust that could arise or be asserted at any time, unless otherwise waived or relinquished in the Parent's Plan;

(f) distributing to some or all of the SCC Litigation Trust Beneficiaries (as deemed appropriate by the SCC Litigation Trustee) information regarding the SCC Litigation Trust Claims and executing confidentiality agreements with such SCC Litigation Trust Beneficiaries satisfactory to the SCC Litigation Trustee in connection therewith, and the SCC Litigation Trustee shall have the full power, authority, and discretion to withhold or restrict the delivery of any such information to any SCC Litigation Trust Beneficiary if the SCC Litigation Trustee determines in its sole discretion that such action is in the best interests of the SCC Litigation Trust;

(g) making all necessary filings in accordance with any applicable law, statute or regulation, and in consultation with counsel, seeking any advice or determination that may be necessary or appropriate under any such laws, statutes, or regulations;

(h) executing and filing one or more registration statements and prospectuses (including any amendments or supplements thereto) under the Securities Act (if applicable) relating to the SCC Litigation Trust Beneficial Interests and the preparation and filing of all periodic and other reports, forms, and other filings required under the Exchange Act and any other applicable federal or state securities laws;

(i) taking of any action to cause the SCC Litigation Trust to not be deemed an Investment Company under the Investment Act or subject to the Trust Indenture Act;

(j) calculating and implementing of all distributions to be made to the SCC Litigation Trust Beneficiaries;

(k) filing of all required tax and information returns and paying of taxes and all other obligations of the SCC Litigation Trust;

(l) requesting any appropriate tax determination with respect to the SCC Litigation Trust;

(m) paying all expenses and making all other payments relating to any assets of the SCC Litigation Trust;

(n) obtaining insurance coverage with respect to (i) the liabilities and obligations of the Trustees under this Agreement (in the form of an errors and omissions policy or otherwise) and (ii) real and personal property, which may become assets of the SCC Litigation Trust, if any;

(o) in consultation with and subject to the approval of the SCC Litigation Trust Board, negotiating, receiving, or accepting of the assignment or transfer of claims, rights, suits, judgments, causes of action, recoveries and/or proceeds therefrom, from the holders thereof, to the extent that an assignment and/or transfer to the SCC Litigation Trust is deemed to be in the best interests of maximizing the value of the assets of the SCC Litigation Trust for the SCC Litigation Trust Beneficiaries;

(p) in consultation with and subject to the approval of the SCC Litigation Trust Board, determining the amount of consideration to be provided for the assignment or transfer of claims, rights, suits, judgments, causes of action, recoveries, and/or proceeds therefrom;

(q) in consultation with and subject to the approval of the SCC Litigation Trust Board, compromising, adjusting, arbitrating, suing on or defending, abandoning, or otherwise dealing with and settling claims in favor of or against the SCC Litigation Trust as the SCC Litigation Trustee shall deem advisable;

(r) determining and satisfying any and all liabilities created, incurred or assumed by the SCC Litigation Trust;

(s) in consultation with and subject to the approval of the SCC Litigation Trust Board, retaining and paying such law firms, accounting firms, experts, advisors, consultants, investigators, appraisers, agents, employees, or other professionals and third parties as the SCC Litigation Trustee may deem necessary or appropriate to assist the SCC Litigation Trustee in carrying out the SCC Litigation Trustee's powers and duties under this Declaration. The SCC Litigation Trustee may commit the SCC Litigation Trust to and shall pay all persons or entities retained or employed by the SCC Litigation Trust reasonable compensation for services rendered and reasonable expenses incurred;

(t) investing any moneys held as part of the assets of the SCC Litigation Trust in accordance with, and subject to the limitations of, the terms of Section 3.7 and 3.8 hereof;

(u) performing such other responsibilities as may be vested in the SCC Litigation Trustee pursuant to the Parent's Plan, this Declaration, orders of the Bankruptcy Court, or as may be necessary and proper to carry out the provisions of the Parent's Plan;

(v) conducting the affairs of the SCC Litigation Trust and operating the SCC Litigation Trust so that the SCC Litigation Trust will not fail to be classified as a liquidating trust within the meaning of Treasury Regulation 301.7701-4(d); and

(w) acting as a debtor in possession with the full rights and powers under section 1107 of the Bankruptcy Code, including, without limitation, the duty to prosecute the SCC Litigation Trust Claims and distribute the proceeds of such claims, and such other rights and powers as set forth in this Declaration; subject to the Maximum Recovery.

3.3 Payment of SCC Litigation Trust Expenses.

(a) The SCC Litigation Trustee shall maintain the SCC Litigation Trust Expense Fund and expend the assets of the SCC Litigation Trust Expense Fund (i) as are reasonably necessary to meet contingent liabilities and to maintain the value of the assets of the SCC Litigation Trust during liquidation, (ii) to pay reasonable administrative expenses (including but not limited to, the costs and expenses of the SCC Litigation Trustee (including reasonable fees, costs, and expenses of professionals) and the members of the SCC Litigation Trust Board), any taxes imposed on the SCC Litigation Trust or fees and expenses in connection with, arising out of or related to the SCC Litigation Trust Claims or the performance by the SCC Litigation Trustee of his duties hereunder in accordance with this Declaration, and (iii) to satisfy other liabilities incurred or assumed by the SCC Litigation Trust (or to which the assets are otherwise subject) in accordance with the Parent's Plan or this Declaration.

(b) The SCC Litigation Trustee may retain from the SCC Litigation Trust Proceeds and add to the SCC Litigation Trust Expense Fund, at any time and from time to time, such amounts as the SCC Litigation Trustee deems reasonable and appropriate to ensure that the SCC Litigation Trust Expense Fund will be adequate to meet the expenses and liabilities described in Section 3.3(a).

(c) Notwithstanding any other provision of this Declaration to the contrary, the SCC Litigation Trustee shall not be required to take any action or enter into or maintain any claim, demand, action, or proceeding relating to the SCC Litigation Trust unless it shall have sufficient funds in the SCC Litigation Trust Expense Fund for that purpose.

3.4 Books and Records.

(a) The SCC Litigation Trustee shall maintain in respect of the SCC Litigation Trust and the SCC Litigation Trust Beneficiaries, books and records relating to the assets and income of the SCC Litigation Trust and the payment of expenses of, and liabilities of claims against or assumed by, the SCC Litigation Trust in such detail and for such period of time as may be necessary to enable the SCC Litigation Trustee to make full and proper accounting in respect thereof in accordance with the provisions hereof and to comply with applicable provisions of law. Nothing in this Declaration requires the SCC Litigation Trustee to file any accounting or seek approval of any court with respect to the administration of the SCC Litigation Trust, or as a condition for any payment or distribution out of the assets of the SCC Litigation Trust.

(b) Upon distribution of all SCC Litigation Proceeds and all other Cash from the SCC Litigation Trust or the termination of the SCC Litigation Trust, the SCC Litigation Trustee shall retain the books, records, and files which shall have been delivered to or created by the SCC Litigation Trustee.

3.5 Compliance with Laws. Any and all distributions of assets of the SCC Litigation Trust and proceeds of borrowings, if any, shall be in compliance with applicable laws, including, without limitation, applicable federal and state securities laws.

3.6 Reliance by SCC Litigation Trustee. Except as otherwise provided herein:

(a) the SCC Litigation Trustee may rely, and shall be protected in acting upon, any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, or other paper or document believed by the SCC Litigation Trustee to be genuine and to have been signed or presented by the proper party or parties;

(b) persons dealing with the SCC Litigation Trustee shall look only to the assets of the SCC Litigation Trust to satisfy any liability incurred by the SCC Litigation Trustee to such Person in carrying out the terms of this Declaration, and neither the SCC Litigation Trustee nor any member of the SCC Litigation Trust Board shall have any personal obligation to satisfy any such liability; and

(c) the SCC Litigation Trustee shall have the right at any time to seek instructions concerning the administration of this Declaration from the Bankruptcy Court or, in the event that the Bankruptcy Cases are closed, any Delaware Court of Chancery.

3.7 Investment and Safekeeping of SCC Litigation Trust Assets. The SCC Litigation Trustee shall invest all assets transferred to the SCC Litigation Trustee (other than SCC Litigation Trust Claims), all SCC Litigation Trust Proceeds, the SCC Litigation Trust Expense Fund and all income earned by the SCC Litigation Trust (pending periodic distributions

in accordance with the provisions of the Parent's Plan) only in cash demand and time deposits, such as short-term certificates of deposit, in banks or other savings institutions, or other temporary, liquid investments, such as Treasury bills; *provided, however*, that (a) the scope of any such permissible investments shall be limited to include only those investments, or shall be expanded to include any additional investments, as the case may be, that a liquidating trust within the meaning of Treasury Regulation Section 301.7701-4(d) may be permitted to hold, pursuant to the Treasury Regulations, or any modification in the guidelines of the IRS, whether set forth in IRS rulings, other IRS pronouncements or otherwise, (b) under no circumstances, shall the SCC Litigation Trustee segregate the assets of the SCC Litigation Trust on the basis of classification of the holders of SCC Litigation Trust Interests, other than in accordance with the provisions of the Parent's Plan, and (c) the SCC Litigation Trustee shall not "vary the investment" of the SCC Litigation Trust Beneficiaries, within the meaning of Treasury Regulation Section 301.7701-4(c).

3.8 Limitation of SCC Litigation Trustee's Authority. Notwithstanding anything herein to the contrary, the SCC Litigation Trustee shall not (i) be authorized to engage in any trade or business, (ii) take such actions inconsistent with the prompt and orderly liquidation of the assets of the SCC Litigation Trust as are required or contemplated by applicable law, the Parent's Plan, and this Declaration, (iii) be authorized to engage in any activities inconsistent with the treatment of the SCC Litigation Trust as a liquidating trust within the meaning of Treasury Regulation Section 301.7701-4(d) and in accordance with Rev. Proc. 94-45, 1994-2 C.B. 684, or (iv) take any action to cause the SCC Litigation Trust to be treated as a publicly traded partnership within the meaning of Section 7704 of the Internal Revenue Code, including, without limitation, any action to cause the SCC Litigation Trust Interests, or any of them, to be traded on an established securities market or to be readily tradeable on a secondary market or the substantial equivalent thereof (if and only to the extent such limitation described in this clause (iv) is required to qualify and maintain the qualification of the SCC Litigation Trust as a liquidating trust within the meaning of Treasury Regulation 301.7701-4(d)).

3.9 Responsibilities of the Delaware Trustee.

(a) The Delaware Trustee shall have no obligation or duty to manage the assets of the SCC Litigation Trust or to take any other act except as expressly required hereunder. The Delaware Trustee's duties shall be limited to the following:

- i. serve as registered agent for service of process for the SCC Litigation Trust under Section 3804(b) of the Act;
- ii. serve as the Delaware resident trustee under Section 3807(a) of the Act;
- iii. maintain the registered office of the SCC Litigation Trust and forward to the SCC Litigation Trustee within a reasonable time any process served upon it; and
- iv. perform all other requirements so that the SCC Litigation Trust qualifies as a Delaware statutory trust under the Act.

(b) The Delaware Trustee shall not have any duty or obligation with respect to the SCC Litigation Trust Claims or any other assets of the SCC Litigation Trust or the SCC Litigation Trust except as otherwise specifically provided in this Agreement, and the Delaware Trustee shall be a trustee of the SCC Litigation Trust for the sole and limited purpose of fulfilling the requirements of Section 3807 of the Act. No implied duties or obligations shall be read into this Agreement against the Delaware Trustee. Notwithstanding the foregoing, the Delaware Trustee is authorized to take all actions which the SCC Litigation Trustee deems necessary, convenient, or incidental to effect the purposes of the SCC Litigation Trust, all as set forth in written instructions from the SCC Litigation Trustee in accordance with this Declaration. The right of the Delaware Trustee to perform any act enumerated herein shall not be construed as a duty.

3.10 Standard of Care; Exculpation. To the fullest extent permitted by law, neither the SCC Litigation Trustee nor the Delaware Trustee, nor any of their respective members, designees or professionals, nor any of their duly designated agents or representatives, shall be liable, responsible, or accountable in damages or otherwise for any loss, damage, or claim incurred by reason of any act or omission taken or omitted to be taken by the other Trustee or such Trustee's agents or representatives, nor shall the SCC Litigation Trustee or the Delaware Trustee be liable, responsible, or accountable in damages or otherwise for any loss, damage, or claim incurred by reason of any act or omission taken or omitted to be taken by either such Trustee in good faith other than acts or omissions resulting from each such Trustee's own bad faith, willful misconduct, gross negligence or knowing violation of law. Each of the SCC Litigation Trustee and the Delaware Trustee and each of their respective members may, in connection with the performance of their respective functions, and in each of their sole and absolute discretion, consult with their respective attorneys, accountants, financial advisors, and agents, and shall not be liable for any act taken, omitted to be taken, or suffered to be done in good faith in accordance with advice or opinions rendered by such Persons. Notwithstanding such authority, neither the SCC Litigation Trustee nor the Delaware Trustee nor any of their respective members shall be under any obligation to consult with their respective attorneys, accountants, financial advisors, or agents, and the good faith determination not to do so shall not result in the imposition of liability on either of the SCC Litigation Trustee or the Delaware Trustee or, as applicable, their respective members or designees, unless such determination is based on bad faith, willful misconduct, gross negligence, or knowing violation of law.

ARTICLE 4

SCC LITIGATION TRUST BOARD

4.1 SCC Litigation Trust Board. The SCC Litigation Trust Board shall be comprised of three Persons. The initial members of the SCC Litigation Trust Board shall be appointed as described in and in accordance with the Parent's Plan. Successor members of the SCC Litigation Trust Board shall be appointed as described in Section 4.7 below.

4.2 Authority of the SCC Litigation Trust Board. The SCC Litigation Trust Board shall have the authority and responsibility to oversee, review, and guide the activities and performance of the SCC Litigation Trustee and shall have the authority to remove the SCC Litigation Trustee in accordance with Section 2.3. The SCC Litigation Trustee shall consult with and provide information to the SCC Litigation Trust Board in accordance with and pursuant to

the terms of this Declaration and the Parent's Plan. The SCC Litigation Trust Board shall have the authority to select and engage such Persons, and select and engage such professional advisors, including, without limitation, any professional previously retained by the Debtors in accordance with the terms of the Parent's Plan and this Declaration, as the SCC Litigation Trust Board deems necessary and desirable to assist the SCC Litigation Trust Board in fulfilling its obligations under this Declaration and the Parent's Plan, and the SCC Litigation Trust Board shall pay the reasonable fees of such Persons (including on an hourly, contingency, or modified contingency basis) and reimburse such Persons for their reasonable and documented out-of-pocket costs and expenses consistent with the terms of this Declaration.

4.3 Meetings of the SCC Litigation Trust Board.

(a) Regular meetings of the SCC Litigation Trust Board are to be held with such frequency and at such place as the members of the SCC Litigation Trust Board may determine in their reasonable discretion, but in no event shall such meetings be held less frequently than quarterly. The SCC Litigation Trust Board shall attend and participate in these regularly scheduled meetings. The SCC Litigation Trust Board shall establish by resolution the time or times and place or places for the holding of such meetings. Notice of any such regular meetings of the SCC Litigation Trust Board need not be given.

(b) Special meetings of the SCC Litigation Trust Board may be held whenever and wherever called by the SCC Litigation Trust Board or any two members of the SCC Litigation Trust Board. The SCC Litigation Trust Board shall attend and participate in any special meeting called by the SCC Litigation Trust Board and any other special meeting as requested by at least one member of the SCC Litigation Trust Board.

4.4 Notice and Waiver of Notice for SCC Litigation Trust Board and SCC Litigation Trust Board. Notice of the time and place (but not necessarily the purpose or all of the purposes) of any special meeting, or any change in time or place of a regular meeting, will be given to the SCC Litigation Trust Board and the members of the SCC Litigation Trust Board in person or by telephone, or via mail, electronic mail, or facsimile transmission. Notice to the SCC Litigation Trust Board and the members of the SCC Litigation Trust Board of any such special meeting or change in a regular meeting will be deemed given sufficiently in advance when (i) if given by electronic mail or facsimile transmission, the same is transmitted at least one business day prior to the convening of the meeting, or (ii) if personally delivered (including by overnight courier) or given by telephone, the same is handed, or the substance thereof is communicated over the telephone to the SCC Litigation Trust Board and the members of the SCC Litigation Trust Board or to an adult member of his/her office staff or household, at least one business day prior to the convening of the meeting. Each of the SCC Litigation Trust Board and any member of the SCC Litigation Trust Board may waive notice of any meeting and any adjournment thereof at any time before, during, or after it is held, as provided by law. Except as provided in the next sentence below, the waiver must be in writing, signed by the SCC Litigation Trust Board or the applicable member or members of the SCC Litigation Trust Board entitled to the notice, and filed with the minutes or records of the SCC Litigation Trust Board. The attendance of the SCC Litigation Trust Board or a member of the SCC Litigation Trust Board at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express

purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

4.5 Manner of Acting.

(a) A majority of the total number of members of the SCC Litigation Trust Board then in office shall constitute a quorum for the transaction of business at any meeting of the SCC Litigation Trust Board. The affirmative vote of a majority of the members of the SCC Litigation Trust Board present and entitled to vote at a meeting at which a quorum is present shall be the act of the SCC Litigation Trust Board, except as otherwise required by law or as provided in this Declaration.

(b) Each of the SCC Litigation Trustee and any or all of the members of the SCC Litigation Trust Board may participate in a regular or special meeting by, or conduct the meeting through the use of, conference telephone or similar communications equipment by means of which all persons participating in the meeting may hear each other, in which case any required notice of such meeting may generally describe the arrangements (rather than or in addition to the place) for the holding thereof. Each of the SCC Litigation Trustee and any member of the SCC Litigation Trust Board participating in a meeting by this means is deemed to be present in person at the meeting. Voting may, if approved by the majority of the members at a meeting, be conducted by electronic mail or individual communications by the SCC Litigation Trustee and each member of the SCC Litigation Trust Board.

(c) Any member of the SCC Litigation Trust Board who is present and entitled to vote at a meeting of the SCC Litigation Trust Board when action is taken is deemed to have assented to the action taken, subject to the requisite vote of the SCC Litigation Trust Board, unless: (i) such member of the SCC Litigation Trust Board objects at the beginning of the meeting (or promptly upon his/her arrival) to holding it or transacting business at the meeting; or (ii) his/her dissent or abstention from the action taken is entered in the minutes of the meeting; or (iii) he/she delivers written notice (including by electronic or facsimile transmission) of his/her dissent or abstention to the SCC Litigation Trust Board before its adjournment. The right of dissent or abstention is not available to any member of the SCC Litigation Trust Board who votes in favor of the action taken.

(d) Prior to the taking of a vote on any matter or issue or the taking of any action with respect to any matter or issue, each of the SCC Litigation Trustee and each member of the SCC Litigation Trust Board shall report to the SCC Litigation Trust Board any conflict of interest such member has or may have with respect to the matter or issue at hand and fully disclose the nature of such conflict or potential conflict (including, without limitation, disclosing any and all financial or other pecuniary interests that such member might have with respect to or in connection with such matter or issue, other than solely as, or as a representative of, a SCC Litigation Trust Beneficiary). A SCC Litigation Trust Board member who has or who may have a conflict of interest shall be deemed to be a “conflicted member” who shall not be entitled to vote or take part in any action with respect to such matter or issue (however such member shall be counted for purposes of determining the existence of a quorum); the vote or action with respect to such matter or issue shall be undertaken only by members of the SCC Litigation Trust Board who are not “conflicted members.”

4.6 SCC Litigation Trust Board's Action Without a Meeting. Any action required or permitted to be taken by the SCC Litigation Trust Board at a meeting may be taken without a meeting if the action is taken by unanimous written consent of the SCC Litigation Trust Board as evidenced by one or more written consents describing the action taken, signed by all members of the SCC Litigation Trust Board and recorded in the minutes or other transcript of proceedings of the SCC Litigation Trust Board.

4.7 Tenure, Removal, and Replacement of the Members of the SCC Litigation Trust Board. The authority of the members of the SCC Litigation Trust Board will be effective as of the Effective Date and will remain and continue in full force and effect until the SCC Litigation Trust is terminated in accordance with Article 9. The service of the members of the SCC Litigation Trust Board will be subject to the following:

(a) the members of the SCC Litigation Trust Board will serve until death or resignation pursuant to subsection (b) below, or removal pursuant to subsection (c) below.

(b) a member of the SCC Litigation Trust Board may resign at any time by providing a written notice of resignation to the remaining members of the SCC Litigation Trust Board. Such resignation will be effective upon the date received by the SCC Litigation Trust Board or such later date specified in the written notice.

(c) members of the SCC Litigation Trust Board may be removed as follows:

i. the member originally selected by the ASARCO Committee (the "SCC Committee Board Member") may be removed by the affirmative vote of the then-current Eligible Holders holding at least a majority of the SCC Litigation Trust Interests;

ii. the member originally selected by the DOJ (the "SCC DOJ Board Member") may be removed by the DOJ (in consultation with the states that have Allowed Unsecured Environmental Claims); and

iii. the member jointly selected by the SCC Committee Board Member and the SCC DOJ Board Member may be removed by the affirmative vote of both the SCC Committee Board Member and the SCC DOJ Board Member.

(d) In the event of a vacancy on the SCC Litigation Trust Board (whether by removal, death, or resignation), new members may be appointed to fill such vacancy as follows:

i. if the vacancy was created by the removal, death, or resignation of the SCC DOJ Board Member, then by the DOJ (in consultation with the states that have Allowed Unsecured Environmental Claims); or

ii. if the vacancy was created by the removal, death, or resignation of either of the other two members, by the remaining members.

(e) For purposes of this Declaration, "Eligible Holder" means each SCC Litigation Trust Beneficiary except any SCC Litigation Trust Beneficiary who is a party adverse to ASARCO in the SCC Litigation, or is an Affiliate of any party adverse to ASARCO in the SCC Litigation.

(f) If there are no Eligible Holders of SCC Litigation Trust Interests in a particular class to select as a member of the SCC Litigation Trust Board, the SCC Litigation Trust Board shall proceed without a member selected by that class.

(g) Immediately upon the appointment of any successor member of the SCC Litigation Trust Board, all rights, powers, duties, authority, and privileges of the predecessor member of the SCC Litigation Trust Board hereunder will be vested in and undertaken by the successor member of the SCC Litigation Trust Board without any further act; and the successor member of the SCC Litigation Trust Board will not be liable personally for any act or omission of the predecessor member of the SCC Litigation Trust Board.

4.8 Compensation of the SCC Litigation Trust Board. Each member of the SCC Litigation Trust Board shall be paid the amount of \$ _____ per quarter, plus \$ _____ per meeting when such member is required to attend a SCC Litigation Trust Board meeting in person, as compensation for his or her services under this Agreement, and shall be reimbursed for all reasonable and documented expenses incurred by such member in connection with the performance of his or her services hereunder.

4.9 Standard of Care; Exculpation. To the fullest extent permitted by law, none of the SCC Litigation Trust Board, its members, designees or professionals, nor any of their duly designated agents or representatives, shall be liable, responsible, or accountable in damages or otherwise for any loss, damage, or claim incurred by reason of any act or omission taken or omitted to be taken by any other member, agent or representative of the SCC Litigation Trust Board, nor shall the SCC Litigation Trust Board or any of its members be liable, responsible, or accountable in damages or otherwise for any loss, damage, or claim incurred by reason of any act or omission taken or omitted to be taken by the SCC Litigation Trust Board in good faith, other than acts or omissions resulting from the SCC Litigation Trust Board's bad faith, willful misconduct, gross negligence, or knowing violation of law. The SCC Litigation Trust Board and each of its members may, in connection with the performance of their respective functions, and in each of their sole and absolute discretion, consult with its attorneys, accountants, financial advisors, and agents, and shall not be liable for any act taken, omitted to be taken, or suffered to be done in good faith in accordance with advice or opinions rendered by such Persons. Notwithstanding such authority, neither the SCC Litigation Trust Board nor any of its members shall be under any obligation to consult with their respective attorneys, accountants, financial advisors or agents, and its good faith determination not to do so shall not result in the imposition of liability on the SCC Litigation Trust Board or, as applicable, its members or designees, unless such determination is based on bad faith, willful misconduct, gross negligence, or knowing violation of law.

ARTICLE 5
SCC LITIGATION TRUST INTERESTS

5.1 Issuance of SCC Litigation Trust Interests. The issuance of SCC Litigation Trust Interests shall be accomplished as set forth in the Parent's Plan, including, without limitation, Article V.B. of the Parent's Plan.

5.2 Interests Beneficial Only.

(a) The ownership of a SCC Litigation Trust Interest shall not entitle any SCC Litigation Trust Beneficiary to any title in or to the assets of the SCC Litigation Trust as such (which title shall be vested in the SCC Litigation Trustee) or to any right to call for a partition or division of the assets of the SCC Litigation Trust or to require an accounting.

(b) The SCC Litigation Trust Beneficiaries have no rights with respect to, or interest in the Debtors (or any successor thereto).

(c) The SCC Litigation Trust Beneficiaries have no rights to direct the SCC Litigation Trustee, the Delaware Trustee, or the SCC Litigation Trust Board, except as set forth in Section 5.8 herein.

(d) (i) The SCC Litigation Trust Claims are solely assets of the SCC Litigation Trust; (ii) the SCC Litigation Trust Claims shall be conducted on behalf of the SCC Litigation Trust Beneficiaries solely in accordance with the instructions of the SCC Litigation Trustee pursuant to this Declaration; (iii) the SCC Litigation Trustee shall have the sole and exclusive right (subject to consultation with the SCC Litigation Trust Board as set forth herein), to take (or not take), actions relating to such SCC Litigation Trust Claims as contemplated by this Declaration and may, among other things, dismiss, settle, or cease prosecuting such SCC Litigation Trust Claims at any time without obtaining any cash or other recovery, or upon obtaining such cash or other recovery as the SCC Litigation Trustee may determine; (iv) the SCC Litigation Trustee has the sole and exclusive right (subject to consultation with the SCC Litigation Trust Board as set forth herein), to take or not take other actions contemplated by this Declaration on behalf of the SCC Litigation Trust Beneficiaries relating to such SCC Litigation Trust Claims (including, without limitation, any decision with respect to the incurrence of expenses); and (v) any liability of the SCC Litigation Trustee, or any member of the SCC Litigation Trust Board, is limited to the extent set forth in this Declaration.

5.3 Evidence of Beneficial Interests.

(a) The SCC Litigation Trustee shall have full power, authority and discretion to determine whether ownership of any SCC Litigation Trust Interest shall be represented by physical certificates, by book entries in lieu of physical certificates, or in any other form or manner. Regardless of such determination, the record holders of the SCC Litigation Trust Interests shall be recorded and set forth in the SCC Litigation Trust Register maintained by the SCC Litigation Trust Registrar expressly for such purpose pursuant to Section 5.5. All references in this Declaration to SCC Litigation Trust Beneficiaries shall be read to mean holders of record as set forth in the official register maintained by the SCC Litigation Trust Registrar and shall not mean any beneficial owner not recorded on such official

register. Unless expressly provided herein, the SCC Litigation Trustee may establish a record date, which the SCC Litigation Trustee deems practicable for determining the holders for a particular purpose.

(b) In the event certificates are to be issued to evidence ownership of any SCC Litigation Trust Interests, (i) the form and content of such certificates shall be determined by the SCC Litigation Trustee subject to approval by the SCC Litigation Trust Board, and (ii) the SCC Litigation Trustee shall cause to be placed on such certificates such legends as it deems to be necessary or appropriate under tax laws or regulations, securities laws or regulations or otherwise. Any SCC Litigation Trust Beneficiary to whom such a certificate is issued, by virtue of the acceptance thereof, shall assent to and be bound by the terms and conditions of this Declaration and the Parent's Plan.

5.4 Securities Law Matters.

(a) To the extent the SCC Litigation Trust Interests are deemed to be "securities," the issuance of SCC Litigation Trust Interests under the Parent's Plan are exempt, pursuant to Section 1145 of the Bankruptcy Code, from registration under the Securities Act of 1933, as amended, and any applicable state and local laws requiring registration of securities. If the SCC Litigation Trustee determines, with the advice of counsel, that the SCC Litigation Trust is required to comply with registration and reporting requirements of the Exchange Act, then the SCC Litigation Trustee shall take any and all actions deemed necessary or appropriate by the SCC Litigation Trustee to comply with such registration and reporting requirements, if any, and to file periodic reports with the Securities and Exchange Commission (the "SEC"). Notwithstanding the foregoing procedure, nothing in the Parent's Plan shall be deemed to preclude the SCC Litigation Trustee from amending this Declaration to make such changes as deemed necessary or appropriate by the SCC Litigation Trustee, with the advice of counsel, to ensure that the SCC Litigation Trust is not subject to registration or reporting requirements of the Exchange Act, the Trust Indenture Act, or the Investment Company Act.

(b) Exemptions may be sought from the SEC from all or some of the registration and reporting requirements that may be applicable to the SCC Litigation Trust pursuant to the Exchange Act, the Trust Indenture Act, or the Investment Company Act, if it is determined that compliance with such requirements would be burdensome on the SCC Litigation Trust.

(c) The SCC Litigation Trust is organized as a liquidating entity in the process of liquidation, and therefore should not be considered, and the SCC Litigation Trust does not and will not hold itself out as, an "investment company" or any entity "controlled" by an "investment company," as such terms are defined in the Investment Company Act.

5.5 Transfer and Exchange.

(a) The SCC Litigation Trustee shall appoint a SCC Litigation Trust Registrar, which may be the SCC Litigation Trustee, for the purpose of registering and transferring the SCC Litigation Trust Interests as herein provided. The SCC Litigation Trust Registrar may be a duly qualified institution or the SCC Litigation Trustee itself. For its services

hereunder, the SCC Litigation Trust Registrar, unless it is the SCC Litigation Trustee, shall be entitled to receive reasonable compensation from the SCC Litigation Trust as an expense of the SCC Litigation Trust.

(b) The SCC Litigation Trustee shall cause to be kept at the office of the SCC Litigation Trust Registrar, or at such other place or places as shall be designated by it from time to time, the SCC Litigation Trust Register. The SCC Litigation Trust Register shall contain the names, addresses for payment and notice, and class and number of SCC Litigation Trust Interests of each of the SCC Litigation Trust Beneficiaries and shall be maintained pursuant to such reasonable regulations as the SCC Litigation Trustee and the SCC Litigation Trust Registrar may prescribe.

(c) Pursuant to such reasonable regulations as the SCC Litigation Trustee and the SCC Litigation Trust Registrar may prescribe, and subject to the SCC Litigation Trustee's review and approval of any such proposed transaction in its sole and absolute discretion, the SCC Litigation Trustee may permit to be transferred, assigned, pledged, hypothecated, or registered on the SCC Litigation Trust Register any SCC Litigation Trust Interests issued pursuant to this Declaration. Subject to the review and approval of any such proposed transaction by the SCC Litigation Trustee and the other limitations set forth herein, any registered SCC Litigation Trust Beneficiary may transfer, assign, pledge, or hypothecate, in whole or in part, SCC Litigation Trust Interests upon presentation of a duly executed written instrument of transfer in the form approved by the SCC Litigation Trustee and the SCC Litigation Trust Registrar, which instrument must be executed by the transferor and the transferee and must clearly identify the SCC Litigation Trust Interests being transferred, assigned, pledged, or hypothecated, and such other documents as they may reasonably require; provided, however, SCC Litigation Trust Interests may only be transferred, assigned, pledged or hypothecated upon acceptance and acknowledgment by the transferee that such SCC Litigation Trust Interest remains subject to the Parent's Plan, including the cap on the recovery under the SCC Litigation Trust. The transferor shall pay reasonable transfer charges established by the SCC Litigation Trustee or the SCC Litigation Trust Registrar for the purpose of reimbursing the SCC Litigation Trust and the SCC Litigation Trust Registrar for the expenses incident thereto, including any legal fees, taxes, or other governmental charges.

(d) No SCC Litigation Trust Beneficiary may transfer, assign, pledge, hypothecate, or otherwise dispose of any SCC Litigation Trust Interests unless in compliance with the Securities Act and other state and federal securities laws. No transfer, assignment, pledge, hypothecation, or other disposition of a SCC Litigation Trust Interest may be effected until (i) the SCC Litigation Trustee has approved such proposed transaction in its sole and absolute discretion, and (ii) the SCC Litigation Trustee and the SCC Litigation Trust Board shall have received such legal or other information that they, in their sole discretion, deem necessary or appropriate to evidence such compliance.

(e) In the event that the SCC Litigation Trustee determines that the SCC Litigation Trust Interests shall be represented by physical certificates, subject to the foregoing conditions of this Section 5.5, whenever any certificate shall be presented for transfer or exchange, the SCC Litigation Trustee shall cause the SCC Litigation Trust Registrar to issue,

authenticate, and deliver in exchange therefor, the certificate for the SCC Litigation Trust Interest(s) that the person(s) presenting such certificates shall be entitled to receive.

(f) In the event that the SCC Litigation Trustee determines that the SCC Litigation Trust Interests shall be represented by physical certificates, if a SCC Litigation Trust Beneficiary claims that his/her certificate (the "Original Certificate") has been mutilated, defaced, lost, stolen, or destroyed, the SCC Litigation Trustee shall issue, and the SCC Litigation Trust Registrar shall authenticate, a replacement certificate if such SCC Litigation Trust Beneficiary submits a notarized affidavit certifying that (i) he/she is the true, lawful, present, and sole owner of the Original Certificate, (ii) he/she has diligently searched all of his/her financial and other records and the Original Certificate is nowhere to be found, (iii) the Original Certificate and any rights or interests therein were not endorsed, and have not been pledged, sold, delivered, transferred, or assigned under any agreement, hypothecated or pledged for any loan, or disposed of in any manner by the SCC Litigation Trust Beneficiary or on his/her behalf, (iv) no other person or other entity has any right, title, claim, equity, or interest in, to, or respecting the Original Certificate, and (v) in the event of the recovery of the Original Certificate at any time after the issuance of a new certificate in exchange thereof, the SCC Litigation Trust Beneficiary will cause the recovered Original Certificate to be returned to the SCC Litigation Trust for cancellation. In addition, such SCC Litigation Trust Beneficiary will indemnify, and if required by the SCC Litigation Trustee or the SCC Litigation Trust Registrar, provide a bond or other security sufficient in the reasonable judgment of the SCC Litigation Trustee, the SCC Litigation Trust Registrar or any authenticating agent, from any loss which any of them may suffer if the Original Certificate is replaced, including a loss resulting from the assertion by any entity or person of the right to payment under the Original Certificate. Such SCC Litigation Trust Beneficiary shall pay reasonable charges established by the SCC Litigation Trustee and the SCC Litigation Trust Registrar for the purpose of reimbursing the SCC Litigation Trust and the SCC Litigation Trust Registrar for the expenses incident thereto, including any tax or other governmental charges. The SCC Litigation Trustee shall incur no liability to anyone by reason of anything done or omitted to be done by it in good faith under the provisions of this Section 5.5(f). All SCC Litigation Trust Interests shall be held and owned upon the express condition that the provisions of this Section 5.5(f) are exclusive in respect of the replacement or payment of mutilated, defaced, lost, stolen or destroyed certificates and shall, to the extent permitted by law, preclude any and all other rights or remedies respecting such replacement or the payment in respect thereto. Any duplicate certificate issued pursuant to this Section 5.5(f) shall constitute original interests in the SCC Litigation Trust. The SCC Litigation Trustee and the SCC Litigation Trust Registrar shall not treat the Original Certificate as outstanding.

5.6 Access to the SCC Litigation Trust Register by the SCC Litigation Trust Beneficiaries. SCC Litigation Trust Beneficiaries and their duly authorized representatives shall have the right, upon reasonable prior written notice to the SCC Litigation Trust Registrar and the SCC Litigation Trustee, and in accordance with the reasonable regulations prescribed by the SCC Litigation Trust Registrar and the SCC Litigation Trustee, to inspect and, at the sole expense of the SCC Litigation Trust Beneficiary seeking the same, make copies of the SCC Litigation Trust Register, in each case for a purpose reasonably related to such SCC Litigation Trust Beneficiary's interest in the SCC Litigation Trust.

5.7 Absolute Owners. The SCC Litigation Trustee may deem and treat the SCC Litigation Trust Beneficiary of record in the SCC Litigation Trust Register as the absolute owner of such SCC Litigation Trust Interests for the purpose of receiving distributions and payment thereon or on account thereof and for all other purposes whatsoever and the SCC Litigation Trustee shall not be charged with having received notice of any claim or demand to such SCC Litigation Trust Interests or the interest therein of any other Person.

5.8 Limitation on Suits by SCC Litigation Trust Beneficiaries. To the fullest extent permitted by law, no SCC Litigation Trust Beneficiary shall have any right by virtue of or by availing itself of any provision of this Declaration to institute any action or proceeding (other than a suit by such SCC Litigation Trust Beneficiary for nonpayment of amounts due and owing hereunder with respect to such SCC Litigation Trust Beneficiary's SCC Litigation Trust Interest) at law or in equity or in bankruptcy or otherwise upon or under or with respect to this Declaration, or for the appointment of any trustee, receiver, liquidator, custodian, or other similar official or for any other remedy hereunder, unless such SCC Litigation Trust Beneficiary previously shall have given to the SCC Litigation Trustee written notice of default, and unless such SCC Litigation Trust Beneficiary shall also have made written request upon the SCC Litigation Trustee to institute such action or proceeding in its own name as SCC Litigation Trustee hereunder and shall have offered to the SCC Litigation Trustee such reasonable indemnity as it may require against the costs, expenses and liabilities to be incurred therein or thereby and the SCC Litigation Trustee for 60 days after its receipt of such notice, request and offer of indemnity shall have failed to institute any such action or proceeding; it being understood and intended, and being expressly covenanted by every SCC Litigation Trust Beneficiary with every other SCC Litigation Trust Beneficiary and the SCC Litigation Trustee, that no one or more SCC Litigation Trust Beneficiaries shall have any right in any manner whatsoever by virtue or by availing itself or themselves of any provision of this Declaration to effect, disturb or prejudice the rights of any other such SCC Litigation Trust Beneficiary, or to obtain or seek to obtain priority over or preference to any other such SCC Litigation Trust Beneficiary or to enforce any right under this Declaration, except in the manner herein provided and for the ratable and common benefit of all SCC Litigation Trust Beneficiaries. For the protection and enforcement of the provisions of this Section, each and every SCC Litigation Trust Beneficiary and the SCC Litigation Trustee shall be entitled to such relief as can be given either at law or in equity.

ARTICLE 6 DISTRIBUTIONS

6.1 Use of Proceeds.

(a) All SCC Litigation Proceeds, any proceeds therefrom, and any other Cash of the SCC Litigation Trust (other than the SCC Litigation Trust Expense Fund) received by the SCC Litigation Trustee shall be applied as follows:

i. first, to (i) pay all costs and expenses of the SCC Litigation Trust to the extent not paid by or from the SCC Litigation Trust Expense Fund (including the costs and expenses of the SCC Litigation Trust, the SCC Litigation Trustee, the Delaware Trustee and the SCC Litigation Trust Board and the fees, costs and expenses of all

professionals retained by the SCC Litigation Trustee, and any taxes imposed on the SCC Litigation Trust or in respect of the assets of the SCC Litigation Trust), (ii) satisfy other liabilities incurred or assumed by the SCC Litigation Trust (or to which the assets are otherwise subject) in accordance with the Parent's Plan or this Declaration, (iii) hold such amounts in reserve as the SCC Litigation Trustee deems reasonably necessary to meet future expenses, contingent liabilities and to maintain the value of the assets of the SCC Litigation Trust during liquidation (including the SCC Litigation Trust Expense Fund) and (iv) pay the Parent's Plan Administrator such amounts as the Parent's Plan Administrator designates from time to time for the purpose of paying, or indemnifying Reorganized ASARCO for, any taxes incurred or expected to be incurred by Reorganized ASARCO in connection with the SCC Litigation Trust as a result of the allocation of tax items by the SCC Litigation Trustee or the allowance or disallowance of Disputed Claims; and

ii. second, to pay any remaining amounts to the SCC Litigation Trust Beneficiaries (including to the Parent's Plan Administrator for deposit into the Disputed Claims Reserve on account of the Claims of any Claimant that would be an SCC Litigation Trust Beneficiary absent such objection) Pro Rata based on their SCC Litigation Trust Interests; provided, however, that (a) in no event shall any holder of a Claim in Class 2, 6 or 7 or a Claim in Class 3 as to which the holder has elected Treatment B or Treatment C (as set forth in Article 4.2(c) of the Parent's Plan) receive aggregate distributions in excess of Payment in Full on account of such Claim and (b) in no event shall any holder of a Claim in Class 3 receiving Treatment A receive any SCC Litigation Trust Proceeds on account of such Claim. If the Parent's Plan Administrator holds proceeds of the SCC Litigation Trust in the Disputed Claims Reserve on account of a Disputed Claim that is finally determined adversely to such Claimant, in whole or in part, the Parent's Plan Administrator shall return to the SCC Litigation Trust the disallowed portion that the Parent's Plan Administrator received from the SCC Litigation Trust on account of such Claim and shall pay any Allowed portion to such Claimant.

(b) Subject to clauses (i) and (ii) of Section 6.1(a), the SCC Litigation Trustee shall distribute in accordance with Section 6.1(a) at least annually its net income and all net proceeds from the liquidation of the assets of the SCC Litigation Trust (except to the extent any such failure to distribute is not inconsistent with the classification of the SCC Litigation Trust as a liquidating trust under Section 301.7701-4(d) of the Treasury Regulations).

(c) If, upon termination of the SCC Litigation Trust, the SCC Litigation Trust Expense Fund has funds remaining after the payment of all of the SCC Litigation Trust's expenses, such remaining funds shall be distributed in accordance with clause (ii) of Section 6.1(a) above..

(d) Any funds remaining after all Claims entitled to share in the SCC Litigation Trust have been Paid in Full and all expenses of the SCC Litigation Trust have been satisfied, shall be distributed to Parent or other applicable defendant.

(e) Notwithstanding the foregoing clauses of this Section 6.1, the SCC Litigation Trustee may withhold from amounts distributable to any Person any and all amounts,

determined in the SCC Litigation Trustee's reasonable sole discretion, required by any law, regulation, rule, ruling, directive, or other governmental requirement to be withheld. Any amount so withheld from a distribution to a SCC Litigation Trust Beneficiary (or its designee) shall be treated as having been paid to, and received by, such SCC Litigation Trust Beneficiary for purposes of the Parent's Plan and the Parent's Plan Documents.

6.2 Manner of Payment of Distributable Proceeds.

(a) All distributions made by the SCC Litigation Trustee to holders of SCC Litigation Trust Interests shall be payable to the holders of SCC Litigation Trust Interests of record as of the 20th day prior to the date scheduled for the distribution, unless such day is not a Business Day, then such day shall be the following Business Day. The SCC Litigation Trustee shall promptly notify the SCC Litigation Trust Registrar in writing of any such dates and the SCC Litigation Trust Registrar shall promptly notify the SCC Litigation Trust Beneficiaries of the same.

(b) If the distribution shall be in Cash, the SCC Litigation Trustee shall distribute such Cash by wire, check, or such other method as the SCC Litigation Trustee deems appropriate under the circumstances.

(c) All distributions under this Declaration to any holder of SCC Litigation Trust Interests shall be made at the address or to the account (as applicable) of such holder as set forth in the SCC Litigation Trust Register or at such other address or in such other manner as such holder of SCC Litigation Trust Interests shall have specified for payment purposes in a written notice to the SCC Litigation Trustee and the SCC Litigation Trust Registrar at least 20 days prior to such distribution date. In the event that any distribution to any holder is returned as undeliverable, the SCC Litigation Trustee shall be entitled to rely on the most current information available from the Parent's Plan Administrator, as applicable, to determine the current address or account information of such holder, but no distribution to such holder shall be made unless and until the SCC Litigation Trustee has determined the then current address or account (as applicable) of such holder, at which time such distribution shall be made to such holder without interest; *provided, however*, that such undeliverable or unclaimed distributions shall be deemed unclaimed property at the expiration of one year from the date of distribution. The SCC Litigation Trustee shall reallocate the undeliverable and unclaimed distributions for the benefit of all other SCC Litigation Trust Beneficiaries.

(d) Notwithstanding anything herein to the contrary, the SCC Litigation Trustee shall not be required to make distributions or payments of fractions of dollars. Whenever any payment of a fraction of a dollar under the Parent's Plan or this Declaration would otherwise be called for, the actual payment shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars or more being rounded up.

ARTICLE 7
INDEMNIFICATION

7.1 Indemnification of SCC Litigation Trustee and the SCC Litigation Trust Board.

(a) To the fullest extent permitted by law, the SCC Litigation Trust, to the extent of its assets legally available for that purpose, shall indemnify and hold harmless each present and former SCC Litigation Trustee and each present and former member of the SCC Litigation Trust Board and each of their respective directors, members, shareholders, partners, officers, agents, employees, attorneys, and other professionals (collectively, the “Indemnified Persons”) from and against any and all losses, costs, damages, reasonable and documented out-of-pocket expenses (including, without limitation, reasonable fees and expenses of attorneys and other advisors and any court costs incurred by any Indemnified Person) or liability arising out of or relating to the SCC Litigation Trust, the SCC Litigation Trust Interests, the assets of the SCC Litigation Trust, the SCC Litigation Trust Claims or any acts or omissions of the SCC Litigation Trust or any Indemnified Person in its capacity as a SCC Litigation Trustee, SCC Litigation Trust Board member or agent, employee, or representative thereof; *provided, however*, that such act or omission was taken in good faith, was reasonably believed by the applicable Indemnified Person to be within the scope of authority granted to such Person under this Declaration and did not constitute bad faith, gross negligence, willful misconduct, or knowing violation of law.

(b) To the extent reasonable, the SCC Litigation Trust may pay in advance or reimburse reasonable and documented out-of-pocket expenses (including advancing reasonable costs of defense) incurred by the Indemnified Person who is or is threatened to be named or made a defendant or a respondent in a proceeding concerning the business and affairs of the SCC Litigation Trust. To the extent that any such expenses are paid or reimbursed in advance of the final disposition of any such action, suit or proceeding, the Indemnified Person shall provide the SCC Litigation Trust with an undertaking by or on behalf of such Indemnified Person to repay such amount if it shall ultimately be determined that such Person is not entitled to be indemnified by the SCC Litigation Trust as authorized in this Article 7. Such expenses (including attorneys’ fees) may be so paid upon such terms and conditions, if any, as the SCC Litigation Trustee deems appropriate.

(c) Any Indemnified Person may waive the benefits of indemnification under this Article 7, but only by an instrument in writing executed by such Indemnified Person.

(d) The SCC Litigation Trust shall have power to purchase and maintain insurance on behalf of any potentially Indemnified Person against any liability asserted against such Person and incurred by such Person in connection with such Person’s obligations under this Declaration, whether or not the SCC Litigation Trust would have the power to indemnify such Person against such liability under the provisions of this Article 7.

(e) The rights to indemnification under this Article 7 are not exclusive of other rights which any Indemnified Person may otherwise have at law or in equity, including without limitation common law rights to indemnification or contribution. Nothing in this Article 7 will affect the rights or obligations of any Person (or the limitations on those rights or obligations) under this Declaration or any other agreement or instrument to which that Person is a party.

ARTICLE 8 REPORTS

8.1 Financial, Tax, and Other Information.

(a) At such times as may be required by the Exchange Act, if applicable, or otherwise as soon as practicable

i. after the end of each calendar year, and as soon as practicable upon termination of the SCC Litigation Trust, the SCC Litigation Trustee shall cause to be prepared, and shall submit to each SCC Litigation Trust Beneficiary a written report including: (a) audited financial statements of the SCC Litigation Trust at the end of the calendar year or period and the receipts and disbursements of the SCC Litigation Trustee for the period; (b) a description of any action taken by the SCC Litigation Trustee in the performance of the SCC Litigation Trustee's duties which materially affects the SCC Litigation Trust and of which notice has not previously been given to the SCC Litigation Trust Beneficiaries; and (c) a description of any material judicial or arbitral decision with respect to, or any agreement to settle, the SCC Litigation Trust Claims included in the assets of the SCC Litigation Trust.

ii. after the end of each calendar quarter, the SCC Litigation Trustee shall cause to be prepared, and shall submit to each SCC Litigation Trust Beneficiary a written report including: (a) unaudited financial statements of the SCC Litigation Trust at the end of the calendar quarter, and the receipts and disbursements of the SCC Litigation Trustee for the quarter; and (b) a description of any action taken by the SCC Litigation Trustee in the performance of the SCC Litigation Trustee's duties which materially affects the SCC Litigation Trust and of which notice has not previously been given to the SCC Litigation Trust Beneficiaries.

iii. promptly following the occurrence of a material event or change which effects either the SCC Litigation Trust or the rights of the SCC Litigation Trust Beneficiaries hereunder, the SCC Litigation Trustee shall cause to be prepared and shall submit additional reports to the SCC Litigation Trust Beneficiaries relating to such occurrences.

The information to be provided pursuant to this Section 8.1(a) shall satisfy any rights under the Delaware Statutory Trust Act, 12 Del. C. § 3801 et seq., or otherwise of the SCC Litigation Trust Beneficiaries to access to information regarding the business and financial condition of the SCC Litigation Trust.

(b) As soon as practicable after the end of each calendar year, and as soon as practicable upon the termination of the SCC Litigation Trust, the SCC Litigation Trustee shall cause to be prepared and shall submit to current and former Trust Tax Owners, as applicable, a statement setting forth, for federal income tax purposes, their allocable portions of items of income, gain, loss, deduction and credit of the SCC Litigation Trust for such calendar year (as determined pursuant to Section 1.4(d) hereof), and the fair market value of the assets

deemed to have been transferred to such current or former Trust Tax Owner during such calendar year (as determined pursuant to Section 1.4(d) hereof).

(c) The SCC Litigation Trustee shall submit to Reorganized ASARCO, as soon as practicable after the Effective Date (but no later than January 20th of the year following the Effective Date), a statement setting forth, for federal income tax purposes, the total fair market value (as of the Effective Date) of each asset transferred to the SCC Litigation Trust (including, without limitation, the SCC Litigation Trust Claims), and the portion of such fair market value allocated to each Trust Tax Owner. The SCC Litigation Trustee shall submit to Reorganized ASARCO, as soon as practicable after the end of each calendar year, a statement setting forth the fair market value (as of the applicable deemed transfer dates) of the portion of the SCC Litigation Trust's assets that is treated for federal income tax purposes as having been transferred to Trust Tax Owners or other Persons by Reorganized ASARCO as a result of the allowance or disallowance of Disputed Claims during such year and the portion of such fair market value allocated to each Trust Tax Owner.

(d) The SCC Litigation Trustee shall be responsible for filing all federal, state, and local tax returns for the SCC Litigation Trust and paying any taxes imposed on the SCC Litigation Trust. The SCC Litigation Trustee shall comply with all withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority. Subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary (including the issuance of applicable Treasury Regulations, the receipt by the SCC Litigation Trustee of a private letter ruling if the SCC Litigation Trustee so requests one, or the receipt of an adverse determination by the IRS upon audit if not contested by the SCC Litigation Trustee), the SCC Litigation Trustee shall file tax returns (including all federal returns, and to the extent permitted under state and local law, state and local returns) for the SCC Litigation Trust as a grantor trust of which the Trust Tax Owners are the deemed owners pursuant to Treasury Regulation Section 1.671-4(a) and any comparable provisions under applicable state and local law.

8.2 Other Required Reports. The SCC Litigation Trustee shall also file (or cause to be filed) any other statements, returns, or disclosures relating to the SCC Litigation Trust that are required by any governmental unit or regulatory agency.

8.3 Certain Non-Public Information. The SCC Litigation Trustee may deliver certain non-public information to one or more SCC Litigation Trust Beneficiaries and such delivery shall in no way entitle any other SCC Litigation Trust Beneficiary to receive such information. Notwithstanding anything in this Declaration to the contrary, the SCC Litigation Trustee may, in its sole discretion, withhold information from any SCC Litigation Trust Beneficiary if the SCC Litigation Trustee believes in good faith that the delivery of such information to such SCC Litigation Trust Beneficiary (i) is or would be prohibited by any agreement with a third party or (ii) is not in the best interest of the SCC Litigation Trust or in the purpose of maximizing the value of the assets of the SCC Litigation Trust or could damage or prejudice the SCC Litigation Trust, the assets of the SCC Litigation Trust (including the SCC Litigation Trust Claims and Privileges) or the business, operations, or purpose of the SCC Litigation Trust.

8.4 Electronic Reporting. Notwithstanding anything herein to the contrary, the SCC Litigation Trustee may post any report, notice, or other information required to be provided to the SCC Litigation Trust Beneficiaries on a web site maintained by the SCC Litigation Trustee in lieu of actual delivery of such report, notice, or other information to the SCC Litigation Trust Beneficiaries, subject to providing notice that such a procedure is being (or will be) implemented.

8.5 Calculation of Maximum Recovery. The Parent's Plan Administrator shall calculate the Maximum Recovery, initially no later than thirty days after the Effective Date, and thereafter quarterly, and shall provide such calculation to the SCC Litigation Trust Board and the DOJ, and shall make a good faith effort to consensually resolve any disagreements with the SCC Litigation Trust Board or the DOJ regarding the amount of the Maximum Recovery. Any disputes regarding the Maximum Recovery shall be presented to the Bankruptcy Court for resolution.

ARTICLE 9 TERM; TERMINATION OF THE SCC LITIGATION TRUST

9.1 Term; Termination of the SCC Litigation Trust.

(a) The SCC Litigation Trust shall terminate on the earlier of: (i) 30 days after the distribution of all of the assets of the SCC Litigation Trust in accordance with the terms of this Declaration and the Parent's Plan or (ii) the fifth anniversary of the Effective Date; *provided, however*, that, on or prior to a date less than six months (but not less than three months) prior to such termination, the Bankruptcy Court, upon motion by a party in interest, may extend the term of this SCC Litigation Trust for a finite period if, based on the facts and circumstances, the Bankruptcy Court finds that such extension is necessary to the liquidating purpose of the SCC Litigation Trust. The Bankruptcy Court may approve multiple extensions of the term of the SCC Litigation Trust; provided that any such extension is so approved on or prior to a date less than six months (but not less than three months) prior to termination of the immediately preceding extended term.

(b) The SCC Litigation Trustee shall not unduly prolong the duration of the SCC Litigation Trust and shall at all times endeavor to resolve, settle, or otherwise dispose of all of the SCC Litigation Trust Claims and to effect the distribution of the assets of the SCC Litigation Trust to the holders of the SCC Litigation Trust Interests in accordance with the terms of the Parent's Plan as soon as practicable.

9.2 Continuance of Trust for Winding Up. After the termination of the SCC Litigation Trust and for the purpose of liquidating and winding up the affairs of the SCC Litigation Trust, the SCC Litigation Trustee shall continue to act as such until its duties have been fully performed. Prior to the final distribution of all of the remaining assets of the SCC Litigation Trust and upon approval of the SCC Litigation Trust Board, the SCC Litigation Trustee shall be entitled to reserve from such assets any and all amounts required to provide for its own costs and expenses, in accordance with Section 6.2 herein, until such time as the winding up of the SCC Litigation Trust is completed. Upon termination of the SCC Litigation Trust, the SCC Litigation Trustee shall retain for a period of two years the books, records, SCC Litigation

Trust Beneficiary lists, the SCC Litigation Trust Register, and certificates and other documents and files that have been delivered to or created by the SCC Litigation Trustee. At the SCC Litigation Trustee's discretion, all of such records and documents may, but need not, be destroyed at any time after two years from the completion and winding up of the affairs of the SCC Litigation Trust. Except as otherwise specifically provided herein, upon the termination of the SCC Litigation Trust, the SCC Litigation Trustee shall have no further duties or obligations hereunder.

ARTICLE 10 AMENDMENT AND WAIVER

10.1 Amendment and Waiver.

(a) The SCC Litigation Trustee, with the prior approval of the SCC Litigation Trust Board, may amend, supplement or waive any provision of, this Declaration, without notice to or the consent of any SCC Litigation Trust Beneficiary or the approval of the Bankruptcy Court: (i) to cure any ambiguity, omission, defect, or inconsistency in this Declaration, provided that such amendments, supplements, or waivers shall not materially adversely affect the distributions to be made under this Declaration to any of the SCC Litigation Trust Beneficiaries, or materially adversely affect the U.S. federal income tax status of the SCC Litigation Trust as a "liquidating trust" that is a grantor trust; (ii) to comply with any requirements in connection with the U.S. Federal income tax status of the SCC Litigation Trust as a "liquidating trust" that is a grantor trust; (iii) to comply with any requirements in connection with maintaining any exemptions from or exceptions to the registration or reporting requirements of the Exchange Act, the Trust Indenture Act, or the Investment Company Act as deemed necessary or appropriate from time to time by the SCC Litigation Trustee, including, without limitation, to cause the SCC Litigation Trust Interests to be non-transferable; (iv) to make the SCC Litigation Trust a reporting entity and, in such event, to comply with any requirements in connection with satisfying the registration or reporting requirements of the Exchange Act, the Trust Indenture Act, or the Investment Company Act as deemed necessary or appropriate from time to time by the SCC Litigation Trustee; (v) to cause the SCC Litigation Trust Interests to be non-transferable to the extent the SCC Litigation Trustee determines such restraint on transferability to be in the best interests of the SCC Litigation Trust; and (vi) to evidence and provide for the acceptance of appointment hereunder by a successor trustee in accordance with the terms of this Declaration and the Parent's Plan.

(b) Except as provided in the foregoing subsection (a), any substantive provision of this Declaration may be amended or waived by the SCC Litigation Trustee, subject to the prior approval of the SCC Litigation Trust Board, with the approval of the Bankruptcy Court upon notice and an opportunity for a hearing; *provided, however*, that no change may be made to this Declaration that would materially adversely affect the distributions to be made under this Declaration to any of the SCC Litigation Trust Beneficiaries, or materially adversely affect the U.S. Federal income tax status of the SCC Litigation Trust as a "liquidating trust" that is a grantor trust. Notwithstanding this Section 10.1, any amendments to this Declaration shall not be inconsistent with the purpose and intention of the SCC Litigation Trust to liquidate in an expeditious but orderly manner the SCC Litigation Trust Claims in accordance with Treasury Regulation Section 301.7701-4(d).

ARTICLE 11
MISCELLANEOUS PROVISIONS

11.1 Intention of Parties to Establish the SCC Litigation Trust. This Declaration is intended to create a liquidating trust that is a grantor trust for federal income tax purposes and, to the extent provided by law, shall be governed and construed in all respects as such a trust and any ambiguity herein shall be construed consistent herewith and, if necessary, this Declaration may be amended in accordance with Section 10.1 to comply with such federal income tax laws, which amendments may apply retroactively.

11.2 Reimbursement of Trust SCC Litigation Costs. If the SCC Litigation Trustee, the SCC Litigation Trust Board, or the SCC Litigation Trust, as the case may be, is the prevailing party in a dispute regarding the provisions of this Declaration or the enforcement thereof, the SCC Litigation Trustee, the SCC Litigation Trust Board, or the SCC Litigation Trust, as the case may be, shall be entitled to collect any and all costs, reasonable and documented out-of-pocket expenses, and fees, including attorneys' fees, from the non-prevailing party incurred by the SCC Litigation Trustee, the SCC Litigation Trust Board, or the SCC Litigation Trust, as the case may be, in connection with such dispute or enforcement action.

11.3 Laws as to Construction. This Declaration shall be governed by and construed in accordance with the laws of the State of Delaware and U.S. bankruptcy laws, as applicable, without regard to whether any conflicts of law would require the application of the law of another jurisdiction.

11.4 Jurisdiction. Without limiting any Person or entity's right to appeal any order of the Bankruptcy Court or to seek withdrawal of the reference with regard to any matter, and subject to the rights of the Delaware Trustee pursuant to Section 2.3(b) of this Declaration, (i) prior to the closure of the Bankruptcy Cases (a) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Declaration and to decide any claims or disputes which may arise or result from, or be connected with, this Declaration, any breach or default hereunder, or the transactions contemplated hereby, and (b) any and all actions related to the foregoing shall be filed and maintained only in the Bankruptcy Court, and (ii) following the closure of the Bankruptcy Cases, (x) the Delaware Courts of Chancery shall retain exclusive jurisdiction to enforce the terms of this Declaration and to decide any claims or disputes which may arise or result from, or be connected with, this Declaration, any breach or default hereunder, or the transactions contemplated hereby, and (y) any and all actions related to the foregoing shall be filed and maintained only in a Delaware Court of Chancery, and the parties, including the SCC Litigation Trust Beneficiaries, and Holders of Claims and Equity Interests, hereby consent to and submit to the jurisdiction and venue of the Bankruptcy Court and the Delaware Courts of Chancery, as applicable.

11.5 Severability. If any provision of this Declaration or the application thereof to any Person or circumstance shall be finally determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Declaration, or the application of such provision to Persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and such provision of this Declaration shall be valid and enforced to the fullest extent permitted by law.

11.6 Notices. All notices, requests, or other communications to the parties hereto shall be in writing and shall be sufficiently given only if (i) delivered in person; (ii) sent by electronic mail or facsimile communication (as evidenced by a confirmed fax transmission report); (iii) sent by registered or certified mail, return receipt requested; or (iv) sent by commercial delivery service or courier. Until a change of address is communicated, as provided below, all notices, requests, and other communications shall be sent to the parties at the following addresses or facsimile numbers:

If to the SCC Litigation Trustee, to:

With a copy to:

If to the SCC Litigation Trust Board, to:

With a copy to:

If the Delaware Trustee, to:

With a copy to:

If to Reorganized ASARCO, to:

With a copy to:

All notices shall be effective and shall be deemed delivered (i) if by personal delivery, delivery service or courier, on the date of delivery; (ii) if by electronic mail or facsimile communication, on the date of receipt or confirmed transmission of the communication; and (iii) if by mail, on the date of receipt. Any party from time to time may change its address, facsimile number, or other information for the purpose of notices to that party by giving notice specifying such change to the other party hereto.

11.7 Fiscal Year. The fiscal year of the SCC Litigation Trust will begin on the first day of January and end on the last day of December of each year.

11.8 Definitions. Each of the terms set forth below has the meaning set forth in the provision set forth opposite such term in the following table:

Term	Provision
Act	Section 1.5(a)
Bankruptcy Cases	Recitals
Bankruptcy Court	Recitals

Covered Person	Section 11.11
Declaration	Preamble
Delaware Trustee	Preamble
Eligible Holder	Section 4.7(e)
Information	Section 11.11
Indemnified Persons	Section 7.1(a)
Interim Trustee	Section 2.3(g)
Maximum Recovery	Section 1.2(a)
Original Certificate	Section 5.5(f)
SCC Committee Board Member	Section 4.7(c)
SCC DOJ Board Member	Section 4.7(c)
SCC Litigation Trust	Preamble
SCC Litigation Trustee	Preamble
SEC	Section 5.4(a)
Parent's Plan	Preamble
Reorganized ASARCO	Preamble
Treasury Regulations	Section 1.4(a)
Trust Tax Owners	Section 1.4(a)
Trustee	Section 2.3(a)

11.9 Headings. The section headings contained in this Declaration are solely for convenience of reference and shall not affect the meaning or interpretation of this Declaration or of any term or provision hereof.

11.10 Counterparts. This Declaration may be executed in any number of counterparts, each of which shall be deemed to be an original instrument, but all together shall constitute one agreement.

11.11 Confidentiality. The SCC Litigation Trustee, the Delaware Trustee and each successor trustee and each member of the SCC Litigation Trust Board and each successor member of the SCC Litigation Trust Board (each a "Covered Person") shall, during the period that they serve in such capacity under this Declaration and following either the termination of this Declaration or such individual's removal, incapacity, or resignation hereunder, hold strictly confidential and not use for personal gain any material, non-public information of or pertaining to any entity to which any of the assets of the SCC Litigation Trust relates or of which it has become aware in its capacity (the "Information"), except to the extent disclosure is required by applicable law, order, regulation, or legal process. In the event that any Covered Person is requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigation, demand, or similar legal process) to disclose any Information, such Covered Person shall notify the SCC Litigation Trust Board reasonably promptly (unless prohibited by law) so that the SCC Litigation Trust Board may seek an appropriate protective order or other appropriate remedy or, in its discretion, waive compliance with the terms of this Section (and if the SCC Litigation Trust Board seeks such an order, the relevant Covered Person will provide cooperation as the SCC Litigation Trust Board shall reasonably request). In the event that no such protective order or other remedy is obtained, or that the SCC Litigation Trust Board waives compliance with the terms of this Section and that any Covered Person is nonetheless legally compelled to disclose the Information, the Covered Person will furnish only

that portion of the Information, which the Covered Person, advised by counsel, is legally required and will give the SCC Litigation Trust Board written notice (unless prohibited by law) of the Information to be disclosed as far in advance as practicable and exercise all reasonable efforts to obtain reliable assurance that confidential treatment will be accorded the Information.

11.12 Entire Agreement. This Declaration (including the Recitals), the Parent's Plan, and the Confirmation Order constitute the entire agreement by and among the parties hereto and there are no representations, warranties, covenants or obligations except as set forth herein or therein. This Declaration, the Parent's Plan and the Confirmation Order supersede all prior and contemporaneous agreements, understandings, negotiations, discussions, written or oral, of the parties hereto, relating to any transaction contemplated hereunder. Except as otherwise specifically provided herein, in the Parent's Plan or in the Confirmation Order, nothing in this Declaration is intended or shall be construed to confer upon or to give any person other than the parties thereto and their respective heirs, administrators, executors, successors, or assigns any right to remedies under or by reason of this Declaration.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto have either executed and acknowledged this Declaration, or caused it to be executed and acknowledged on their behalf by their duly authorized officers all as of the date first above written.

ASARCO LLC:

By: _____
Name:
Title:

SCC LITIGATION TRUSTEE:

By: _____
Name:
Title:

DELAWARE TRUSTEE:

By: _____
Name:
Title:

**AGREED AND ACKNOWLEDGED
as of the date first above written:**

Name:
Title: SCC Litigation Trust Board Member

Name:
Title: SCC Litigation Trust Board Member

Name:
Title: SCC Litigation Trust Board Member

MTHM Draft
07/24/2009

PLAN EXHIBIT 24

FORM OF SCC LITIGATION TRUST AGREEMENT

DECLARATION OF TRUST

FOR THE

[Insert Name of Trust]

BY AND AMONG

ARSARCO LLC

AND

THE TRUSTEES (AS NAMED HEREIN)

Dated as of _____, 2009

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DECLARATION OF TRUST

This Declaration of Trust (this “Declaration”), dated as of [_____] [____], 2009, by and among ASARCO LLC (“Reorganized ASARCO”), [_____] [____], as the trustee (the “SCC Litigation Trustee”), and [_____] [____], as the Delaware trustee (the “Delaware Trustee”), is executed in order to establish a liquidating trust (the “SCC Litigation Trust”) in connection with the ~~Fifth~~ ASARCO Incorporated and Americas Mining Corporation’s Modified Sixth Amended ~~Parent’s~~ Plan of Reorganization for the Debtors under Chapter 11 of the United States Bankruptcy Code, dated _____, July 30, 2009 (as it may be amended, modified, or supplemented, the “Parent’s Plan”). Capitalized terms used in this Declaration and not otherwise defined herein shall have the respective meanings ascribed to them in the Glossary of Defined Terms for the Parent’s Plan Documents; all other capitalized terms used herein are defined in Section 11.8 hereof.

WITNESSETH

WHEREAS, the Debtors filed voluntary petitions pursuant to Chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division (the “Bankruptcy Court”), commencing the jointly administered cases known as In re ASARCO LLC, et al., Case No. 05-21207 (the “Bankruptcy Cases”):

WHEREAS, the Bankruptcy Court, through the Parent’s Plan, has ordered the establishment and creation of the SCC Litigation Trust to (a) in an expeditious but orderly manner, prosecute, settle, or otherwise dispose of the SCC Litigation Trust Claims, as successor to and representative of the estates of the Debtors in accordance with Sections 1145(a)(1) and 1123(b)(3)(B) of the Bankruptcy Code and (b) make timely distributions to the SCC Litigation Trust Beneficiaries;

WHEREAS, in fulfilling its purpose, the SCC Litigation Trust shall have no objective or authority to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the purpose of the SCC Litigation Trust;

WHEREAS, the SCC Litigation Trust is created for the benefit of the SCC Litigation Trust Beneficiaries;

WHEREAS, the SCC Litigation Trust is created pursuant to, and to effectuate, the Parent’s Plan.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein and in the Parent’s Plan, the Debtors and the Trustees agree as follows:

ARTICLE 1 ESTABLISHMENT OF THE SCC LITIGATION TRUST

1.1 Declaration of Trust.

(a) Pursuant to the Parent's Plan, the Debtors and the SCC Litigation Trustee hereby establish the SCC Litigation Trust, which shall be known as the "[Insert Name of Trust]" on behalf of the SCC Litigation Trust Beneficiaries and the Trustees hereby accept such rights and properties assigned and transferred to them and the trust imposed upon them pursuant to this Declaration.

(b) The principal office of the SCC Litigation Trust shall be in care of the SCC Litigation Trustee at [_____], or at such other address as the SCC Litigation Trustee may designate.

1.2 SCC Litigation Trust Assets.

(a) In accordance with the Parent's Plan and this Declaration, as of the Effective Date, the Reorganized Debtors, subject to the provisions of the Confirmation Order, hereby transfer, assign, and deliver to the SCC Litigation Trustee for the benefit of the SCC Litigation Trust Beneficiaries, and the SCC Litigation Trustee hereby accepts on behalf of the SCC Litigation Trust Beneficiaries, (i) all of the Debtors' respective rights, title, and interests in and to the SCC Litigation Trust Claims, subject to the Maximum Recovery, free and clear of any and all Liens, Claims, encumbrances, or interests of any kind in such property of any other Person or entity, other than Liens or encumbrances arising under the Bankruptcy Code or other applicable law; (ii) all of the Debtors' respective rights, title, and interest in the Debtors' Privileges associated with the SCC Litigation Trust Claims; and (iii) the \$[_____] million SCC Litigation Trust Expense Fund. Upon the transfer of the assets to the SCC Litigation Trust, the Debtors shall have no interest in or obligation with respect to such assets or, except as described in this Section 1.2, Section 1.3 or Section 1.4, the SCC Litigation Trust. The SCC Litigation Trust shall not be entitled to recover from the defendants named in the SCC Litigation Trust Claims or any ASARCO Protected Party any amount in connection with the SCC Litigation Trust Claims in excess of the amount necessary to provide, as of any date of determination, Payment in Full to all holders of Allowed Claims in Classes ~~1~~, 2, 6, and 7, and holders of Allowed Claims in Class 3 that elected Treatment B or Treatment C as set forth in Article 4.2(c) of the Parent's Plan plus the SCC Litigation Trust's aggregate administrative expenses minus the SCC Litigation Trust Expense Fund (the "Maximum Recovery"). If the SCC Litigation Trust sells, transfers or otherwise disposes of its interests in the SCC Litigation Trust Claims, any purchaser, transferee and/or successor-in-interest shall not be entitled to recover from the defendants named in the SCC Litigation Trust Claims or any ASARCO Protected Party in connection with the SCC Litigation Trust Claims any amount in excess of the Maximum Recovery. For the avoidance of doubt, no purchaser, transferee, or successor-in-interest of the SCC Litigation Trust's interests in the SCC Litigation Trust Claims shall be entitled to recover from the defendants named in the SCC Litigation Trust Claims or any ASARCO Protected Party any fees, costs or expenses including, without limitation, attorney's fees or litigation costs and expenses.

(b) The SCC Litigation Trustee shall collect all income earned with respect to, and all SCC Litigation Proceeds attributable to, and all payments made on account of, the assets of the SCC Litigation Trust, which shall thereupon be added to the assets of the SCC

Litigation Trust and held as a part thereof (and which title shall be vested in the SCC Litigation Trustee).

(c) On or as promptly as practicable after the Effective Date, Reorganized ASARCO shall provide reasonable access to the SCC Litigation Trustee and its advisors to such employees of the Debtors, their agents, advisors, attorneys, accountants, or any other professionals hired by the Debtors with knowledge of matters relevant to the SCC Litigation Trust Claims for the purpose of enabling the SCC Litigation Trustee to fulfill its obligations under this Declaration, including the prosecution of the SCC Litigation Trust Claims. Reorganized ASARCO shall, pursuant to and subject to the terms and conditions of the Parent's Plan, ~~or the New Plan Sponsor PSA, as applicable,~~ facilitate access to the SCC Litigation Trustee and its advisors to employees and books and records of ~~the Plan Sponsor~~ Reorganized ASARCO in connection with the obligations of the SCC Litigation Trustee under this Declaration, including the prosecution of the SCC Litigation Trust Claims. Requests for such access shall be made through Reorganized ASARCO or its representatives.

(d) At any time and from time to time on and after the Effective Date, the Trustees and Reorganized ASARCO agree (i) at the reasonable request of the SCC Litigation Trustee to execute and/or deliver any instruments, documents, books, and records (including those maintained in electronic format and original documents as may be needed) and (ii) to take, or cause to be taken, all such further actions as the SCC Litigation Trustee may reasonably request, in each case, in order to evidence or effectuate the transfer of the SCC Litigation Trust Claims and the Privileges to the SCC Litigation Trustee and to otherwise carry out the intent of the Parent's Plan.

1.3 Funding of the SCC Litigation Trust.

(a) In accordance with the Parent's Plan, ~~Reorganized ASARCO~~ the Parent's Plan Administrator shall, on the Effective Date, ~~(i) transfer to the SCC Litigation Trust the SCC Litigation Trust Expense Fund and (ii) from time to time thereafter deliver additions to the SCC Litigation Trust Expense Fund to the extent required by the Parent's Plan.~~ Except pursuant to the terms of the Parent's Plan, none of the Debtors shall have any further obligation to provide any funding with respect to the SCC Litigation Trust. The SCC Litigation Trustee shall use the SCC Litigation Trust Expense Fund consistent with the purposes of the SCC Litigation Trust and subject to the terms and conditions of the Parent's Plan and this Declaration.

(b) All costs and expenses associated with the administration of the SCC Litigation Trust shall be the responsibility of and paid by the SCC Litigation Trust.

1.4 Tax Matters.

(a) Solely for tax purposes, the SCC Litigation Trust Beneficiaries and Reorganized ASARCO (to the extent of its retained interest in the SCC Litigation Trust for federal income tax purposes) (collectively, the "Trust Tax Owners") are treated as grantors and owners of the SCC Litigation Trust pursuant to Section 671 et seq. of the Internal Revenue Code and the Treasury Regulations promulgated thereunder (the "Treasury Regulations") and any

similar provisions of state or local law. It is intended that the SCC Litigation Trust be classified as a liquidating trust under Section 301.7701-4(d) of the Treasury Regulations.

(b) For all federal, state and local income tax purposes, all persons (including, without limitation, the Debtors, the Trustees, and the Trust Tax Owners) shall take the position, subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary, that the transfer of assets to the SCC Litigation Trust is a deemed transfer to the Trust Tax Owners (as of the Initial Distribution Date), followed by a deemed transfer by such Trust Tax Owners to the SCC Litigation Trust.

(c) The fair market value of the portion of the SCC Litigation Trust assets that is treated as having been transferred to each Trust Tax Owner pursuant to Section 1.4(b) hereof, and the fair market value of the portion of the SCC Litigation Trust assets that is treated for federal income tax purposes as having been transferred to any Trust Tax Owner or other distributee as a result of the allowance or disallowance of a Disputed Claim, shall be determined by the SCC Litigation Trustee, and all persons (including, without limitation, the SCC Litigation Trustee, the Trust Tax Owners, and the transferors, for tax purposes, of any assets transferred to the SCC Litigation Trust) shall utilize the fair market value determined by the SCC Litigation Trustee for all federal income tax purposes.

(d) The SCC Litigation Trustee shall allocate any items of income, gain, loss, deduction, and credit of the SCC Litigation Trust for federal income tax purposes among current and/or former Trust Tax Owners, such allocation shall be binding on all current and former Trust Tax Owners for all federal, state, and local income tax purposes and the current and former Trust Tax Owners shall be responsible (on a current basis) for the payment of any federal, state, and local income tax due on the income and gain so allocated to them.

1.5 Nature and Purpose of the SCC Litigation Trust.

(a) Purpose. Upon compliance with Section 3810 of the Delaware Statutory Trust Act, 12 Del. C., § 3801 et seq. (hereinafter the “Act”), the SCC Litigation Trust shall be organized and established as a statutory trust pursuant to which the SCC Litigation Trustee, subject to the terms and conditions contained herein and in the Parent’s Plan, is to (i) hold the assets of the SCC Litigation Trust and dispose of the same in accordance with this Declaration and the Parent’s Plan in accordance with Treasury Regulation Section 301.7701-4(d) and (ii) oversee and direct the expeditious but orderly liquidation of the assets of the SCC Litigation Trust. Accordingly, the primary purpose of the SCC Litigation Trust is to liquidate the SCC Litigation Trust Claims with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the SCC Litigation Trust.

(b) Relationship. This Declaration is intended to create a trust and a trust relationship and to be governed and construed in all respects as a trust. The SCC Litigation Trust is not intended to be, and shall not be deemed to be or treated as, a general partnership, limited partnership, joint venture, corporation, joint stock company or association, nor shall the SCC Litigation Trustee, the SCC Litigation Trust Board (or any of its members or ex officio members), or the SCC Litigation Trust Beneficiaries, or any of them, for any purpose be, or be

deemed to be or treated in any way whatsoever to be, liable or responsible hereunder as partners or joint venturers. The relationship of the SCC Litigation Trust Beneficiaries to the SCC Litigation Trustee and the SCC Litigation Trust Board shall be solely that of beneficiaries of a trust and shall not be deemed a principal or agency relationship, and their rights shall be limited to those conferred upon them by this Declaration.

1.6 Incorporation of Parent's Plan. The Parent's Plan and the Confirmation Order are each hereby incorporated into this Declaration and made a part hereof by this reference; *provided, however*, to the extent that there is conflict between the provisions of this Declaration, the provisions of the Parent's Plan, and/or the Confirmation Order, each such document shall have controlling effect in the following rank order: (1) the Confirmation Order; (2) the Parent's Plan; and (3) this Declaration.

1.7 Appointment as Representative. Pursuant to section 1123(b)(3) of the Bankruptcy Code, the Parent's Plan appointed the SCC Litigation Trustee as the duly appointed representative of the Debtors' Estates, and, as such, the SCC Litigation Trustee succeeds to all of the rights and powers of a trustee in bankruptcy with respect to prosecution, sale, transfer, or other disposition, as applicable, of the SCC Litigation Trust Claims for the ratable benefit of the SCC Litigation Trust Beneficiaries. To the extent that any SCC Litigation Trust Claims cannot be transferred to the SCC Litigation Trust because of a restriction on transferability under applicable non-bankruptcy law that is not superseded or preempted by section 1123 of the Bankruptcy Code or any other provision of the Bankruptcy Code, such SCC Litigation Trust Claims shall be deemed to have been retained by Reorganized ASARCO, and the SCC Litigation Trustee shall be deemed to have been designated as a representative of the Estates pursuant to section 1123 (b)(3)(B) of the Bankruptcy Code to enforce, pursue, sale, transfer, or otherwise dispose of, as applicable, such SCC Litigation Trust Claims on behalf of the Estates.

ARTICLE 2 TRUSTEES

2.1 Delaware Trustee. In accordance with the Parent's Plan and subject to the Confirmation Order, [] of Delaware is hereby named, constituted, and appointed as Delaware Trustee effective as of the date hereof, to have all the rights, powers, and duties set forth herein and as otherwise provided by law. The Delaware Trustee is willing and does hereby accept the appointment to act and serve as Delaware Trustee of the SCC Litigation Trust.

2.2 SCC Litigation Trustee. In accordance with the Parent's Plan and subject to the Confirmation Order, the ~~{Parent's Plan Administrator} is hereby named, constituted, and appointed as~~ SCC Litigation Board shall name, constitute and appoint the SCC Litigation Trustee effective as of the date hereof by the SCC Litigation Board, to The SCC Litigation Trustee will have all the rights, powers, and duties set forth herein and as otherwise provided by law. ~~The SCC Litigation Trustee is willing, and does hereby accept the appointment, to act and serve as SCC Litigation Trustee of the SCC Litigation Trust.~~

2.3 Tenure, Removal, and Replacement of the SCC Litigation and Delaware Trustee.

(a) The SCC Litigation Trustee and the Delaware Trustee (each, a “Trustee” and, together, the “Trustees”) will each serve until resignation and the appointment of a successor pursuant to subsection (b) below, removal pursuant to subsection (c) below, or death (if applicable).

(b) A Trustee may resign by giving not less than 90 days’ prior written notice to the SCC Litigation Trust Board. Such resignation will become effective on the later to occur of: (i) the day specified in such notice and (ii) the appointment of a successor trustee as provided herein and the acceptance by such successor trustee of such appointment. If a successor trustee is not appointed or does not accept its appointment within 90 days following delivery of notice of resignation, (i) in the case of the SCC Litigation Trustee, the SCC Litigation Trustee may file a motion with the Bankruptcy Court (at the expense of the SCC Litigation Trust), upon notice and hearing, for the appointment of a successor trustee and (ii) in the case of the Delaware Trustee, the Delaware Trustee may file a motion with the Delaware Court of Chancery (at the expense of the SCC Litigation Trust), upon notice and hearing, for the appointment of a successor trustee.

(c) A Trustee may be removed by order of the Bankruptcy Court on motion of any one of the members of the SCC Litigation Trust Board. Any motion to remove a Trustee shall be for cause shown.

(d) In the event of a vacancy in the position of a Trustee (whether by removal, resignation, or (if applicable) death), the vacancy will be filled by the appointment of a successor trustee by (i) majority vote and resolution of the SCC Litigation Trust Board, and the acceptance by the successor trustee in accordance with Section 2.3(e) or (ii) an order of the Bankruptcy Court after an opportunity for a hearing; *provided, however*, that only the SCC Litigation Trust Board shall have standing to seek such an order, except as provided in Section 2.3(b). If a successor trustee is appointed by resolution, as provided in clause (i) of the preceding sentence, and such appointment is accepted by the successor trustee, the SCC Litigation Trust Board shall file notice of such appointment and acceptance with the Bankruptcy Court, which notice will include the name, address, and telephone number of the successor trustee; provided that the filing of such notice shall not be a condition precedent to the vesting in the successor Trustee of all the estates, properties, rights, powers, trusts, and duties of its predecessor.

(e) Any successor trustee appointed hereunder shall execute an instrument accepting such appointment and assuming all of the obligations of the predecessor Trustee hereunder and thereupon the successor trustee shall, without any further act, become vested with all the estates, properties, rights, powers, privileges, authorities, and duties of its predecessor in the SCC Litigation Trust hereunder with like effect as if originally named herein and the successor trustee will not be liable personally for any act or omission of the predecessor Trustee.

(f) Upon the appointment of a successor trustee, the predecessor Trustee (or the duly appointed legal representative of a deceased Trustee) shall, if applicable, when requested in writing by the successor trustee, execute and deliver an instrument or instruments conveying and transferring to such successor trustee upon the trust herein expressed, without recourse to the predecessor Trustee, all the estates, properties, rights, powers, and trusts of such predecessor Trustee, and shall duly assign, transfer, and deliver to such successor trustee all property and money held hereunder, and all other assets and documents relating to the SCC Litigation Trust, the SCC Litigation Trust Claims, or the SCC Litigation Trust Interests then in its possession and held hereunder.

(g) During any period in which there is a vacancy in the position of a Trustee, the SCC Litigation Trust Board may (to the extent permitted by the Act) appoint one of its members to serve as an interim Trustee, (the “Interim Trustee”). The Interim Trustee shall be subject to all the terms and conditions applicable to a SCC Litigation Trustee hereunder. Such Interim Trustee shall not be limited in any manner from exercising any rights or powers as a member of the SCC Litigation Trust Board merely by its appointment as Interim Trustee.

(h) The death, resignation, retirement, removal, bankruptcy, dissolution, liquidation, incompetence, or incapacity to perform the duties of a Trustee shall not operate to dissolve, terminate, or annul the SCC Litigation Trust.

2.4 Compensation of the Trustees.

(a) As compensation, the SCC Litigation Trustee shall be entitled to receive \$ _____ per annum (or such other amount as agreed to from time to time by the SCC Litigation Trustee and the SCC Litigation Trust Board), payable in advance in quarterly installments, for the performance of services provided under and pursuant to this Declaration, and shall be reimbursed for all reasonable and documented expenses incurred in connection with the performance of its services hereunder.

(b) The Delaware Trustee shall be entitled to receive \$ _____ per annum, payable on [_____], and shall be reimbursed for all reasonable and documented expenses incurred in connection with the performance of its services hereunder.

2.5 No Bond. The Trustees shall serve without bond.

2.6 Inquiries into Trustee’s Authority. Except as otherwise set forth in the SCC Litigation Trust or in the Parent’s Plan, no Person dealing with the SCC Litigation Trust shall be obligated to inquire into the authority of the SCC Litigation Trustee in connection with the prosecution, protection, conservation, sale, or other disposition, as applicable, of the SCC Litigation Trust Claims.

ARTICLE 3 DUTIES AND LIMITATIONS OF TRUSTEES

3.1 Role of the SCC Litigation Trustee. In furtherance of and consistent with the purpose of the SCC Litigation Trust and the Parent’s Plan, the SCC Litigation Trustee,

subject to the terms and conditions contained herein and in the Parent's Plan, shall, in an expeditious but orderly manner, liquidate and convert to Cash the assets of the SCC Litigation Trust, engage in acts that would constitute ordinary performance of the obligations of a trustee under a liquidating litigation trust, make timely distributions of such Cash and not unduly prolong the duration of the SCC Litigation Trust. The liquidation of the SCC Litigation Trust Claims may be accomplished either through the prosecution, compromise and settlement, abandonment, dismissal, or other disposition of any or all claims, rights, or causes of action, or otherwise. In all circumstances, the SCC Litigation Trustee shall act in the best interests of maximizing the value of the assets of the SCC Litigation Trust for the SCC Litigation Trust Beneficiaries and in furtherance of the purpose of the SCC Litigation Trust and shall, where required pursuant to the terms of this Declaration, consult with or obtain the required approval of the SCC Litigation Trust Board.

3.2 Authority of SCC Litigation Trustee. Subject to any limitations contained herein (including, without limitation, Article 4 hereof) or in the Parent's Plan, the SCC Litigation Trustee shall have the full power, authority, and discretion to take any and all actions as are necessary or advisable to carry out its responsibilities hereunder and to effectuate the purposes of the SCC Litigation Trust, including, without limitation:

(a) full power, authority, and discretion to interpret, construe, and decide all questions and issues arising under any provision of this Declaration or of any agreement, notification, certificate, or document relating to or evidencing a SCC Litigation Trust Interest (including, without limitation, the power, authority, and discretion to determine whether any particular holder or beneficial owner of a SCC Litigation Trust Interest shall be entitled to exercise any right conferred hereunder or under any other relevant agreement, notification, certificate, document, or similar instrument), and the decisions of the SCC Litigation Trustee with respect to all such matters shall be final, conclusive, and binding on all parties who have an interest in the SCC Litigation Trust or any SCC Litigation Trust Interest;

(b) receiving (and accepting), managing, supervising, and protecting the assets of the SCC Litigation Trust on behalf of and for the benefit of the SCC Litigation Trust Beneficiaries;

(c) holding legal title to any and all rights of the SCC Litigation Trust Beneficiaries in or arising from the assets of the SCC Litigation Trust, and, in consultation with and subject to the approval of the SCC Litigation Trust Board, protecting and enforcing the rights to the assets of the SCC Litigation Trust vested in the SCC Litigation Trustee by this Declaration by any method deemed appropriate, including, without limitation, by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium, or similar law, and general principles of equity;

(d) in consultation with and subject to the approval of the SCC Litigation Trust Board, filing, initiating, prosecuting, and if necessary and appropriate, selling, compromising and settling, abandoning, or dismissing the SCC Litigation Trust Claims;

(e) in consultation with and subject to the approval of the SCC Litigation Trust Board, commencing and/or pursuing any and all actions involving assets of the

SCC Litigation Trust that could arise or be asserted at any time, unless otherwise waived or relinquished in the Parent's Plan;

(f) distributing to some or all of the SCC Litigation Trust Beneficiaries (as deemed appropriate by the SCC Litigation Trustee) information regarding the SCC Litigation Trust Claims and executing confidentiality agreements with such SCC Litigation Trust Beneficiaries satisfactory to the SCC Litigation Trustee in connection therewith, and the SCC Litigation Trustee shall have the full power, authority, and discretion to withhold or restrict the delivery of any such information to any SCC Litigation Trust Beneficiary if the SCC Litigation Trustee determines in its sole discretion that such action is in the best interests of the SCC Litigation Trust;

(g) making all necessary filings in accordance with any applicable law, statute or regulation, and in consultation with counsel, seeking any advice or determination that may be necessary or appropriate under any such laws, statutes, or regulations;

(h) executing and filing one or more registration statements and prospectuses (including any amendments or supplements thereto) under the Securities Act (if applicable) relating to the SCC Litigation Trust Beneficial Interests and the preparation and filing of all periodic and other reports, forms, and other filings required under the Exchange Act and any other applicable federal or state securities laws;

(i) taking of any action to cause the SCC Litigation Trust to not be deemed an Investment Company under the Investment Act or subject to the Trust Indenture Act;

(j) calculating and implementing of all distributions to be made to the SCC Litigation Trust Beneficiaries;

(k) filing of all required tax and information returns and paying of taxes and all other obligations of the SCC Litigation Trust;

(l) requesting any appropriate tax determination with respect to the SCC Litigation Trust;

(m) paying all expenses and making all other payments relating to any assets of the SCC Litigation Trust;

(n) obtaining insurance coverage with respect to (i) the liabilities and obligations of the Trustees under this Agreement (in the form of an errors and omissions policy or otherwise) and (ii) real and personal property, which may become assets of the SCC Litigation Trust, if any;

(o) in consultation with and subject to the approval of the SCC Litigation Trust Board, negotiating, receiving, or accepting of the assignment or transfer of claims, rights, suits, judgments, causes of action, recoveries and/or proceeds therefrom, from the holders thereof, to the extent that an assignment and/or transfer to the SCC Litigation Trust is

deemed to be in the best interests of maximizing the value of the assets of the SCC Litigation Trust for the SCC Litigation Trust Beneficiaries;

(p) in consultation with and subject to the approval of the SCC Litigation Trust Board, determining the amount of consideration to be provided for the assignment or transfer of claims, rights, suits, judgments, causes of action, recoveries, and/or proceeds therefrom;

(q) in consultation with and subject to the approval of the SCC Litigation Trust Board, compromising, adjusting, arbitrating, suing on or defending, abandoning, or otherwise dealing with and settling claims in favor of or against the SCC Litigation Trust as the SCC Litigation Trustee shall deem advisable;

(r) determining and satisfying any and all liabilities created, incurred or assumed by the SCC Litigation Trust;

(s) in consultation with and subject to the approval of the SCC Litigation Trust Board, retaining and paying such law firms, accounting firms, experts, advisors, consultants, investigators, appraisers, agents, employees, or other professionals and third parties as the SCC Litigation Trustee may deem necessary or appropriate to assist the SCC Litigation Trustee in carrying out the SCC Litigation Trustee's powers and duties under this Declaration. The SCC Litigation Trustee may commit the SCC Litigation Trust to and shall pay all persons or entities retained or employed by the SCC Litigation Trust reasonable compensation for services rendered and reasonable expenses incurred;

(t) investing any moneys held as part of the assets of the SCC Litigation Trust in accordance with, and subject to the limitations of, the terms of Section 3.7 and 3.8 hereof;

(u) performing such other responsibilities as may be vested in the SCC Litigation Trustee pursuant to the Parent's Plan, this Declaration, orders of the Bankruptcy Court, or as may be necessary and proper to carry out the provisions of the Parent's Plan;

(v) conducting the affairs of the SCC Litigation Trust and operating the SCC Litigation Trust so that the SCC Litigation Trust will not fail to be classified as a liquidating trust within the meaning of Treasury Regulation 301.7701-4(d); and

(w) acting as a debtor in possession with the full rights and powers under section 1107 of the Bankruptcy Code, including, without limitation, the duty to prosecute the SCC Litigation Trust Claims and distribute the proceeds of such claims, and such other rights and powers as set forth in this Declaration; subject to the Maximum Recovery.

3.3 Payment of SCC Litigation Trust Expenses.

(a) The SCC Litigation Trustee shall maintain the SCC Litigation Trust Expense Fund and expend the assets of the SCC Litigation Trust Expense Fund (i) as are reasonably necessary to meet contingent liabilities and to maintain the value of the assets of the SCC Litigation Trust during liquidation, (ii) to pay reasonable administrative expenses

(including but not limited to, the costs and expenses of the SCC Litigation Trustee (including reasonable fees, costs, and expenses of professionals) and the members of the SCC Litigation Trust Board), any taxes imposed on the SCC Litigation Trust or fees and expenses in connection with, arising out of or related to the SCC Litigation Trust Claims or the performance by the SCC Litigation Trustee of his duties hereunder in accordance with this Declaration, and (iii) to satisfy other liabilities incurred or assumed by the SCC Litigation Trust (or to which the assets are otherwise subject) in accordance with the Parent's Plan or this Declaration.

(b) The SCC Litigation Trustee may retain from the SCC Litigation Trust Proceeds and add to the SCC Litigation Trust Expense Fund, at any time and from time to time, such amounts as the SCC Litigation Trustee deems reasonable and appropriate to ensure that the SCC Litigation Trust Expense Fund will be adequate to meet the expenses and liabilities described in Section 3.3(a).

(c) Notwithstanding any other provision of this Declaration to the contrary, the SCC Litigation Trustee shall not be required to take any action or enter into or maintain any claim, demand, action, or proceeding relating to the SCC Litigation Trust unless it shall have sufficient funds in the SCC Litigation Trust Expense Fund for that purpose.

3.4 Books and Records.

(a) The SCC Litigation Trustee shall maintain in respect of the SCC Litigation Trust and the SCC Litigation Trust Beneficiaries, books and records relating to the assets and income of the SCC Litigation Trust and the payment of expenses of, and liabilities of claims against or assumed by, the SCC Litigation Trust in such detail and for such period of time as may be necessary to enable the SCC Litigation Trustee to make full and proper accounting in respect thereof in accordance with the provisions hereof and to comply with applicable provisions of law. Nothing in this Declaration requires the SCC Litigation Trustee to file any accounting or seek approval of any court with respect to the administration of the SCC Litigation Trust, or as a condition for any payment or distribution out of the assets of the SCC Litigation Trust.

(b) Upon distribution of all SCC Litigation Proceeds and all other Cash from the SCC Litigation Trust or the termination of the SCC Litigation Trust, the SCC Litigation Trustee shall retain the books, records, and files which shall have been delivered to or created by the SCC Litigation Trustee.

3.5 Compliance with Laws. Any and all distributions of assets of the SCC Litigation Trust and proceeds of borrowings, if any, shall be in compliance with applicable laws, including, without limitation, applicable federal and state securities laws.

3.6 Reliance by SCC Litigation Trustee. Except as otherwise provided herein:

(a) the SCC Litigation Trustee may rely, and shall be protected in acting upon, any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, or other paper or document believed by the SCC Litigation Trustee to be genuine and to have been signed or presented by the proper party or parties;

(b) persons dealing with the SCC Litigation Trustee shall look only to the assets of the SCC Litigation Trust to satisfy any liability incurred by the SCC Litigation Trustee to such Person in carrying out the terms of this Declaration, and neither the SCC Litigation Trustee nor any member of the SCC Litigation Trust Board shall have any personal obligation to satisfy any such liability; and

(c) the SCC Litigation Trustee shall have the right at any time to seek instructions concerning the administration of this Declaration from the Bankruptcy Court or, in the event that the Bankruptcy Cases are closed, any Delaware Court of Chancery.

3.7 Investment and Safekeeping of SCC Litigation Trust Assets. The SCC Litigation Trustee shall invest all assets transferred to the SCC Litigation Trustee (other than SCC Litigation Trust Claims), all SCC Litigation Trust Proceeds, the SCC Litigation Trust Expense Fund and all income earned by the SCC Litigation Trust (pending periodic distributions in accordance with the provisions of the Parent's Plan) only in cash demand and time deposits, such as short-term certificates of deposit, in banks or other savings institutions, or other temporary, liquid investments, such as Treasury bills; *provided, however*, that (a) the scope of any such permissible investments shall be limited to include only those investments, or shall be expanded to include any additional investments, as the case may be, that a liquidating trust within the meaning of Treasury Regulation Section 301.7701-4(d) may be permitted to hold, pursuant to the Treasury Regulations, or any modification in the guidelines of the IRS, whether set forth in IRS rulings, other IRS pronouncements or otherwise, (b) under no circumstances, shall the SCC Litigation Trustee segregate the assets of the SCC Litigation Trust on the basis of classification of the holders of SCC Litigation Trust Interests, other than in accordance with the provisions of the Parent's Plan, and (c) the SCC Litigation Trustee shall not "vary the investment" of the SCC Litigation Trust Beneficiaries, within the meaning of Treasury Regulation Section 301.7701-4(c).

3.8 Limitation of SCC Litigation Trustee's Authority. Notwithstanding anything herein to the contrary, the SCC Litigation Trustee shall not (i) be authorized to engage in any trade or business, (ii) take such actions inconsistent with the prompt and orderly liquidation of the assets of the SCC Litigation Trust as are required or contemplated by applicable law, the Parent's Plan, and this Declaration, (iii) be authorized to engage in any activities inconsistent with the treatment of the SCC Litigation Trust as a liquidating trust within the meaning of Treasury Regulation Section 301.7701-4(d) and in accordance with Rev. Proc. 94-45, 1994-2 C.B. 684, or (iv) take any action to cause the SCC Litigation Trust to be treated as a publicly traded partnership within the meaning of Section 7704 of the Internal Revenue Code, including, without limitation, any action to cause the SCC Litigation Trust Interests, or any of them, to be traded on an established securities market or to be readily tradeable on a secondary market or the substantial equivalent thereof (if and only to the extent such limitation described in this clause (iv) is required to qualify and maintain the qualification of the SCC Litigation Trust as a liquidating trust within the meaning of Treasury Regulation 301.7701-4(d)).

3.9 Responsibilities of the Delaware Trustee.

(a) The Delaware Trustee shall have no obligation or duty to manage the assets of the SCC Litigation Trust or to take any other act except as expressly required hereunder. The Delaware Trustee's duties shall be limited to the following:

- i. serve as registered agent for service of process for the SCC Litigation Trust under Section 3804(b) of the Act;
- ii. serve as the Delaware resident trustee under Section 3807(a) of the Act;
- iii. maintain the registered office of the SCC Litigation Trust and forward to the SCC Litigation Trustee within a reasonable time any process served upon it; and
- iv. perform all other requirements so that the SCC Litigation Trust qualifies as a Delaware statutory trust under the Act.

(b) The Delaware Trustee shall not have any duty or obligation with respect to the SCC Litigation Trust Claims or any other assets of the SCC Litigation Trust or the SCC Litigation Trust except as otherwise specifically provided in this Agreement, and the Delaware Trustee shall be a trustee of the SCC Litigation Trust for the sole and limited purpose of fulfilling the requirements of Section 3807 of the Act. No implied duties or obligations shall be read into this Agreement against the Delaware Trustee. Notwithstanding the foregoing, the Delaware Trustee is authorized to take all actions which the SCC Litigation Trustee deems necessary, convenient, or incidental to effect the purposes of the SCC Litigation Trust, all as set forth in written instructions from the SCC Litigation Trustee in accordance with this Declaration. The right of the Delaware Trustee to perform any act enumerated herein shall not be construed as a duty.

3.10 Standard of Care; Exculpation. To the fullest extent permitted by law, neither the SCC Litigation Trustee nor the Delaware Trustee, nor any of their respective members, designees or professionals, nor any of their duly designated agents or representatives, shall be liable, responsible, or accountable in damages or otherwise for any loss, damage, or claim incurred by reason of any act or omission taken or omitted to be taken by the other Trustee or such Trustee's agents or representatives, nor shall the SCC Litigation Trustee or the Delaware Trustee be liable, responsible, or accountable in damages or otherwise for any loss, damage, or claim incurred by reason of any act or omission taken or omitted to be taken by either such Trustee in good faith other than acts or omissions resulting from each such Trustee's own bad faith, willful misconduct, gross negligence or knowing violation of law. Each of the SCC Litigation Trustee and the Delaware Trustee and each of their respective members may, in connection with the performance of their respective functions, and in each of their sole and absolute discretion, consult with their respective attorneys, accountants, financial advisors, and agents, and shall not be liable for any act taken, omitted to be taken, or suffered to be done in good faith in accordance with advice or opinions rendered by such Persons. Notwithstanding such authority, neither the SCC Litigation Trustee nor the Delaware Trustee nor any of their respective members shall be under any obligation to consult with their respective attorneys, accountants, financial advisors, or agents, and the good faith determination not to do so shall not

result in the imposition of liability on either of the SCC Litigation Trustee or the Delaware Trustee or, as applicable, their respective members or designees, unless such determination is based on bad faith, willful misconduct, gross negligence, or knowing violation of law.

ARTICLE 4

SCC LITIGATION TRUST BOARD

4.1 SCC Litigation Trust Board. The SCC Litigation Trust Board shall be comprised of three Persons. The initial members of the SCC Litigation Trust Board shall be appointed as described in and in accordance with the Parent's Plan. Successor members of the SCC Litigation Trust Board shall be appointed as described in Section 4.7 below.

4.2 Authority of the SCC Litigation Trust Board. The SCC Litigation Trust Board shall have the authority and responsibility to oversee, review, and guide the activities and performance of the SCC Litigation Trustee and shall have the authority to remove the SCC Litigation Trustee in accordance with Section 2.3. The SCC Litigation Trustee shall consult with and provide information to the SCC Litigation Trust Board in accordance with and pursuant to the terms of this Declaration and the Parent's Plan. The SCC Litigation Trust Board shall have the authority to select and engage such Persons, and select and engage such professional advisors, including, without limitation, any professional previously retained by the Debtors in accordance with the terms of the Parent's Plan and this Declaration, as the SCC Litigation Trust Board deems necessary and desirable to assist the SCC Litigation Trust Board in fulfilling its obligations under this Declaration and the Parent's Plan, and the SCC Litigation Trustee shall pay the reasonable fees of such Persons (including on an hourly, contingency, or modified contingency basis) and reimburse such Persons for their reasonable and documented out-of-pocket costs and expenses consistent with the terms of this Declaration.

4.3 Meetings of the SCC Litigation Trust Board.

(a) Regular meetings of the SCC Litigation Trust Board are to be held with such frequency and at such place as the members of the SCC Litigation Trust Board may determine in their reasonable discretion, but in no event shall such meetings be held less frequently than quarterly. The SCC Litigation Trustee shall attend and participate in these regularly scheduled meetings. The SCC Litigation Trust Board shall establish by resolution the time or times and place or places for the holding of such meetings. Notice of any such regular meetings of the SCC Litigation Trust Board need not be given.

(b) Special meetings of the SCC Litigation Trust Board may be held whenever and wherever called by the SCC Litigation Trustee or any two members of the SCC Litigation Trust Board. The SCC Litigation Trustee shall attend and participate in any special meeting called by the SCC Litigation Trustee and any other special meeting as requested by at least one member of the SCC Litigation Trust Board.

4.4 Notice and Waiver of Notice for SCC Litigation Trustee and SCC Litigation Trust Board. Notice of the time and place (but not necessarily the purpose or all of the purposes) of any special meeting, or any change in time or place of a regular meeting, will be given to the SCC Litigation Trustee and the members of the SCC Litigation Trust Board in

person or by telephone, or via mail, electronic mail, or facsimile transmission. Notice to the SCC Litigation Trustee and the members of the SCC Litigation Trust Board of any such special meeting or change in a regular meeting will be deemed given sufficiently in advance when (i) if given by electronic mail or facsimile transmission, the same is transmitted at least one business day prior to the convening of the meeting, or (ii) if personally delivered (including by overnight courier) or given by telephone, the same is handed, or the substance thereof is communicated over the telephone to the SCC Litigation Trustee and the members of the SCC Litigation Trust Board or to an adult member of his/her office staff or household, at least one business day prior to the convening of the meeting. Each of the SCC Litigation Trustee and any member of the SCC Litigation Trust Board may waive notice of any meeting and any adjournment thereof at any time before, during, or after it is held, as provided by law. Except as provided in the next sentence below, the waiver must be in writing, signed by the SCC Litigation Trustee or the applicable member or members of the SCC Litigation Trust Board entitled to the notice, and filed with the minutes or records of the SCC Litigation Trust. The attendance of the SCC Litigation Trustee or a member of the SCC Litigation Trust Board at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

4.5 Manner of Acting.

(a) A majority of the total number of members of the SCC Litigation Trust Board then in office shall constitute a quorum for the transaction of business at any meeting of the SCC Litigation Trust Board. The affirmative vote of a majority of the members of the SCC Litigation Trust Board present and entitled to vote at a meeting at which a quorum is present shall be the act of the SCC Litigation Trust Board, except as otherwise required by law or as provided in this Declaration.

(b) Each of the SCC Litigation Trustee and any or all of the members of the SCC Litigation Trust Board may participate in a regular or special meeting by, or conduct the meeting through the use of, conference telephone or similar communications equipment by means of which all persons participating in the meeting may hear each other, in which case any required notice of such meeting may generally describe the arrangements (rather than or in addition to the place) for the holding thereof. Each of the SCC Litigation Trustee and any member of the SCC Litigation Trust Board participating in a meeting by this means is deemed to be present in person at the meeting. Voting may, if approved by the majority of the members at a meeting, be conducted by electronic mail or individual communications by the SCC Litigation Trustee and each member of the SCC Litigation Trust Board.

(c) Any member of the SCC Litigation Trust Board who is present and entitled to vote at a meeting of the SCC Litigation Trust Board when action is taken is deemed to have assented to the action taken, subject to the requisite vote of the SCC Litigation Trust Board, unless: (i) such member of the SCC Litigation Trust Board objects at the beginning of the meeting (or promptly upon his/her arrival) to holding it or transacting business at the meeting; or (ii) his/her dissent or abstention from the action taken is entered in the minutes of the meeting; or (iii) he/she delivers written notice (including by electronic or facsimile transmission) of his/her dissent or abstention to the SCC Litigation Trust Board before its adjournment. The right of

dissent or abstention is not available to any member of the SCC Litigation Trust Board who votes in favor of the action taken.

(d) Prior to the taking of a vote on any matter or issue or the taking of any action with respect to any matter or issue, each of the SCC Litigation Trustee and each member of the SCC Litigation Trust Board shall report to the SCC Litigation Trust Board any conflict of interest such member has or may have with respect to the matter or issue at hand and fully disclose the nature of such conflict or potential conflict (including, without limitation, disclosing any and all financial or other pecuniary interests that such member might have with respect to or in connection with such matter or issue, other than solely as, or as a representative of, a SCC Litigation Trust Beneficiary). A SCC Litigation Trust Board member who has or who may have a conflict of interest shall be deemed to be a “conflicted member” who shall not be entitled to vote or take part in any action with respect to such matter or issue (however such member shall be counted for purposes of determining the existence of a quorum); the vote or action with respect to such matter or issue shall be undertaken only by members of the SCC Litigation Trust Board who are not “conflicted members.”

4.6 SCC Litigation Trust Board’s Action Without a Meeting. Any action required or permitted to be taken by the SCC Litigation Trust Board at a meeting may be taken without a meeting if the action is taken by unanimous written consent of the SCC Litigation Trust Board as evidenced by one or more written consents describing the action taken, signed by all members of the SCC Litigation Trust Board and recorded in the minutes or other transcript of proceedings of the SCC Litigation Trust Board.

4.7 Tenure, Removal, and Replacement of the Members of the SCC Litigation Trust Board. The authority of the members of the SCC Litigation Trust Board will be effective as of the Effective Date and will remain and continue in full force and effect until the SCC Litigation Trust is terminated in accordance with Article 9. The service of the members of the SCC Litigation Trust Board will be subject to the following:

(a) the members of the SCC Litigation Trust Board will serve until death or resignation pursuant to subsection (b) below, or removal pursuant to subsection (c) below.

(b) a member of the SCC Litigation Trust Board may resign at any time by providing a written notice of resignation to the remaining members of the SCC Litigation Trust Board. Such resignation will be effective upon the date received by the SCC Litigation Trust Board or such later date specified in the written notice.

(c) members of the SCC Litigation Trust Board may be removed as follows:

i. the ~~two members~~member originally selected by the ASARCO Committee (the “SCC Committee Board Member”) may be removed by the affirmative vote of the then-current Eligible Holders holding at least a majority of the SCC Litigation Trust Interests;

ii. the member originally selected by the DOJ (the “SCC DOJ Board Member”) may be removed by the DOJ (in consultation with the states that have Allowed Unsecured Environmental Claims); and

iii. ~~the Parent’s Plan Administrator may petition the Bankruptcy Court for removal, and the Bankruptcy Court may order such removal, of any member of the SCC Litigation Trust Board for cause shown.~~ member jointly selected by the SCC Committee Board Member and the SCC DOJ Board Member may be removed by the affirmative vote of both the SCC Committee Board Member and the SCC DOJ Board Member.

(d) In the event of a vacancy on the SCC Litigation Trust Board (whether by removal, death, or resignation), new members may be appointed to fill such vacancy as follows:

i. if the vacancy was created by the removal, death, or resignation of the SCC ~~Committee~~ DOJ Board Member, then by the ~~affirmative vote of the then current Eligible Holders holding at least a majority of the SCC Litigation Trust Interests~~ DOJ (in consultation with the states that have Allowed Unsecured Environmental Claims); or

ii. if the vacancy was created by the removal, death, or resignation of ~~the SCC DOJ Board Member, then by the DOJ (in consultation with the states that have Allowed Unsecured Environmental Claims)~~ either of the other two members, by the remaining members.

(e) For purposes of this Declaration, “Eligible Holder” means each SCC Litigation Trust Beneficiary except any SCC Litigation Trust Beneficiary who is a party adverse to ASARCO in the SCC Litigation, or is an Affiliate of any party adverse to ASARCO in the SCC Litigation.

(f) If there are no Eligible Holders of SCC Litigation Trust Interests in a particular class to select as a member of the SCC Litigation Trust Board, the SCC Litigation Trust Board shall proceed without a member selected by that class.

~~(g) In the case of a SCC Committee Board Member, only persons who are nominated in accordance with the procedures set forth in this Declaration shall be eligible to serve as a replacement SCC Committee Board Member of the SCC Litigation Trust Board. Nominations of persons for election as a replacement SCC Committee Board Member may be made by any Eligible Holder of SCC Litigation Trust Interests of who (i) is an interest holder of record as of the record date established by the SCC Litigation Trustee for such purpose and at the time of giving of notice provided for in this Section 4.7(g), (ii) shall be entitled to vote for the election of a replacement member of the SCC Litigation Trust Board and (iii) complies with the notice procedures set forth in this Section 4.7(f). Such nominations shall be made pursuant to timely notice in writing to the SCC Litigation Trustee. To be timely, an interest holder’s notice shall be delivered to or mailed and received by the SCC Litigation Trustee at the address set forth herein not later than the close of business on the calendar day prior to the date established by the SCC Litigation Trustee for such purpose. Such interest holder’s notice shall~~

~~set forth (A) as to the person whom the interest holder proposes to nominate for election as a replacement SCC Committee Board Member of the SCC Litigation Trust Board detailed information relating to the qualifications of such person to serve as a member of the SCC Litigation Trust Board, including such person's written consent to being named as a nominee and to serving as a member of the SCC Litigation Trust Board if elected and being bound by the terms and conditions of this Declaration, and the number of SCC Litigation Trust Interests owned beneficially and/or of record by such individual or any Person affiliated with such individual; and (B) as to the SCC Litigation Trust Beneficiary giving the notice (i) the name and address, as they appear on the SCC Litigation Trust Registrar, of such SCC Litigation Trust Beneficiary and (ii) the number of SCC Litigation Trust Interests owned beneficially and/or of record by such by such SCC Litigation Trust Beneficiary. No person shall be eligible to serve as an SCC Committee Board Member of the SCC Litigation Trust Board unless nominated in accordance with the procedures set forth in this Section 4.7(f).~~

~~(h) Following the receipt of nominations for a replacement SCC Committee Board Member of the SCC Litigation Trust Board in accordance with Section 4.7(f), the SCC Litigation Trustee shall mail a ballot to all SCC Litigation Trust Beneficiaries who are entitled to vote in the election of the replacement member of the SCC Litigation Trust Board. With respect to the election of a replacement member of the SCC Litigation Trust Board, each SCC Litigation Trust Beneficiary shall be entitled to one vote for each outstanding SCC Litigation Trust Interest held by such SCC Litigation Trust Beneficiary and such SCC Litigation Trust Beneficiary shall submit such vote in accordance with the procedures established from time to time by the SCC Litigation Trustee.~~

~~(g)~~ ~~(i)~~ Immediately upon the appointment of any successor member of the SCC Litigation Trust Board, all rights, powers, duties, authority, and privileges of the predecessor member of the SCC Litigation Trust Board hereunder will be vested in and undertaken by the successor member of the SCC Litigation Trust Board without any further act; and the successor member of the SCC Litigation Trust Board will not be liable personally for any act or omission of the predecessor member of the SCC Litigation Trust Board.

4.8 Compensation of the SCC Litigation Trust Board. Each member of the SCC Litigation Trust Board shall be paid the amount of \$ _____ per quarter, plus \$ _____ per meeting when such member is required to attend a SCC Litigation Trust Board meeting in person, as compensation for his or her services under this Agreement, and shall be reimbursed for all reasonable and documented expenses incurred by such member in connection with the performance of his or her services hereunder.

4.9 Standard of Care; Exculpation. To the fullest extent permitted by law, none of the SCC Litigation Trust Board, its members, designees or professionals, nor any of their duly designated agents or representatives, shall be liable, responsible, or accountable in damages or otherwise for any loss, damage, or claim incurred by reason of any act or omission taken or omitted to be taken by any other member, agent or representative of the SCC Litigation Trust Board, nor shall the SCC Litigation Trust Board or any of its members be liable, responsible, or accountable in damages or otherwise for any loss, damage, or claim incurred by reason of any act or omission taken or omitted to be taken by the SCC Litigation Trust Board in good faith, other than acts or omissions resulting from the SCC Litigation Trust Board's bad faith, willful

misconduct, gross negligence, or knowing violation of law. The SCC Litigation Trust Board and each of its members may, in connection with the performance of their respective functions, and in each of their sole and absolute discretion, consult with its attorneys, accountants, financial advisors, and agents, and shall not be liable for any act taken, omitted to be taken, or suffered to be done in good faith in accordance with advice or opinions rendered by such Persons. Notwithstanding such authority, neither the SCC Litigation Trust Board nor any of its members shall be under any obligation to consult with their respective attorneys, accountants, financial advisors or agents, and its good faith determination not to do so shall not result in the imposition of liability on the SCC Litigation Trust Board or, as applicable, its members or designees, unless such determination is based on bad faith, willful misconduct, gross negligence, or knowing violation of law.

ARTICLE 5 SCC LITIGATION TRUST INTERESTS

5.1 Issuance of SCC Litigation Trust Interests. The issuance of SCC Litigation Trust Interests shall be accomplished as set forth in the Parent's Plan, including, without limitation, Article V.B. of the Parent's Plan.

5.2 Interests Beneficial Only.

(g) The ownership of a SCC Litigation Trust Interest shall not entitle any SCC Litigation Trust Beneficiary to any title in or to the assets of the SCC Litigation Trust as such (which title shall be vested in the SCC Litigation Trustee) or to any right to call for a partition or division of the assets of the SCC Litigation Trust or to require an accounting.

(h) The SCC Litigation Trust Beneficiaries have no rights with respect to, or interest in the Debtors (or any successor thereto).

(i) The SCC Litigation Trust Beneficiaries have no rights to direct the SCC Litigation Trustee, the Delaware Trustee, or the SCC Litigation Trust Board, except as set forth in Section 5.8 herein.

(j) (i) The SCC Litigation Trust Claims are solely assets of the SCC Litigation Trust; (ii) the SCC Litigation Trust Claims shall be conducted on behalf of the SCC Litigation Trust Beneficiaries solely in accordance with the instructions of the SCC Litigation Trustee pursuant to this Declaration; (iii) the SCC Litigation Trustee shall have the sole and exclusive right (subject to consultation with the SCC Litigation Trust Board as set forth herein), to take (or not take), actions relating to such SCC Litigation Trust Claims as contemplated by this Declaration and may, among other things, dismiss, settle, or cease prosecuting such SCC Litigation Trust Claims at any time without obtaining any cash or other recovery, or upon obtaining such cash or other recovery as the SCC Litigation Trustee may determine; (iv) the SCC Litigation Trustee has the sole and exclusive right (subject to consultation with the SCC Litigation Trust Board as set forth herein), to take or not take other actions contemplated by this Declaration on behalf of the SCC Litigation Trust Beneficiaries relating to such SCC Litigation Trust Claims (including, without limitation, any decision with respect to the incurrence of

expenses); and (v) any liability of the SCC Litigation Trustee, or any member of the SCC Litigation Trust Board, is limited to the extent set forth in this Declaration.

5.3 Evidence of Beneficial Interests.

(g) The SCC Litigation Trustee shall have full power, authority and discretion to determine whether ownership of any SCC Litigation Trust Interest shall be represented by physical certificates, by book entries in lieu of physical certificates, or in any other form or manner. Regardless of such determination, the record holders of the SCC Litigation Trust Interests shall be recorded and set forth in the SCC Litigation Trust Register maintained by the SCC Litigation Trust Registrar expressly for such purpose pursuant to Section 5.5. All references in this Declaration to SCC Litigation Trust Beneficiaries shall be read to mean holders of record as set forth in the official register maintained by the SCC Litigation Trust Registrar and shall not mean any beneficial owner not recorded on such official register. Unless expressly provided herein, the SCC Litigation Trustee may establish a record date, which the SCC Litigation Trustee deems practicable for determining the holders for a particular purpose.

(h) In the event certificates are to be issued to evidence ownership of any SCC Litigation Trust Interests, (i) the form and content of such certificates shall be determined by the SCC Litigation Trustee subject to approval by the SCC Litigation Trust Board, and (ii) the SCC Litigation Trustee shall cause to be placed on such certificates such legends as it deems to be necessary or appropriate under tax laws or regulations, securities laws or regulations or otherwise. Any SCC Litigation Trust Beneficiary to whom such a certificate is issued, by virtue of the acceptance thereof, shall assent to and be bound by the terms and conditions of this Declaration and the Parent's Plan.

5.4 Securities Law Matters.

(g) To the extent the SCC Litigation Trust Interests are deemed to be "securities," the issuance of SCC Litigation Trust Interests under the Parent's Plan are exempt, pursuant to Section 1145 of the Bankruptcy Code, from registration under the Securities Act of 1933, as amended, and any applicable state and local laws requiring registration of securities. If the SCC Litigation Trustee determines, with the advice of counsel, that the SCC Litigation Trust is required to comply with registration and reporting requirements of the Exchange Act, then the SCC Litigation Trustee shall take any and all actions deemed necessary or appropriate by the SCC Litigation Trustee to comply with such registration and reporting requirements, if any, and to file periodic reports with the Securities and Exchange Commission (the "SEC"). Notwithstanding the foregoing procedure, nothing in the Parent's Plan shall be deemed to preclude the SCC Litigation Trustee from amending this Declaration to make such changes as deemed necessary or appropriate by the SCC Litigation Trustee, with the advice of counsel, to ensure that the SCC Litigation Trust is not subject to registration or reporting requirements of the Exchange Act, the Trust Indenture Act, or the Investment Company Act.

(h) Exemptions may be sought from the SEC from all or some of the registration and reporting requirements that may be applicable to the SCC Litigation Trust pursuant to the Exchange Act, the Trust Indenture Act, or the Investment Company Act, if it is

determined that compliance with such requirements would be burdensome on the SCC Litigation Trust.

(i) The SCC Litigation Trust is organized as a liquidating entity in the process of liquidation, and therefore should not be considered, and the SCC Litigation Trust does not and will not hold itself out as, an “investment company” or any entity “controlled” by an “investment company,” as such terms are defined in the Investment Company Act.

5.5 Transfer and Exchange.

(g) The SCC Litigation Trustee shall appoint a SCC Litigation Trust Registrar, which may be the SCC Litigation Trustee, for the purpose of registering and transferring the SCC Litigation Trust Interests as herein provided. The SCC Litigation Trust Registrar may be a duly qualified institution or the SCC Litigation Trustee itself. For its services hereunder, the SCC Litigation Trust Registrar, unless it is the SCC Litigation Trustee, shall be entitled to receive reasonable compensation from the SCC Litigation Trust as an expense of the SCC Litigation Trust.

(h) The SCC Litigation Trustee shall cause to be kept at the office of the SCC Litigation Trust Registrar, or at such other place or places as shall be designated by it from time to time, the SCC Litigation Trust Register. The SCC Litigation Trust Register shall contain the names, addresses for payment and notice, and class and number of SCC Litigation Trust Interests of each of the SCC Litigation Trust Beneficiaries and shall be maintained pursuant to such reasonable regulations as the SCC Litigation Trustee and the SCC Litigation Trust Registrar may prescribe.

(i) Pursuant to such reasonable regulations as the SCC Litigation Trustee and the SCC Litigation Trust Registrar may prescribe, and subject to the SCC Litigation Trustee’s review and approval of any such proposed transaction in its sole and absolute discretion, the SCC Litigation Trustee may permit to be transferred, assigned, pledged, hypothecated, or registered on the SCC Litigation Trust Register any SCC Litigation Trust Interests issued pursuant to this Declaration. Subject to the review and approval of any such proposed transaction by the SCC Litigation Trustee and the other limitations set forth herein, any registered SCC Litigation Trust Beneficiary may transfer, assign, pledge, or hypothecate, in whole or in part, SCC Litigation Trust Interests upon presentation of a duly executed written instrument of transfer in the form approved by the SCC Litigation Trustee and the SCC Litigation Trust Registrar, which instrument must be executed by the transferor and the transferee and must clearly identify the SCC Litigation Trust Interests being transferred, assigned, pledged, or hypothecated, and such other documents as they may reasonably require; provided, however, SCC Litigation Trust Interests may only be transferred, assigned, pledged or hypothecated upon acceptance and acknowledgment by the transferee that such SCC Litigation Trust Interest remains subject to the Parent’s Plan, including the cap on the recovery under the SCC Litigation Trust. The transferor shall pay reasonable transfer charges established by the SCC Litigation Trustee or the SCC Litigation Trust Registrar for the purpose of reimbursing the SCC Litigation Trust and the SCC Litigation Trust Registrar for the expenses incident thereto, including any legal fees, taxes, or other governmental charges.

(j) ~~(e)~~ No SCC Litigation Trust Beneficiary may transfer, assign, pledge, ~~or~~ hypothecate, or otherwise dispose of any SCC Litigation Trust Interests unless in compliance with the Securities Act and other state and federal securities laws. No transfer, assignment, pledge, hypothecation, or other disposition of a SCC Litigation Trust Interest may be effected until (i) the SCC Litigation Trustee has approved such proposed transaction in its sole and absolute discretion, and (ii) the SCC Litigation Trustee and the SCC Litigation Trust Board shall have received such legal or other information that they, in their sole discretion, deem necessary or appropriate to evidence such compliance.

(k) ~~(d)~~ In the event that the SCC Litigation Trustee determines that the SCC Litigation Trust Interests shall be represented by physical certificates, subject to the foregoing conditions of this Section 5.5, whenever any certificate shall be presented for transfer or exchange, the SCC Litigation Trustee shall cause the SCC Litigation Trust Registrar to issue, authenticate, and deliver ~~to the SCC Litigation Trustee or SCC Litigation Beneficiary, as applicable, a~~ in exchange therefor, the certificate for the SCC Litigation Trust Interest(s) that the person(s) presenting such certificates shall be entitled to receive.

(l) ~~(e)~~ In the event that the SCC Litigation Trustee determines that the SCC Litigation Trust Interests shall be represented by physical certificates, if a SCC Litigation Trust Beneficiary claims that his/her certificate (the “Original Certificate”) has been mutilated, defaced, lost, stolen, or destroyed, the SCC Litigation Trustee shall issue, and the SCC Litigation Trust Registrar shall authenticate, a replacement certificate if such SCC Litigation Trust Beneficiary submits a notarized affidavit certifying that (i) he/she is the true, lawful, present, and sole owner of the Original Certificate, (ii) he/she has diligently searched all of his/her financial and other records and the Original Certificate is nowhere to be found, (iii) the Original Certificate and any rights or interests therein were not endorsed, and have not been pledged, sold, delivered, transferred, or assigned under any agreement, hypothecated or pledged for any loan, or disposed of in any manner by the SCC Litigation Trust Beneficiary or on his/her behalf, (iv) no other person or other entity has any right, title, claim, equity, or interest in, to, or respecting the Original Certificate, and (v) in the event of the recovery of the Original Certificate at any time after the issuance of a new certificate in exchange thereof, the SCC Litigation Trust Beneficiary will cause the recovered Original Certificate to be returned to the SCC Litigation Trust for cancellation. In addition, such SCC Litigation Trust Beneficiary will indemnify, and if required by the SCC Litigation Trustee or the SCC Litigation Trust Registrar, provide a bond or other security sufficient in the reasonable judgment of the SCC Litigation Trustee, the SCC Litigation Trust Registrar or any authenticating agent, from any loss which any of them may suffer if the Original Certificate is replaced, including a loss resulting from the assertion by any entity or person of the right to payment under the Original Certificate. Such SCC Litigation Trust Beneficiary shall pay reasonable charges established by the SCC Litigation Trustee and the SCC Litigation Trust Registrar for the purpose of reimbursing the SCC Litigation Trust and the SCC Litigation Trust Registrar for the expenses incident thereto, including any tax or other governmental charges. The SCC Litigation Trustee shall incur no liability to anyone by reason of anything done or omitted to be done by it in good faith under the provisions of this Section 5.5~~(e)~~(f). All SCC Litigation Trust Interests shall be held and owned upon the express condition that the provisions of this Section 5.5~~(e)~~(f) are exclusive in respect of the replacement or payment of mutilated, defaced, lost, stolen or destroyed certificates and shall, to the extent permitted by law, preclude any and all other rights or remedies respecting such replacement or the payment in

respect thereto. Any duplicate certificate issued pursuant to this Section 5.5(e) shall constitute original interests in the SCC Litigation Trust. The SCC Litigation Trustee and the SCC Litigation Trust Registrar shall not treat the Original Certificate as outstanding.

5.6 Access to the SCC Litigation Trust Register by the SCC Litigation Trust Beneficiaries. SCC Litigation Trust Beneficiaries and their duly authorized representatives shall have the right, upon reasonable prior written notice to the SCC Litigation Trust Registrar and the SCC Litigation Trustee, and in accordance with the reasonable regulations prescribed by the SCC Litigation Trust Registrar and the SCC Litigation Trustee, to inspect and, at the sole expense of the SCC Litigation Trust Beneficiary seeking the same, make copies of the SCC Litigation Trust Register, in each case for a purpose reasonably related to such SCC Litigation Trust Beneficiary's interest in the SCC Litigation Trust.

5.7 Absolute Owners. The SCC Litigation Trustee may deem and treat the SCC Litigation Trust Beneficiary of record in the SCC Litigation Trust Register as the absolute owner of such SCC Litigation Trust Interests for the purpose of receiving distributions and payment thereon or on account thereof and for all other purposes whatsoever and the SCC Litigation Trustee shall not be charged with having received notice of any claim or demand to such SCC Litigation Trust Interests or the interest therein of any other Person.

5.8 Limitation on Suits by SCC Litigation Trust Beneficiaries. To the fullest extent permitted by law, no SCC Litigation Trust Beneficiary shall have any right by virtue of or by availing itself of any provision of this Declaration to institute any action or proceeding (other than a suit by such SCC Litigation Trust Beneficiary for nonpayment of amounts due and owing hereunder with respect to such SCC Litigation Trust Beneficiary's SCC Litigation Trust Interest) at law or in equity or in bankruptcy or otherwise upon or under or with respect to this Declaration, or for the appointment of any trustee, receiver, liquidator, custodian, or other similar official or for any other remedy hereunder, unless such SCC Litigation Trust Beneficiary previously shall have given to the SCC Litigation Trustee written notice of default, and unless such SCC Litigation Trust Beneficiary shall also have made written request upon the SCC Litigation Trustee to institute such action or proceeding in its own name as SCC Litigation Trustee hereunder and shall have offered to the SCC Litigation Trustee such reasonable indemnity as it may require against the costs, expenses and liabilities to be incurred therein or thereby and the SCC Litigation Trustee for 60 days after its receipt of such notice, request and offer of indemnity shall have failed to institute any such action or proceeding; it being understood and intended, and being expressly covenanted by every SCC Litigation Trust Beneficiary with every other SCC Litigation Trust Beneficiary and the SCC Litigation Trustee, that no one or more SCC Litigation Trust Beneficiaries shall have any right in any manner whatsoever by virtue or by availing itself or themselves of any provision of this Declaration to effect, disturb or prejudice the rights of any other such SCC Litigation Trust Beneficiary, or to obtain or seek to obtain priority over or preference to any other such SCC Litigation Trust Beneficiary or to enforce any right under this Declaration, except in the manner herein provided and for the ratable and common benefit of all SCC Litigation Trust Beneficiaries. For the protection and enforcement of the provisions of this Section, each and every SCC Litigation Trust Beneficiary and the SCC Litigation Trustee shall be entitled to such relief as can be given either at law or in equity.

**ARTICLE 6
DISTRIBUTIONS**

6.1 Use of Proceeds.

(g) All SCC Litigation Proceeds, any proceeds therefrom, and any other Cash of the SCC Litigation Trust (other than the SCC Litigation Trust Expense Fund) received by the SCC Litigation Trustee shall be applied as follows:

i. first, to (i) pay all costs and expenses of the SCC Litigation Trust to the extent not paid by or from the SCC Litigation Trust Expense Fund (including the costs and expenses of the SCC Litigation Trust, the SCC Litigation Trustee, the Delaware Trustee and the SCC Litigation Trust Board and the fees, costs and expenses of all professionals retained by the SCC Litigation Trustee, and any taxes imposed on the SCC Litigation Trust or in respect of the assets of the SCC Litigation Trust), (ii) satisfy other liabilities incurred or assumed by the SCC Litigation Trust (or to which the assets are otherwise subject) in accordance with the Parent's Plan or this Declaration, (iii) hold such amounts in reserve as the SCC Litigation Trustee deems reasonably necessary to meet future expenses, contingent liabilities and to maintain the value of the assets of the SCC Litigation Trust during liquidation (including the SCC Litigation Trust Expense Fund) and (iv) pay the Parent's Plan Administrator such amounts as the Parent's Plan Administrator designates from time to time for the purpose of paying, or indemnifying Reorganized ASARCO for, any taxes incurred or expected to be incurred by Reorganized ASARCO in connection with the SCC Litigation Trust as a result of the allocation of tax items by the SCC Litigation Trustee or the allowance or disallowance of Disputed Claims; and

ii. second, to pay any remaining amounts to the SCC Litigation Trust Beneficiaries (including to the Parent's Plan Administrator for deposit into the Disputed Claims Reserve on account of the Claims of any Claimant that would be an SCC Litigation Trust Beneficiary absent such objection) Pro Rata based on their SCC Litigation Trust Interests; provided, however, that (a) in no event shall any holder of a Claim in Class ~~1~~, 2, 6 or 7 or a Claim in Class 3 as to which the holder has elected Treatment B or Treatment C (as set forth in Article 4.2(c) of the Parent's Plan) receive aggregate distributions in excess of Payment in Full on account of such Claim and (b) in no event shall any holder of a Claim in Class 3 receiving Treatment A receive any SCC Litigation Trust Proceeds on account of such Claim. If the Parent's Plan Administrator holds proceeds of the SCC Litigation Trust in the Disputed Claims Reserve on account of a Disputed Claim that is finally determined adversely to such Claimant, in whole or in part, the Parent's Plan Administrator shall return to the SCC Litigation Trust the disallowed portion that the Parent's Plan Administrator received from the SCC Litigation Trust on account of such Claim and shall pay any Allowed portion to such Claimant.

(h) Subject to clauses (i) and (ii) of Section 6.1(a), the SCC Litigation Trustee shall distribute in accordance with Section 6.1(a) at least annually its net income and all net proceeds from the liquidation of the assets of the SCC Litigation Trust (except to the extent

any such failure to distribute is not inconsistent with the classification of the SCC Litigation Trust as a liquidating trust under Section 301.7701-4(d) of the Treasury Regulations).

(i) If, upon termination of the SCC Litigation Trust, the SCC Litigation Trust Expense Fund has funds remaining after the payment of all of the SCC Litigation Trust's expenses, such remaining funds shall be ~~returned to the~~distributed in accordance with clause (ii) of Section 6.1(a) above.

(j) Any funds remaining after all Claims entitled to share in the SCC Litigation Trust have been Paid in Full and all expenses of the SCC Litigation Trust have been satisfied, shall be distributed to Parent or other applicable defendant.

(k) ~~(d)~~ Notwithstanding the foregoing clauses of this Section 6.1, the SCC Litigation Trustee may withhold from amounts distributable to any Person any and all amounts, determined in the SCC Litigation Trustee's reasonable sole discretion, required by any law, regulation, rule, ruling, directive, or other governmental requirement to be withheld. Any amount so withheld from a distribution to a SCC Litigation Trust Beneficiary (or its designee) shall be treated as having been paid to, and received by, such SCC Litigation Trust Beneficiary for purposes of the Parent's Plan and the Parent's Plan Documents.

6.2 Manner of Payment of Distributable Proceeds.

(g) All distributions made by the SCC Litigation Trustee to holders of SCC Litigation Trust Interests shall be payable to the holders of SCC Litigation Trust Interests of record as of the 20th day prior to the date scheduled for the distribution, unless such day is not a Business Day, then such day shall be the following Business Day. The SCC Litigation Trustee shall promptly notify the SCC Litigation Trust Registrar in writing of any such dates and the SCC Litigation Trust Registrar shall promptly notify the SCC Litigation Trust Beneficiaries of the same.

(h) If the distribution shall be in Cash, the SCC Litigation Trustee shall distribute such Cash by wire, check, or such other method as the SCC Litigation Trustee deems appropriate under the circumstances.

(i) All distributions under this Declaration to any holder of SCC Litigation Trust Interests shall be made at the address or to the account (as applicable) of such holder as set forth in the SCC Litigation Trust Register or at such other address or in such other manner as such holder of SCC Litigation Trust Interests shall have specified for payment purposes in a written notice to the SCC Litigation Trustee and the SCC Litigation Trust Registrar at least 20 days prior to such distribution date. In the event that any distribution to any holder is returned as undeliverable, the SCC Litigation Trustee shall be entitled to rely on the most current information available from the Parent's Plan Administrator, as applicable, to determine the current address or account information of such holder, but no distribution to such holder shall be made unless and until the SCC Litigation Trustee has determined the then current address or account (as applicable) of such holder, at which time such distribution shall be made to such holder without interest; *provided, however*, that such undeliverable or unclaimed distributions shall be deemed unclaimed property at the expiration of one year from the date of distribution.

The SCC Litigation Trustee shall reallocate the undeliverable and unclaimed distributions for the benefit of all other SCC Litigation Trust Beneficiaries.

(j) Notwithstanding anything herein to the contrary, the SCC Litigation Trustee shall not be required to make distributions or payments of fractions of dollars. Whenever any payment of a fraction of a dollar under the Parent's Plan or this Declaration would otherwise be called for, the actual payment shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars or more being rounded up.

ARTICLE 7 INDEMNIFICATION

7.1 Indemnification of SCC Litigation Trustee and the SCC Litigation Trust Board.

(g) To the fullest extent permitted by law, the SCC Litigation Trust, to the extent of its assets legally available for that purpose, shall indemnify and hold harmless each present and former SCC Litigation Trustee and each present and former member of the SCC Litigation Trust Board and each of their respective directors, members, shareholders, partners, officers, agents, employees, attorneys, and other professionals (collectively, the "Indemnified Persons") from and against any and all losses, costs, damages, reasonable and documented out-of-pocket expenses (including, without limitation, reasonable fees and expenses of attorneys and other advisors and any court costs incurred by any Indemnified Person) or liability arising out of or relating to the SCC Litigation Trust, the SCC Litigation Trust Interests, the assets of the SCC Litigation Trust, the SCC Litigation Trust Claims or any acts or omissions of the SCC Litigation Trust or any Indemnified Person in its capacity as a SCC Litigation Trustee, SCC Litigation Trust Board member or agent, employee, or representative thereof; *provided, however*, that such act or omission was taken in good faith, was reasonably believed by the applicable Indemnified Person to be within the scope of authority granted to such Person under this Declaration and did not constitute bad faith, gross negligence, willful misconduct, or knowing violation of law.

(h) To the extent reasonable, the SCC Litigation Trust may pay in advance or reimburse reasonable and documented out-of-pocket expenses (including advancing reasonable costs of defense) incurred by the Indemnified Person who is or is threatened to be named or made a defendant or a respondent in a proceeding concerning the business and affairs of the SCC Litigation Trust. To the extent that any such expenses are paid or reimbursed in advance of the final disposition of any such action, suit or proceeding, the Indemnified Person shall provide the SCC Litigation Trust with an undertaking by or on behalf of such Indemnified Person to repay such amount if it shall ultimately be determined that such Person is not entitled to be indemnified by the SCC Litigation Trust as authorized in this Article 7. Such expenses (including attorneys' fees) may be so paid upon such terms and conditions, if any, as the SCC Litigation Trustee deems appropriate.

(i) Any Indemnified Person may waive the benefits of indemnification under this Article 7, but only by an instrument in writing executed by such Indemnified Person.

(j) The SCC Litigation Trust shall have power to purchase and maintain insurance on behalf of any potentially Indemnified Person against any liability asserted against such Person and incurred by such Person in connection with such Person's obligations under this Declaration, whether or not the SCC Litigation Trust would have the power to indemnify such Person against such liability under the provisions of this Article 7.

(k) The rights to indemnification under this Article 7 are not exclusive of other rights which any Indemnified Person may otherwise have at law or in equity, including without limitation common law rights to indemnification or contribution. Nothing in this Article 7 will affect the rights or obligations of any Person (or the limitations on those rights or obligations) under this Declaration or any other agreement or instrument to which that Person is a party.

ARTICLE 8 REPORTS

8.1 Financial, Tax, and Other Information.

(g) At such times as may be required by the Exchange Act, if applicable, or otherwise as soon as practicable

i. after the end of each calendar year, and as soon as practicable upon termination of the SCC Litigation Trust, the SCC Litigation Trustee shall cause to be prepared, and shall submit to each SCC Litigation Trust Beneficiary a written report including: (a) audited financial statements of the SCC Litigation Trust at the end of the calendar year or period and the receipts and disbursements of the SCC Litigation Trustee for the period; (b) a description of any action taken by the SCC Litigation Trustee in the performance of the SCC Litigation Trustee's duties which materially affects the SCC Litigation Trust and of which notice has not previously been given to the SCC Litigation Trust Beneficiaries; and (c) a description of any material judicial or arbitral decision with respect to, or any agreement to settle, the SCC Litigation Trust Claims included in the assets of the SCC Litigation Trust.

ii. after the end of each calendar quarter, the SCC Litigation Trustee shall cause to be prepared, and shall submit to each SCC Litigation Trust Beneficiary a written report including: (a) unaudited financial statements of the SCC Litigation Trust at the end of the calendar quarter, and the receipts and disbursements of the SCC Litigation Trustee for the quarter; and (b) a description of any action taken by the SCC Litigation Trustee in the performance of the SCC Litigation Trustee's duties which materially affects the SCC Litigation Trust and of which notice has not previously been given to the SCC Litigation Trust Beneficiaries.

iii. promptly following the occurrence of a material event or change which effects either the SCC Litigation Trust or the rights of the SCC Litigation Trust

Beneficiaries hereunder, the SCC Litigation Trustee shall cause to be prepared and shall submit additional reports to the SCC Litigation Trust Beneficiaries relating to such occurrences.

The information to be provided pursuant to this Section 8.1(a) shall satisfy any rights under the Delaware Statutory Trust Act, 12 Del. C. § 3801 et seq., or otherwise of the SCC Litigation Trust Beneficiaries to access to information regarding the business and financial condition of the SCC Litigation Trust.

(h) As soon as practicable after the end of each calendar year, and as soon as practicable upon the termination of the SCC Litigation Trust, the SCC Litigation Trustee shall cause to be prepared and shall submit to current and former Trust Tax Owners, as applicable, a statement setting forth, for federal income tax purposes, their allocable portions of items of income, gain, loss, deduction and credit of the SCC Litigation Trust for such calendar year (as determined pursuant to Section 1.4(d) hereof), and the fair market value of the assets deemed to have been transferred to such current or former Trust Tax Owner during such calendar year (as determined pursuant to Section 1.4(d) hereof).

(i) The SCC Litigation Trustee shall submit to Reorganized ASARCO, as soon as practicable after the Effective Date (but no later than January 20th of the year following the Effective Date), a statement setting forth, for federal income tax purposes, the total fair market value (as of the Effective Date) of each asset transferred to the SCC Litigation Trust (including, without limitation, the SCC Litigation Trust Claims), and the portion of such fair market value allocated to each Trust Tax Owner. The SCC Litigation Trustee shall submit to Reorganized ASARCO, as soon as practicable after the end of each calendar year, a statement setting forth the fair market value (as of the applicable deemed transfer dates) of the portion of the SCC Litigation Trust's assets that is treated for federal income tax purposes as having been transferred to Trust Tax Owners or other Persons by Reorganized ASARCO as a result of the allowance or disallowance of Disputed Claims during such year and the portion of such fair market value allocated to each Trust Tax Owner.

(j) The SCC Litigation Trustee shall be responsible for filing all federal, state, and local tax returns for the SCC Litigation Trust and paying any taxes imposed on the SCC Litigation Trust. The SCC Litigation Trustee shall comply with all withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority. Subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary (including the issuance of applicable Treasury Regulations, the receipt by the SCC Litigation Trustee of a private letter ruling if the SCC Litigation Trustee so requests one, or the receipt of an adverse determination by the IRS upon audit if not contested by the SCC Litigation Trustee), the SCC Litigation Trustee shall file tax returns (including all federal returns, and to the extent permitted under state and local law, state and local returns) for the SCC Litigation Trust as a grantor trust of which the Trust Tax Owners are the deemed owners pursuant to Treasury Regulation Section 1.671-4(a) and any comparable provisions under applicable state and local law.

8.2 Other Required Reports. The SCC Litigation Trustee shall also file (or cause to be filed) any other statements, returns, or disclosures relating to the SCC Litigation Trust that are required by any governmental unit or regulatory agency.

8.3 Certain Non-Public Information. The SCC Litigation Trustee may deliver certain non-public information to one or more SCC Litigation Trust Beneficiaries and such delivery shall in no way entitle any other SCC Litigation Trust Beneficiary to receive such information. Notwithstanding anything in this Declaration to the contrary, the SCC Litigation Trustee may, in its sole discretion, withhold information from any SCC Litigation Trust Beneficiary if the SCC Litigation Trustee believes in good faith that the delivery of such information to such SCC Litigation Trust Beneficiary (i) is or would be prohibited by any agreement with a third party or (ii) is not in the best interest of the SCC Litigation Trust or in the purpose of maximizing the value of the assets of the SCC Litigation Trust or could damage or prejudice the SCC Litigation Trust, the assets of the SCC Litigation Trust (including the SCC Litigation Trust Claims and Privileges) or the business, operations, or purpose of the SCC Litigation Trust.

8.4 Electronic Reporting. Notwithstanding anything herein to the contrary, the SCC Litigation Trustee may post any report, notice, or other information required to be provided to the SCC Litigation Trust Beneficiaries on a web site maintained by the SCC Litigation Trustee in lieu of actual delivery of such report, notice, or other information to the SCC Litigation Trust Beneficiaries, subject to providing notice that such a procedure is being (or will be) implemented.

8.5 Calculation of Maximum Recovery. The Parent's Plan Administrator shall calculate the Maximum Recovery, initially no later than thirty days after the Effective Date, and thereafter quarterly, and shall provide such calculation to the ~~ASARCO Committee~~[SCC Litigation Trust Board](#) and the DOJ, and shall make a good faith effort to consensually resolve any disagreements with the ~~ASARCO Committee~~[SCC Litigation Trust Board](#) or the DOJ regarding the amount of the Maximum Recovery. Any disputes regarding the Maximum Recovery shall be presented to the Bankruptcy Court for resolution.

ARTICLE 9

TERM; TERMINATION OF THE SCC LITIGATION TRUST

9.1 Term; Termination of the SCC Litigation Trust.

(g) The SCC Litigation Trust shall terminate on the earlier of: (i) 30 days after the distribution of all of the assets of the SCC Litigation Trust in accordance with the terms of this Declaration and the Parent's Plan or (ii) the fifth anniversary of the Effective Date; *provided, however,* that, on or prior to a date less than six months (but not less than three months) prior to such termination, the Bankruptcy Court, upon motion by a party in interest, may extend the term of this SCC Litigation Trust for a finite period if, based on the facts and circumstances, the Bankruptcy Court finds that such extension is necessary to the liquidating purpose of the SCC Litigation Trust. The Bankruptcy Court may approve multiple extensions of the term of the SCC Litigation Trust; provided that ~~(x)~~ any such extension is so approved on or

prior to a date less than six months (but not less than three months) prior to termination of the immediately preceding extended term ~~and (y) the SCC Litigation Trustee receives an opinion of counsel or a favorable ruling from the IRS that any further extension would not adversely affect the status of the SCC Litigation Trust as a grantor trust for federal income tax purposes.~~

(h) The SCC Litigation Trustee shall not unduly prolong the duration of the SCC Litigation Trust and shall at all times endeavor to resolve, settle, or otherwise dispose of all of the SCC Litigation Trust Claims and to effect the distribution of the assets of the SCC Litigation Trust to the holders of the SCC Litigation Trust Interests in accordance with the terms of the Parent's Plan as soon as practicable.

9.2 Continuance of Trust for Winding Up. After the termination of the SCC Litigation Trust and for the purpose of liquidating and winding up the affairs of the SCC Litigation Trust, the SCC Litigation Trustee shall continue to act as such until its duties have been fully performed. Prior to the final distribution of all of the remaining assets of the SCC Litigation Trust and upon approval of the SCC Litigation Trust Board, the SCC Litigation Trustee shall be entitled to reserve from such assets any and all amounts required to provide for its own costs and expenses, in accordance with Section 6.2 herein, until such time as the winding up of the SCC Litigation Trust is completed. Upon termination of the SCC Litigation Trust, the SCC Litigation Trustee shall retain for a period of two years the books, records, SCC Litigation Trust Beneficiary lists, the SCC Litigation Trust Register, and certificates and other documents and files that have been delivered to or created by the SCC Litigation Trustee. At the SCC Litigation Trustee's discretion, all of such records and documents may, but need not, be destroyed at any time after two years from the completion and winding up of the affairs of the SCC Litigation Trust. Except as otherwise specifically provided herein, upon the termination of the SCC Litigation Trust, the SCC Litigation Trustee shall have no further duties or obligations hereunder.

ARTICLE 10 AMENDMENT AND WAIVER

10.1 Amendment and Waiver.

(g) The SCC Litigation Trustee, with the prior approval of the SCC Litigation Trust Board, may amend, supplement or waive any provision of, this Declaration, without notice to or the consent of any SCC Litigation Trust Beneficiary or the approval of the Bankruptcy Court: (i) to cure any ambiguity, omission, defect, or inconsistency in this Declaration, provided that such amendments, supplements, or waivers shall not materially adversely affect the distributions to be made under this Declaration to any of the SCC Litigation Trust Beneficiaries, or materially adversely affect the U.S. federal income tax status of the SCC Litigation Trust as a "liquidating trust" that is a grantor trust; (ii) to comply with any requirements in connection with the U.S. Federal income tax status of the SCC Litigation Trust as a "liquidating trust" that is a grantor trust; (iii) to comply with any requirements in connection with maintaining any exemptions from or exceptions to the registration or reporting requirements of the Exchange Act, the Trust Indenture Act, or the Investment Company Act as deemed necessary or appropriate from time to time by the SCC Litigation Trustee, including, without

limitation, to cause the SCC Litigation Trust Interests to be non-transferable; (iv) to make the SCC Litigation Trust a reporting entity and, in such event, to comply with any requirements in connection with satisfying the registration or reporting requirements of the Exchange Act, the Trust Indenture Act, or the Investment Company Act as deemed necessary or appropriate from time to time by the SCC Litigation Trustee; (v) to cause the SCC Litigation Trust Interests to be non-transferable to the extent the SCC Litigation Trustee determines such restraint on transferability to be in the best interests of the SCC Litigation Trust; and (vi) to evidence and provide for the acceptance of appointment hereunder by a successor trustee in accordance with the terms of this Declaration and the Parent's Plan.

(h) Except as provided in the foregoing subsection (a), any substantive provision of this Declaration may be amended or waived by the SCC Litigation Trustee, subject to the prior approval of the SCC Litigation Trust Board, with the approval of the Bankruptcy Court upon notice and an opportunity for a hearing; *provided, however*, that no change may be made to this Declaration that would materially adversely affect the distributions to be made under this Declaration to any of the SCC Litigation Trust Beneficiaries, or materially adversely affect the U.S. Federal income tax status of the SCC Litigation Trust as a "liquidating trust" that is a grantor trust. Notwithstanding this Section 10.1, any amendments to this Declaration shall not be inconsistent with the purpose and intention of the SCC Litigation Trust to liquidate in an expeditious but orderly manner the SCC Litigation Trust Claims in accordance with Treasury Regulation Section 301.7701-4(d).

ARTICLE 11 MISCELLANEOUS PROVISIONS

11.1 Intention of Parties to Establish the SCC Litigation Trust. This Declaration is intended to create a liquidating trust that is a grantor trust for federal income tax purposes and, to the extent provided by law, shall be governed and construed in all respects as such a trust and any ambiguity herein shall be construed consistent herewith and, if necessary, this Declaration may be amended in accordance with Section 10.1 to comply with such federal income tax laws, which amendments may apply retroactively.

11.2 Reimbursement of Trust SCC Litigation Costs. If the SCC Litigation Trustee, the SCC Litigation Trust Board, or the SCC Litigation Trust, as the case may be, is the prevailing party in a dispute regarding the provisions of this Declaration or the enforcement thereof, the SCC Litigation Trustee, the SCC Litigation Trust Board, or the SCC Litigation Trust, as the case may be, shall be entitled to collect any and all costs, reasonable and documented out-of-pocket expenses, and fees, including attorneys' fees, from the non-prevailing party incurred by the SCC Litigation Trustee, the SCC Litigation Trust Board, or the SCC Litigation Trust, as the case may be, in connection with such dispute or enforcement action.

11.3 Laws as to Construction. This Declaration shall be governed by and construed in accordance with the laws of the State of Delaware and U.S. bankruptcy laws, as applicable, without regard to whether any conflicts of law would require the application of the law of another jurisdiction.

11.4 Jurisdiction. Without limiting any Person or entity's right to appeal any order of the Bankruptcy Court or to seek withdrawal of the reference with regard to any matter, and subject to the rights of the Delaware Trustee pursuant to Section 2.3(b) of this Declaration, (i) prior to the closure of the Bankruptcy Cases (a) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Declaration and to decide any claims or disputes which may arise or result from, or be connected with, this Declaration, any breach or default hereunder, or the transactions contemplated hereby, and (b) any and all actions related to the foregoing shall be filed and maintained only in the Bankruptcy Court, and (ii) following the closure of the Bankruptcy Cases, (x) the Delaware Courts of Chancery shall retain exclusive jurisdiction to enforce the terms of this Declaration and to decide any claims or disputes which may arise or result from, or be connected with, this Declaration, any breach or default hereunder, or the transactions contemplated hereby, and (y) any and all actions related to the foregoing shall be filed and maintained only in a Delaware Court of Chancery, and the parties, including the SCC Litigation Trust Beneficiaries, and Holders of Claims and Equity Interests, hereby consent to and submit to the jurisdiction and venue of the Bankruptcy Court and the Delaware Courts of Chancery, as applicable.

11.5 Severability. If any provision of this Declaration or the application thereof to any Person or circumstance shall be finally determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Declaration, or the application of such provision to Persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and such provision of this Declaration shall be valid and enforced to the fullest extent permitted by law.

11.6 Notices. All notices, requests, or other communications to the parties hereto shall be in writing and shall be sufficiently given only if (i) delivered in person; (ii) sent by electronic mail or facsimile communication (as evidenced by a confirmed fax transmission report); (iii) sent by registered or certified mail, return receipt requested; or (iv) sent by commercial delivery service or courier. Until a change of address is communicated, as provided below, all notices, requests, and other communications shall be sent to the parties at the following addresses or facsimile numbers:

If to the SCC Litigation Trustee, to:

With a copy to:

If to the SCC Litigation Trust Board, to:

With a copy to:

If the Delaware Trustee, to:

With a copy to:

If to Reorganized ASARCO, to:

With a copy to:

All notices shall be effective and shall be deemed delivered (i) if by personal delivery, delivery service or courier, on the date of delivery; (ii) if by electronic mail or facsimile communication, on the date of receipt or confirmed transmission of the communication; and (iii) if by mail, on the date of receipt. Any party from time to time may change its address, facsimile number, or other information for the purpose of notices to that party by giving notice specifying such change to the other party hereto.

11.7 Fiscal Year. The fiscal year of the SCC Litigation Trust will begin on the first day of January and end on the last day of December of each year.

11.8 Definitions. Each of the terms set forth below has the meaning set forth in the provision set forth opposite such term in the following table:

Term	Provision
Act	Section 1.5(a)
Bankruptcy Cases	Recitals
Bankruptcy Court	Recitals
Covered Person	Section 11.11
Declaration	Preamble
Delaware Trustee	Preamble
Eligible Holder	Section 4.7(e)
Information	Section 11.11
Indemnified Persons	Section 7.1(a)
Interim Trustee	Section 2.3(g)
Maximum Recovery	Section 1.2(a)
Original Certificate	Section 5.5(f)
SCC Committee Board Member	Section 4.7(c)
SCC DOJ Board Member	Section 4.7(c)
SCC Litigation Trust	Preamble
SCC Litigation Trustee	Preamble
SEC	Section 5.4(a)
Parent's Plan	Preamble
Reorganized ASARCO	Preamble
Treasury Regulations	Section 1.4(a)
Trust Tax Owners	Section 1.4(a)
Trustee	Section 2.3(a)

11.9 Headings. The section headings contained in this Declaration are solely for convenience of reference and shall not affect the meaning or interpretation of this Declaration or of any term or provision hereof.

11.10 Counterparts. This Declaration may be executed in any number of counterparts, each of which shall be deemed to be an original instrument, but all together shall constitute one agreement.

11.11 Confidentiality. The SCC Litigation Trustee, the Delaware Trustee and each successor trustee and each member of the SCC Litigation Trust Board and each successor member of the SCC Litigation Trust Board (each a "Covered Person") shall, during the period that they serve in such capacity under this Declaration and following either the termination of this Declaration or such individual's removal, incapacity, or resignation hereunder, hold strictly confidential and not use for personal gain any material, non-public information of or pertaining to any entity to which any of the assets of the SCC Litigation Trust relates or of which it has become aware in its capacity (the "Information"), except to the extent disclosure is required by applicable law, order, regulation, or legal process. In the event that any Covered Person is requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigation, demand, or similar legal process) to disclose any Information, such Covered Person shall notify the SCC Litigation Trust Board reasonably promptly (unless prohibited by law) so that the SCC Litigation Trust Board may seek an appropriate protective order or other appropriate remedy or, in its discretion, waive compliance with the terms of this Section (and if the SCC Litigation Trust Board seeks such an order, the relevant Covered Person will provide cooperation as the SCC Litigation Trust Board shall reasonably request). In the event that no such protective order or other remedy is obtained, or that the SCC Litigation Trust Board waives compliance with the terms of this Section and that any Covered Person is nonetheless legally compelled to disclose the Information, the Covered Person will furnish only that portion of the Information, which the Covered Person, advised by counsel, is legally required and will give the SCC Litigation Trust Board written notice (unless prohibited by law) of the Information to be disclosed as far in advance as practicable and exercise all reasonable efforts to obtain reliable assurance that confidential treatment will be accorded the Information.

11.12 Entire Agreement. This Declaration (including the Recitals), the Parent's Plan, and the Confirmation Order constitute the entire agreement by and among the parties hereto and there are no representations, warranties, covenants or obligations except as set forth herein or therein. This Declaration, the Parent's Plan and the Confirmation Order supersede all prior and contemporaneous agreements, understandings, negotiations, discussions, written or oral, of the parties hereto, relating to any transaction contemplated hereunder. Except as otherwise specifically provided herein, in the Parent's Plan or in the Confirmation Order, nothing in this Declaration is intended or shall be construed to confer upon or to give any person other than the parties thereto and their respective heirs, administrators, executors, successors, or assigns any right to remedies under or by reason of this Declaration.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto have either executed and acknowledged this Declaration, or caused it to be executed and acknowledged on their behalf by their duly authorized officers all as of the date first above written.

ASARCO LLC:

By: _____
Name:
Title:

SCC LITIGATION TRUSTEE:

By: _____
Name:
Title:

DELAWARE TRUSTEE:

By: _____
Name:
Title:

**AGREED AND ACKNOWLEDGED
as of the date first above written:**

Name:
Title: SCC Litigation Trust Board Member

Name:
Title: SCC Litigation Trust Board Member

Name:
Title: SCC Litigation Trust Board Member

Document comparison done by DeltaView on Thursday, July 30, 2009 4:50:33 PM

Input:	
Document 1	pdocs://ny3/7465974/5
Document 2	pdocs://ny3/7465974/9
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	64
Deletions	73
Moved from	4
Moved to	4
Style change	0
Format changed	0
Total changes	145

EXHIBIT 25

FORM OF PARENT'S COPPER NOTE

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR ANY SECURITIES OR BLUE SKY LAW OF ANY STATE OR OTHER JURISDICTION. THE HOLDER HEREOF AGREES THAT THIS NOTE MAY BE REOFFERED, RESOLD, PLEDGED OR OTHERWISE TRANSFERRED ONLY IN COMPLIANCE WITH THE SECURITIES ACT AND OTHER APPLICABLE LAWS.

THIS NOTE WILL BE SUBJECT TO THE RULES OF TREASURY REGULATION SECTION 1.1275-4(c). UNDER THOSE RULES, THE NONCONTINGENT PORTION OF THE NOTE IS TREATED AS HAVING BEEN ISSUED WITH ORIGINAL ISSUE DISCOUNT (“OID”) FOR UNITED STATES FEDERAL INCOME TAX PURPOSES. A HOLDER MAY OBTAIN THE ISSUE PRICE, THE AMOUNT OF OID, THE DUE DATE AND THE YIELD TO MATURITY FOR UNITED STATES FEDERAL INCOME TAX PURPOSES WITH RESPECT TO THE NONCONTINGENT PORTION OF THE NOTE BY SUBMITTING A WRITTEN REQUEST TO THE CHIEF FINANCIAL OFFICER OF ASARCO LLC AT THE ADDRESS PROVIDED IN SECTION 7.2. INTEREST WILL ACCRUE FOR TAX PURPOSES ON THE CONTINGENT PORTION OF THE NOTE IN ACCORDANCE WITH THE RULES OF TREASURY REGULATION SECTION 1.1275-4(c)(4) AND (6).

**COPPER PRICE PARTICIPATION
SENIOR NOTE
of
ASARCO LLC**

[_____], 2009

[\$770,000,000]¹

FOR VALUE RECEIVED, ASARCO LLC, a Delaware limited liability company (the “Company”), hereby promises to pay to the order of [insert name of initial Holder], a [_____] (“[insert defined term for name of initial Holder]”), and its successors and assigns ([insert defined term for name of initial Holder], and any such successors, assigns and any other subsequent holder of this Note being referred to herein as the “Holder”), in lawful money of the United States of America and in immediately available funds, the principal amount of [SEVEN HUNDRED AND SEVENTY MILLION] DOLLARS (\$770,000,000), as adjusted in accordance with Section 2.7, in accordance with the provisions of this Note (such adjusted amount, the “Maximum Principal Amount”).

1. **Definitions.**

1.1 **Certain Definitions.** For purposes of this Note, the following terms shall have the meanings specified in this Section 1.1:

“AAA” shall have the meaning set forth in Section 7.7.

¹ The amount of this Promissory Note is subject to adjustment in accordance with the Plan.

“Adjusted Principal Note Balance” means, as of any time of determination, the present value of the Principal Note Balance calculated in accordance with the methodology set forth in Schedule 1.1(A) on the basis of a 360-day year (consisting of 12 months of 30 days each) using a discount rate of (a) 6% for Events of Default pursuant to Section 6.1(a), (b) 6% for Events of Default pursuant to Section 6.1(c), or (c) 10% for all other Events of Default. An example of the calculation of Adjusted Principal Note Balance is set forth in Schedule 1.1(A).

“Affiliate” (and, with a correlative meaning “affiliated”) means, with respect to any Person, (a) any other Person that directly, or through one or more intermediaries, controls or is controlled by or is under common control with such Person or (b) any Subsidiary of such Person. As used in this definition, “control” (including with correlative meanings, “controlled by” and “under common control with”) means possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other ownership interests, by Contract or otherwise).

“Aggregate Annual Note Payments” shall have the meaning set forth in Section 2.2.

“AMC” means Americas Mining Corporation, a Delaware corporation.

“Annual Note Payment” shall have the meaning set forth in Section 2.1.

“Applicable Law” means, with respect to any Person, any Law applicable to such Person or its business, properties or assets.

“[insert defined term for name of initial Holder]” shall have the meaning set forth in the preamble of this Note.

“Average Copper Daily Price” means the average over the course of the applicable year of the closing price of the daily official Comex High Grade Spot Price of copper on the New York Mercantile Exchange COMEX Division, as published in the Wall Street Journal in U.S. dollars per metric tonne (or, if reported in any other weight measure, as converted to metric tonnes) (or, should the Wall Street Journal cease to be published, as published in or otherwise available from a mutually acceptable reputable price source).

“Bankruptcy Cases” means the chapter 11 cases commenced by the Company and its affiliated debtors on or after August 9, 2005 (including any case commenced after the date of this Agreement), jointly administered under Case No. 05-21207, but excluding the chapter 11 case commenced by Encycle/Texas, Inc which was converted to a chapter 7 case..

“Bankruptcy Code” means Title 11 of the United States Code (11 U.S.C. §§ 101 et seq.).

“Bankruptcy Court” means the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division or any other court having jurisdiction over the Bankruptcy Cases from time to time.

“Beneficiaries” shall have the meaning set forth in Section 7.3.

“Business Day” means a day other than a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by Law to close. Any event the scheduled occurrence of which would fall on a day that is not a Business Day shall be deferred until the next succeeding Business Day.

“Company” shall have the meaning set forth in the preamble of this Note.

“Competitor” means a Person whose primary business is the mining of copper and the production of refined copper (i.e., cathode, anode or rod) and who is a direct competitor of the Company in the copper business.

“Competitor Holder” shall have the meaning set forth in Section 7.4.

“Compliance Certificate” shall have the meaning set forth in Section 5.2(c).

“Confidential Information” shall have the meaning set forth in Section 7.3.

“Default” means any event or condition which constitutes an Event of Default or which upon notice, lapse of time or both would, unless cured or waived, become an Event of Default.

“Default Rate” means the rate of 10% per annum calculated on the basis of a 360 day year.

“Disposition” or “Dispose” means the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction) of any property or assets by the Company, excluding any sale, transfer, license, lease or other disposition (including any sale and leaseback transaction) of such property or assets in the ordinary course of business and on ordinary business terms.

“Enforceability Exceptions” means, with reference to the enforcement of the terms and provisions of this Agreement, that the enforcement thereof is or may be subject to the effect of (i) applicable bankruptcy, receivership, insolvency, reorganization, moratorium, fraudulent conveyance, fraudulent transfer and other similar laws relating to or affecting the enforcement of the rights and remedies of creditors or parties to executory contracts generally; (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding at law or in equity) and the exercise of equitable powers by a court of competent jurisdiction; and (iii) Applicable Law or public policy limiting the enforcement of provisions providing for the indemnification of any Person.

“Environmental Law” means any Law pertaining to health, industrial hygiene, public safety, occupational safety, mining, mine reclamation, natural or cultural resources, fish, wildlife or other protected species or the environment, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601, et. seq.); the Resource, Conservation and Recovery Act of 1976 (42 U.S.C. § 6901, et. seq.); the Toxic Substances Control Act (15 U.S.C. § 2601, et. seq.); the Clean Water Act (33 U.S.C. § 1251, et. seq.); the Oil Pollution Act of 1990 (33 U.S.C. § 2701, et. seq.); the Clean Air Act (42 U.S.C. § 7401, et. seq.); the Atomic Energy Act (42 U.S.C. § 2011, et. seq.); the Hazardous Materials Transportation Act (49 U.S.C. § 5 101, et. seq.); the Emergency Planning and Community Right-

To-Know Act (42 U.S.C. 1 1001, et. seq.); the Endangered Species Act of 1973 (16 U.S.C. §153 1, et. seq.); the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1701, et. seq.); the Lead-Based Paint Exposure Reduction Act (15 U.S.C. § 2681, et. seq.); the Safe Water Drinking Act Amendments of 1996 (42 U.S.C. § 300); the National Historic Preservation Act of 1966; the Mine Safety and Health Act (30 U.S.C. 801 et seq.); the Surface Mining Control and Reclamation Act (30 U.S.C. 1201 et seq.) and state and local counterparts of each of the foregoing.

“Environmental Reports” shall have the meaning set forth in Section 5.3(b).

“Equity Securities” means (i) with respect to any corporation, all shares, interests, participations or other equivalents of capital stock of such corporation (however designated), and any warrants, options or other rights to purchase or acquire any such capital stock and any securities convertible into or exchangeable or exercisable for any such capital stock, (ii) with respect to any partnership, all partnership interests, participations or other equivalents of partnership interests of such partnership (however designated), and any warrants, options or other rights to purchase or acquire any such partnership interests and any securities convertible into or exchangeable or exercisable for any such partnership interests and (iii) with respect to any limited liability company, all membership interests, participations or other equivalents of membership interests of such limited liability company (however designated), and any warrants, options or other rights to purchase or acquire any such membership interests and any securities convertible into or exchangeable or exercisable for any such membership interests.

“Event of Default” means each of the events set forth in Section 6.1.

“Existing Indebtedness” means Indebtedness of the Company that existed on the date of issuance of this Note and that was secured by an Existing Lien.

“Existing Liens” means (a) the Liens set forth on Schedule 1.1(B) hereto and (b) to the extent the same are not listed on Schedule 1.1(B), valid and existing security interests covering any of the property or assets of the Company and existing immediately prior to the date hereof.

“Extraordinary Event” means any loss, casualty or condemnation of property or assets that results in cash received by or paid to or for the account of the Company in the nature of proceeds of insurance and condemnation awards (and payments in lieu thereof).

“Fair Market Value” means, with respect to any asset or property, the fair value which would be paid for such asset or property in a sale of such asset or property on a going-concern basis, free and clear of all liens and encumbrances, by an unaffiliated, willing, able, knowledgeable and informed buyer in an orderly negotiated arm’s-length transaction between such a buyer and a willing and able seller, neither of which are under undue time constraints or pressure to buy or sell (as applicable); provided that, if at the time of determination any such asset or property is not being operated, then the fair market value of such asset or property shall be liquidation value.

“Final Note Payment” shall have the meaning set forth in Section 2.2.

“Fiscal Year” means a fiscal year of the Company.

“GAAP” means United States generally accepted accounting principles and practices set forth from time to time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the US accounting profession), consistently applied.

“Governmental Authority” means any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, foreign or domestic, including any governmental authority, agency, department, board, commission or instrumentality of the United States or other country, any state, province, tribal authority or any political subdivision of any of the foregoing, and any tribunal, court, arbitrator(s) or other private adjudicator whose decisions are binding of competent jurisdiction, and shall include the Bankruptcy Court.

“Guaranty” means the Guaranty made as of [_____], 2009 by AMC in favor of the Holder.

“Hedging Agreements” shall mean any and all agreements now existing or hereafter entered into between the Company and a counterparty that provides for a swap, cap, floor, collar, forward purchase or sale, option or any combination of these or similar transactions, for the purpose of hedging commodity prices, interest rates, currency rates, credit risk, weather or other contingencies.

“Holder” shall have the meaning set forth in the preamble of this Note.

“Indebtedness” means, with respect to the Company:

- (a) obligations for borrowed money;
- (b) obligations representing the deferred purchase price of property or services other than accounts payable arising in connection with the purchase of goods or services on terms customary in the trade and not outstanding more than 60 days unless contested in good faith;
- (c) obligations, whether or not assumed, secured by liens or a pledge of or an encumbrance on the proceeds or production from property now or hereafter owned or acquired;
- (d) obligations which are evidenced [by notes, bonds, debentures, acceptances or other instruments];
- (e) reimbursement obligations in respect of letters of credit;
- (f) net termination obligations under Hedging Agreements, calculated as of any date of calculation as if such Hedging Agreements were terminated as of such date;
- (g) that portion of any obligation with respect to leases of real or personal property which is required to be capitalized under GAAP or which is treated as operating leases

under applicable regulations but which otherwise would be required to be capitalized under GAAP; and

(h) guarantees and other contingent obligations with respect to the obligations described in (a) through (g) above.

“Indemnified Liabilities” shall have the meaning set forth in Section 7.10.

“Indemnitees” shall have the meaning set forth in Section 7.10.

“Information Agent” shall have the meaning set forth in Section 7.3.

“Law” means any federal, tribal, state or local or provincial law (including common law), statute, code, ordinance, rule, regulation, executive order, Order, administrative or judicial decision, judgment or decree or other requirement enacted, promulgated, issued or entered by a Governmental Authority.

“Legal Proceedings” means any action, claim, suit, arbitration, inquiry, proceeding or investigation by or before any Governmental Authority of any nature, civil, criminal, regulatory or otherwise, in law or in equity.

“Lien” means, with respect to any property, any mortgage, lien, pledge, negative pledge agreement, assignment, charge, option, security interest, title retention agreement, levy, execution, seizure, attachment, garnishment, any documents, notice, instruments or other filings under the Federal Assignment of Claims Act of 1940 or other encumbrance of any kind in respect of such property, whether or not choate, vested, or perfected.

“Maturity Date” shall have the meaning set forth in Section 2.3.

“Maximum Principal Amount” shall have the meaning set forth in the preamble of this Note.

“Net Cash Proceeds” means with respect to any Disposition by the Company, or any Extraordinary Event for the account of the Company, the excess, if any, of (a) the sum of cash and cash equivalents received in connection with such transaction (including any cash or cash equivalents received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received) over (b) the sum of (i) the reasonable and customary out-of-pocket fees and expenses incurred by the Company in connection with such transaction; (ii) taxes reasonably estimated to be actually payable in connection with the relevant transaction (provided that, if the amount of any estimated taxes pursuant to this subclause (ii) exceeds the amount of taxes actually required to be paid in cash in respect of such Disposition, the aggregate amount of such excess shall constitute Net Cash Proceeds from and after the date of determination of such excess); (iii) amounts provided as a reserve, in accordance with GAAP, against any liabilities under any indemnification obligations or purchase price adjustment associated with such Disposition or Extraordinary Event (provided that, to the extent and at the time any such amounts are released from such reserve, such amounts shall constitute Net Cash Proceeds) and (iv) amounts then due and payable on Existing Indebtedness which is secured by the property or asset subject to such Disposition or Extraordinary Event and which is

required to be repaid with such proceeds (other than any such Existing Indebtedness assumed by the purchaser of such property or asset).

“Note” means this Copper Price Participation Senior Note, as the same may be amended or otherwise modified from time to time pursuant to Section 7.1.

“Order” means any final and non-appealable order, injunction, judgment, stipulation, decree, ruling, writ, assessment or arbitration award issued by a Governmental Authority or any legally binding and enforceable conciliation or settlement agreement with any Governmental Authority.

“Organizational Documents” means (i) in the case of any Person organized as a corporation, the certificate or articles of incorporation of such corporation (or, if applicable, the memorandum and articles of association of such corporation) and the bylaws of such corporation, (ii) in the case of any Person organized as a limited liability company, the certificate of formation or organization and the limited liability company agreement, operating agreement or regulations of such limited liability company, (iii) in the case of any Person organized as a limited partnership, the certificate of limited partnership and partnership agreement of such limited partnership and (iv) in the case of any other Person, all constitutive or organizational documents of such Person which address all matters relating to the business and affairs of such Person similar to the matters addressed by the documents referred to in clauses (i) through (iii) above in the case of Persons organized as corporations, limited liability companies or limited partnerships.

“Other Taxes” shall have the meaning set forth in Section 3.3(b).

“Permits” any approvals, authorizations, consents, licenses, permits or certificates.

“Person” means any natural person, corporation, limited partnership, limited liability company, general partnership, joint stock company, joint venture, association, company, trust, bank, trust company, land trust, business trust or other organization, whether or not a legal entity, and any Governmental Authority.

“Principal Note Balance” means, as of any time of determination, the difference between (i) the Maximum Principal Amount and (ii) the sum of all Annual Note Payments made immediately prior to such time of determination.

“Replacement Assets” shall have the meaning set forth in Section 2.5(b).

“Representatives” means, with respect to any Person, any director, officer, employee, investment banker, financial advisor, attorney, accountant or other advisor, agent or representative of such Person.

“Securities Act” shall have the meaning set forth in the legend on the first page of this Note.

“Subsidiary” means, with respect to any Person, any corporation, limited liability company, joint venture or partnership of which such Person (a) beneficially owns, either directly

or indirectly, more than 50% of (i) the total combined voting power of all classes of voting securities of such entity, (ii) the total combined equity interests, or (iii) the capital or profit interests, in the case of a partnership; or (b) otherwise has the power to vote or to direct the voting of sufficient securities to elect a majority of the board of directors or similar governing body. Unless otherwise specified, all references herein to a “Subsidiary” or “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of the Company or its Subsidiaries.

“Taxes” shall have the meaning set forth in Section 3.3(a).

1.2 Certain Rules of Construction. Whenever the context may require, any pronoun used in this Note shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa. In addition, as used in this Note, unless otherwise provided to the contrary, (a) all references to days, months or years shall be deemed references to calendar days, months or years or (b) any reference to a “Section,” “Article” or “Schedule” shall be deemed to refer to a section, article or schedule to this Note. Unless the context otherwise requires, the words “hereof,” “herein,” and “hereunder” and words of similar import referring to this Note refer to this Note as a whole and not to any particular provision of this Note. The words “include,” “includes,” or “including” shall be deemed to be followed by the words “without limitation.” Unless otherwise specifically provided for herein, the term “or” shall not be deemed to be exclusive. All references to dollar amounts are to the lawful currency of the United States of America. A reference to any Law shall include all modifications, amendments and re-enactments thereof.

2. Payment.

2.1 Annual Note Payments. Within 7 days after the first anniversary of the date of issuance of this Note and within 7 days after each anniversary thereafter until the Maturity Date, the Company shall pay the Holder an amount equal to the product of (a) a fraction, the numerator of which is the Average Copper Daily Price for such year minus \$6,000 and the denominator of which is 100 and (b) the Maximum Principal Amount divided by 180 (the “Annual Note Payment”); provided, however, that commencing with the year ending on the second anniversary of the date of issuance, each Annual Note Payment shall be at least \$20,000,000 (for the avoidance of doubt, such minimum amount shall be payable even if the Average Copper Daily Price is less than \$6,000 per metric tonne); provided, further, that no Annual Note Payment shall be less than \$0 or shall exceed the lesser of (x) one-ninth of the Maximum Principal Amount and (y) the then outstanding (after giving effect to reductions pursuant to Section 2.7) Maximum Principal Amount. Examples of the calculation of Annual Note Payments are set forth in Schedule 2.1.

2.2 Final Note Payment. If as of the Maturity Date, the aggregate of the Annual Note Payments previously paid pursuant to Section 2.1 (the “Aggregate Annual Note Payments”) is less than the Maximum Principal Amount, then the Company shall, on the Maturity Date, pay the Holder an amount equal to (a) the Maximum Principal Amount less (b) the Aggregate Annual Note Payments (the “Final Note Payment”).

2.3 Maturity. The Company hereby unconditionally promises to pay to the Holder the Final Note Payment and any and all other sums then due and payable hereunder on the ninth anniversary of the date of issuance of this Note (the "Maturity Date").

2.4 Voluntary Prepayments. So long as no Event of Default shall have occurred and be continuing, the Company may, at any time and from time to time, upon two Business Days' prior written notice, prepay any or all amounts due under this Note prior to the Maturity Date, in whole or in part without premium or penalty.

2.5 Dispositions. From and after the first anniversary of the issuance of this Note and until the Maximum Principal Amount has been indefeasibly paid in full:

(a) All Net Cash Proceeds in excess of \$10,000,000 received by or on behalf of the Company in connection with the Disposition from time to time (when aggregated with the Net Cash Proceeds of all other Dispositions), shall be paid to the Holder as mandatory prepayments in accordance with this Section 2.5.

(b) Mandatory prepayments shall (in each case) be immediately due and payable contemporaneously with the receipt by or on behalf of the Company of such Net Cash Proceeds; provided that, so long as no Event of Default shall have occurred and be continuing, the Company may elect (by written notice thereof to the Holder prior to the consummation of such Disposition) to deposit such Net Cash Proceeds into a segregated deposit account, to be used by the Company within 270 days to acquire (or replace or rebuild) assets that are used in or useful in the business of the Company (such assets being hereinafter referred to as "Replacement Assets"; provided that Indebtedness or Equity Securities shall not constitute Replacement Assets). In the event that the Company has not used the Net Cash Proceeds to acquire (or rebuild) Replacement Assets on or before the date which is 270 days after the date of the Company's receipt of same, then a mandatory prepayment shall be immediately due and payable on such date in an amount equal to the amount of such Net Cash Proceeds that have not been so used.

2.6 Extraordinary Events. From and after the first anniversary of the issuance of this Note and until the Maximum Principal Amount has been indefeasibly paid in full:

(a) All Net Cash Proceeds in excess of \$10,000,000 received by or on behalf of the Company in connection with Extraordinary Events from time to time (when aggregated with the Net Cash Proceeds of all other Extraordinary Events), shall be paid to the Holder as mandatory prepayments in accordance with this Section 2.6.

(b) Mandatory prepayments shall (in each case) be immediately due and payable contemporaneously with the receipt by or on behalf of the Company of such Net Cash Proceeds; provided that, so long as no Event of Default shall have occurred and be continuing, the Company may elect (by written notice thereof to the Holder prior to the consummation of such Disposition) to deposit such Net Cash Proceeds into a segregated deposit account, to be used by the Company within 270 days to acquire (or replace or rebuild) Replacement Assets. In the event that the Company has not used the Net Cash Proceeds to acquire (or rebuild) Replacement Assets on or before the date which is 270 days after the date of the Company's

receipt of same, then a mandatory prepayment shall be immediately due and payable on such date in an amount equal to the amount of such Net Cash Proceeds that have not been so used.

2.7 Application of Prepayments. Prepayments made pursuant to Section 2.4, Section 2.5 or Section 2.6 shall be applied first to reduce the amount of the Final Note Payment and then, if applicable, Annual Note Payments due pursuant to Section 2.1, in inverse order of maturity, by an amount or amounts determined in accordance with the methodology set forth in Schedule 2.7 using a discount rate of 10% on the basis of a 360-day year (consisting of 12 months of 30 days each). Examples of the application of prepayments to the Final Note Payment and then, if applicable, Annual Note Payments due pursuant to Section 2.1 are set forth in Schedule 2.7. Notwithstanding anything to the contrary herein, except as used in clause (y) of the second proviso to Section 2.1, no application of a prepayment shall adjust the “Maximum Principal Amount” for purposes of Section 2.1.

3. Manner and Time of Payment.

3.1 Payment in Immediately Available Funds. Subject to Section 3.3, all payments on this Note shall be made without deduction, setoff or counterclaim, in United States Dollars and in immediately available funds delivered to the Holder by wire transfer to the account listed in Schedule 3.1 hereto or to such other account as the Holder shall notify the Company in writing from time to time.

3.2 Payment on Non-Business Days. If any payment on this Note shall become due on a day that is not a Business Day, such payment shall be made on the next succeeding Business Day.

3.3 Taxes.

(a) No Deduction for Taxes. Any and all payments or reimbursements made by the Company hereunder shall be made free and clear of, and without any deduction for, and the Company shall indemnify and hold harmless the Holder from and against, any and all current or future taxes, levies, imposts, deductions, charges, withholdings or other charges of whatever nature now or hereafter imposed by any Governmental Authority with respect to such payments or reimbursements and all interest, penalties or similar liabilities with respect thereto (excluding, with respect to any payment to be made with respect to this Note, (i) any tax imposed by the United States or any political subdivision thereof and (ii) any taxes imposed by any Governmental Authority on or measured by overall net income and franchise taxes imposed in lieu thereof imposed by the jurisdiction, or any political subdivision thereof, under the laws of which the Holder is organized or is tax resident or in which its principal office is located) (all such non-excluded taxes, collectively or individually, “Taxes”). If the Company shall be required to deduct any Taxes from or in respect of any sum payable hereunder, then (a) the sum payable shall be increased by the amount necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 3.3), the Holder shall receive an amount equal to the sum it would have received had no such deductions been made, (b) the Company shall make such deductions, and (c) the Company shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with Applicable Law.

(b) Other Taxes. Without limiting the provisions of Section 3.3(a) above, the Company shall timely pay to the relevant Governmental Authority in accordance with Applicable Law, and shall indemnify and hold harmless the Holder from and against, any present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or from the execution, delivery or enforcement of, or otherwise with respect to, this Note, excluding any tax imposed by the United States or any political subdivision thereof (all such non-excluded taxes, collectively or individually “Other Taxes”).

(c) Status of Holder. If the Holder is entitled to an exemption from or reduction of withholding tax under the law of the jurisdiction in which the Company is resident for tax purposes, or any treaty to which such jurisdiction is a party, with respect to payments hereunder shall deliver to the Company, at the time or times prescribed by Applicable Law or reasonably requested by the Company, such properly completed and executed documentation prescribed by Applicable Law as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, the Holder, if requested by the Company, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by the Company as will enable the Company to determine whether or not the Holder is subject to backup withholding or information reporting requirements.

(d) Refunds. If any Taxes or Other Taxes for which the Holder has received additional amounts or indemnification from the Company pursuant to this Section 3.3 shall be finally determined to have been incorrectly or illegally asserted and are refunded to the Holder (such determination to be made in the reasonable discretion of the Holder), the Holder shall promptly forward to the Company any such refunded amount (after deduction of any taxes, fees or assessments paid or payable by the Holder as a result of such refund and any reasonable out-of-pocket expenses incurred by the Holder with respect to such refund), not exceeding the corresponding increased amounts paid by the Company pursuant to this Section 3.3 with respect to the Taxes or Other Taxes giving rise to such refund.

4. Representations and Warranties. The Company hereby represents and warrants to the Holder that:

4.1 Organization and Good Standing. The Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware.

4.2 Authorization; Enforceability. The Company has the requisite corporate power and authority to execute this Note and perform its obligations hereunder. The execution and delivery of this Note by the Company have been duly authorized by the Board of Directors of the Company and no other corporate proceedings on the part of the Company or the applicable Subsidiary are necessary to authorize this Note. This Note has been duly executed and delivered by the Company and constitutes the valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, subject to the Enforceability Exceptions.

4.3 No Conflict. The execution, delivery and performance by the Company of this Note in accordance with its terms and the consummation of the transactions contemplated herein do not and will not: (a) violate any provision of Applicable Law; (b) conflict with, result in a

breach of, or constitute a default under (i) the Organizational Documents of the Company, (ii) any indenture, agreement, instrument or other contractual obligation of the Company, or (iii) any Order of Governmental Authority to which the Company; (c) result in or require the creation or imposition of any Lien upon any of the properties or assets of the Company; or (d) require any approval or consent of any Person under any contractual obligation of the Company, in each case other than as contemplated by this Note or any conflict, violation, breach, default, requirement for consents, rights of acceleration, cancellation, termination or Lien that would not reasonably be expected to prevent, impede or materially delay or otherwise affect in any material respect the ability of the Company to meet its payment obligations hereunder.

4.4 Litigation. There are no Legal Proceedings pending, or to knowledge of the Company, threatened in writing against or affecting the Company, at law or in equity, before or by any Governmental Authority, and the Company is not subject to any Order rendered specifically against it which would or seeks to enjoin, rescind or materially delay the transactions contemplated in this Note or otherwise that would reasonably be expected to prevent, impede or materially delay or otherwise affect in any material respect the ability of the Company to meet its payment obligations hereunder.

4.5 Compliance with Laws. The Company is in compliance with all Applicable Laws and other requirements of all Governmental Authorities having jurisdiction over the conduct of its business or the ownership of its properties (including all Environmental Laws), except to the extent the failure to comply would not reasonably be expected to prevent, impede or materially delay or otherwise affect in any material respect the ability of the Company to meet its obligations hereunder.

4.6 Ranking of Payment Obligations. The Company's payment obligations under this Note rank at least pari passu in preference and priority to all other secured and unsecured Indebtedness of the Company.

4.7 No Defaults. No Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Note.

5. Covenants.

5.1 General Covenants. Until the Maximum Principal Amount has been indefeasibly paid in full:

(a) Books and Records. The Company shall maintain proper books of record and account, in which full, true and correct entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of the Company.

(b) Insurance. The Company shall maintain with financially sound and reputable independent insurers, insurance with respect to its property or assets (similar to that in effect immediately prior to the date of issuance), against loss or damage in such amounts and against such risks as would be customary in respect of assets similar thereto and as would be customary for companies in the same industry and of comparable size to the Company, on a

consolidated basis, with modifications as the Company determines are commercially prudent. The Holder shall be named as loss payee and as an additional insured on such insurance.

(c) Compliance with Laws. Except to the extent the failure to comply would not reasonably be expected to prevent, impede or materially delay or otherwise affect in any material respect the ability of the Company to meet its obligations hereunder, the Company shall comply with the requirements of all Applicable Laws of any Governmental Authority having jurisdiction over the business of the Company (including all Environmental Laws). In addition, the Company shall maintain in full force and effect all Permits required under Applicable Law (including all Environmental Laws).

(d) Inspection of Properties. The Company shall permit the Holder's Representatives to inspect its properties and to examine its books and records, and make copies thereof or abstracts therefrom, at such reasonable times during normal business hours upon reasonable advance notice to the Company; provided, however, that when a Default has occurred and is continuing the Holder (or any of its Representatives) may do any of the foregoing at any time during normal business hours and without advance notice.

(e) Maintenance of Property. The Company shall maintain or cause to be maintained in the ordinary course of business in good repair, working order and condition, normal wear and tear and disposal of obsolete equipment (as determined in good faith by the Company's Board of Directors) excepted, all property material to the conduct of its business, and from time to time shall make or cause to be made all needed and appropriate repairs, renewals, replacements, additions, betterments and improvements thereto.

(f) Dispositions of Property or Assets. The Company shall not effect any Disposition to any Person (other than to its Subsidiaries) unless the Net Cash Proceeds therefor are equal to or greater than the Fair Market Value for property or assets subject of such Disposition. If the Net Cash Proceeds of any Disposition is in excess of \$10,000,000, the Company's Chief Financial Officer shall, at or prior to the consummation of such Disposition, provide a certificate to the Holder certifying compliance with this Section 5.1(f).

(g) If any Disposition is to be made to an Affiliate of the Company, the terms of such transaction must be no less favorable to the Company than could be achieved in an arm's length transaction with an unaffiliated third party.

5.2 Information Covenant. Until the Maximum Principal Amount has been indefeasibly paid in full:

(a) Annual Financial Statements and Information. The Company shall furnish to the Holder as soon as they are available, but in no event more than 120 days after the end of each Fiscal Year, (i) the audited balance sheet of the Company and its Subsidiaries as at the end of such year and the related audited statements of income, shareholder's equity and cash flows for such year, all of which shall be on a consolidated basis; and (ii) an audit report with respect to such balance sheet, statements of income, shareholder's equity and cash flows prepared and certified by a firm of independent certified public accountants of nationally recognized standing.

(b) Quarterly Financial Statements and Information. Within 60 days after the end of each of the first three fiscal quarters in each Fiscal Year, the Company shall furnish to the Holder the unaudited balance sheet of the Company and its Subsidiaries as at the end of such fiscal quarter, and the related unaudited statements of income, shareholder's equity and cash flows for the portion of the applicable Fiscal Year ending with the last day of such fiscal quarter, all of which shall be on a consolidated basis.

(c) Quarterly Compliance and Information Certificate. Concurrently with the delivery of the quarterly financial statements required in Section 5.2(b), the Company shall deliver a certificate of the Company's Chief Financial Officer (each, a "Compliance Certificate"):

(i) stating that the representations and warranties contained in this Note are true and correct (in the case of representations and warranties qualified as to materiality) or true and correct in all material respects (in the case of representations and warranties that are not so qualified) as of the date of such Compliance Certificate;

(ii) including a full copy of all information (excluding forward-looking financial projections) which the Company is required from time to time to provide to any of the labor unions representing any of its workforce pursuant to applicable collective bargaining agreements (or similar related agreements);

(iii) including the Company's short and long-term operating and financial results (including inputs relevant to the development of them) together with the additional information identified in Schedule 5.2.

5.3 Other Notices. Until the Maximum Principal Amount has been indefeasibly paid in full:

(a) Promptly after any officer of the Company becomes aware of (a) any Default, (b) any material Legal Proceeding or (c) any violation in any material respect of any Environmental Law, the Company shall deliver a certificate of the Company's Chief Financial Officer specifying the nature and period of existence thereof and describing what action the Company has taken, is taking and proposes to take with respect thereto.

(b) Promptly upon receipt or preparation, the Company shall provide the Holder with copies of any and all environmental studies, reports, assessments, audits, analyses, material correspondence and other material documentation or similar information (excluding forward-looking financial projections) relating to Company's compliance with Environmental Laws, the environmental condition of the property and assets of the Company, or remedial activities on or relating to such property or assets prepared or received on or after the date of issuance of this Note (collectively, "Environmental Reports").

6. Default.

6.1 Events of Default. Each of the following shall constitute an "Event of Default," whatever the reason for such event and whether it shall be voluntary or involuntary or be effected

by operation of law or pursuant to any judgment or order of any court or any order, rule or regulation of any Governmental Authority or non-governmental body:

(a) the Company fails to (i) make any payment due under Section 2.1 or comply with the requirements of Section 5.6 and such failure shall continue unremedied for a period of 23 days after the earlier of (A) notice thereof from the Holder to the Company or (B) the Company otherwise becoming aware of such a default or (ii) make any other payment due hereunder when and as the same shall become due and payable, and such failure shall continue unremedied for a period of 30 days after the earlier of (A) notice thereof from the Holder to the Company or (B) the Company otherwise becoming aware of such a default;

(b) the Company breaches or otherwise fails to perform or observe the provisions of Section 2.5 or Section 2.6;

(c) the Company breaches or otherwise fails to perform or observe any covenant or agreement contained in this Note (other than those described in clauses (a) and (b) above), and such failure shall continue unremedied for a period of 30 days after the earlier of (i) notice thereof from the Holder to the Company or (ii) the Company becoming aware of such default;

(d) Any representation or warranty made herein or which is contained in any certificate, document or financial or other statement by the Company, furnished at any time in connection with this Note, is false, misleading or incomplete in any material respect on or as of the date made;

(e) the Company or AMC (i) is generally not paying, or admits in writing its inability to pay, its debts as they become due, (ii) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy, for liquidation or to take advantage of any bankruptcy, insolvency, reorganization, moratorium or other similar law of any jurisdiction, (iii) makes an assignment for the benefit of its creditors, (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers with respect to it or with respect to any substantial part of its property, (v) is adjudicated as insolvent or to be liquidated, or (vi) takes corporate action for the purpose of any of the foregoing;

(f) a court or Governmental Authority of competent jurisdiction enters an order appointing, without consent by the Company or AMC, a custodian, receiver, trustee or other officer with similar powers with respect to it or with respect to any substantial part of its respective property, or constituting an order for relief or approving a petition for relief or reorganization or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction, or ordering the dissolution, winding-up or liquidation of the Company or AMC, as applicable, or any such petition shall be filed against the Company or AMC, as applicable, and such petition shall not be dismissed within 60 days; or

(g) the Guaranty shall cease to be in full force or effect.

6.2 Remedies. If an Event of Default shall have occurred and shall be continuing:

(a) With the exception of an Event of Default specified in Section 6.1(e) or (f), [insert defined term for name of initial Holder] may in its discretion or, at the request of Holders holding twenty-five percent (25%) or more of the outstanding aggregate principal amount of this Note, shall declare the Adjusted Principal Note Balance to be forthwith due and payable without presentment, demand, protest or other notice of any kind, all of which are expressly waived, anything in this Note to the contrary notwithstanding.

(b) Upon the occurrence and continuance of an Event of Default specified in Section 6.1(e) or (f) with respect to the Company, the Adjusted Principal Note Balance shall thereupon immediately become due and payable, without any action by the Holder and without presentment, demand, protest or other notice of any kind, all of which are expressly waived, anything in this Note to the contrary notwithstanding.

(c) Upon the occurrence and during the continuation of an Event of Default, interest shall accrue on the Adjusted Principal Note Balance at the Default Rate until the Adjusted Principal Note Balance has been paid in full.

6.3 Rights Not Exclusive. The rights provided for in this Note are cumulative and are not exclusive of any other rights, powers, privileges or remedies provided by law or in equity, or under any other instrument, document or agreement now existing or hereafter arising.

7. **Miscellaneous.**

7.1 Amendment and Waiver. Neither this Note nor any provision hereof may be amended or modified except pursuant to an agreement or agreements in writing entered into by the Company and the Holder. The Holder may, from time to time, waive, on such terms as the Holder may specify, any of the requirements of this Note. In the event of a waiver, such waiver shall be effective only in the specific instance and for the specific purpose for which given.

7.2 Notices.

(a) All notices and other communications under this Note shall be in writing and shall be deemed duly given (i) when delivered personally or by prepaid overnight courier, with a record of receipt or (ii) the day of transmission, if sent by facsimile during regular business hours, or the day after transmission, if sent after regular business hours (with a copy promptly sent by prepaid overnight courier with record of receipt or by certified mail, return receipt requested), to the parties at the following addresses or facsimile numbers (or to such other address or facsimile number as a party may have specified by notice given to the other party pursuant to this provision):

(i) If to the Company:

ASARCO LLC

c/o [_____]

[_____]

[_____]

Telephone: [_____]

Facsimile: [_____]

with a copy to:

[_____]
[_____]
[_____]
Attention: [_____]
Telephone: [_____]
Facsimile: [_____]

and to:

[_____]
[_____]
[_____]
Attention: [_____]
Telephone: [_____]
Facsimile: [_____]

(ii) If to the Holder:

[insert name of Holder]
[_____]
[_____]
Attention: [_____]
Telephone: [_____]
Facsimile: [_____]

with a copy to:

[_____]
[_____]
[_____]
Attention: [_____]
Telephone: [_____]
Facsimile: [_____]

(b) Any party hereto may change the address to which notices shall be directed under this Section 7.2 by giving 10 days' written notice of such change to the other parties.

7.3 Confidentiality. The Holder shall hold confidential all non-public information regarding the Company and its Subsidiaries identified as such by the Company and obtained by the Holder pursuant to the requirements hereof (the "Confidential Information") in accordance with the Holder's customary procedures for handling confidential information of such nature, it being understood and agreed by the Company that, in any event, the Holder may make (a) disclosures of such information to Affiliates and Representatives of the Holder, creditors in the Bankruptcy Cases and to their agents and advisors, and to other Persons who have the right, by contract or otherwise, to receive payments from the Holder in respect of payments made to

the Holder under this Note (“Beneficiaries”) and to other persons authorized by the Holder to organize, present or disseminate such information in connection with disclosures otherwise made in accordance with this Section 7.3 (each, an “Information Agent”); provided that, subject to clauses (c) and (d) below, the Holder may provide Environmental Reports only to its Affiliates and Representatives and each Information Agent (and their agents and advisors) and the Holder may not distribute to any Beneficiary that is a Competitor any non-public information described in Sections 5.2(c)(ii) and (iii) of this Note provided to it by the Company, (b) disclosures of such information reasonably required by any bona fide or potential assignee, transferee or participant in connection with the contemplated assignment, transfer or participation by the Holder or any creditor in the Bankruptcy Cases or any participations therein, (c) disclosures reasonably necessary in connection with the defense of any action, suit or investigation brought against the Holder or any creditor in the Bankruptcy Cases, and (d) disclosures required or requested by any governmental or regulatory agency or representative thereof, and self-regulatory organization or representative thereof, or pursuant to legal or judicial process; provided that with respect to disclosures in the foregoing clauses (a) and (b), the third parties to whom such disclosures are made shall have agreed to observe and be bound by the confidentiality provisions of this Section 7.3; provided, further, that with respect to disclosures in the foregoing clause (d), the Holder agrees that (i) the Holder will provide the Company with prompt notice of such request or requirement in order to enable the Company to seek an appropriate protective order or other remedy, to consult with the Company with respect to the Company taking steps to resist or narrow the scope of such request or legal process, or to waive compliance, in whole or in part, with the provisions of this Section 7.3 and (ii) notwithstanding anything to the contrary contained herein, in the event that such protective order or other remedy is not obtained, or that the Company waives compliance, in whole or in part, with the provisions of this Section 7.3, the Holder will disclose only that portion of the Confidential Information which the Holder is advised by counsel is legally required to be disclosed and will use its reasonable best efforts to ensure that all Confidential Information so disclosed will be accorded confidential treatment.

7.4 Competitors. The Company shall not be required to provide to any Competitor Holder any Environmental Reports or non-public information described in Sections 5.2(c)(ii) and (iii) of this Note. A “Competitor Holder” means a Competitor to whom any or all of this Note is transferred after the date hereof and who becomes a “Holder” hereunder. The Holder may not provide information pursuant to Section 7.3 to any Competitor Holder.

7.5 Waiver of Demand and Notice. The Company hereby waives demand, notice, protest and all other demands and notices in connection with the delivery, acceptance, performance, default or enforcement of this Note.

7.6 Governing Law. THIS NOTE, THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS NOTE, AND ANY CLAIM OR CONTROVERSY DIRECTLY OR INDIRECTLY BASED UPON OR ARISING OUT OF THIS NOTE (WHETHER BASED ON CONTRACT, TORT, OR ANY OTHER THEORY), INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, SHALL IN ALL RESPECTS BE GOVERNED BY AND INTERPRETED, CONSTRUED, AND DETERMINED IN ACCORDANCE WITH, THE APPLICABLE PROVISIONS OF THE BANKRUPTCY CODE AND THE INTERNAL LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO

ANY CONFLICTS OF LAW PROVISION THAT WOULD REQUIRE THE APPLICATION OF THE LAW OF ANY OTHER JURISDICTION).

7.7 Submission to Jurisdiction; Consent to Service of Process.

(a) Each of the Company and the Holder hereby submits to the non-exclusive jurisdiction of the United States District Court for the Southern District of New York and of the Supreme Court of the State of New York sitting in New York County (including its Appellate Division) and of any other appellate court in the State of New York for the purposes of all legal proceedings arising out of or relating to this Note or the transactions contemplated hereby; provided, however, that the parties agree that all disputes, controversies or claims that may arise out of the transactions contemplated by this Note, or the breach, termination or invalidity thereof (other than a suit to obtain specific performance of the provisions of this Note or obtain other injunctive relief), may be submitted to, and determined by, binding arbitration in accordance with the following procedures:

A. Either the Holder or the Company may submit a dispute, controversy or claim to arbitration by giving the other party written notice to such effect, which notice shall describe, in reasonable detail, the facts and legal grounds forming the basis for the filing party's request for relief. The arbitration shall be held before one neutral arbitrator in Dallas, Texas.

B. Within 30 days after the other party's receipt of such demand, the Holder and the Company shall mutually agree upon a neutral arbitrator. If the parties are unable to agree on the arbitrator within that time period, the arbitrator shall be selected by the American Arbitration Association ("AAA"). In any event, the arbitrator shall have a background in, and knowledge of, transactions in the mining industry and shall otherwise be an appropriate person based on the nature of the dispute. If a person with experience in such matters is not available, the arbitrator shall be chosen from the retired federal judges pool maintained by AAA.

C. The arbitration shall be governed by the Commercial Arbitration Rules of the AAA. However, the arbitration shall be administered by any organization mutually agreed to in writing by the parties. If the parties are unable to agree on the organization to administer the arbitration, it shall be administered by the AAA.

D. Discovery shall be limited to the request for and production of documents, depositions and interrogatories. All discovery shall be guided by the Federal Rules of Civil Procedure. All issues concerning discovery upon which the parties cannot agree shall be submitted to the arbitrator for determination.

E. The decision of, and award rendered by, the arbitrator shall (unless the arbitrator determines that this time frame is impracticable) be determined no more than 30 days after the selection of the arbitrator and shall be final and binding on the parties and shall not be subject to appeal. Judgment on the award may be entered in and enforced by any court of competent jurisdiction.

F. Each party shall bear its own costs and expenses (including filing fees) with respect to the arbitration, including one-half of the fees and expenses of the arbitrator.

(b) The parties hereby unconditionally and irrevocably waive, to the fullest extent permitted by Applicable Law, any objection which they may now or hereafter have to the arbitration of any dispute arising out of or relating to this Note, or any defense of inconvenient forum for the maintenance of such dispute.

(c) Each of the parties hereto hereby consents to process being served by any party to this Note in any suit, action or proceeding by the mailing of a copy thereof in accordance with the provisions of Section 7.2. The Company has appointed Corporation Service Company to receive for it, and on its behalf, service of process in the United States.

7.8 Waiver of Jury Trial. THE PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT THAT THEY MAY HAVE TO TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION, OR IN ANY LEGAL PROCEEDING, DIRECTLY OR INDIRECTLY BASED UPON OR ARISING OUT OF THIS NOTE OR THE TRANSACTIONS CONTEMPLATED BY THIS NOTE (WHETHER BASED ON CONTRACT, TORT, OR ANY OTHER THEORY). EACH PARTY (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT, OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTIES WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HAVE BEEN INDUCED TO ENTER INTO THIS NOTE BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

7.9 Expenses and Attorneys' Fees. The Company agrees to promptly pay or promptly reimburse the Holder for all reasonable fees, costs and expenses (including reasonable attorneys' fees) incurred by the Holder in connection with (a) the enforcement, attempted enforcement, or preservation of any rights or remedies under this Note, or (b) any amendment, supplement, waiver or modification to this Note.

7.10 Indemnity. Except with respect to taxes, which shall be solely governed by Section 3.3, the Company agrees to indemnify, defend and hold the Holder, and the officers, directors, employees, agents, affiliates and attorneys of the Holder (collectively called the "Indemnitees") harmless from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including the reasonable fees and disbursements of counsel for such Indemnitees in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not such Indemnitee shall be designated a party thereto) that may be imposed on, incurred by, or asserted against that Indemnitee, in any manner relating to or arising out of, in connection with, as a result of or in any other way associated with (a) the execution or delivery of this Note or any agreement or instrument contemplated hereby or thereby, and the performance by the parties hereto of their respective obligations hereunder or thereunder, the consummation of the transactions contemplated hereby or thereby or (b) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Company or any of its Subsidiaries, and regardless of whether any Indemnitee is a party thereto (the "Indemnified Liabilities"); provided that the Company shall have no obligation

to an Indemnitee hereunder with respect to Indemnified Liabilities arising from the negligence or intentional misconduct of that Indemnitee. The provisions of this Section 7.10 shall survive the maturity and termination of this Note.

7.11 No Waiver; Remedies Cumulative. No failure to exercise and no delay in exercising, on the part of the Holder, any right, remedy, power or privilege hereunder, shall operate as a waiver thereof nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

7.12 Severability. The provisions of this Note shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of this Note, or the application thereof to any Person or any circumstance, is found to be invalid or unenforceable in any jurisdiction, (a) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid or enforceable, such provision and (b) the remainder of this Note and the application of such provision to other Persons or circumstances shall not be affected by such invalidity or unenforceability, nor shall such invalidity or unenforceability affect the validity or enforceability of such provision, or the application thereof, in any other jurisdiction.

7.13 Headings. The section headings of this Note are for reference purposes only and are to be given no effect in the construction or interpretation of this Note.

7.14 Assignments. The Holder may assign its rights under this Note and further may assign, or sell participations in, all or part of this Note to any other Person or Persons, provided that at no time shall this Note be distributed such that the Company would be subject to any registration requirements under the Securities Act. Prior to the effective date of any assignment of this Note, the Holder shall promptly deliver to the Company written notice of such assignment, which notice shall specify the identity of the assignee. In no event shall such assignee, transferee or participant be entitled to any additional payment pursuant to Section 3.3 that is greater than the payment [insert defined term for name of initial Holder] would have received if [insert defined term for name of initial Holder] had not made an assignment or sold a participation. The Company may not assign or otherwise transfer any of its rights or obligations under this Note without the prior written consent of the Holder.

7.15 Registration. This Note is registered as to all payments hereunder with the Company and transfer of this Note may be effected only by surrender of the old instrument and either the reissuance by the Company of the old instrument to the new holder or the issuance by the Company of a new instrument to the new holder. The Company agrees to keep a register in which provision shall be made for the registration of this Note and the registration of transfer of this Note. Upon due presentment for registration of transfer of this Note, the Company shall promptly issue a new note to the transferee in exchange herefor without charge except for any tax or other governmental charge imposed in connection therewith.

7.16 Entire Agreement. THIS NOTE EMBODIES THE ENTIRE AGREEMENT AND UNDERSTANDING AMONG THE COMPANY AND THE HOLDER AND SUPERSEDES ALL PRIOR OR CONTEMPORANEOUS AGREEMENTS AND

UNDERSTANDINGS OF SUCH PERSONS, VERBAL OR WRITTEN, RELATING TO THE SUBJECT MATTER HEREOF AND THEREOF.

7.17 Usury. Regardless of any provision herein or in any agreement made in connection herewith, the Holder shall never be entitled to receive, charge or apply, as interest on any indebtedness relating hereto, any amount in excess of the maximum amount of interest permissible under Applicable Law. If the Holder ever receives, collects or applies any such excess, it shall be deemed a partial repayment of principal and treated as such; and if the principal is paid in full, any remaining excess shall be refunded to the Company.

[Signature page follows]

IN WITNESS WHEREOF, the Company has executed and delivered this Note as of the date first written above.

ASARCO LLC

By: _____

Name: _____

Title: _____

SCHEDULE 1.1(A)

Amount due Upon Acceleration of Payment Following Event of Default²**Methodology**

The calculation of the amount due upon the acceleration of payment resulting from an Event of Default uses methodology consistent with the application of prepayments detailed in Schedule 2.7, however with a discount rate dependent on the type of Event of Default, as such discount rate is set forth in the definition of Adjusted Principal Note Balance. The steps to calculate are as follows:

- 1) Calculate the stream of expected remaining payments as of the date of the Event of Default (the "Event of Default Date"). As with prepayments, this stream of expected remaining payments should be calculated based on the most recent final closing (evening evaluation) forward prices published by London Metal Exchange (or, should London Metal Exchange cease to publish such prices, as published in or otherwise available from a mutually acceptable reputable price source) at the time of calculation. That is to say, the expected payments should be calculated assuming the Average Copper Daily Price for a given year is equal to the corresponding London Metal Exchange forward price for that year.
- 2) Calculate present value of the remaining expected payments *as of the Event of Default Date* (i.e., with the Event of Default Date being time "zero" for purposes of discounting), using the applicable discount rate.
- 3) The sum of the present value of all remaining expected payments calculated in step 2 above is the amount due upon acceleration of payment following an Event of Default.

Example³

The example detailed in the exhibit below assumes a payment-based Event of Default on 10/18/2013. Expected payments are calculated using the London Metal Exchange forward pricing curve as of 2/23/2009. The sum of the present values of the expected remaining payments (from 2014-2018) is \$544.3mm. This is the amount that would be due upon acceleration of payment following an Event of Default on 10/18/2013.

² With respect to any period elapsed at the time of calculation, the historical prices used in any such calculation pursuant to this Schedule 1.1(A) shall be the actual prices for such period.

³ The example in this Schedule 1.1(A) is for illustrative purposes only and the numbers used in these example may not add up due to rounding inconsistencies.

SCHEDULE 1.1(A)

(USD mm except for per pound prices)

Basic Note Assumptions		Event of Default Variables		Annual Payment Assumptions	
Maximum Principal Amount	\$770.0	Event of Default Date	10/18/2013	Payment Trigger (\$/ ton)	\$6,000
Minimum Annual Payment	\$20.0			Payment Cap (\$/ ton)	\$8,000
Note Issuance Date	8/31/2009			Payment per \$100 / ton Increase	\$4.3
Calculations (360 Day Year)					
		Years Since Issuance	4.13		
Discount Rate	6%	Years Until Maturity	4.87		

Expected Payment Stream

	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>
LME Curve (\$ / lb.)	N/A	\$1.52	\$1.56	\$1.58	\$1.61	\$1.62	\$1.64	\$1.66	\$1.67	\$1.68
LME Curve (\$ / ton)	N/A	\$3,351	\$3,430	\$3,489	\$3,539	\$3,580	\$3,615	\$3,649	\$3,680	\$3,710
Annual Note Payment		0.0	\$20.0	\$20.0	\$20.0	0.0	0.0	0.0	0.0	0.0
Additional Payment to Meet Minimum	–	–	20.0	20.0	20.0	20.0	20.0	20.0	20.0	20.0
Final Payment (net of Annual Note Payments)	–	–	–	–	–	–	–	–	–	\$440.0
Total Anticipated Cash Flows	\$0.0	\$0.0	\$20.0	\$20.0	\$20.0	\$20.0	\$20.0	\$20.0	\$20.0	\$460.0

Application of Prepayment

	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>Total</u>
PV of Remaining Cash Flows (at EOD Date)	–	–	–	–	–	\$19.0	\$17.9	\$16.9	\$16.0	\$346.4	\$416.3

SCHEDULE 1.1(B)

Existing Liens

Examples of Annual Note Payment Calculation

By way of example, if the Average Copper Daily Price for a given year is \$7,000 per metric tonne, the amount of the Annual Note Payment is calculated as follows:

$$\text{Annual Note Payment} = ((\$7,000 - \$6,000) / \$100) \times (\$770,000,000 / 180) = \$42,777,778$$

As a second example, if the Average Copper Daily Price for a given year is \$6,200 per metric tonne, the amount of the Annual Note Payment is calculated as follows:

$$\text{Annual Note Payment} = ((\$6,200 - \$6,000) / \$100) \times (\$770,000,000 / 180) = \$8,555,556^*$$

* In this case (where the calculated Annual Note Payment is less than \$20,000,000) commencing with the year ending on the second anniversary of the date of issuance of this Note, the minimum payment provision of Section 2.1 would apply and the Annual Note Payment would be \$20,000,000.

As a third example, if the Average Copper Daily Price for a given year is \$6,500 per metric tonne, the amount of the Annual Note Payment is calculated as follows:

$$\text{Annual Note Payment} = ((\$6,500 - \$6,000) / \$100) \times (\$770,000,000 / 180) = \$21,388,889$$

As a fourth example, if the Average Copper Daily Price for a given year is \$5,900 per metric tonne, the amount of the Annual Note Payment is calculated as follows:

$$\text{Annual Note Payment} = ((\$5,900 - \$6,000) / \$100) \times (\$770,000,000 / 180) = \$-4,277,778^*$$

* In this case (where the Average Copper Daily Price is less than \$6,000) commencing with the year ending on the second anniversary of the date of issuance of this Note, the minimum payment provision of Section 2.1 would apply and the Annual Note Payment would be \$20,000,000.

As a fifth example, if the Average Copper Daily Price for a given year is \$8,500 per metric tonne, the amount of the Annual Note Payment is calculated as follows:

$$\text{Annual Note Payment} = ((\$8,500 - \$6,000) / \$100) \times (\$770,000,000 / 180) = \$106,944,444^*$$

* In this case, the maximum payment provision of Section 2.1 would apply and the Annual Note Payment would be \$770,000,000 / 9 or \$85,555,556.

Each of the above examples assumes that (i) the Maximum Principal Amount is \$770,000,000 and (ii) the amount outstanding pursuant to the Note is greater than the calculated Annual Note Payment.

SCHEDULE 2.7

Application of Prepayments - Methodology and Examples⁴**Methodology**

To calculate the impact of a prepayment on the remaining payments of the Note (Annual Note Payments and Final Note Payment), the following methodology should be used:

- 1) Calculate the stream of expected remaining payments as of the date of prepayment (the “Prepayment Date”). This stream of expected remaining payments should be calculated based on the most recent final closing (evening evaluation) forward prices published by London Metal Exchange (or, should London Metal Exchange cease to publish such prices, as published in or otherwise available from a mutually acceptable reputable price source) at the time of calculation. That is to say, the expected payments should be calculated assuming the Average Copper Daily Price for a given year is equal to the corresponding London Metal Exchange forward price for that year.
- 2) Calculate the present value of the remaining expected payments *as of the Prepayment Date* (i.e., with the Prepayment Date being time “zero” for purposes of discounting), using a 10% discount rate.
- 3) The amount of prepayment (the “Prepayment Amount”) is then applied to this stream of present values of expected payments starting with the most long-dated payment (2018):
 - a. If the Prepayment Amount is *less than* the present value of the expected 2018 payment, the Prepayment Amount is fully applied to the expected 2018 payment, with the result being a reduction of the present value of the expected 2018 payment by the Prepayment Amount.
 - b. If the Prepayment Amount is *greater than* the present value of the expected 2018 payment, the entire present value of the expected 2018 payment is paid down and the amount by which the Prepayment Amount exceeds the expected 2018 payment (the “2018 Excess Amount”) is applied to the previous year’s expected payment (2017):
 - i. If the 2018 Excess Amount is *less than* the present value of the expected 2017 payment, the 2018 Excess Amount is fully applied to the 2017 payment, with the result being a reduction of the present value of the expected 2017 payment by the 2018 Excess Amount

⁴ With respect to any period elapsed at the time of calculation, the historical prices used in any such calculation pursuant to this Schedule 2.7 shall be the actual prices for such period.

- ii. If the 2018 Excess Amount is *greater than* the present value of the expected 2017 payment, the entire present value of the expected 2017 payment is paid down and the amount by which the 2018 Excess Amount exceeds the expected 2017 payment (the “2017 Excess Amount”) is applied to the previous year’s expected payment (2016)

(This methodology in which any remaining portion of the Prepayment Amount is applied to the previous year’s present value of expected payment is repeated until the Prepayment Amount is applied in full)

- 4) Calculate the future values of the stream of present values of remaining payments that result after full application of the Prepayment Amount, using a 10% discount rate -this is the resulting nominal value of the remaining payments.

Examples⁵

Note: The examples below assume a date of issuance for the Note of August 31, 2009 and a Maturity Date of August 30, 2018.

Examples #1 and #2 are made using a recent London Metal Exchange forward pricing curve (as of 2/23/2009). Example #3 uses a hypothetical London Metal Exchange forward pricing curve to reflect how substantial upward movement in the price of copper (as reflected in the London Metal Exchange forward pricing curve) impacts the expected remaining payments and the resulting application of prepayments.

Example #1: \$50mm Prepayment on June 30, 2012 (Assuming 2/23/09 London Metal Exchange Forward Pricing Curve)

If a prepayment of \$50mm is made on June 30, 2012, the present value of the remaining payments, calculated as of the Prepayment Date at a discount rate of 10%, would be reduced by an amount equal to the Prepayment Amount.

In this example, as of the Prepayment Date there are 6.17 years remaining on the life of the Note. Since the Prepayment Amount (\$50mm) is less than the present value (as of the Prepayment Date) of the expected 2018 payment (\$350.0mm), the entire Prepayment Amount is applied against the 2018 expected payment. The first attached exhibit details the calculations associated with this example.

Example #2: \$419mm Prepayment on January 1, 2014 (Assuming 2/23/09 London Metal Exchange Forward Pricing Curve)

In this example, as of the Prepayment Date there are 4.66 years remaining on the life of the Note. Since the Prepayment Amount (\$419mm) is greater than the present value (as of the Prepayment Date) of the expected 2018 payment (\$402.9mm), the prepayment is applied first against the

⁵ The examples in this Schedule 2.7 are for illustrative purposes only and the numbers used in these examples may not add up due to rounding inconsistencies.

2018 expected payment, then is applied to earlier years' expected payments, using the methodology described above, until the Prepayment Amount is fully applied. The \$419mm prepayment is therefore applied against expected payments in 2017 and 2016. The expected payment in 2017 is fully prepaid, whereas the 2016 expected payment is only partially prepaid, as this is the point in the expected payment stream at which the Prepayment Amount is fully applied. The second attached exhibit details the calculations associated with this example.

Example #3: \$419mm Prepayment on January 1, 2012 (Assuming London Metal Exchange Forward Pricing Curve of \$3.00 / Ib. for Life of Note)

In this example, the London Metal Exchange forward pricing curve is assumed to be flat at \$3.00 / Ib for the life of the Note. Here, the expected payments in each year are \$46.6mm (greater than the \$20mm minimum) and start one year earlier (in 2010 instead of 2011). As a result, the 2018 expected payment is lower. Here the Prepayment Amount is applied in years 2012 through 2018 (as opposed to just 2017 and 2016 in Example #2). The third attached exhibit details the calculations associated with this example.

SCHEDULE 2.7*(USD mm except for per pound prices)*

Basic Note Assumptions		Prepayment Variables		Annual Payment Assumptions	
Maximum Principal Amount	\$770.0	Prepayment Amount	\$50.0	Payment Trigger (\$/ ton)	\$6,000
Minimum Annual Payment	\$20.0	Prepayment Date	6/30/2012	Payment Cap (\$/ ton)	\$8,000
Note Issuance Date	8/31/2009			Payment per \$100 / ton Increase	\$4.28
Calculations (360 Day Year)					
		Years Since Issuance	2.83		
Discount Rate	10%	Years Until Maturity	6.17		

Expected Payment Stream

	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>
LME Curve (\$ / lb.)	N/A	\$1.52	\$1.56	\$1.58	\$1.61	\$1.62	\$1.64	\$1.66	\$1.67	\$1.68
LME Curve (\$ / ton)	N/A	\$3,351	\$3,439	\$3,483	\$3,459	\$3,580	\$3,571	\$3,616	\$3,660	\$3,704
Annual Note Payment		0.0	\$20.0	\$20.0	\$20.0	\$20.0	\$20.0	\$20.0	\$20.0	\$20.0
Additional Payment to Meet Minimum	–	–	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Final Payment (net of Annual Note Payments)	–	–	–	–	–	–	–	–	–	\$610.0
Total Anticipated Cash Flows	\$0.0	\$0.0	\$20.0	\$20.0	\$20.0	\$20.0	\$20.0	\$20.0	\$20.0	\$630.0

Application of Prepayment

	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>Total</u>
PV of Remaining Cash Flows (at Prepayment Date)	–	–	–	\$19.7	\$17.9	\$16.3	\$14.8	\$13.4	\$12.2	\$350.0	\$444.3
Application of Prepayment Proceeds	–	–	–	–	–	–	–	–	–	(\$50.0)	(\$50.0)
PV of Remaining Cash Flows after Prepayment	\$0.0	\$0.0	\$0.0	\$19.7	\$17.9	\$16.3	\$14.8	\$13.4	\$12.2	\$300.0	\$394.3
NOMINAL Value of Remaining Payments	\$0.0	\$0.0	\$0.0	\$20.0	\$20.0	\$20.0	\$20.0	\$20.0	\$20.0	\$540.0	\$660.0

SCHEDULE 2.7*(USD mm except for per pound prices)*

Basic Note Assumptions		Prepayment Variables		Annual Payment Assumptions	
Maximum Principal Amount	\$770.0	Prepayment Amount	\$419.0	Payment Trigger (\$/ ton)	\$6,000
Minimum Annual Payment	\$20.0	Prepayment Date	1/1/2014	Payment Cap (\$/ ton)	\$8,000
Note Issuance Date	8/31/2009			Payment per \$100 / ton Increase	\$4.28
Calculations (360 Day Year)					
		Years Since Issuance	4.34		
Discount Rate	10%	Years Until Maturity	4.66		

Expected Payment Stream

	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>
LME Curve (\$ / lb.)	N/A	\$1.52	\$1.56	\$1.58	\$1.61	\$1.62	\$1.64	\$1.66	\$1.67	\$1.68
LME Curve (\$ / ton)	N/A	\$3,351	\$3,439	\$3,483	\$3,549	\$3,571	\$3,616	\$3,660	\$3,682	\$3,704
Annual Note Payment	–	0.0	\$20.0	\$20.0	\$20.0	\$20.0	\$20.0	\$20.0	\$20.0	\$20.0
Additional Payment to Meet Minimum	–	–	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Final Payment (net of Annual Note Payments)	–	–	–	–	–	–	–	–	–	\$610.0
Total Anticipated Cash Flows	\$0.0	\$0.0	\$20.0	\$20.0	\$20.0	\$20.0	\$20.0	\$20.0	\$20.0	\$630.0

Application of Prepayment

	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>Total</u>
PV of Remaining Cash Flows (at Prepayment Date)	–	–	–	–	–	\$18.8	\$17.1	\$15.5	\$14.1	\$403.9	\$469.4
Application of Prepayment Proceeds	–	–	–	–	–	–	–	(\$1.0)	(\$14.1)	(\$403.9)	(\$419.0)
PV of Remaining Cash Flows after Prepayment	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$18.8	\$17.1	\$14.5	\$0.0	\$0.0	\$40.4
NOMINAL Value of Remaining Payments	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$20.0	\$20.0	\$18.7	\$0.0	\$0.0	\$58.7

SCHEDULE 2.7*(USD mm except for per pound prices)*

Basic Note Assumptions		Prepayment Variables		Annual Payment Assumptions	
Maximum Principal Amount	\$770.0	Prepayment Amount	\$419.0	Payment Trigger (\$/ ton)	\$6,000
Minimum Annual Payment	\$20.0	Prepayment Date	1/1/2014	Payment Cap (\$/ ton)	\$8,000
Note Issuance Date	8/31/2009			Payment per \$100 / ton Increase	\$4.28

Calculations (360 Day Year)

		Years Since Issuance	2.34
Discount Rate	10%	Years Until Maturity	6.66

Expected Payment Stream

	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
LME Curve (\$ / lb.)	N/A	\$3.00	\$3.00	\$3.00	\$3.00	\$3.00	\$3.00	\$3.00	\$3.00	\$3.00
LME Curve (\$ / ton)	N/A	\$6,614	\$6,614	\$6,614	\$6,614	\$6,614	\$6,614	\$6,614	\$6,614	\$6,614
Annual Note Payment		\$46.3	\$46.3	\$46.3	\$46.3	\$46.3	\$46.3	\$46.3	\$46.3	\$46.3
Additional Payment to Meet Minimum	–	–	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Final Payment (net of Annual Note Payments)	–	–	–	–	–	–	–	–	–	\$353.7
Total Anticipated Cash Flows	\$0.0	\$46.3	\$46.3	\$46.3	\$46.3	\$46.3	\$46.3	\$46.3	\$46.3	\$399.9

Application of Prepayment

	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	Total
PV of Remaining Cash Flows (at Prepayment Date)	–	–	–	\$43.4	\$39.5	\$35.9	\$32.6	\$29.7	\$27.0	\$211.9	\$419.9
Application of Prepayment Proceeds	–	–	–	(\$42.5)	(\$39.5)	(\$35.9)	(\$32.6)	(\$29.7)	(\$27.0)	(\$211.9)	(\$419.0)
PV of Remaining Cash Flows after Prepayment	\$0.0	\$0.0	\$0.0	\$0.9	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.9
NOMINAL Value of Remaining Payments	\$0.0	\$0.0	\$0.0	\$1.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$1.0

Holder Account Information

Additional Operating Information
to be Included in Compliance Certificate

EXHIBIT []25

FORM OF PROMISSORY PARENT'S COPPER NOTE

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR ANY SECURITIES OR BLUE SKY LAW OF ANY STATE OR OTHER JURISDICTION. THE HOLDER HEREOF AGREES THAT THIS NOTE MAY BE REOFFERED, RESOLD, PLEDGED OR OTHERWISE TRANSFERRED ONLY IN COMPLIANCE WITH THE SECURITIES ACT AND OTHER APPLICABLE LAWS.

THIS NOTE WILL BE SUBJECT TO THE RULES OF TREASURY REGULATION SECTION 1.1275-4(c). UNDER THOSE RULES, THE NONCONTINGENT PORTION OF THE NOTE IS TREATED AS HAVING BEEN ISSUED WITH ORIGINAL ISSUE DISCOUNT (“OID”) FOR UNITED STATES FEDERAL INCOME TAX PURPOSES. A HOLDER MAY OBTAIN THE ISSUE PRICE, THE AMOUNT OF OID, THE DUE DATE AND THE YIELD TO MATURITY FOR UNITED STATES FEDERAL INCOME TAX PURPOSES WITH RESPECT TO THE NONCONTINGENT PORTION OF THE NOTE BY SUBMITTING A WRITTEN REQUEST TO THE CHIEF FINANCIAL OFFICER OF ASARCO LLC AT THE ADDRESS PROVIDED IN SECTION 7.2. INTEREST WILL ACCRUE FOR TAX PURPOSES ON THE CONTINGENT PORTION OF THE NOTE IN ACCORDANCE WITH THE RULES OF TREASURY REGULATION SECTION 1.1275-4(c)(4) AND (6).

**COPPER PRICE PARTICIPATION
SENIOR NOTE
of
ASARCO LLC**

[_____], 2009

[\$780,000,000770,000,000]¹

FOR VALUE RECEIVED, ASARCO LLC, a Delaware limited liability company (the “Company”), hereby promises to pay to the order of [insert name of initial Holder], a [_____] (“[insert defined term for name of initial Holder]”), and its successors and assigns ([insert defined term for name of initial Holder], and any such successors, assigns and any other subsequent holder of this Note being referred to herein as the “Holder”), in lawful money of the United States of America and in immediately available funds, the principal amount of [SEVEN HUNDRED AND ~~EIGHTY~~SEVENTY MILLION] DOLLARS (\$[780,000,000770,000,000]), as adjusted in accordance with Section 2.7, in accordance with the provisions of this Note (such adjusted amount, the “Maximum Principal Amount”).

1. **Definitions.**

1.1 **Certain Definitions.** For purposes of this Note, the following terms shall have the meanings specified in this Section 1.1:

“AAA” shall have the meaning set forth in Section 7.7.

¹ The amount of this Promissory Note is subject to adjustment in accordance with the Plan.

“Adjusted Principal Note Balance” means, as of any time of determination, the present value of the Principal Note Balance calculated in accordance with the methodology set forth in Schedule 1.1(A) on the basis of a 360-day year (consisting of 12 months of 30 days each) using a discount rate of (a) 6% for Events of Default pursuant to Section 6.1(a), (b) 6% for Events of Default pursuant to Section 6.1(c), or (c) 10% for all other Events of Default. **An example of the calculation of Adjusted Principal Note Balance is set forth in Schedule 1.1(A).**

“Affiliate” (and, with a correlative meaning “affiliated”) means, with respect to any Person, (a) any other Person that directly, or through one or more intermediaries, controls or is controlled by or is under common control with such Person or (b) any Subsidiary of such Person. As used in this definition, “control” (including with correlative meanings, “controlled by” and “under common control with”) means possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other ownership interests, by Contract or otherwise).

“Aggregate Annual Note Payments” shall have the meaning set forth in Section 2.2.

“AMC” means Americas Mining Corporation, a Delaware corporation.

“Annual Note Payment” shall have the meaning set forth in Section 2.1.

“Applicable Law” means, with respect to any Person, any Law applicable to such Person or its business, properties or assets.

“[insert defined term for name of initial Holder]” shall have the meaning set forth in the preamble of this Note.

“Average Copper Daily Price” means the average over the course of the applicable year of the closing price of the daily official Comex High Grade Spot Price of copper on the New York Mercantile Exchange COMEX Division, as published in the Wall Street Journal in U.S. dollars per metric tonne (or, if reported in any other weight measure, as converted to metric tonnes) (or, should the Wall Street Journal cease to be published, as published in or otherwise available from a mutually acceptable reputable price source).

“Bankruptcy Cases” means the chapter 11 cases commenced by the Company and its affiliated debtors on or after August 9, 2005 (including any case commenced after the date of this Agreement), jointly administered under Case No. 05-21207, but excluding the chapter 11 case commenced by Encycle/Texas, Inc which was converted to a chapter 7 case..

“Bankruptcy Code” means Title 11 of the United States Code (11 U.S.C. §§ 101 et seq.).

“Bankruptcy Court” means the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division or any other court having jurisdiction over the Bankruptcy Cases from time to time.

“Beneficiaries” shall have the meaning set forth in Section 7.3.

“Business Day” means a day other than a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by Law to close. Any event the scheduled occurrence of which would fall on a day that is not a Business Day shall be deferred until the next succeeding Business Day.

“Company” shall have the meaning set forth in the preamble of this Note.

“Competitor” means a Person whose primary business is the mining of copper and the production of refined copper (i.e., cathode, anode or rod) and who is a direct competitor of the Company in the copper business.

“Competitor Holder” shall have the meaning set forth in Section 7.4.

“Compliance Certificate” shall have the meaning set forth in Section 5.2(c).

“Confidential Information” shall have the meaning set forth in Section 7.3.

“Default” means any event or condition which constitutes an Event of Default or which upon notice, lapse of time or both would, unless cured or waived, become an Event of Default.

“Default Rate” means the rate of 10% per annum calculated on the basis of a 360 day year.

“Disposition” or “Dispose” means the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction) of any property or assets by the Company, excluding any sale, transfer, license, lease or other disposition (including any sale and leaseback transaction) of such property or assets in the ordinary course of business and on ordinary business terms.

“Enforceability Exceptions” means, with reference to the enforcement of the terms and provisions of this Agreement, that the enforcement thereof is or may be subject to the effect of (i) applicable bankruptcy, receivership, insolvency, reorganization, moratorium, fraudulent conveyance, fraudulent transfer and other similar laws relating to or affecting the enforcement of the rights and remedies of creditors or parties to executory contracts generally; (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding at law or in equity) and the exercise of equitable powers by a court of competent jurisdiction; and (iii) Applicable Law or public policy limiting the enforcement of provisions providing for the indemnification of any Person.

“Environmental Law” means any Law pertaining to health, industrial hygiene, public safety, occupational safety, mining, mine reclamation, natural or cultural resources, fish, wildlife or other protected species or the environment, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601, et. seq.); the Resource, Conservation and Recovery Act of 1976 (42 U.S.C. § 6901, et. seq.); the Toxic Substances Control Act (15 U.S.C. § 2601, et. seq.); the Clean Water Act (33 U.S.C. § 1251, et. seq.); the Oil Pollution Act of 1990 (33 U.S.C. § 2701, et. seq.); the Clean Air Act (42 U.S.C. § 7401, et. seq.); the Atomic Energy Act (42 U.S.C. § 2011, et. seq.); the Hazardous Materials Transportation Act (49 U.S.C. § 5 101, et. seq.); the Emergency Planning and Community Right-

To-Know Act (42 U.S.C. 1 1001, et. seq.); the Endangered Species Act of 1973 (16 U.S.C. §153 1, et. seq.); the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1701, et. seq.); the Lead-Based Paint Exposure Reduction Act (15 U.S.C. § 2681, et. seq.); the Safe Water Drinking Act Amendments of 1996 (42 U.S.C. § 300); the National Historic Preservation Act of 1966; the Mine Safety and Health Act (30 U.S.C. 801 et seq.); the Surface Mining Control and Reclamation Act (30 U.S.C. 1201 et seq.) and state and local counterparts of each of the foregoing.

“Environmental Reports” shall have the meaning set forth in Section 5.3(b).

“Equity Securities” means (i) with respect to any corporation, all shares, interests, participations or other equivalents of capital stock of such corporation (however designated), and any warrants, options or other rights to purchase or acquire any such capital stock and any securities convertible into or exchangeable or exercisable for any such capital stock, (ii) with respect to any partnership, all partnership interests, participations or other equivalents of partnership interests of such partnership (however designated), and any warrants, options or other rights to purchase or acquire any such partnership interests and any securities convertible into or exchangeable or exercisable for any such partnership interests and (iii) with respect to any limited liability company, all membership interests, participations or other equivalents of membership interests of such limited liability company (however designated), and any warrants, options or other rights to purchase or acquire any such membership interests and any securities convertible into or exchangeable or exercisable for any such membership interests.

“Event of Default” means each of the events set forth in Section 6.1.

“Existing Indebtedness” means Indebtedness of the Company that existed on the date of issuance of this Note and that was secured by an Existing Lien.

“Existing Liens” means (a) the Liens set forth on Schedule 1.1(B) hereto and (b) to the extent the same are not listed on Schedule 1.1(B), valid and existing security interests covering any of the property or assets of the Company and existing immediately prior to the date hereof.

“Extraordinary Event” means any loss, casualty or condemnation of property or assets that results in cash received by or paid to or for the account of the Company in the nature of proceeds of insurance and condemnation awards (and payments in lieu thereof).

“Fair Market Value” means, with respect to any asset or property, the fair value which would be paid for such asset or property in a sale of such asset or property on a going-concern basis, free and clear of all liens and encumbrances, by an unaffiliated, willing, able, knowledgeable and informed buyer in an orderly negotiated arm’s-length transaction between such a buyer and a willing and able seller, neither of which are under undue time constraints or pressure to buy or sell (as applicable); provided that, if at the time of determination any such asset or property is not being operated, then the fair market value of such asset or property shall be liquidation value.

“Final Note Payment” shall have the meaning set forth in Section 2.2.

“Fiscal Year” means a fiscal year of the Company.

“GAAP” means United States generally accepted accounting principles and practices set forth from time to time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the US accounting profession), consistently applied.

“Governmental Authority” means any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, foreign or domestic, including any governmental authority, agency, department, board, commission or instrumentality of the United States or other country, any state, province, tribal authority or any political subdivision of any of the foregoing, and any tribunal, court, arbitrator(s) or other private adjudicator whose decisions are binding of competent jurisdiction, and shall include the Bankruptcy Court.

“Guaranty” means the Guaranty made as of [____], 2009 by AMC in favor of the Holder.

“Hedging Agreements” shall mean any and all agreements now existing or hereafter entered into between the Company and a counterparty that provides for a swap, cap, floor, collar, forward purchase or sale, option or any combination of these or similar transactions, for the purpose of hedging commodity prices, interest rates, currency rates, credit risk, weather or other contingencies.

“Holder” shall have the meaning set forth in the preamble of this Note.

“Indebtedness” means, with respect to the Company:

- (a) obligations for borrowed money;
- (b) obligations representing the deferred purchase price of property or services other than accounts payable arising in connection with the purchase of goods or services on terms customary in the trade and not outstanding more than 60 days unless contested in good faith;
- (c) obligations, whether or not assumed, secured by liens or a pledge of or an encumbrance on the proceeds or production from property now or hereafter owned or acquired;
- (d) obligations which are evidenced by notes, bonds, debentures, acceptances or other instruments;
- (e) reimbursement obligations in respect of letters of credit;
- (f) net termination obligations under Hedging Agreements, calculated as of any date of calculation as if such Hedging Agreements were terminated as of such date;

(g) that portion of any obligation with respect to leases of real or personal property which is required to be capitalized under GAAP or which is treated as operating leases under applicable regulations but which otherwise would be required to be capitalized under GAAP; and

(h) guarantees and other contingent obligations with respect to the obligations described in (a) through (g) above.

“Indemnified Liabilities” shall have the meaning set forth in Section 7.10.

“Indemnitees” shall have the meaning set forth in Section 7.10.

“Information Agent” shall have the meaning set forth in Section 7.3.

“Law” means any federal, tribal, state or local or provincial law (including common law), statute, code, ordinance, rule, regulation, executive order, Order, administrative or judicial decision, judgment or decree or other requirement enacted, promulgated, issued or entered by a Governmental Authority.

“Legal Proceedings” means any action, claim, suit, arbitration, inquiry, proceeding or investigation by or before any Governmental Authority of any nature, civil, criminal, regulatory or otherwise, in law or in equity.

“Lien” means, with respect to any property, any mortgage, lien, pledge, negative pledge agreement, assignment, charge, option, security interest, title retention agreement, levy, execution, seizure, attachment, garnishment, any documents, notice, instruments or other filings under the Federal Assignment of Claims Act of 1940 or other encumbrance of any kind in respect of such property, whether or not choate, vested, or perfected.

“Maturity Date” shall have the meaning set forth in Section 2.3.

“Maximum Principal Amount” shall have the meaning set forth in the preamble of this Note.

“Net Cash Proceeds” means with respect to any Disposition by the Company, or any Extraordinary Event for the account of the Company, the excess, if any, of (a) the sum of cash and cash equivalents received in connection with such transaction (including any cash or cash equivalents received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received) over (b) the sum of (i) the reasonable and customary out-of-pocket fees and expenses incurred by the Company in connection with such transaction; (ii) taxes reasonably estimated to be actually payable in connection with the relevant transaction (provided that, if the amount of any estimated taxes pursuant to this subclause (ii) exceeds the amount of taxes actually required to be paid in cash in respect of such Disposition, the aggregate amount of such excess shall constitute Net Cash Proceeds from and after the date of determination of such excess); (iii) amounts provided as a reserve, in accordance with GAAP, against any liabilities under any indemnification obligations or purchase price adjustment associated with such Disposition or Extraordinary Event (provided that, to the extent and at the time any such amounts are released from such reserve, such amounts shall constitute

Net Cash Proceeds) and (iv) amounts then due and payable on Existing Indebtedness which is secured by the property or asset subject to such Disposition or Extraordinary Event and which is required to be repaid with such proceeds (other than any such Existing Indebtedness assumed by the purchaser of such property or asset).

“Note” means this Copper Price Participation Senior Note, as the same may be amended or otherwise modified from time to time pursuant to Section 7.1.

“Order” means any final and non-appealable order, injunction, judgment, stipulation, decree, ruling, writ, assessment or arbitration award issued by a Governmental Authority or any legally binding and enforceable conciliation or settlement agreement with any Governmental Authority.

“Organizational Documents” means (i) in the case of any Person organized as a corporation, the certificate or articles of incorporation of such corporation (or, if applicable, the memorandum and articles of association of such corporation) and the bylaws of such corporation, (ii) in the case of any Person organized as a limited liability company, the certificate of formation or organization and the limited liability company agreement, operating agreement or regulations of such limited liability company, (iii) in the case of any Person organized as a limited partnership, the certificate of limited partnership and partnership agreement of such limited partnership and (iv) in the case of any other Person, all constitutive or organizational documents of such Person which address all matters relating to the business and affairs of such Person similar to the matters addressed by the documents referred to in clauses (i) through (iii) above in the case of Persons organized as corporations, limited liability companies or limited partnerships.

“Other Taxes” shall have the meaning set forth in Section 3.3(b).

“Permits” any approvals, authorizations, consents, licenses, permits or certificates.

“Person” means any natural person, corporation, limited partnership, limited liability company, general partnership, joint stock company, joint venture, association, company, trust, bank, trust company, land trust, business trust or other organization, whether or not a legal entity, and any Governmental Authority.

“Principal Note Balance” means, as of any time of determination, the difference between (i) the Maximum Principal Amount and (ii) the sum of all Annual Note Payments made immediately prior to such time of determination.

“Replacement Assets” shall have the meaning set forth in Section 2.5(b).

“Representatives” means, with respect to any Person, any director, officer, employee, investment banker, financial advisor, attorney, accountant or other advisor, agent or representative of such Person.

“Securities Act” shall have the meaning set forth in the legend on the first page of this Note.

“Subsidiary” means, with respect to any Person, any corporation, limited liability company, joint venture or partnership of which such Person (a) beneficially owns, either directly or indirectly, more than 50% of (i) the total combined voting power of all classes of voting securities of such entity, (ii) the total combined equity interests, or (iii) the capital or profit interests, in the case of a partnership; or (b) otherwise has the power to vote or to direct the voting of sufficient securities to elect a majority of the board of directors or similar governing body. Unless otherwise specified, all references herein to a “Subsidiary” or “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of the Company or its Subsidiaries.

“Taxes” shall have the meaning set forth in Section 3.3(a).

1.2 Certain Rules of Construction. Whenever the context may require, any pronoun used in this Note shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa. In addition, as used in this Note, unless otherwise provided to the contrary, (a) all references to days, months or years shall be deemed references to calendar days, months or years or (b) any reference to a “Section,” “Article” or “Schedule” shall be deemed to refer to a section, article or schedule to this Note. Unless the context otherwise requires, the words “hereof,” “herein,” and “hereunder” and words of similar import referring to this Note refer to this Note as a whole and not to any particular provision of this Note. The words “include,” “includes,” or “including” shall be deemed to be followed by the words “without limitation.” Unless otherwise specifically provided for herein, the term “or” shall not be deemed to be exclusive. All references to dollar amounts are to the lawful currency of the United States of America. A reference to any Law shall include all modifications, amendments and re-enactments thereof.

2. Payment.

2.1 Annual Note Payments. Within 7 days after the first anniversary of the date of issuance of this Note and within 7 days after each anniversary thereafter until the Maturity Date, the Company shall pay the Holder an amount equal to the product of (a) a fraction, the numerator of which is the Average Copper Daily Price for such year minus \$6,000 and the denominator of which is 100 and (b) the Maximum Principal Amount divided by 180 (the “Annual Note Payment”); provided, however, that commencing with the year ending on the second anniversary of the date of issuance, each Annual Note Payment shall be at least \$20,000,000 (for the avoidance of doubt, such minimum amount shall be payable even if the Average Copper Daily Price is less than \$6,000 per metric tonne); provided, further, that no Annual Note Payment shall be less than \$0 or shall exceed the lesser of (x) one-ninth of the Maximum Principal Amount and (y) the then outstanding (after giving effect to reductions pursuant to Section 2.7) Maximum Principal Amount. **Examples of the calculation of Annual Note Payments are set forth in Schedule 2.1.**

2.2 Final Note Payment. If as of the Maturity Date, the aggregate of the Annual Note Payments previously paid pursuant to Section 2.1 (the “Aggregate Annual Note Payments”) is less than the Maximum Principal Amount, then the Company shall, on the Maturity Date, pay the Holder an amount equal to (a) the Maximum Principal Amount less (b) the Aggregate Annual Note Payments (the “Final Note Payment”).

2.3 Maturity. The Company hereby unconditionally promises to pay to the Holder the Final Note Payment and any and all other sums then due and payable hereunder on the ninth anniversary of the date of issuance of this Note (the "Maturity Date").

2.4 Voluntary Prepayments. So long as no Event of Default shall have occurred and be continuing, the Company may, at any time and from time to time, upon two Business Days' prior written notice, prepay any or all amounts due under this Note prior to the Maturity Date, in whole or in part without premium or penalty.

2.5 Dispositions. From and after the first anniversary of the issuance of this Note and until the Maximum Principal Amount has been indefeasibly paid in full:

(a) All Net Cash Proceeds in excess of \$10,000,000 received by or on behalf of the Company in connection with the Disposition from time to time (when aggregated with the Net Cash Proceeds of all other Dispositions), shall be paid to the Holder as mandatory prepayments in accordance with this Section 2.5.

(b) Mandatory prepayments shall (in each case) be immediately due and payable contemporaneously with the receipt by or on behalf of the Company of such Net Cash Proceeds; provided that, so long as no Event of Default shall have occurred and be continuing, the Company may elect (by written notice thereof to the Holder prior to the consummation of such Disposition) to deposit such Net Cash Proceeds into a segregated deposit account, to be used by the Company within 270 days to acquire (or replace or rebuild) assets that are used in or useful in the business of the Company (such assets being hereinafter referred to as "Replacement Assets"; provided that Indebtedness or Equity Securities shall not constitute Replacement Assets). In the event that the Company has not used the Net Cash Proceeds to acquire (or rebuild) Replacement Assets on or before the date which is 270 days after the date of the Company's receipt of same, then a mandatory prepayment shall be immediately due and payable on such date in an amount equal to the amount of such Net Cash Proceeds that have not been so used.

2.6 Extraordinary Events. From and after the first anniversary of the issuance of this Note and until the Maximum Principal Amount has been indefeasibly paid in full:

(a) All Net Cash Proceeds in excess of \$10,000,000 received by or on behalf of the Company in connection with Extraordinary Events from time to time (when aggregated with the Net Cash Proceeds of all other Extraordinary Events), shall be paid to the Holder as mandatory prepayments in accordance with this Section 2.6.

(b) Mandatory prepayments shall (in each case) be immediately due and payable contemporaneously with the receipt by or on behalf of the Company of such Net Cash Proceeds; provided that, so long as no Event of Default shall have occurred and be continuing, the Company may elect (by written notice thereof to the Holder prior to the consummation of such Disposition) to deposit such Net Cash Proceeds into a segregated deposit account, to be used by the Company within 270 days to acquire (or replace or rebuild) Replacement Assets. In the event that the Company has not used the Net Cash Proceeds to acquire (or rebuild) Replacement Assets on or before the date which is 270 days after the date of the Company's

receipt of same, then a mandatory prepayment shall be immediately due and payable on such date in an amount equal to the amount of such Net Cash Proceeds that have not been so used.

2.7 Application of Prepayments. Prepayments made pursuant to Section 2.4, Section 2.5 or Section 2.6 shall be applied first to reduce the amount of the Final Note Payment and then, if applicable, Annual Note Payments due pursuant to Section 2.1, in inverse order of maturity, by an amount or amounts determined in accordance with the methodology set forth in Schedule 2.7 using a discount rate of 10% on the basis of a 360-day year (consisting of 12 months of 30 days each). **Examples of the application of prepayments to the Final Note Payment and then, if applicable, Annual Note Payments due pursuant to Section 2.1 are set forth in Schedule 2.7.** Notwithstanding anything to the contrary herein, except as used in clause (y) of the second proviso to Section 2.1, no application of a prepayment shall adjust the “Maximum Principal Amount” for purposes of Section 2.1.

3. Manner and Time of Payment.

3.1 Payment in Immediately Available Funds. Subject to Section 3.3, all payments on this Note shall be made without deduction, setoff or counterclaim, in United States Dollars and in immediately available funds delivered to the Holder by wire transfer to the account listed in Schedule 3.1 hereto or to such other account as the Holder shall notify the Company in writing from time to time.

3.2 Payment on Non-Business Days. If any payment on this Note shall become due on a day that is not a Business Day, such payment shall be made on the next succeeding Business Day.

3.3 Taxes.

(a) No Deduction for Taxes. Any and all payments or reimbursements made by the Company hereunder shall be made free and clear of, and without any deduction for, and the Company shall indemnify and hold harmless the Holder from and against, any and all current or future taxes, levies, imposts, deductions, charges, withholdings or other charges of whatever nature now or hereafter imposed by any Governmental Authority with respect to such payments or reimbursements and all interest, penalties or similar liabilities with respect thereto (excluding, with respect to any payment to be made with respect to this Note, (i) any tax imposed by the United States or any political subdivision thereof and (ii) any taxes imposed by any Governmental Authority on or measured by overall net income and franchise taxes imposed in lieu thereof imposed by the jurisdiction, or any political subdivision thereof, under the laws of which the Holder is organized or is tax resident or in which its principal office is located) (all such non-excluded taxes, collectively or individually, “Taxes”). If the Company shall be required to deduct any Taxes from or in respect of any sum payable hereunder, then (a) the sum payable shall be increased by the amount necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 3.3), the Holder shall receive an amount equal to the sum it would have received had no such deductions been made, (b) the Company shall make such deductions, and (c) the Company shall timely pay the

full amount deducted to the relevant Governmental Authority in accordance with Applicable Law.

(b) Other Taxes. Without limiting the provisions of Section 3.3(a) above, the Company shall timely pay to the relevant Governmental Authority in accordance with Applicable Law, and shall indemnify and hold harmless the Holder from and against, any present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or from the execution, delivery or enforcement of, or otherwise with respect to, this Note, excluding any tax imposed by the United States or any political subdivision thereof (all such non-excluded taxes, collectively or individually "Other Taxes").

(c) Status of Holder. If the Holder is entitled to an exemption from or reduction of withholding tax under the law of the jurisdiction in which the Company is resident for tax purposes, or any treaty to which such jurisdiction is a party, with respect to payments hereunder shall deliver to the Company, at the time or times prescribed by Applicable Law or reasonably requested by the Company, such properly completed and executed documentation prescribed by Applicable Law as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, the Holder, if requested by the Company, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by the Company as will enable the Company to determine whether or not the Holder is subject to backup withholding or information reporting requirements.

(d) Refunds. If any Taxes or Other Taxes for which the Holder has received additional amounts or indemnification from the Company pursuant to this Section 3.3 shall be finally determined to have been incorrectly or illegally asserted and are refunded to the Holder (such determination to be made in the reasonable discretion of the Holder), the Holder shall promptly forward to the Company any such refunded amount (after deduction of any taxes, fees or assessments paid or payable by the Holder as a result of such refund and any reasonable out-of-pocket expenses incurred by the Holder with respect to such refund), not exceeding the corresponding increased amounts paid by the Company pursuant to this Section 3.3 with respect to the Taxes or Other Taxes giving rise to such refund.

4. **Representations and Warranties**. The Company hereby represents and warrants to the Holder that:

4.1 Organization and Good Standing. The Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware.

4.2 Authorization; Enforceability. The Company has the requisite corporate power and authority to execute this Note and perform its obligations hereunder. The execution and delivery of this Note by the Company have been duly authorized by the Board of Directors of the Company and no other corporate proceedings on the part of the Company or the applicable Subsidiary are necessary to authorize this Note. This Note has been duly executed and delivered by the Company and constitutes the valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, subject to the Enforceability Exceptions.

4.3 No Conflict. The execution, delivery and performance by the Company of this Note in accordance with its terms and the consummation of the transactions contemplated herein do not and will not: (a) violate any provision of Applicable Law; (b) conflict with, result in a breach of, or constitute a default under (i) the Organizational Documents of the Company, (ii) any indenture, agreement, instrument or other contractual obligation of the Company, or (iii) any Order of Governmental Authority to which the Company; (c) result in or require the creation or imposition of any Lien upon any of the properties or assets of the Company; or (d) require any approval or consent of any Person under any contractual obligation of the Company, in each case other than as contemplated by this Note or any conflict, violation, breach, default, requirement for consents, rights of acceleration, cancellation, termination or Lien that would not reasonably be expected to prevent, impede or materially delay or otherwise affect in any material respect the ability of the Company to meet its payment obligations hereunder.

4.4 Litigation. There are no Legal Proceedings pending, or to knowledge of the Company, threatened in writing against or affecting the Company, at law or in equity, before or by any Governmental Authority, and the Company is not subject to any Order rendered specifically against it which would or seeks to enjoin, rescind or materially delay the transactions contemplated in this Note or otherwise that would reasonably be expected to prevent, impede or materially delay or otherwise affect in any material respect the ability of the Company to meet its payment obligations hereunder.

4.5 Compliance with Laws. The Company is in compliance with all Applicable Laws and other requirements of all Governmental Authorities having jurisdiction over the conduct of its business or the ownership of its properties (including all Environmental Laws), except to the extent the failure to comply would not reasonably be expected to prevent, impede or materially delay or otherwise affect in any material respect the ability of the Company to meet its obligations hereunder.

4.6 Ranking of Payment Obligations. The Company's payment obligations under this Note rank at least pari passu in preference and priority to all other secured and unsecured Indebtedness of the Company.

4.7 No Defaults. No Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Note.

5. Covenants.

5.1 General Covenants. Until the Maximum Principal Amount has been indefeasibly paid in full:

(a) Books and Records. The Company shall maintain proper books of record and account, in which full, true and correct entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of the Company.

(b) Insurance. The Company shall maintain with financially sound and reputable independent insurers, insurance with respect to its property or assets (similar to that in

effect immediately prior to the date of issuance), against loss or damage in such amounts and against such risks as would be customary in respect of assets similar thereto and as would be customary for companies in the same industry and of comparable size to the Company, on a consolidated basis, with modifications as the Company determines are commercially prudent. The Holder shall be named as loss payee and as an additional insured on such insurance.

(c) Compliance with Laws. Except to the extent the failure to comply would not reasonably be expected to prevent, impede or materially delay or otherwise affect in any material respect the ability of the Company to meet its obligations hereunder, the Company shall comply with the requirements of all Applicable Laws of any Governmental Authority having jurisdiction over the business of the Company (including all Environmental Laws). In addition, the Company shall maintain in full force and effect all Permits required under Applicable Law (including all Environmental Laws).

(d) Inspection of Properties. The Company shall permit the Holder's Representatives to inspect its properties and to examine its books and records, and make copies thereof or abstracts therefrom, at such reasonable times during normal business hours upon reasonable advance notice to the Company; provided, however, that when a Default has occurred and is continuing the Holder (or any of its Representatives) may do any of the foregoing at any time during normal business hours and without advance notice.

(e) Maintenance of Property. The Company shall maintain or cause to be maintained in the ordinary course of business in good repair, working order and condition, normal wear and tear and disposal of obsolete equipment (as determined in good faith by the Company's Board of Directors) excepted, all property material to the conduct of its business, and from time to time shall make or cause to be made all needed and appropriate repairs, renewals, replacements, additions, betterments and improvements thereto.

(f) Dispositions of Property or Assets. The Company shall not effect any Disposition to any Person (other than to its Subsidiaries) unless the Net Cash Proceeds therefor are equal to or greater than the Fair Market Value for property or assets subject of such Disposition. If the Net Cash Proceeds of any Disposition is in excess of \$10,000,000, the Company's Chief Financial Officer shall, at or prior to the consummation of such Disposition, provide a certificate to the Holder certifying compliance with this Section 5.1(f).

(g) If any Disposition is to be made to an Affiliate of the Company, the terms of such transaction must be no less favorable to the Company than could be achieved in an arm's length transaction with an unaffiliated third party.

5.2 Information Covenant. Until the Maximum Principal Amount has been indefeasibly paid in full:

(a) Annual Financial Statements and Information. The Company shall furnish to the Holder as soon as they are available, but in no event more than 120 days after the end of each Fiscal Year, (i) the audited balance sheet of the Company and its Subsidiaries as at the end of such year and the related audited statements of income, shareholder's equity and cash flows for such year, all of which shall be on a consolidated basis; and (ii) an audit report with respect

to such balance sheet, statements of income, shareholder's equity and cash flows prepared and certified by a firm of independent certified public accountants of nationally recognized standing.

(b) Quarterly Financial Statements and Information. Within 60 days after the end of each of the first three fiscal quarters in each Fiscal Year, the Company shall furnish to the Holder the unaudited balance sheet of the Company and its Subsidiaries as at the end of such fiscal quarter, and the related unaudited statements of income, shareholder's equity and cash flows for the portion of the applicable Fiscal Year ending with the last day of such fiscal quarter, all of which shall be on a consolidated basis.

(c) Quarterly Compliance and Information Certificate. Concurrently with the delivery of the quarterly financial statements required in Section 5.2(b), the Company shall deliver a certificate of the Company's Chief Financial Officer (each, a "Compliance Certificate"):

(i) stating that the representations and warranties contained in this Note are true and correct (in the case of representations and warranties qualified as to materiality) or true and correct in all material respects (in the case of representations and warranties that are not so qualified) as of the date of such Compliance Certificate;

(ii) including a full copy of all information (excluding forward-looking financial projections) which the Company is required from time to time to provide to any of the labor unions representing any of its workforce pursuant to applicable collective bargaining agreements (or similar related agreements);

(iii) including the Company's short and long-term operating and financial results (including inputs relevant to the development of them) together with the additional information identified in Schedule 5.2.

5.3 Other Notices. Until the Maximum Principal Amount has been indefeasibly paid in full:

(a) Promptly after any officer of the Company becomes aware of (a) any Default, (b) any material Legal Proceeding or (c) any violation in any material respect of any Environmental Law, the Company shall deliver a certificate of the Company's Chief Financial Officer specifying the nature and period of existence thereof and describing what action the Company has taken, is taking and proposes to take with respect thereto.

(b) Promptly upon receipt or preparation, the Company shall provide the Holder with copies of any and all environmental studies, reports, assessments, audits, analyses, material correspondence and other material documentation or similar information (excluding forward-looking financial projections) relating to Company's compliance with Environmental Laws, the environmental condition of the property and assets of the Company, or remedial activities on or relating to such property or assets prepared or received on or after the date of issuance of this Note (collectively, "Environmental Reports").

6. Default.

6.1 Events of Default. Each of the following shall constitute an “Event of Default,” whatever the reason for such event and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment or order of any court or any order, rule or regulation of any Governmental Authority or non-governmental body:

(a) the Company fails to (i) make any payment due under Section 2.1 or comply with the requirements of Section 5.6 and such failure shall continue unremedied for a period of 23 days after the earlier of (A) notice thereof from the Holder to the Company or (B) the Company otherwise becoming aware of such a default or (ii) make any other payment due hereunder when and as the same shall become due and payable, and such failure shall continue unremedied for a period of 30 days after the earlier of (A) notice thereof from the Holder to the Company or (B) the Company otherwise becoming aware of such a default;

(b) the Company breaches or otherwise fails to perform or observe the provisions of Section 2.5 or Section 2.6;

(c) the Company breaches or otherwise fails to perform or observe any covenant or agreement contained in this Note (other than those described in clauses (a) and (b) above), and such failure shall continue unremedied for a period of 30 days after the earlier of (i) notice thereof from the Holder to the Company or (ii) the Company becoming aware of such default;

(d) Any representation or warranty made herein or which is contained in any certificate, document or financial or other statement by the Company, furnished at any time in connection with this Note, is false, misleading or incomplete in any material respect on or as of the date made;

(e) the Company or AMC (i) is generally not paying, or admits in writing its inability to pay, its debts as they become due, (ii) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy, for liquidation or to take advantage of any bankruptcy, insolvency, reorganization, moratorium or other similar law of any jurisdiction, (iii) makes an assignment for the benefit of its creditors, (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers with respect to it or with respect to any substantial part of its property, (v) is adjudicated as insolvent or to be liquidated, or (vi) takes corporate action for the purpose of any of the foregoing;

(f) a court or Governmental Authority of competent jurisdiction enters an order appointing, without consent by the Company or AMC, a custodian, receiver, trustee or other officer with similar powers with respect to it or with respect to any substantial part of its respective property, or constituting an order for relief or approving a petition for relief or reorganization or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction, or ordering the dissolution, winding-up or liquidation of the Company or AMC, as applicable, or any such petition shall be filed against the Company or AMC, as applicable, and such petition shall not be dismissed within 60 days; or

(g) the Guaranty shall cease to be in full force or effect.

6.2 Remedies. If an Event of Default shall have occurred and shall be continuing:

(a) With the exception of an Event of Default specified in Section 6.1(e) or (f), [insert defined term for name of initial Holder] may in its discretion or, at the request of Holders holding twenty-five percent (25%) or more of the outstanding aggregate principal amount of this Note, shall declare the Adjusted Principal Note Balance to be forthwith due and payable without presentment, demand, protest or other notice of any kind, all of which are expressly waived, anything in this Note to the contrary notwithstanding.

(b) Upon the occurrence and continuance of an Event of Default specified in Section 6.1(e) or (f) with respect to the Company, the Adjusted Principal Note Balance shall thereupon immediately become due and payable, without any action by the Holder and without presentment, demand, protest or other notice of any kind, all of which are expressly waived, anything in this Note to the contrary notwithstanding.

(c) Upon the occurrence and during the continuation of an Event of Default, interest shall accrue on the Adjusted Principal Note Balance at the Default Rate until the Adjusted Principal Note Balance has been paid in full.

6.3 Rights Not Exclusive. The rights provided for in this Note are cumulative and are not exclusive of any other rights, powers, privileges or remedies provided by law or in equity, or under any other instrument, document or agreement now existing or hereafter arising.

7. Miscellaneous.

7.1 Amendment and Waiver. Neither this Note nor any provision hereof may be amended or modified except pursuant to an agreement or agreements in writing entered into by the Company and the Holder. The Holder may, from time to time, waive, on such terms as the Holder may specify, any of the requirements of this Note. In the event of a waiver, such waiver shall be effective only in the specific instance and for the specific purpose for which given.

7.2 Notices.

(a) All notices and other communications under this Note shall be in writing and shall be deemed duly given (i) when delivered personally or by prepaid overnight courier, with a record of receipt or (ii) the day of transmission, if sent by facsimile during regular business hours, or the day after transmission, if sent after regular business hours (with a copy promptly sent by prepaid overnight courier with record of receipt or by certified mail, return receipt requested), to the parties at the following addresses or facsimile numbers (or to such other address or facsimile number as a party may have specified by notice given to the other party pursuant to this provision):

(i) If to the Company:

ASARCO LLC
c/o [_____
[_____
[_____

Telephone: [_____]
Facsimile: [_____]

with a copy to:

[_____]
[_____]
[_____]
Attention: [_____]
Telephone: [_____]
Facsimile: [_____]

and to:

[_____]
[_____]
[_____]
Attention: [_____]
Telephone: [_____]
Facsimile: [_____]

(ii) If to the Holder:

[insert name of Holder]
[_____]
[_____]
Attention: [_____]
Telephone: [_____]
Facsimile: [_____]

with a copy to:

[_____]
[_____]
[_____]
Attention: [_____]
Telephone: [_____]
Facsimile: [_____]

(b) Any party hereto may change the address to which notices shall be directed under this Section 7.2 by giving 10 days' written notice of such change to the other parties.

7.3 Confidentiality. The Holder shall hold confidential all non-public information regarding the Company and its Subsidiaries identified as such by the Company and obtained by the Holder pursuant to the requirements hereof (the "Confidential Information") in accordance with the Holder's customary procedures for handling confidential information of such nature, it being understood and agreed by the Company that, in any event, the Holder may make (a)

disclosures of such information to Affiliates and Representatives of the Holder, creditors in the Bankruptcy Cases and to their agents and advisors, and to other Persons who have the right, by contract or otherwise, to receive payments from the Holder in respect of payments made to the Holder under this Note (“Beneficiaries”) and to other persons authorized by the Holder to organize, present or disseminate such information in connection with disclosures otherwise made in accordance with this Section 7.3 (each, an “Information Agent”); provided that, subject to clauses (c) and (d) below, the Holder may provide Environmental Reports only to its Affiliates and Representatives and each Information Agent (and their agents and advisors) and the Holder may not distribute to any Beneficiary that is a Competitor any non-public information described in Sections 5.2(c)(ii) and (iii) of this Note provided to it by the Company, (b) disclosures of such information reasonably required by any bona fide or potential assignee, transferee or participant in connection with the contemplated assignment, transfer or participation by the Holder or any creditor in the Bankruptcy Cases or any participations therein, (c) disclosures reasonably necessary in connection with the defense of any action, suit or investigation brought against the Holder or any creditor in the Bankruptcy Cases, and (d) disclosures required or requested by any governmental or regulatory agency or representative thereof, and self-regulatory organization or representative thereof, or pursuant to legal or judicial process; provided that with respect to disclosures in the foregoing clauses (a) and (b), the third parties to whom such disclosures are made shall have agreed to observe and be bound by the confidentiality provisions of this Section 7.3; provided, further, that with respect to disclosures in the foregoing clause (d), the Holder agrees that (i) the Holder will provide the Company with prompt notice of such request or requirement in order to enable the Company to seek an appropriate protective order or other remedy, to consult with the Company with respect to the Company taking steps to resist or narrow the scope of such request or legal process, or to waive compliance, in whole or in part, with the provisions of this Section 7.3 and (ii) notwithstanding anything to the contrary contained herein, in the event that such protective order or other remedy is not obtained, or that the Company waives compliance, in whole or in part, with the provisions of this Section 7.3, the Holder will disclose only that portion of the Confidential Information which the Holder is advised by counsel is legally required to be disclosed and will use its reasonable best efforts to ensure that all Confidential Information so disclosed will be accorded confidential treatment.

7.4 Competitors. The Company shall not be required to provide to any Competitor Holder any Environmental Reports or non-public information described in Sections 5.2(c)(ii) and (iii) of this Note. A “Competitor Holder” means a Competitor to whom any or all of this Note is transferred after the date hereof and who becomes a “Holder” hereunder. The Holder may not provide information pursuant to Section 7.3 to any Competitor Holder.

7.5 Waiver of Demand and Notice. The Company hereby waives demand, notice, protest and all other demands and notices in connection with the delivery, acceptance, performance, default or enforcement of this Note.

7.6 Governing Law. THIS NOTE, THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS NOTE, AND ANY CLAIM OR CONTROVERSY DIRECTLY OR INDIRECTLY BASED UPON OR ARISING OUT OF THIS NOTE (WHETHER BASED ON CONTRACT, TORT, OR ANY OTHER THEORY), INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, SHALL IN ALL RESPECTS BE GOVERNED BY AND INTERPRETED, CONSTRUED, AND DETERMINED IN

ACCORDANCE WITH, THE APPLICABLE PROVISIONS OF THE BANKRUPTCY CODE AND THE INTERNAL LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO ANY CONFLICTS OF LAW PROVISION THAT WOULD REQUIRE THE APPLICATION OF THE LAW OF ANY OTHER JURISDICTION).

7.7 Submission to Jurisdiction; Consent to Service of Process.

(a) Each of the Company and the Holder hereby submits to the non-exclusive jurisdiction of the United States District Court for the Southern District of New York and of the Supreme Court of the State of New York sitting in New York County (including its Appellate Division) and of any other appellate court in the State of New York for the purposes of all legal proceedings arising out of or relating to this Note or the transactions contemplated hereby; provided, however, that the parties agree that all disputes, controversies or claims that may arise out of the transactions contemplated by this Note, or the breach, termination or invalidity thereof (other than a suit to obtain specific performance of the provisions of this Note or obtain other injunctive relief), may be submitted to, and determined by, binding arbitration in accordance with the following procedures:

A. Either the Holder or the Company may submit a dispute, controversy or claim to arbitration by giving the other party written notice to such effect, which notice shall describe, in reasonable detail, the facts and legal grounds forming the basis for the filing party's request for relief. The arbitration shall be held before one neutral arbitrator in Dallas, Texas.

B. Within 30 days after the other party's receipt of such demand, the Holder and the Company shall mutually agree upon a neutral arbitrator. If the parties are unable to agree on the arbitrator within that time period, the arbitrator shall be selected by the American Arbitration Association ("AAA"). In any event, the arbitrator shall have a background in, and knowledge of, transactions in the mining industry and shall otherwise be an appropriate person based on the nature of the dispute. If a person with experience in such matters is not available, the arbitrator shall be chosen from the retired federal judges pool maintained by AAA.

C. The arbitration shall be governed by the Commercial Arbitration Rules of the AAA. However, the arbitration shall be administered by any organization mutually agreed to in writing by the parties. If the parties are unable to agree on the organization to administer the arbitration, it shall be administered by the AAA.

D. Discovery shall be limited to the request for and production of documents, depositions and interrogatories. All discovery shall be guided by the Federal Rules of Civil Procedure. All issues concerning discovery upon which the parties cannot agree shall be submitted to the arbitrator for determination.

E. The decision of, and award rendered by, the arbitrator shall (unless the arbitrator determines that this time frame is impracticable) be determined no more than 30 days after the selection of the arbitrator and shall be final and binding on the parties and shall not be subject to appeal. Judgment on the award may be entered in and enforced by any court of competent jurisdiction.

F. Each party shall bear its own costs and expenses (including filing fees) with respect to the arbitration, including one-half of the fees and expenses of the arbitrator.

(b) The parties hereby unconditionally and irrevocably waive, to the fullest extent permitted by Applicable Law, any objection which they may now or hereafter have to the arbitration of any dispute arising out of or relating to this Note, or any defense of inconvenient forum for the maintenance of such dispute.

(c) Each of the parties hereto hereby consents to process being served by any party to this Note in any suit, action or proceeding by the mailing of a copy thereof in accordance with the provisions of Section 7.2. The Company has appointed Corporation Service Company to receive for it, and on its behalf, service of process in the United States.

7.8 Waiver of Jury Trial. THE PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT THAT THEY MAY HAVE TO TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION, OR IN ANY LEGAL PROCEEDING, DIRECTLY OR INDIRECTLY BASED UPON OR ARISING OUT OF THIS NOTE OR THE TRANSACTIONS CONTEMPLATED BY THIS NOTE (WHETHER BASED ON CONTRACT, TORT, OR ANY OTHER THEORY). EACH PARTY (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT, OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTIES WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HAVE BEEN INDUCED TO ENTER INTO THIS NOTE BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

7.9 Expenses and Attorneys' Fees. The Company agrees to promptly pay or promptly reimburse the Holder for all reasonable fees, costs and expenses (including reasonable attorneys' fees) incurred by the Holder in connection with (a) the enforcement, attempted enforcement, or preservation of any rights or remedies under this Note, or (b) any amendment, supplement, waiver or modification to this Note.

7.10 Indemnity. Except with respect to taxes, which shall be solely governed by Section 3.3, the Company agrees to indemnify, defend and hold the Holder, and the officers, directors, employees, agents, affiliates and attorneys of the Holder (collectively called the "Indemnitees") harmless from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including the reasonable fees and disbursements of counsel for such Indemnitees in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not such Indemnatee shall be designated a party thereto) that may be imposed on, incurred by, or asserted against that Indemnatee, in any manner relating to or arising out of, in connection with, as a result of or in any other way associated with (a) the execution or delivery of this Note or any agreement or instrument contemplated hereby or thereby, and the performance by the parties hereto of their respective obligations hereunder or thereunder, the consummation of the transactions contemplated hereby or thereby or (b) any actual or prospective claim, litigation, investigation or proceeding relating to any of the

foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Company or any of its Subsidiaries, and regardless of whether any Indemnitee is a party thereto (the “Indemnified Liabilities”); provided that the Company shall have no obligation to an Indemnitee hereunder with respect to Indemnified Liabilities arising from the negligence or intentional misconduct of that Indemnitee. The provisions of this Section 7.10 shall survive the maturity and termination of this Note.

7.11 No Waiver; Remedies Cumulative. No failure to exercise and no delay in exercising, on the part of the Holder, any right, remedy, power or privilege hereunder, shall operate as a waiver thereof nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

7.12 Severability. The provisions of this Note shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of this Note, or the application thereof to any Person or any circumstance, is found to be invalid or unenforceable in any jurisdiction, (a) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid or enforceable, such provision and (b) the remainder of this Note and the application of such provision to other Persons or circumstances shall not be affected by such invalidity or unenforceability, nor shall such invalidity or unenforceability affect the validity or enforceability of such provision, or the application thereof, in any other jurisdiction.

7.13 Headings. The section headings of this Note are for reference purposes only and are to be given no effect in the construction or interpretation of this Note.

7.14 Assignments. The Holder may assign its rights under this Note and further may assign, or sell participations in, all or part of this Note to any other Person or Persons, provided that at no time shall this Note be distributed such that the Company would be subject to any registration requirements under the Securities Act. Prior to the effective date of any assignment of this Note, the Holder shall promptly deliver to the Company written notice of such assignment, which notice shall specify the identity of the assignee. In no event shall such assignee, transferee or participant be entitled to any additional payment pursuant to Section 3.3 that is greater than the payment [insert defined term for name of initial Holder] would have received if [insert defined term for name of initial Holder] had not made an assignment or sold a participation. The Company may not assign or otherwise transfer any of its rights or obligations under this Note without the prior written consent of the Holder.

7.15 Registration. This Note is registered as to all payments hereunder with the Company and transfer of this Note may be effected only by surrender of the old instrument and either the reissuance by the Company of the old instrument to the new holder or the issuance by the Company of a new instrument to the new holder. The Company agrees to keep a register in which provision shall be made for the registration of this Note and the registration of transfer of this Note. Upon due presentment for registration of transfer of this Note, the Company shall promptly issue a new note to the transferee in exchange herefor without charge except for any tax or other governmental charge imposed in connection therewith.

7.16 Entire Agreement. THIS NOTE EMBODIES THE ENTIRE AGREEMENT AND UNDERSTANDING AMONG THE COMPANY AND THE HOLDER AND SUPERSEDES ALL PRIOR OR CONTEMPORANEOUS AGREEMENTS AND UNDERSTANDINGS OF SUCH PERSONS, VERBAL OR WRITTEN, RELATING TO THE SUBJECT MATTER HEREOF AND THEREOF.

7.17 Usury. Regardless of any provision herein or in any agreement made in connection herewith, the Holder shall never be entitled to receive, charge or apply, as interest on any indebtedness relating hereto, any amount in excess of the maximum amount of interest permissible under Applicable Law. If the Holder ever receives, collects or applies any such excess, it shall be deemed a partial repayment of principal and treated as such; and if the principal is paid in full, any remaining excess shall be refunded to the Company.

[Signature page follows]

IN WITNESS WHEREOF, the Company has executed and delivered this Note as of the date first written above.

ASARCO LLC

By: _____

Name: _____

Title: _____

SCHEDULE 1.1(A)

Amount due Upon Acceleration of Payment Following Event of Default²

Methodology

The calculation of the amount due upon the acceleration of payment resulting from an Event of Default uses methodology consistent with the application of prepayments detailed in Schedule 2.7, however with a discount rate dependent on the type of Event of Default, as such discount rate is set forth in the definition of Adjusted Principal Note Balance. The steps to calculate are as follows:

- 1) Calculate the stream of expected remaining payments as of the date of the Event of Default (the “Event of Default Date”). As with prepayments, this stream of expected remaining payments should be calculated based on the most recent final closing (evening evaluation) forward prices published by London Metal Exchange (or, should London Metal Exchange cease to publish such prices, as published in or otherwise available from a mutually acceptable reputable price source) at the time of calculation. That is to say, the expected payments should be calculated assuming the Average Copper Daily Price for a given year is equal to the corresponding London Metal Exchange forward price for that year.
- 2) Calculate present value of the remaining expected payments *as of the Event of Default Date* (i.e., with the Event of Default Date being time “zero” for purposes of discounting), using the applicable discount rate.
- 3) The sum of the present value of all remaining expected payments calculated in step 2 above is the amount due upon acceleration of payment following an Event of Default.

Example³

The example detailed in the exhibit below assumes a payment-based Event of Default on 10/18/2013. Expected payments are calculated using the London Metal Exchange forward pricing curve as of 2/23/2009. The sum of the present values of the expected remaining payments (from 2014-2018) is \$544.3mm. This is the amount that would be due upon acceleration of payment following an Event of Default on 10/18/2013.

² With respect to any period elapsed at the time of calculation, the historical prices used in any such calculation pursuant to this Schedule 1.1(A) shall be the actual prices for such period.

³ **The example in this Schedule 1.1(A) is for illustrative purposes only and the numbers used in these example may not add up due to rounding inconsistencies.**

SCHEDULE 1.1(A)*(USD mm except for per pound prices)*

<u>Basic Note Assumptions</u>		<u>Event of Default Variables</u>		<u>Annual Payment Assumptions</u>							
<u>Maximum Principal Amount</u>	<u>\$770.0</u>	<u>Event of Default Date 10/18/2013</u>		<u>Payment Trigger (\$/ ton)</u>		<u>\$6,000</u>					
<u>Minimum Annual Payment</u>	<u>\$20.0</u>			<u>Payment Cap (\$/ ton)</u>		<u>\$8,000</u>					
<u>Note Issuance Date</u>	<u>8/31/2009</u>			<u>Payment per \$100 / ton Increase</u>		<u>\$4.3</u>					
<u>Calculations (360 Day Year)</u>											
		<u>Years Since Issuance</u>		<u>4.13</u>							
<u>Discount Rate</u>	<u>6%</u>	<u>Years Until Maturity</u>		<u>4.87</u>							
<u>Expected Payment Stream</u>											
	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	
<u>LME Curve (\$ / lb.)</u>	<u>N/A</u>	<u>\$1.52</u>	<u>\$1.56</u>	<u>\$1.58</u>	<u>\$1.61</u>	<u>\$1.62</u>	<u>\$1.64</u>	<u>\$1.66</u>	<u>\$1.67</u>	<u>\$1.68</u>	
<u>LME Curve (\$ / ton)</u>	<u>N/A</u>	<u>\$3,351</u>	<u>\$3,430</u>	<u>\$3,489</u>	<u>\$3,539</u>	<u>\$3,580</u>	<u>\$3,615</u>	<u>\$3,649</u>	<u>\$3,680</u>	<u>\$3,710</u>	
<u>Annual Note Payment</u>		<u>0.0</u>	<u>\$20.0</u>	<u>\$20.0</u>	<u>\$20.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	
<u>Additional Payment to Meet Minimum</u>	=	=	<u>20.0</u>	<u>20.0</u>	<u>20.0</u>	<u>20.0</u>	<u>20.0</u>	<u>20.0</u>	<u>20.0</u>	<u>20.0</u>	
<u>Final Payment (net of Annual Note Payments)</u>	=	=	=	=	=	=	=	=	=	<u>\$440.0</u>	
<u>Total Anticipated Cash Flows</u>	<u>\$0.0</u>	<u>\$0.0</u>	<u>\$20.0</u>	<u>\$20.0</u>	<u>\$20.0</u>	<u>\$20.0</u>	<u>\$20.0</u>	<u>\$20.0</u>	<u>\$20.0</u>	<u>\$460.0</u>	
<u>Application of Prepayment</u>											
	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>Total</u>
<u>PV of Remaining Cash Flows (at EOD Date)</u>	=	=	=	=	=	<u>\$19.0</u>	<u>\$17.9</u>	<u>\$16.9</u>	<u>\$16.0</u>	<u>\$346.4</u>	<u>\$416.3</u>

SCHEDULE 1.1(B)

Existing Liens

Examples of Annual Note Payment Calculation

By way of example, if the Average Copper Daily Price for a given year is \$7,000 per metric tonne, the amount of the Annual Note Payment is calculated as follows:

$$\text{Annual Note Payment} = ((\$7,000 - \$6,000) / \$100) \times (\$770,000,000 / 180) = \underline{\$42,777,778}$$

As a second example, if the Average Copper Daily Price for a given year is \$6,200 per metric tonne, the amount of the Annual Note Payment is calculated as follows:

$$\text{Annual Note Payment} = ((\$6,200 - \$6,000) / \$100) \times (\$770,000,000 / 180) = \underline{\$8,555,556^*}$$

* In this case (where the calculated Annual Note Payment is less than \$20,000,000) commencing with the year ending on the second anniversary of the date of issuance of this Note, the minimum payment provision of Section 2.1 would apply and the Annual Note Payment would be \$20,000,000.

As a third example, if the Average Copper Daily Price for a given year is \$6,500 per metric tonne, the amount of the Annual Note Payment is calculated as follows:

$$\text{Annual Note Payment} = ((\$6,500 - \$6,000) / \$100) \times (\$770,000,000 / 180) = \underline{\$21,388,889}$$

As a fourth example, if the Average Copper Daily Price for a given year is \$5,900 per metric tonne, the amount of the Annual Note Payment is calculated as follows:

$$\text{Annual Note Payment} = ((\$5,900 - \$6,000) / \$100) \times (\$770,000,000 / 180) = \underline{\$-4,277,778^*}$$

* In this case (where the Average Copper Daily Price is less than \$6,000) commencing with the year ending on the second anniversary of the date of issuance of this Note, the minimum payment provision of Section 2.1 would apply and the Annual Note Payment would be \$20,000,000.

As a fifth example, if the Average Copper Daily Price for a given year is \$8,500 per metric tonne, the amount of the Annual Note Payment is calculated as follows:

$$\text{Annual Note Payment} = ((\$8,500 - \$6,000) / \$100) \times (\$770,000,000 / 180) = \underline{\$106,944,444^*}$$

* In this case, the maximum payment provision of Section 2.1 would apply and the Annual Note Payment would be \$770,000,000 / 9 or \$85,555,556.

Each of the above examples assumes that (i) the Maximum Principal Amount is \$770,000,000 and (ii) the amount outstanding pursuant to the Note is greater than the calculated Annual Note Payment.

SCHEDULE 2.7

Application of Prepayments - Methodology and Examples⁴**Methodology**

To calculate the impact of a prepayment on the remaining payments of the Note (Annual Note Payments and Final Note Payment), the following methodology should be used:

- 1) Calculate the stream of expected remaining payments as of the date of prepayment (the "Prepayment Date"). This stream of expected remaining payments should be calculated based on the most recent final closing (evening evaluation) forward prices published by London Metal Exchange (or, should London Metal Exchange cease to publish such prices, as published in or otherwise available from a mutually acceptable reputable price source) at the time of calculation. That is to say, the expected payments should be calculated assuming the Average Copper Daily Price for a given year is equal to the corresponding London Metal Exchange forward price for that year.
- 2) Calculate the present value of the remaining expected payments *as of the Prepayment Date* (i.e., with the Prepayment Date being time "zero" for purposes of discounting), using a 10% discount rate.
- 3) The amount of prepayment (the "Prepayment Amount") is then applied to this stream of present values of expected payments starting with the most long-dated payment (2018):
 - a. If the Prepayment Amount is *less than* the present value of the expected 2018 payment, the Prepayment Amount is fully applied to the expected 2018 payment, with the result being a reduction of the present value of the expected 2018 payment by the Prepayment Amount.
 - b. If the Prepayment Amount is *greater than* the present value of the expected 2018 payment, the entire present value of the expected 2018 payment is paid down and the amount by which the Prepayment Amount exceeds the expected 2018 payment (the "2018 Excess Amount") is applied to the previous year's expected payment (2017):
 - i. If the 2018 Excess Amount is *less than* the present value of the expected 2017 payment, the 2018 Excess Amount is fully applied to the 2017 payment, with the result being a reduction of the present value of the expected 2017 payment by the 2018 Excess Amount
 - ii. If the 2018 Excess Amount is *greater than* the present value of the expected 2017 payment, the entire present value of the expected

⁴ With respect to any period elapsed at the time of calculation, the historical prices used in any such calculation pursuant to this Schedule 2.7 shall be the actual prices for such period.

2017 payment is paid down and the amount by which the 2018 Excess Amount exceeds the expected 2017 payment (the “2017 Excess Amount”) is applied to the previous year’s expected payment (2016)

(This methodology in which any remaining portion of the Prepayment Amount is applied to the previous year’s present value of expected payment is repeated until the Prepayment Amount is applied in full)

- 4) Calculate the future values of the stream of present values of remaining payments that result after full application of the Prepayment Amount, using a 10% discount rate -this is the resulting nominal value of the remaining payments.

Examples⁵

Note: The examples below assume a date of issuance for the Note of August 31, 2009 and a Maturity Date of August 30, 2018.

Examples #1 and #2 are made using a recent London Metal Exchange forward pricing curve (as of 2/23/2009). Example #3 uses a hypothetical London Metal Exchange forward pricing curve to reflect how substantial upward movement in the price of copper (as reflected in the London Metal Exchange forward pricing curve) impacts the expected remaining payments and the resulting application of prepayments.

Example #1: \$50mm Prepayment on June 30, 2012 (Assuming 2/23/09 London Metal Exchange Forward Pricing Curve)

If a prepayment of \$50mm is made on June 30, 2012, the present value of the remaining payments, calculated as of the Prepayment Date at a discount rate of 10%, would be reduced by an amount equal to the Prepayment Amount.

In this example, as of the Prepayment Date there are 6.17 years remaining on the life of the Note. Since the Prepayment Amount (\$50mm) is less than the present value (as of the Prepayment Date) of the expected 2018 payment (\$350.0mm), the entire Prepayment Amount is applied against the 2018 expected payment. The first attached exhibit details the calculations associated with this example.

Example #2: \$419mm Prepayment on January 1, 2014 (Assuming 2/23/09 London Metal Exchange Forward Pricing Curve)

In this example, as of the Prepayment Date there are 4.66 years remaining on the life of the Note. Since the Prepayment Amount (\$419mm) is greater than the present value (as of the Prepayment Date) of the expected 2018 payment (\$402.9mm), the prepayment is applied first against the 2018 expected payment, then is applied to earlier years’ expected payments, using the methodology described above, until the Prepayment Amount is fully applied. The \$419mm prepayment is therefore applied against expected payments in 2017

⁵ The examples in this Schedule 2.7 are for illustrative purposes only and the numbers used in these examples may not add up due to rounding inconsistencies.

and 2016. The expected payment in 2017 is fully prepaid, whereas the 2016 expected payment is only partially prepaid, as this is the point in the expected payment stream at which the Prepayment Amount is fully applied. The second attached exhibit details the calculations associated with this example.

Example #3: \$419mm Prepayment on January 1, 2012 (Assuming London Metal Exchange Forward Pricing Curve of \$3.00 / Ib. for Life of Note)

In this example, the London Metal Exchange forward pricing curve is assumed to be flat at \$3.00 / Ib for the life of the Note. Here, the expected payments in each year are \$46.6mm (greater than the \$20mm minimum) and start one year earlier (in 2010 instead of 2011). As a result, the 2018 expected payment is lower. Here the Prepayment Amount is applied in years 2012 through 2018 (as opposed to just 2017 and 2016 in Example #2). The third attached exhibit details the calculations associated with this example.

SCHEDULE 2.7*(USD mm except for per pound prices)*

<u>Basic Note Assumptions</u>		<u>Prepayment Variables</u>		<u>Annual Payment Assumptions</u>							
<u>Maximum Principal Amount</u>	<u>\$770.0</u>	<u>Prepayment Amount</u>	<u>\$50.0</u>	<u>Payment Trigger (\$/ ton)</u>							<u>\$6,000</u>
<u>Minimum Annual Payment</u>	<u>\$20.0</u>	<u>Prepayment Date</u>	<u>6/30/2012</u>	<u>Payment Cap (\$/ ton)</u>							<u>\$8,000</u>
<u>Note Issuance Date</u>	<u>8/31/2009</u>	<u>Payment per \$100 / ton Increase</u>							<u>\$4.28</u>		
<u>Calculations (360 Day Year)</u>											
<u>Discount Rate</u>	<u>10%</u>	<u>Years Since Issuance</u>	<u>2.83</u>								
		<u>Years Until Maturity</u>	<u>6.17</u>								
<u>Expected Payment Stream</u>											
	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	
<u>LME Curve (\$ / lb.)</u>	<u>N/A</u>	<u>\$1.52</u>	<u>\$1.56</u>	<u>\$1.58</u>	<u>\$1.61</u>	<u>\$1.62</u>	<u>\$1.64</u>	<u>\$1.66</u>	<u>\$1.67</u>	<u>\$1.68</u>	
<u>LME Curve (\$ / ton)</u>	<u>N/A</u>	<u>\$3,351</u>	<u>\$3,439</u>	<u>\$3,483</u>	<u>\$3,459</u>	<u>\$3,580</u>	<u>\$3,571</u>	<u>\$3,616</u>	<u>\$3,660</u>	<u>\$3,704</u>	
<u>Annual Note Payment</u>		<u>0.0</u>	<u>\$20.0</u>	<u>\$20.0</u>	<u>\$20.0</u>	<u>\$20.0</u>	<u>\$20.0</u>	<u>\$20.0</u>	<u>\$20.0</u>	<u>\$20.0</u>	
<u>Additional Payment to Meet Minimum</u>	<u>-</u>	<u>-</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	
<u>Final Payment (net of Annual Note Payments)</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>\$610.0</u>	
<u>Total Anticipated Cash Flows</u>	<u>\$0.0</u>	<u>\$0.0</u>	<u>\$20.0</u>	<u>\$20.0</u>	<u>\$20.0</u>	<u>\$20.0</u>	<u>\$20.0</u>	<u>\$20.0</u>	<u>\$20.0</u>	<u>\$630.0</u>	
<u>Application of Prepayment</u>											
	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>Total</u>
<u>PV of Remaining Cash Flows (at Prepayment Date)</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>\$19.7</u>	<u>\$17.9</u>	<u>\$16.3</u>	<u>\$14.8</u>	<u>\$13.4</u>	<u>\$12.2</u>	<u>\$350.0</u>	<u>\$444.3</u>
<u>Application of Prepayment Proceeds</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>(\$50.0)</u>	<u>(\$50.0)</u>
<u>PV of Remaining Cash Flows after Prepayment</u>	<u>\$0.0</u>	<u>\$0.0</u>	<u>\$0.0</u>	<u>\$19.7</u>	<u>\$17.9</u>	<u>\$16.3</u>	<u>\$14.8</u>	<u>\$13.4</u>	<u>\$12.2</u>	<u>\$300.0</u>	<u>\$394.3</u>
<u>NOMINAL Value of Remaining Payments</u>	<u>\$0.0</u>	<u>\$0.0</u>	<u>\$0.0</u>	<u>\$20.0</u>	<u>\$20.0</u>	<u>\$20.0</u>	<u>\$20.0</u>	<u>\$20.0</u>	<u>\$20.0</u>	<u>\$540.0</u>	<u>\$660.0</u>

SCHEDULE 2.7*(USD mm except for per pound prices)*

<u>Basic Note Assumptions</u>	<u>Prepayment Variables</u>		<u>Annual Payment Assumptions</u>								
<u>Maximum Principal Amount</u>	<u>\$770.0</u>	<u>Prepayment Amount</u>	<u>\$419.0</u>	<u>Payment Trigger (\$/ ton)</u>	<u>\$6,000</u>						
<u>Minimum Annual Payment</u>	<u>\$20.0</u>	<u>Prepayment Date</u>	<u>1/1/2014</u>	<u>Payment Cap (\$/ ton)</u>	<u>\$8,000</u>						
<u>Note Issuance Date</u>	<u>8/31/2009</u>			<u>Payment per \$100 / ton Increase</u>	<u>\$4.28</u>						
		<u>Calculations (360 Day Year)</u>									
		<u>Years Since Issuance</u>		<u>4.34</u>							
<u>Discount Rate</u>	<u>10%</u>	<u>Years Until Maturity</u>		<u>4.66</u>							
<u>Expected Payment Stream</u>											
	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	
<u>LME Curve (\$ / lb.)</u>	<u>N/A</u>	<u>\$1.52</u>	<u>\$1.56</u>	<u>\$1.58</u>	<u>\$1.61</u>	<u>\$1.62</u>	<u>\$1.64</u>	<u>\$1.66</u>	<u>\$1.67</u>	<u>\$1.68</u>	
<u>LME Curve (\$ / ton)</u>	<u>N/A</u>	<u>\$3,351</u>	<u>\$3,439</u>	<u>\$3,483</u>	<u>\$3,549</u>	<u>\$3,571</u>	<u>\$3,616</u>	<u>\$3,660</u>	<u>\$3,682</u>	<u>\$3,704</u>	
<u>Annual Note Payment</u>	<u>-</u>	<u>0.0</u>	<u>\$20.0</u>	<u>\$20.0</u>	<u>\$20.0</u>	<u>\$20.0</u>	<u>\$20.0</u>	<u>\$20.0</u>	<u>\$20.0</u>	<u>\$20.0</u>	
<u>Additional Payment to Meet Minimum</u>	<u>-</u>	<u>-</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	
<u>Final Payment (net of Annual Note Payments)</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>\$610.0</u>	
<u>Total Anticipated Cash Flows</u>	<u>\$0.0</u>	<u>\$0.0</u>	<u>\$20.0</u>	<u>\$20.0</u>	<u>\$20.0</u>	<u>\$20.0</u>	<u>\$20.0</u>	<u>\$20.0</u>	<u>\$20.0</u>	<u>\$630.0</u>	
<u>Application of Prepayment</u>											
	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>Total</u>
<u>PV of Remaining Cash Flows (at Prepayment Date)</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>\$18.8</u>	<u>\$17.1</u>	<u>\$15.5</u>	<u>\$14.1</u>	<u>\$403.9</u>	<u>\$469.4</u>
<u>Application of Prepayment Proceeds</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>(\$1.0)</u>	<u>(\$14.1)</u>	<u>(\$403.9)</u>	<u>(\$419.0)</u>
<u>PV of Remaining Cash Flows after Prepayment</u>	<u>\$0.0</u>	<u>\$0.0</u>	<u>\$0.0</u>	<u>\$0.0</u>	<u>\$0.0</u>	<u>\$18.8</u>	<u>\$17.1</u>	<u>\$14.5</u>	<u>\$0.0</u>	<u>\$0.0</u>	<u>\$40.4</u>
<u>NOMINAL Value of Remaining Payments</u>	<u>\$0.0</u>	<u>\$0.0</u>	<u>\$0.0</u>	<u>\$0.0</u>	<u>\$0.0</u>	<u>\$20.0</u>	<u>\$20.0</u>	<u>\$18.7</u>	<u>\$0.0</u>	<u>\$0.0</u>	<u>\$58.7</u>

Holder Account Information

Additional Operating Information
to be Included in Compliance Certificate

AMENDED SUPPORT AGREEMENT
AMONG
GRUPO MÉXICO, S.A.B. DE C.V.
AND
AMERICAS MINING CORPORATION
AND
ASARCO INCORPORATED

This Amended Support Agreement, dated as of July 30, 2009 (the “**Support Agreement**”), is among Grupo México, S.A.B. de C.V., a Mexican corporation (“**GM**”), ASARCO Incorporated, a Delaware Corporation (“**ASARCO Inc.**”) and Americas Mining Corporation, a Delaware corporation (“**AMC**”, and together with ASARCO Inc. the “**Plan Sponsor**”).

WHEREAS, GM directly owns 100% of the outstanding capital stock of AMC and indirectly owns 100% of the outstanding capital stock of ASARCO Inc.;

WHEREAS, the Plan Sponsor is the sponsor of a Chapter 11 plan of reorganization (the “**Plan**”) for ASARCO LLC, a Delaware limited liability company (“**ASARCO**”) and certain of its affiliates, in the bankruptcy case captioned *In re ASARCO LLC, et al.*, Case No. 05-21207 (the “**Bankruptcy Case**”);

WHEREAS, pursuant to the Plan, the Plan Sponsor is required to deliver the Parent Contribution (as defined in the Plan) to the Parent’s Plan Administrator (as defined in the Plan) on the Effective Date (as defined in the Plan) or as soon thereafter as practicable;

WHEREAS, pursuant to the Plan, on the Effective Date, the Plan Sponsor and ASARCO will enter into a revolving working capital facility (the “**Working Capital Facility**”), pursuant to which the Plan Sponsor will provide financing to ASARCO to fund its working capital needs;

WHEREAS, the terms of Working Capital Facility may require the Plan Sponsor to provide financing to ASARCO in the form of cash or cash equivalents (such cash requirements, the “**Working Capital Cash Requirements**”);

WHEREAS, GM and the Plan Sponsor entered into a Support Agreement dated as of July 24, 2009, and now wish to amend its terms.

NOW, THEREFORE, in consideration of the premises, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. GM Undertaking. (a) If, during the term of this Support Agreement, the Plan Sponsor is unable to deliver the Parent Contribution in full to the Parent’s Plan Administrator in accordance with the terms of the Plan or satisfy the Working Capital Cash Requirements in full, GM shall promptly provide the Plan Sponsor such funds in an amount equal to the amount required to permit the Plan Sponsor to deliver the Parent Contribution in full or satisfy the Working Capital Cash Requirements in full, as the case may be.

(b) GM and the Plan Sponsor hereby acknowledge that any funds provided by GM pursuant to Section 1(a) shall be used solely for the purpose of allowing the Plan Sponsor to deliver the Parent Contribution or satisfy the Working Capital Cash Requirements, as the case may be, and not for any other purposes. Each of the parties hereto acknowledges that GM's obligations hereunder do not constitute a guarantee by GM of the Plan Sponsor's obligations to provide the Parent Contributions pursuant to the Plan, provide financing to ASARCO pursuant to the Working Capital Facility or perform any other agreement in connection with the Plan. Notwithstanding the preceding sentence, this Support Agreement is enforceable in accordance with its terms, including in the Bankruptcy Court (as defined in the Plan).

2. Waiver. GM hereby waives any failure or delay on the part of the Plan Sponsor or the Parent's Plan Administrator in asserting or enforcing any of its rights or in making any claims or demands hereunder.

3. Rights of the Parent's Plan Administrator. The Plan Sponsor hereby assigns and pledges to the Parent's Plan Administrator the Plan Sponsor's rights under Sections 1 and 2 of this Support Agreement, and, if the Plan Sponsor fails or refuses to take timely action to enforce its rights under Sections 1 and 2 of this Support Agreement, the Parent's Plan Administrator may enforce such rights on behalf of the Plan Sponsor directly against GM. GM hereby consents to such assignment and pledge and enforcement by the Parent's Plan Administrator.

4. Notices. Any notice, instruction, request, consent, demand or other communication required or contemplated by this Support Agreement shall be in writing, shall be given or made by United States first class mail, facsimile transmission, electronic mail or hand delivery addressed as follows

If to GM:

GM Mexico, S.A.B. de C.V.
Edificio Pargue Reforma
Campos Eliseos No. 400, Piso 18
Col. Lomas de Chapultepec
11560 Mexico, D.F.
Mexico
Attn: Alberto de la Parra
Facsimile: 011-52-55-1103-5578
E-Mail: alberto.delaparra@mm.gmexico.com

If to the Plan Sponsor:

ASARCO Incorporated
Americas Mining Corporation
c/o GM Mexico, S.A.B. de C.V.
Edificio Pargue Reforma
Campos Eliseos No. 400, Piso 18
Col. Lomas de Chapultepec

11560 Mexico, D.F.
Mexico
Attn: Alberto de la Parra
Facsimile: 011-52-55-1103-5578
E-Mail: alberto.delaparra@mm.gmexico.com

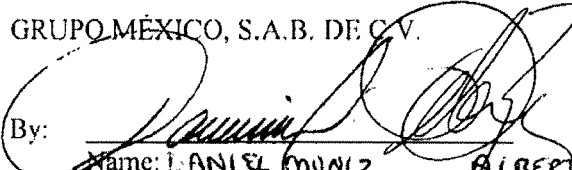
With a copy to:

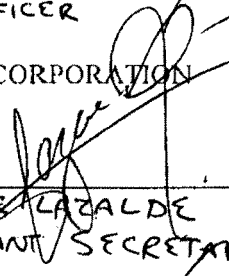
Milbank, Tweed, Hadley & McCloy LLP
601 S. Figueroa Street, 30th Floor
Los Angeles, CA 90017-5735
Attn: Robert Jay Moore
Facsimile: 213-892-4701
E-Mail: rmoore@milbank.com

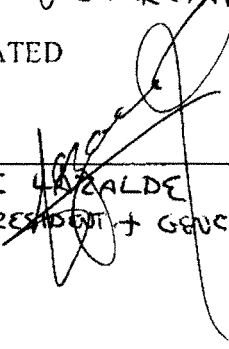
5. Successors. This Support Agreement shall be binding upon the parties hereto and their respective successors and assigns and is also intended for the benefit of the Parent's Plan Administrator. This Support Agreement is not intended for the benefit of any person other than the parties hereto and the Parent's Plan Administrator, and shall not confer or be deemed to confer upon any such person any benefits, rights or remedies hereunder.

6. Governing Law. This Support Agreement shall be governed by the laws of the State of New York.

IN WITNESS WHEREOF, the parties hereto have caused this Support Agreement to be executed and delivered as of the day and year first above written.

GRUPO MEXICO, S.A.B. DE C.V.
By: 
Name: I. ANIEL MUNIZ
Title: CHIEF FINANCIAL OFFICER
ALBERTO DE LA PARRA
GENERAL COUNSEL

AMERICAS MINING CORPORATION
By: 
Name: JORGE LAZALDE
Title: ASSISTANT SECRETARY

ASARCO INCORPORATED
By: 
Name: JORGE LAZALDE
Title: VICE PRESIDENT + GENERAL COUNSEL

EXECUTION VERSION

AMENDED SUPPORT AGREEMENT
AMONG
GRUPO MÉXICO, S.A.B. DE C.V.
AND
AMERICAS MINING CORPORATION
AND
ASARCO INCORPORATED

This Amended Support Agreement, dated as of July 24, 2009, 2009 (the “**Support Agreement**”), is among Grupo México, S.A.B. de C.V., a Mexican corporation (“**GM**”), ASARCO Incorporated, a Delaware Corporation (“**ASARCO Inc.**”) and Americas Mining Corporation, a Delaware corporation (“**AMC**”, and together with ASARCO Inc. the “**Plan Sponsor**”).

WHEREAS, GM directly owns 100% of the outstanding capital stock of AMC and indirectly owns 100% of the outstanding capital stock of ASARCO Inc.;

WHEREAS, the Plan Sponsor is the sponsor of a Chapter 11 plan of reorganization (the “**Plan**”) for ASARCO LLC, a Delaware limited liability company (“**ASARCO**”) and certain of its affiliates, in the bankruptcy case captioned *In re ASARCO LLC, et al.*, Case No. 05-21207 (the “**Bankruptcy Case**”);

WHEREAS, pursuant to the Plan, the Plan Sponsor is required to deliver the Parent Contribution (as defined in the Plan) to the Parent’s Plan Administrator (as defined in the Plan) on the Effective Date (as defined in the Plan) or as soon thereafter as practicable;

WHEREAS, pursuant to the Plan, on the Effective Date, the Plan Sponsor and ASARCO will enter into a revolving working capital facility (the “**Working Capital Facility**”), pursuant to which the Plan Sponsor will provide financing to ASARCO to fund its working capital needs;

WHEREAS, the terms of Working Capital Facility may require the Plan Sponsor to provide financing to ASARCO in the form of cash or cash equivalents (such cash requirements, the “**Working Capital Cash Requirements**”);

WHEREAS, GM and the Plan Sponsor entered into a Support Agreement dated as of July 24, 2009, and now wish to amend its terms.

NOW, THEREFORE, in consideration of the premises, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. **GM Undertaking.** (a) If, during the term of this Support Agreement, the Plan Sponsor is unable to deliver the Parent Contribution in full to the Parent’s Plan Administrator in accordance with the terms of the Plan or satisfy the Working Capital Cash Requirements in full, GM shall promptly provide the Plan Sponsor such funds in an amount equal to the amount

required to permit the Plan Sponsor to deliver the Parent Contribution in full or satisfy the Working Capital Cash Requirements in full, as the case may be.

(b) GM and the Plan Sponsor hereby acknowledge that any funds provided by GM pursuant to Section 1(a) shall be used solely for the purpose of allowing the Plan Sponsor to deliver the Parent Contribution or satisfy the Working Capital Cash Requirements, as the case may be, and not for any other purposes. Each of the parties hereto acknowledges that GM's obligations hereunder do not constitute a guarantee by GM of the Plan Sponsor's obligations to provide the Parent Contributions pursuant to the Plan, provide financing to ASARCO pursuant to the Working Capital Facility or perform any other agreement in connection with the Plan. Notwithstanding the preceding sentence, this Support Agreement is enforceable in accordance with its terms, including in the Bankruptcy Court (as defined in the Plan).

2. Waiver. GM hereby waives any failure or delay on the part of the Plan Sponsor or the Parent's Plan Administrator in asserting or enforcing any of its rights or in making any claims or demands hereunder.

3. Rights of the Parent's Plan Administrator. The Plan Sponsor hereby assigns and pledges to the Parent's Plan Administrator the Plan Sponsor's rights under Sections 1 and 2 of this Support Agreement, and, if the Plan Sponsor fails or refuses to take timely action to enforce its rights under Sections 1 and 2 of this Support Agreement, the Parent's Plan Administrator may enforce such rights on behalf of the Plan Sponsor directly against GM. GM hereby consents to such assignment and pledge and enforcement by the Parent's Plan Administrator.

4. Notices. Any notice, instruction, request, consent, demand or other communication required or contemplated by this Support Agreement shall be in writing, shall be given or made by United States first class mail, facsimile transmission, electronic mail or hand delivery addressed as follows

If to GM:

GM Mexico, S.A.B. de C.V.
Edificio Pargue Reforma
Campos Eliseos No. 400, Piso 18
Col. Lomas de Chapultepec
11560 Mexico, D.F.
Mexico
Attn: Alberto de la Parra
Facsimile: 011-52-55-1103-5578
E-Mail: alberto.delaparra@mm.gmexico.com

If to the Plan Sponsor:

ASARCO Incorporated
Americas Mining Corporation
c/o GM Mexico, S.A.B. de C.V.

Edificio Pargue Reforma
Campos Eliseos No. 400, Piso 18
Col. Lomas de Chapultepec
11560 Mexico, D.F.
Mexico
Attn: Alberto de la Parra
Facsimile: 011-52-55-1103-5578
E-Mail: alberto.delaparra@mm.gmexico.com

With a copy to:

Milbank, Tweed, Hadley & McCloy LLP
601 S. Figueroa Street, 30th Floor
Los Angeles, CA 90017-5735
Attn: Robert Jay Moore
Facsimile: 213-892-4701
E-Mail: rmoore@milbank.com

5. Successors. This Support Agreement shall be binding upon the parties hereto and their respective successors and assigns and is also intended for the benefit of the Parent's Plan Administrator. This Support Agreement is not intended for the benefit of any person other than the parties hereto and the Parent's Plan Administrator, and shall not confer or be deemed to confer upon any such person any benefits, rights or remedies hereunder.

6. Governing Law. This Support Agreement shall be governed by the laws of the State of New York.

7.

IN WITNESS WHEREOF, the parties hereto have caused this Support Agreement to be executed and delivered as of the day and year first above written.

GRUPO MÉXICO, S.A.B. DE C.V.

By: _____
Name:
Title:

AMERICAS MINING CORPORATION

By: _____
Name:
Title:

ASARCO INCORPORATED

By: _____
Name:
Title:

Document comparison done by DeltaView on Thursday, July 30, 2009 5:24:06 PM

Input:	
Document 1	pdocs://ny3/7466029/7
Document 2	pdocs://ny3/7466029/8
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
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Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	6
Deletions	4
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	10

AMENDED AND RESTATED ESCROW AGREEMENT

This Amended and Restated Escrow Agreement, amending and restating the June Escrow Agreement (as defined below) (the “**Escrow Agreement**”), is made and entered into as of July 30, 2009 by and among ASARCO Incorporated, a Delaware corporation (the “**Parent**”), Americas Mining Corporation (“**AMC**”, and together with the Parent, the “**Plan Sponsor**”) and The Bank of New York Mellon (the “**Escrow Agent**,” and collectively with the Parent and AMC, the “**Parties**”).

WHEREAS, the Plan Sponsor is the sponsor of the ASARCO Incorporated and Americas Mining Corporation's Modified Sixth Amended Plan of Reorganization for the Debtors Under Chapter 11 of the United States Bankruptcy Code Dated July 30, 2009 (the “**Sixth Amended Plan**”, as it may be further modified or amended, the “**Plan**”) for ASARCO LLC, a Delaware limited liability company and certain of its affiliates, filed in the chapter 11 bankruptcy case captioned *In re ASARCO LLC, et al.*, Case No. 05-21207 (the “**Bankruptcy Case**”);

WHEREAS, in support of the Plan, the Plan Sponsor entered into an escrow agreement with the Escrow Agent dated June 29, 2009 (the “**June Escrow Agreement**”), pursuant to which it deposited on the date thereof 67,280,000 shares of stock of Southern Copper Corporation, a Delaware corporation (the “**SCC Shares**”), into the escrow account established thereby to backstop the Plan Sponsor's obligations under the Plan;

WHEREAS, the Plan Sponsor desires that a number of the SCC Shares deposited pursuant to this Escrow Agreement with a value sufficient to generate upon sale net proceeds of \$125,000,000 be available for liquidation as a forfeitable deposit upon the circumstances described in Section 3(a) below;

WHEREAS, the Plan Sponsor desires that the SCC Shares deposited pursuant to this Escrow Agreement be available as a forfeitable deposit upon the circumstances described in Section 3(b) below;

WHEREAS, the Plan Sponsor requires the services of an escrow agent to hold in escrow the SCC Shares and to disburse the SCC Shares, or the proceeds from the exchange of certain SCC Shares in accordance with Sections 3(a) and 3(b) below, in accordance with this Escrow Agreement;

WHEREAS, the Parties understand that the ASARCO Committee (as defined in the Plan, the “**ASARCO Committee**”) has certain rights as a third party beneficiary under this Escrow Agreement;

WHEREAS, the Plan Sponsor and the Escrow Agent desire to amend and restate the June Escrow Agreement.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

1. *Appointment of Escrow Agent; Investment.* The Escrow Agent agrees to act as escrow agent subject to the terms and conditions set forth herein and, as such, to establish an appropriate segregated account designated as the “ASARCO INC - AMC ESC ACCT# 2, Account No. 331329” (the “**Escrow Account**”). The Escrow Agent shall cause the SCC Shares transmitted to it by or on behalf of the Plan Sponsor to be held in the Escrow Account in accordance with Section 3 hereof.

The Escrow Agent shall maintain accurate records of all transactions made in the Escrow Account. Promptly after the termination of the Escrow Account, or as may be reasonably requested by the Plan Sponsor before such termination, the Escrow Agent shall provide the Plan Sponsor with the complete copy of accurate records of all transactions in the Escrow Account. Each such statement shall be deemed to be correct and final upon receipt thereof by the Plan Sponsor unless the Escrow Agent is notified in writing to the contrary within thirty (30) days of such receipt. The Authorized Plan Sponsor Representatives (as defined below) shall also have access to such books and records at all reasonable times during normal business hours upon reasonable notice to the Escrow Agent.

The Escrow Agent shall not be responsible in any respect for the form, execution, validity, value or genuineness of documents or securities deposited hereunder, or for any description therein, or for the identity, authority or rights of persons executing or delivering or purporting to execute or deliver any such document, security or endorsement; *provided, however*, that the Escrow Agent shall exercise reasonable care in the discharge of its duties and the custody of the SCC Shares held in the Escrow Account under this Escrow Agreement.

The duties, responsibilities and obligations of the Escrow Agent shall be limited to those expressly set forth herein and no duties, responsibilities or obligations shall be inferred or implied. The Escrow Agent shall not be subject to, nor required to comply with, any other agreement (i) between or among any or all of any Plan Sponsor and any holder of a Claim, Demand or Interest (each such term as defined in the Plan; and all holders of Claims, Demands and Interests, other than the Plan Sponsor and its subsidiaries and affiliates other than the Debtors (as defined in the Plan, the “**Debtors**”), referred to herein collectively as the “**ASARCO Creditors**”), or (ii) to which any Plan Sponsor or ASARCO Creditor is a party, even though reference thereto may be made herein, or (iii) to comply with any direction or instruction from any Plan Sponsor or ASARCO Creditor or any entity acting on its behalf other than any direction or instruction contained herein or delivered in accordance with this Escrow Agreement. The Escrow Agent shall not be required to, and shall not, expend or risk any of its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder.

This Escrow Agreement is for the exclusive benefit of the Parties and their respective successors hereunder, and to the extent provided herein, the ASARCO Committee, and shall not be deemed to give, either express or implied, any legal or equitable right, remedy, or claim to any other entity or person whatsoever. The ASARCO Committee shall have the right pursuant to Section 3 below to (i) deliver to the Plan Sponsor and the Escrow Agent a notice in the form attached hereto as Exhibit A (the “**Creditors’ Pre-Confirmation Default Notice**”), and thereby cause the Escrow Agent to deliver from the Escrow Account to the estate of ASARCO LLC \$125,000,000; *provided, however*, that the ASARCO Committee shall not be entitled to deliver the Creditors’ Pre-Confirmation Default Notice if (x) the Plan Sponsor terminates or withdraws

the Plan with the consent of the ASARCO Committee, (y) the Plan Sponsor terminates or withdraws the Plan after entry of an order in the Bankruptcy Case approving a settlement agreement with Debtor ASARCO LLC with respect to the Final Judgment (the “**Final Judgment**”) entered against the Parent in the United States District Court for the Southern District of Texas (Brownsville Division) on April 15, 2009, and related litigation, or (z) a plan other than the Plan is Confirmed (as defined in the Plan) pursuant to an entered Confirmation Order (as defined in the Plan, a “**Confirmation Order**”); (ii) deliver to the Plan Sponsor, the Debtors, and the Escrow Agent a notice in the form attached hereto as Exhibit B (the “**Creditors' Post-Confirmation Default Notice**”), and thereby cause the Escrow Agent to deliver from the Escrow Account to the estate of ASARCO LLC \$1,300,000,000; *provided, however,* that the ASARCO Committee shall not be entitled to deliver the Creditors' Post-Confirmation Default Notice (w) if the failure to Consummate (as defined in the Plan) the Plan is solely due to the failure to receive executed, delivered, or filed Parent’s Plan Documents (as defined in the Plan) from third parties as required by Article 9.3(b) of the Plan because of circumstances beyond the control of the Plan Sponsor, (x) if from and after the Confirmation Date (as defined in the Plan, the “**Confirmation Date**”) of the Plan, the Plan Sponsor terminates or withdraws the Plan with the consent of the ASARCO Committee and in a manner consistent with an order entered by the Bankruptcy Court (as defined in the plan, the “**Bankruptcy Court**”) authorizing such withdrawal or termination, (y) on any date on which a stay of the Confirmation Order is in effect, or (z) on any date after December 31, 2009 if a stay of the Confirmation Order is in effect on December 31, 2009. The Plan Sponsor shall have the right pursuant to Section 3 below to (i) deliver to the ASARCO Committee and the Escrow Agent a notice in the form attached hereto as Exhibit C (the “**Plan Sponsor's Pre-Confirmation Termination Notice**”), and thereby cause the Escrow Agent to return the SCC Shares to the Plan Sponsor, as directed in writing by the Plan Sponsor; (ii) deliver to the ASARCO Committee, the Debtors, and the Escrow Agent a notice in the form attached hereto as Exhibit D (the “**Plan Sponsor's Post-Confirmation Termination Notice**”), and thereby cause the Escrow Agent to return the SCC Shares to the Plan Sponsor, as directed in writing by the Plan Sponsor; (iii) deliver to the Escrow Agent a notice in the form attached hereto as Exhibit E (the “**Final Notice**”), and thereby cause the Escrow Agent to return the SCC Shares to the Plan Sponsor, as directed in writing by the Plan Sponsor. The Plan Sponsor shall indemnify the ASARCO Committee against any and all Losses (as defined below) arising in any action in which the ASARCO Committee is a defendant from or in connection with or related to the delivery of any notice under this Escrow Agreement (including but not limited to Losses incurred or sustained by the ASARCO Committee in connection with its successful defense, in whole or in part, of any claim of gross negligence or willful misconduct on its part); *provided, however,* that nothing contained herein shall require the indemnification of the ASARCO Committee for Losses caused by its gross negligence or willful misconduct, bad faith or intentional wrongdoing. The ASARCO Committee shall have the right as a third party beneficiary of this Escrow Agreement to enforce its rights under this Escrow Agreement.

If at any time the Escrow Agent is served with any judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process which in any way affects the Escrow Account (including but not limited to orders of attachment or garnishment or other forms of levies or injunctions or stays relating to the transfer of the Escrow Account), the Escrow Agent is authorized to comply therewith in any manner as it or its legal counsel of its own choosing deems appropriate; and if the Escrow Agent complies with any such judicial or

administrative order, judgment, decree, writ or other form of judicial or administrative process, the Escrow Agent shall not be liable to any of the parties hereto or to any other person or entity even though such order, judgment, decree, writ or process may be subsequently modified or vacated or otherwise determined to have been without legal force or effect; *provided, however*, that prior to complying with any such judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process, the Escrow Agent shall give at least 10 days notice to the Plan Sponsor and the ASARCO Committee. Notwithstanding the foregoing sentence, in the event that the Escrow Agent is required by any judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process to comply therewith before the Escrow Agent is able to give at least 10 days notice to the Plan Sponsor and the ASARCO Committee, the Escrow Agent shall be deemed to be in compliance with the notice requirement set forth in the immediately preceding sentence so long as it promptly delivers such notice to the Plan Sponsor and the ASARCO Committee.

2. *Deposit of Fund Assets.* (a) The SCC Shares will remain on deposit in accordance with the terms of this Escrow Agreement.

(b) The Plan Sponsor shall designate to the Escrow Agent certain of the deposited SCC Shares with an aggregate value equal to \$125,000,000, computed by the Plan Sponsor based on the average of the last reported sale price of shares of stock of Southern Copper Corporation (“**SCC Stock**”) during a period of twenty (20) consecutive trading days ending within the five (5) business days before the applicable date of determination (such shares being hereinafter referred to as the “**Segregated Shares**”, and the aggregate value of the Segregated Shares, as so computed, being hereinafter referred to as the “**Segregated Share Value**”, and the remaining SCC Shares being hereinafter referred to as the “**Non-Segregated Shares**”, and the aggregate of the Segregated Share Value and the value of the Non-Segregated Shares, as so computed, being hereinafter referred to as the “**SCC Share Value**”). It is understood and acknowledged that the Escrow Agent need not make any inquiry or determination with respect to the computations made by the Plan Sponsor pursuant to this Escrow Agreement.

(c) On the date hereof, the Plan Sponsor shall provide a certification of the calculation of the Segregated Share Value to the Escrow Agent and to the ASARCO Committee (a “**Pre-Confirmation Certification**”). The Plan Sponsor shall also provide to the same parties a Pre-Confirmation Certification updating the Segregated Share Value at the end of each ten (10) consecutive trading day period after the date of the initial Certification up to and including the date upon which a Confirmation Order is entered with respect to the Plan or any plan other than the Plan or such earlier date as is the subject of a Plan Sponsor's Pre-Confirmation Termination Notice.

As of any date on which the Plan Sponsor is required to provide a Pre-Confirmation Certification pursuant to the immediately preceding paragraph, if the Segregated Share Value is less than \$125,000,000, the Plan Sponsor shall deliver a certification to the Escrow Agent (a copy of which shall be simultaneously sent to the ASARCO Committee) indicating the occurrence of the shortfall, and the Plan Sponsor shall re-designate in accordance with its Pre-Confirmation Certification a number of Non-Segregated Shares to become Segregated Shares, or alternatively, if there are not sufficient Non-Segregated Shares, promptly deposit sufficient additional shares of stock of Southern Copper Corporation into the Escrow Account, to, in either

case, cause the Segregated Share Value, after giving effect to such re-designation or deposit, to equal at least \$125,000,000.

(d) On the date of and following the entry of a Confirmation Order confirming the Plan, the Plan Sponsor shall provide a certification of the calculation of the SCC Share Value to the Escrow Agent, the ASARCO Committee, and the Debtors (a “**Post-Confirmation Certification**”). The Plan Sponsor shall also provide to the same parties a Post-Confirmation Certification updating the SCC Share Value at the end of each ten (10) consecutive trading day period after the date of the initial Post-Confirmation Certification up to and including the Effective Date of the Plan or such earlier date as is the subject of a Plan Sponsor's Post-Confirmation Termination Notice.

As of any date on which the Plan Sponsor is required to provide a Post-Confirmation Certification pursuant to the immediately preceding paragraph, if the SCC Share Value is less than \$1,300,000,000, the Plan Sponsor shall deliver a certification to the Escrow Agent (a copy of which shall be simultaneously sent to the ASARCO Committee and the Debtors) indicating the occurrence of the shortfall, and the Plan Sponsor shall deposit in the Escrow Account in accordance with its Post-Confirmation Certification a number of additional shares of SCC Stock such that the aggregate value of the SCC Shares and the value of the additional shares equal at least \$1,300,000,000, and the Plan Sponsor promptly shall deposit such additional shares into the Escrow Account.

(e) For purposes of this Section 2, (i) the “**last reported sale price**” of each share of SCC Stock on any date means the closing sale price per share of SCC Stock (or if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices) on that date as reported in composite transactions for the principal U.S. national or regional securities exchange on which shares of SCC Stock are listed for trading. If shares of SCC Stock are not listed for trading on a U.S. national or regional securities exchange on the relevant date, the “last reported sale price” will be the last quoted bid price for shares of SCC Stock in the over-the-counter market on the relevant date as reported by the National Quotation Bureau or similar organization. If shares of SCC Stock are not so quoted, the “last reported sale price” will be the average of the mid-point of the last bid and ask prices for shares of SCC Stock on the relevant date from each of at least three nationally recognized independent investment banking firms selected by the Plan Sponsor for this purpose; (ii) “**trading day**” means a day during which trading in shares of SCC Stock occurs on the principal U.S. national or regional securities exchange on which shares of SCC Stock are listed for trading and during which there is no market disruption event; provided that if shares of SCC Stock are not listed for trading on a U.S. national or regional securities exchange, trading day will mean a business day; and (iii) the term “**market disruption event**” means (1) a failure by the primary exchange or quotation system on which shares of SCC Stock trade or are quoted to open for trading during its regular trading session or (2) the occurrence or existence on any trading day for shares of SCC Stock of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the stock exchange or otherwise) in shares of SCC Stock or in any options, contracts or future contracts relating to shares of SCC Stock for an aggregate period in excess of one half hour.

(f) All property deposited into the Escrow Account and all interest and earnings thereon or proceeds derived therefrom, shall remain the property of AMC for U.S. federal and all state or local income, franchise or similar tax purposes. The parties hereto shall take no position inconsistent with that treatment.

3. *Disbursement and Release of the SCC Shares.*

(a) If prior to the date upon which the Plan is Confirmed (as defined in the Plan), (i) the Plan Sponsor withdraws or terminates the Plan without the written consent of the ASARCO Committee (*provided, however*, that this condition is not satisfied if either (A) at the time of such withdrawal, a plan other than the Plan is Confirmed (as defined in the Plan), or (B) the Debtors and the Parent have entered into a settlement agreement with Debtor ASARCO LLC with respect to the Final Judgment entered against the Parent in the United States District Court for the Southern District of Texas (Brownsville Division) on April 15, 2009, and related litigation, and such settlement has been approved by an order entered in the Bankruptcy Case), or (ii) the Plan Sponsor modifies or amends the Plan in a manner that would effect a material adverse change to the treatment proposed to be given unsecured creditors under the Sixth Amended Plan as filed on July 30, 2009 (*provided, however*, that such modification or amendment that provides for the cure and reinstatement of any obligation, including but not limited to any series of bond indebtedness, consistent with 11 U.S.C. Section 1124(2) (but excluding any Environmental Trust Claims or Environmental Unsecured Claims which may not be reinstated) shall not be deemed to constitute a material adverse change to such Plan for purposes of this Escrow Agreement), then, in the case of (i) or (ii), the ASARCO Committee may deliver to the Plan Sponsor and the Escrow Agent a notice in the form attached hereto as Exhibit A (the “**Creditors’ Pre-Confirmation Default Notice**”), and upon receipt of such notice by the Plan Sponsor, the Plan Sponsor may deliver \$125,000,000 in cash to the Escrow Agent for deposit in the Escrow Account, in exchange for the Segregated Shares (such Segregated Shares and all other shares of SCC Stock on deposit and held by the Escrow Agent under this Escrow Agreement to be disbursed by the Escrow Agent to the Plan Sponsor as directed in writing by the Plan Sponsor), and the Escrow Agent shall deliver the \$125,000,000 in cash as separately directed in writing by the ASARCO Committee, for delivery to the estate of ASARCO LLC; *provided* that if the Plan Sponsor fails to deliver the \$125,000,000 in cash to the Escrow Agent within five (5) business days after receipt of the Creditor’s Pre-Confirmation Default Notice, the Escrow Agent shall deliver the Segregated Shares as directed in writing by the ASARCO Committee, for delivery to the estate of ASARCO LLC, and shall disburse all other shares of SCC Stock on deposit and held by the Escrow Agent under this Escrow Agreement to the Plan Sponsor as directed in writing by the Plan Sponsor; *provided, however*, that the ASARCO Committee shall not be entitled to deliver the Creditors’ Pre-Confirmation Default Notice if (x) the Plan Sponsor terminates or withdraws the Plan with the consent of the ASARCO Committee, (y) the Plan Sponsor terminates or withdraws the Plan after entry of an order in the Bankruptcy Case approving a settlement agreement with Debtor ASARCO LLC with respect to the Final Judgment entered against the Parent in the United States District Court for the Southern District of Texas (Brownsville Division) on April 15, 2009, and related litigation, or (z) a plan other than the Plan is Confirmed (as defined in the Plan) pursuant to an entered Confirmation Order, and, in the case of (x), (y) or (z), the Plan Sponsor may deliver a notice in the form attached hereto as Exhibit C (the “**Plan Sponsor’s Pre-Confirmation Termination Notice**”) to the Escrow Agent (a copy of which shall be simultaneously sent to the ASARCO Committee), and the Escrow

Agent shall return the SCC Shares to the Plan Sponsor as directed in writing by the Plan Sponsor.

The ASARCO Committee shall give at least 10 days written notice to the Plan Sponsor prior to delivery of the Creditors' Pre-Confirmation Default Notice under this Section 3(a).

The Plan Sponsor shall give at least 10 days written notice to the ASARCO Committee prior to delivery of the Plan Sponsor's Pre-Confirmation Termination Notice under this Section 3(a).

(b) If from and after the Confirmation Date of the Plan, (i) the Plan Sponsor withdraws or terminates the Plan absent an order entered by the Bankruptcy Court authorizing such withdrawal or termination, (ii) the Plan is not Consummated (as defined in the Plan) by the date that is thirty days after the Plan is Confirmed (as defined in the Plan), or (iii) the Plan Sponsor modifies or amends the Plan after the Confirmation Date of the Plan and before the Effective Date in a manner that would effect a material adverse change to the treatment proposed to be given unsecured creditors under the Plan, as Confirmed (as defined in the Plan) (*provided, however, that such modification or amendment that provides for the cure and reinstatement of any obligation, including but not limited to any series of bond indebtedness, consistent with 11 U.S.C. Section 1124(2) (but excluding any Environmental Trust Claims or Environmental Unsecured Claims which may not be reinstated) shall not be deemed to constitute a material adverse change to such Plan for purposes of this Escrow Agreement*), then, in the case of (i), (ii) or (iii), the ASARCO Committee may deliver to the Plan Sponsor, the Debtors and the Escrow Agent a notice in the form attached hereto as Exhibit B (the "**Creditors' Post-Confirmation Default Notice**"), and upon receipt of such notice by the Escrow Agent, the Escrow Agent shall promptly disburse the SCC Shares as directed in writing by the ASARCO Committee for delivery to the estate of ASARCO LLC; *provided, however, that upon receipt of such notice by the Plan Sponsor, the Plan Sponsor may elect to deliver \$1,300,000,000 in cash to the Escrow Agent for deposit in the Escrow Account, in exchange for the SCC Shares (such SCC Shares to be disbursed by the Escrow Agent to the Plan Sponsor as directed in writing by the Plan Sponsor), and the Escrow Agent shall deliver the \$1,300,000,000 in cash as separately directed in writing by the ASARCO Committee, for delivery to the estate of ASARCO LLC; provided that if the Plan Sponsor fails to deliver the \$1,300,000,000 in cash to the Escrow Agent within five (5) business days after receipt of the Creditor's Post-Confirmation Default Notice, the Escrow Agent shall deliver the SCC Shares or a portion thereof, in either case representing an aggregate value equal to \$1,300,000,000, computed by the Plan Sponsor pursuant to Section 2(b) above, as directed in writing by the ASARCO Committee, for delivery to the estate of ASARCO LLC, and to the extent only a portion of the SCC Shares are so delivered, disburse all the other shares of SCC Stock on deposit and held by the Escrow Agent under this Escrow Agreement to the Plan Sponsor as directed in writing by the Plan Sponsor; provided, however, that the ASARCO Committee shall not be entitled to deliver the Creditors' Post-Confirmation Default Notice (w) if the failure to Consummate (as defined in the Plan) the Plan is solely due to the failure to receive executed, delivered, or filed Parent's Plan Documents (as defined in the Plan) from third parties as required by Article 9.3(b) of the Plan because of circumstances beyond the control of the Plan Sponsor, (x) if from and after the Confirmation Date of the Plan, the Plan Sponsor terminates or withdraws the Plan with the consent of the ASARCO Committee and in a manner consistent with an order entered by the Bankruptcy Court authorizing such withdrawal or*

termination, (y) on any date on which a stay of the Confirmation Order is in effect, or (z) on any date after December 31, 2009 if a stay of the Confirmation Order is in effect on December 31, 2009, and, in the case of (x) or (z), the Plan Sponsor may deliver a notice in the form attached hereto as Exhibit D (the “**Plan Sponsor’s Post-Confirmation Termination Notice**”) to the Escrow Agent (copies of which shall be simultaneously sent to the ASARCO Committee and the Debtors), and the Escrow Agent shall return the SCC Shares to the Plan Sponsor as directed in writing by the Plan Sponsor.

The ASARCO Committee shall give at least 10 days written notice to the Plan Sponsor prior to delivery of the Creditors’ Post-Confirmation Default Notice under this Section 3(b).

The Plan Sponsor shall give at least 10 days written notice to the ASARCO Committee prior to delivery of the Plan Sponsor’s Post-Confirmation Termination Notice under this Section 3(b).

(c) Upon the Effective Date, the Plan Sponsor may deliver a notice in the form attached hereto as Exhibit E (the “**Final Notice**”), to the Escrow Agent, and the Escrow Agent shall return the SCC Shares to the Plan Sponsor, as directed in writing by the Plan Sponsor. The Plan Sponsor shall give at least 10 days written notice to the ASARCO Committee prior to the delivery of the Plan Sponsor’s Final Notice under this Section 3(c).

(d) At any time prior to the termination of this Escrow Agreement, the Plan Sponsor may deliver to the Escrow Agent \$1,300,000,000 in cash. Upon delivery to the Escrow Agent of such \$1,300,000,000, the Escrow Agent shall return the SCC Shares to the Plan Sponsor, as directed in writing by the Plan Sponsor. The Escrow Agent shall invest the cash so deposited as directed in writing by the Plan Sponsor in: (i) a Bank of New York Mellon interest bearing deposit account; (ii) direct obligations of the United States of America; (iii) obligations for which the full faith and credit of the United States of America is pledged to provide for the payment of principal and interest; (iv) certificates of deposit issued by any bank or saving institution that are insured by the Federal Deposit Insurance Corporation; *provided* that such certificates of deposit, to the extent they exceed the amounts covered by such insurance, are fully secured by obligations described in clause (ii) above; (v) money market funds authorized to invest principally in short-term securities issued or guaranteed as to principal and interest by the U.S. Government; and/or (vi) repurchase agreements of short duration with respect to Government Securities; *provided* that such direction shall identify the specific investment instrument(s) to be purchased within the above categories. In no event will the maturity of any of the obligations described in the preceding sentence exceed 7 days. The Escrow Agent will distribute on a monthly basis to the Plan Sponsor all income received with respect to the amounts so invested. Upon receipt by the Escrow Agent of a Creditors’ Pre-Confirmation Default Notice as provided in Section 3(a), the Escrow Agent shall deliver the \$125,000,000 in cash as separately directed in writing by the ASARCO Committee, for delivery to the estate of ASARCO LLC, and shall disburse all other assets held by the Escrow Agent under this Escrow Agreement to the Plan Sponsor as directed in writing by the Plan Sponsor. Upon receipt by the Escrow Agent of a Creditors’ Post-Confirmation Default Notice as provided in Section 3(b), the Escrow Agent shall deliver the \$1,300,000,000 in cash as separately directed in writing by the ASARCO Committee, for delivery to the estate of ASARCO LLC, and shall disburse all other assets held by the Escrow

Agent under this Escrow Agreement to the Plan Sponsor as directed in writing by the Plan Sponsor.

4. *Fees and Expenses.* For services rendered hereunder, the Plan Sponsor will pay or cause to be paid to the Escrow Agent fees as set forth in Exhibit F attached hereto, which shall be payable within 30 days upon receipt by the Plan Sponsor of the Escrow Agent's invoice. All reasonable out-of-pocket costs, including but not limited to reasonable attorney's fees and postage, will be reimbursed to the Escrow Agent by the Plan Sponsor.

5. *Authorized Representatives.* Each of the following officers of the Plan Sponsor (collectively, "**Authorized Plan Sponsor Representatives**") is authorized to give the Escrow Agent any further instructions in connection with the Escrow Agent acting as escrow agent: (i) President, (ii) the Chief Financial Officer, (iii) the General Counsel, (iv) the Secretary and (v) the Assistant Secretary.

To the extent the ASARCO Committee is authorized under this Escrow Agreement to give the Escrow Agent any notice hereunder, the authorized representative of the ASARCO Committee (the "**Authorized Creditor Representative**") is authorized to give the Escrow Agent such further instructions; it being understood and acknowledged that the Escrow Agent need not make any inquiry or determination as to the authority of the individual signing such notice as the Authorized Creditor Representative.

6. *Special Provisions Related to the SCC Shares.* AMC shall (a) have the right to exercise all voting, consensual and other powers of ownership pertaining to the SCC Shares and any additional shares of SCC Stock deposited into the Escrow Account pursuant to the provisions of Sections 2(c) and 2(d) above for all purposes not inconsistent with the terms of this Escrow Agreement; and (b) be entitled to receive and retain any dividends, distributions or proceeds on the SCC Shares and such additional shares.

7. *Reliance upon certificates, etc.* The Escrow Agent shall be protected in acting upon any certificate, statement, request, consent, agreement or other instrument whatsoever furnished to the Escrow Agent by the Plan Sponsor, any Authorized Plan Sponsor Representative, or any Authorized Creditor Representative, not only as to its due execution and validity and the effectiveness of its provisions, but also as to the truth and accuracy of any information therein contained, which the Escrow Agent shall in good faith believe to be genuine or to have been signed or presented by a proper person or persons.

8. *Indemnification.* (a) The Plan Sponsor shall be liable for and shall reimburse and indemnify the Escrow Agent and hold the Escrow Agent harmless from and against any and all claims, losses, liabilities, costs, damages or expenses (including reasonable attorneys' fees and expenses) (collectively, "**Losses**") arising from or in connection with or related to this Escrow Agreement or being the Escrow Agent hereunder (including but not limited to Losses incurred or sustained by the Escrow Agent in connection with its successful defense, in whole or in part, of any claim of gross negligence or willful misconduct on its part); *provided, however*, that nothing contained herein shall require the Escrow Agent to be indemnified for Losses caused by its gross negligence or willful misconduct, bad faith or intentional wrongdoing.

(b) The Plan Sponsor shall indemnify and hold harmless the Escrow Agent against any and all claims, Losses incurred or sustained by the Escrow Agent as a result of or in connection with the Escrow Agent's reliance upon and compliance with instructions or directions given by facsimile or email transmission; *provided, however*, that such Losses have not arisen from the gross negligence or willful misconduct of the Escrow Agent, it being understood that the failure of the Escrow Agent to verify or confirm that the person giving the instructions or directions, is, in fact, an authorized person does not constitute gross negligence or willful misconduct.

(c) In no event shall the Escrow Agent be liable (i) for any consequential, punitive or special damages, (ii) for the acts or omissions of its nominees, correspondents, designees, subagents or subcustodians, or (iii) for an amount in excess of the value of the Escrow Account, valued as of the date of deposit.

(d) If any fees, expenses or costs incurred by, or any obligations owed to, the Escrow Agent hereunder are not promptly paid when due, the Escrow Agent may reimburse itself therefor from the Escrow Account and may sell, convey or otherwise dispose of the Escrow Account for such purpose.

(e) As security for the due and punctual performance of any and all of the Plan Sponsor's obligations to the Escrow Agent hereunder, now or hereafter arising, the Plan Sponsor hereby pledges, assigns and grants to the Escrow Agent a continuing security interest in, and a lien on, the Escrow Account and all distributions thereon or additions thereto. The security interest of the Escrow Agent shall at all times be valid, perfected and enforceable by the Escrow Agent against the Plan Sponsor and all third parties in accordance with the terms of this Escrow Agreement.

(f) The Escrow Agent may consult with legal counsel at the expense of the Plan Sponsor as to any matter relating to this Escrow Agreement, and the Escrow Agent shall not incur any liability in acting in good faith in accordance with any advice from such counsel.

(g) The Escrow Agent shall not incur any liability for not performing any act or fulfilling any duty, obligation or responsibility hereunder by reason of any occurrence beyond the control of the Escrow Agent (including but not limited to any act or provision of any present or future law or regulation or governmental authority, any act of God or war, or the unavailability of the Federal Reserve Bank wire or telex or other wire or communication facility).

(h) It is hereby acknowledged and understood that none of the ASARCO Committee, the Parent's Plan Administrator, or the Debtor's Plan Administrator (the latter two as defined in the Plan), shall have liability for any costs or fees in connection with the Escrow Account, or any obligation for the indemnification of the Escrow Agent.

(i) The Plan Sponsor shall be liable for and shall reimburse and indemnify the ASARCO Committee and hold the ASARCO Committee harmless from and against any and all Losses arising in any action in which the ASARCO Committee is a defendant from or in connection with or related to the delivery of any notice under this Escrow Agreement (including but not limited to Losses incurred or sustained by the ASARCO Committee in connection with its

successful defense, in whole or in part, of any claim of gross negligence or willful misconduct on its part); *provided, however*, that nothing contained herein shall require the ASARCO Committee to be indemnified for Losses caused by its gross negligence or willful misconduct, bad faith or intentional wrongdoing.

9. *Resignation of Escrow Agent.* The Escrow Agent may resign and be discharged from its duties hereunder at any time by giving thirty (30) calendar days' prior written notice of such resignation to the Plan Sponsor and the ASARCO Committee. The Plan Sponsor may remove the Escrow Agent at any time by giving thirty (30) calendar days' prior written notice to the Escrow Agent and the ASARCO Committee. Upon such notice, a successor escrow agent shall be appointed by the Plan Sponsor who shall provide written notice of such appointment to the resigning Escrow Agent and the ASARCO Committee. Such successor escrow agent shall become the escrow agent hereunder or under a further escrow agreement (the "**New Escrow Agreement**"), that (i) is mutually satisfactory to the Plan Sponsor and such successor escrow agent upon the resignation or removal date specified in such notice and (ii) does not alter the terms of this Escrow Agreement in a manner that would effect a material adverse change to the rights of the ASARCO Committee under this Escrow Agreement or the amount of the SCC Stock or the Segregated Shares deposited in the Escrow Agreement. Upon receipt of the identity of the successor escrow agent, the Escrow Agent shall deliver the Proceeds, together with all interest and gains thereon, then held hereunder to the successor Escrow Agent as promptly as practicable after the Plan Sponsor has paid in full all of the Escrow Agent's then unpaid fees, costs and expenses. Upon its resignation and delivery of the Proceeds, together with all interest and gains thereon, as set forth in this Section 9, the Escrow Agent shall be discharged of and from any and all further obligations arising in connection with the Proceeds or this Escrow Agreement. If a successor Escrow Agent has not accepted such appointment by the end of such 30-day period, the Escrow Agent may, in its sole discretion and after reasonable advance notice to the ASARCO Committee, apply to a court of competent jurisdiction for the appointment of a successor Escrow Agent or for other appropriate relief. The costs and expenses (including reasonable attorneys' fees and expenses) incurred by the Escrow Agent in connection with such proceeding shall be paid by, and be deemed an obligation of, the Plan Sponsor.

10. *Termination.* This Escrow Agreement shall terminate upon the release of all the SCC Shares or cash in exchange for the SCC Shares held by the Escrow Agent from the Escrow Account in accordance with Section 3 hereof. Upon termination of this Escrow Agreement, the Plan Sponsor shall be discharged from all obligations under this Escrow Agreement except for its obligations to the Escrow Agent under Sections 4 and 8 hereof and except with respect to the obligation of the Plan Sponsor to provide instruction and direction to the Escrow Agent as may be provided in this Escrow Agreement.

11. *Notice.* Except as expressly set forth elsewhere in this Escrow Agreement all notices, instructions and communications under this Escrow Agreement shall be in writing, shall be effective upon receipt and shall be sent via facsimile, email, U.S. mail or overnight courier addressed to the parties at their respective addresses listed below or to such other person or addresses as the relevant party shall designate from time to time in writing delivered in like manner:

If to the Plan Sponsor:

ASARCO Incorporated
Americas Mining Corporation
c/o Grupo Mexico, S.A.B. de C.V.
Edificio Pargue Reforma
Campos Eliseos No. 400, Piso 18
Col. Lomas de Chapultepec
11560 Mexico, D.F.
Mexico
Attn: Alberto de la Parra
Facsimile: 011-52-55-1103-5578
E-Mail: alberto.delaparra@mm.gmexico.com

With a copy to:

Milbank, Tweed, Hadley & McCloy LLP
1 Chase Manhattan Plaza
New York, NY 10005
Attn: Robert Jay Moore
Facsimile: 213-892-4701
E-Mail: rmoore@milbank.com

If to the Escrow Agent:

The Bank of New York Mellon
Escrow Group
101 Barclay Street
New York, NY 10271
Attn: Wendy Morgan
Facsimile: 732-667-9547
E-Mail: wendy.morgan1@bnymellon.com

If to the ASARCO Committee:

ASARCO Committee
c/o Reed Smith LLP
435 Sixth Avenue
Pittsburg, PA 15219
Attn: Paul M. Singer
Facsimile: 412-288-3063
E-Mail: psinger@reedsmith.com

Whenever under the terms hereof the time for giving a notice or performing an act falls upon a Saturday, Sunday, or banking holiday, such time shall be extended to the next day on which the Escrow Agent is open for business.

12. *Amendments.* No provision of this Escrow Agreement may be amended, waived, discharged or terminated except by an instrument in writing signed by the Plan Sponsor and the

Escrow Agent. No amendment to the Escrow Agreement shall, without the consent of the ASARCO Committee, alter the terms of the Escrow Agreement in a manner that would effect a material adverse change to the rights of the ASARCO Committee under the Escrow Agreement, or the amount of the SCC Stock or the Segregated Shares deposited in the Escrow Agreement

13. *Counterparts.* This Escrow Agreement may be executed in one or more counterparts, each of which shall be deemed original, and all of which together shall constitute one instrument.

14. *Governing Law; Successors and Assigns.* This Escrow Agreement shall be governed by and construed in accordance with the laws of the State of New York and shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto; *provided* that this Escrow Agreement may not be assigned by any party without the prior written consent of the other party.

The Plan Sponsor hereby submits to the personal jurisdiction of and each agrees that all proceedings relating hereto shall be brought in courts located within the City and State of New York. The Plan Sponsor hereby waives the right to trial by jury and to assert counterclaims in any such proceedings. To the extent that in any jurisdiction the Plan Sponsor may be entitled to claim, for itself or its assets, immunity from suit, execution, attachment (whether before or after judgment) or other legal process, each hereby irrevocably agrees not to claim, and hereby waives, such immunity. The Plan Sponsor waives personal service of process and consents to service of process by certified or registered mail, return receipt requested, directed to it at the address last specified for notices hereunder, and such service shall be deemed completed ten (10) calendar days after the same is so mailed. Notwithstanding the foregoing, the parties hereto acknowledge that the Bankruptcy Court shall have non-exclusive jurisdiction over this Escrow Agreement.

15. *Conflict with the Agreement.* In the case of any conflict between or ambiguity regarding any provision of this Escrow Agreement and the Plan, the Escrow Agreement shall govern.

16. *Miscellaneous.* (a) In the event of any ambiguity or uncertainty hereunder or in any notice, instruction or other communication received by the Escrow Agent hereunder, the Escrow Agent may, in its sole discretion, refrain from taking any action other than retain possession of the Escrow Account, unless the Escrow Agent receives written instructions, signed by the Plan Sponsor, and with notice to the ASARCO Committee, which eliminates such ambiguity or uncertainty.

(b) In the event of any dispute between or conflicting claims by or among the Plan Sponsor and any other person or entity with respect to the Escrow Account, the Escrow Agent shall be entitled, in its sole discretion, to refuse to comply with any and all claims, demands or instructions with respect to the Escrow Account so long as such dispute or conflict shall continue, and the Escrow Agent shall not be or become liable in any way to the Plan Sponsor for failure or refusal to comply with such conflicting claims, demands or instructions. The Escrow Agent shall be entitled to refuse to act until, in its sole discretion, either (i) such conflicting or adverse claims or demands shall have been determined by a final order, judgment or decree of a

court of competent jurisdiction, which order, judgment or decree is not subject to appeal, or settled by agreement between the conflicting parties as evidenced in a writing satisfactory to the Escrow Agent or (ii) the Escrow Agent shall have received security or an indemnity satisfactory to it sufficient to hold it harmless from and against any and all Losses which it may incur by reason of so acting. The Escrow Agent may, in addition, elect, in its sole discretion, to commence an interpleader action or seek other judicial relief or orders as it may deem, in its sole discretion, necessary. The costs and expenses (including reasonable attorneys' fees and expenses) incurred in connection with such proceeding shall be paid by, and shall be deemed a joint and several obligation of, the Plan Sponsor.

(c) The rights and remedies conferred upon the parties hereto shall be cumulative, and the exercise or waiver of any such right or remedy shall not preclude or inhibit the exercise of any additional rights or remedies. The waiver of any right or remedy hereunder shall not preclude the subsequent exercise of such right or remedy.

(d) The Plan Sponsor hereby represents and warrants (a) that this Escrow Agreement has been duly authorized, executed and delivered on its behalf and constitutes its legal, valid and binding obligation and (b) that the execution, delivery and performance of this Escrow Agreement by the Plan Sponsor does not and will not violate any applicable law or regulation.

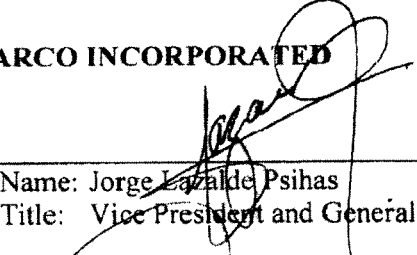
(e) The invalidity, illegality or unenforceability of any provision of this Escrow Agreement shall in no way affect the validity, legality or enforceability of any other provision; and if any provision is held to be enforceable as a matter of law, the other provisions shall not be affected thereby and shall remain in full force and effect.

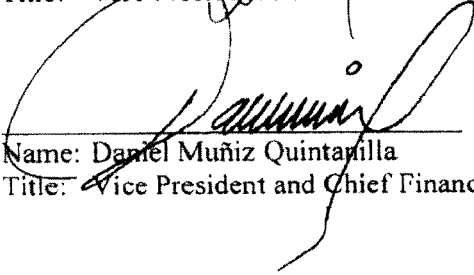
(f) The headings contained in this Escrow Agreement are for convenience of reference only and shall have no effect on the interpretation or operation hereof. Any payments of income from the Escrow Account shall be subject to withholding regulations then in force with respect to United States taxes. AMC will provide the Escrow Agent with appropriate W-9 forms for tax I.D., number certifications, or W-8 forms for non-resident alien certifications. It is understood that the Escrow Agent shall be responsible for such reporting as is required for U.S. federal, and any state or local income, franchise or similar tax purposes with respect to the Escrow Account and is not responsible for any other reporting.

(g) The Escrow Agent shall deliver to the ASARCO Committee a copy of all reports concerning the Escrow Agreement that are delivered by the Escrow Agent to the Plan Sponsor.

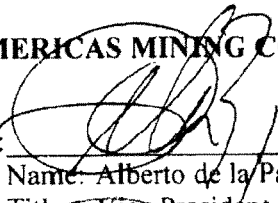
IN WITNESS WHEREOF, each of the parties hereto has caused this Escrow Agreement to be executed and delivered by its duly authorized officer(s) as of the date first written above.

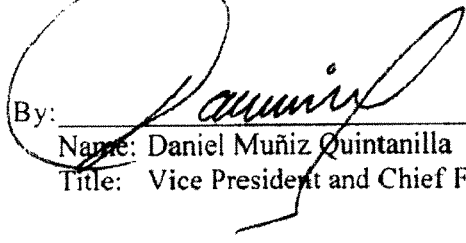
ASARCO INCORPORATED

By: 
Name: Jorge Lazalde Psihas
Title: Vice President and General Counsel

By: 
Name: Daniel Muñoz Quintanilla
Title: Vice President and Chief Financial Officer

AMERICAS MINING CORPORATION

By: 
Name: Alberto de la Parra Zavala
Title: Vice President Legal, General Counsel and Secretary

By: 
Name: Daniel Muñoz Quintanilla
Title: Vice President and Chief Financial Officer

IN WITNESS WHEREOF, each of the parties hereto has caused this Escrow Agreement to be executed and delivered by its duly authorized officer(s) as of the date first written above.

THE BANK OF NEW YORK MELLON

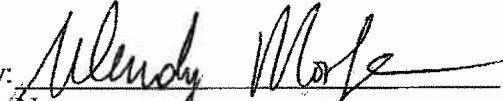
By: 
Name: _____
Title: **WENDY MORGAN**
SENIOR ASSOCIATE

EXHIBIT A

Form of Creditors' Pre-Confirmation Default Notice

The Bank of New York Mellon
Escrow Group
101 Barclay Street
New York, NY 10271
Attn: Wendy Morgan
Facsimile: 732-667-9547

VIA FACSIMILE

Reference is made to that certain Escrow Agreement dated as of July 30, 2009 (the "**Escrow Agreement**") by and among ASARCO Incorporated, a Delaware corporation (the "**Parent**"), Americas Mining Corporation ("**AMC**", and together with the Parent, the "**Plan Sponsor**") and The Bank of New York Mellon (the "**Escrow Agent**"). Capitalized terms used but not otherwise defined herein shall have the meanings specified in the Escrow Agreement. The undersigned hereby certifies that he or she is the Authorized Creditor Representative and is authorized to execute this Creditors' Pre-Confirmation Default Notice (the "**Notice**") on behalf of the ASARCO Committee.

This Notice is provided to you pursuant to section 3(a) of the Escrow Agreement. The undersigned hereby certifies to you that:

1. *(check any of the following, as appropriate):*

- Prior to the date upon which the Plan is Confirmed (as defined in the Plan), the Plan Sponsor withdrew or terminated the Plan without the written consent of the ASARCO Committee *(provided, however, that this condition is not satisfied if either (i) at the time of such withdrawal, a plan other than the Plan is Confirmed (as defined in the Plan), or (ii) the Debtors and the Parent have entered into a settlement agreement with Debtor ASARCO LLC with respect to the Final Judgment entered against the Parent in the United States District Court for the Southern District of Texas (Brownsville Division) on April 15, 2009, and related litigation, and such settlement has been approved by an order entered in the Bankruptcy Case); or*
- Prior to the date upon which the Plan is Confirmed, the Plan Sponsor modified or amended the Plan in a manner that would effect a material adverse change to the treatment proposed to be given unsecured creditors under the Sixth Amended Plan as filed on July 30, 2009; *provided, however, that such modification or amendment that provided for the cure and reinstatement of any obligation, including but not limited to any series of bond indebtedness, consistent with 11 U.S.C. Section 1124(2) (but excluding any Environmental Trust Claims or Environmental Unsecured Claims which may not be reinstated) shall not be*

deemed to constitute a material adverse change to such Plan for purposes of this Notice or the Escrow Agreement, and

2. the ASARCO Committee has given at least 10 days notice to the Plan Sponsor prior to delivery of this Notice,

and the ASARCO Committee hereby directs you to:

- (upon deposit by the Plan Sponsor of an amount in cash equal to \$125,000,000 (in exchange for the Segregated Shares)) disburse to the Plan Sponsor the Segregated Shares and all other shares of the common stock of Southern Copper Corporation (“**SCC Common Stock**”) registered in the name of AMC on deposit and held by the Escrow Agent under the Escrow Agreement via stock transfer of the SCC Common Stock as follows:

[Add Plan Sponsor’s Stock Transfer Instructions]

and the ASARCO Committee hereby directs you to disburse such cash in the amount of \$125,000,000 on deposit and held by the Escrow Agent via wire transfer of immediately available funds as follows:

[Add ASARCO Committee’s wire transfer instructions]

for delivery to the estate of ASARCO LLC.

OR

- (if the Plan Sponsor fails to deposit an amount in cash equal to \$125,000,000 by the fifth business day after delivery of this Notice) disburse the Segregated Shares of SCC Common Stock on deposit and held by the Escrow Agent under the Escrow Agreement via stock transfer of the SCC Common Stock as follows:

[Add ASARCO Committee’s Stock Transfer Instructions]

for delivery to the estate of ASARCO LLC,

and disburse to the Plan Sponsor all other shares of SCC Common Stock registered in the name of AMC on deposit and held by the Escrow Agent under the Escrow Agreement via stock transfer of the SCC Common Stock as follows:

[Add Plan Sponsor’s Stock Transfer Instructions]

This Notice may be signed in multiple counterparts.

IN WITNESS WHEREOF, the undersigned have executed this Creditors' Pre-Confirmation Default Notice as of the __ day of _____, 20__.

ASARCO COMMITTEE

By: _____

Name:

Title: Authorized representative of the ASARCO Committee

I, [Name], Counsel to the ASARCO Committee, do hereby certify that the person whose name appears above has been duly elected or appointed, has duly qualified, and on this day is the authorized representative of the ASARCO Committee, and that the signature above is his/her genuine signature.

Witness my hand this __ day of _____, 20__.

By: _____

Name:

Title: Counsel to the ASARCO Committee

EXHIBIT B

Form of Creditors' Post-Confirmation Default Notice

The Bank of New York Mellon
Escrow Group
101 Barclay Street
New York, NY 10271
Attn: Wendy Morgan
Facsimile: 732-667-9547

VIA FACSIMILE

Reference is made to that certain Escrow Agreement dated as of July 30, 2009 (the "**Escrow Agreement**") by and among ASARCO Incorporated, a Delaware corporation (the "**Parent**"), Americas Mining Corporation ("**AMC**", and together with the Parent, the "**Plan Sponsor**") and The Bank of New York Mellon (the "**Escrow Agent**"). Capitalized terms used but not otherwise defined herein shall have the meanings specified in the Escrow Agreement. The undersigned hereby certifies that he or she is the Authorized Creditor Representative and is authorized to execute this Creditors' Post-Confirmation Default Notice (the "**Notice**") on behalf of the ASARCO Committee.

This Notice is provided to you pursuant to Section 3(b) of the Escrow Agreement. The undersigned hereby certifies to you that:

1. *(check any of the following, as appropriate):*

- From and after the Confirmation Date of the Plan, the Plan Sponsor withdrew or terminated the Plan absent an order entered by the Bankruptcy Court authorizing such withdrawal or termination; or
- The Plan was not Consummated by the date that is thirty days after the Plan is Confirmed (as defined in the Plan) (provided, however, that (w) the failure to Consummate (as defined in the Plan) the Plan was not solely due to the failure to receive executed, delivered, or filed Parent's Plan Documents (as defined in the Plan) from third parties as required by Article 9.3(b) of the Plan because of circumstances beyond the control of the Plan Sponsor, (x) the Plan Sponsor has not terminated or withdrawn the Plan with the consent of the ASARCO Committee and in a manner consistent with an order entered by the Bankruptcy Court authorizing such withdrawal or termination, (y) a stay of the Confirmation Order is not in effect, or (z) on any date after December 31, 2009, a stay of the Confirmation Order was not in effect on December 31, 2009); or
- the Plan Sponsor modified or amended the Plan after the Confirmation Date of the Plan and before the Effective Date in a manner that would effect a material adverse change to the treatment proposed to be given unsecured creditors under the Plan, as Confirmed (*provided, however, that such modification or amendment*

that provided for the cure and reinstatement of any obligation, including but not limited to any series of bond indebtedness, consistent with 11 U.S.C. Section 1124(2) (but excluding any Environmental Trust Claims or Environmental Unsecured Claims which may not be reinstated) shall not be deemed to constitute a material adverse change to such Plan for purposes of this Notice or the Escrow Agreement), and

2. the ASARCO Committee has given at least 10 days notice to the Plan Sponsor prior to delivery of this Notice,

and the ASARCO Committee hereby directs you to disburse _____ shares of the common stock of Southern Copper Corporation (“**SCC Common Stock**”), representing an aggregate value equal to \$1,300,000,000 as of the date hereof, on deposit and held by the Escrow Agent under the Escrow Agreement via stock transfer of the SCC Common Stock as follows:

[Add ASARCO Committee’s Stock Transfer Instructions]

for delivery to the estate of ASARCO LLC.

[and disburse to the Plan Sponsor all other shares of SCC Common Stock registered in the name of AMC on deposit and held by the Escrow Agent under the Escrow Agreement via stock transfer of the SCC Common Stock as follows:

[Add Plan Sponsor’s Stock Transfer Instructions]]¹

This Notice may be signed in multiple counterparts.

¹ Insert the bracketed language if the Escrow Agent is being directed to deliver only a portion of the SCC Shares to the ASARCO Committee.

IN WITNESS WHEREOF, the undersigned have executed this Creditors' Post-Confirmation Default Notice as of the __ day of _____, 20__.

ASARCO COMMITTEE

By: _____

Name:

Title: Authorized representative of the ASARCO Committee

I, [Name], Counsel to the ASARCO Committee, do hereby certify that the person whose name appears above has been duly elected or appointed, has duly qualified, and on this day is the authorized representative of the ASARCO Committee, and that the signature above is his/her genuine signature.

Witness my hand this __ day of _____, 20__.

By: _____

Name:

Title: Counsel to the ASARCO Committee

EXHIBIT C

Form of Plan Sponsor's Pre-Confirmation Termination Notice

The Bank of New York Mellon
Escrow Group
101 Barclay Street
New York, NY 10271
Attn: Wendy Morgan
Facsimile: 732-667-9547

VIA FACSIMILE

Reference is made to that certain Escrow Agreement dated as of July 30, 2009 (the "**Escrow Agreement**") by and among ASARCO Incorporated, a Delaware corporation (the "**Parent**"), Americas Mining Corporation ("**AMC**", and together with the Parent, the "**Plan Sponsor**") and The Bank of New York Mellon (the "**Escrow Agent**"). Capitalized terms used but not otherwise defined herein shall have the meanings specified in the Escrow Agreement. Each of the undersigned hereby certifies that he or she is an Authorized Plan Sponsor Representative and is authorized to execute this Plan Sponsor's Pre-Confirmation Termination Notice (the "**Notice**") on behalf of the Parent or AMC, as the case may be.

This Notice is provided to you pursuant to section 3(a) of the Escrow Agreement. We hereby certify to you that:

1. *(check any of the following, as appropriate):*

- The Plan Sponsor has terminated or withdrawn the Plan with the consent of the ASARCO Committee; or
 - The Plan Sponsor has terminated or withdrawn the Plan after entry of an order in the Bankruptcy Case approving a settlement agreement with Debtor ASARCO LLC with respect to the Final Judgment entered against the Parent in the United States District Court for the Southern District of Texas (Brownsville Division) on April 15, 2009, and related litigation; or
 - A plan other than the Plan was Confirmed pursuant to an entered Confirmation Order, and
2. The Plan Sponsor has given at least 10 days notice to the ASARCO Committee prior to the delivery of this notice,

and the Plan Sponsor directs you to return the SCC Shares to the Plan Sponsor via stock transfer of shares of the common stock of Southern Copper Corporation as follows:

[Add Plan Sponsor's Stock Transfer Instructions]

This Notice may be signed in multiple counterparts.

IN WITNESS WHEREOF, the undersigned have executed this Plan Sponsor's Pre-Confirmation Termination Notice as of the __ day of _____, 20__.

ASARCO INCORPORATED

By: _____
Name:
Title:

AMERICAS MINING CORPORATION

By: _____
Name:
Title:

By: _____
Name:
Title:

EXHIBIT D

Form of Plan Sponsor's Post-Confirmation Termination Notice

The Bank of New York Mellon
Escrow Group
101 Barclay Street
New York, NY 10271
Attn: Wendy Morgan
Facsimile: 732-667-9547

VIA FACSIMILE

Reference is made to that certain Escrow Agreement dated as of July 30, 2009 (the "**Escrow Agreement**") by and among ASARCO Incorporated, a Delaware corporation (the "**Parent**"), Americas Mining Corporation ("**AMC**"), and together with the Parent, the "**Plan Sponsor**") and The Bank of New York Mellon (the "**Escrow Agent**"). Capitalized terms used but not otherwise defined herein shall have the meanings specified in the Escrow Agreement. Each of the undersigned hereby certifies that he or she is an Authorized Plan Sponsor Representative and is authorized to execute this Plan Sponsor's Post-Confirmation Termination Notice (the "**Notice**") on behalf of the Parent or AMC, as the case may be.

This Second Termination Notice is provided to you pursuant to section 3(b) of the Escrow Agreement. We hereby certify to you that:

1. *(check any of the following, as appropriate):*

From and after the Confirmation Date of the Plan, the Plan Sponsor has terminated or withdrawn the Plan with the consent of the ASARCO Committee and in a manner consistent with an order entered by the Bankruptcy Court authorizing such withdrawal or termination; or

A stay of the Confirmation Order was in effect on December 31, 2009, or thereafter, and

2. The Plan Sponsor has given at least 10 days notice to the ASARCO Committee prior to the delivery of this notice,

and the Plan Sponsor directs you to return the SCC Shares to the Plan Sponsor via stock transfer of shares of the common stock of Southern Copper Corporation as follows:

[Add Plan Sponsor's Stock Transfer Instructions]

This Notice may be signed in multiple counterparts.

IN WITNESS WHEREOF, the undersigned have executed this Plan Sponsor's Post-Confirmation Termination Notice as of the __ day of _____, 20__.

ASARCO INCORPORATED

By: _____
Name:
Title:

AMERICAS MINING CORPORATION

By: _____
Name:
Title:

By: _____
Name:
Title:

EXHIBIT E

Form of Final Notice

The Bank of New York Mellon
Escrow Group
101 Barclay Street
New York, NY 10271
Attn: Wendy Morgan
Facsimile: 732-667-9547

VIA FACSIMILE

Reference is made to that certain Escrow Agreement dated as of July 30, 2009 (the “**Escrow Agreement**”) by and among ASARCO Incorporated, a Delaware corporation (the “**Parent**”), Americas Mining Corporation (“**AMC**”, and together with the Parent, the “**Plan Sponsor**”) and The Bank of New York Mellon (the “**Escrow Agent**”). Capitalized terms used but not otherwise defined herein shall have the meanings specified in the Escrow Agreement. Each of the undersigned hereby certifies that he or she is an Authorized Plan Sponsor Representative and is authorized to execute this Final Notice on behalf of the Parent or AMC, as the case may be.

This Final Notice is provided to you pursuant to Section 3(c) of the Escrow Agreement. We hereby certify to you that

1. the Effective Date has occurred, and
2. the Plan Sponsor has given at least 10 days notice to the ASARCO Committee prior to the delivery of this notice,

and the Plan Sponsor directs you to disburse the SCC Shares via stock transfer of shares of the common stock of Southern Copper Corporation as follows:

[Add Plan Sponsor’s Stock Transfer Instructions]

This Final Notice may be signed in multiple counterparts.

IN WITNESS WHEREOF, the undersigned have executed this Final Notice as of the ___ day of _____, 20__.

ASARCO INCORPORATED

By: _____
Name:
Title:

AMERICAS MINING CORPORATION

By: _____
Name:
Title:

By: _____
Name:
Title:

EXHIBIT F

Escrow Agent Fees

Fee Schedule

Upon appointment of The Bank of New York Mellon (“BNY Mellon”) as Escrow Agent, the Plan Sponsor, as defined in the escrow agreement, shall be responsible for the payment of the fees, expenses and charges as set forth in this Fee Schedule.

General Fees

(1)

Acceptance Fee	Waived
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This one time charge is payable at the time of the closing and includes the review and execution of the agreement and all documents submitted in support thereof and establishment of accounts.

Annual Administration Fee	\$ 7,500
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An annual fee of \$7,500 will cover the duties and responsibilities related to account administration and servicing, which may include maintenance of accounts on various systems, custody and securities servicing, reporting, etc. This fee is payable in advance for the year and shall not be prorated.

Investment Compensation	
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With respect to investments in money market mutual funds for which BNY Mellon provides shareholder services BNY Mellon (or its affiliates) may also receive and retain additional fees from the mutual funds (or their affiliates) for shareholder services as set forth in the Authorization and Direction to BNY Mellon to Invest Cash Balances in Money Market Mutual Funds.

BNY Mellon will charge a \$25.00 transaction fee for each purchase, sale, or redemption of securities other than the aforementioned Money Market Mutual Funds.

With respect to investments in Dreyfus Money Market Funds, BNY Mellon (or its affiliates) also will be compensated by the Fund for investment advisory and other services.

Disbursement Fee (Check or Wire)

\$ 25.00 per disbursement

A fee of \$25.00 will be assessed for each disbursement.

Counsel Fees

If counsel is retained by BNY Mellon, a fee covering the fees and expenses of Counsel for its services, including review of governing documents, communication with members of the closing party (including representatives of the purchaser, investment banker(s), attorney(s) and BNY Mellon), attendance at meetings and the closing, and such other services as BNY Mellon may deem necessary. The Counsel fee will be the actual amount of the fees and expenses charged by Counsel and is payable at closing. Should closing not occur, you would still be responsible for payment of Counsel fees and expenses.

Miscellaneous Fees

The fees for performing extraordinary or other services not contemplated at the time of the execution of the transaction or not specifically covered elsewhere in this schedule will be commensurate with the service to be provided and will be charged in BNY Mellon's sole discretion. These extraordinary services may include, but are not limited to: proxy dissemination/tabulation, customized reporting and/or procedures, electronic account access, etc. Counsel, accountants, special agents and others will be charged at the actual amount of fees and expenses billed.

Out-of-Pocket Expenses

Additional out-of-pocket expenses may include, but are not limited to, telephone; facsimile; courier; copying; postage; supplies; expenses of foreign depositaries; and expenses of BNY Mellon's representative(s) and Counsel for attending special meetings. Fees and expenses of BNY Mellon's representatives and Counsel will be charged at the actual amount of fees and expenses charged and all other expenses will be charged at cost or in an amount equal to 5% of all expenses billed for the year, in BNY Mellon's discretion, and BNY Mellon may charge certain expenses at cost and others on a percentage basis.

(2) Terms and Disclosures

TERMS OF PROPOSAL

Final acceptance of the appointment as escrow agent under the escrow agreement is subject to approval of authorized officers of BNY Mellon and full review and execution of all documentation related hereto. Please note that if this transaction does not close, you will be responsible for paying any expenses incurred, including Counsel fees. We reserve the right to terminate this offer if we do not enter into final written documents within three months from the date this document is first transmitted to you. Fees may be subject to adjustment during the life of the engagement.

MISCELLANEOUS

The terms of this Fee Schedule shall govern the matters set forth herein and shall not be superseded or modified by the terms of the escrow agreement. This Fee Schedule shall be governed by the laws of the State of New York without reference to laws governing conflicts. BNY Mellon and the undersigned agree to jurisdiction of the federal and state courts located in the City of New York, State of New York.

CUSTOMER NOTICE REQUIRED BY THE USA PATRIOT ACT

To help the US government fight the funding of terrorism and money laundering activities, US Federal law requires all financial institutions to obtain, verify, and record information that identifies each person (whether an individual or organization) for which a relationship is established.

What this means to you: When you establish a relationship with BNY Mellon, we will ask you to provide certain information (and documents) that will help us to identify you. We will ask for your organization's name, physical address, tax identification or other government registration number and other information that will help us to identify you. We may also ask for a Certificate of Incorporation or similar document or other pertinent identifying documentation for your type of organization.

We thank you for your assistance.

Accepted By:

For The Bank of New York Mellon:

Signature: _____

Date: _____

Name: _____

Title: _____

Signature: _____

Date: _____

Name: _____

Title:

Signature:	
Date:	
Name:	
Title:	

Who's helping you?

As a leader in securities services and the world's foremost corporate trust provider, we have in-depth knowledge of specialized products and services, a profound understanding of local markets around the world, and vast global capabilities. These attributes, combined with our ability to work collaboratively with clients, enable us to define and develop solutions that address your unique needs.

Who's helping you succeed in the world's financial markets? Turn to The Bank of New York Mellon.

AMENDED AND RESTATED ESCROW AGREEMENT

This Amended and Restated Escrow Agreement, amending and restating the June Escrow Agreement (as defined below) (the “**Escrow Agreement**”), is made and entered into as of July ~~1~~,30, 2009 by and among ASARCO Incorporated, a Delaware corporation (the “**Parent**”), Americas Mining Corporation (“**AMC**”, and together with the Parent, the “**Plan Sponsor**”) and The Bank of New York Mellon (the “**Escrow Agent**,” and collectively with the Parent and AMC, the “**Parties**”).

WHEREAS, the Plan Sponsor is the sponsor of the ASARCO Incorporated and Americas Mining Corporation's Modified ~~Fifth~~Sixth Amended Plan of Reorganization for the Debtors Under Chapter 11 of the United States Bankruptcy Code Dated July ~~2~~,30, 2009 (the “~~Fifth~~Sixth **Amended Plan**”, as it may be further modified or amended, the “**Plan**”) for ASARCO LLC, a Delaware limited liability company and certain of its affiliates, filed in the chapter 11 bankruptcy case captioned *In re ASARCO LLC, et al.*, Case No. 05-21207 (the “**Bankruptcy Case**”);

WHEREAS, in support of the Plan, the Plan Sponsor entered into an escrow agreement with the Escrow Agent dated June 29, 2009 (the “**June Escrow Agreement**”), pursuant to which it deposited on the date thereof 67,280,000 shares of stock of Southern Copper Corporation, a Delaware corporation (the “**SCC Shares**”), into the escrow account established thereby to backstop the Plan Sponsor's obligations under the Plan;

WHEREAS, the Plan Sponsor desires that a number of the SCC Shares deposited pursuant to this Escrow Agreement with a value sufficient to generate upon sale net proceeds of \$125,000,000 be available for liquidation as a forfeitable deposit upon the circumstances described in Section 3(a) below;

WHEREAS, the Plan Sponsor desires that the SCC Shares deposited pursuant to this Escrow Agreement be available as a forfeitable deposit upon the circumstances described in Section 3(b) below;

WHEREAS, the Plan Sponsor requires the services of an escrow agent to hold in escrow the SCC Shares and to disburse the SCC Shares, or the proceeds from the exchange of certain SCC Shares in accordance with Sections 3(a) and 3(b) below, in accordance with this Escrow Agreement;

WHEREAS, the Parties understand that the ASARCO Committee (as defined in the Plan, the “**ASARCO Committee**”) has certain rights as a third party beneficiary under this Escrow Agreement;

WHEREAS, the Plan Sponsor and the Escrow Agent desire to amend and restate the June Escrow Agreement.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

1. *Appointment of Escrow Agent; Investment.* The Escrow Agent agrees to act as escrow agent subject to the terms and conditions set forth herein and, as such, to establish an appropriate segregated account designated as the “ASARCO INC - AMC ESC ACCT# 2, Account No. 331329” (the “**Escrow Account**”). The Escrow Agent shall cause the SCC Shares transmitted to it by or on behalf of the Plan Sponsor to be held in the Escrow Account in accordance with Section 3 hereof.

The Escrow Agent shall maintain accurate records of all transactions made in the Escrow Account. Promptly after the termination of the Escrow Account, or as may be reasonably requested by the Plan Sponsor before such termination, the Escrow Agent shall provide the Plan Sponsor with the complete copy of accurate records of all transactions in the Escrow Account. Each such statement shall be deemed to be correct and final upon receipt thereof by the Plan Sponsor unless the Escrow Agent is notified in writing to the contrary within thirty (30) days of such receipt. The Authorized Plan Sponsor Representatives (as defined below) shall also have access to such books and records at all reasonable times during normal business hours upon reasonable notice to the Escrow Agent.

The Escrow Agent shall not be responsible in any respect for the form, execution, validity, value or genuineness of documents or securities deposited hereunder, or for any description therein, or for the identity, authority or rights of persons executing or delivering or purporting to execute or deliver any such document, security or endorsement; *provided, however*, that the Escrow Agent shall exercise reasonable care in the discharge of its duties and the custody of the SCC Shares held in the Escrow Account under this Escrow Agreement.

The duties, responsibilities and obligations of the Escrow Agent shall be limited to those expressly set forth herein and no duties, responsibilities or obligations shall be inferred or implied. The Escrow Agent shall not be subject to, nor required to comply with, any other agreement (i) between or among any or all of any Plan Sponsor and any holder of a Claim, Demand or Interest (each such term as defined in the Plan; and all holders of Claims, Demands and Interests, other than the Plan Sponsor and its subsidiaries and affiliates other than the Debtors (as defined in the Plan, the “**Debtors**”), referred to herein collectively as the “**ASARCO Creditors**”), or (ii) to which any Plan Sponsor or ASARCO Creditor is a party, even though reference thereto may be made herein, or (iii) to comply with any direction or instruction from any Plan Sponsor or ASARCO Creditor or any entity acting on its behalf other than any direction or instruction contained herein or delivered in accordance with this Escrow Agreement. The Escrow Agent shall not be required to, and shall not, expend or risk any of its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder.

This Escrow Agreement is for the exclusive benefit of the Parties and their respective successors hereunder, and to the extent provided herein, the ASARCO Committee, and shall not be deemed to give, either express or implied, any legal or equitable right, remedy, or claim to any other entity or person whatsoever ~~other than the respective rights of: (i) the ASARCO Committee (as defined in the Plan, the “ASARCO Committee”, which shall be deemed to be a third party beneficiary of this Escrow Agreement, with the right to seek to enforce its rights under this Escrow Agreement) to~~. The ASARCO Committee shall have the right pursuant to Section 3 below to (i) deliver to the Plan Sponsor and the Escrow Agent a notice in the form attached hereto as Exhibit A (the “**Creditors’ Pre-Confirmation Default Notice**”), and thereby cause the Escrow Agent to

deliver from the Escrow Account to the estate of ASARCO LLC \$125,000,000; *provided, however*, that the ASARCO Committee shall not be entitled to deliver the Creditors' Pre-Confirmation Default Notice if (x) the Plan Sponsor terminates ~~and/or~~ withdraws the Plan with the consent of the ASARCO Committee, (y) the Plan Sponsor terminates ~~and/or~~ withdraws the Plan after entry of an order in the Bankruptcy Case approving a settlement agreement with Debtor ASARCO LLC with respect to the Final Judgment (the "**Final Judgment**") entered against the Parent in the United States District Court for the Southern District of Texas (Brownsville Division) on April 15, 2009, and related litigation, or (z) a plan other than the Plan is Confirmed (as defined in the Plan) pursuant to an entered Confirmation Order (as defined in the Plan, a "**Confirmation Order**"); (ii) ~~the ASARCO Committee to~~ deliver to the Plan Sponsor, the Debtors, and the Escrow Agent a notice in the form attached hereto as Exhibit B (the "**Creditors' Post-Confirmation Default Notice**"), and thereby cause the Escrow Agent to deliver from the Escrow Account to the estate of ASARCO LLC \$1,300,000,000; *provided, however*, that the ASARCO Committee shall not be entitled to deliver the Creditors' Post-Confirmation Default Notice ~~if (x)~~ (w) if the failure to Consummate (as defined in the Plan) the Plan is solely due to the failure to receive executed, delivered, or filed Parent's Plan Documents (as defined in the Plan) from third parties as required by Article 9.3(b) of the Plan because of circumstances beyond the control of the Plan Sponsor, (x) if from and after the Confirmation Date (as defined in the Plan, the "**Confirmation Date**") of the Plan, the Plan Sponsor terminates ~~and/or~~ withdraws the Plan with the consent of the ASARCO Committee and in a manner consistent with an order entered by the Bankruptcy Court (as defined in the plan, the "**Bankruptcy Court**") authorizing such withdrawal or termination, (y) ~~all conditions to the Effective Date (as defined in the Plan, the "Effective Date") (other than the conditions specified in Sections 9.1(f) and (g) of the Plan) have not occurred by November 30, 2009, or (z) the Effective Date does not occur by December 31, 2009;~~ (iii) the Plan Sponsor to on any date on which a stay of the Confirmation Order is in effect, or (z) on any date after December 31, 2009 if a stay of the Confirmation Order is in effect on December 31, 2009. The Plan Sponsor shall have the right pursuant to Section 3 below to (i) deliver to the ASARCO Committee and the Escrow Agent a notice in the form attached hereto as Exhibit C (the "**Plan Sponsor's Pre-Confirmation Termination Notice**"), and thereby cause the Escrow Agent to return the SCC Shares to the Plan Sponsor, as directed in writing by the Plan Sponsor; ~~(iv) the Plan Sponsor to (ii)~~ deliver to the ASARCO Committee, the Debtors, and the Escrow Agent a notice in the form attached hereto as Exhibit D (the "**Plan Sponsor's Post-Confirmation Termination Notice**"), and thereby cause the Escrow Agent to return the SCC Shares to the Plan Sponsor, as directed in writing by the Plan Sponsor; ~~(v) the Plan Sponsor to (iii)~~ deliver to the Escrow Agent a notice in the form attached hereto as Exhibit E (the "**Final Notice**"), and thereby cause the Escrow Agent to return the SCC Shares to the Plan Sponsor, as directed in writing by the Plan Sponsor; ~~and (vi).~~ The Plan Sponsor shall indemnify the ASARCO Committee ~~'s right to be indemnified by the Plan Sponsor~~ against any and all Losses (as defined below) arising in any action in which the ASARCO Committee is a defendant from or in connection with or related to the delivery of any notice under this Escrow Agreement (including but not limited to Losses incurred or sustained by the ASARCO Committee in connection with its successful defense, in whole or in part, of any claim of gross negligence or willful misconduct on its part); *provided, however*, that nothing contained herein shall require the indemnification of the ASARCO Committee for Losses caused by its gross negligence or willful misconduct, bad faith or intentional wrongdoing. The ASARCO Committee shall have the right as a third party beneficiary of this Escrow Agreement to enforce its rights under this Escrow Agreement.

If at any time the Escrow Agent is served with any judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process which in any way affects the Escrow Account (including but not limited to orders of attachment or garnishment or other forms of levies or injunctions or stays relating to the transfer of the Escrow Account), the Escrow Agent is authorized to comply therewith in any manner as it or its legal counsel of its own choosing deems appropriate; and if the Escrow Agent complies with any such judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process, the Escrow Agent shall not be liable to any of the parties hereto or to any other person or entity even though such order, judgment, decree, writ or process may be subsequently modified or vacated or otherwise determined to have been without legal force or effect; *provided, however*, that prior to complying with any such judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process, the Escrow Agent shall give at least 10 days notice to the Plan Sponsor and the ASARCO Committee. Notwithstanding the foregoing sentence, in the event that the Escrow Agent is required by any judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process to comply therewith before the Escrow Agent is able to give at least 10 days notice to the Plan Sponsor and the ASARCO Committee, the Escrow Agent shall be deemed to be in compliance with the notice requirement set forth in the immediately preceding sentence so long as it promptly delivers such notice to the Plan Sponsor and the ASARCO Committee.

2. *Deposit of Fund Assets.* (a) The SCC Shares will remain on deposit in accordance with the terms of this Escrow Agreement.

(b) The Plan Sponsor shall designate to the Escrow Agent certain of the deposited SCC Shares with an aggregate value equal to \$125,000,000, computed by the Plan Sponsor based on the average of the last reported sale price of shares of stock of Southern Copper Corporation (“**SCC Stock**”) during a period of twenty (20) consecutive trading days ending within the five (5) business days before the applicable date of determination (such shares being hereinafter referred to as the “**Segregated Shares**”, and the aggregate value of the Segregated Shares, as so computed, being hereinafter referred to as the “**Segregated Share Value**”, and the remaining SCC Shares being hereinafter referred to as the “**Non-Segregated Shares**”, and the aggregate of the Segregated Share Value and the value of the Non-Segregated Shares, as so computed, being hereinafter referred to as the “**SCC Share Value**”). It is understood and acknowledged that the Escrow Agent need not make any inquiry or determination with respect to the computations made by the Plan Sponsor pursuant to this Escrow Agreement.

(c) On the date hereof, the Plan Sponsor shall provide a certification of the calculation of the Segregated Share Value to the Escrow Agent and to the ASARCO Committee (a “**Pre-Confirmation Certification**”). The Plan Sponsor shall also provide to the same parties a Pre-Confirmation Certification updating the Segregated Share Value at the end of each ten (10) consecutive trading day period after the date of the initial Certification up to and including the date upon which a Confirmation Order is entered with respect to the Plan or any plan other than the Plan or such earlier date as is the subject of a Plan Sponsor's Pre-Confirmation Termination Notice.

As of any date on which the Plan Sponsor is required to provide a Pre-Confirmation Certification pursuant to the immediately preceding paragraph, if the Segregated Share Value is less than \$125,000,000, the Plan Sponsor shall deliver a certification to the Escrow Agent (a copy

of which shall be simultaneously sent to the ASARCO Committee) indicating the occurrence of the shortfall, and the Plan Sponsor shall re-designate in accordance with its Pre-Confirmation Certification a number of Non-Segregated Shares to become Segregated Shares, or alternatively, if there are not sufficient Non-Segregated Shares, promptly deposit sufficient additional shares of stock of Southern Copper Corporation into the Escrow Account, to, in either case, cause the Segregated Share Value, after giving effect to such re-designation or deposit, to equal at least \$125,000,000.

(d) On the date of and following the entry of a Confirmation Order confirming the Plan, the Plan Sponsor shall provide a certification of the calculation of the SCC Share Value to the Escrow Agent, the ASARCO Committee, and the Debtors (a “**Post-Confirmation Certification**”). The Plan Sponsor shall also provide to the same parties a Post-Confirmation Certification updating the SCC Share Value at the end of each ten (10) consecutive trading day period after the date of the initial Post-Confirmation Certification up to and including the Effective Date of the Plan or such earlier date as is the subject of a Plan Sponsor's Post-Confirmation Termination Notice.

As of any date on which the Plan Sponsor is required to provide a Post-Confirmation Certification pursuant to the immediately preceding paragraph, if the SCC Share Value is less than \$1,300,000,000, the Plan Sponsor shall deliver a certification to the Escrow Agent (a copy of which shall be simultaneously sent to the ASARCO Committee and the Debtors) indicating the occurrence of the shortfall, and the Plan Sponsor shall deposit in the Escrow Account in accordance with its Post-Confirmation Certification a number of additional shares of SCC Stock such that the aggregate value of the SCC Shares and the value of the additional shares equal at least \$1,300,000,000, and the Plan Sponsor promptly shall deposit such additional shares into the Escrow Account.

(e) For purposes of this Section 2, (i) the “**last reported sale price**” of each share of SCC Stock on any date means the closing sale price per share of SCC Stock (or if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices) on that date as reported in composite transactions for the principal U.S. national or regional securities exchange on which shares of SCC Stock are listed for trading. If shares of SCC Stock are not listed for trading on a U.S. national or regional securities exchange on the relevant date, the “last reported sale price” will be the last quoted bid price for shares of SCC Stock in the over-the-counter market on the relevant date as reported by the National Quotation Bureau or similar organization. If shares of SCC Stock are not so quoted, the “last reported sale price” will be the average of the mid-point of the last bid and ask prices for shares of SCC Stock on the relevant date from each of at least three nationally recognized independent investment banking firms selected by the Plan Sponsor for this purpose; (ii) “**trading day**” means a day during which trading in shares of SCC Stock occurs on the principal U.S. national or regional securities exchange on which shares of SCC Stock are listed for trading and during which there is no market disruption event; provided that if shares of SCC Stock are not listed for trading on a U.S. national or regional securities exchange, trading day will mean a business day; and (iii) the term “**market disruption event**” means (1) a failure by the primary exchange or quotation system on which shares of SCC Stock trade or are quoted to open for trading during its regular trading session or (2) the occurrence or existence on any trading day for shares of SCC Stock of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the stock exchange or otherwise) in shares of SCC Stock or

in any options, contracts or future contracts relating to shares of SCC Stock for an aggregate period in excess of one half hour.

(f) All property deposited into the Escrow Account and all interest and earnings thereon or proceeds derived therefrom, shall remain the property of AMC for U.S. federal and all state or local income, franchise or similar tax purposes. The parties hereto shall take no position inconsistent with that treatment.

3. *Disbursement and Release of the SCC Shares.*

(a) If prior to the date upon which the Plan is Confirmed (as defined in the Plan), (i) the Plan Sponsor withdraws ~~and/or~~ terminates the Plan without the written consent of the ASARCO Committee (*provided, however*, that this condition is not satisfied if either (A) at the time of such withdrawal, a plan other than the Plan ~~was the subject of an entered Confirmation Order~~ is Confirmed (as defined in the Plan), or (B) the Debtors and the Parent have entered into a settlement agreement with Debtor ASARCO LLC with respect to the Final Judgment entered against the Parent in the United States District Court for the Southern District of Texas (Brownsville Division) on April 15, 2009, and related litigation, and such settlement has been approved by an order entered in the Bankruptcy Case), or (ii) the Plan Sponsor modifies or amends the Plan in a manner that would effect a material adverse change to the treatment proposed to be given unsecured creditors under the ~~Fifth~~ Sixth Amended Plan as filed on July ~~2, 30,~~ 2009; (*provided, however*, that such modification or amendment that provides for the cure and reinstatement of any obligation, including but not limited to any series of bond indebtedness, consistent with 11 U.S.C. Section 1124(2) (but excluding any Environmental Trust Claims or Environmental Unsecured Claims which may not be reinstated) shall not be deemed to constitute a material adverse change to such Plan for purposes of this Escrow Agreement;), then, in the case of (i) or (ii), the ASARCO Committee may deliver to the Plan Sponsor and the Escrow Agent a notice in the form attached hereto as Exhibit A (the “**Creditors’ Pre-Confirmation Default Notice**”), and upon receipt of such notice by the Plan Sponsor, the Plan Sponsor may deliver \$125,000,000 in cash to the Escrow Agent for deposit in the Escrow Account, in exchange for the Segregated Shares (such Segregated Shares and all other shares of SCC Stock on deposit and held by the Escrow Agent under this Escrow Agreement to be disbursed by the Escrow Agent to the Plan Sponsor as directed in writing by the Plan Sponsor), and the Escrow Agent shall deliver the \$125,000,000 in cash as separately directed in writing by the ASARCO Committee, for delivery to the estate of ASARCO LLC; *provided* that if the Plan Sponsor fails to deliver the \$125,000,000 in cash to the Escrow Agent within five (5) business days after receipt of the Creditor’s Pre-Confirmation Default Notice, the Escrow Agent shall deliver the Segregated Shares as directed in writing by the ASARCO Committee, for delivery to the estate of ASARCO LLC, and shall disburse all other shares of SCC Stock on deposit and held by the Escrow Agent under this Escrow Agreement to the Plan Sponsor as directed in writing by the Plan Sponsor; *provided, however*, that the ASARCO Committee shall not be entitled to deliver the Creditors’ Pre-Confirmation Default Notice if (x) the Plan Sponsor terminates ~~and/or~~ withdraws the Plan with the consent of the ASARCO Committee, (y) the Plan Sponsor terminates ~~and/or~~ withdraws the Plan after entry of an order in the Bankruptcy Case approving a settlement agreement with Debtor ASARCO LLC with respect to the Final Judgment entered against the Parent in the United States District Court for the Southern District of Texas (Brownsville Division) on April 15, 2009, and related litigation, or (z) a plan other than the Plan is Confirmed (as defined in the Plan) pursuant to an entered Confirmation Order, and, in the case of

(x), (y) or (z), the Plan Sponsor may deliver a notice in the form attached hereto as Exhibit C (the “**Plan Sponsor’s Pre-Confirmation Termination Notice**”) to the Escrow Agent (a copy of which shall be simultaneously sent to the ASARCO Committee), and the Escrow Agent shall return the SCC Shares to the Plan Sponsor as directed in writing by the Plan Sponsor.

The ASARCO Committee shall give at least 10 days written notice to the Plan Sponsor prior to delivery of the Creditors’ Pre-Confirmation Default Notice under this Section 3(a).

The Plan Sponsor shall give at least 10 days written notice to the ASARCO Committee prior to delivery of the Plan Sponsor’s Pre-Confirmation Termination Notice under this Section 3(a).

(b) If from and after the Confirmation Date of the Plan, (i) the Plan Sponsor withdraws ~~and/or~~ terminates the Plan absent an order entered by the Bankruptcy Court authorizing such withdrawal or termination, (ii) the Plan is not Consummated (as defined in the Plan) by the date that is thirty days after the ~~Confirmation Order with respect to the Plan becomes a Final Order~~ Plan is Confirmed (as defined in the Plan) ~~with respect to the Plan if the conditions to the Effective Date (other than the conditions specified in Sections 9.1(f) and (g) of the Plan) are all satisfied on or before November 30, 2009,~~ or (iii) the Plan Sponsor modifies or amends the Plan after the Confirmation Date of the Plan and before the Effective Date in a manner that would effect a material adverse change to the treatment proposed to be given unsecured creditors under the Plan, as Confirmed (as defined in the Plan) (*provided, however*, that such modification or amendment that provides for the cure and reinstatement of any obligation, including but not limited to any series of bond indebtedness, consistent with 11 U.S.C. Section 1124(2) (but excluding any Environmental Trust Claims or Environmental Unsecured Claims which may not be reinstated) shall not be deemed to constitute a material adverse change to such Plan for purposes of this Escrow Agreement), then, in the case of (i), (ii) or (iii), the ASARCO Committee may deliver to the Plan Sponsor, the Debtors and the Escrow Agent a notice in the form attached hereto as Exhibit B (the “**Creditors’ Post-Confirmation Default Notice**”), and upon receipt of such notice by the Escrow Agent, the Escrow Agent, ~~provided the Plan Sponsor does not elect to deliver cash in lieu of SCC Shares,~~ shall promptly disburse the SCC Shares as directed in writing by the ASARCO Committee; for delivery to the estate of ASARCO LLC; *provided, however*, that upon receipt of such notice by the Plan Sponsor, the Plan Sponsor may elect to deliver ~~the~~ \$1,300,000,000 in cash to the Escrow Agent for deposit in the Escrow Account, in exchange for the SCC Shares (such SCC Shares to be disbursed by the Escrow Agent to the Plan Sponsor as directed in writing by the Plan Sponsor), and the Escrow Agent shall deliver the ~~the~~ \$1,300,000,000 in cash as separately directed in writing by the ASARCO Committee, for delivery to the estate of ASARCO LLC; *provided* that if the Plan Sponsor fails to deliver the ~~the~~ \$1,300,000,000 in cash to the Escrow Agent within five (5) business days after receipt of the Creditor’s ~~Pre~~Post-Confirmation Default Notice, the Escrow Agent shall deliver the SCC Shares or a portion thereof, in either case representing an aggregate value equal to \$1,300,000,000, computed by the Plan Sponsor pursuant to Section 2(b) above, as directed in writing by the ASARCO Committee, for delivery to the estate of ASARCO LLC, and to the extent only a portion of the SCC Shares are so delivered, disburse all the other shares of SCC Stock on deposit and held by the Escrow Agent under this Escrow Agreement to the Plan Sponsor as directed in writing by the Plan Sponsor; *provided, however*, that the ASARCO Committee shall not be entitled to deliver the Creditors’ Post-Confirmation Default Notice ~~if (x)(w) if the failure to Consummate (as defined in the Plan) the Plan is solely due to the failure to receive executed,~~

delivered, or filed Parent's Plan Documents (as defined in the Plan) from third parties as required by Article 9.3(b) of the Plan because of circumstances beyond the control of the Plan Sponsor, (x) if from and after the Confirmation Date of the Plan, the Plan Sponsor terminates ~~and~~or withdraws the Plan with the consent of the ASARCO Committee and in a manner consistent with an order entered by the Bankruptcy Court authorizing such withdrawal or termination, (y) ~~all conditions to the Effective Date (other than the conditions specified in Sections 9.1(f) and (g) of the Plan) have not occurred by November 30, 2009, or (z) the Effective Date has not occurred by December, on any date on which a stay of the Confirmation Order is in effect, or (z) on any date after December 31, 2009 if a stay of the Confirmation Order is in effect on December 31, 2009, and, in the case of (x), ~~(y)~~ or (z), the Plan Sponsor may deliver a notice in the form attached hereto as Exhibit D (the "Plan Sponsor's Post-Confirmation Termination Notice") to the Escrow Agent (copies of which shall be simultaneously sent to the ASARCO Committee and the Debtors), and the Escrow Agent shall return the SCC Shares to the Plan Sponsor as directed in writing by the Plan Sponsor.~~

The ASARCO Committee shall give at least 10 days written notice to the Plan Sponsor prior to delivery of the Creditors' Post-Confirmation Default Notice under this Section 3(b).

The Plan Sponsor shall give at least 10 days written notice to the ASARCO Committee prior to delivery of the Plan Sponsor's Post-Confirmation Termination Notice under this Section 3(b).

(c) Upon the Effective Date, the Plan Sponsor may deliver a notice in the form attached hereto as Exhibit E (the "**Final Notice**"), to the Escrow Agent, and the Escrow Agent shall return the SCC Shares to the Plan Sponsor, as directed in writing by the Plan Sponsor. The Plan Sponsor shall give at least 10 days written notice to the ASARCO Committee prior to the delivery of the Plan Sponsor's Final Notice under this Section 3(c).

(d) At any time prior to the termination of this Escrow Agreement, the Plan Sponsor may deliver to the Escrow Agent \$1,300,000,000 in cash. Upon delivery to the Escrow Agent of such \$1,300,000,000, the Escrow Agent shall return the SCC Shares to the Plan Sponsor, as directed in writing by the Plan Sponsor. The Escrow Agent shall invest the cash so deposited as directed in writing by the Plan Sponsor in: (i) ~~a) The Bank of New York Mellon Money Market Account; ~~(b) interest bearing deposit account;~~ (ii) direct obligations of the United States of America; ~~(e) iii~~ obligations for which the full faith and credit of the United States of America is pledged to provide for the payment of principal and interest; ~~(d) iv~~ certificates of deposit issued by any bank or saving institution that are insured by the Federal Deposit Insurance Corporation; *provided* that such certificates of deposit, to the extent they exceed the amounts covered by such insurance, are fully secured by obligations described in clause ~~(b) ii~~ above; ~~(e) v~~ money market funds authorized to invest principally in short-term securities issued or guaranteed as to principal and interest by the U.S. Government; and/or ~~(f) vi~~ repurchase agreements of short duration with respect to Government Securities; provided that such direction shall identify the specific investment instrument(s) to be purchased within the above categories. In no event will the maturity of any of the obligations described in the preceding sentence exceed 7 days. The Escrow Agent will distribute on a monthly basis to the Plan Sponsor all income received with respect to the amounts so invested. Upon receipt by the Escrow Agent of a Creditors' Pre-Confirmation Default Notice as provided in Section 3(a), the Escrow Agent shall deliver the \$125,000,000 in cash as separately directed in writing by the ASARCO Committee, for delivery to the estate of ASARCO LLC, and~~

shall disburse all other assets held by the Escrow Agent under this Escrow Agreement to the Plan Sponsor as directed in writing by the Plan Sponsor. Upon receipt by the Escrow Agent of a Creditors' Post-Confirmation Default Notice as provided in Section 3(b), the Escrow Agent shall deliver the \$1,300,000,000 in cash as separately directed in writing by the ASARCO Committee, for delivery to the estate of ASARCO LLC, and shall disburse all other assets held by the Escrow Agent under this Escrow Agreement to the Plan Sponsor as directed in writing by the Plan Sponsor.

4. *Fees and Expenses.* For services rendered hereunder, the Plan Sponsor will pay or cause to be paid to the Escrow Agent fees as set forth in Exhibit F attached hereto, which shall be payable within 30 days upon receipt by the Plan Sponsor of the Escrow Agent's invoice. All reasonable out-of-pocket costs, including but not limited to reasonable attorney's fees and postage, will be reimbursed to the Escrow Agent by the Plan Sponsor.

5. *Authorized Representatives.* Each of the following officers of the Plan Sponsor (collectively, "**Authorized Plan Sponsor Representatives**") is authorized to give the Escrow Agent any further instructions in connection with the Escrow Agent acting as escrow agent: (i) President, (ii) the Chief Financial Officer, (iii) the General Counsel, (iv) the Secretary and (v) the Assistant Secretary.

To the extent the ASARCO Committee is authorized under this Escrow Agreement to give the Escrow Agent any notice hereunder, the ~~chair~~authorized representative of the ASARCO Committee (the "**Authorized Creditor Representative**") is authorized to give the Escrow Agent such further instructions; it being understood and acknowledged that the Escrow Agent need not make any inquiry or determination as to the authority of the individual signing such notice as the Authorized Creditor Representative.

6. *Special Provisions Related to the SCC Shares.* AMC shall (a) have the right to exercise all voting, consensual and other powers of ownership pertaining to the SCC Shares and any additional shares of SCC Stock deposited into the Escrow Account pursuant to the provisions of Sections 2(c) and 2(d) above for all purposes not inconsistent with the terms of this Escrow Agreement; and (b) be entitled to receive and retain any dividends, distributions or proceeds on the SCC Shares and such additional shares.

7. *Reliance upon certificates, etc.* The Escrow Agent shall be protected in acting upon any certificate, statement, request, consent, agreement or other instrument whatsoever furnished to the Escrow Agent by the Plan Sponsor, any Authorized Plan Sponsor Representative, or any Authorized Creditor Representative, not only as to its due execution and validity and the effectiveness of its provisions, but also as to the truth and accuracy of any information therein contained, which the Escrow Agent shall in good faith believe to be genuine or to have been signed or presented by a proper person or persons.

8. *Indemnification.* (a) The Plan Sponsor shall be liable for and shall reimburse and indemnify the Escrow Agent and hold the Escrow Agent harmless from and against any and all claims, losses, liabilities, costs, damages or expenses (including reasonable attorneys' fees and expenses) (collectively, "**Losses**") arising from or in connection with or related to this Escrow Agreement or being the Escrow Agent hereunder (including but not limited to Losses incurred or

sustained by the Escrow Agent in connection with its successful defense, in whole or in part, of any claim of gross negligence or willful misconduct on its part); *provided, however*, that nothing contained herein shall require the Escrow Agent to be indemnified for Losses caused by its gross negligence or willful misconduct, bad faith or intentional wrongdoing.

(b) The Plan Sponsor shall indemnify and hold harmless the Escrow Agent against any and all claims, Losses incurred or sustained by the Escrow Agent as a result of or in connection with the Escrow Agent's reliance upon and compliance with instructions or directions given by facsimile or email transmission; *provided, however*, that such Losses have not arisen from the gross negligence or willful misconduct of the Escrow Agent, it being understood that the failure of the Escrow Agent to verify or confirm that the person giving the instructions or directions, is, in fact, an authorized person does not constitute gross negligence or willful misconduct.

(c) In no event shall the Escrow Agent be liable (i) for any consequential, punitive or special damages, (ii) for the acts or omissions of its nominees, correspondents, designees, subagents or subcustodians, or (iii) for an amount in excess of the value of the Escrow Account, valued as of the date of deposit.

(d) If any fees, expenses or costs incurred by, or any obligations owed to, the Escrow Agent hereunder are not promptly paid when due, the Escrow Agent may reimburse itself therefor from the Escrow Account and may sell, convey or otherwise dispose of the Escrow Account for such purpose.

(e) As security for the due and punctual performance of any and all of the Plan Sponsor's obligations to the Escrow Agent hereunder, now or hereafter arising, the Plan Sponsor hereby pledges, assigns and grants to the Escrow Agent a continuing security interest in, and a lien on, the Escrow Account and all distributions thereon or additions thereto. The security interest of the Escrow Agent shall at all times be valid, perfected and enforceable by the Escrow Agent against the Plan Sponsor and all third parties in accordance with the terms of this Escrow Agreement.

(f) The Escrow Agent may consult with legal counsel at the expense of the Plan Sponsor as to any matter relating to this Escrow Agreement, and the Escrow Agent shall not incur any liability in acting in good faith in accordance with any advice from such counsel.

(g) The Escrow Agent shall not incur any liability for not performing any act or fulfilling any duty, obligation or responsibility hereunder by reason of any occurrence beyond the control of the Escrow Agent (including but not limited to any act or provision of any present or future law or regulation or governmental authority, any act of God or war, or the unavailability of the Federal Reserve Bank wire or telex or other wire or communication facility).

(h) It is hereby acknowledged and understood that none of the ASARCO Committee, the Parent's Plan Administrator, or the Debtor's Plan Administrator (the latter two as defined in the Plan), shall have liability for any costs or fees in connection with the Escrow Account, or any obligation for the indemnification of the Escrow Agent.

(i) The Plan Sponsor shall be liable for and shall reimburse and indemnify the ASARCO Committee and hold the ASARCO Committee harmless from and against any and all Losses arising in any action in which the ASARCO Committee is a defendant from or in connection with or related to the delivery of any notice under this Escrow Agreement (including but not limited to Losses incurred or sustained by the ASARCO Committee in connection with its successful defense, in whole or in part, of any claim of gross negligence or willful misconduct on its part); *provided, however,* that nothing contained herein shall require the ASARCO Committee to be indemnified for Losses caused by its gross negligence or willful misconduct, bad faith or intentional wrongdoing.

9. *Resignation of Escrow Agent.* The Escrow Agent may resign and be discharged from its duties hereunder at any time by giving thirty (30) calendar days' prior written notice of such resignation to the Plan Sponsor and the ASARCO Committee. The Plan Sponsor may remove the Escrow Agent at any time by giving thirty (30) calendar days' prior written notice to the Escrow Agent and the ASARCO Committee. Upon such notice, a successor escrow agent shall be appointed by the Plan Sponsor who shall provide written notice of such appointment to the resigning Escrow Agent and the ASARCO Committee. Such successor escrow agent shall become the escrow agent hereunder or under a further escrow agreement (the "**New Escrow Agreement**"), that (i) is mutually satisfactory to the Plan Sponsor and such successor escrow agent upon the resignation or removal date specified in such notice and (ii) does not alter the terms of this Escrow Agreement in a manner that would effect a material adverse change to the rights of the ASARCO Committee under this Escrow Agreement or the amount of the SCC Stock or the Segregated Shares deposited in the Escrow Agreement. Upon receipt of the identity of the successor escrow agent, the Escrow Agent shall deliver the Proceeds, together with all interest and gains thereon, then held hereunder to the successor Escrow Agent as promptly as practicable after the Plan Sponsor has paid in full all of the Escrow Agent's then unpaid fees, costs and expenses. Upon its resignation and delivery of the Proceeds, together with all interest and gains thereon, as set forth in this Section 9, the Escrow Agent shall be discharged of and from any and all further obligations arising in connection with the Proceeds or this Escrow Agreement. If a successor Escrow Agent has not accepted such appointment by the end of such 30-day period, the Escrow Agent may, in its sole discretion and after reasonable advance notice to the ASARCO Committee, apply to a court of competent jurisdiction for the appointment of a successor Escrow Agent or for other appropriate relief. The costs and expenses (including reasonable attorneys' fees and expenses) incurred by the Escrow Agent in connection with such proceeding shall be paid by, and be deemed an obligation of, the Plan Sponsor.

10. *Termination.* This Escrow Agreement shall terminate upon the release of all the SCC Shares or cash in exchange for the SCC Shares held by the Escrow Agent from the Escrow Account in accordance with Section 3 hereof. Upon termination of this Escrow Agreement, the Plan Sponsor shall be discharged from all obligations under this Escrow Agreement except for its obligations to the Escrow Agent under Sections 4 and 8 hereof and except with respect to the obligation of the Plan Sponsor to provide instruction and direction to the Escrow Agent as may be provided in this Escrow Agreement.

11. *Notice.* Except as expressly set forth elsewhere in this Escrow Agreement all notices, instructions and communications under this Escrow Agreement shall be in writing, shall be effective upon receipt and shall be sent via facsimile, email, U.S. mail or overnight courier addressed to the parties at their respective addresses listed below or to such other person or addresses as the relevant party shall designate from time to time in writing delivered in like manner:

If to the Plan Sponsor:

ASARCO Incorporated
Americas Mining Corporation
c/o Grupo Mexico, S.A.B. de C.V.
Edificio Pargue Reforma
Campos Eliseos No. 400, Piso 18
Col. Lomas de Chapultepec
11560 Mexico, D.F.
Mexico
Attn: Alberto de la Parra
Facsimile: 011-52-55-1103-5578
E-Mail: alberto.delaparra@mm.gmexico.com

With a copy to:

Milbank, Tweed, Hadley & McCloy LLP
1 Chase Manhattan Plaza
New York, NY 10005
Attn: Robert Jay Moore
Facsimile: 213-892-4701
E-Mail: rmoore@milbank.com

If to the Escrow Agent:

The Bank of New York Mellon
Escrow Group
101 Barclay Street
New York, NY 10271
Attn: Wendy Morgan
Facsimile: 732-667-9547
E-Mail: wendy.morgan1@bnymellon.com

If to the ASARCO Committee:

ASARCO Committee
c/o Reed Smith LLP
435 Sixth Avenue
~~Pittsburg~~Pittsburg, PA 15219
Attn: Paul M. Singer
Facsimile: 412-288-3063

E-Mail: psinger@reedsmith.com

Whenever under the terms hereof the time for giving a notice or performing an act falls upon a Saturday, Sunday, or banking holiday, such time shall be extended to the next day on which the Escrow Agent is open for business.

12. *Amendments.* No provision of this Escrow Agreement may be amended, waived, discharged or terminated except by an instrument in writing signed by the Plan Sponsor and the Escrow Agent. No amendment to the Escrow Agreement shall, without the consent of the ASARCO Committee, alter the terms of the Escrow Agreement in a manner that would effect a material adverse change to the rights of the ASARCO Committee under the Escrow Agreement, or the amount of the SCC Stock or the Segregated Shares deposited in the Escrow Agreement

13. *Counterparts.* This Escrow Agreement may be executed in one or more counterparts, each of which shall be deemed original, and all of which together shall constitute one instrument.

14. *Governing Law; Successors and Assigns.* This Escrow Agreement shall be governed by and construed in accordance with the laws of the State of New York and shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto; *provided* that this Escrow Agreement may not be assigned by any party without the prior written consent of the other party.

The Plan Sponsor hereby submits to the personal jurisdiction of and each agrees that all proceedings relating hereto shall be brought in courts located within the City and State of New York. The Plan Sponsor hereby waives the right to trial by jury and to assert counterclaims in any such proceedings. To the extent that in any jurisdiction the Plan Sponsor may be entitled to claim, for itself or its assets, immunity from suit, execution, attachment (whether before or after judgment) or other legal process, each hereby irrevocably agrees not to claim, and hereby waives, such immunity. The Plan Sponsor waives personal service of process and consents to service of process by certified or registered mail, return receipt requested, directed to it at the address last specified for notices hereunder, and such service shall be deemed completed ten (10) calendar days after the same is so mailed. Notwithstanding the foregoing, the parties hereto acknowledge that the Bankruptcy Court shall have non-exclusive jurisdiction over this Escrow Agreement.

15. *Conflict with the Agreement.* In the case of any conflict between or ambiguity regarding any provision of this Escrow Agreement and the Plan, the Escrow Agreement shall govern.

16. *Miscellaneous.* (a) In the event of any ambiguity or uncertainty hereunder or in any notice, instruction or other communication received by the Escrow Agent hereunder, the Escrow Agent may, in its sole discretion, refrain from taking any action other than retain possession of the Escrow Account, unless the Escrow Agent receives written instructions, signed by the Plan Sponsor, and with notice to the ASARCO Committee, which eliminates such ambiguity or uncertainty.

(b) In the event of any dispute between or conflicting claims by or among the Plan Sponsor and any other person or entity with respect to the Escrow Account, the Escrow Agent shall be

entitled, in its sole discretion, to refuse to comply with any and all claims, demands or instructions with respect to the Escrow Account so long as such dispute or conflict shall continue, and the Escrow Agent shall not be or become liable in any way to the Plan Sponsor for failure or refusal to comply with such conflicting claims, demands or instructions. The Escrow Agent shall be entitled to refuse to act until, in its sole discretion, either (i) such conflicting or adverse claims or demands shall have been determined by a final order, judgment or decree of a court of competent jurisdiction, which order, judgment or decree is not subject to appeal, or settled by agreement between the conflicting parties as evidenced in a writing satisfactory to the Escrow Agent or (ii) the Escrow Agent shall have received security or an indemnity satisfactory to it sufficient to hold it harmless from and against any and all Losses which it may incur by reason of so acting. The Escrow Agent may, in addition, elect, in its sole discretion, to commence an interpleader action or seek other judicial relief or orders as it may deem, in its sole discretion, necessary. The costs and expenses (including reasonable attorneys' fees and expenses) incurred in connection with such proceeding shall be paid by, and shall be deemed a joint and several obligation of, the Plan Sponsor.

(c) The rights and remedies conferred upon the parties hereto shall be cumulative, and the exercise or waiver of any such right or remedy shall not preclude or inhibit the exercise of any additional rights or remedies. The waiver of any right or remedy hereunder shall not preclude the subsequent exercise of such right or remedy.

(d) The Plan Sponsor hereby represents and warrants (a) that this Escrow Agreement has been duly authorized, executed and delivered on its behalf and constitutes its legal, valid and binding obligation and (b) that the execution, delivery and performance of this Escrow Agreement by the Plan Sponsor does not and will not violate any applicable law or regulation.

(e) The invalidity, illegality or unenforceability of any provision of this Escrow Agreement shall in no way affect the validity, legality or enforceability of any other provision; and if any provision is held to be enforceable as a matter of law, the other provisions shall not be affected thereby and shall remain in full force and effect.

(f) The headings contained in this Escrow Agreement are for convenience of reference only and shall have no effect on the interpretation or operation hereof. Any payments of income from the Escrow Account shall be subject to withholding regulations then in force with respect to United States taxes. AMC will provide the Escrow Agent with appropriate W-9 forms for tax I.D., number certifications, or W-8 forms for non-resident alien certifications. It is understood that the Escrow Agent shall be responsible for such reporting as is required for U.S. federal, and any state or local income, franchise or similar tax purposes with respect to the Escrow Account and is not responsible for any other reporting.

(g) The Escrow Agent shall deliver to the ASARCO Committee a copy of all reports concerning the Escrow Agreement that are delivered by the Escrow Agent to the Plan Sponsor.

IN WITNESS WHEREOF, each of the parties hereto has caused this Escrow Agreement to be executed and delivered by its duly authorized officer(s) as of the date first written above.

ASARCO INCORPORATED

By: _____
Name:
Title:

AMERICAS MINING CORPORATION

By: _____
Name:
Title:

By: _____
Name:
Title:

IN WITNESS WHEREOF, each of the parties hereto has caused this Escrow Agreement to be executed and delivered by its duly authorized officer(s) as of the date first written above.

THE BANK OF NEW YORK MELLON

By: _____
Name:
Title:

EXHIBIT A

Form of Creditors' Pre-Confirmation Default Notice

The Bank of New York Mellon
Escrow Group
101 Barclay Street
New York, NY 10271
Attn: Wendy Morgan
Facsimile: 732-667-9547

VIA FACSIMILE

Reference is made to that certain Escrow Agreement dated as of July ~~1~~30, 2009 (the "**Escrow Agreement**") by and among ASARCO Incorporated, a Delaware corporation (the "**Parent**"), Americas Mining Corporation ("**AMC**", and together with the Parent, the "**Plan Sponsor**") and The Bank of New York Mellon (the "**Escrow Agent**"). Capitalized terms used but not otherwise defined herein shall have the meanings specified in the Escrow Agreement. The undersigned hereby certifies that he or she is the Authorized Creditor Representative and is authorized to execute this Creditors' Pre-Confirmation Default Notice (the "**Notice**") on behalf of the ASARCO Committee.

This Notice is provided to you pursuant to section 3(a) of the Escrow Agreement. The undersigned hereby certifies to you that:

1. *(check any of the following, as appropriate):*

- Prior to the date upon which the Plan is Confirmed ([as defined in the Plan](#)), the Plan Sponsor withdrew ~~and/or~~ terminated the Plan without the written consent of the ASARCO Committee (*provided, however*, that this condition is not satisfied if either (i) at the time of such withdrawal, a plan other than the Plan ~~was the subject of an entered Confirmation Order~~ [is Confirmed \(as defined in the Plan\)](#), or (ii) the Debtors and the Parent have entered into a settlement agreement with Debtor ASARCO LLC with respect to the Final Judgment entered against the Parent in the United States District Court for the Southern District of Texas (Brownsville Division) on April 15, 2009, and related litigation, and such settlement has been approved by an order entered in the Bankruptcy Case); or
- Prior to the date upon which the Plan is Confirmed, the Plan Sponsor modified or amended the Plan in a manner that would effect a material adverse change to the treatment proposed to be given unsecured creditors under the ~~Fifth~~Sixth Amended Plan as filed on July ~~2~~30, 2009; *provided, however*, that such modification or amendment that provided for the cure and reinstatement of any obligation, including but not limited to any series of bond indebtedness, consistent with 11 U.S.C. Section 1124(2) ([but excluding any Environmental Trust Claims or Environmental Unsecured Claims which may not be reinstated](#)) shall not be

deemed to constitute a material adverse change to such Plan for purposes of this Notice or the Escrow Agreement, and

2. the ASARCO Committee has given at least 10 days notice to the Plan Sponsor prior to delivery of this Notice,

and the ASARCO Committee hereby directs you to:

- (upon deposit by the Plan Sponsor of an amount in cash equal to \$125,000,000 (in exchange for the Segregated Shares)) disburse to the Plan Sponsor the Segregated Shares and all other shares of the common stock of Southern Copper Corporation (“**SCC Common Stock**”) registered in the name of AMC on deposit and held by the Escrow Agent under the Escrow Agreement via stock transfer of the SCC Common Stock as follows:

[Add Plan Sponsor’s Stock Transfer Instructions]

and the ASARCO Committee hereby directs you to disburse such cash in the amount of \$125,000,000 on deposit and held by the Escrow Agent via wire transfer of immediately available funds as follows:

[Add ASARCO Committee’s wire transfer instructions]

for delivery to the estate of ASARCO LLC.

OR

- (if the Plan Sponsor fails to deposit an amount in cash equal to \$125,000,000 by the fifth business day after delivery of this Notice) disburse the Segregated Shares of SCC Common Stock on deposit and held by the Escrow Agent under the Escrow Agreement via stock transfer of the SCC Common Stock as follows:

[Add ASARCO Committee’s Stock Transfer Instructions]

for delivery to the estate of ASARCO LLC,

and disburse to the Plan Sponsor all other shares of SCC Common Stock registered in the name of AMC on deposit and held by the Escrow Agent under the Escrow Agreement via stock transfer of the SCC Common Stock as follows:

[Add Plan Sponsor’s Stock Transfer Instructions]

This Notice may be signed in multiple counterparts.

IN WITNESS WHEREOF, the undersigned have executed this Creditors' Pre-Confirmation Default Notice as of the __ day of _____, 20__.

ASARCO COMMITTEE

By: _____

Name:

Title: ~~Chair~~ Authorized representative of the ASARCO Committee

I, [Name], Counsel to the ASARCO Committee, do hereby certify that the person whose name appears above has been duly elected or appointed, has duly qualified, and on this day is the ~~Chair~~ authorized representative of the ASARCO Committee, and that the signature above is his/her genuine signature.

Witness my hand this __ day of _____, 20__.

By: _____

Name:

Title: Counsel to the ASARCO Committee

EXHIBIT B

Form of Creditors' Post-Confirmation Default Notice

The Bank of New York Mellon
Escrow Group
101 Barclay Street
New York, NY 10271
Attn: Wendy Morgan
Facsimile: 732-667-9547

VIA FACSIMILE

Reference is made to that certain Escrow Agreement dated as of July ~~1~~30, 2009 (the "**Escrow Agreement**") by and among ASARCO Incorporated, a Delaware corporation (the "**Parent**"), Americas Mining Corporation ("**AMC**", and together with the Parent, the "**Plan Sponsor**") and The Bank of New York Mellon (the "**Escrow Agent**"). Capitalized terms used but not otherwise defined herein shall have the meanings specified in the Escrow Agreement. The undersigned hereby certifies that he or she is the Authorized Creditor Representative and is authorized to execute this Creditors' Post-Confirmation Default Notice (the "**Notice**") on behalf of the ASARCO Committee.

This Notice is provided to you pursuant to Section 3(b) of the Escrow Agreement. The undersigned hereby certifies to you that:

1. *(check any of the following, as appropriate):*

- From and after the Confirmation Date of the Plan, the Plan Sponsor withdrew ~~and~~or terminated the Plan absent an order entered by the Bankruptcy Court authorizing such withdrawal or termination; or
- The Plan was not Consummated by the date that is thirty days after the ~~Confirmation Order with respect to the Plan became a Final Order with respect to the Plan, provided that the conditions to the Effective Date (other than the conditions specified in Sections 9.1(f) and (g) of the Plan) were all satisfied on or before November 30, 2009~~Plan is Confirmed (as defined in the Plan) (provided, however, that (w) the failure to Consummate (as defined in the Plan) the Plan was not solely due to the failure to receive executed, delivered, or filed Parent's Plan Documents (as defined in the Plan) from third parties as required by Article 9.3(b) of the Plan because of circumstances beyond the control of the Plan Sponsor, (x) the Plan Sponsor has not terminated or withdrawn the Plan with the consent of the ASARCO Committee and in a manner consistent with an order entered by the Bankruptcy Court authorizing such withdrawal or termination, (y) a stay of the Confirmation Order is not in effect, or (z) on any date after December 31, 2009, a stay of the Confirmation Order was not in effect on December 31, 2009); or

- the Plan Sponsor modified or amended the Plan after the Confirmation Date of the Plan and before the Effective Date in a manner that would effect a material adverse change to the treatment proposed to be given unsecured creditors under the Plan, as Confirmed (*provided, however*, that such modification or amendment that provided for the cure and reinstatement of any obligation, including but not limited to any series of bond indebtedness, consistent with 11 U.S.C. Section 1124(2) (but excluding any Environmental Trust Claims or Environmental Unsecured Claims which may not be reinstated) shall not be deemed to constitute a material adverse change to such Plan for purposes of this Notice or the Escrow Agreement), and
2. the ASARCO Committee has given at least 10 days notice to the Plan Sponsor prior to delivery of this Notice,

and the ASARCO Committee hereby directs you to disburse ~~the SCC Shares~~ _____ shares of the common stock of Southern Copper Corporation (“**SCC Common Stock**”), representing an aggregate value equal to \$1,300,000,000 as of the date hereof, on deposit and held by the Escrow Agent under the Escrow Agreement via stock transfer of the SCC Common Stock as follows:

[Add ASARCO Committee’s Stock Transfer Instructions]

for delivery to the estate of ASARCO LLC.

[and disburse to the Plan Sponsor all other shares of SCC Common Stock registered in the name of AMC on deposit and held by the Escrow Agent under the Escrow Agreement via stock transfer of the SCC Common Stock as follows:

[Add Plan Sponsor’s Stock Transfer Instructions]]¹

This Notice may be signed in multiple counterparts.

¹ Insert the bracketed language if the Escrow Agent is being directed to deliver only a portion of the SCC Shares to the ASARCO Committee.

IN WITNESS WHEREOF, the undersigned have executed this Creditors' Post-Confirmation Default Notice as of the __ day of _____, 20__.

ASARCO COMMITTEE

By: _____

Name:

Title: ~~Chair~~ Authorized representative of the ASARCO Committee

I, [Name], Counsel to the ASARCO Committee, do hereby certify that the person whose name appears above has been duly elected or appointed, has duly qualified, and on this day is the ~~Chair~~ authorized representative of the ASARCO Committee, and that the signature above is his/her genuine signature.

Witness my hand this __ day of _____, 20__.

By: _____

Name:

Title: Counsel to the ASARCO Committee

EXHIBIT C

Form of Plan Sponsor's Pre-Confirmation Termination Notice

The Bank of New York Mellon
Escrow Group
101 Barclay Street
New York, NY 10271
Attn: Wendy Morgan
Facsimile: 732-667-9547

VIA FACSIMILE

Reference is made to that certain Escrow Agreement dated as of July ~~1~~30, 2009 (the "**Escrow Agreement**") by and among ASARCO Incorporated, a Delaware corporation (the "**Parent**"), Americas Mining Corporation ("**AMC**", and together with the Parent, the "**Plan Sponsor**") and The Bank of New York Mellon (the "**Escrow Agent**"). Capitalized terms used but not otherwise defined herein shall have the meanings specified in the Escrow Agreement. Each of the undersigned hereby certifies that he or she is an Authorized Plan Sponsor Representative and is authorized to execute this Plan Sponsor's Pre-Confirmation Termination Notice (the "**Notice**") on behalf of the Parent or AMC, as the case may be.

This Notice is provided to you pursuant to section 3(a) of the Escrow Agreement. We hereby certify to you that:

1. *(check any of the following, as appropriate):*

- The Plan Sponsor has terminated ~~and~~or withdrawn the Plan with the consent of the ASARCO Committee; or
 - The Plan Sponsor has terminated ~~and~~or withdrawn the Plan after entry of an order in the Bankruptcy Case approving a settlement agreement with Debtor ASARCO LLC with respect to the Final Judgment entered against the Parent in the United States District Court for the Southern District of Texas (Brownsville Division) on April 15, 2009, and related litigation; or
 - A plan other than the Plan was Confirmed pursuant to an entered Confirmation Order, and
2. The Plan ~~sponsor~~Sponsor has given at least 10 days notice to the ASARCO Committee prior to the delivery of this notice,

and the Plan Sponsor directs you to return the SCC Shares to the Plan Sponsor via stock transfer of shares of the common stock of Southern Copper Corporation as follows:

[Add Plan Sponsor's Stock Transfer Instructions]

This Notice may be signed in multiple counterparts.

IN WITNESS WHEREOF, the undersigned have executed this Plan Sponsor's Pre-Confirmation Termination Notice as of the __ day of _____, 20__.

ASARCO INCORPORATED

By: _____
Name:
Title:

AMERICAS MINING CORPORATION

By: _____
Name:
Title:

By: _____
Name:
Title:

EXHIBIT D

Form of Plan Sponsor's Post-Confirmation Termination Notice

The Bank of New York Mellon
Escrow Group
101 Barclay Street
New York, NY 10271
Attn: Wendy Morgan
Facsimile: 732-667-9547

VIA FACSIMILE

Reference is made to that certain Escrow Agreement dated as of July ~~1~~30, 2009 (the "**Escrow Agreement**") by and among ASARCO Incorporated, a Delaware corporation (the "**Parent**"), Americas Mining Corporation ("**AMC**", and together with the Parent, the "**Plan Sponsor**") and The Bank of New York Mellon (the "**Escrow Agent**"). Capitalized terms used but not otherwise defined herein shall have the meanings specified in the Escrow Agreement. Each of the undersigned hereby certifies that he or she is an Authorized Plan Sponsor Representative and is authorized to execute this Plan Sponsor's Post-Confirmation Termination Notice (the "**Notice**") on behalf of the Parent or AMC, as the case may be.

This Second Termination Notice is provided to you pursuant to section 3(b) of the Escrow Agreement. We hereby certify to you that:

1. *(check any of the following, as appropriate):*

From and after the Confirmation Date of the Plan, the Plan Sponsor has terminated ~~and~~or withdrawn the Plan with the consent of the ASARCO Committee and in a manner consistent with an order entered by the Bankruptcy Court authorizing such withdrawal or termination; or

~~All conditions to the Effective Date (other than the conditions specified in Sections 9.1(f) and (g) of the Plan) have not occurred by November 30, 2009; or~~

~~The Effective Date has not occurred by~~ A stay of the Confirmation Order was in effect on December 31, 2009, or thereafter, and

2. The Plan ~~sponsor~~Sponsor has given at least 10 days notice to the ASARCO Committee prior to the delivery of this notice,

and the Plan Sponsor directs you to return the SCC Shares to the Plan Sponsor via stock transfer of shares of the common stock of Southern Copper Corporation as follows:

[Add Plan Sponsor's Stock Transfer Instructions]

This Notice may be signed in multiple counterparts.

IN WITNESS WHEREOF, the undersigned have executed this Plan Sponsor's Post-Confirmation Termination Notice as of the __ day of _____, 20__.

ASARCO INCORPORATED

By: _____
Name:
Title:

AMERICAS MINING CORPORATION

By: _____
Name:
Title:

By: _____
Name:
Title:

EXHIBIT E

Form of Final Notice

The Bank of New York Mellon
Escrow Group
101 Barclay Street
New York, NY 10271
Attn: Wendy Morgan
Facsimile: 732-667-9547

VIA FACSIMILE

Reference is made to that certain Escrow Agreement dated as of July ~~1~~30, 2009 (the “**Escrow Agreement**”) by and among ASARCO Incorporated, a Delaware corporation (the “**Parent**”), Americas Mining Corporation (“**AMC**”, and together with the Parent, the “**Plan Sponsor**”) and The Bank of New York Mellon (the “**Escrow Agent**”). Capitalized terms used but not otherwise defined herein shall have the meanings specified in the Escrow Agreement. Each of the undersigned hereby certifies that he or she is an Authorized Plan Sponsor Representative and is authorized to execute this Final Notice on behalf of the Parent or AMC, as the case may be.

This Final Notice is provided to you pursuant to Section 3(c) of the Escrow Agreement. We hereby certify to you that

1. the Effective Date has occurred, and
2. the Plan Sponsor has given at least 10 days notice to the ASARCO Committee prior to the delivery of this notice,

and the Plan Sponsor directs you to disburse the SCC Shares via stock transfer of shares of the common stock of Southern Copper Corporation as follows:

[Add Plan Sponsor’s Stock Transfer Instructions]

This Final Notice may be signed in multiple counterparts.

IN WITNESS WHEREOF, the undersigned have executed this Final Notice as of the ___ day of _____, 20__.

ASARCO INCORPORATED

By: _____
Name:
Title:

AMERICAS MINING CORPORATION

By: _____
Name:
Title:

By: _____
Name:
Title:

EXHIBIT F

Escrow Agent Fees

Fee Schedule

Upon appointment of The Bank of New York Mellon (“BNY Mellon”) as Escrow Agent, the Plan Sponsor, as defined in the escrow agreement, shall be responsible for the payment of the fees, expenses and charges as set forth in this Fee Schedule.

General Fees

(1)

Acceptance Fee	Waived
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This one time charge is payable at the time of the closing and includes the review and execution of the agreement and all documents submitted in support thereof and establishment of accounts.

Annual Administration Fee	\$ 7,500
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An annual fee of \$7,500 will cover the duties and responsibilities related to account administration and servicing, which may include maintenance of accounts on various systems, custody and securities servicing, reporting, etc. This fee is payable in advance for the year and shall not be prorated.

Investment Compensation	
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With respect to investments in money market mutual funds for which BNY Mellon provides shareholder services BNY Mellon (or its affiliates) may also receive and retain additional fees from the mutual funds (or their affiliates) for shareholder services as set forth in the Authorization and Direction to BNY Mellon to Invest Cash Balances in Money Market Mutual Funds.

BNY Mellon will charge a \$25.00 transaction fee for each purchase, sale, or redemption of securities other than the aforementioned Money Market Mutual Funds.

With respect to investments in Dreyfus Money Market Funds, BNY Mellon (or its affiliates) also will be compensated by the Fund for investment advisory and other services.

Disbursement Fee (Check or Wire)**\$ 25.00 per disbursement**

A fee of \$25.00 will be assessed for each disbursement.

Counsel Fees

If counsel is retained by BNY Mellon, a fee covering the fees and expenses of Counsel for its services, including review of governing documents, communication with members of the closing party (including representatives of the purchaser, investment banker(s), attorney(s) and BNY Mellon), attendance at meetings and the closing, and such other services as BNY Mellon may deem necessary. The Counsel fee will be the actual amount of the fees and expenses charged by Counsel and is payable at closing. Should closing not occur, you would still be responsible for payment of Counsel fees and expenses.

Miscellaneous Fees

The fees for performing extraordinary or other services not contemplated at the time of the execution of the transaction or not specifically covered elsewhere in this schedule will be commensurate with the service to be provided and will be charged in BNY Mellon's sole discretion. These extraordinary services may include, but are not limited to: proxy dissemination/tabulation, customized reporting and/or procedures, electronic account access, etc. Counsel, accountants, special agents and others will be charged at the actual amount of fees and expenses billed.

Out-of-Pocket Expenses

Additional out-of-pocket expenses may include, but are not limited to, telephone; facsimile; courier; copying; postage; supplies; expenses of foreign depositaries; and expenses of BNY Mellon's representative(s) and Counsel for attending special meetings. Fees and expenses of BNY Mellon's representatives and Counsel will be charged at the actual amount of fees and expenses charged and all other expenses will be charged at cost or in an amount equal to 5% of all expenses billed for the year, in BNY Mellon's discretion, and BNY Mellon may charge certain expenses at cost and others on a percentage basis.

(2) Terms and Disclosures**TERMS OF PROPOSAL**

Final acceptance of the appointment as escrow agent under the escrow agreement is subject to approval of authorized officers of BNY Mellon and full review and execution of all documentation related hereto. Please note that if this transaction does not close, you will be responsible for paying any expenses incurred, including Counsel fees. We reserve the right to terminate this offer if we do not enter into final written documents within three months from the date this document is first transmitted to you. Fees may be subject to adjustment during the life of the engagement.

MISCELLANEOUS

The terms of this Fee Schedule shall govern the matters set forth herein and shall not be superseded or modified by the terms of the escrow agreement. This Fee Schedule shall be governed by the laws of the State of New York without reference to laws governing conflicts. BNY Mellon and the undersigned agree to jurisdiction of the federal and state courts located in the City of New York, State of New York.

CUSTOMER NOTICE REQUIRED BY THE USA PATRIOT ACT

To help the US government fight the funding of terrorism and money laundering activities, US Federal law requires all financial institutions to obtain, verify, and record information that identifies each person (whether an individual or organization) for which a relationship is established.

What this means to you: When you establish a relationship with BNY Mellon, we will ask you to provide certain information (and documents) that will help us to identify you. We will ask for your organization's name, physical address, tax identification or other government registration number and other information that will help us to identify you. We may also ask for a Certificate of Incorporation or similar document or other pertinent identifying documentation for your type of organization.

We thank you for your assistance.

Accepted By:

For The Bank of New York Mellon:

Signature: _____

Date: _____

Name: _____

Title: _____

Signature: _____

Date: _____

Name: _____

Title:

Signature:	
Date:	
Name:	
Title:	

Who's helping you?

As a leader in securities services and the world's foremost corporate trust provider, we have in-depth knowledge of specialized products and services, a profound understanding of local markets around the world, and vast global capabilities. These attributes, combined with our ability to work collaboratively with clients, enable us to define and develop solutions that address your unique needs.

Who's helping you succeed in the world's financial markets? Turn to The Bank of New York Mellon.

Document comparison done by DeltaView on Thursday, July 30, 2009 4:44:08 PM

Input:	
Document 1	pdocs://ny3/7465150/22
Document 2	pdocs://ny3/7465150/28
Rendering set	Standard

Legend:	
Insertion	
Deletion	
Moved from	
Moved to	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	105
Deletions	75
Moved from	3
Moved to	3
Style change	0
Format changed	0
Total changes	186

**Americas Mining Corporation and ASARCO Incorporated (the “Parent”)
Recommendation on Plan Voting**

TO THE CREDITORS OF ASARCO LLC:

The Parent recommends that General Unsecured Creditors:

- (1) vote to accept the Parent’s Sixth Amended Plan and elect among the three Treatment options available exclusively under the Parent’s Plan;**
- (2) indicate a preference for the Parent’s Plan; and**
- (3) vote to reject the Debtors’ Plan and Harbinger’s Plan.**

Creditors that have already voted may recast their votes using the enclosed ballot. The Parent recommends that creditors recast their votes to accept the Parent’s Sixth Amended Plan and reject the Debtors’ Plan and Harbinger’s Plan.

If you wish to elect among the three Treatments available exclusively under the Parent’s Plan, you must return the enclosed ballot.

The Parent has filed a Modified Sixth Amended Plan of Reorganization for the Debtors Under Chapter 11 of the United States Bankruptcy Code (the “Parent’s Sixth Amended Plan”). The Parent hereby requests that creditors vote to accept the Parent’s Sixth Amended Plan. In addition, the Parent asks that any party that has already voted on the Parent’s Fifth Amended Plan to carefully weigh the improved value and possibilities offered by the Parent’s Sixth Amended Plan, and to recast such vote to accept the Parent’s Sixth Amended Plan and reject the Debtors’ Plan and Harbinger’s Plan.

The Parent’s Sixth Amended Plan contains several very important and valuable enhancements, including preserving the SCC Litigation against the Parent (sometimes called the Brownsville Litigation) for the benefit of creditors and providing the possibility for certain classes of claims to be Paid in Full, including Post-Petition Interest.

More specifically, the Parent’s Sixth Amended Plan provides holders of General Unsecured Claims with the right to elect one of the following three treatments:

- (a) Treatment A. The treatment originally proposed under the Parent’s Fifth Amended Plan: A pro rata share of the Parent Contribution of \$1.4625 billion in Cash representing an estimated 97% Cash recovery on the Effective Date, (with the possibility of a 100% cash recovery), a \$60 million tax refund, and litigation rights against Sterlite to obtain a maximum recovery of up to 100% of the principal amount of the unsecured claims;**
- (b) Treatment B: A new treatment constructed to mirror the form of treatment offered under the Debtor’s Plan, but with improved consideration: A pro rata share of \$1.15 billion in Cash on the Effective Date (compared to \$1.1 billion under the Debtors’ Plan), a nine-year “copper note” in the face amount of \$770 million fully guaranteed by the Parent and with the principal amount subject to being adjusted upwards in identical fashion to the Sterlite copper note under the Debtor’s Plan (though note the Parent’s copper note is guaranteed by the Parent**

but is not secured by the assets of Reorganized ASARCO), recoveries from the SCC Litigation (if any) to 100% of the principal amount of such unsecured claim plus Post-Petition Interest, and in addition recoveries from the estate's claims against Sterlite in connection with Sterlite's 2008 breach of its agreement to purchase the Debtors (the Debtors' Plan releases the estate's claims against Sterlite); or

- (c) Treatment C: A variation on Treatment B that provides a \$308.7 million Cash distribution on the Effective Date (based upon the present value currently ascribed to the copper note by the Debtors) in lieu of the copper note and in addition to the improved \$1.15 billion in Cash, allowing creditors who elect this treatment to receive more cash on the Effective Date than those electing Treatment B.

Other significant improvements to the Parent's Sixth Amended Plan include the following:

- (i) Certainty of Closing: the Parent has waived the requirement that the Confirmation Order become a Final Order, and committed to go effective on the Parent's Sixth Amended Plan within thirty days of entry of the Confirmation Order even in the face of an appeal, as long as no stay has been granted;
- (ii) Forfeitable Deposits: the Parent has put at risk in the Escrow Account as a forfeitable deposit \$125 million immediately, escalating to \$1.3 billion once the Bankruptcy Court confirms the Parent's Sixth Amended Plan; and
- (iii) Grupo Support Agreement: the Parent's corporate owner Grupo México, S.A.B. de C.V. has issued a written commitment to fully support the Parent's funding obligations under the Parent's Sixth Amended Plan (the "Support Agreement").

General Unsecured Creditors may elect to receive Treatment A, B or C under the Parent's Plan even if they do not vote to accept the Parent's Plan and even if they do not express a preference for the Parent's Plan, however, General Unsecured Creditors must make such election on the attached ballot and return the ballot by the voting deadline. ***Holders of General Unsecured Claims that fail to elect Treatment A, B or C and timely return the attached ballot will receive Treatment A under the Parent's Plan.***

We believe that the Parent's Plan provides an equitable means for paying creditor claims and offers creditors the ability to select a treatment that best fits their needs and expectation, including options providing for superior immediate cash recovery and longer term ability to recover 100% of their principal plus Post-Petition Interest. The Debtor's Plan and the Harbinger Plan, on the other hand, provide significantly smaller initial distributions to creditors on the effective date and include prolonged litigation and payment risks. Accordingly, the Parent recommends that, even if you have already submitted a ballot, you complete and submit the enclosed ballot(s) voting to accept the Parent's Plan and electing the Treatment that best suits your objection, as follows:

- **VOTE FOR confirmation of the Parent's Sixth Amended Plan of Reorganization.**
- **VOTE AGAINST confirmation of the Debtors' Sixth Amended Plan Of Reorganization.**
- **VOTE AGAINST confirmation of the First Amended Chapter 11 Plan Filed by Harbinger Capital Partners Master Fund I, Ltd.**
- In the event you vote for more than one plan, please **INDICATE THAT YOU PREFER THE PARENT'S PLAN.**
- **IF YOU HOLD A GENERAL UNSECURED CLAIM IN CLASS 3, ELECT TREATMENT A, B OR C UNDER THE PARENT'S SIXTH AMENDED PLAN.**