

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

|                                   |   |                             |
|-----------------------------------|---|-----------------------------|
| <b>In re:</b>                     | § | <b>Case No. 05-21207</b>    |
|                                   | § |                             |
| <b>ASARCO LLC, <i>et al.</i>,</b> | § | <b>Chapter 11</b>           |
|                                   | § |                             |
| <b>Debtors.</b>                   | § | <b>Jointly Administered</b> |
|                                   | § |                             |

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**NOTICE OF FILING ASARCO INCORPORATED AND  
AMERICAS MINING CORPORATION'S SIXTH AMENDED PLAN OF  
REORGANIZATION FOR THE DEBTORS UNDER CHAPTER 11 OF THE  
UNITED STATES BANKRUPTCY CODE, AS MODIFIED ON AUGUST 14, 2009**

**PLEASE TAKE NOTICE** that Americas Mining Corporation and ASARCO Incorporated (together, the "Parent") have filed their Sixth Amended Plan of Reorganization for the Debtors under Chapter 11 of the United States Bankruptcy Code, as Modified on August 14, 2009 (the "Sixth Amended Plan, as Modified," Docket No. 12509).

The Further Supplement to the Uniform Glossary of Defined Terms for Plan Documents and a blackline comparison of the Sixth Amended Plan, as Modified to the Sixth Amended Plan, dated July 30, 2009 are attached hereto as Exhibits A and B, respectively.

Dated: August 14, 2009

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**Exhibit A**

### **Further Supplement to Uniform Glossary of Defined Terms for Plan Documents**

This further supplemental glossary (the “Parent’s Further Supplemental Glossary”) shall supplement the Parent’s Glossary, which is attached to the Disclosure Statement as **Exhibit A-2**, and the Parent’s Supplemental Glossary, which is attached to the Disclosure Statement Supplement as **Exhibit C**. To the extent any term in the Parent’s Further Supplemental Glossary was previously defined by the Parent’s Glossary or the Parent’s Supplemental Glossary, the definition provided by the Parent’s Further Supplemental Glossary shall apply.

### **Further Supplemental Glossary of Terms:**

1. “Confirmation” or “Confirmed” means the entry of the Confirmation Order.
2. “Confirmation Date” means the date on which the Confirmation Order is entered on the docket of the Bankruptcy Court and/or the District Court.
3. “LMI Agreement” means the Confidential Settlement Agreement and Release dated July 13, 2006, by and between ASARCO and certain Participating LMI.
4. “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, 3, 6, and 7, plus the SCC Litigation Trust’s aggregate administrative expenses minus the SCC Litigation Trust Expense Fund.
5. “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.
6. “Parent Contribution” means Cash and/or an Acceptable Letter of Credit provided by the Parent in the aggregate amount of \$1.720 billion.
7. “Participating LMI” means the Participating London Market Companies that are parties to the LMI Agreement.
8. “Reinstated” or “Reinstatement” means leaving unaltered the legal, equitable, and contractual rights to which a Claim entitles the holder thereof so as to leave the Claim unimpaired in accordance with section 1124 of the Bankruptcy Code.
9. “Reports” means the detailed reports concerning Asbestos Claims (as such term is defined in the LMI Agreement) in the form and manner required by the LMI Agreement.
10. “SCC Litigation Trust” means that certain litigation trust to be established on the Effective Date pursuant to the SCC Litigation Trust Agreement.
11. “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.

12. “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.
13. “SCC Litigation Trust Beneficiaries” means the holders of the SCC Litigation Trust Interests.
14. “SCC Litigation Trust Board” means the group of three Person selected in accordance with the SCC Litigation Trust Agreement.
15. “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.
16. “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.
17. “SCC Litigation Trust Initial Beneficiaries” means the holders of Claims in Classes 2 and 3.
18. “SCC Litigation Trust Interests” means the beneficial interests in the SCC Litigation Trust.
19. “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.
20. “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.

**Exhibit B**

**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)  
§

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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, AS MODIFIED ON AUGUST 14, 2009**

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### EXHIBITS TO THE PARENT'S PLAN

| <u>Exhibit Designation</u> | <u>Exhibit Title</u>  |
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| 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 |

|                          |   |
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| 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 | <del>Form of Parent's Copper Note</del> <a href="#">[omitted]</a>   |
| Parent's Plan Exhibit 26 | Support Agreement   |

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.

No Secured Asbestos Personal Injury Claims have been filed against the Debtors or scheduled by the Debtors; therefore, all of the Asbestos Personal Injury Claims are Unsecured. This Plan nonetheless provides, out of an abundance of caution, the following treatment for Secured Asbestos Personal Injury Claims. 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~~ on or before the Confirmation ~~Hearing~~ Date. 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.

~~Treatment C (as set forth below).~~ (i) Cash in the amount of a Pro Rata share of a pool consisting of the Net Distributable Cash, the Tax Refund and \$1.720 billion, (ii) a Pro Rata share of the Distributed Litigation Trust Interests to which such holder is entitled pursuant to Article 5.6 hereunder; and (ii) the SCC Litigation Trust Interests to which such holder is entitled pursuant to Article 5.18 hereunder; provided, that in no event shall a holder of a Claim in Class 3 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.

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~~

~~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~~With respect to any ASARCO Protected Party only, the sole recourse of the holder of an Unsecured 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



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

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

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(e)~~3, 6, and 7 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. All decisions of the SCC Litigation Trustee and the SCC Litigation Trust Board with respect to the pursuit or settlement of the SCC Litigation Trust Claims shall be taken in good faith.

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

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~~Classes 2 and ~~to holders of Claims in Class 3 that elected Treatment B or Treatment C (as set forth in Article 4.2(c))~~3 (the "SCC Litigation Trust Initial Beneficiaries").

Upon Payment in Full of all Allowed Claims of the SCC Litigation Trust Initial

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, or otherwise after distribution of all SCC Litigation Trust Proceeds in accordance with article 5.19 and the SCC Litigation Trust Agreement, the SCC Litigation Trust shall cease to be entitled to pursue ~~or recover~~ recovery upon the SCC Litigation Trust Claims; all causes of action relating to the SCC Litigation Trust Claims 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; 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.

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, 3, 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;

6.14 Section 524(g) Trust Reporting Requirements.

Notwithstanding anything to the contrary in the Parent's Plan or the Section 524(g) Trust Distribution Protocol, the Section 524(g) Trust shall provide, in accordance with the Confidential Settlement Agreement & Release (the "LMI Agreement") dated July 13, 2006, by and between ASARCO and certain Participating London Market Companies (the "Participating LMI"), to the Participating LMI or their representative, detailed reports concerning Asbestos Claims (as defined in the LMI Agreement) in the form and manner required by the LMI Agreement (the "Reports") on at least a quarterly basis, with the first Report to be provided to the Participating LMI or their representative within 90 days of the Effective Date.

Alternatively, the Section 524(g) Trust may provide the Participating LMI or their representative with access to any database(s) that the 524(g) Trust maintains for asbestos-related bodily injury claims provided that such database(s) contain the data required to be contained in the Reports and provided further that such database(s) can be operated by the Participating LMI or their representative to produce data reports reasonably equivalent to the Reports.

The Participating LMI and their representative shall exercise their reasonable best efforts to maintain the confidentiality of the Reports, including, without limitation, seeking a confidentiality pledge from any auditor, regulator or reinsurer to which they provide the Reports and seeking a protective order in any proceeding in which they use the Reports, but the Participating LMI's right to disclose any portion of the Reports to their auditors, regulators or reinsurers shall not be affected if their reasonable best efforts do not result in a confidentiality pledge being given or a confidentiality order being entered. A Report or information contained in any Report shall only be disclosed to another party by a Participating LMI for the purpose of seeking reimbursement from reinsurers in connection with the LMI Agreement or to respond to inquiries made by its auditor or by a regulatory authority in connection with the LMI Agreement; provided, that nothing herein shall prevent the Participating LMI from using the Reports for their own internal purposes, so long as such purposes relate to ASARCO and/or the Subject Insurance Policies (as defined in the LMI Agreement) but shall not be used in relation to other insureds of the Participating LMI.

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



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. 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. This article 7.1 and article 2.1 of the Parent's Plan may be subsequently modified by written agreement signed by all of the affected states, the United States Department of Justice and the Parent.

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



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 Bankruptcy Court shall have submitted to the District Court no later than August 31, 2009, a recommendation that the District Court confirm the Parent's Plan ~~and the District Court shall have entered the Confirmation Order no later than September 30, 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

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(e));~~ (iv) the Parent shall deliver its ~~guarantees~~guarantee 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

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),

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 holders are ~~paid 100% of the Allowed Amount of such Claims~~ 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~~

~~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.~~

~~(e) 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.

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.

10.23 Approval of Asbestos Insurance Settlement Agreements. Confirmation of this Plan shall constitute approval pursuant to Bankruptcy Rule 9019 of all Asbestos Insurance Settlement Agreements executed as of the Confirmation Date (which are listed in Parent's Plan Exhibit 21, which may be amended, supplemented, or modified at any time prior to the Confirmation Date) and shall cause such Asbestos Insurance Settlement Agreements, and all terms within such agreements, to be fully binding upon all parties to such agreements (including, without limitation, their successors and assigns), as evidenced by entry of the Confirmation Order.

## 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,

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~~ from the Petition Date 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,



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~~



~~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.—~~

11.9 ~~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.

11.10 ~~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,

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 Confirmation Order 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 in the Bankruptcy Court 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.

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.

(g) Notwithstanding the foregoing Article 12.4, to the extent of any conflict between this provision and Article XI, the Permanent Channeling Injunction, the Asbestos Insurance Company Injunction, the provisions of the Asbestos Trust Agreement or the Asbestos TDP, the provisions of Article XI, the Permanent Channeling Injunction, the Asbestos Insurance Company Injunction, the provisions of the Asbestos Trust Agreement or the Asbestos TDP shall govern.

(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;~~

(dd) ~~(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

(ee) ~~(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

The undersigned have executed this Modified Sixth Amended Plan of Reorganization as of the ~~30<sup>th</sup>~~ 13 day of ~~July~~ August, 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