

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

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

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

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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

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.

If Class 3 (General Unsecured Claims) accepts the Parent's Plan and expresses a preference for the Parent's Plan (or is neutral with respect to all three Plans), then, on the Effective Date, (i) 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 Environmental 9019 Motion; (ii) title to the Designated Properties shall be conveyed and transferred into the Environmental Custodial Trusts for the sole benefit of the beneficiaries thereof; (iii) the Environmental Custodial Trust Claims shall be treated as Administrative Claims and the Environmental Custodial Trusts shall be funded in cash in the full amount set forth in the Debtors' Plan; 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. 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. If Class 3 rejects the Parent's Plan and/or expresses a preference for either the Debtors' Plan or the Harbinger Plan, however, the Parent shall 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, and shall treat all Claims with respect to Designated Sites as Disputed Claims pending a final order resolving the Disputed Claims. The Parent's Plan Administrator shall maintain the Environmental Custodial Trust Assets in the Disputed Claims Reserve pending such final resolution.

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

Claims and Interests shall be treated in the manner set forth in this Article IV.

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) shall, in full satisfaction, settlement, release, extinguishment, and discharge of such Claim, be Paid in Full, in Cash, on the later of the Effective Date or the date on which such Priority Claim becomes an Allowed 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 (1) be paid, in Cash, the full value of the Collateral securing such Allowed Secured Claim on the later of the Effective Date or the date on which such Secured Claim becomes due in the ordinary course, (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.

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 the Cash 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) shall, 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, receive (i) a Pro Rata share of the Available Parent's Plan Funds, and (ii) a Pro Rata share of the Distributed Litigation Trust Interests. In no event shall Class 3 Claims holders receive more than 100% of the Allowed amount of such Class 3 Claims.

If Class 3 votes to accept the Parent's Plan and expresses a preference for the Parent's Plan (or is neutral with respect to all three Plans), 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. If Class 3 rejects the Parent's Plan and/or expresses a preference for either the Debtors' Plan or the Harbinger Plan, however, the Parent shall 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.

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.

(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.*

The holders of Late-Filed Claims shall not receive or retain any property under the Parent's Plan on account of such Claims except to the extent that Distributed Litigation Trust Interests are distributed to such holders pursuant to Article 5.6(a) hereunder and/or funds from the Disputed Claims Reserve are distributed to such holders pursuant to Article 13.8(f) hereunder. In no event shall Class 6 Claims holders receive more than 100% of the Allowed amount of such Class 6 Claims.

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

(g) *Class 7 – Subordinated Claims.*

The holders of Subordinated Claims shall not receive or retain any property under the Parent's Plan on account of such Claims except to the extent that Distributed Litigation Trust Interests are distributed to such holders pursuant to Article 5.6(a) hereunder and/or funds from the Disputed Claims Reserve are distributed to such holders pursuant to Article 13.8(f) hereunder. In no event shall Class 7 Claims holders receive more than 100% of the Allowed amount of such Class 7 Claims.

This Class is impaired. Class 7 is deemed to have rejected the Parent's Plan and, accordingly, is 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.

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.

ARTICLE V

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 Class 3.

Upon Payment in Full of all Allowed Claims in Class 3 (and the resolution of all Disputed Claims in Class 3), the Litigation Trustee shall remove Class 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 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. Upon Payment in Full of all Allowed Claims in Classes 3, 6, and 8, 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.

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 (i) if the Parent's Plan is accepted by Class 3, then, on or before the Effective Date; or (ii) if Class 3 rejects the Parent's Plan, then when and to the extent the Environmental Trust Claims become Allowed Claims. 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 Environmental 9019 Motion. In particular, the organization, operative documents and funding amounts of the Environmental Custodial Trusts 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. 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), shall be implemented with only such 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.

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 (i) if Class 3 accepts the Parent's Plan, upon approval by the Bankruptcy Court in the Confirmation Order; or (ii) if Class 3 rejects the Parent's Plan, then by separate order of the Bankruptcy Court entered when the Environmental Trust Claims become Allowed Claims.

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

9.1 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 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 and the Asbestos Representatives.

(2) The Confirmation Order entered or affirmed by the District Court is acceptable to the Parent.

(3) The Confirmation Order entered or affirmed by the District Court is acceptable to the Parent.

(4) The Confirmation Order shall have become a Final Order.

(d) *No Stay.*

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

(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, in a form acceptable to the Parent, delivered and, where applicable, filed with the appropriate governmental or supervisory authorities.

(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.

(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. The Parent, in its sole discretion, may waive any condition to effectiveness 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(c)(1), 9.1(c)(2), or 9.1(f) without the consent of the Asbestos Representatives.

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

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, 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.

9.5 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; (iii) 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; 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 Deposit. The Parent shall forfeit the Deposit to the Debtors' Estate if one of the following conditions apply: (i) prior to the date upon which any plan of reorganization for the Debtors is Confirmed, the Parent withdraws the Parent's Plan without the written consent of the ASARCO Committee, (ii) from and after the Confirmation Date, the Parent withdraws the Parent's Plan without the written consent of the ASARCO Committee; or (iii) the Parent's Plan is not Consummated by the date that is thirty days after the Confirmation Order becomes a Final Order, unless the failure to Consummate the Parent's Plan by that date is not primarily due to the failure by the Parent to fulfill any obligation under the Parent's Plan (it being understood that the failure of the Parent to reach agreement with the USW on a consensual CBA shall not constitute

cause for the Parent to fail to Consummate the Parent's Plan); *provided*, however, that the Deposit shall be released to the Parent and shall not be forfeited if the Parent terminates and withdraws the Parent's Plan (a) with the consent of the ASARCO Committee; (b) after the Bankruptcy Court enters an order Confirming a plan of reorganization other than the Parent's Plan, or (c) the Effective Date does not occur by November 30, 2009. Upon the Effective Date, at the election of the Parent, the Deposit will either be turned over to the Parent's Plan Administrator as part of the Parent Contribution, or returned to the Parent upon deposit with the Plan Administrator of the Parent Contribution from other sources.

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

(a) Not less than ten days prior to commencement of the Confirmation Hearing, 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 (or, if the Parent's Plan is not accepted by Class 3, maintain the Environmental Custodial Trust Assets in the Disputed Claims Reserve until the Environmental Trust Claims become Allowed Claims), (iii) fund the Disputed Claims Reserve as provided for in Article 13.8 hereof, and (iv) fund the Litigation Trust with the Litigation Trust Assets.

(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 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. On the Effective Date, the Parent's Plan Administrator shall pay the Allowed Claims that are to be paid on the Effective Date.

10.5 Release of Litigations. On the Effective Date, all causes of action identified in **Parent's Plan Exhibit 2** hereto 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, 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 and Litigation Trust Claims, 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) Trustees 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.

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.

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) Trustees, 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) Trustees, 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. 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. 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 Releases by Holders of Claims, Demands, and Interests. To the 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 the Parent's Plan 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 Claims and Demands based on negligence or strict liability, and 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 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, 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. 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 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

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; and

(dd) 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 by a Final Order, 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, (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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The FCR

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Frost Bank Plaza
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The DOJ

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[Remainder of page intentionally blank.]

The undersigned have executed this Modified Fifth Amended Plan of Reorganization as of the ____ day of _____, 2009.

Respectfully submitted,

ASARCO INCORPORATED, a Delaware corporation

By: 

Name: Jaime F. Collazo Gonzalez
Title: CEO and President

By: 

Name: Jorge Lazalde Psihas
Title: Vice President and General Counsel

AMERICAS MINING CORPORATION, a Delaware corporation

By: 

Name: Alberto de la Parra Zavala
Title: General Counsel

By: 

Name: Jorge Lazalde Psihas
Title: Assistant Secretary

PARENT'S PLAN EXHIBIT 1

SCHEDULE OF ASARCO PROTECTED NON-DEBTOR AFFILIATES

ASARCO PROTECTED NON-DEBTOR AFFILIATES
AR Silver Bell, Inc
Copper Basin Railway, Inc
ASARCO Santa Cruz, Inc
Grupo México, S.A.B. de C.V.
Americas Mining Corporation
Exploraciones Mineras Del Perú
Southern Copper Corporation
Americas Sales Company, Inc.
Minera México, S.A. de C.V.
Western Copper Supplies Inc.
México Compañía Inmobiliaria, S.A.
Mexicana de Cananea, S.A. de C.V.
Minera Cumobabi, S.A. de C.V.
Hospital Del Ronquillo, S. de R.L. de C.V.
Proyecciones Urbanísticas, S. de R.L. de C.V.
Industrial Minera México, S.A. de C.V.
Compañía de Terrenos E Inversiones De SLP, S.C. por A. S.A.
Preparación de Terrenos Para Labranza, S.C.
Taller Escuela de Platería de Sombrerete, S.A.
Minerales y Minas Mexicanas, S.A. de C.V.
Mexicana de Cobre S.A. de C.V.
Minera Pilares, S.A. de C.V.
Compañía Hotelera La Caridad, S.A. DE C.V.
Minerales Metálicos Del Norte, S.A.
Gdc Generadora S. de R.L.
Mexicana Del Arco, S.A. de C.V.
Servicios de Apoyo Administrativo, S.A. dE C.V.
Minera México Internacional, Inc,
SDG Servicios de Apoyo, S.A. de C.V.

ASARCO PROTECTED NON-DEBTOR AFFILIATES
Indumirentas Arrendadora S.A. de C.V.
Cobrentas Arrendadora S.A. de C.V.
Mexcanrentas Arrendadora, S.A. de C.V.
Mimenorentas Arrendadora, S.A. de C.V.
Global Natural Resources, Inc.
Southern Peru Limited, Inc.
Logistics Services, Inc. LSI
Multimines Corporation
Compañía Minera Los Tolmos, S.A.
Asarco Incorporated
ASARCO USA Incorporated
ASARCO LLC
ASARCO Cayman Ltd.
Grupo México Servicios, S.A. de C.V.
México Proyectos y Desarrollos, S.A. de C.V.
México Constructora Industrial, S.A. de C.V.
Infraestructura y Transportes México, S.A. de C.V.
Intermodal México S.A. de C.V.
Intermodal México Arrendadora, S.A. de C.V.
Líneas Ferroviarias de México S.A. de C.V.
Texas Pacifico LP, Inc.
Texas Pacifico, GP, LLC
Texas Pacifico, Transportation, Ltd.
Grupo Ferroviario Mexicano, S.A. de C.V.
Ferrocarril Mexicano, S.A. de C.V.
Infraestructura y Transportes Ferroviarios, S.A. de C.V.
Ferrosur, S.A. de C.V.
Terminales Transgolfo, S.A. de C.V.
Coordinadora Ferrosur, S.A. de C.V.

PARENT'S PLAN EXHIBIT 2
SCHEDULE OF RELEASED LITIGATION

RELEASED LITIGATION			
DOCKET NO.	PLAINTIFFS	DEFENDANTS	NATURE OF ACTION
District Court, Southern District of Texas			
07-00018	ASARCO LLC, Southern Peru Holdings, LLC	Americas Mining Corporation (“ <u>AMC</u> ”)	Fraudulent transfer
07-00203 ¹ (Removed 05/02/07)	Phillip Nelson Burns, ASARCO LLC, Southern Peru Holdings, LLC, Mirjana Pavkovich, Warren Elmer Halpap	Grupo Mexico S.A. de C.V.	Constructive and actual fraud, fraudulent conveyance
Bankruptcy Court, Southern District of Texas			
07-02009	ASARCO LLC	AMC	Fraudulent transfer
07-02011	ASARCO LLC	AMC, ASARCO Incorporated, Enthone Inc. f/k/a Enthone-OMI, Inc., EI Liquidation, Inc. f/k/a Enthone, Incorporated, OMI International Corporation	Tax refund complaint: seeking declaration that the refund is property of ASARCO LLC.
07-02062	ASARCO LLC	Servicios de Apoyo Administrativo, S.A. de C.V	Recovery of money/property
07-02063	ASARCO LLC	Mexicana de Cobre, S.A. de C.V.	Preferential or fraudulent transfer
07-02064	ASARCO LLC	Minera Mexico Internacional, Inc.	Preferential or fraudulent transfer; and objection to Claim No. 11067

¹ The release of this litigation only applies to the extent it has been removed and transferred to the District Court for the Southern District of Texas.

RELEASED LITIGATION			
DOCKET NO.	PLAINTIFFS	DEFENDANTS	NATURE OF ACTION
07-02071	ASARCO LLC, AR Sacaton, LLC	AMC, Tri-Point Development, LLC, CMR/Casa Grande, LLC, Vanguard Properties, Inc., First American Title Insurance Company	Fraudulent transfer
07-02072	ASARCO LLC	Grupo Mexico, S.A. de C.V.	Preferential or fraudulent transfer
07-02073	ASARCO LLC	Minera Mexico S.A. de C.V.	Preferential or fraudulent transfer
07-02075	ASARCO LLC	AMC, ASARCO Incorporated	Preferential or fraudulent transfer
07-02077	Official Committee of Unsecured Creditors of ASARCO, LLC, <i>on Behalf of the ASARCO, LLC Bankruptcy Estate</i>	Genaro Larrea Mota-Velasco, German Larrea Mota-Velasco, Xavier Garcia de Quevedo Topete, Oscar Gonzalez Rocha, Alfredo Casar Perez, Daniel Tellechea Salido, Manuel Calderon Cardenas, Alberto de la Parra Zavala, Armando Fausto Ortega Gomez	Breach of fiduciary duties

PARENT'S PLAN EXHIBIT 3

**SCHEDULE OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES TO
BE REJECTED UNDER THE PARENT'S PLAN**

[*To be filed ten (10) days prior to the Confirmation Hearing*]

PARENT'S PLAN EXHIBIT 4

FORM OF PARENT'S PLAN ADMINISTRATION AGREEMENT

PARENT'S PLAN ADMINISTRATION AGREEMENT

THIS PARENT'S PLAN ADMINISTRATION AGREEMENT is made this _____ day of _____, 2009, by and among [_____] (the "**Parent's Plan Administrator**") and ASARCO Incorporated, a Delaware corporation, Americas Mining Corporation, a Delaware corporation ("**AMC**," and, together with ASARCO Incorporated, the "**Parent**") and Reorganized ASARCO (as such term is defined in the Parent's Modified Fifth Amended Plan of Reorganization for the Debtors under Chapter 11 of the United States Bankruptcy Code, dated as of July 2, 2009 (as the same may be modified or amended from time to time, the "**Parent's Plan**")). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Parent's Plan.

RECITALS

WHEREAS, a voluntary petition for reorganization under chapter 11 of the Bankruptcy Code was filed by each Debtor in the Bankruptcy Court; and

WHEREAS, the Parent's Plan contemplates that certain specified rights and powers of Reorganized ASARCO will be exercised in certain specified circumstances by and through the Parent's Plan Administrator; and

WHEREAS, on [_____] 2009, the Bankruptcy Court confirmed the Parent's Plan; and

WHEREAS, effective upon the Effective Date, the Parent desires to appoint [_____] to serve as the Parent's Plan Administrator under the Parent's Plan, and [_____] is willing to serve in such capacity, in each case upon the terms set forth herein and pursuant to the Parent's Plan;

NOW, THEREFORE, in consideration of the foregoing and the covenants and agreements set forth herein, the parties hereto agree as follows:

ARTICLE I.

PARENT'S PLAN ADMINISTRATOR'S ACCEPTANCE OF POSITION

1.1 Acceptance. [_____] accepts the appointment as Parent's Plan Administrator and agrees to observe and perform all duties and obligations imposed upon it by this Agreement, the Parent's Plan, orders of the Bankruptcy Court, and applicable law.

ARTICLE II.

GENERAL OBLIGATIONS OF THE PARENT'S PLAN ADMINISTRATOR

2.1 General. The Parent's Plan Administrator shall comply with the Parent's Plan and the Confirmation Order in connection with the performance of its duties hereunder and under the Parent's Plan. On the Effective Date, (i) the Parent's Contribution shall be delivered to

the Parent's Plan Administrator and (ii) Reorganized ASARCO shall transfer the Distributable Cash to the Parent's Plan Administrator.

2.2 Establish Accounts. 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, the Disputed Secured Claims Escrow Account, and the Undeliverable and Unclaimed Distribution Reserve, and may also establish such general accounts as the Parent's Plan Administrator deems necessary and appropriate. 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.

2.3 Initial Distributions. On the Effective Date (or as soon thereafter as is reasonably practicable), in accordance with the Parent's Plan, the Parent's Plan Administrator shall (i) pay the Allowed Claims that are to be paid on the Effective Date, (ii) fund the Section 524(g) Trust with the Section 524(g) Trust Assets, (iii) either fund the Environmental Liquidation Trust with the Environmental Liquidation Trust Assets or, to the extent unanimously elected by the applicable federal and state agencies holding an Allowed Environmental Trust Claim with respect to a Designated Property, fund the Environmental Custodial Trust(s) with the Environmental Custodial Trust Assets, and (iv) fund the Disputed Claims Reserve as provided for in Article 13.8 of the Parent's Plan.

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

a) 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.

b) 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.

c) 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 are transferred to Reorganized ASARCO shall remain in place, pending resolution of the objection to the allegedly Secured Claim.

d) 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, an amount equal to the Allowed Claim as if such Claim had been an Allowed Claim on the Effective Date. With respect to Claims that are Reinstated, the Parent's Plan Administrator will distribute from the Disputed Claims Reserve to the holder of any Disputed Claim that is allowed by an unstayed order of a court of competent jurisdiction, not later than the tenth Business Day after the end of the calendar month in which such order is entered, an amount equal to such Claim as if such Claim had been an Allowed Claim on the Effective Date.

e) 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 as a Subsequent Distribution the Cash reserved in respect of such disallowed Disputed Claim in accordance with the terms and conditions of the Parent's Plan and the Confirmation Order.

f) 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 shall (i) timely file such income tax and other returns and statements and timely pay all taxes required to be paid by the Disputed Claims Reserve using assets of the Disputed Claims Reserve; (ii) satisfy all requirements necessary to qualify and maintain qualification of the Disputed Claims Reserve as a disputed ownership fund within the meaning of Treasury Regulations; (iii) take no action that could cause the Disputed Claims Reserve to fail to qualify as a disputed ownership fund within the meaning of Treasury Regulations; (iv) take no action that could cause the Disputed Claims Reserve to be treated as a grantor trust for federal income tax purposes; and (v) within seventy-five (75) days (or earlier if required by law) after the end of each calendar year, cause to be prepared and mailed information as required by law to enable payees to complete and file each of their respective federal, state and local income and other tax returns.

g) Reorganized ASARCO will make an election on a protective basis to treat the Disputed Claims Reserve as a grantor trust all of which is owned by Reorganized ASARCO for federal and, to the extent permitted, state and local tax purposes (pursuant to section 671 et seq. of the Code, the Treasury Regulations promulgated thereunder and the comparable provisions of any applicable state and local laws) in the event that the IRS were to successfully assert that the Disputed Claims Reserve is treated as a qualified

settlement fund within the meaning of Treasury Regulation section 1.468B-1. If the Disputed Claims Reserve were so treated as a grantor trust, any items of income, gain, deduction, loss and credit relating to the assets of the Disputed Claims Reserve shall be reported on Reorganized ASARCO's U.S. federal income tax return and, to the extent required, state and local tax returns and Reorganized ASARCO shall be responsible for the taxes due on such returns. The Disputed Claims Reserve will be liable for and pay any other taxes that may be imposed on it. For any calendar year for which the Disputed Claims Reserve is determined to be a grantor trust with respect to Reorganized ASARCO, the Parent's Plan Administrator will distribute to Reorganized ASARCO from the Disputed Claims Reserve within 30 days following the close of such calendar year (or with respect to calendar years prior to the Parent's Plan Administrator becoming aware that the Disputed Claims Reserve is so treated, promptly upon demand of Reorganized Asarco) an amount equal to the product of (x) the taxable income for such calendar year of the Disputed Claims Reserve (computed as if the Disputed Claims Reserve were a corporation for U.S. federal income tax purposes) and (y) the sum of (1) highest rate of tax imposed by section 11 of the Internal Revenue Code with respect to such calendar year and (2) five percent.

2.5 Excess Funds in Parent's Plan Administration Account or Miscellaneous Parent's Plan Administration Accounts. To the extent there are excess funds in the Parent's Plan Administration Account (or any sub-account thereof) or any Miscellaneous Parent's Plan Administration Account, the Parent's Plan Administrator shall make a Subsequent Distribution of such funds to Reorganized ASARCO.

2.6 Investments. The Parent's Plan Administrator shall invest the Cash held in the accounts established under Section 2.2 hereof in (a) direct obligations of the United States of America or obligations of any agency or instrumentality thereof which are guaranteed by the full faith and credit of the United States of America, (b) money market deposit accounts, checking accounts, savings accounts or certificates of deposit, or other time deposit accounts that are issued by a commercial bank or savings institution organized under the laws of the United States of America or any state thereof, or (c) any other investments that may be permissible under Section 345 of the Bankruptcy Code or any order of the Bankruptcy Court. Such investments shall mature in such amounts and at such times as the Parent's Plan Administrator shall deem appropriate to provide funds when needed to transfer funds or make payments in accordance with the Parent's Plan and this Agreement. The interest or other income earned on the investments of the Cash in any given reserve, account or escrow established pursuant to this Agreement, the Parent's Plan or any order of the Bankruptcy Court shall constitute a part of such reserve, account or escrow unless and until transferred or distributed pursuant to the terms of the Parent's Plan, this Agreement, or order of the Bankruptcy Court.

2.7 Books and Records. The Parent's Plan Administrator shall maintain appropriate books and records. On the Effective Date, the Parent's Plan Administrator shall have access to such books and records of the Debtors and Reorganized ASARCO (as applicable) useful or necessary to implement the Parent's Plan or this Agreement. Until the termination of this Agreement pursuant to Section 5.1 hereof (the "**Termination Date**"), the Parent's Plan Administrator shall retain the books, records and files which shall have been delivered to or created by the Parent's Plan Administrator. At any time after 180 days from the Termination

Date the Parent's Plan Administrator may give written notice to the Bankruptcy Court, the Parent, and any other parties-in-interest entitled to notice under the Confirmation Order that it intends to destroy the books, records and files delivered to or created by the Parent's Plan Administrator. If, within 20 days thereafter, one of those parties-in-interest advises the Parent's Plan Administrator in writing that it objects to the proposed destruction of such books, records and files and such party-in-interest undertakes to pay the costs and expenses of transfer, then the Parent's Plan Administrator shall transfer the records to such party as may be directed by the Bankruptcy Court. If no such party-in-interest makes a timely objection to the proposed destruction of such books, records and files as provided in the preceding sentence, then the Parent's Plan Administrator may destroy such books, records and files (unless such records and documents are necessary to fulfill any remaining obligations of the Parent's Plan Administrator pursuant to this Agreement).

2.8 Compliance with Tax Requirements.

a) Reorganized ASARCO and the Parent's Plan Administrator shall comply with all applicable tax payments, withholding or reporting requirements imposed by any federal, state, local, or foreign taxing authorities. All distributions hereunder or under any Parent's Plan Document shall be subject to applicable withholding and reporting requirements, if any. Notwithstanding any 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.

b) The Parent's Plan Administrator will cooperate with Reorganized ASARCO in connection with the filing of any tax return or information return relating to the protective grantor trust election and the treatment of the Disputed Claims Reserve as a grantor trust as described in Section 2.4(g). Further, as soon as practicable after the end of each calendar year, and as soon as practicable upon the termination of the Disputed Claims Reserve, the Parent's Plan Administrator shall submit to Reorganized ASARCO a statement setting forth, for federal income tax purposes, the items of income, gain, loss, deduction and credit of the Disputed Claims Reserve for such calendar year

2.9 Reports. Unless otherwise ordered by the Bankruptcy Court, the Parent's Plan Administrator shall be responsible for preparing, filing and serving (if applicable) all reports required by [the Parent's Plan,] this Agreement or applicable law, including:

a) Reports to the Parent and Reorganized ASARCO. The Parent's Plan Administrator shall provide written reports on a monthly basis, or such other information as may be reasonably requested, to the Parent and Reorganized ASARCO as to budgets, Cash receipts and disbursements, asset sales or other dispositions, Claims reconciliations and Parent's Plan distributions.

b) Reports to the U.S. Trustee. The Parent's Plan Administrator shall file and serve on the U.S. Trustee such periodic financial reports as may be

required by the U.S. Trustee until such time as a final decree is entered closing the Reorganization Cases or the Reorganization Cases are dismissed.

c) Status Reports. The Parent's Plan Administrator shall file and serve upon the U.S. Trustee any periodic status report, closing report, application for final decree or other reports or applications in accordance with any postconfirmation order entered in the Reorganization Cases pursuant to Rule 3021-1 of the Local Bankruptcy Rules for the Southern District of Texas.

2.10 Fees. On the Effective Date, and thereafter as may be required, the Parent's Plan Administrator shall cause Reorganized ASARCO to pay all fees payable pursuant to Section 1930 of chapter 123 of title 28 of the United States Code through the entry of a final decree closing the applicable Debtors' and Reorganized ASARCO's cases.

2.11 Transactions with Related Persons. Notwithstanding any other provisions of this Agreement, the Parent's Plan Administrator shall not knowingly, directly or indirectly, sell or otherwise transfer all or any part of the assets that are placed in the Disputed Claims Reserve to, or contract with, (a) any relative, employee, or agent (acting in their individual capacities) of the Parent's Plan Administrator or the Parent or (b) any Person of which any employee or agent of the Parent's Plan Administrator or either Parent is an affiliate by reason of being a trustee, director, officer, partner, or direct or indirect beneficial owner of five percent (5%) or more of the outstanding capital stock, shares, or other equity interest of such persons unless, in each such case, after full disclosure of such interest or affiliation, such transaction is approved by the Bankruptcy Court and the Bankruptcy Court determines that the terms of such transaction are fair and reasonable to Reorganized ASARCO and no less favorable to Reorganized ASARCO than terms available for a comparable transaction with unrelated Persons.

2.12 Wind Down of Subsidiary Debtors. On the Effective Date, 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. As soon as practicable after the Effective Date, the Plan Administrator shall liquidate all such 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.

2.13 No Other Duties. Other than the obligations of the Parent's Plan Administrator enumerated herein, under the Parent's Plan, under the Confirmation Order, and by operation of law, the Parent's Plan Administrator shall have no duties or obligations of any kind or nature respecting implementation of the Parent's Plan or this Agreement.

ARTICLE III.

POWERS AND RIGHTS OF THE PARENT'S PLAN ADMINISTRATOR

3.1 General. The Parent's Plan Administrator shall have all powers and rights enumerated below and in the Parent's Plan, including those rights and powers enumerated in

Articles X and XIII of the Parent's Plan. The enumeration of the following powers or those listed in Articles X and XIII of the Parent's Plan shall not be considered in any way to limit or control the power of the Parent's Plan Administrator to act as specifically authorized by any other section or provision of this Agreement, the Parent's Plan, the Confirmation Order or another Bankruptcy Court order.

3.2 Employees and Agents. The Parent's Plan Administrator is empowered, subject to the oversight of the Parent: (a) to elect, appoint, engage, retain and employ any persons as agents, representatives, employees, professionals or independent contractors in one or more capacities as is reasonably necessary to enable the Parent's Plan Administrator to implement this Agreement and the Parent's Plan; (b) subject to Article 10.2 of the Parent's Plan, to pay fees to and to reimburse the expenses of those employees, agents or independent contractors elected, appointed, engaged, retained or employed by the Parent's Plan Administrator; (c) to indemnify the Parent's Plan Administrator's agents, professionals and employees from any loss (including reasonable attorneys' fees) incurred in connection with the execution and implementation of the Parent's Plan other than a loss due to the indemnified party's willful misconduct, gross negligence, recklessness or fraud; (d) to authorize the creation or assumption of employee benefits plans and arrangements for employees of the Parent's Plan Administrator to act as sponsor for and pay for any employee benefits under such plans or arrangements; and (e) to prescribe the titles, powers and duties, terms of service and other terms and conditions of the election, appointment, engagement, retention, or employment of such persons as are reasonable and appropriate. The Parent's Plan Administrator shall serve without bond.

3.3 Insurance. The Parent's Plan Administrator is hereby authorized to obtain all reasonably necessary insurance coverage for itself, its agents, representatives, employees or independent contractors, or Reorganized ASARCO, including, but not limited to, coverage with respect to (i) appropriate directors and officers liability insurance and other insurance coverage appropriate to the business in which Reorganized ASARCO is to be engaged, (ii) any property that is or may in the future become the property of the Disputed Claims Reserve and (iii) the liabilities, duties, and obligations of the Parent's Plan Administrator and its agents, representatives, employees or independent contractors under the Parent's Plan and this Agreement.

3.4 Protection of Assets. The Parent's Plan Administrator is hereby authorized to do and to perform any and all acts necessary or appropriate for the conservation and protection of the assets of Reorganized ASARCO that are placed in the Disputed Claims Reserve, including acts or things necessary or appropriate to maintain assets held pending sale or other disposition or distribution thereof.

3.6 Additional Powers. The Parent's Plan Administrator is hereby authorized, subject to the oversight of the Parent, to do all other acts and things not inconsistent with the provisions of the Parent's Plan or this Agreement that the Parent's Plan Administrator deems reasonably necessary or desirable with respect to implementing the Parent's Plan and this Agreement.

ARTICLE IV.

THE PARENT'S PLAN ADMINISTRATOR

4.1 Resignation; Removal. The Parent's Plan Administrator may resign as Parent's Plan Administrator hereunder upon delivery of 30 days' written notice to Reorganized ASARCO and the Parent. Any successor Parent's Plan Administrator shall be selected by Reorganized ASARCO and the Parent. If a successor Parent's Plan Administrator has not been appointed by the end of such 30-day period, the Parent's Plan Administrator shall continue as Parent's Plan Administrator for up to an additional 30 days if so requested by Reorganized ASARCO and the Parent. The Parent's Plan Administrator may be removed as Parent's Plan Administrator and its powers and responsibilities hereunder may be terminated at any time, with or without cause, upon delivery to it by Reorganized ASARCO and the Parent of written notice of such removal. In such event, the Parent's Plan Administrator shall immediately begin transitioning responsibilities to the new Parent's Plan Administrator on a schedule approved by Reorganized ASARCO and the Parent. If a new Parent's Plan Administrator has not been appointed prior to removal of the existing Parent's Plan Administrator, the existing Parent's Plan Administrator shall continue to serve as Parent's Plan Administrator for a period of up to 30 days until a new Parent's Plan Administrator is appointed, but shall take no actions on behalf of Reorganized ASARCO without the consent of Reorganized ASARCO and the Parent or an order of the Bankruptcy Court. The removed Parent's Plan Administrator shall be compensated for services rendered during a transition to a new Parent's Plan Administrator.

4.2 Continuity. Unless otherwise ordered by the Bankruptcy Court, the death, resignation, incompetence or removal of the Parent's Plan Administrator shall not operate to terminate, dissolve or remove any existing agency created pursuant to the terms of this Agreement or invalidate any action theretofore taken by the Parent's Plan Administrator. In the event of the resignation or removal of the Parent's Plan Administrator, the Parent's Plan Administrator shall promptly execute and deliver such documents, instruments and other writings as may be reasonably requested by the Bankruptcy Court or the successor Parent's Plan Administrator.

4.3 Compensation. The Parent's Plan Administrator shall be entitled to receive the compensation set forth in Schedule A hereto and shall be entitled to reimbursement of reasonable out-of-pocket expenses incurred in connection with performing its duties hereunder. The Parent's Plan Administrator shall provide the Parent and its counsel with monthly bills for services performed and expenses to be reimbursed. In the event the Parent or its counsel objects to the compensation or reimbursement being sought within ten (10) Business Days of service of the monthly bill, the matter shall be presented to the Bankruptcy Court for determination. Upon the request of any party-in-interest or the Parent's Plan Administrator, the Bankruptcy Court after notice and hearing may, on a prospective basis, alter the amount, terms or conditions of the Parent's Plan Administrator's compensation.

4.4 Standard of Care, Indemnification and Exculpation. The Parent's Plan Administrator shall be a fiduciary for Reorganized ASARCO, subject to the provisions hereof. The Parent's Plan Administrator, its professionals and its employees shall not be personally liable to the holder of any Claim or Interest or to any other Person except for such of its or their own acts as shall constitute willful misconduct, gross negligence, recklessness or fraud. Reorganized ASARCO shall indemnify and hold the Parent's Plan Administrator harmless from

and against any loss, claim, damages or expense incurred by it as a result of and in connection with serving as Parent's Plan Administrator, except to the extent resulting from its own willful misconduct, gross negligence, recklessness or fraud. No indemnification payments shall be made to the Parent's Plan Administrator pursuant hereto, however, without the prior consent of the Parent and Reorganized ASARCO or pursuant to an order of the Bankruptcy Court.

4.5 Reliance by Parent's Plan Administrator. The Parent's Plan Administrator may conclusively rely, and shall be fully protected personally in acting upon, any statement, instrument, opinion, report, notice, request, consent, order or other instrument or document which it believes to be genuine and to have been signed or presented by the proper party or parties. The Parent's Plan Administrator may also conclusively rely on information provided to it by agents and employees of Reorganized ASARCO as applicable. The Parent's Plan Administrator may consult with legal counsel and shall be fully protected from any liability except as set forth in Section 4.4 above in respect of any action taken or suffered by it in accordance with the opinion of legal counsel. The Parent's Plan Administrator shall have the right at any time to seek instructions from the Bankruptcy Court concerning the acquisition, management or disposition of the assets of Reorganized ASARCO.

4.6 Reliance by Persons Dealing with the Parent's Plan Administrator. In the absence of actual knowledge to the contrary, any person dealing with Reorganized ASARCO shall be entitled to rely on the authority of the Parent's Plan Administrator to act on behalf of Reorganized ASARCO with respect to the subject matter of this Agreement, and shall have no obligation to inquire into the existence of such authority.

ARTICLE V.

TERMINATION

5.1 Subject to further order of the Bankruptcy Court, this Agreement shall terminate on the earlier of (i) thirty (30) days after: (a) the final Subsequent Distribution under the Parent's Plan or (b) the date the order granting the final decree closing the last Reorganization Case that has not yet been closed becomes a Final Order, whichever is later; and (ii) the date any order dismissing the last Reorganization Case that has not yet been closed becomes a Final Order.

ARTICLE VI.

MISCELLANEOUS

6.1 Notices. All notices, requests or other communications required or permitted to be made in accordance with this Agreement shall be in writing and shall be mailed by first class mail, or delivered by such other means that might be reasonable and appropriate under the circumstances:

- a) Parent's Plan Administrator:
 [_____
 [_____
 [_____]

b) Parent:
Americas Mining Corporation
ASARCO Incorporated
Attn: Jorge Lazalde Psihas
11811 North Tatum Blvd.
Suite 2500
Phoenix, AZ 85028

with a copy to:

Robert Jay Moore
Milbank, Tweed, Hadley & McCloy LLP
601 South Figueroa Street, 30th Floor
Los Angeles, CA 90017
Telephone: (213) 892-4000
Facsimile: (213) 629-5063

Robert E. Winter
Milbank, Tweed, Hadley & McCloy LLP
1850 K Street, 11th Floor
Washington, DC 20006
Telephone: (202) 835-7500
Facsimile: (202) 835-7586

Charles A. Beckham, Jr.
Haynes and Boone, LLP
1 Houston Center
1221 McKinney, Suite 2100
Houston, Texas 77010
Telephone: (713) 547-2000
Facsimile: (713) 547-2600

c) Reorganized ASARCO:

[_____]
[_____]
[_____]

with a copy to:

[_____]
[_____]
[_____]

6.2 Change of Address. Any entity may change the address at which it is to receive notices under this Agreement by furnishing written notice to the parties listed in Section 6.1. Such change of address shall be effective ten (10) Business Days after service of such notice.

6.3 Effectiveness. This Agreement shall become effective on the Effective Date.

6.4 Governing Law. This Agreement shall be governed by, construed under and interpreted in accordance with the laws of the State of New York and, to the extent applicable, the Bankruptcy Code, without giving effect to any contrary result required under applicable conflict or choice of law rules.

6.5 Headings. Sections, subheadings and other headings used in this Agreement are for convenience only and shall not affect the construction of this Agreement.

6.6 Amendments. This Agreement may be amended from time to time by the Parent's Plan Administrator with the approval of the Bankruptcy Court after notice to the Parent and the U.S. Trustee and such hearing (if any) as the Bankruptcy Court may hold.

6.7 Meaning of Terms. Except where the context otherwise requires, words importing the masculine gender include the feminine and the neuter, if appropriate, and words importing the singular number include the plural number and vice versa.

6.8 Conflict. In the event of a conflict between the provisions of this Agreement and the provisions of the Parent's Plan, the provisions of the Parent's Plan shall govern.

6.9 Jurisdiction. The Bankruptcy Court shall retain exclusive jurisdiction to hear and determine all conflicts concerning this Agreement and all matters related to the interpretation and implementation of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their authorized representatives effective for all purposes as of the Effective Date.

Parent's Plan Administrator

By: _____
Name:
Title:

ASARCO Incorporated

By: _____
Name:
Title:

Americas Mining Corporation

By: _____
Name:
Title:

Reorganized ASARCO

By: _____
Name:
Title:

SCHEDULE A

TERMS OF COMPENSATION AND REIMBURSEMENT OF EXPENSES OF [_____] , AS PARENT'S PLAN ADMINISTRATOR (THE "PARENT'S PLAN ADMINISTRATOR") UNDER THE PARENT'S PLAN ADMINISTRATION AGREEMENT BETWEEN THE PARENT'S PLAN ADMINISTRATOR, ASARCO INCORPORATED, AMERICAS MINING CORPORATION AND REORGANIZING ASARCO

1. COMPENSATION

Beginning at the Effective Date, the Parent's Plan Administrator shall be compensated at the rate of \$[_____] [per _____].

2. COMPUTATION OF HOURS; RECORDKEEPING

The Parent's Plan Administrator shall maintain a record of its time expended in its capacity as Parent's Plan Administrator which shall include a brief description for such activities. The record shall be available for inspection and copying by the Parent. Beginning with the calendar month ending after the Effective Date, the Parent's Plan Administrator shall report to the Parent as to the amount of time so expended during the month and each month thereafter.

3. REIMBURSEMENT OF EXPENSES

The Parent's Plan Administrator shall be entitled to reimbursement for reasonable expenses incurred in performing its duties as the Parent's Plan Administrator, and shall submit a report of said expenses with each report under Section 2 above.

PARENT'S PLAN EXHIBIT 5

**SCHEDULE OF SUBSIDIARY DEBTOR ASSETS TO BE TRANSFERRED TO
REORGANIZED ASARCO**

[*To be filed ten (10) days prior to the Confirmation Hearing*]

PARENT'S PLAN EXHIBIT 6
SCHEDULE OF ASBESTOS INSURANCE POLICIES

1. Insurance policies at issue in the Nueces County action, ASARCO, LLC., *et al.* v. Fireman's Fund Ins. Co. *et al.*, Cause No. 02680-D (105th Judicial District Court, Nueces County, Texas):

6/1/77-3/15/78 Lloyd's Policy 614/NC 3988

3/15/78-3/15/79 Lloyd's Policy 614/NC 5380

3/15/79-3/15/80 Lloyd's Policy 614/NC 6721

3/15/79-3/15/80 Lloyd's Policy 614/NC 6722

3/15/79-3/15/80 Lloyd's Policy 614/NC 6723

3/15/80-3/15/81 Lloyd's Policy 614/NC 8712

3/15/80-3/15/81 Lloyd's Policy 614/NC 8713

3/15/80-3/15/81 Lloyd's Policy 614/NC 8714

3/15/81-3/15/82 Lloyd's Policy 614/NTA 382

3/15/81-3/15/82 Lloyd's Policy 614/NTA 383

3/15/82-3/15/83 Lloyd's Policy 614/NTA 826

3/15/82-3/15/83 Lloyd's Policy 614/NTA 827

3/15/83-3/15/84 Lloyd's Policy 614/NTB 249

3/15/83-3/15/84 Lloyd's Policy 614/NTB 250

3/15/82-3/15/83 Fireman's Fund Policy XLX 148 16 98

3/15/83-3/15/84 Fireman's Fund Policy XLX 153 47 73

3/15/83-3/15/84 Fireman's Fund Policy XLX 153 47 74

2. Insurance policies at issue in the fraudulent conveyance actions that have been filed by the Debtors against American Home Assurance Company, Equitas Limited, *et al.*, Lexington Insurance Company, Century Indemnity Company, *et al.*, and Mt. McKinley Insurance Company, *et al.* Confidentiality provisions in the prepetition settlement agreements that are the subject of these fraudulent conveyance actions prevent the Debtors from disclosing publicly the insurance policies to which the agreements apply.

3. Insurance policies that are subject to premises settlement agreements with, respectively, American Home Assurance Company and Century Indemnity Company, as successor to, inter alia, Insurance Company of North American and California Union Insurance Company. Confidentiality provisions in these prepetition settlement agreements prevent the Debtors from disclosing publicly the insurance policies to which the agreements apply.
4. Insurance policies purchased from insurance companies that are insolvent, in liquidation and/or subject to a protective order that prohibits pursuit of a traditional lawsuit against them, but against whom the Debtors are pursuing recovery through other means:

4/29/75-3/15/76 Midland Policy 145523

4/20/76-3/15/77 Midland Policy 151738

3/15/76-3/15/77 Midland Policy 151735

3/15/77-3/15/78 Midland Policy 152353

6/1/77-3/15/78 Lloyd's Policy 614/NC 3988

3/15/78-3/15/79 Lloyd's Policy 614/NC 5380

3/15/79-3/15/80 Lloyd's Policy 614/NC 6721

3/15/79-3/15/79 Lloyd's Policy 614/NC 6722

3/15/79-3/15/80 Lloyd's Policy 614/NC 6723

3/15/80-3/15/81 Lloyd's Policy 614/NC 8712

3/15/80-3/15/81 Lloyd's Policy 614/NC 8713

3/15/80-3/15/81 Lloyd's Policy 614/NC 8714

3/15/81-3/15/82 Lloyd's Policy 614/NTA 382

3/15/81-3/15/82 Lloyd's Policy 614/NTA 383

3/15/82-3/15/83 Lloyd's Policy 614/NTA 826

3/15/82-3/15/83 Lloyd's Policy 614/NTA 827

3/15/83-3/15/84 Lloyd's Policy 614/NTB 249

3/15/83-3/15/84 Lloyd's Policy 614/NTB 250

PARENT'S PLAN EXHIBIT 7
SCHEDULE OF CLASS 2 SECURED CLAIMS

<u>Creditor</u>	<u>File No. or Proof of Claim No.</u>	<u>Original File Date</u>	<u>Date Debt Incurred</u>	<u>Collateral</u>	<u>Asserted Secured Amount</u>
Denver, City and County of/Treasury	0245, 18439	10/25/2005	09/01/2002 - 09/30/2005	Real Estate with no assessed value	\$20,910.56
Nueces County, Texas	18338, 18339	04/04/2006	January 1 of each tax year	Missing	\$1,025.32
Perth Amboy Tax Collector, New Jersey	8369	03/02/2006	January 1 of each tax year	Real Estate with \$8,241,800 assessed value	\$107,102.20
State of Ohio Department of Taxation	04JG.12, 26095	12/14/2004	1995	Real Estate with no assessed value	\$24,013.13
Texas Comptroller of Public Accounts	15955	09/21/2006	01/01/2001-08/09/2005	Real Estate with no assessed value	\$5,361.81

NOTE: The Debtors reserve all rights to object, at any time prior to the Claims objection deadline, to the secured status and amount of any of the Claims listed herein. Nothing herein shall be deemed as an admission by the Debtors as to the existence or validity of the alleged underlying debts or the validity of the liens.

<u>Creditor</u>	<u>File Number or Proof of Claim Number</u>	<u>Original File Date</u>	<u>Date Debt Incurred</u>	<u>Collateral</u>	<u>Asserted Secured Amount</u>
Air Liquide Industrial US LP	22821126, 20082920608200, 90405107	02/14/2005 08/27/2008 02/06/2009	n/a	Leased equipment	None Listed
Arthur Anderson LLP	3511	12/13/2005	02/25/2003	Equitable lien on tax recovery	Subject to abated avoidance action, No. 07-02053
Co. Dept. of Public Health	10408	07/25/2006	Blank	\$8.6mm trust fund on deposit with Wells Fargo	Unliquidated
Co. Division of Minerals	10405	07/25/2006	Blank	Deed of trust recorded in favor of the Mined Land Reclamation Board on August 15, 2002 and \$2,233,400.00 is secured by a reclamation bond	\$4,114,000.00
H&E Equipment Services L.L.C.	200513751712	07/07/2005	n/a	Leased equipment, repairs, replacements, additions thereto and proceeds thereof	None Listed
Hovson, Inc. & Heritage Minerals, Inc. ¹	17772	01/05/2007	06/22/1995	Proceeds of Letter of Credit	\$1,061,773.54 Subject to abated avoidance action, No. 07-02053
Komatsu Financial Limited Partnership	22545145, 10413	08/31/2004 07/27/2006	08/12/2004	One Komatsu 930E-1 Mining Truck	Paid Current
Minera Mexico International, Inc.	50742883, 200513591058, 11067	03/08/2005 04/01/2005 08/01/2006	12/15/2003	Copper, silver and gold of Creditor held in bailment by Debtor	\$4,621,190.00 Subject to abated avoidance action, No. 07-02064

¹ This Claim is addressed in the Settlement Agreement re: Manchester, New Jersey site, which was approved by the Court on December 22, 2008 (Docket No. 10177).

<u>Creditor</u>	<u>File Number or Proof of Claim Number</u>	<u>Original File Date</u>	<u>Date Debt Incurred</u>	<u>Collateral</u>	<u>Asserted Secured Amount</u>
Mitsui & Co. (U.S.A.) Inc.	51931377, 51964619, 10409, 18317	06/23/2005 06/27/2005 07/27/2006	03/23/1999	All clean copper concentrates and copper cathodes of Creditor held in bailment by Debtor and all silver inventory located at Debtor's Amarillo, Texas facility and proceeds thereof ²	\$26,210,420.65 Subject to Tolling Agreement
New Mexico Energy, Minerals, and Natural Resources Dept. Mining & Minerals Div ³	09403	05/17/2006	Blank	Surety Bond	\$850,000.00
Saint-Gobain Ceramics & Plastics, Inc.	01060607 Vol. 3652 Pg. 226	09/12/2005	July 2005	Debtor's Real Property in Potter County, Texas	\$167,311.35
Society of Our Lady of the Most Holy Trinity	2004048457, 03211	09/17/2004 12/06/2005	09/13/2000	Judgment Lien attaches to Debtor's real property located in Nueces County, Texas	\$238,415.63 Subject to Tolling Agreement
State of New Mexico, by New Mexico Office of Natural Resources Trustee ³	10332	07/25/2006	Blank	Potential insurance proceeds	Unliquidated Subject to Tolling Agreement
Terry L. Swensen	8049	12/15/2005	06/16/2004	Potential insurance proceeds, real property located in Montana	\$648.20
Union Pacific Railroad Company	18211	05/14/2007	Various	Setoff Rights	\$437,138.00 Subject to abated avoidance action, No. 07-02061
United States of America on behalf of the U.S. EPA, Dept. of Agriculture, Dept. of the Interior and the International Boundary and Water Commission ³	8375, 10745, 10746, 11008-10	Various	Blank	CERCLA liens in excess; tax refund; insurance proceeds; escrow amounts; res of environmental trust	Unliquidated Subject to abated avoidance action, No. 07-02076

² Mitsui asserts that it has a valid secured claim secured by all silver inventory as of the petition date and the proceeds thereof, including \$21,216,276.25 in the Mitsui Cash Collateral Account and silver included in process equipment at the El Paso smelter, Texas and the East Helena, Montana facility. There is a dispute between Mitsui and the Debtors as to whether Mitsui has a valid lien securing its claim. However, the Debtors agree that the cash in the Mitsui Cash Collateral Account shall not be removed from the account without a court order.

³ These Claims are addressed as part of the global environmental settlement submitted to the Court for approval on March 12, 2009 (Docket No. 10534).

<u>Creditor</u>	<u>File Number or Proof of Claim Number</u>	<u>Original File Date</u>	<u>Date Debt Incurred</u>	<u>Collateral</u>	<u>Asserted Secured Amount</u>
Washington State Department of Ecology ³	10761, 11099-106, 11113-15	07/31/2006	Blank	Potential insurance proceeds	Unliquidated Subject to Tolling Agreement

NOTE: The Debtors reserve all rights to object, at any time prior to the Claims objection deadline, to the secured status and amount of any of the Claims listed herein. Nothing herein shall be deemed as an admission by the Debtors as to the existence or validity of the alleged underlying debts or the validity of the liens.

PARENT'S PLAN EXHIBIT 8

SCHEDULE OF DIRECTORS, OFFICERS & ADMINISTRATORS

[*To be filed ten (10) days prior to the Confirmation Hearing*]

PARENT'S PLAN EXHIBIT 9
SCHEDULE OF LITIGATION TRUST CLAIMS

1. Lien Avoidance Lawsuit – Adv. No. 07-02076, pending in the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division, ASARCO LLC, *et al.* v. Joe Bob Beasley, The Industrial Development Authority of the County of Gila, Arizona, National Indemnity Company, Duane E. Pierce, Ruben Sandoval, Sara Rogers, Alyssa Rogers, Chelsea Rogers, Liborio M. Silva, Southwest Mobile, Inc., Terry L. Swenson, Trafigura AG, UMW Combined Benefit Fund, United States of America on behalf of the U.S. Environmental Protection Agency, Dept. of Agriculture, Dept. of the Interior and the International Boundary and Water Commission;
2. Nueces County Coverage Action – No. 01-02680-D, pending in the 105th District Court of Nueces County, Texas, ASARCO, Inc., Lac d' Amiante du Quebec Ltée and Capco Pipe Co., Inc. v. Allianz International Insurance Company, Ltd., *et al.*;
3. Lawsuits to Avoid Constructively Fraudulent Transfers Against Insurance Companies
 - a. Adv. No. 07-02025, pending in the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division, Lac d'Amiante Du Quebec Ltée, *et al.* v. Allstate Insurance Company, *et al.*;
 - b. Adv. No. 07-02065, pending in the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division, ASARCO LLC v. American Home Assurance Company;
 - c. Adv. No. 07-02066, pending in the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division, ASARCO LLC v. Equitas Limited, Equitas Reinsurance Limited, Equitas Holdings Limited, Equitas Management Services Limited, Equitas Policyholders Trustee Limited, And Certain Underwriters At Lloyd's, London, including Syndicate 035, Syndicate 056, Syndicate 090, Syndicate 099, Syndicate 109, Syndicate 126, Syndicate 175, Syndicate 183, Syndicate 190, Syndicate 205, Syndicate 210, Syndicate 219, Syndicate 224, Syndicate 231, Syndicate 235, Syndicate 243, Syndicate 250, Syndicate 263, Syndicate 278, Syndicate 279, Syndicate 346, Syndicate 365, Syndicate 383, Syndicate 408, Syndicate 417, Syndicate 471, Syndicate 494, Syndicate 518, Syndicate 553, Syndicate 602, Syndicate 604, Syndicate 618, Syndicate 620, Syndicate 650, Syndicate 653, Syndicate 661, Syndicate 673, Syndicate 694, Syndicate 701, Syndicate 722, Syndicate 727, Syndicate 729, Syndicate 751, Syndicate 772, Syndicate 799, Syndicate 918, Syndicate 935, Syndicate 948, Syndicate 987, and Syndicate 989;
 - d. Adv. No. 07-02067, pending in the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division, ASARCO LLC v. Lexington Insurance Company;
 - e. Adv. No. 07-02068, pending in the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division, ASARCO LLC v. Century Indemnity Company (as successor to CIGNA Specialty Company, formerly California Union Insurance Company) and a member company of the ACE IN A Group;
 - f. Adv. No. 07-02069, pending in the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division, ASARCO LLC v. Mt. McKinley Insurance

Company, (formerly known as Gibraltar Casualty Company) and Everest Reinsurance Company (formerly known as Prudential Reinsurance Company);

4. Avoidance Actions Tolling Agreements.

a. Second Amended Tolling Agreement and Limited Waiver of Statute of Limitations Between ASARCO LLC and Mitsui & Co. (U.S.A.), Inc. as of July 27, 2007;

b. First Amended Tolling Agreement and Limited Waiver of Statute of Limitations Between ASARCO LLC and State of Washington Department of Ecology as of August 2, 2007;

c. First Amended Tolling Agreement and Limited Waiver of Statute of Limitations Between ASARCO LLC and Society of Our Lady of the Most Holy Trinity as of August 3, 2007;

d. First Amended Tolling Agreement and Limited Waiver of Statute of Limitations Between ASARCO LLC and Milliard & Munoz, LLP as of August 3, 2007;

e. First Amended Tolling Agreement and Limited Waiver of Statute of Limitations Between ASARCO LLC and State of New Mexico as of August 7, 2007; and

f. First Amended Tolling Agreement and Limited Waiver of Statute of Limitations Between ASARCO LLC and El Paso Natural Gas Company as of August 9, 2007.

5. Other Adversary Proceedings.

a. Adv. No. 07-02052, pending in the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division, ASARCO LLC, *et al.* v. Helen Faith;

b. Adv. No. 07-02053, pending in the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division, ASARCO LLC, *et al.* v. Amarillo Lawn Care Sierra Liquidity Fund, Apache Corp., Arthur Anderson, LLP, Darrell Barrett, Brandenburg Industrial Serv. Co., Esco Corp., Helen Faith, Federal Insurance Company, Garry Moore, Hovson Inc., Heritage Minerals, Inc., Joe Friend, Jr., John P. Holland, MD, P.C., David H. Latimer, Joanne Latimer, Lee Wayne Lewis, Eduardo Lopez, Gloria Lopez, Lopez, Gloria for children of Eduardo C. Lopez and/or Daniel A. Lopez, Olegario Lopez, Vincenta Lopez, Old Republic Insurance Company, Ron and Linda Deen;

c. Adv. No. 07-02054, pending in the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division, ASARCO LLC, *et al.* v. A.I. Credit Corporation, AIC Imperial A.I. Credit Companies, AICCO, Inc., Appalachian Electric Cooperative, Arrow Trucking Company, ARSI Corporation;

d. Adv. No. 07-02055, pending in the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division, ASARCO LLC, *et al.* v. Border Steel, Inc., BNSF Railway Company, CDW Direct, L.L.C., Cetco, Citigroup;

e. Adv. No. 07-02057, pending in the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division, ASARCO LLC, *et al.* v. Pointe South Mountain Corporate Centre, L.L.C. F/K/A East Katella Partnership, Electric Power and Process, Inc., Esplanade IV PT, L.L.C., Ferrocarril Mexicano S.A. de C.V., GE International Inc.;

f. Adv. No. 07-02058, pending in the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division, ASARCO LLC, *et al.* v. Hajoca Corporation d/b/a Keenan Supply Division, Harrison Western Construction Corp., James C. Herrmann & Associates, Ltd, Knoxville Utilities Board, aka KUB, Laron Incorporated (Tucson);

g. Adv. No. 07-02059, pending in the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division, ASARCO LLC, *et al.* v. Mesirow Financial, Nathan Bales, Prime Inc.;

h. Adv. No. 07-02060, pending in the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division, ASARCO LLC, *et al.* v. Roman Friedrich & Company, Staver Foundry, Inc.;

i. Adv. No. 07-02061, pending in the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division, ASARCO LLC, *et al.* v. Union Pacific Railroad Company; and

j. Adv. No. 07-02070, pending in the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division, ASARCO LLC, *et al.* v. Truckers Express Inc., Werner Enterprises, Inc.

6. Revett Lawsuit – Adv. No. 07-02074, pending in the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division, ASARCO LLC v. Revett Silver Company and Genesis Inc.

7. Derivative D&O Litigation – Adv. No. 07-02077, pending in the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division, Official Committee of Unsecured Creditors of ASARCO LLC on behalf of the Estate v. Genaro Larrea Mota-Velasco, German Larrea Mota-Velasco, Xavier Garcia de Quevedo Topete, Oscar Gonzalez Rocha, Alfredo Casar Perez, Daniel Tellechea Salido, Manuel Calderon Cardenas, Alberto de la Parra Zavala, Armando Fausto Ortega Gomez (order granting Official Committee of Unsecured Creditors of ASARCO LLC standing to assert these causes of action on behalf of the Estate currently on appeal, No. 07-00104, pending in the United States District Court for the Southern District of Texas, Brownsville Division).

8. Prospective Litigation against Sterlite (USA), Inc. Any and all pending or potential claims of the Debtors against Sterlite (USA), Inc. If the First L/C is collected, the proceeds of that First L/C will be contributed to the Litigation Trust.

9. PRP Claims – Reorganized ASARCO expressly reserves unto itself, its successors, heirs and assigns, all rights and interests in actions and/or claims against third parties (“potentially responsible parties” or “PRP”), for indemnity and contribution for environmental damages, harm or injury, which PRP claims have not been discharged or settled in this bankruptcy.

Name of Site	Lead Defendant
Cal Gulch	Union Pacific Railroad Company
Cal Gulch**	
Omaha, NE	Carter White Lead Company/N.L. Industries
Omaha, NE**	Union Pacific Railroad Company (S)
El Paso County Metals Survey Site	Oglebay-Norton Minerals, Inc.
El Paso County Metals Survey Site**	Phelps Dodge Corp. (AMAX)
Dona Ana Metal	Oglebay-Norton
Dona Ana Metal**	Phelps Dodge Corp. (AMAX)
Taylor Springs, IL	
Golinsky, CA	
Azurite	Azurite Gold Company (AGC)
Everett Smelter	Weyerhaeuser
Everett Smelter**	Puget Sound Reduction Company
B&L Woodwaste	
B&L Woodwaste**	
East Helena Yards and NRD	Burlington Northern Railroad
Butte/Silver Bow Creek	ARCO/ARCO Coal Co. (subsidiary of BP Corp. of North America, Inc.)/ Anaconda Minerals Company
Butte/Silver Bow Creek**	
CDA (Box and Basin)	
Barker-Hughesville, MT (Block P)	AMAX Exploration Inc./Cyprus Minerals Company/Cyprus Amax Minerals/Dodge Phelps
Iron Mountain, MT	No viable PRPs were identified.
Tacoma Smelter Plume, WA	BNSF Railway Company
Tri-States Sites-Cherokee**	LTV Corporation (S)
Tri-States Sites-Cherokee	Eagle-Picher Industries (aka Eagle Picher Mining Co.)(S)
Tri-States Sites-Jasper	Sun Company/Sun Oil Co. (Sunoco, Inc.) (S)
Tri-States Sites-Jasper**	
Tri-States Sites-Jasper**	Doe Run Resources Company/St. Joe Minerals Company (S)
Tri-States Sites-Newton	

Name of Site	Lead Defendant
Tri-States Sites-Newton**	Eagle-Picher Co.
Tri-States Sites-Tar Creek	Eagle-Picher Mining Co.
Tri-States Sites-Tar Creek**	
Tri-States Sites-Tar Creek**	
SE MO Sites-Madison County/Catherine Mine	Anschutz Mining Corporation
SE MO Sites-Madison County/Catherine Mine**	
SE MO Sites-Big River/Federal Mine Tailings (St. Francois County)	
SE MO Sites-Westfork Mine	
SE MO Sites-Sweetwater Mine	
SE MO Sites-Sweetwater Mine**	Kennecott Corporation/Ozark Lead Company (owner and operator)
SE MO Sites-Glover Smelter	
Selby Smelter CA	
Selby Smelter CA**	Wickland Oil Company (owner and operator) (S)
Mike Horse/Upper Blackfoot (MT)	
Nueces Bay/Corpus Christi, Encycle Texas Site	American Electric Power
USIBWC	Oglebay-Norton (and predecessors)
USIBWC**	
Amarillo	
American Chemical Services	General Motors Corporation
Anderson Calhoun	Blue Tee Corp
Black Cloud	
Black Pine	
Blackhawk Mill	Chino Mines Company
Bonanza	Raytheon (a.k.a. Steams-Rogers)
Cholett Mine	
Circle Smelting	
Colorado School of Mines	Phillips Petroleum Company

Name of Site	Lead Defendant
Columbus Windsor Avenue	
Combination Mine (part of the Black Pine Mining Complex)	
Commencement Bay	Exxon Corporation
Conservation Chemical	General Motors Headquarters
Deming Mill	Phelps Dodge
Federated Metals (Owned)	Federal Metals Corporation
Federated Metals	Bridgeview Management Company
Flux Mine	
Four County Landfill	General Motors Corporation
Globe	
Golden King Mine	
Ground Hog Mine	Phelps Dodge
Gulf Metals	Robinson Iron and Metal Co.
Hayden	Kennecott Copper Corporation, Ray Mines Division
Helvetia	
Henryetta	Eagle-Picher Industries, Inc.
Jacobs Smelter	Union Pacific Railroad
KCC Smelter	Kennecott Copper Corporation, Ray Mines Division
Kusa	
Los Angeles Harbor	
Madera Canyon	
Magdalena - Hop Canyon Mill	
Manchester	
Midland & Berlin	
Mission	
Monte Cristo Mining District	
Murray Smelter	
Northport Smelter	
Pallas Yard	Union Pacific
Perth Amboy - Arthur Kill	

Name of Site	Lead Defendant
Ray Mine	
Richardson Flat	
Sacaton	
Salero Ranch	
Santa Cruz	D.R. Horton
Silver Bell	
Silverton	
Sinton Landfill	
South Plainfield	
Stephenson Bennett	
Summitville	Newmont Mining Corp.
Trench Camp	Bureau of Land Management
Triumph	
Troy Mine	
Van Stone Mine	Hecla Mining Co.
Vasquez	Union Pacific Railroad Company
Viburnum (SEMO Site)	

10. Canadian Lawsuits

a. No. 500-05-015073-925, pending in the Superior Court, Province of Québec, District of Montreal, Dominion of Canada, Lac d'Amiante du Québec Ltée v. 2858-0702 Quebec, Inc. and Lac d'Amiante du Canada, Ltée;

b. No. 500-05-027806-965, pending in the Superior Court, Province of Québec, District of Montreal, Dominion of Canada, Lac d'Amiante du Québec Ltée v. 2858-0702 Quebec, Inc. and Lac d'Amiante du Canada, Ltée;

c. No. 500-05-011714-944, pending in the Superior Court, Province of Québec, District of Montreal, Dominion of Canada, Lac d'Amiante du Québec Ltée v. LAB Chrysotile, Inc. and 2858-0702 Quebec, Inc.

11. Trade Creditor Preference Claims

3M

3M Industrial Chemicals Product Division

ABF Freight System, Inc.

Absolute Transport, L.L.C.

ACE Pipe Cleaning, Inc.
ACT Environmental, Inc.
ADP, Inc.
Advanced Lining Solutions, Inc.
Advanced Systems Group
Aetna Insulated Wire
Air Liquide Industrial U.S. L.P.
Aker Kvaerner Industrial Constructors
Alkemin, S. De R.L. De C.V.
Altasteel Ltd.
Amalgamet Canada, a Division of Premetalco, Inc.
American Fire & Security Systems, Inc.
American Magotteaux Corp.
Ameron International Water Transmission Group
Aon Re Mexico Intermediario De Reaseguro, S.A De C.V.
Applied Industrial Technologies
The Ashton Company, Inc.
Atlantic Metals & Alloys, Inc.
Auto & Truck Parts, dba Truck & Trailer Parts
BC Wire Rope & Rigging
BJ Cecil Trucking, Inc.
Border States Electric Supply
Brenntag Pacific, Inc.
Brenntag Southwest, Inc.
Brown and Brown Chevrolet, Inc.
Bucyrus International, Inc.
Burgess Manufacturing of Oklahoma, Inc.
Canyon Compressor Co.
Cerro Wire & Cable Co., Inc.
Charles S. Lewis Pumps & Co., Inc.
Chas. S. Lewis & Co., Inc.
Chemical Lime Company
Chevron Natural Gas Services, Inc.
Chevron Phillips Chemical Company, L.L.C.
Chevron U.S.A. Products Company
Chevron U.S.A. Inc.
Cimetta Engineering & Construction Co., Inc.
Clean Harbors Environmental Services, Inc.
Cobre Valley Motors
Columbia Steel Casting Co., Inc.
Copperstate Companies
Copper State Bolt & Nut Co.
Creative Engineers, Inc.
Cutting Edge Supply
Cytec Industries Inc.
Diane Eicher

Doe Run Peru
Dorr-Oliver Eimco U.S.A. Inc.
Ducon Technologies Inc.
Durham Communications
El Paso Electric Co.
Empire Southwest, L.L.C.
 a/k/a Empire Machinery
Enron Metals & Commodity Corp.
Entact and Associates, L.L.C.
Erin Electrical Enterprises
Esco Corporation
Express Way STS
FLSmith Minerals Inc., file/a FFE Minerals U.S.A. Inc.
Flodraulic Group, Inc.
Geib Refining Corp.
Geotemps, Inc.
Granberry Supply Corp dba Hose Power U.S.A.
Hagemeyer North America, Inc.
Harbison-Walker Refractories Company
Heflin Steel Company, a Division of Esco Corp.
Hertz Equipment Rental Company
Hory Material Corporation
Hunt Transportation, Inc.
Industrial Mining Supply Company
Industrial Radiator Service Co.
Industrial Tool & Supply, a Division of General & Supply
ISCO Industries, L.L.C.
J. B. Hunt Transport, Inc.
J.T. Thorpe & Son, Inc.
Jefco Refractories
Jensen Drilling Company
Kaman Industrial Technologies
Keller Equipment Company, Inc.
Krebs International
Laron Incorporated (Tucson)
Laron Incorporated (Kingman)
Leco Corporation
Lubrication Equipment & Supply Co.
Magotteaux, Inc.
Marco Crane & Rigging Company
Maxim Crane Works
MCP Metal Specialties Incorporated
ME Global Inc.
 a/k/a ME Electric Metal
Metro Mechanical Inc.
Michelin North America Inc.

Miles Overall Maintenance Inc.
Miller Sales & Engineering ANM Equipment
National Railroad Constructors, Inc.
Nitron Chemical Corporation
Office of Trust Funds Management
Oneok Westex Transmission Inc.
Petron Corporation
Phoenix Fuels Companies
Pioneer Equipment Inc.
Purcell Western States Tire
Quadna, an ESOP Company
R Wales & Son L.L.C.
R.J. Ruff & Company
Ram-Mac Products, Inc.
Ray, Valdez, McChristian & Jeans, P.C.
REB Industrial Maintenance L.L.C., f/k/a JBS Industrial
Recon Refractory & Construction
Redburn Tire Company
Schwab Sales, Inc.
Serck Service Inc.
Sidnode Corporation
Smithway Motor Xpress, Inc.
Smorgon Steel Grinding Systems-America L.L.C.
Sonoran Process Equipment Co.
Southwest Energy L.L.C.
Southwest Field Service, Inc.
Structural Preservation Systems
Sturgeon Electric Company, Inc.
Sun Life Assurance Company Of Canada
Sun Valley Manufacturing
Sunwest Supply Inc.
Superior Essex Communications L,P.
Superior Steel Supply
Swift Transportation Corporation
Swiss Metal Group Inc.
T.A. Caid and Sons Incorporated
T.A. Caid Industries, Inc.
TB Contractors, Inc.
The Fairchild Company
The Stebbins Engineering & Manufacturing Company
Thomas Janitorial Service, Inc.
Tower Performance Inc.
Townley Engineering and Manufacturing Company, Inc.
Umicore Marketing Services U.S.A. Inc.
Wa Ho Truck Brokerage
Water & Energy Systems Technology, Inc.

Weir Slurry Group, Inc.

Weir Slurry Group, Inc. d/b/a Rubber Engineering,
a/k/a Weir Minerals North America Rubber Engineering

Willis of Arizona, Inc.

XCel Energy

XMS Industrial

Zephyr Environmental Corporation

PARENT'S PLAN EXHIBIT 10
FORM OF WORKING CAPITAL FACILITY

ASARCO LLC

REVOLVING WORKING CAPITAL CREDIT AGREEMENT

Dated as of [●], 2009

AMERICAS MINING CORPORATION
as Lender

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EXHIBIT A	-	Form of Note
EXHIBIT B	-	Form of Master Security Agreement

REVOLVING WORKING CAPITAL CREDIT AGREEMENT, dated as of [●], 2009, between: ASARCO LLC, a limited liability company duly organized and validly existing under the laws of the State of Delaware (the “Borrower”); and AMERICAS MINING CORPORATION, a corporation duly organized and validly existing under the laws of the State of Delaware (the “Lender”).

The Borrower has requested that the Lender make loans to it in an aggregate principal amount not exceeding \$200,000,000 at any one time outstanding and the Lender is prepared to make such loans upon the terms and conditions hereof. Accordingly, the parties hereto agree as follows:

Section 1. Definitions and Accounting Matters.

1.01 Certain Defined Terms. As used herein, the following terms have the following meanings (all terms defined in this Section or in other provisions of this Agreement in the singular to have the same meanings when used in the plural and vice versa):

“Affiliate” means, as to any Person, any other Person that, directly or indirectly, Controls, is Controlled by or is under common Control with such Person or is a director or officer of such Person.

“Approved Fund” means any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by (a) the Lender, (b) an Affiliate of the Lender or (c) an entity or an Affiliate of an entity that administers or manages the Lender.

“ASARCO LLC” means Reorganized ASARCO LLC.

“Bankruptcy Code” means title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.*, as in effect on the Petition Date, together with all amendments and modifications thereto subsequently made, to the extent applicable to the Reorganization Cases.

“Bankruptcy Court” means the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division.

“Business Day” means any day other than a day on which commercial banks are authorized or required to close in New York City.

“Code” means the Internal Revenue Code of 1986, as amended from time to time.

“Collateral” has the meaning assigned to such term in the Security Agreement.

“Commitment” means the obligation of the Lender to make Loans in an aggregate amount at any one time outstanding up to but not exceeding the amount set forth opposite the Lender’s name on the signature page hereof (or in any instrument or agreement entered into pursuant to Section 9.06(b)) (as the same may be modified from time to time pursuant to Section 2.03 or 9.04). The initial amount of the Lender’s Commitment is \$200,000,000.

“Commitment Termination Date” means [●], 20__, [insert date that is not less than 364 days after the Effective Date], as such date may be extended pursuant to Section 2.08.

“Confirmation Order” means the order of the Bankruptcy Court and/or the District Court confirming the Parent’s Plan pursuant to section 1129 and other applicable sections of the Bankruptcy Code.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract or otherwise, and “Controlling” and “Controlled” shall have meanings correlative thereto.

“Debt” of any Person means (a) all indebtedness of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of such Person to pay the deferred purchase price of property or services, (d) all obligations of such Person as lessee under leases which shall have been or should be, in accordance with generally accepted accounting principles, recorded as capital leases, (e) all amounts available to be drawn, and the amount of all unpaid drawings, under letters of credit issued for the account of such Person, and (f) all obligations of such Person under direct or indirect guaranties in respect of, and obligations (contingent or otherwise) to purchase or otherwise acquire, or otherwise to assure a creditor against loss in respect of, indebtedness or obligations of others of the kinds referred to in clauses (a) through (e) above.

“Debtors” means the debtors in the Reorganization Cases, including, without limitation, Lac d’Amiante du Québec Ltée; Lake Asbestos of Quebec, Ltd.; LAQ Canada, Ltd.; CAPCO Pipe Company, Inc.; Cement Asbestos Products Company; ASARCO LLC; ASARCO Consulting, Inc.; Encycle, Inc.; ALC, Inc.; American Smelting and Refining Company; AR Mexican Explorations, Inc.; Asarco Master, Inc.; Asarco Oil and Gas Company, Inc.; Bridgeview Management Company, Inc.; Covington Land Company; Government Gulch Mining Company, Limited; Southern Peru Holdings, LLC; AR Sacaton, LLC; ASARCO Exploration Company, Inc.; Green Hill Cleveland Mining Company; Alta Mining and Development Company; Blackhawk Mining and Development Company, Limited; Peru Mining Exploration and Development Company; Tulipan Company, Inc.; and Wyoming Mining and Milling Company.

“Default” means an Event of Default or an event that with notice or lapse of time or both would become an Event of Default.

“District Court” means the United States District Court for the Southern District of Texas.

“Dollars” and “\$” means lawful money of the United States of America.

“Effective Date” means the date upon which the conditions specified in Section 5.01 are satisfied (or waived in accordance with Section 9.04).

“Entity” shall have the meaning assigned to such term by section 101(15) of the Bankruptcy Code.

“Event of Default” has the meaning assigned to such term in Section 8.

“Existing Commitment Termination Date” has the meaning assigned to such term in Section 2.08(a).

“Fixed Rate” means [●]% per annum with respect to the Loans.

“GAAP” means U.S. generally accepted accounting principles as in effect from time to time.

“Governmental Authority” means any nation or government, any state or other political subdivision thereof, any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and any court or arbitrator having jurisdiction over the Borrower or any of its Subsidiaries or any of their respective properties.

“Indemnified Party” has the meaning assigned to such term in Section 9.03.

“Interest Period” means the period commencing on the last day of the preceding Interest Period (or in the case of the first Interest Period, the date on which the Loans are made) and ending on the numerically corresponding date three months thereafter. Notwithstanding the foregoing: (i) no Interest Period may end after the Commitment Termination Date; (ii) each Interest Period that would otherwise end on a day which is not a Business Day shall end on the next succeeding Business Day (or, if such next succeeding Business Day falls in the next succeeding calendar month, on the next preceding Business Day); and (iii) notwithstanding clause (i) above, no Interest Period shall have a duration of less than seven days and, if any Interest Period would otherwise be a shorter period, such Loan shall not be available hereunder for such period.

“Lien” means, with respect to any property, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such property. For purposes of this Agreement and the other Loan Documents, a Person shall be deemed to own subject to a Lien any property that it has acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement (other than an operating lease) relating to such property.

“Loan Documents” means, collectively, this Agreement, the Notes and the Security Documents.

“Loans” means the loans provided for in Section 2.01.

“Material Adverse Effect” means a material adverse effect on the consolidated financial condition or business of the Borrower and its Subsidiaries.

“Notes” means the promissory notes provided for by Section 2.05 and all promissory notes delivered in substitution or exchange therefor, in each case as the same shall be modified and supplemented and in effect from time to time.

“Parent’s Plan” means ASARCO Incorporated and Americas Mining Corporation’s Third Amended Parent’s Plan of Reorganization for the Debtors Under Chapter 11 of the United States Bankruptcy Code, and all exhibits attached thereto or referenced therein, as the same may be amended, modified, or supplemented.

“Person” means any individual, corporation, company, voluntary association, partnership, joint venture, trust, unincorporated association or government (or any agency, instrumentality or political subdivision thereof).

“Petition Date” means, as to each of the Debtors, the date on which such entity’s bankruptcy case was commenced with the filing of a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

“Post-Default Rate” means, in respect of any principal of any Loan or any other amount under this Agreement, any Note or any other Loan Document that is not paid when due (whether at stated maturity, by acceleration, by optional prepayment or otherwise), a rate per annum during the period from and including the due date to but excluding the date on which such amount is paid in full equal to 2% per annum plus the Fixed Rate.

“Principal Office” means the principal office of Americas Mining Corporation, located on the date hereof at 2575 East Camelback Rd., Phoenix, AZ 85106.

“Quarterly Date” means the last Business Day of March, June, September and December in each year, the first of which shall be the first such day after the date hereof.

“Reorganization Cases” means the proceedings before the Bankruptcy Court leading to the Confirmation of the Parent’s Plan under chapter 11 of the Bankruptcy Code.

“Reorganized ASARCO LLC” means: ASARCO LLC and/or any of its successors, successors-in-interest, and assigns (by merger, assignment of assets, consolidation, operation of law, or otherwise, including any Entity or Entities designated as successor or successor-in-interest in the Confirmation Order), on or after the Effective Date (as defined in Parent’s DS Exhibit A to Third Amended Parent’s Plan of Reorganization for the Debtors Under Chapter 11 of the United States Bankruptcy Code).

“Responsible Officer” means the chief executive officer, the chief accounting officer, the chief financial officer, the general counsel, the treasurer or an assistant treasurer of the Borrower.

“Secured Obligations” means the obligations described in the definition of “Secured Obligations” in the Security Agreement.

“Security Agreement” means a Master Security Agreement substantially in the form of Exhibit B hereto between the Borrower and the Lender, pursuant to which the Borrower pledges a 100% interest in the proceeds of any of the Debtors’ causes of action which shall vest in Reorganized ASARCO LLC on the Effective Date, as listed on Exhibit 9 to the Parent’s Plan.

“Security Documents” means, collectively, the Security Agreement and all Uniform Commercial Code financing statements required by the Security Agreement to be filed with respect to the security interests created pursuant to the Security Agreement.

“Subsidiary” means with respect to any Person, any Person that is accounted for as a consolidated subsidiary of such Person in accordance with generally accepted accounting principles.

1.02 Accounting Terms and Determinations. Except as otherwise expressly provided herein, all accounting terms used herein shall be interpreted, and all financial statements and certificates and reports as to financial matters required to be delivered to the Lender hereunder shall be prepared, in accordance with GAAP.

1.03 Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (c) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Sections, Exhibits and Schedules shall be construed to refer to Sections of, and Exhibits and Schedules to, this Agreement and (e) the words “asset” and “property” shall be construed to

have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

Section 2. Commitment, Loans, Evidence of Indebtedness and Prepayments.

2.01 Loans. The Lender agrees, on the terms and conditions of this Agreement, to make loans to the Borrower (the "Loans") in Dollars during the period from and including the Effective Date to but excluding the Commitment Termination Date in an aggregate principal amount at any one time outstanding up to but not exceeding the amount of the Commitment as in effect from time to time. Subject to the terms and conditions of this Agreement, during such period the Borrower may borrow, repay and reborrow the amount of the Commitment by means of Loans.

2.02 Borrowings. The Borrower shall give the Lender notice of each borrowing hereunder as provided in Section 4.04. Not later than 4:00 p.m. New York City time on the date specified for each borrowing hereunder, the Lender shall make available the amount of the Loan to be made by it on such date to the Borrower by remitting the same, in immediately available funds, to such account of the Borrower in accordance with the written instructions of the Borrower.

2.03 Changes of Commitment. The Commitment shall, subject to Section 2.08, be automatically reduced to zero on the Commitment Termination Date. The Borrower shall have the right at any time or from time to time (i) so long as no Loans are outstanding, to terminate the Commitment and (ii) to reduce the aggregate unused amount of the Commitment; provided that (x) the Borrower shall give notice of each such termination or reduction as provided in Section 4.04 and (y) each partial reduction shall be in an aggregate amount at least equal to \$[1,000,000] (or a larger multiple of \$[1,000,000]). Commitment once terminated or reduced may not be reinstated.

2.04 Facility Fees. The Borrower shall pay to the Lender a facility fee equal to [0.5]% per annum on the average daily amount of the Commitment (whether used or unused) during the period from and including the date hereof to but excluding the Commitment Termination Date (or any earlier date on which the Commitment is terminated). Accrued facility fees shall be payable on each Quarterly Date, on the Commitment Termination Date (or any earlier date on which the Commitment is terminated).

2.05 Evidence of Indebtedness.

(a) The Lender shall maintain records evidencing the indebtedness of the Borrower hereunder resulting from each Loan made by the Lender to the Borrower, including the amounts of principal and interest payable and paid by the Borrower to the Lender from time to time hereunder. The entries made in the records maintained pursuant to this paragraph (a) shall be prima facie evidence of the existence and amounts of the obligations recorded therein; provided that the failure of the Lender to maintain such records or any error therein shall not in any manner affect the obligation of the Borrower to repay the Loans in accordance with the terms of this Agreement.

(b) The Lender may request that the Loans shall be evidenced by a single promissory note of the Borrower substantially in the form of Exhibit A hereto, payable to the Lender in a principal amount equal to the Commitment as then in effect and otherwise duly completed. Following the issuance of any such Note, the Loans evidenced by such Note and interest thereon shall at all times (including after assignment pursuant to Section 9.06) be represented by one or more Notes in such form payable to the order of the payee named therein.

2.06 Optional Prepayments of Loans. Subject to Sections 4.03 and 5, the Borrower shall have the right to prepay Loans at any time or from time to time, provided that the Borrower shall give the Lender notice of each such prepayment as provided in Section 4.04 (and, upon the date specified in any such notice of prepayment, the amount to be prepaid shall become due and payable hereunder).

2.07 Mandatory Prepayment of Loans. The Borrower shall be required to prepay the Loans in full if Americas Mining Corporation shall cease to own, beneficially and of record, directly or indirectly, 100% of the outstanding interests of the Borrower;

2.08 Extension of Commitment Termination Date.

(a) The Borrower may, by written notice to the Lender not less than 30 days and not more than 45 days prior to the Commitment Termination Date then in effect (the "Existing Commitment Termination Date"), request that the Lender extend the Commitment Termination Date for an additional 364 days from the Existing Commitment Termination Date. The Lender, acting in its sole discretion, shall, by written notice to the Borrower given on or before the date occurring 15 days after receipt of such notice (or, if such date is not a Business Day, the Business Day next succeeding such date) (such date or Business Day, as the case may be, the "Consent Date"), advise the Borrower whether or not the Lender agrees to such extension; provided that (i) if the Lender determines not to extend the Commitment Termination Date, the Lender shall notify the Borrower of such fact promptly after such determination (but in any event no later than the Consent Date) and if the Lender does not so advise the Borrower on or before the Consent Date it shall be deemed to not have consented to such extension; and (ii) any such consent given before the date 30 days prior to the Existing Commitment Termination Date shall be revocable until the opening of business of the Lender on such date and any such consent not revoked before the opening of such business on such date shall be irrevocable.

(b) If the Lender shall have agreed to extend the Commitment Termination Date, then, effective as of the Existing Commitment Termination Date, the Commitment Termination Date shall be extended to the date falling 364 days after the Existing Commitment Termination Date (provided that, if such date is not a Business Day, then the Commitment Termination Date shall be the next preceding Business Day). Notwithstanding the foregoing, the extension of the Commitment Termination Date shall not be effective with respect to the Lender unless:

(i) no Default shall have occurred and be continuing on each of the date of the notice requesting such extension and the Existing Commitment Termination Date; and

(ii) each of the representations and warranties of the Borrower in Section 6 and in the other Loan Documents shall be true and correct on and as of each of the date of the notice requesting such extension and the Existing Commitment Termination Date with the same force and effect as if made on and as of each such date (or, if any such representation or warranty is expressly stated to have been made as of a specific date, as of such specific date); and

(iii) the Lender shall have received a certificate of a Responsible Officer dated the Existing Commitment Termination Date to the effect of clauses (i) and (ii) above.

Section 3. Payments of Principal and Interest.

3.01 Repayment of Loans. The Borrower hereby agrees to repay the Loans in full on the Commitment Termination Date.

3.02 Interest. The Borrower hereby agrees to pay to the Lender interest on the unpaid principal amount of each Loan for the period from and including the date of such Loan to but excluding the date such Loan shall be paid in full, at the Fixed Rate, and

Notwithstanding the foregoing, the Borrower hereby agrees to pay to the Lender interest at the applicable Post-Default Rate on any principal of any Loan and on any other amount payable by the Borrower hereunder or under the Note that shall not be paid in full when due (whether at stated maturity, by acceleration, by prepayment or otherwise), for the period from and including the due date thereof to but

excluding the date the same is paid in full. Accrued interest on each Loan shall be payable (i) for each day such Loan shall be outstanding on the last day of each Interest Period with respect thereof and (ii) upon the payment or prepayment thereof, except that interest payable at the Post-Default Rate shall be payable from time to time on demand. Promptly after the determination of any interest rate provided for herein or any change therein, the Lender shall give notice thereof to the Borrower.

Section 4. Payments; Computations; Etc.

4.01 Payments.

(a) Except to the extent otherwise provided herein, all payments of principal, interest and other amounts to be made by the Borrower under this Agreement and the Notes, and, except to the extent otherwise provided therein, all payments to be made by the Borrower under any other Loan Document, shall be made in Dollars, in immediately available funds, without deduction, set-off or counterclaim, to the Lender at an account at the Principal Office, not later than 1:00 p.m. New York City time on the date on which such payment shall become due (each such payment made after such time on such due date to be deemed to have been made on the next succeeding Business Day).

(b) Without limiting the foregoing, all payments to be made by the Borrower under this Agreement and any other Loan Document shall be made free and clear of and without deduction for any and all present or future taxes, levies, imposts, deductions, charges or withholdings, and all liabilities with respect thereto, excluding, in the case of the Lender, taxes imposed on or measured by its net income, and franchise taxes imposed on it, by the jurisdiction under the laws of which the Lender is organized or any political subdivision thereof and taxes imposed on or measured by its net income, and franchise taxes imposed on it, by the jurisdiction of the Lender or any political subdivision thereof (all such non-excluded taxes, levies, imposts, deductions, charges, withholdings and liabilities being hereinafter referred to as "Taxes"). If the Borrower shall be required by law to deduct any Taxes from or in respect of any sum payable hereunder to the Lender, (i) the sum payable shall be increased as may be necessary so that after making all required deductions the Lender receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Borrower shall make such deductions and (iii) the Borrower shall pay the full amount deducted to the relevant taxation authority or other authority in accordance with applicable law. In addition, the Borrower agrees to pay any present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies which arise from any payment made hereunder or from the execution, delivery, enforcement or registration of, or otherwise with respect to, this Agreement (hereinafter referred to as "Other Taxes"). Without duplication with respect to any amounts paid pursuant to this paragraph (b), the Borrower will indemnify the Lender for the full amount of Taxes or Other Taxes paid by the Lender and any liability (including penalties, interest and expenses) arising therefrom or with respect thereto, whether or not such Taxes or Other Taxes were correctly or legally asserted.

(c) The Borrower shall, at the time of making each payment under this Agreement or any Note, specify to the Lender the Loans or other amounts payable by the Lender hereunder to which such payment is to be applied (and in the event that the Lender fails to so specify, or if an Event of Default has occurred and is continuing, the Lender may apply such payment in such manner as it may determine to be appropriate).

(d) Except to the extent otherwise expressly provided herein, if the due date of any payment under this Agreement or any Note would otherwise fall on a day that is not a Business Day, such date shall be extended to the next succeeding Business Day, and interest shall be payable for any principal so extended for the period of such extension.

4.02 Computations. Interest on Loans and the facility fees shall be computed on the basis of a year of 360 days and actual days elapsed (including the first day but excluding the last day)

Credit Agreement

occurring in the period for which payable. Each determination by the Lender of an interest rate hereunder shall be conclusive and binding for all purposes, absent manifest error.

4.03 Minimum Amounts. Each borrowing and partial prepayment of principal of Loans shall be in an aggregate amount at least equal to \$[●] or a larger multiple of \$[●].

4.04 Certain Notices. Notices by the Borrower to the Lender of terminations or reductions of the Commitment and of borrowings and optional prepayments of Loans shall be irrevocable and shall be effective only if received by the Lender not later than the New York City time and number of Business Days prior to the date of the relevant termination, reduction, borrowing or prepayment or the first day of such Interest Period specified below:

<u>Notice</u>	<u>Number of Business Days Prior</u>	<u>Time</u>
Termination or reduction of Commitment	3	1:00 p.m.
Borrowing of Loans	same day	At least one hour prior to the rate setting time
Prepayments of Loans	1	1:00 p.m.

Each such notice of termination or reduction shall specify the amount of the Commitment to be terminated or reduced. Each such notice of borrowing or optional prepayment shall specify the Borrower, the Loans to be borrowed, the amount (subject to Section 4.03) of each Loan to be borrowed or prepaid and the date of borrowing or optional prepayment (which shall be a Business Day).

4.05 Set-Off. Upon the occurrence and during the continuance of any Event of Default, the Lender is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and indebtedness at any time owing by the Lender to or for the credit or the account of the Borrower against any and all of the obligations of the Borrower now or hereafter existing under this Agreement and the other Loan Documents and any Loans held by the Lender, whether or not the Lender shall have made any demand under this Agreement and although such obligations may be unmatured. The Lender agrees promptly to notify the Borrower after any such set-off and application made by the Lender; provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of the Lender under this Section are in addition to other rights and remedies (including other rights of set-off) which the Lender may have.

Section 5 Conditions Precedent.

5.01 Effective Date. The obligation of the Lender to make its initial Loan hereunder shall not become effective until the date on which the Lender shall have received the following documents, each of which shall be satisfactory to the Lender in form and substance:

(a) Organizational Documents. A good standing certificate and certified copies of the organizational documents of the Borrower and of limited liability company authority for the Borrower (including board of managers' resolutions and evidence of the incumbency of officers) with respect to the execution, delivery and performance of the Loan Documents and each other document to be delivered by the Borrower from time to time in connection herewith and the

Loans hereunder (and the Lender may conclusively rely on such certificate until it receives notice in writing from the Borrower to the contrary).

(b) Opinion(s) of Counsel to the Borrower. Opinion(s), each dated the Effective Date, of [●], and/or a General Counsel of the Borrower, in each case in form and substance satisfactory to the Lender and covering such matters as the Lender may reasonably request (and the Borrower hereby instructs each such counsel to deliver such opinion to the Lender).

(c) Security Agreement. The Security Agreement, duly executed and delivered by the Borrower.

(d) Fees and Expenses. Evidence satisfactory to the Lender that the Borrower shall have paid on or before the Effective Date all fees, costs, expenses in connection with the negotiation, preparation, execution and delivery of this Agreement and the other Loan Documents (to the extent invoiced to the Borrower at least one Business Day prior to the Effective Date).

(e) Other Documents. Such other documents as the Lender or its counsel may reasonably request.

Notwithstanding the foregoing, the obligations of the Lender to make Loans hereunder shall not become effective unless (i) each of the foregoing conditions is satisfied (or waived pursuant to Section 10.04) on or prior to 5:00 p.m., New York City time, on [●], 2009 [insert date 30 days after the date of this Agreement] (and, in the event such conditions are not satisfied or waived, the Commitment shall terminate at such time), and (ii) the Parent's Plan shall have become effectiveness and is not subject to any stay or appeal.

5.02 Initial and Subsequent Loans. The obligation of the Lender to make any Loan upon the occasion of each borrowing hereunder (including the initial borrowing) is subject to the further conditions precedent that, both immediately prior to the making of such Loan and also after giving effect thereto and to the intended use thereof:

(a) no Default shall have occurred and be continuing;

(b) the representations and warranties made by the Borrower in Section 6 and in each of the other Loan Documents, shall be true and correct on and as of the date of the making of such Loan with the same force and effect as if made on and as of such date (or, if any such representation or warranty is expressly stated to have been made as of a specific date, as of such specific date);

(c) the Borrower shall have taken all action required or contemplated by the Security Agreement;

(d) the Parent's Plan shall have become effective and is not subject to any stay or appeal.

Each notice of borrowing by the Borrower hereunder shall constitute a certification by the Borrower to the effect set forth in the preceding sentence (both as of the date of such notice and, unless the Borrower otherwise notifies the Lender prior to the date of such borrowing, as of the date of such borrowing).

Section 6. Representations and Warranties. The Borrower represents and warrants to the Lender that:

6.01 Existence. The Borrower (a) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation (or, if not a corporation, the jurisdiction of its organization), (b) has all corporate power to own its property and carry on its business as now being conducted and (c) is duly qualified to do business and is in good standing in each jurisdiction in which it owns or leases property or in which the conduct of its business requires it to so qualify or be licensed except to the extent that failure to so qualify (or be so licensed or registered) does not and is not reasonably likely to have a Material Adverse Effect.

6.02 No Breach. The execution, delivery and performance by the Borrower of this Agreement are within the Borrower's powers, have been duly authorized by all necessary corporate action, and do not and will not (a) contravene the Borrower's bylaws or certificate of incorporation, (b) violate any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award, (c) conflict with or result in the breach of, or constitute a default under, any agreement to which the Borrower is a party or which is binding on the Borrower's properties or (d) (except for the Liens created pursuant to the Security Documents) result in or require the creation or imposition of any Lien upon or with respect to any of the properties of the Borrower.

6.03 Validity. This Agreement has been duly and validly executed and delivered by the Borrower and constitutes, and each of the Notes and the other Loan Documents when executed and delivered (in the case of the Notes, for value) will constitute, its legal, valid and binding obligation, enforceable against the Borrower in accordance with its terms.

6.04 Approvals. Except for any authorization or approval, consent, filing or registration in connection with the bankruptcy proceedings of the Borrower and certain related debtors under Chapter 11 of the United States Bankruptcy Code in cases jointly administered under Case No. 05-21207 in the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division, no authorizations, approvals or consents of, and no filings or registrations with, any Governmental Authority or agency are necessary for the execution, delivery or performance by the Borrower for the legality, validity or enforceability thereof, except for filings and recordings (if any) in respect of perfecting the Liens created pursuant to the Security Documents.

6.05 Investment Company Act. The Borrower is not an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

Section 7. Covenants. The Borrower covenants and agrees with the Lender that, so long as any Commitment or Loan is outstanding and until payment in full of all amounts payable by the Borrower hereunder:

7.01 Financial Statements Etc. The Borrower will deliver to the Lender:

(a) as soon as available and in any event within 90 days after the end of each fiscal year of the Borrower a certificate of the chief financial officer or the comptroller or other appropriate officer of the Borrower stating that no Default has occurred and is continuing or, if such a Default has occurred and is continuing, a statement as to the nature thereof and the action that the Borrower has taken and proposes to take with respect thereto;

(b) not later than 30 days after the commencement thereof or change in the status thereof, notice of all actions, suits, investigations, litigation and proceedings before any Governmental Authority affecting the Borrower or any of its Subsidiaries the likely effect of which would be to have a Material Adverse Effect; and

(c) such other information respecting the condition or operations, financial (including financial statements and reports) or otherwise, of the Borrower or any of its Subsidiaries as the Lender may from time to time reasonably request.

7.02 Existence, Etc. The Borrower will:

(a) preserve and maintain its legal existence and all of its material rights, privileges, licenses and franchises, except to the extent failure to preserve or maintain such rights, privileges, licenses or franchises is not reasonably likely to have a Material Adverse Effect;

(b) comply with the requirements of all applicable laws, rules, regulations and orders of Governmental Authorities if failure to comply with such requirements could (either individually or in the aggregate) have a Material Adverse Effect; and

(c) pay and discharge all taxes, assessments and governmental charges or levies imposed on it or on its income or profits or on any of its properties prior to the date on which penalties attach thereto, except for any such tax, assessment, charge or levy the payment of which is being contested in good faith and by proper proceedings and against which adequate reserves are being maintained in accordance with GAAP.

7.03 Insurance. The Borrower will maintain insurance with responsible and reputable insurance companies or associations in such amounts and covering such risks as is usually carried by companies engaged in similar businesses and owning similar properties in the same general areas in which the Borrower operates.

Section 8. Events of Default. If one or more of the following events (herein called “Events of Default”) shall occur and be continuing:

(a) The Borrower shall fail to pay any principal of any Loan within one Business Day after such principal becomes due and payable, or shall fail to pay any interest on any Loan or any fees or other amount payable hereunder or under any other Loan Document within ten days after such interest, fees or other amount become due and payable; or

(b) Any representation or warranty made by the Borrower (or any of its officers) in connection with this Agreement or the other Loan Documents shall prove to have been incorrect in any material respect when made or deemed made; or

(c) The Borrower shall fail to perform or observe any term, covenant or agreement contained in this Agreement or any other Loan Document on its part to be performed or observed if the failure to perform or observe such other term, covenant or agreement shall remain unremedied for 21 days after written notice thereof shall have been given to the Borrower by the Lender; or

(d) One or more judgments for the payment of money in an aggregate amount in excess of \$[10,000,000] shall be rendered against the Borrower and the same shall remain undischarged for a period of 30 consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of the Borrower to enforce any such judgment; or

(e) Any of the Security Documents shall for whatever reason be terminated or cease to be in full force and effect, or the enforceability thereof shall be contested by the Borrower; or (ii) any of the Liens purportedly created by the Security Documents shall fail at any time to constitute

a valid and perfected Lien on the collateral intended to be covered thereby (to the extent perfection by filing, registration, recordation or possession is required herein or therein), free and clear of all other Liens (other than Liens permitted by the Security Agreement);

THEREUPON: In the case of an Event of Default, the Lender may, by notice to the Borrower, terminate the Commitment and/or declare the principal amount then outstanding of, and the accrued interest on, the Loans and all other amounts payable by the Borrower hereunder and under the Notes to be forthwith due and payable, whereupon such amounts shall be immediately due and payable without presentment, demand, protest or other formalities of any kind, all of which are hereby expressly waived by the Borrower.

Section 9. Miscellaneous.

9.01 Waiver. No failure on the part of the Lender to exercise and no delay in exercising, and no course of dealing with respect to, any right, power or privilege under this Agreement or any Note shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege under this Agreement or any Note preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.

9.02 Notices. All notices and other communications provided for hereunder shall be in writing (including facsimile communication) and mailed, sent via facsimile or delivered to the Borrower at its address at [●], Attention: [●]; or if to the Lender at its address specified below its signature line hereof; or, as to each of the aforementioned parties, at such other address as shall be designated by such party in a written notice to the other party hereto. All such notices and communications shall, when mailed or sent via facsimile be effective when deposited in the mails or sent via facsimile respectively, except that notices and communications to the Lender pursuant to Section 2 shall not be effective until received by the Lender.

9.03 Expenses, Etc. The Borrower agrees to pay on demand all costs and expenses of the Lender in connection with the preparation, execution, delivery, administration, modification and amendment of this Agreement and the other documents to be delivered hereunder, including the reasonable and documented fees and out-of-pocket expenses of counsel for the Lender and with respect to advising the Lender as to their respective rights and responsibilities under the Loan Documents. The Borrower further agrees to pay on demand all costs and expenses of the Lender, if any (including reasonable and documented fees and expenses of counsel for the Lender), in connection with the enforcement (whether through negotiations, legal proceedings or otherwise) of this Agreement and the other documents to be delivered hereunder, including reasonable fees and expenses of counsel for the Lenders and hereunder in connection with the enforcement of rights under this Section.

The Borrower agrees to indemnify and hold harmless the Lender and its officers, directors, employees, agents and advisors (each, an "Indemnified Party") from and against any and all claims, damages, losses, liabilities and expenses (including reasonable and documented fees and expenses of counsel) that may be incurred by or asserted or awarded against any Indemnified Party, in each case arising out of or in connection with or by reason of, or in connection with an Event of Default or with the preparation for a defense of, any investigation, litigation or proceeding arising out of, related to or in connection with this Agreement or any other Loan Document, including any transaction in which the proceeds of any borrowing hereunder are or are to be applied, whether or not an Indemnified Party is a party thereto and whether or not the transactions contemplated hereby are consummated, except to the extent any such claim, damage, loss, liability or expense is found in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from such Indemnified Party's gross negligence or willful misconduct.

9.04 Amendments, Etc. Except as otherwise expressly provided in this Agreement, any provision of this Agreement may be modified or supplemented only by an instrument in writing signed by the Borrower and the Lender.

9.05 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

9.06 Assignments.

(a) The Borrower may not assign any of its rights or obligations hereunder or under the Notes without the prior consent of the Lender.

(b) The Lender may assign any of its Loans, its Notes, and its Commitment in a minimum amount of \$[10,000,000], provided that (i) unless an Event of Default shall have occurred and be continuing, any such assignment shall require the prior written consent of the Borrower (which consent shall not be unreasonably withheld); (ii) no such consent of the Borrower shall be required with respect to any such assignment to any Approved Fund and (iii) each such assignment by the Lender of its Loans, Notes or Commitment shall be made in such manner so that the same portion of its Loan, Note and Commitment is assigned to the respective assignee. Upon (x) execution and delivery by the assignee of a written instrument (in form and substance reasonably satisfactory to the Lender) pursuant to which such assignee agrees to become a "Lender" hereunder having the Commitment and Loans specified in such instrument and (y) consent to such assignee's assignment by the Borrower, to the extent required above, the assignee shall have, to the extent of such assignment (unless otherwise provided in such assignment with the consent of the Borrower), the obligations, rights and benefits of the Lender hereunder holding the Commitment and Loans (or portions thereof) assigned to it (in addition to the Commitment and Loans, if any, theretofore held by such assignee) and the assigning Lender shall, to the extent of such assignment, be released from the Commitment (or portion thereof) so assigned.

(c) The Lender may furnish any information concerning the Borrower or any of its Subsidiaries in the possession of the Lender from time to time to assignees (including prospective assignees), subject, however, to the provisions of Section 9.12.

9.07 Survival. The obligations of the Borrower under Sections 4.01(b) and 9.03 shall survive the repayment of the Loans and the termination of the Commitment. In addition, each representation and warranty made, or deemed to be made by a notice of any Loan, herein or pursuant hereto shall survive the making of such representation and warranty, and no Lender shall be deemed to have waived, by reason of making any Loan, any Default that may arise by reason of such representation or warranty proving to have been false or misleading, notwithstanding that the Lender may have had notice or knowledge or reason to believe that such representation or warranty was false or misleading at the time such Loan was made.

9.08 Captions. The table of contents and captions and section headings appearing herein are included solely for convenience of reference and are not intended to affect the interpretation of any provision of this Agreement.

9.09 Counterparts; Effectiveness. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart. Except as provided in Section 5.01, this Agreement shall become effective when it has been executed by the parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page to this Agreement by facsimile shall be effective as delivery of a manually executed counterpart of this Agreement.

9.10 Governing Law; Submission to Jurisdiction. This Agreement and the Notes shall be governed by, and construed in accordance with, the law of the State of New York. The Borrower hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of any New York State court or Federal court of the United States of America sitting in the Borough of Manhattan, The City of New York, and any appellate court from any thereof, in any suit, action or proceeding arising out of or relating to this Agreement or any other document delivered hereunder, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that the Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other document delivered hereunder against the Borrower or any of its property in the courts of any jurisdiction.

9.11 Waiver of Jury Trial. **THE BORROWER AND THE LENDER HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the day and year first above written.

BORROWER

ASARCO LLC

By _____
Name:
Title:

LENDER

AMERICAS MINING CORPORATION

By _____
Name:
Title:

Address for Notices:

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
Attention: General Counsel
Telephone No.: 011-52-55-1103-5327
Facsimile No.: 011-52-55-1103-5578

with a copy to:

[●]

Attention: [●]

Telephone No.: [●]

Facsimile No.: [●]

EXHIBIT A

Form of Note

[To be provided]

EXHIBIT B

Form of Master Security Agreement

[To be provided]

Credit Agreement

PARENT'S PLAN EXHIBIT 11
FORM OF SECTION 524(G) TRUST AGREEMENT

ASARCO LLC and certain related Debtors

**ASBESTOS PERSONAL INJURY SETTLEMENT TRUST
DISTRIBUTION PROCEDURES**

ASARCO LLC and certain related Debtors

**ASBESTOS PERSONAL INJURY SETTLEMENT
TRUST AGREEMENT**

ASARCO LLC and certain related Debtors

ASBESTOS PERSONAL INJURY SETTLEMENT TRUST AGREEMENT

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ASARCO LLC and certain related Debtors

ASBESTOS PERSONAL INJURY SETTLEMENT TRUST AGREEMENT

This ASARCO LLC Asbestos Personal Injury Settlement Trust Agreement (this “**Asbestos Trust Agreement**”), dated the date set forth on the signature page hereof and effective as of the Effective Date, is entered pursuant to the ASARCO Incorporated and Americas Mining Corporation’s Modified Fifth Amended Plan of Reorganization for the Debtors Under Chapter 11 of the United States Bankruptcy Code dated July 2, 2009 (as it may be amended or modified, the “**Plan**”)¹, by ASARCO LLC, Lac d’Amiante du Québec Ltée, Lake Asbestos of Quebec, Ltd., LAQ Canada, Ltd., CAPCO Pipe Company, Inc., Cement Asbestos Products Company, Encycle, Inc., ASARCO Consulting, Inc., ALC, Inc., American Smelting and Refining Company, AR Mexican Explorations Inc., Asarco Master, Inc., Asarco Oil and Gas Company, Inc., Bridgeview Management Company, Inc., Covington Land Company, Government Gulch Mining Company, Limited, Southern Peru Holdings, LLC, AR Sacaton, LLC, a Delaware limited liability company, ASARCO Exploration Company, Inc., Wyoming Mining and Milling Company, Alta Mining and Development Company, Tulipan Company, Inc., Blackhawk Mining and Development Company, Limited, Peru Mining Exploration and Development Company, and Green Hill Cleveland Mining Company (collectively referred to as the “**Debtors**” or “**ASARCO**”), the debtors and debtors-in-possession whose Chapter 11 cases are jointly administered under Case No. 05-21207 in the United States Bankruptcy Court for the

¹ All capitalized terms not otherwise defined herein or in the TDP shall have their respective meanings as set forth in the Plan, and such definitions are incorporated herein by reference; *provided, however*, that unless otherwise stated, Asbestos Personal Injury Claims shall include Demands. All capitalized terms not defined herein or defined in the Plan, but defined in the Bankruptcy Code or Rules, shall have the meanings ascribed to them by the Bankruptcy Code and Rules, and such definitions are incorporated herein by reference.

Southern District of Texas, Corpus Christi Division; the Future Claims' Representative (the "**FCR**"), and ASARCO Incorporated and Americas Mining Corporation ("Parent" and collectively with the Debtors, "Settlors"); the Official Committee of the Subsidiary Debtors (the "**Asbestos Subsidiary Committee**"); the Official Committee of Asbestos Claimants (the "**Asbestos Claimants' Committee**"); the Trustees (the "**Trustees**"); Wilmington Trust Company (the "**Delaware Trustee**"); and the members of the Trust Advisory Committee (the "**TAC**") identified on the signature page hereof.

WHEREAS, as of the Petition Date, one or more of the Debtors had been named as a defendant in personal injury and/or wrongful death actions seeking recovery for damages allegedly caused by the presence of, or exposure to, asbestos or asbestos-containing products.

WHEREAS, the Debtors have reorganized under the provisions of Chapter 11 of the United States Bankruptcy Code in cases pending in the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division, jointly administered and known as In re ASARCO LLC *et al.*, Case No. 05-21207.

WHEREAS, on _____, the Bankruptcy Court entered an order confirming the Plan (the "Confirmation Order").

WHEREAS, on _____, the United States District Court for the Southern District of Texas, Corpus Christi Division, entered an order affirming the Confirmation Order and issuing the Permanent Channeling Injunction and the Asbestos Insurance Company Injunction.

WHEREAS, the Plan provides, *inter alia*, for the creation of the ASARCO Asbestos Personal Injury Settlement Trust ("**Asbestos Trust**").

WHEREAS, all Asbestos Personal Injury Claims are channeled to the Asbestos Trust pursuant to the Permanent Channeling Injunction.

WHEREAS, pursuant to the Plan, the Asbestos Trust is to use its assets and income to satisfy all Asbestos Personal Injury Claims.

WHEREAS, pursuant to the Plan, the Asbestos Trust shall be funded with the consideration described in Article 6.3 of the Plan.

WHEREAS, it is the intent of ASARCO, the Parent, the Trustees, the Asbestos Subsidiary Committee, the Asbestos Claimants' Committee, the TAC, and the FCR that the Asbestos Trust be administered, maintained, and operated at all times as a QSF (as defined below) through mechanisms that provide reasonable assurance that the Asbestos Trust will satisfy all Asbestos Personal Injury Claims pursuant to the Plan and the ASARCO Asbestos Personal Injury Settlement Trust Distribution Procedures (the "**TDP**") that are attached hereto as Exhibit 1 in substantially the same manner, and in strict compliance with the terms of this Asbestos Trust Agreement and the TDP.

WHEREAS, any rights of the holders of Asbestos Personal Injury Claims arising under this Asbestos Trust Agreement and the TDP shall vest on the Effective Date.

WHEREAS, pursuant to the Plan, the Asbestos Trust is intended to qualify as a "qualified settlement fund" ("QSF") within the meaning of section 1.468B-1 *et seq.* of the Treasury Regulations promulgated under section 468B of the Internal Revenue Code (the "**QSF Regulations**"), for which no grantor trust election has been made.

WHEREAS, the Bankruptcy Court has determined that the Asbestos Trust and the Plan satisfy all the prerequisites for the injunctions pursuant to Section 524(g) of the Bankruptcy Code, and the injunctions have been entered in connection with the Confirmation Order;

NOW, THEREFORE, it is hereby agreed as follows:

SECTION I

AGREEMENT OF TRUST

1.1 Creation and Name. The Settlers hereby create a trust known as the “ASARCO Asbestos Personal Injury Settlement Trust,” which is the Asbestos Trust provided for and referred to in the Plan. The Trustees of the Asbestos Trust may transact the business and affairs of the Asbestos Trust in the name of the ASARCO Asbestos Trust or the Asbestos Trust, and references herein to the Asbestos Trust shall include a Trustee or Trustees acting on behalf of the Trust. It is the intention of the parties that the trust created hereby constitutes a statutory trust under Chapter 38 of Title 12 of the Delaware Code, 12 Del. C. § 3801 et seq. (the “**Act**”) and that this document, the TDP and the Asbestos Trust Bylaws described herein constitute the governing instruments of the Asbestos Trust. The Trustees and the Delaware Trustee are hereby authorized and directed to execute and file a Certificate of Trust with the Delaware Secretary of State in the form attached hereto.

1.2 Purpose. The purpose of the Asbestos Trust is to assume all liabilities and responsibility for all Asbestos Personal Injury Claims and, among other things to: (a) direct the processing, liquidation and payment of all Asbestos Personal Injury Claims in accordance with the Plan, the TDP and the Confirmation Order; (b) preserve, hold, manage and maximize the assets of the Asbestos Trust for use in paying and satisfying Asbestos Personal Injury Claims; and (c) qualify at all times as a QSF (for which no grantor trust election has been made). The Asbestos Trust is to use the Asbestos Trust’s assets and income to pay the holders of Asbestos Premises Liability Claims from applicable Asbestos Insurance Policies to the extent of coverage and to pay the holders of all other Asbestos Personal Injury Claims in accordance with this Asbestos Trust Agreement and the TDP in such a way that the holders of Asbestos Personal

Injury Claims are treated fairly, equitably and reasonably in light of the finite assets available to satisfy such claims, and to otherwise comply in all respects with the requirements of a trust set forth in Section 524(g)(2)(B) of the Bankruptcy Code.

1.3 Transfer of Assets. Pursuant to Article 6.3 of the Plan, the Reorganized Debtors, through the Parent's Plan Administrator, have transferred the Asbestos Trust Assets to fund the Asbestos Trust and to settle, discharge or channel all Asbestos Personal Injury Claims. Pursuant to the Plan, Reorganized ASARCO, from and after the Effective Date, may transfer and assign additional assets to the Asbestos Trust. In all events, the Asbestos Trust Assets or any other assets to be transferred to the Asbestos Trust under the Plan will be transferred to the Asbestos Trust free and clear of any liens or other claims by the Debtors, Reorganized Debtors, the Parent, any creditor, or other entity. The Debtors, the Reorganized Debtor, the Parent, and any other transferors shall also execute and deliver such documents to the Asbestos Trust as the Trustees reasonably request to transfer and assign any Asbestos Trust Assets to the Asbestos Trust.

1.4 Acceptance of Assets and Assumption of Liabilities.

(a) In furtherance of the purposes of the Asbestos Trust, the Asbestos Trust expressly accepts the transfer to the Asbestos Trust of the Asbestos Trust Assets and any other transfers contemplated by the Plan in the time and manner as contemplated in the Plan.

(b) In furtherance of the purposes of the Asbestos Trust, the Asbestos Trust expressly assumes all liabilities and responsibility for all Asbestos Personal Injury Claims, and, except as otherwise provided in the Plan or Confirmation Order, neither the Reorganized Debtors, the Debtors nor the Parent shall have any further financial or other responsibility or liability therefor. Notwithstanding the foregoing, the Reorganized Debtors and the Parent retain their financial and other responsibility and liability, if any, to the Asbestos Trust as provided in

the Plan. Except as otherwise provided in this Asbestos Trust Agreement and the TDP, the Asbestos Trust shall have all defenses, cross-claims, offsets, and recoupments, as well as rights of indemnification, contribution, subrogation, and similar rights, regarding such claims that the Debtors or the Reorganized Debtors have or would have had under applicable law. Regardless of the foregoing, however, a claimant must meet otherwise applicable federal, state and foreign statutes of limitations and repose, except as otherwise provided in Section 5.1(a)(2) of the TDP.

(c) No provision herein or in the TDP shall be construed or implemented in a manner that would cause the Asbestos Trust to fail to qualify as a QSF under the QSF Regulations (for which no grantor trust election has been made).

(d) The Asbestos Trust shall protect, defend, indemnify and hold harmless, to the fullest extent permitted by applicable law, each ASARCO Protected Party from and against any Asbestos Personal Injury Claims and any related damages, including indemnification from the Asbestos Trust for any expenses, costs, and fees (including attorneys' fees and costs, but excluding any such expenses, costs, and fees incurred prior to the Effective Date), judgments, settlements, or other liabilities arising from or incurred in connection with any action related to Asbestos Personal Injury Claims, including, but not limited to, indemnification or contribution for such claims prosecuted against the Reorganized Debtor. The foregoing shall not apply or constitute a limitation on coverage under any Asbestos Insurance Policies.

(e) Nothing in this Asbestos Trust Agreement shall be construed in any way to limit (i) the scope, enforceability, or effectiveness of the Permanent Channeling Injunction issued under Section 524(g) in connection with the Plan or (ii) subject to the provisions of Section 1.4(b) above, the Asbestos Trust's assumption of all liability for Asbestos Personal Injury Claims.

1.5 Beneficial Owners

To the extent required by the Act, the beneficial owners (within the meaning of the Act) of the Asbestos Trust shall be deemed to be the holders of Asbestos Personal Injury Claims (the “Beneficial Owners of the Asbestos Trust”); *provided* that the holders of Asbestos Personal Injury Claims, as such Beneficial Owners of the Asbestos Trust, shall have only the rights with respect to the Asbestos Trust and its assets as are set forth in the TDP, and no greater or other rights, including upon dissolution, liquidation or winding up of the Asbestos Trust, shall be deemed to apply or be available to the holders of Asbestos Personal Injury Claims in their capacity as Beneficial Owners of the Asbestos Trust.

SECTION II

POWERS AND TRUST ADMINISTRATION

2.1 Powers.

(a) The Trustees are and shall act as the fiduciaries to the Asbestos Trust in accordance with the provisions of this Asbestos Trust Agreement and the Plan. The Trustees shall, at all times, administer the Asbestos Trust and the Asbestos Trust Assets in accordance with the purposes set forth in Section 1.2. Subject to the limitations set forth in this Asbestos Trust Agreement and the TDP, the Trustees shall have the power to take any and all actions that, in the reasonable judgment of the Trustees, are necessary or proper to fulfill the purposes of the Asbestos Trust, including, without limitation, each power expressly granted in this Section 2.1, any power reasonably incidental thereto, and any trust power now or hereafter permitted under the laws of the State of Delaware.

(b) Except as required by applicable law or otherwise specified herein, the Trustees need not obtain the order or approval of any court in the exercise of any power or discretion conferred hereunder.

(c) Without limiting the generality of Section 2.1(a), and except as limited below, the Trustees shall have the power to:

(i) receive and hold the Asbestos Trust Assets and exercise all rights with respect thereto, including the right to vote and sell any securities that are included in the Asbestos Trust Assets;

(ii) invest the monies held from time to time by the Asbestos Trust;

(iii) sell, transfer, or exchange any or all of the Asbestos Trust Assets at such prices and upon such terms as the Trustees may consider proper, consistent with the other terms of this Asbestos Trust Agreement, the Plan and Plan Documents;

(iv) exercise all rights and powers granted to the Trustees and/or the Asbestos Trust by, under or pursuant to the TDP, the Plan Administration Agreement, if any, or any other applicable Plan Document;

(v) enter into leasing agreements with third parties to the extent such agreements are reasonably necessary to permit the Asbestos Trust to operate;

(vi) pay liabilities and expenses of the Asbestos Trust;

(vii) establish such funds, reserves and accounts within the Asbestos Trust estate, as deemed by the Trustees to be necessary or useful in carrying out the purposes of the Asbestos Trust;

(viii) sue and be sued and participate, as a party or otherwise, in any judicial, administrative, arbitral, or other proceeding;

(ix) establish, supervise and administer the Asbestos Trust in accordance with this Asbestos Trust Agreement and the TDP and the terms thereof;

(x) appoint officers, hire employees and engage legal, financial, accounting, investment, auditing, forecasting, and other consultants, advisors and agents as the purposes of the Asbestos Trust require, and delegate to such persons the powers and authorities as the fiduciary duties of the Trustees permit and as the Trustees, in their discretion, deem advisable or necessary in order to carry out the terms of this Asbestos Trust;

(xi) pay employees, legal, financial, accounting, investment, auditing, forecasting, and other consultants, advisors, and agents, including those engaged by the Asbestos Trust in connection with its alternative dispute resolution activities, reasonable compensation;

(xii) compensate the Trustees, the Delaware Trustee, the TAC members, and the FCR as provided below, and their employees, legal, financial, accounting, investment and other advisors, consultants, independent contractors, and agents for services rendered in connection with the performance of the duties of the Trustees, Delaware Trustee, the TAC members and the FCR hereunder, and reimburse the Trustees, the Delaware Trustee, the TAC members and the FCR for all reasonable out-of-pocket costs and expenses incurred by them in connection with the performance of their duties hereunder;

(xiii) execute and deliver instruments as the Trustees consider proper in administering the Asbestos Trust;

(xiv) enter into other arrangements with third parties as are deemed by the Trustees to be useful in carrying out the purposes of the Asbestos Trust, provided the arrangements do not conflict with any other provision of this Asbestos Trust Agreement or the TDP;

(xv) in accordance with Section 4.6, defend, indemnify and hold harmless (and purchase insurance indemnifying) (A) the Trustees, the Delaware Trustee, the members of the TAC and the FCR, and (B) the officers and employees of the Asbestos Trust, and any legal, financial, accounting, investment, auditing, forecasting, and other agents, advisors and consultants of the Asbestos Trust, the TAC or the FCR (the “**Additional Indemnitees**”), to the fullest extent that a statutory trust organized under the laws of the State of Delaware is from time to time entitled to indemnify and/or insure its directors, trustees, officers, employees, agents, advisors, consultants and representatives;

(xvi) delegate any or all of the authority herein conferred with respect to the investment of all or any portion of the Asbestos Trust Assets to any one or more reputable individuals or recognized institutional investment advisors or investment managers without liability for any action taken or omission made because of any delegation, except as provided in Section 4.4;

(xvii) consult with the TAC and the FCR, from time to time, on issues relating to the conduct of the Asbestos Trust as the Trustees consider desirable; and

(xviii) make, pursue (by litigation or otherwise), collect, compromise or settle, in the name of the Asbestos Trust or in the name of Reorganized ASARCO, any claim, right, action, or cause of action included in the Asbestos Trust Assets, including, but not limited to, insurance recoveries, before any court of competent jurisdiction.

(d) The Trustees shall not have the power to guarantee any debt of other persons.

(e) The Trustees agree to take the actions of the Asbestos Trust required hereunder.

(f) The Trustees shall give the TAC and the FCR prompt notice of any act performed or taken pursuant to Sections 2.1(c)(i), (iii), (iv), (viii), or (xvi), and any act proposed to be performed or taken pursuant to Section 2.2(f).

2.2 General Administration.

(a) The Trustees shall act in accordance with the Asbestos Trust Agreement. The Trustees shall adopt and act in accordance with the Asbestos Trust Bylaws. To the extent not inconsistent with the terms of this Asbestos Trust Agreement, the Asbestos Trust Bylaws shall govern the affairs of the Asbestos Trust. In the event of an inconsistency between the Asbestos Trust Bylaws and this Asbestos Trust Agreement, this Asbestos Trust Agreement shall govern.

(b) The Trustees shall be the “administrator” of the Asbestos Trust, within the meaning of Treasury Regulation Section 1.468B-2(k)(3) and shall (i) timely file income tax and other returns and statements and timely pay all taxes required to be paid by the Asbestos Trust using assets of the Asbestos Trust; (ii) comply with all applicable tax reporting and withholding obligations imposed on the Asbestos Trust or the Trustees (in their capacity as Trustees); (iii) satisfy all requirements necessary to qualify and maintain qualification of the Asbestos Trust as a qualified settlement fund within the meaning of the QSF Regulations; (iv) take no action that could cause the Asbestos Trust to fail to qualify as a QSF within the meaning of the QSF Regulations; (v) take no action that could cause the Asbestos Trust to be treated as a grantor trust for federal income tax purposes; and (vi) within seventy-five (75) days (or earlier if required by law) after the end of each calendar year, cause to be prepared and mailed information as required by law to enable payees to complete and file each of their respective federal, state and local

income and other tax returns. The Trustees also shall provide a copy of any filed tax return of the Asbestos Trust to the TAC and the FCR when the return is filed.

(c) The Trustees shall timely account to the Bankruptcy Court as follows:

(i) The Trustees shall cause to be prepared and filed with the Bankruptcy Court, as soon as available, and in any event within one hundred and twenty (120) days following the end of each fiscal year, an annual report (the “**Annual Report**”) containing financial statements of the Asbestos Trust (including, without limitation, a balance sheet of the Asbestos Trust as of the end of the fiscal year and a statement of operations for the fiscal year) audited by a firm of independent certified public accountants selected by the Trustees and accompanied by an opinion of the firm as to the fairness of the financial statements’ presentation of the cash and investments available for the payment of claims and as to the conformity of the financial statements with generally accepted accounting principles or, at the option of the Trustees on advice of the independent certified public accountants, with special purpose accounting methods. Special purpose accounting methods may be adopted to communicate to the beneficiaries of the Trust the net claimants’ equity and the related operating expenses of the Trust. In the event of the use of special purpose accounting methods, the independent certified public accountants may include a statement to the effect that since the financial statements and transactions are not based on generally accepted accounting principles, accounting treatment by other parties for the same transactions may differ as to timing and amount. In addition, the financial statements should contain by note the Trustees’ best estimate of future liability for Asbestos Personal Injury Claims. The Trustees shall provide a copy of the Annual Report to the TAC and the FCR when the Annual Report is filed with the Bankruptcy Court.

(ii) Simultaneously with the filing of the Annual Report, the Trustees shall cause to be prepared and filed with the Bankruptcy Court a report containing a summary of the number and type of claims and the amount paid in respect to the claims disposed of during the period covered by the financial statements. The Trustees shall provide a copy of the report to the TAC and the FCR when the report is filed.

(iii) All materials required to be filed with the Bankruptcy Court by this Section 2.2(c) shall be available for inspection by the public in accordance with procedures established by the Bankruptcy Court.

(d) The Trustees shall cause to be prepared as soon as practicable prior to the commencement of each fiscal year a budget and cash flow projections covering the fiscal year and the succeeding four fiscal years. The budget and cash flow projections shall include a determination of the Maximum Annual Payment pursuant to Section 2.4 of the TDP and the Claims Payment Ratio pursuant to Section 2.5 of the TDP. The Trustees shall provide a copy of the budget and cash flow projections to the TAC and the FCR.

(e) The Trustees shall consult with the TAC and the FCR (i) on the general implementation and administration of the Asbestos Trust; (ii) on the general implementation and administration of the TDP; and (iii) on other matters as may be required under this Asbestos Trust Agreement and the TDP.

(f) The Trustees shall be required to obtain the consent of the TAC and the FCR pursuant to the Consent Process set forth in Sections 5.7(b) and 6.6(b), in addition to any other instances elsewhere enumerated, in order to take any of the following actions:

(i) to redetermine the Payment Percentage described in Section 2.3 of the TDP and as provided in Section 4.2 of the TDP;

(ii) to change the Claims Payment Ratio described in Section 2.5 of the TDP in the event that the requirements for a change as set forth in Section 2.5 of the TDP have been met;

(iii) to change the Disease Levels, Scheduled Values and/or Medical/Exposure Criteria set forth in Section 5.3(a)(3) of the TDP, and/or the Average Values and/or Maximum Values set forth in Section 5.3(b)(3) and Section 5.4(a) of the TDP;

(iv) to establish and/or to change the Claims Materials to be provided to holders of Asbestos Personal Injury Claims under Section 6.1 of the TDP;

(v) to require that claimants provide additional kinds of medical evidence pursuant to Section 7.1 of the TDP;

(vi) to change the form of release to be provided pursuant to Section 7.8 of the TDP;

(vii) to terminate the Asbestos Trust pursuant to Section 7.2;

(viii) to settle the liability of any insurer under any insurance policy or legal action related thereto;

(ix) to change the compensation and/or per diem of the members of the TAC, the FCR, the Delaware Trustee or the Trustees, other than to reflect cost-of-living increases or changes provided under this Asbestos Trust Agreement or approved by the Bankruptcy Court;

(x) to take actions to minimize any tax on the Asbestos Trust Assets; provided that no such action prevents the Asbestos Trust from qualifying as a QSF within the meaning of the QSF Regulations or requires an election for the Asbestos Trust to be treated as a grantor trust for tax purposes;

(xi) to adopt the Asbestos Trust Bylaws in accordance with Section 2.2(a) or thereafter to amend the Asbestos Trust Bylaws in accordance with the terms thereof;

(xii) to amend any provision of this Asbestos Trust Agreement or the TDP in accordance with the terms thereof;

(xiii) to vote the stock, if any, of Reorganized ASARCO for purposes of appointing members of the Board of Directors of Reorganized ASARCO or to appoint members of the Plan Administration Committee, if any;

(xiv) to acquire an interest in or to merge any claims resolution organization formed by the Asbestos Trust with another claims resolution organization that is not specifically created by this Asbestos Trust Agreement or the TDP, or to contract with another claims resolution organization or other entity that is not specifically created by this Asbestos Trust Agreement or the TDP, or permit any other party to join in any claims resolution organization that is formed by the Asbestos Trust pursuant to the Asbestos Trust Agreement or the TDP; provided that a merger, acquisition, contract or joinder shall not (a) subject the Reorganized Debtors, or any successors in interest thereto, to any risk of having any Asbestos Personal Injury Claim asserted against it or them, or (b) otherwise jeopardize the validity or enforceability of the Permanent Channeling Injunction issued pursuant to Section 524(g); and provided further that the terms of a merger will require the surviving organization to make decisions about the allowability and value of claims in accordance with Section 2.1 of the TDP which requires that decisions be based on the provisions of the TDP; or

(xv) to disclose any information, documents, or other materials to preserve, litigate, resolve, or settle coverage, or to comply with an applicable obligation under an insurance policy or settlement agreement pursuant to Section 6.5 of the TDP.

(g) The Trustees shall meet with the TAC and the FCR no less often than quarterly. The Trustees shall meet in the interim with the TAC and the FCR when requested by either.

(h) The Trustees, upon notice from either the TAC or the FCR, if practicable in view of pending business, shall at their next meeting with the TAC or the FCR or, if appropriate, at a specially called meeting, place on the agenda and consider issues submitted by the TAC or the FCR.

(i) For all purposes of this Asbestos Trust Agreement and the Act, the consent of the TAC and the FCR shall be deemed the consent of the Beneficial Owners of the Asbestos Trust.

(j) Periodically, but not less often than once a year, the Trustees shall make available to Asbestos Personal Injury Claimants and other interested parties the number of Asbestos Personal Injury Claims by Disease Level that have been resolved both by individual review and by alternative dispute resolution procedures, as well as by trial, indicating the amounts of the awards and the averages of the awards by jurisdiction.

(k) The Asbestos Trust shall be subject to the continuing jurisdiction of the Bankruptcy Court, within the meaning of the QSF Regulations.

(l) Notwithstanding anything to the contrary in this Asbestos Trust Agreement, the Asbestos Trust and the Trustees are not authorized to engage in any trade or business, for federal income tax purposes, with respect to the Asbestos Trust or the assets thereof except to the extent reasonably necessary (in the good faith judgment of the Trustees) to effect the processing, liquidation, and payment of the Asbestos Personal Injury Claims.

2.3 Claims Administration. The Trustees shall promptly proceed to implement the TDP.

SECTION III

ACCOUNTS, INVESTMENTS, AND PAYMENTS

3.1 Accounts.

(a) The assets of the Asbestos Trust shall be used to pay Asbestos Personal Injury Claims and Asbestos Trust Expenses. The Asbestos Trust may, from time to time, create funds, accounts and reserves within the Asbestos Trust estate as the Trustees may deem necessary, prudent, or useful in order to provide for the payment of Asbestos Trust Expenses and Asbestos Personal Injury Claims and may, with respect to any other fund, account or reserve, restrict the use of monies therein. To the extent of coverage, Asbestos Premises Liability Claims shall be paid pursuant to the applicable terms and conditions of the Asbestos Insurance Policies that are the subject of CIP Agreements and the TDP.

(b) The Trustees shall include a reasonably detailed description of the creation of any account or reserve in accordance with this Section 3.1 and, with respect to any account, the transfers made to the account, the proceeds of or earnings on the assets held in each account and the payments from each account in the reports to be filed with the Bankruptcy Court and provided to the TAC and the FCR pursuant to Section 2.2(c)(i).

3.2 Investments. Investment of monies held in the Asbestos Trust shall be administered in a manner consistent with the standards set forth in the Uniform Prudent Investor Act drafted by the National Conference of Commissioners on Uniform State Laws and approved by the American Bar Association on February 14, 1995, subject to the following limitations and provisions:

(a) The Asbestos Trust shall not acquire or hold any equity securities unless the equity portfolio is invested in either or a combination of the following: (i) diversified equity funds of large capitalization companies which may be included in, but not necessarily limited to, such indices as the S&P 500, Russell 1000, FTSE 100, DAX 100, and MSCI EAFE with no rating criteria, or (ii) any individual company or business enterprise preferred stock or convertible securities if such stock or securities are rated “Baa1” or higher by Moody’s Investor Services, Inc. (“**Moody’s**”), “BBB+” or higher by Standard & Poor’s (“**S&P**”), or have been given an equivalent investment grade rating by another nationally recognized statistical rating agency. Provided, however, the Asbestos Trust shall not acquire, directly or indirectly, equity in any entity (other than a Reorganized Debtor or any successor to a Reorganized Debtor) or business enterprise if, immediately following the acquisition, the Asbestos Trust would hold more than 5% of the equity in the entity or business enterprise, and further provided that the Asbestos Trust shall not hold, directly or indirectly, more than 10% of the equity in any entity (other than a Reorganized Debtor or any successor to a Reorganized Debtor) or business enterprise.

(b) The Asbestos Trust shall not acquire or hold any long-term debt securities, including promissory notes unless (i) the securities are Asbestos Trust Assets under the Plan, (ii) the securities, including promissory notes, are rated “Baa1” or higher by Moody’s, “BBB+” or higher by S&P and are not on “negative watch” (or other appellation indicating that the debt is under review for a possible downgrade) at the applicable agency, or have been given an equivalent investment grade rating by another nationally recognized statistical rating agency, or (iii) the securities have been issued or fully guaranteed as to principal and interest by the United States of America or any agency or instrumentality thereof.

(c) The Asbestos Trust may acquire any issue which is a direct or indirect obligation of any state, county, city or other qualifying government entity. A short term issue may be rated no lower than “MIG 1” or “SP-1”; a long-term issue may be rated no lower than “A” by Moody’s or S&P.

(d) The Asbestos Trust shall not acquire or hold any commercial paper unless the commercial paper is rated “Prime-1” or higher by Moody’s or “A-1” or higher by S&P, or has been given an equivalent rating by another nationally recognized statistical rating agency.

(e) The Asbestos Trust may invest in a money market fund if the fund has the highest rating obtained from either Moody’s or S&P.

(f) The Asbestos Trust shall not acquire any debt securities, equity or other instruments issued by any entity if, following the acquisition, the aggregate fair market value of all debt securities, equity and instruments issued by the entity held by the Asbestos Trust would exceed 5% of the then current aggregate value of the Asbestos Trust’s assets. There is no limitation on holding debt securities or other instruments issued or fully guaranteed as to principal and interest by the United States of America or any agency or instrumentality thereof.

(g) The Asbestos Trust shall not acquire or hold any certificates of deposit, time deposits, bankers’ acceptances or other instruments unless all publicly held, long-term debt securities, if any, of the financial institution issuing the certificate of deposit, time deposit, banker’s acceptance or other instrument and the holding company, if any, of which the financial institution is a subsidiary, meet the standards set forth in Section 3.2(b).

(h) The Asbestos Trust may acquire and hold any securities or instruments issued by a Reorganized Debtor or any successor to a Reorganized Debtor or obtained as

proceeds of litigation or otherwise to resolve disputes, without regard to the limitations set forth in Subsections (a)-(g).

(i) The Asbestos Trust shall not acquire or hold any repurchase obligations unless, in the opinion of the Trustees, they are adequately collateralized.

(j) The Asbestos Trust may allow its investment managers to acquire prudently or hold derivative instruments, including, but not limited to, options, futures and swaps in the normal course of portfolio management. Specifically, the Asbestos Trust may acquire or hold derivatives to help manage or mitigate portfolio risk, including but not limited to, interest rate risk and equity market risk. Using derivative instruments to leverage a portfolio to enhance returns (at a much greater risk to the portfolio) is prohibited.

(k) The Asbestos Trust may lend securities on a short-term basis, subject to adequate, normal and customary collateral arrangements.

(l) Notwithstanding Section 3.2(a), the Asbestos Trust may acquire and hold an equity interest in a claims resolution organization without limitation as to the size of the equity interest acquired and held if prior to the acquisition, the Asbestos Trust complies with the provisions of Section 2.2(f)(xv) with respect to the acquisition.

3.3 Source of Payments.

(a) Asbestos Trust Expenses and payments with respect to Asbestos Personal Injury Claims shall be payable solely by the Trustees out of the Asbestos Trust Assets or investments and proceeds therefrom. Neither the Debtors, the Reorganized Debtors, the Parent, their subsidiaries, any successor in interest, the present or former directors, officers, employees or agents of the Debtors or the Reorganized Debtors, the Parent, nor the Trustees, the TAC or

FCR, or any of their officers, agents, advisors, or employees shall be liable for the payment of any Asbestos Trust Expense or any other Liability of the Asbestos Trust.

(b) The Trustees shall include in the Annual Report a reasonably detailed description of any payments made in accordance with this Section 3.3.

SECTION IV

TRUSTEES; DELAWARE TRUSTEE

4.1 Number. In addition to the Delaware Trustee appointed pursuant to Section 4.11, there shall be three (3) Trustees who shall be those persons named on the signature page hereof.

4.2 Term of Service.

(a) The initial Trustees named pursuant to Article 4.1 shall serve staggered terms of three (3), four (4) and five (5) years shown on the signature pages hereof. Thereafter each term of service shall be five (5) years. The initial Trustees shall serve from the Effective Date until the earlier of (i) the end of his or her term, (ii) his or her death, (iii) his or her resignation pursuant to Section 4.2(b), (iv) his or her removal pursuant to Section 4.2(c), or (v) the termination of the Asbestos Trust pursuant to Section 7.2.

(b) A Trustee may resign at any time by written notice to the remaining Trustees, the TAC and the FCR. The notice shall specify a date when the resignation shall take effect, which shall not be less than ninety (90) days after the date notice is given, where practicable.

(c) A Trustee may be removed (i) by unanimous vote of the remaining Trustees with the consent and approval of the TAC and FCR or (ii) at the recommendation of the remaining Trustees or the TAC and the FCR with the approval of the Bankruptcy Court, in the event that the Trustee becomes unable to discharge the Trustee's duties hereunder due to

accident or physical or mental deterioration, or for other good cause. Good cause shall be deemed to include, without limitation, any substantial failure to comply with the general administration provisions of Section 2.2, a consistent pattern of neglect and failure to perform or participate in performing the duties of the Trustees hereunder, or repeated non-attendance at scheduled meetings. Removal under (i) shall take effect at the time the remaining Trustees, the TAC and the FCR jointly determine. Removal under (ii) shall take effect as determined by the Bankruptcy Court.

4.3 Appointment of Successor Trustees.

(a) In the event of a vacancy in the position of a Trustee, whether by death, term expiration, resignation or removal, the remaining Trustees shall consult with the TAC and the FCR concerning appointment of a successor Trustee. The vacancy shall be filled by the unanimous vote of the remaining Trustees with the consent of the TAC and the FCR. In the event that the remaining Trustees cannot agree on a successor Trustee, or the TAC or the FCR does not consent to the appointment of a successor Trustee, the Bankruptcy Court shall make the appointment. Nothing shall prevent the reappointment of a Trustee for an additional term or terms, and there shall be no limit on the number of terms that a Trustee may serve.

(b) Immediately upon the appointment of any successor Trustee, all rights, titles, duties, powers and authority of the predecessor Trustee hereunder shall be vested in, and undertaken by, the successor Trustee without any further act. No successor Trustee shall be liable personally for any act or omission of the predecessor Trustees.

(c) Each successor Trustee shall serve until the earlier of (i) the end of a full term of five (5) years if the predecessor Trustee completed the Trustee's term, (ii) the end of the remainder of the term of the predecessor Trustee if the predecessor Trustee did not complete the

term, (iii) the Trustee's death, (iv) the Trustee's resignation pursuant to Section 4.2(b), (v) the Trustee's removal pursuant to Section 4.2(c), or (vi) the termination of the Asbestos Trust pursuant to Section 7.2.

4.4 Liability of Trustees, Members of the TAC and the Futures Representative.

(a) The Trustees, the members of the TAC and the FCR shall not be liable to the Asbestos Trust, to any individual holding an Asbestos Personal Injury Claim, or to any other person, except for the individual's own breach of trust committed in bad faith or willful misappropriation. This protection from liability may, in the discretion of the Trustees, be extended to the legal, financial, accounting, investment, auditing, forecasting, and other agents, advisors or consultants of the Asbestos Trust, TAC and FCR.

(b) To the extent that, at law or in equity, the Trustees, the Delaware Trustee, a member of the TAC or the FCR, in his or her capacity as such, has duties (including fiduciary duties) and liabilities to the Asbestos Trust, any Beneficial Owner of the Asbestos Trust or any other Person (as defined in the Act), the Trustee, the Delaware Trustee, TAC member or the FCR acting under this Asbestos Trust Agreement shall not be liable to the Asbestos Trust, any Beneficial Owner of the Asbestos Trust or any other Person (as defined in the Act) for his or her good faith reliance on the provisions of the Asbestos Trust Agreement except as provided in Section 4.4(a). The provisions of the Asbestos Trust Agreement, to the extent that they restrict or eliminate the duties and liabilities of the Trustees, the Delaware Trustee, the members of the TAC or the FCR otherwise existing at law or equity, are agreed by the parties hereto to replace the other duties and liabilities of the Trustees, the Delaware Trustee, the members of the TAC and the FCR.

(c) Notwithstanding any other provision of the Asbestos Trust Agreement or otherwise applicable law, whenever in the Asbestos Trust Agreement the Trustees, the Delaware Trustee, the TAC members and the FCR are permitted or required to make a decision in their “*good faith*” or under another express standard, the actions of the Trustees, the Delaware Trustee, the TAC members and the FCR shall be evaluated under the express standard and shall not be subject to any other or different standard.

4.5 Compensation and Expenses of Trustees.

(a) Each Trustee shall receive compensation from the Asbestos Trust for services as a Trustee in the amount of \$60,000.00 per annum, which amount shall be payable in quarterly installments on January 1st, April 1st, July 1st and October 1st, or as soon thereafter as practicable, beginning with the first such date after the Effective Date. In addition, for all time expended attending Trust meetings, preparing for Trust meetings, and working on Trust business or authorized Trust projects, the Trustees shall receive the sum of \$550 per hour, computed on a quarter-hour basis. The Trustees shall record all hourly time to be charged to the Trust on a daily basis. The per annum and hourly compensation payable to the Trustees hereunder shall be reviewed every year by the Trustees and, after consultation with the members of the TAC and the FCR, appropriately adjusted by the Trustees for changes in the cost of living. Any changes in compensation of the Trustees other than cost of living adjustments shall be made subject to the approval of the Bankruptcy Court. The Delaware Trustee shall be paid compensation pursuant to a separate fee agreement.

(b) The Asbestos Trust will promptly reimburse the Trustees and the Delaware Trustee for all reasonable out-of-pocket costs and expenses incurred by the Trustees or

the Delaware Trustee in connection with the performance of their duties hereunder, following submission of appropriate documentation evidencing payment of costs or expenses.

(c) The Asbestos Trust shall include a description of the amounts paid under this Section 4.5 in the Annual Report.

4.6 Indemnification.

(a) The Asbestos Trust shall indemnify and defend the Trustees, the Delaware Trustee, the members of the TAC and the FCR in the performance of their duties hereunder to the fullest extent that a statutory trust organized under the laws of the State of Delaware is from time to time entitled to indemnify and defend such persons against any and all liabilities, expenses, claims, damages or losses incurred by them in the performance of their duties hereunder or in connection with activities undertaken by them prior to the Effective Date in connection with the formation, establishment, or funding of the Asbestos Trust. The Asbestos Trust may indemnify any of the Additional Indemnitees in the performance of their duties hereunder to the fullest extent that a statutory trust organized under the laws of the State of Delaware is from time to time entitled to indemnify and defend such persons against any and all liabilities, expenses, claims, damages or losses incurred by them in the performance of their duties hereunder or in connection with activities undertaken by them prior to the Effective Date in connection with the formation, establishment or funding of the Asbestos Trust.

Notwithstanding the foregoing, no individual shall be indemnified or defended in any way for any liability, expense, claim, damage, or loss for which the individual is ultimately liable under Section 4.4.

(b) Reasonable expenses, costs and fees (including attorneys' fees and costs) incurred by or on behalf of a Trustee, the Delaware Trustee, a member of the TAC, the FCR or

Additional Indemnatee in connection with any action, suit, or proceeding, whether civil, administrative or arbitrative, from which they are indemnified by the Asbestos Trust pursuant to Section 4.6(a), shall be paid by the Asbestos Trust in advance of the final disposition thereof upon receipt of an undertaking, by or on behalf of the Trustee, the Delaware Trustee, the members of the TAC, the FCR or Additional Indemnatee, to repay the amount in the event that it shall be determined ultimately by final order that the Trustee, the Delaware Trustee, member of the TAC, the FCR or Additional Indemnatee is not entitled to be indemnified by the Asbestos Trust.

(c) The Trustees may purchase and maintain reasonable amounts and types of insurance on behalf of an individual who is or was a Trustee, the Delaware Trustee, member of the TAC, the FCR or Additional Indemnatee, including against liability asserted against or incurred by the individual in that capacity or arising from the individual's status as a Trustee, the Delaware Trustee, TAC member, FCR, an officer or an employee of the Asbestos Trust, or an advisor, consultant or agent of the Asbestos Trust, the TAC or the FCR.

4.7 Trustees' Lien. The Trustees, the Delaware Trustee, the members of the TAC, the FCR and the Additional Indemnitees shall have a first priority lien upon the Asbestos Trust assets to secure the payment of any amounts payable to them pursuant to Section 4.6. The Asbestos Trust shall take actions as may be necessary or reasonably requested by any of the Trustees, the Delaware Trustee, members of the TAC, the FCR and any of the other Additional Indemnitees to evidence the first priority lien, including, without limitation, filing appropriate financing statements.

4.8 Trustees' Employment of Experts; Delaware Trustee's Employment of Counsel.

(a) The Trustees may, but shall not be required to, retain and/or consult with counsel, accountants, appraisers, auditors, forecasters, experts, financial and investment advisors and other persons deemed by the Trustees to be qualified as experts on the matters submitted to them (the “**Trust Professionals**”), and in the absence of gross negligence, the written opinion of or information provided by any Trust Professional deemed by the Trustees to be an expert on the particular matter submitted to the Trust Professional shall be full and complete authorization and protection in respect of any action taken or not taken by the Trustees hereunder in good faith and in accordance with the written opinion of or information provided by any Trust Professional.

(b) The Delaware Trustee shall be permitted to retain counsel as required in the exercise of its obligations hereunder and compliance with the advice of counsel shall be full and complete authorization and protection for actions taken or not taken by the Delaware Trustee in good faith in compliance with the advice.

4.9 Trustees’ Independence. The Trustees shall not, during the term of their service, hold a financial interest in, act as attorney or agent for, or serve as any other professional for a Reorganized Debtor. Notwithstanding the foregoing, any Trustee may serve, without any additional compensation other than the hourly compensation to be paid by the Asbestos Trust pursuant to Section 4.5(a), as a director of Reorganized ASARCO or the Plan Administration Committee, if any, or pursuant to any other Plan Document. No Trustee shall act as an attorney for any person who holds an Asbestos Personal Injury Claim. For the avoidance of doubt, this Section 4.9 shall not be applicable to the Delaware Trustee.

4.10 Bond. The Trustees and the Delaware Trustee shall not be required to post any bond or other form of surety or security unless otherwise ordered by the Bankruptcy Court.

4.11 Delaware Trustee.

(a) There shall at all times be a Delaware Trustee. The Delaware Trustee shall either be (i) a natural person who is at least 21 years of age and a resident of the State of Delaware or (ii) a legal entity that has its principal place of business in the State of Delaware, otherwise meets the requirements of applicable Delaware law and shall act through one or more persons authorized to bind the entity. If at any time the Delaware Trustee shall cease to be eligible in accordance with the provisions of this Section 4.11, it shall resign immediately in the manner and with the effect hereinafter specified in Section 4.11(c). For the avoidance of doubt, the Delaware Trustee will only have the rights and obligations expressly provided by reference to the Delaware Trustee hereunder.

(b) The Delaware Trustee shall not be entitled to exercise any powers, nor shall the Delaware Trustee have any of the duties and responsibilities, of the Trustees set forth herein. The Delaware Trustee shall be one of the trustees of the Asbestos Trust for the sole and limited purpose of fulfilling the requirements of Section 3807 of the Act and for taking actions required to be taken by a Delaware Trustee under the Act. The duties (including fiduciary duties), liabilities and obligations of the Delaware Trustee shall be limited to (i) accepting legal process served on the Asbestos Trust in the State of Delaware and (ii) the execution of any certificates required to be filed with the Secretary of State of the State of Delaware that the Delaware Trustee is required to execute under Section 3811 of the Act and there shall be no other duties (including fiduciary duties) or obligations, express or implied, at law or in equity, of the Delaware Trustee.

(c) The Delaware Trustee shall serve until removed by the Trustees or the Delaware Trustee resigns and a successor Delaware Trustee is appointed by the Trustees in accordance with the terms of Section 4.11(d). The Delaware Trustee may resign at any time

upon the giving of at least sixty (60) days advance written notice to the Trustees; provided, that any resignation shall not become effective unless and until a successor Delaware Trustee shall have been appointed by the Trustees in accordance with Section 4.11(d). If the Trustees do not act within the 60-day period, the Delaware Trustee may apply to the Court of Chancery of the State of Delaware for the appointment of a successor Delaware Trustee.

(d) Upon the resignation or removal of the Delaware Trustee, the Trustees shall appoint a successor Delaware Trustee by delivering a written instrument to the outgoing Delaware Trustee. Any successor Delaware Trustee must satisfy the requirements of Section 3807 of the Act. Any resignation or removal of the Delaware Trustee and appointment of a successor Delaware Trustee shall not become effective until a written acceptance of appointment is delivered by the successor Delaware Trustee to the outgoing Delaware Trustee and the Trustees and any fees and expenses due to the outgoing Delaware Trustee are paid. Following compliance with the preceding sentence, the successor Delaware Trustee shall become fully vested with all of the rights, powers, duties and obligations of the outgoing Delaware Trustee under this Asbestos Trust Agreement, with like effect as if originally named as the Delaware Trustee, and the outgoing Delaware Trustee shall be discharged of its duties and obligations under this Asbestos Trust Agreement.

SECTION V

TRUST ADVISORY COMMITTEE

5.1 Members. The TAC shall consist of five (5) members, who shall initially be the persons named on the signature page hereof.

5.2 Duties. The members of the TAC shall serve in a fiduciary capacity representing all holders of present Asbestos Personal Injury Claims. The Trustees must consult with the TAC

on matters identified in Section 2.2(e) and in other provisions herein, and must obtain the consent of the TAC on matters identified in Section 2.2(f). Where provided in the TDP, certain other actions by the Trustees are also subject to the consent of the TAC.

5.3 Term of Office.

(a) The initial members of the TAC appointed in accordance with Section 5.1 shall serve the staggered three-, four-, or five-year terms shown on the signature pages hereof. Thereafter, each term of office shall be five (5) years. Each member of the TAC shall serve until the earlier of (i) the member's death, (ii) the member's resignation pursuant to Section 5.3(b), (iii) the member's removal pursuant to Section 5.3(c), (iv) the end of the member's term as provided above, or (v) the termination of the Asbestos Trust pursuant to Section 7.2.

(b) A member of the TAC may resign at any time by written notice to the other members of the TAC, the Trustees and the FCR. The notice shall specify a date when the resignation shall take effect, which shall not be less than ninety (90) days after the date notice is given, where practicable.

(c) A member of the TAC may be removed in the event that the member becomes unable to discharge the member's duties hereunder due to accident, physical deterioration, mental incompetence, or a consistent pattern of neglect and failure to perform or to participate in performing the duties of the member hereunder, such as repeated non-attendance at scheduled meetings, or for other good cause. Removal shall be made at the recommendation of the remaining members of the TAC with the approval of the Bankruptcy Court.

5.4 Appointment of Successor.

(a) If, prior to the termination of service of a member of the TAC other than as a result of removal, the member has designated in writing an individual to succeed the

member as a member of the TAC, the designated individual shall be the member's successor. If the member of the TAC did not designate an individual to succeed the member prior to the termination of the member's service as contemplated above, the member's law firm may designate the member's successor. If (i) a member of the TAC did not designate an individual to succeed the member prior to the termination of the member's service and the member's law firm does not designate the member's successor as contemplated above or (ii) the member is removed pursuant to Section 5.3(c), the member's successor shall be appointed by a majority of the remaining members of the TAC or, if a majority of the remaining members of the TAC cannot agree on a successor, the Bankruptcy Court. Nothing in this Asbestos Trust Agreement shall prevent the reappointment of an individual serving as a member of the TAC for an additional term or terms, and there shall be no limit on the number of terms that a TAC member may serve.

(b) Each successor TAC member shall serve until the earlier of (i) the end of the full term of five (5) years for which the member was appointed if the member's immediate predecessor member of the TAC completed the predecessor member's term, (ii) the end of the term of the predecessor member if the predecessor member did not complete the term (iii) the member's death, (iv) the member's resignation pursuant to Section 5.3(b), (v) the member's removal pursuant to Section 5.3(c), or (vi) the termination of the Asbestos Trust pursuant to Section 7.2.

5.5 TAC's Employment of Professionals.

(a) The TAC may but is not required to retain and/or consult counsel, accountants, appraisers, auditors, forecasters, experts, financial and investment advisors, and other persons deemed by the TAC to be qualified as experts on matters submitted to the TAC (the "TAC Professionals"). The TAC and the TAC Professionals shall at all times have

complete access to the Asbestos Trust's officers, employees and agents, as well as to the Trust Professionals, and shall also have complete access to all information generated by them or otherwise available to the Asbestos Trust or the Trustees except that any information provided by the Trust Professionals shall not constitute a waiver of any applicable privilege. In the absence of gross negligence, the written opinion of or information provided by any TAC Professional or Trust Professional deemed by the TAC to be qualified as an expert on the particular matter submitted to the TAC shall be full and complete authorization and protection in support of any action taken or not taken by the TAC in good faith and in accordance with the written opinion of or information provided by the TAC Professional or Trust Professional.

(b) The Asbestos Trust shall promptly reimburse, or pay directly if so instructed, the TAC for all reasonable fees and costs associated with the TAC's employment of legal counsel pursuant to this provision in connection with the TAC's performance of its duties hereunder. The Asbestos Trust shall also promptly reimburse, or pay directly if so instructed, the TAC for all reasonable fees and costs associated with the TAC's employment of any other TAC Professional pursuant to this provision in connection with the TAC's performance of its duties hereunder; provided, however, that (i) the TAC has first submitted to the Asbestos Trust a written request for reimbursement setting forth the reasons (A) why the TAC desires to employ the TAC Professional, and (B) why the TAC cannot rely on Trust Professionals to meet the need of the TAC for the expertise or advice, and (ii) the Asbestos Trust has approved the TAC's request for reimbursement in writing. If the Asbestos Trust agrees to pay for the TAC Professional, the reimbursement shall be treated as an Asbestos Trust Expense. If the Asbestos Trust declines to pay for the TAC Professional, it must set forth its reasons in writing. If the

TAC still desires to employ the TAC Professional at Trust expense, the TAC and/or the Trustees shall resolve their dispute pursuant to Section 7.13.

5.6 Compensation and Expenses of the TAC.

The members of the TAC shall receive compensation from the Asbestos Trust for their services as TAC members at their standard billing rate up to \$550 per hour for attendance at Asbestos Trust meetings and for the conduct of other Asbestos Trust business. The Asbestos Trust will promptly reimburse the members of the TAC for all reasonable out-of-pocket costs and expenses incurred by the members of the TAC in connection with the performance of their duties hereunder. The members of the TAC shall record all hourly time to be charged to the Trust on a daily basis. The hourly compensation payable to the members of the TAC hereunder shall be reviewed every year by the Trustees and, after consultation with the members of the TAC and the FCR, appropriately adjusted by the Trustees for changes in the cost of living. Any changes in compensation of the TAC other than cost of living adjustments shall be subject to the approval of the Bankruptcy Court. The reimbursement or direct payment provided hereunder shall be deemed an Asbestos Trust Expense. The Asbestos Trust shall include a description of the amounts paid under this Section 5.6 in the Annual Report to be filed with the Bankruptcy Court and provided to the FCR and the TAC pursuant to Section 2.2(c)(i).

5.7 Procedures for Consultation With and Obtaining the Consent of the TAC.

(a) **Consultation Process.**

(i) In the event the Trustees are required to consult with the TAC pursuant to Section 2.2(e) or on other matters as provided herein or in the TDP, the Trustees shall provide the TAC with written advance notice of the matter under consideration and with all relevant information concerning the matter as is reasonably practicable under the

circumstances. The Trustees shall also provide the TAC with reasonable access to the Trust Professionals and other experts retained by the Asbestos Trust and its staff (if any) as the TAC may reasonably request during the time that the Trustees are considering the matter, and shall also provide the TAC the opportunity, at reasonable times and for reasonable periods of time, to discuss and comment on the matter with the Trustees.

(ii) In determining when to take definitive action on any matter subject to the consultation procedures set forth in this Section 5.7(a), the Trustees shall take into consideration the time required for the TAC, if its members so wish, to engage and consult with its own independent financial or investment advisors as to the matter. In any event, the Trustees shall not take definitive action on any matter subject to the consultation procedures set forth in this Section 5.7(a) until at least thirty (30) days after providing the TAC with the initial written notice that the matter is under consideration by the Trustees, unless the time period is waived or reduced by the TAC.

(b) **Consent Process.**

(i) In the event the Trustees are required to obtain the consent of the TAC pursuant to Section 2.2(f) or on any other matters specified herein or in the TDP, the Trustees shall provide the TAC with a written notice stating that their consent is being sought, describing in detail the nature and scope of the action the Trustees propose to take, and explaining in detail the reasons why the Trustees desire to take the action. The Trustees shall provide the TAC as much relevant additional information concerning the proposed action as is reasonably practicable under the circumstances. The Trustees shall also provide the TAC with reasonable access to the Trust Professionals and other experts retained by the Asbestos Trust and its staff (if any) as the TAC may reasonably request during the time that the Trustees are

considering the action, and shall also provide the TAC the opportunity, at reasonable times and for reasonable periods of time, to discuss and comment on the action with the Trustees.

(ii) The TAC must consider in good faith and in a timely fashion any request for its consent by the Trustees, and must in any event advise the Trustees in writing of its consent or its objection to the proposed action within thirty (30) days of receiving the original request for consent from the Trustees, unless the period is waived or reduced by the TAC or the TAC advises the Trustees of its consent or objection at a duly noticed Trust meeting with the TAC and FCR. The TAC may not withhold its consent unreasonably. If the TAC decides to withhold its consent, it must explain in detail its objections to the proposed action. If the TAC does not advise the Trustees in writing of its consent or its objections to the action within thirty (30) days of receiving notice regarding the request, the TAC's consent to the proposed action shall be deemed to have been affirmatively granted.

(iii) Except as otherwise provided in this Asbestos Trust Agreement or in the TDP, the TAC shall act by majority vote.

(iv) If, after following the procedures specified in this Section 5.7(b), the TAC continues to object to the proposed action and to withhold its consent to the proposed action, the Trustees and the TAC shall resolve their dispute pursuant to Section 7.13. However, the burden of proof with respect to the validity of the TAC's objection and withholding of its consent shall be on the TAC.

SECTION VI

THE FUTURE CLAIMS REPRESENTATIVE

6.1 Duties. The initial FCR shall be the individual identified on the signature pages hereto. The FCR shall serve in a fiduciary capacity, representing the interests of the holders of

future Asbestos Personal Injury Claims for the purpose of protecting the rights of those persons. The Trustees must consult with the FCR on matters identified in Section 2.2(e) and on certain other matters provided herein, and must obtain the consent of the FCR on matters identified in Section 2.2(f). Where provided in the TDP, certain other actions by the Trustees are also subject to the consent of the FCR.

6.2 Term of Office.

(a) The FCR shall serve until the earlier of (i) the FCR's death, (ii) the FCR's resignation pursuant to Section 6.2(b), (iii) the FCR's removal pursuant to Section 6.2(c), or (iv) the termination of the Asbestos Trust pursuant to Section 7.2.

(b) The FCR may resign at any time by written notice to the Trustees. The notice shall specify a date when the resignation shall take effect, which shall not be less than ninety (90) days after the date notice is given, where practicable.

(c) The FCR may be removed by the Bankruptcy Court in the event the FCR becomes unable to discharge the FCR's duties hereunder due to accident, physical deterioration, mental incompetence, or a consistent pattern of neglect and failure to perform or to participate in performing the duties hereunder, such as repeated non-attendance at scheduled meetings, or for other good cause.

6.3 Appointment of Successor. A vacancy caused by death or resignation shall be filled with an individual nominated prior to the effective date of the resignation or the death by the resigning or deceased FCR, and a vacancy caused by removal of the FCR or by death or resignation without pre-selection shall be filled with an individual nominated by the Trustees in consultation with the TAC, subject, in each case, to the approval of the Bankruptcy Court. In the

event a majority of the Trustees cannot agree, the successor shall be chosen by the Bankruptcy Court.

6.4 FCR's Employment of Professionals.

(a) The FCR may, but is not required to, retain and/or consult counsel, accountants, appraisers, auditors, forecasters, experts, financial and investment advisors, and such other parties deemed by the FCR to be qualified as experts on matters submitted to the FCR (the "**FCR Professionals**"). The FCR and the FCR Professionals shall at all times have complete access to the Asbestos Trust's officers, employees and agents, as well as to the Trust Professionals, and shall also have complete access to all information generated by them or otherwise available to the Asbestos Trust or the Trustees provided that any information provided by the Trust Professionals shall not constitute a waiver of any applicable privilege. In the absence of gross negligence, the written opinion of or information provided by any FCR Professional or Trust Professional deemed by the FCR to be qualified as an expert on the particular matter submitted to the FCR shall be full and complete authorization and protection in support of any action taken, or not taken, by the FCR in good faith and in accordance with the written opinion of or information provided by the FCR Professional or Trust Professional.

(b) The Asbestos Trust shall promptly reimburse, or pay directly if so instructed, the FCR for all reasonable fees and costs associated with the FCR's employment of legal counsel pursuant to this provision in connection with the FCR's performance of the FCR's duties hereunder. The Asbestos Trust shall also promptly reimburse, or pay directly if so instructed, the FCR for all reasonable fees and costs associated with the FCR's employment of any other FCR Professionals pursuant to this provision in connection with the FCR's performance of the FCR's duties hereunder; provided, however, that (i) the FCR has first

submitted to the Asbestos Trust a written request for reimbursement setting forth the reasons (A) why the FCR desires to employ the FCR Professional, and (B) why the FCR cannot rely on Trust Professionals to meet the need of the FCR for the expertise or advice, and (ii) the Asbestos Trust has approved the FCR's request for reimbursement in writing. If the Asbestos Trust agrees to pay for the FCR Professional, the reimbursement shall be treated as an Asbestos Trust Expense. If the Asbestos Trust declines to pay for the FCR Professional, it must set forth its reasons in writing. If the FCR still desires to employ the FCR Professional at Trust expense, the FCR and/or the Trustees shall resolve their dispute pursuant to Section 7.13.

6.5 Compensation and Expenses of the Future Claims Representative. The FCR shall receive compensation from the Asbestos Trust for services as the FCR at the FCR's standard billing rate up to \$550 per hour for attendance at Asbestos Trust meetings or for the conduct of other Asbestos Trust business. The Asbestos Trust will promptly reimburse the FCR for all reasonable out-of-pocket costs and expenses incurred by the FCR in connection with the performance of the FCR's duties hereunder. The FCR shall record all hourly time to be charged to the Trust on a daily basis. The hourly compensation payable to the FCR hereunder shall be reviewed every year by the Trustees and, after consultation with the members of the TAC and the FCR, appropriately adjusted by the Trustees for changes in the cost of living. Any changes in compensation of the FCR other than cost of living adjustments shall be made subject to the approval of the Bankruptcy Court. The reimbursement or direct payment provide hereunder shall be deemed an Asbestos Trust Expense. The Asbestos Trust shall include a description of the amounts paid under this Section 6.5 in the Annual Report to be filed with the Bankruptcy Court and provided to the FCR and the TAC pursuant to Section 2.2(c)(i).

6.6 Procedures for Consultation with and Obtaining the Consent of the Future Claims Representative.

(a) Consultation Process.

(i) In the event the Trustees are required to consult with the FCR pursuant to Section 2.2(e) or on any other matters specified herein or in the TDP, the Trustees shall provide the FCR with written advance notice of the matter under consideration, and with all relevant information concerning the matter as is reasonably practicable under the circumstances. The Trustees shall also provide the FCR with reasonable access to the Trust Professionals and other experts retained by the Asbestos Trust and its staff (if any) as the FCR may reasonably request during the time that the Trustees are considering the matter, and shall also provide the FCR the opportunity, at reasonable times and for reasonable periods of time, to discuss and comment on the matter with the Trustees.

(ii) In determining when to take definitive action on any matter subject to the consultation process set forth in this Section 6.6(a), the Trustees shall take into consideration the time required for the FCR, if the FCR so wishes, to engage and consult with the FCR's own independent financial or investment advisors as to the matter. In any event, the Trustees shall not take definitive action on the matter until at least thirty (30) days after providing the FCR with the initial written notice that the matter is under consideration by the Trustees, unless the period is waived or reduced by the FCR.

(b) Consent Process.

(i) In the event the Trustees are required to obtain the consent of the FCR pursuant to Section 2.2(f) or on any other matters specified herein or in the TDP, the Trustees shall provide the FCR with a written notice stating that the FCR's consent is being sought pursuant to that provision, describing in detail the nature and scope of the action the

Trustees propose to take, and explaining in detail the reasons why the Trustees desire to take the action. The Trustees shall provide the FCR as much relevant additional information concerning the proposed action as is reasonably practicable under the circumstances. The Trustees shall also provide the FCR with reasonable access to the Trust Professionals and other experts retained by the Asbestos Trust and its staff (if any) as the FCR may reasonably request during the time that the Trustees are considering the action, and shall also provide the FCR the opportunity, at reasonable times and for reasonable periods of time, to discuss and comment on the action with the Trustees.

(ii) The FCR must consider in good faith and in a timely fashion any request for the FCR's consent by the Trustees, and must in any event advise the Trustees in writing of the FCR's consent or objection to the proposed action within thirty (30) days of receiving the original request for consent from the Trustees, unless the period is waived or reduced by the FCR or the FCR advises the Trustees of the FCR's consent or objection at a duly noticed Trust meeting with the TAC and FCR. The FCR may not withhold the FCR's consent unreasonably. If the FCR decides to withhold consent, the FCR must explain in detail the FCR's objections to the proposed action. If the FCR does not advise the Trustees in writing of the FCR's consent or objections to the proposed action within thirty (30) days of receiving the notice from the Trustees regarding the proposed action, the FCR's consent shall be deemed to have been affirmatively granted.

(iii) If, after following the procedures specified in this Section 6.6(b), the FCR continues to object to the proposed action and to withhold the FCR's consent to the proposed action, the Trustees and the FCR shall resolve their dispute pursuant to Section 7.13.

However, the burden of proof with respect to the validity of the FCR's objection and withholding of his or her consent shall be on the FCR.

SECTION VII

GENERAL PROVISIONS

7.1 Irrevocability. To the fullest extent permitted by applicable law, the Asbestos Trust is irrevocable.

7.2 Term; Termination.

(a) The term for which the Asbestos Trust is to exist shall commence on the date of the filing of the Certificate of Trust and shall terminate pursuant to the provisions of Section 7.2.

(b) The Asbestos Trust shall automatically dissolve on the date (the “**Dissolution Date**”) ninety (90) days after the first to occur of the following events:

(i) the date on which the Trustees decide to dissolve the Asbestos Trust because (A) they deem it unlikely that new asbestos claims will be filed against the Asbestos Trust, (B) all Asbestos Personal Injury Claims duly filed with the Asbestos Trust have been liquidated and paid to the extent provided in this Asbestos Trust Agreement and the TDP or have been disallowed by Final Orders, to the extent possible based upon the funds available through the Plan, and (C) twelve (12) consecutive months have elapsed during which no new asbestos claim has been filed with the Asbestos Trust; or

(ii) if the Trustees have procured and have in place irrevocable insurance policies and have established claims handling agreements and other necessary arrangements with suitable third parties adequate to discharge all expected remaining obligations and expenses of the Asbestos Trust in a manner consistent with this Asbestos Trust Agreement

and the TDP, the date on which the Bankruptcy Court enters an order approving the insurance and other arrangements and the order of the Bankruptcy Court becomes a Final Order; or

(iii) to the extent that any rule against perpetuities shall be deemed applicable to the Asbestos Trust, the date on which twenty-one (21) years less ninety-one (91) days pass after the death of the last survivor of all of the descendants of the late Joseph P. Kennedy, Sr., father of the late President John F. Kennedy, living on the date hereof.

(c) On the Dissolution Date or as soon as reasonably practicable, after the wind-up of the Asbestos Trust's affairs by the Trustees and payment of all the Asbestos Trust's liabilities (including without limitation Asbestos Trust Expenses) has been provided for as required by applicable law including Section 3808 of the Act, all monies remaining in the Asbestos Trust estate shall be given to organization(s) exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code, which tax-exempt organization(s) shall be selected by the Trustees using their reasonable discretion; provided, however, that (i) if practicable, the activities of the selected tax-exempt organization(s) shall be related to the treatment of, research on, or the relief of suffering of individuals suffering from asbestos related lung disease or disorders, and (ii) the tax-exempt organization(s) shall not bear any relationship to the Reorganized Debtors, AMC, ASARCO USA Incorporated, the Parent, their successors, or their Affiliates within the meaning of section 468B(d)(3) of the Internal Revenue Code. Notwithstanding any contrary provision of the Plan and related documents, this Section 7.2(c) cannot be modified or amended.

(d) Following the dissolution and distribution of the assets of the Asbestos Trust, the Asbestos Trust shall terminate and the Trustees, or any one of them, shall execute and cause a Certificate of Cancellation of the Certificate of Trust of the Asbestos Trust to be filed in

accordance with the Act. Notwithstanding anything to the contrary contained in this Asbestos Trust Agreement, the existence of the Asbestos Trust as a separate legal entity shall continue until the filing of such Certificate of Cancellation.

7.3 Amendments. The Trustees, after consultation with the TAC and the FCR, and subject to the unanimous consent of the TAC and the FCR, may modify or amend this Asbestos Trust Agreement and the Asbestos Trust Bylaws. The Trustees, after consultation with the TAC and the FCR, and subject to the consent of the TAC and the FCR, may modify or amend the TDP; provided, however, that no amendment to the TDP shall be inconsistent with the provisions limiting amendments to that document provided therein, and in particular the provisions limiting amendment of the Claims Payment Ratio set forth in Section 2.5 of the TDP and of the Payment Percentage set forth in Section 4.2 of the TDP. Any modification or amendment made pursuant to this Section 7.3 must be done in writing. Notwithstanding anything contained in this Asbestos Trust Agreement or the TDP to the contrary, neither this Asbestos Trust Agreement, the Asbestos Trust Bylaws, the TDP, nor any document annexed to the foregoing shall be modified or amended in any way that could jeopardize, impair, or modify the applicability of section 524(g) of the Bankruptcy Code to the Plan and the Confirmation Order, the efficacy or enforceability of the injunctions entered thereunder, or the status of the Asbestos Trust as a QSF under the QSF Regulations for which no grantor trust election has been made.

7.4 Meetings. The Delaware Trustee shall not be required nor permitted to attend meetings of the Asbestos Trust.

7.5 Severability. Should any provision in this Asbestos Trust Agreement be determined to be unenforceable, that determination shall in no way limit or affect the

enforceability and operative effect of any and all other provisions of this Asbestos Trust Agreement.

7.6 Notices. Notices to persons asserting Asbestos Personal Injury Claims shall be given by first class mail, postage prepaid, at the address of the claimant, or, where applicable, the claimant's legal representative, in each case as provided on the claim form submitted to the Asbestos Trust or on the complaint served on the Asbestos Trust with respect to the Asbestos Personal Injury Claim or by such other means, including electronic notice, as may be agreed between the Asbestos Trust and the Asbestos Personal Injury Claimant.

(a) Any notices or other communications required or permitted hereunder to the following parties shall be in writing and delivered at the addresses designated below, or sent by e-mail or facsimile pursuant to the instructions listed below, or mailed by registered or certified mail, return receipt requested, postage prepaid, addressed as follows, or to another address or addresses as may hereafter be furnished in writing to each of the other parties listed below in compliance with the terms hereof.

To the Asbestos Trust through the Trustees:

[TO COME]

To the Delaware Trustee:

Wilmington Trust Company
1100 N. Market Street
Wilmington, DE 19890-1625
Attention: Corporate Custody

[presumes Wilmington Trust retained as Delaware Trustee—place holder]

To the TAC:

[TO COME]

To the FCR:

Hon. Robert C. Pate
Frost Bank Plaza
802 North Carancahua, Suite 1350
Corpus Christi, Texas 78470-0165
Telephone: (361) 888-8413
Facsimile: (361) 887-6207
Email: judgepate@robertcpatelaw.com

With a copy to:

John H. Tate, II
Oppenheimer, Blend, Harrison, & Tate, Inc.
711 Navarro, Sixth Floor
San Antonio, Texas 78205
Telephone: (210) 224-2000
Facsimile: (210) 224-7540
Email: JTate@obht.com

To Reorganized ASARCO:

c/o Plan Administrator

[Any corporate person?]

With a copy to:

Shelby A. Jordan
Jordan, Hyden, Womble, Culbreath & Holzer, P.C.
Bank of America, Suite 900
500 North Shoreline
Corpus Christi, Texas 78471
Telephone: (361) 884-5678
Facsimile: (361) 888-5555
Email: sjordan@jhwclaw.com

and

Jack L. Kinzie
Baker Botts L.L.P.
2001 Ross Avenue
Dallas, Texas 75201-2980
Telephone: (214) 953-6500
Facsimile: (214) 661-6503

Email: jack.kinzie@bakerbotts.com

To the Parent: [INSERT]

(b) All notices and communications if mailed shall be effective when physically delivered at the designated addresses or, if electronically transmitted, when the communication is received at the designated addresses and confirmed by the recipient by return transmission or by electronic delivery confirmation.

7.7 Successors and Assigns. The provisions of this Asbestos Trust Agreement shall be binding upon and inure to the benefit of the Debtors, the Parent, the Asbestos Trust, the Trustees and the Reorganized Debtors, and their respective successors and assigns, except that neither the Debtors, the Parent, the Asbestos Trust, the Trustees nor the Reorganized Debtors may assign or otherwise transfer any of its, or their, rights or obligations, if any, under this Asbestos Trust Agreement except, in the case of the Asbestos Trust and the Trustees, as contemplated by Section 2.1.

7.8 Limitation on Claim Interests for Securities Laws Purposes. Asbestos Personal Injury Claims, and any interests therein, (a) shall not be assigned, conveyed, hypothecated, pledged or otherwise transferred, voluntarily or involuntarily, directly or indirectly, except by will or under the laws of descent and distribution; (b) shall not be evidenced by a certificate or other instrument; (c) shall not possess any voting rights; and (d) shall not be entitled to receive any dividends or interest; provided, however, that clause (a) of this Section 7.8 shall not apply to the holder of a claim that is subrogated to an Asbestos Personal Injury Claim to the extent of its satisfaction of the Asbestos Personal Injury Claim.

7.9 Entire Agreement; No Waiver. The entire agreement of the parties relating to the subject matter of this Asbestos Trust Agreement is contained herein and in the documents

referred to herein, and this Asbestos Trust Agreement and such documents supersede any prior oral or written agreements concerning the subject matter hereof. No failure to exercise or delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any further exercise thereof or of any other right, power or privilege. The rights and remedies herein provided are cumulative and are not exclusive of rights under law or in equity.

7.10 Headings. The headings used in this Asbestos Trust Agreement are inserted for convenience only and do not constitute a portion of this Asbestos Trust Agreement, nor in any manner affect the construction of the provisions of this Asbestos Trust Agreement.

7.11 Governing Law. This Asbestos Trust Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware, without regard to Delaware conflict of law principles; *provided, however*, that any provision of the laws (common or statutory) of the State of Delaware pertaining to trusts that relate to or regulate the following, in a manner inconsistent with the terms hereof, shall not apply to this Asbestos Trust Agreement or to the parties performing under this Asbestos Trust Agreement: (a) the filing with any court or governmental body or agency of trustee accounts or schedules of trustee fees and charges, (b) affirmative requirements to post bonds for trustees, officers, agents or employees of a trust, (c) the necessity for obtaining court or other governmental approval concerning the acquisition, holding or disposition of real or personal property, (d) fees or other sums payable to trustees, officers, agents or employees of a trust, (e) the allocation of receipts and expenditures to income or principal, (f) restrictions or limitations on the permissible nature, amount or concentration of trust investments or requirements relating to the titling, storage or other manner of holding or investing trust assets or (g) the establishment of fiduciary or other standards of responsibility or

limitations on the acts or powers of trustees that are inconsistent with the limitations or authorities and powers of the trustees hereunder as set forth or referenced in this Asbestos Trust Agreement. Section 3540 of Title 12 of the Delaware Code shall not apply to the Trust.

7.12 Settlors' Representative and Cooperation. The Debtors and the Parent are hereby irrevocably designated as the Settlers, and they are hereby authorized to take any action required of the Settlers in connection with the Asbestos Trust Agreement. The Reorganized Debtors agree to cooperate in implementing the goals and objectives of this Asbestos Trust Agreement.

7.13 Dispute Resolution. Any disputes that arise under this Asbestos Trust Agreement or under the TDP among the parties hereto, other than the liquidation of Asbestos Personal Injury Claims, shall be resolved by submission of the matter to mediation with a mediator mutually agreeable to the parties involved. In the event the mediation does not resolve the dispute, any party to the mediation may apply to the Bankruptcy Court for a judicial determination of the matter. Any review conducted by the Bankruptcy Court shall be *de novo*. In any case, if the dispute arose pursuant to the consent provision set forth in Section 5.7(b) (in the case of the TAC) or Section 6.6(b) (in the case of the FCR), the burden of proof shall be on the party or parties who withheld consent to show that the objection was valid. Should the dispute not be resolved by mediation within thirty (30) days after the commencement of the mediation process as defined in the Asbestos Trust Bylaws, the parties are relieved of the requirement to pursue mediation prior to application to the Bankruptcy Court. If the Trustees determine that the matter in dispute involves a determination of their fiduciary duties, requires the direction of the supervisory court over the Trust or is exigent and cannot await the completion of mediation, the Trustees have the right to elect out of the mediation altogether or at

any stage of the process and seek resolution of the dispute in the Bankruptcy Court.

Notwithstanding anything else herein contained, to the extent any provision of this Asbestos Trust Agreement is inconsistent with any provision of the Plan or the TDP, the Plan or the TDP, as the case may be, shall control.

7.14 Enforcement and Administration. Except in the event that the Delaware Trustee applies to the Court of Chancery of the State of Delaware for the appointment of a successor Delaware Trustee pursuant to Section 4.11(c), the provisions of this Asbestos Trust Agreement and the TDP attached hereto shall be enforced by the Bankruptcy Court pursuant to the Plan. The parties hereby further acknowledge and agree that the Bankruptcy Court shall have exclusive jurisdiction over the settlement of the accounts of the Trustees and over any disputes hereunder not resolved by mediation in accordance with Section 7.13.

7.15 Effectiveness. This Asbestos Trust Agreement shall not become effective until it has been executed and delivered by all the parties hereto. Thereafter, the Asbestos Trust shall be established upon the filing of the Certificate of Trust with the Delaware Secretary of State. The rights and powers under this Asbestos Trust Agreement shall not otherwise become effective until the Effective Date of the Plan has occurred.

7.16 Counterpart Signatures. This Asbestos Trust Agreement may be executed in any number of counterparts, each of which shall constitute an original, but such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Asbestos Trust Agreement this
_____ day of _____, 2009.

SETTLORS:

ASARCO LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

LAC D'AMIANTE DU QUÉBEC LTÉE,
a Delaware corporation

By: _____
Name: _____
Title: _____

CAPCO PIPE COMPANY, INC.,
a Delaware company

By: _____
Name: _____
Title: _____

CEMENT ASBESTOS PRODUCTS COMPANY,
an Alabama corporation

By: _____
Name: _____
Title: _____

LAKE ASBESTOS OF QUEBEC, LTD.,
a Delaware corporation

By: _____
Name: _____
Title: _____

[ADD NAMES OF ANY OTHER DEBTORS]

By: _____
Name: _____
Title: _____

THE PARENT:

TRUSTEES

Name:
Expiration Date of Initial Term: _____
Anniversary of the date of this Trust Agreement

Name:
Expiration Date of Initial Term: _____
Anniversary of the date of this Trust Agreement

Name:
Expiration Date of Initial Term: _____
Anniversary of the date of this Trust Agreement

ASBESTOS CLAIMANTS' COMMITTEE

By:_____

Sander L. Esserman, Counsel to the Asbestos
Claimants' Committee

ASBESTOS SUBSIDIARY COMMITTEE

By:_____

Sander L. Esserman, Counsel to the Asbestos
Subsidiary Committee

DELAWARE TRUSTEE

By:_____

**TRUST ADVISORY COMMITTEE [number to be
determined]**

Name:

Expiration Date of Initial Term: _____ Anniversary of
the date of this Trust Agreement

Name:
Expiration Date of Initial Term: _____ Anniversary of

the date of this Trust Agreement

Name:

Expiration Date of Initial Term: _____ Anniversary of
the date of this Trust Agreement

Name:

Expiration Date of Initial Term: _____ Anniversary of
the date of this Trust Agreement

Name:

Expiration Date of Initial Term: _____ Anniversary of
the date of this Trust Agreement

FUTURE CLAIMS REPRESENTATIVE

Robert C. Pate

ASARCO LLC and certain related Debtors**ASBESTOS PERSONAL INJURY SETTLEMENT TRUST DISTRIBUTION
PROCEDURES****TABLE OF CONTENTS**

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ASARCO LLC

**ASBESTOS PERSONAL INJURY SETTLEMENT TRUST DISTRIBUTION
PROCEDURES**

The ASARCO LLC Asbestos Personal Injury Settlement Trust Distribution Procedures (the “**TDP**”) contained herein provide for resolving all Asbestos Personal Injury Claims, including all asbestos-related personal injury and death claims caused by the conduct of and/or the exposure to fibers or products for which ASARCO LLC and/or Lac d’Amiante du Québec Ltée, Lake Asbestos of Quebec, Ltd., LAQ Canada, Ltd., CAPCO Pipe Company, Inc., Cement Asbestos Products Company, Encycle, Inc., ASARCO Consulting, Inc., ALC, Inc., American Smelting and Refining Company, AR Mexican Explorations Inc., Asarco Master, Inc., Asarco Oil and Gas Company, Inc., Bridgeview Management Company, Inc., Covington Land Company, Government Gulch Mining Company, Limited, Southern Peru Holdings, LLC, AR Sacaton, LLC, a Delaware limited liability company, ASARCO Exploration Company, Inc., Wyoming Mining and Milling Company, Alta Mining and Development Company, Tulipan Company, Inc., Blackhawk Mining and Development Company, Limited, Peru Mining Exploration and Development Company, and Green Hill Cleveland Mining Company (collectively referred to as “**ASARCO**”), and their predecessors, successors, and assigns, have legal responsibility as provided in and required by the ASARCO Incorporated and Americas Mining Corporation’s Modified Fifth Amended Plan of Reorganization for the Debtors Under Chapter 11 of the United States Bankruptcy Code dated July 2, 2009 (as it may be amended or modified, the “**Plan**”)¹ and the ASARCO LLC Asbestos Personal Injury Settlement Trust

¹ Capitalized terms used herein and not otherwise defined shall have the meanings assigned to them in the Plan and the Asbestos Trust Agreement, *provided, however*, that, unless otherwise

Agreement (the “**Asbestos Trust Agreement**”). The Plan and the Asbestos Trust Agreement establish the Asbestos Trust (the “**Asbestos Trust**”). The Trustees of the Asbestos Trust (the “**Trustees**”) shall implement and administer this TDP in accordance with the Asbestos Trust Agreement.

SECTION I

Introduction

1.1 Purpose. This TDP has been adopted pursuant to the Asbestos Trust Agreement. It is designed to provide fair, equitable and substantially similar treatment for all Asbestos Personal Injury Claims.

1.2 Interpretation. Nothing in this TDP shall be deemed to create a substantive right for any claimant. The rights and benefits provided herein to holders of Asbestos Personal Injury Claims shall vest in the holders of Asbestos Personal Injury Claims as of the Effective Date.

1.3 Definitions. The following capitalized terms used herein shall have the meanings set forth below:

“Asbestos Trust Determined Claim” means an Asbestos Personal Injury Claim liquidated pursuant to this TDP.

“Chapter 11 Cases” means the cases under chapter 11 of the Bankruptcy Code pending in the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division, jointly administered and known as In re ASARCO LLC et al., Case No. 05-21207.

“CIP Agreements” means Asbestos In-Place Insurance Coverage regarding Asbestos Premises Liability Claims.

stated, ASARCO shall have the meaning described in the preamble to this TDP. Demands channeled to the Asbestos Trust by the Plan shall only be eligible to become an Asbestos Trust Determined Claim if and when they become an Asbestos Personal Injury Claim.

“Pre-Petition Liquidated Asbestos Personal Injury Claim” means an Asbestos Personal Injury Claim that was liquidated by (i) a binding settlement agreement for the particular claim entered prior to the Petition Date that is judicially enforceable by the claimant, (ii) a jury verdict or non-final judgment in the tort system obtained prior to the Petition Date, or (iii) a judgment that became final and non-appealable prior to the Petition Date.

SECTION II

Overview

2.1 Asbestos Trust Goals. The goal of the Asbestos Trust is to treat all claimants similarly and equitably and in accordance with the requirements of section 524(g) of the Bankruptcy Code. This TDP furthers that goal by setting forth procedures for resolving Asbestos Premises Liability Claims either in the tort system or by the TDP, depending on insurance coverage, and for processing and paying all other Asbestos Personal Injury Claims on an impartial, first-in-first-out (“**FIFO**”) basis, with the intention of paying all holders of Asbestos Trust Determined Claims over time as equivalent a share as possible of the value of their claims based on historical values for substantially similar claims in the tort system.² To this end, the TDP establishes a schedule of eight asbestos-related diseases (“**Disease Levels**”), seven of which have presumptive medical and exposure requirements (“**Medical/Exposure Criteria**”) and specific liquidated values (“**Scheduled Values**”), and six of which have anticipated average values (“**Average Values**”) and caps on their liquidated values (“**Maximum Values**”). The Disease Levels, Medical/Exposure Criteria, Scheduled Values, Average Values and Maximum Values, which are set forth in Sections 5.3 and 5.4, have been selected and derived from the best

² As used in this TDP, the phrase “in the tort system” shall not include claims asserted against a trust established for the benefit of asbestos personal injury claimants pursuant to Section 524(g) and/or Section 105 of the Bankruptcy Code.

available information considering the settlement histories of ASARCO and the rights claimants would have in the tort system absent the bankruptcy, with the intention of achieving a fair allocation of the Asbestos Trust Assets among claimants suffering from different diseases.

2.1 (a) Asbestos Premises Liability Claims. Asbestos Premises Liability Claims shall be liquidated pursuant to Section 5.3(c) of this TDP.

2.1(b) Asbestos Personal Injury Claims. Except as provided in Sections 2.1(a) and 5.3(c), to establish a valid Asbestos Personal Injury Claim, a claimant must meet the requirements set forth in this TDP. Asbestos Personal Injury Claims shall be processed, liquidated and paid based on the procedures provided in this TDP.

Because the assets expected to be contributed to the Asbestos Trust are estimated to be less than the value of all Asbestos Personal Injury Claims that are expected to be filed with the Asbestos Trust over its life, the holders of Asbestos Personal Injury Claims shall receive a pro rata portion of the liquidated value of their claims (a “**Payment Percentage**”) that shall be established pursuant to Sections 2.3 and 4.2. To the extent that the Asbestos Trust has liability for an Asbestos Trust Determined Claim, the Asbestos Trust shall pay the Asbestos Trust Determined Claim subject to the Maximum Annual Payment, Claims Payment Ratio and Payment Percentage.

2.2 Claims Liquidation Procedures. Asbestos Personal Injury Claims shall be processed based on their place in the FIFO Processing Queue to be established pursuant to Section 5.1(a). The Asbestos Trust shall take all reasonable steps to resolve Asbestos Personal Injury Claims as efficiently and expeditiously as possible at each stage of claims processing, including pro bono evaluation, mediation and arbitration, which steps may include, in the Asbestos Trust’s sole discretion, conducting settlement discussions with claimants’

representatives with respect to more than one claim at a time, provided that the claimants' respective positions in the FIFO Processing Queue are maintained, and each claim is individually evaluated pursuant to the valuation factors set forth in Section 5.3(b)(2). The Asbestos Trust shall make every effort to resolve each year at least that number of Asbestos Personal Injury Claims required to exhaust the Maximum Annual Payment for Category A Claims and Category B Claims, as those terms are defined below.

The Asbestos Trust shall liquidate all Asbestos Personal Injury Claims except Foreign Claims (as defined below) that meet the presumptive Medical/Exposure Criteria of Disease Levels I–V, VII and VIII under the Expedited Review Process described in Section 5.3(a). Claims involving Disease Levels I–V, VII and VIII that do not meet the presumptive Medical/Exposure Criteria for the relevant Disease Level may undergo the Asbestos Trust's Individual Review Process described in Section 5.3(b). In such a case, notwithstanding that the claim does not meet the presumptive Medical/Exposure Criteria for the relevant Disease Level, the Asbestos Trust may offer the claimant an amount up to the Scheduled Value of that Disease Level if the Asbestos Trust is satisfied that the claimant has presented a claim that would be cognizable and valid in the tort system.

Claimants holding claims involving Disease Levels III–VIII may alternatively seek to establish a liquidated value for the claim that is greater than its Scheduled Value by electing the Asbestos Trust's Individual Review Process. However, the liquidated value of a claim that undergoes the Individual Review Process for valuation purposes may be determined to be less than the Scheduled Value for the applicable Disease Level, and in any event shall not exceed the Maximum Value for the relevant Disease Level set forth in Section 5.3(b)(3), unless the claim qualifies as an Extraordinary Claim as defined in Section 5.4(a), in which case its liquidated

value cannot exceed the maximum extraordinary value specified in Section 5.4(a) for such claims. Disease Level VI (Lung Cancer 2) claims and all Foreign Claims may be liquidated only pursuant to the Asbestos Trust's Individual Review Process.

Based on ASARCO's claims settlement histories, applicable tort law, and current projections of present and future unliquidated claims, the Scheduled Values and Maximum Values set forth in Section 5.3(b)(3) have been established for each of the Disease Levels that are eligible for Individual Review of their liquidated values, with the expectation that the combination of settlements at the Scheduled Values and those resulting from the Individual Review Process should result in the Average Values also set forth in that provision.

All unresolved disputes over a claimant's medical condition, exposure history and/or the liquidated value of the claim may be submitted to pro bono evaluation and/or mediation and shall be subject to binding or non-binding arbitration as set forth in Section 5.10, at the election of the claimant, under the ADR Procedures that are provided in Attachment A hereto or that will be attached as an exhibit to the Claims Materials to be prepared by the Asbestos Trust pursuant to Section 6.1. Asbestos Personal Injury Claims that are the subject of a dispute with the Asbestos Trust that are not resolved by the ADR Procedures may enter the tort system as provided in Sections 5.11 and 7.5. However, if and when a claimant obtains a judgment in the tort system, the judgment shall be payable (subject to the Payment Percentage, Maximum Annual Payment, and Claims Payment Ratio provisions set forth below) as provided in Section 7.6.

Asbestos Premises Liability Claims shall be handled pursuant to the procedures set forth in Section 5.3(c) of this TDP.

2.3 Application of the Payment Percentage. After the liquidated value of an Asbestos Personal Injury Claim other than a claim involving Other Asbestos Disease (Disease

Level I – Cash Discount Payment), as defined in Section 5.3(a)(3), is determined pursuant to the procedures set forth herein for Expedited Review, Individual Review, pro bono evaluation, mediation, arbitration, or litigation in the tort system, the claimant shall ultimately receive a pro-rata share of that value based on a Payment Percentage described in Section 4.2. The Payment Percentage shall also apply to all Pre-Petition Liquidated Asbestos Personal Injury Claims as provided in Section 5.2 and to all sequencing adjustments paid pursuant to Section 7.4.

The initial Payment Percentage (the “**Initial Payment Percentage**”) has been set at twenty-two percent (22%) for Asbestos Personal Injury Claims other than Asbestos Premises Liability Claims covered by an applicable Asbestos Insurance Policy. The Initial Payment Percentage has been calculated on the assumption that the Average Values set forth in Section 5.3(b)(3) shall be achieved with respect to existing present claims and projected future claims involving Disease Levels III–VIII.

The Payment Percentage may be adjusted upwards or downwards from time to time by the Asbestos Trust with the consent of the Asbestos Trust Advisory Committee (the “**TAC**”) and the FCR to reflect then-current estimates of the Asbestos Trust’s assets and its liabilities, as well as then-estimated values of then-pending and future claims. Any adjustment to the Initial Payment Percentage shall be made only pursuant to Section 4.2. If the Payment Percentage is increased over time, claimants whose claims were liquidated and paid in prior periods under the TDP shall receive additional payments as provided in Section 4.3. Because there is uncertainty in the prediction of both the number and severity of future Asbestos Personal Injury Claims, and the amount of the Asbestos Trust’s assets, no guarantee can be made of any Payment Percentage of an Asbestos Personal Injury Claim’s liquidated value.

2.4 Asbestos Trust's Determination of the Maximum Annual Payment . The Asbestos Trust, in consultation with its advisors and with the consent of the TAC and FCR, shall estimate the amount of cash flow anticipated to be necessary over the life of the Asbestos Trust by year and prepare a schedule setting forth the maximum annual payment (the "**Maximum Annual Payment**") to be distributed by the Asbestos Trust annually for the life of the Asbestos Trust to ensure that funds shall be available to treat all present and future holders of Asbestos Personal Injury Claims as similarly as possible, and taking into account the Payment Percentage provisions set forth in Sections 2.3, 4.2 and 4.3. The initial Maximum Annual Payment for each year of the life of the Asbestos Trust is **[TO BE DETERMINED]**. The Maximum Annual Payment may be adjusted annually by the Trustees with the consent of the TAC and the FCR. The Asbestos Trust's distributions to all claimants for a particular year shall not exceed the Maximum Annual Payment determined for that year plus any excess funds rolled over from earlier years as provided in Section 2.5.

In the event there are insufficient amounts in any year to pay the Asbestos Trust Determined Claims, the available funds shall be paid to the maximum extent to the holders of such claims based on their place in the FIFO Payment Queue. Asbestos Trust Determined Claims for which there are insufficient amounts shall maintain their place in the FIFO Payment Queue and shall be carried to the next year.

The Maximum Annual Payment does not apply to (i) Asbestos Personal Injury Claims that arose prior to the entry of the Confirmation Order; (ii) Asbestos Personal Injury Claims involving Other Asbestos Disease (Disease Level I – Cash Discount Payment); (iii) Pre-Petition Liquidated Asbestos Personal Injury Claims where the claimant has elected to retain the

liquidated value as provided in Section 5.2; and (iv) Asbestos Premises Liability Claims covered by an applicable Asbestos Insurance Policy.

2.5 Claims Payment Ratio. Based on ASARCO's claims settlement histories and analysis of present and future claims, a Claims Payment Ratio for Asbestos Personal Injury Claims that arise after the entry of the Confirmation Order has been determined which, as of the Effective Date, has been set at 90% for Category A Claims and at 10% for Category B Claims. Category A Claims consist of Asbestos Personal Injury Claims involving severe asbestosis and malignancies (Disease Levels IV–VIII). Category B Claims consist of Asbestos Personal Injury Claims involving Nonmalignant Asbestos Disease (Disease Levels II and III). The Claims Payment Ratio does not apply to (i) Asbestos Personal Injury Claims that arose prior to the entry of the Confirmation Order; (ii) Asbestos Personal Injury Claims involving Other Asbestos Disease (Disease Level I – Cash Discount Payment); (iii) Pre-Petition Liquidated Asbestos Personal Injury Claims where the claimants have elected to retain the liquidated value as provided in Section 5.2; and (iv) Asbestos Premises Liability Claims covered by an applicable Asbestos Insurance Policy.

In each year, after the determination of the Maximum Annual Payment described in Section 2.4, 90% of that amount shall be available to pay Category A Claims and 10% shall be available to pay Category B Claims that have been placed in the FIFO Payment Queue described in Section 5.1(b). In the event there are insufficient funds in any year to pay the liquidated claims within either or both of the Categories, the available funds allocated to the particular Category shall be paid to the maximum extent to claimants in that Category based on their place in the FIFO Payment Queue. Claims for which there are insufficient funds allocated to the relevant Category shall be carried over to the next year where they shall maintain their places in

the FIFO Payment Queue. If there are excess funds in either or both Categories, because there is an insufficient amount of Asbestos Trust Determined Claims to exhaust the respective Maximum Annual Payment allocated amount for that Category, then the excess funds for either or both Categories shall roll into the next year, remain dedicated to the respective Category to which they were originally allocated, and added to the Maximum Annual Payment for such next year subject to the Claims Payment Ratio.

The 90%/10% Claims Payment Ratio and its rollover provision shall apply to all Asbestos Personal Injury Claims (except (i) Asbestos Personal Injury Claims that arose prior to the entry of the Confirmation Order; (ii) Asbestos Personal Injury Claims involving Other Asbestos Disease (Disease Level I – Cash Discount Payment); (iii) Pre-Petition Liquidated Asbestos Personal Injury Claims where the claimants have elected to retain the liquidated value as provided in Section 5.2; and (iv) Asbestos Premises Liability Claims covered by an applicable Asbestos Insurance Policy) and shall not be amended until the third anniversary of the date the Asbestos Trust first accepts for processing proof of claim forms and other materials required to file a claim with the Asbestos Trust. Thereafter, both the Claims Payment Ratio and its rollover provision shall be continued absent circumstances, such as a significant change in law or medicine, necessitating amendments to the Claims Payment Ratio to avoid a manifest injustice. The accumulation, rollover and subsequent delay of payment of claims resulting from the application of the Claims Payment Ratio shall not, in and of itself, constitute such circumstances. In addition, an increase in the numbers of Category B Claims beyond those predicted or expected at the time of entry of the Confirmation Order shall not be considered as a factor in deciding whether to reduce the percentage allocated to Category A Claims.

In considering whether to amend the Claims Payment Ratio and/or its rollover provisions, the Trustees shall consider the reasons for which the Claims Payment Ratio and its rollover provisions were adopted, the settlement histories that gave rise to its calculation, and the foreseeability or lack of foreseeability of the reasons why there would be any need to make an amendment. In that regard, the Trustees should keep in mind the interplay between the Payment Percentage and the Claims Payment Ratio as it affects the net cash actually paid to claimants.

In any event, no amendment to the Claims Payment Ratio to reduce the percentage allocated to Category A Claims may be made without the unanimous consent of the TAC members and the consent of the FCR, and the percentage allocated to Category A Claims may not be increased without the consent of the TAC and the FCR. The consent process set forth in Sections 5.7(b) and 6.6(b) of the Asbestos Trust Agreement shall apply in the event of any amendments to the Claims Payment Ratio. The Trustees, with the consent of the TAC and the FCR, may offer the option of a reduced Payment Percentage to holders of claims in either Category A or Category B in return for prompter payment (the “**Reduced Payment Option**”).

2.6 Indirect Asbestos Personal Injury Claims. As set forth in Section 5.6, indirect Asbestos Personal Injury Claims, if any, shall be subject to the same categorization, evaluation, and payment provisions of this TDP as Asbestos Personal Injury Claims.

SECTION III

TDP Administration

3.1 Trust Advisory Committee and Future Claims’ Representative. Pursuant to the Plan and the Asbestos Trust Agreement, the Asbestos Trust and this TDP shall be administered by the Trustees in consultation with the TAC, which represents the interests of holders of present Asbestos Personal Injury Claims, and the FCR, who represents the interests of

holders of Asbestos Personal Injury Claims that may be asserted in the future. The Trustees shall obtain the consent of the TAC and the FCR on any amendments to this TDP pursuant to Section 8.1, on other matters required by the TDP and on matters provided by Section 2.2(f) of the Asbestos Trust Agreement. The Trustees shall also consult with the TAC and the FCR on such matters as are provided in the TDP and in Section 2.2(e) of the Asbestos Trust Agreement. The initial Trustees, the initial members of the TAC and the initial FCR are identified in the Asbestos Trust Agreement.

3.2 Consent and Consultation Procedures. In those circumstances in which consultation or consent is required, the Trustees shall provide written notice to the TAC and the FCR of the specific amendment or other action that is proposed. The Trustees shall not implement the amendment nor take action unless and until the Trustees, TAC and FCR have engaged in the Consultation Process described in Sections 5.7(a) and 6.6(a), or the Consent Process described in Sections 5.7(b) and 6.6(b), of the Asbestos Trust Agreement, respectively.

SECTION IV

Payment Percentage; Periodic Estimates

4.1 Uncertainty of ASARCO's Personal Injury Asbestos Liabilities. As discussed above, there is inherent uncertainty regarding ASARCO's total asbestos-related tort liabilities, as well as the total value of the assets available to the Asbestos Trust to pay Asbestos Personal Injury Claims. Consequently, there is inherent uncertainty regarding the amounts that holders of Asbestos Personal Injury Claims shall receive. To seek to ensure substantially equivalent treatment of all present and future Asbestos Personal Injury Claims, the Trustees must determine from time to time the percentage of full liquidated value that holders of present and future

Asbestos Personal Injury Claims shall be likely to receive, *i.e.*, the “Payment Percentage” described in Sections 2.3 and 4.2.

4.2 Computation of Payment Percentage. As provided in Section 2.3, the Initial Payment Percentage shall be twenty-two percent (22%) for Asbestos Personal Injury Claims other than Asbestos Premises Liability Claims covered by an applicable Asbestos Insurance Policy, unless the Trustees, with the consent of the TAC and the FCR, determine that the Initial Payment Percentage should be changed to assure that the Asbestos Trust shall be in a financial position to pay holders of claims in substantially the same manner. Notwithstanding the foregoing, in no event shall the holder of an Asbestos Personal Injury Claim that is liquidated by the Asbestos Trust receive a payment less than the product of the application of the Initial Payment Percentage to the liquidated value of the claim, if the claimant voted on the Plan pursuant to the voting procedures approved by the Bankruptcy Court.

The Payment Percentage shall be subject to change pursuant to the terms of this TDP and the Asbestos Trust Agreement if the Trustees with the consent of the TAC and FCR determine that an adjustment is required. No less frequently than once every three (3) years, commencing with the first day of January occurring after the third anniversary of the Effective Date, the Trustees shall reconsider the then applicable Payment Percentage to assure that the Payment Percentage is based on accurate and current information. After such reconsideration, the Trustees may, if necessary, change the Payment Percentage with the consent of the TAC and the FCR. The Trustees shall also reconsider the then applicable Payment Percentage at shorter intervals if they deem reconsideration to be appropriate or if requested to do so by the TAC or the FCR.

The Trustees must base their determination of the Payment Percentage on current estimates of the number, types, and values of present and future Asbestos Personal Injury Claims, the value of the assets then available to the Asbestos Trust for payment of Asbestos Trust Determined Claims, all anticipated administrative and legal expenses, and any other material matters that are reasonably likely to affect the sufficiency of funds to pay a comparable percentage of full value to all holders of Asbestos Personal Injury Claims. When making these determinations, the Trustees shall exercise common sense and flexibly evaluate all relevant factors. The Payment Percentage applicable to Category A Claims or Category B Claims may not be reduced to alleviate delays in payments of claims in the other Category; both Categories of claims shall receive the same Payment Percentage, but the payment may be deferred as needed, and a Reduced Payment Option may be instituted as described in Section 2.5.

4.3 Applicability of the Payment Percentage. Except as otherwise provided in Section 5.1(b) for Asbestos Trust Determined Claims involving deceased or incompetent claimants for which approval of the Asbestos Trust's offer by a court or through a probate process is required, no holder of any Asbestos Trust Determined Claim, other than an Asbestos Trust Determined Claim for Other Asbestos Disease (Disease Level I – Cash Discount Payment), shall receive a payment that exceeds the liquidated value of the claim times the Payment Percentage in effect at the time of payment. Asbestos Trust Determined Claims involving Other Asbestos Disease (Disease Level I – Cash Discount Payment) shall not be subject to the Payment Percentage, but shall instead be paid the full amount of their Scheduled Value as set forth in Section 5.3(a)(3).

If a redetermination of the Payment Percentage has been proposed in writing by the Trustees to the TAC and the FCR but has not yet been adopted, the claimant shall receive the

lower of the current Payment Percentage or the proposed Payment Percentage. However, if the proposed Payment Percentage was the lower amount but was not subsequently adopted, the claimant shall thereafter receive the difference between the lower proposed amount and the higher current amount. Conversely, if the proposed Payment Percentage was the higher amount and was subsequently adopted, the claimant shall thereafter receive the difference between the lower current amount and the higher adopted amount.

There is uncertainty surrounding the amount of the Asbestos Trust's future assets. There is also uncertainty surrounding the totality of the Asbestos Personal Injury Claims to be paid over time, as well as the extent to which changes in existing federal and state law could affect the Asbestos Trust's liabilities under this TDP. If the value of the Asbestos Trust's future assets increases significantly and/or if the value or volume of Asbestos Personal Injury Claims actually filed with the Asbestos Trust is significantly lower than originally estimated, the Asbestos Trust shall use those proceeds and/or claims savings, as the case may be, first to maintain the Payment Percentage then in effect.

If the Trustees, with the consent of the TAC and the FCR, make a determination to increase the Payment Percentage due to a material change in the estimates of the Asbestos Trust's future assets and/or liabilities, the Trustees shall also make supplemental payments to all claimants who have previously been paid by the application of the lower Payment Percentage to the liquidated amount of their claims. The amount of any supplemental payment shall be the liquidated value of the claim plus any sequencing adjustment paid under Section 7.4 times the newly adjusted Payment Percentage, less all amounts previously paid to the claimant with respect to the claim.

The Trustees' obligation to make a supplemental payment to a claimant shall be suspended in the event the payment in question would be less than \$100.00, and the amount of the suspended payment shall be added to the amount of any prior supplemental payment that was also suspended because it would have been less than \$100.00. However, the Trustees' obligation shall resume and the Trustees shall pay any aggregate supplemental payments due the claimant when the total exceeds \$100.00.

SECTION V

Resolution of Asbestos Personal Injury Claims.

5.1 Ordering, Processing and Payment of Claims.

5.1(a) Ordering of Claims.

5.1(a)(1) Establishment of the FIFO Processing Queue. The Asbestos Trust shall order claims that are sufficiently complete to be reviewed for processing purposes on a FIFO basis except as otherwise provided herein (the "**FIFO Processing Queue**"). For all claims filed on or before the date that is six (6) months after the date that the Asbestos Trust first makes available the proof of claim forms and other claims materials required to file a claim with the Asbestos Trust (such six month anniversary being referred to herein as the "**Initial Claims Filing Date**"), a claimant's position in the FIFO Processing Queue shall be determined as of the earliest of (i) the date prior to April 11, 2005 (the "**Petition Date of the Subsidiary Debtors**") that the specific claim was either filed against ASARCO in the tort system or was actually submitted to ASARCO pursuant to an administrative settlement agreement; (ii) the date before the Petition Date of the Subsidiary Debtors that the asbestos claim was filed against another defendant in the tort system if at the time the claim was subject to a tolling agreement with ASARCO; (iii) the date after the Petition Date of the Subsidiary Debtors but before the date that

the Asbestos Trust first makes available the proof of claim forms and other claims materials required to file a claim with the Asbestos Trust that the asbestos claim was filed against another defendant in the tort system; (iv) the date after the Petition Date of the Subsidiary Debtors but before the Effective Date that a proof of claim was filed by the claimant against ASARCO in this Chapter 11 proceeding; or (v) the date a ballot was submitted on behalf of the claimant for purposes of voting to accept or reject the Plan pursuant to the voting procedures approved by the Bankruptcy Court. The Initial Claims Filing Date shall not apply to holders of Pre-Petition Liquidated Asbestos Personal Injury Claims who elect to retain the liquidated values of their claims nor shall it apply to holders of Asbestos Premises Liability Claims.

Following the Initial Claims Filing Date, the claimant's position in the FIFO Processing Queue shall be determined by the date the claim is filed with the Asbestos Trust. If any claims are filed on the same date, the claimant's position in the FIFO Processing Queue shall be determined by the date of the diagnosis of the asbestos-related disease. If any claims are filed and diagnosed on the same date, the claimant's position in the FIFO Processing Queue shall be determined by the claimant's date of birth, with older claimants given priority over younger claimants.

5.1(a) (2) Effect of Statutes of Limitations and Repose. All Asbestos Personal Injury Claims other than Pre-Petition Liquidated Asbestos Personal Injury Claims must meet either (i) for claims first filed in the tort system against ASARCO prior to the Petition Date, the applicable federal, state or foreign statute of limitations or repose that was in effect at the time of the filing of the claim in the tort system, or (ii) for claims not filed against ASARCO in the tort system prior to the Petition Date, the applicable federal, state or foreign statute of limitations or repose that was in effect at the time of the filing of the claim with the Asbestos

Trust. However, the running of the relevant statute of limitations shall be tolled as of the earliest of (A) the actual filing of the claim against ASARCO prior to the Petition Date of the Subsidiary Debtors or the Petition Date of ASARCO LLC, as the case may be, whether in the tort system or by submission of the claim to ASARCO pursuant to an administrative settlement agreement; (B) the tolling of the claim against ASARCO prior to the Petition Date of the Subsidiary Debtors or the Petition Date of ASARCO LLC, as the case may be, by an agreement or otherwise, provided the tolling agreement was still in effect on the relevant Petition Date; or (C) the Petition Date of the Subsidiary Debtors or the Petition Date of ASARCO LLC, as the case may be.

If an Asbestos Personal Injury Claim meets any of the tolling provisions described in the preceding sentence and the claim was not barred by the applicable federal, state or foreign statute of limitations or repose at the time of the tolling event, it shall be treated as timely filed if it is actually filed with the Asbestos Trust within three (3) years after the Initial Claims Filing Date. In addition, any claims that were first diagnosed after the Petition Date, irrespective of the application of any relevant federal, state or foreign statute of limitations or repose, may be filed with the Asbestos Trust within three (3) years after the date of diagnosis or within three (3) years after the Initial Claims Filing Date, whichever occurs later. The processing of any Asbestos Personal Injury Claim by the Asbestos Trust may be deferred at the election of the claimant pursuant to Section 6.3.

5.1(b) Payment of Claims. Asbestos Personal Injury Claims that have been liquidated by the Expedited Review Process as provided in Section 5.3(a), by the Individual Review Process as provided in Section 5.3(b), by pro bono evaluation, mediation or arbitration as provided in Section 5.10, or by litigation in the tort system provided in Section 5.11, shall be paid in FIFO order based on the date their liquidation became final (the “**FIFO Payment**

Queue”), all payments being subject to the applicable Payment Percentage, the Maximum Annual Payment, the Claims Payment Ratio, and the sequencing adjustment provided for in Section 7.4, except as otherwise provided herein.

Where the claimant is deceased or incompetent, and the settlement and payment of his or her claim must be approved by a court of competent jurisdiction or through a probate process prior to acceptance of the claim by the claimant’s representative, an offer made by the Asbestos Trust on the claim shall remain open so long as proceedings before that court or in that probate process remain pending, provided that the Asbestos Trust has been furnished with evidence that the settlement offer has been submitted to the court or in the probate process for approval. If the offer is ultimately approved by the court or through the probate process and accepted by the claimant’s representative, the Asbestos Trust shall pay the claim in the amount so offered, multiplied by the Payment Percentage in effect at the time the offer was first made.

If any claims are liquidated on the same date, the claimant’s position in the FIFO Payment Queue shall be determined by the date of the diagnosis of the claimant’s asbestos-related disease. If any claims are liquidated on the same date and the respective holders’ asbestos-related diseases were diagnosed on the same date, the position of those claims in the FIFO Payment Queue shall be determined by the Asbestos Trust based on the dates of the claimants’ birth, with older claimants given priority over younger claimants. For purposes of placement in the FIFO Payment Queue, the date of final liquidation shall be the date the Trustees of the Asbestos Trust approve the Asbestos Personal Injury Claim for payment or as otherwise provided for in the ADR Procedures or litigation.

This Section 5.1(b) shall not apply to Asbestos Premises Liability Claims covered by an applicable Asbestos Insurance Policy.

5.1(c) Effect of Claims Filed in the Bankruptcy Case. Regardless of whether a claimant filed a proof of claim against ASARCO in the Chapter 11 Cases, a claimant must file a claim with the Asbestos Trust in accordance with this TDP in order to be compensated. Proofs of claim filed against ASARCO in the Chapter 11 Cases shall not be processed and paid by the Asbestos Trust. Failure to have filed a proof of claim against ASARCO in the Chapter 11 Cases shall not, in and of itself, bar or prohibit liquidation of a claim filed with the Asbestos Trust.

5.2 Resolution of Pre-Petition Liquidated Asbestos Personal Injury Claims.

5.2(a) Processing and Payment – ASARCO Identified. The holder of a Pre-Petition Liquidated Asbestos Personal Injury Claim may file a claim with the Asbestos Trust for the liquidated value of the Pre-Petition Liquidated Asbestos Personal Injury Claim or for a value to be determined under this TDP.

On or before the Effective Date, ASARCO shall deliver to the Asbestos Trust a schedule of the Pre-Petition Liquidated Asbestos Personal Injury Claims with the supporting database (the “**Approved Pre-Petition Liquidated Asbestos Personal Injury Claims**”). The Asbestos Trust shall provide each claimant on the schedule of Approved Pre-Petition Liquidated Asbestos Personal Injury Claims notice of (i) the liquidated amount of the claim, (ii) the right of the claimant to make the election provided in this Section 5.2(a), and (iii) instructions for making the election, and, if electing to retain the liquidated amount of the claim, instructions for executing and delivering the release provided under Section 7.7.

If the holder of the Approved Pre-Petition Liquidated Asbestos Personal Injury Claim elects to retain the liquidated value of the claim, the Asbestos Trust shall pay the Approved Pre-Petition Liquidated Asbestos Personal Injury Claim as soon as practical upon receipt by the Asbestos Trust of a release executed by the claimant. Payment of the liquidated value of the

Approved Pre-Petition Liquidated Asbestos Personal Injury Claim shall be subject to the Payment Percentage and the sequencing adjustment provided in Section 7.4, except as otherwise provided herein, but shall not be subject to the Maximum Annual Payment and the Claims Payment Ratio and shall not be subject to Section 5.3.

If the holder of the Approved Pre-Petition Liquidated Asbestos Personal Injury Claim elects to file a claim with the Asbestos Trust to be liquidated under this TDP, the holder shall be deemed to waive the liquidated value of the Approved Pre-Petition Liquidated Asbestos Personal Injury Claim, and the claim shall be processed under Section 5.3.

5.2(b) Processing and Payment – Claimant Identified. If the holder of an Asbestos Personal Injury Claim files a claim with the Asbestos Trust for a Pre-Petition Liquidated Asbestos Personal Injury Claim that was not scheduled by ASARCO as an Approved Pre-Petition Liquidated Asbestos Personal Injury Claim, the claimant must submit all documentation necessary to demonstrate to the Asbestos Trust that the claim was liquidated in the manner described in the definition of Pre-Petition Liquidated Asbestos Personal Injury Claim above, which documentation shall include (A) a court authenticated copy of the jury verdict (if applicable), a non-final judgment (if applicable), a final judgment (if applicable), or an executed settlement agreement (if applicable) and (B) the name, social security number and date of birth of the claimant and the name and address of the claimant's lawyer.

The liquidated value of a Pre-Petition Liquidated Asbestos Personal Injury Claim shall be the unpaid portion of the agreed amount in the binding settlement agreement, the unpaid portion of the amount awarded by the jury verdict or non-final judgment, or the unpaid portion of the amount of the final judgment, as the case may be, plus interest, if any, that has accrued on that amount in accordance with the terms of the agreement, if any, or under applicable state law for

settlements or judgments as of the Petition Date of the Subsidiary Debtors; however, except as otherwise provided in Section 7.3, the liquidated value of a Pre-Petition Liquidated Asbestos Personal Injury Claim shall not include any punitive or exemplary damages. Payments of the liquidated values of Pre-Petition Liquidated Asbestos Personal Injury Claims shall be subject to the Payment Percentage and the sequencing adjustment provided in Section 7.4, except as otherwise provided herein, but shall not be subject to the Maximum Annual Payment and the Claims Payment Ratio. In the absence of a Final Order of the Bankruptcy Court determining whether a settlement agreement is binding and judicially enforceable, a dispute between the claimant and the Asbestos Trust over this issue shall be resolved pursuant to the same procedures in this TDP that are provided for resolving the validity and/or liquidated value of an Asbestos Personal Injury Claim (*i.e.*, pro bono evaluation, mediation, arbitration and litigation in the tort system as set forth in Sections 5.10 and 5.11).

Pre-Petition Liquidated Asbestos Personal Injury Claims filed by the claimants and not scheduled as an Approved Pre-Petition Liquidated Asbestos Personal Injury Claim shall be processed and paid in accordance with their order in the FIFO Processing Queue and the FIFO Payment Queue. Pre-Petition Liquidated Asbestos Personal Injury Claims shall be placed in the FIFO Payment Queue upon a determination by the Asbestos Trust of the unpaid amount of a binding settlement, jury verdict, non-final judgment or final judgment or upon a resolution by mediation, arbitration or litigation. If any Pre-Petition Liquidated Asbestos Personal Injury Claims are filed on the same date, the claimants' position in the FIFO Processing Queue shall be determined by the date of the settlement agreement, jury verdict or judgment, as the case may be. If any Pre-Petition Liquidated Asbestos Personal Injury Claims are placed in either the FIFO Processing Queue or the FIFO Payment Queue on the same dates, the position of the claimants in

the respective queue shall be determined by the dates of the claimants' birth, with older claimants given priority over younger claimants.

Pre-Petition Liquidated Asbestos Premises Liability Claims shall be tendered by the Asbestos Trust to the relevant insurer or insurers for handling as provided in the CIP Agreements or in the applicable Asbestos Insurance Policy.

5.3 Resolution of Unliquidated Asbestos Personal Injury Claims. Within six (6) months after the establishment of the Asbestos Trust, the Trustees, with the consent of the TAC and the FCR, shall adopt procedures for reviewing and liquidating all Asbestos Personal Injury Claims other than Pre-Petition Liquidated Asbestos Personal Injury Claims, which shall include deadlines for processing the claims. The procedures shall also require that claimants seeking resolution of unliquidated Asbestos Personal Injury Claims must file a proof of claim form, together with the required supporting documentation, in accordance with the provisions of Sections 6.1 and 6.2. It is anticipated that the Asbestos Trust shall provide an initial response to the claimant within six (6) months of receiving a completed proof of claim form.

The proof of claim form shall require the claimant to assert his or her claim for the highest Disease Level for which the claim qualifies at the time of filing, and to select Expedited Review or Individual Review as provided below. Irrespective of the Disease Level alleged on the proof of claim form, all claims shall be deemed to be a claim for the highest Disease Level for which the claim qualifies at the time of filing, and all lower Disease Levels for which the claim may also qualify at the time of filing or in the future shall be treated as subsumed into the higher Disease Level for both processing and payment purposes.

Upon filing of a valid proof of claim form with the required supporting documentation, the claimant shall be placed in the FIFO Processing Queue in accordance with the ordering criteria described in Section 5.1(a).

5.3(a) Expedited Review Process.

5.3(a)(1) In General. The Asbestos Trust's Expedited Review Process is designed primarily to provide an expeditious, efficient and inexpensive method for liquidating Asbestos Personal Injury Claims (except those involving Lung Cancer 2 – Disease Level VI and all Foreign Claims (as defined below), which shall only be liquidated pursuant to the Asbestos Trust's Individual Review Process), where the claim can easily be verified by the Asbestos Trust as meeting the presumptive Medical/Exposure Criteria for the relevant Disease Level. Expedited Review thus provides claimants with a substantially less burdensome process for pursuing Asbestos Personal Injury Claims than does the Individual Review Process described in Section 5.3(b). Expedited Review is also intended to provide qualifying claimants with fixed and certain claims payments.

Claims that undergo Expedited Review and meet the presumptive Medical/Exposure Criteria for the relevant Disease Level shall be paid the Scheduled Value for the relevant Disease Level set forth in Section 5.3(a)(3). However, except for claims involving Other Asbestos Disease (Disease Level I – Cash Discount Payment), all claims liquidated by Expedited Review shall be subject to the applicable Payment Percentage. Except for claims involving Other Asbestos Disease (Disease Level I – Cash Discount Payment), Asbestos Personal Injury Claims that arose prior to the entry of the Confirmation Order, and Pre-Petition Liquidated Asbestos Personal Injury Claims when the claimant has elected to retain the liquidated value, all claims liquidated by Expedited Review shall be subject to the applicable Maximum Annual Payment,

and the Claims Payment Ratio limitations set forth above. Claimants holding claims that cannot be liquidated by Expedited Review because they do not meet the presumptive Medical/Exposure Criteria for the relevant Disease Level may elect the Asbestos Trust's Individual Review Process set forth in Section 5.3(b).

Subject to the provisions of Section 5.8, the claimant's eligibility to receive the Scheduled Value for his or her Asbestos Personal Injury Claim pursuant to the Expedited Review Process shall be determined solely by reference to the Medical/Exposure Criteria set forth below for each of the Disease Levels eligible for Expedited Review.

5.3(a)(2) Claims Processing Under Expedited Review. All claimants seeking liquidation of their claims pursuant to Expedited Review shall file the Asbestos Trust's proof of claim form. As a proof of claim form is reached in the FIFO Processing Queue, the Asbestos Trust shall determine whether the claim described therein meets the Medical/Exposure Criteria for one of the seven Disease Levels eligible for Expedited Review, and shall advise the claimant of its determination. If the Medical and Exposure Criteria for a Disease Level are determined to have been met, the Asbestos Trust shall tender to the claimant an offer of payment of the Scheduled Value for the relevant Disease Level multiplied by the applicable Payment Percentage, together with a form of release approved by the Asbestos Trust. If the claimant accepts the Scheduled Value and returns the release properly executed, the claim shall be placed in the FIFO Payment Queue, following which the Asbestos Trust shall disburse payment subject to the limitations of the Maximum Annual Payment and Claims Payment Ratio, if any.

5.3(a)(3) Disease Levels, Scheduled Values and Medical/Exposure Criteria. The eight Disease Levels covered by this TDP, together with the Medical/Exposure Criteria for each and the Scheduled Values for the seven Disease Levels eligible for Expedited

Review, are set forth below. These Disease Levels, Scheduled Values, and Medical/Exposure Criteria shall apply to all Asbestos Personal Injury Claims filed with the Asbestos Trust (except for a Pre-Petition Liquidated Asbestos Personal Injury Claim where the claimant has elected to retain the liquidated value) on or before the Initial Claims Filing Date provided in Section 5.1 for which the claimant elects the Expedited Review Process. Thereafter, for purposes of administering the Expedited Review Process and with the consent of the TAC and the FCR, the Trustees may add to, change, or eliminate Disease Levels, Scheduled Values, or Medical/Exposure Criteria; develop subcategories of Disease Levels, Scheduled Values or Medical/Exposure Criteria; or determine that a novel or exceptional asbestos personal injury claim is compensable even though it does not meet the Medical/Exposure Criteria for any of the then current Disease Levels.

<u>Disease Level</u>	<u>Scheduled Value</u>	<u>Medical/Exposure Criteria</u>
Mesothelioma (Disease Level VIII)	\$170,000	(1) Diagnosis ³ of mesothelioma; and (2) ASARCO Exposure as defined in Section 5.7(b)(3).
Lung Cancer 1 (Disease Level VII)	\$60,000	(1) Diagnosis of a primary lung cancer plus evidence of an underlying Bilateral Asbestos-

³ The requirements for a diagnosis of an asbestos-related disease that may be compensated under the provisions of this TDP are set forth in Section 5.7.

⁴ Evidence of “Bilateral Asbestos-Related Nonmalignant Disease,” for purposes of meeting the criteria for establishing Disease Levels I, II, III, V, and VII, means either (i) a chest X-ray read by a qualified B reader of 1/0 or higher on the ILO scale or (ii)(x) a chest X-ray read by a qualified B reader or other Qualified Physician, (y) a CT scan read by a Qualified Physician, or (z) pathology, in each case showing either bilateral interstitial fibrosis, bilateral pleural plaques, bilateral pleural thickening, or bilateral pleural calcification. Evidence submitted to demonstrate (i) or (ii) above must be in the form of a written report stating the results (e.g., an ILO report, a written radiology report or a pathology report). Solely for asbestos claims filed against ASARCO or another defendant in the tort system prior to the Petition Date, if an ILO reading is not available, either (i) a chest X-ray or a CT scan read by a Qualified Physician, or (ii) pathology, in each case showing bilateral interstitial fibrosis, bilateral pleural plaques, bilateral pleural thickening, or bilateral pleural calcification consistent with or compatible with a

<u>Disease Level</u>	<u>Scheduled Value</u>	<u>Medical/Exposure Criteria</u>
		Related Nonmalignant Disease ⁴ , (2) six months ASARCO Exposure, (3) Significant Occupational Exposure ⁵ to asbestos, and (4) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the lung cancer in question.
Lung Cancer 2 (Disease Level VI)	None	<p>(1) Diagnosis of a primary lung cancer; (2) ASARCO Exposure, and (3) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the lung cancer in question.</p> <p>Lung Cancer 2 (Disease Level VI) claims are claims that do not meet the more stringent medical and/or exposure requirements of Lung Cancer 1 (Disease Level VII) claims. All claims in this Disease Level shall be individually evaluated. The estimated likely average of the individual evaluation awards for this category is \$15,000, with such awards capped at \$35,000 unless the claim qualifies for Extraordinary Claim treatment.</p> <p>Disease Level VI claims that show no evidence of either an underlying Bilateral Asbestos-Related Nonmalignant Disease or Significant Occupational Exposure may be individually evaluated, although it is not expected that such</p>

diagnosis of asbestos-related disease, shall be evidence of a Bilateral Asbestos-Related Nonmalignant Disease for purposes of meeting the presumptive medical requirements of Disease Levels I, II, III, V and VII. Pathological proof of asbestosis may be based on the pathological grading system for asbestosis described in the Special Issue of the Archives of Pathology and Laboratory Medicine, "Asbestos-associated Diseases," Vol. 106, No. 11, App. 3 (October 8, 1982). For all purposes of this TDP, a "Qualified Physician" is a physician who is board-certified (or in the case of Foreign Claims, a physician who is certified or qualified under comparable medical standards or criteria of the jurisdiction in question) in one or more relevant specialized fields of medicine such as pulmonology, radiology, internal medicine or occupational medicine; provided, however, subject to the provisions of Section 5.8, that the requirement for board certification in this provision shall not apply to otherwise qualified physicians whose X-ray and/or CT scan readings are submitted for deceased holders of Asbestos Personal Injury Claims.

⁵ The term "Significant Occupational Exposure" is defined in Section 5.7(b)(2).

<u>Disease Level</u>	<u>Scheduled Value</u>	<u>Medical/Exposure Criteria</u>
		claims shall be treated as having any significant value, especially if the claimant is also a Smoker. ⁶ In any event, no presumption of validity shall be available for any claims in this category.
Other Cancer (Disease Level V)	\$20,000	(1) Diagnosis of a primary colorectal, laryngeal, esophageal, pharyngeal, or stomach cancer, plus evidence of an underlying Bilateral Asbestos-Related Nonmalignant Disease, (2) six months ASARCO Exposure, (3) Significant Occupational Exposure to asbestos, and (4) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the other cancer in question.
Severe Asbestosis (Disease Level IV)	\$50,000	(1) Diagnosis of asbestosis with ILO of 2/1 or greater, or asbestosis determined by pathological evidence of asbestos, plus (a) TLC less than 65%, or (b) FVC less than 65% and FEV1/FVC ratio greater than 65%, (2) six months ASARCO Exposure, (3) Significant Occupational Exposure to asbestos, and (4) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the pulmonary disease in question.
Nonmalignant Asbestos Disease (Disease Level III)	\$7,500	(1) Diagnosis of Bilateral Asbestos-Related Nonmalignant Disease, plus (a) TLC less than 80%, or (b) FVC less than 80% and FEV1/FVC ratio greater than or equal to 65%, and (2) six months ASARCO Exposure, (3) Significant Occupational Exposure to asbestos, and (4) supporting medical documentation establishing

⁶ There is no distinction between Non-Smokers and Smokers for either Lung Cancer 1 (Disease Level VII) or Lung Cancer 2 (Disease Level VI), although a claimant who meets the more stringent requirements of Lung Cancer 1 (Disease Level VII) (evidence of an underlying Bilateral Asbestos-Related Nonmalignant Disease plus Significant Occupational Exposure), and who is also a Non-Smoker, may wish to have his or her claim individually evaluated by the Asbestos Trust. In such a case, absent circumstances that would otherwise reduce the value of the claim, it is anticipated that the liquidated value of the claim might well exceed the \$60,000 Scheduled Value for Lung Cancer 1 (Disease Level VII) shown above. "Non-Smoker" means a claimant who either (a) never smoked or (b) has not smoked during any portion of the twelve (12) years immediately prior to the diagnosis of the lung cancer.

<u>Disease Level</u>	<u>Scheduled Value</u>	<u>Medical/Exposure Criteria</u>
		asbestos exposure as a contributing factor in causing the pulmonary disease in question.
Nonmalignant Asbestos Disease (Disease Level II)	\$3,000	(1) Diagnosis of a Bilateral Asbestos-Related Nonmalignant Disease, (2) six months ASARCO Exposure, and (3) five years cumulative occupational exposure to asbestos.
Other Asbestos Disease (Disease Level I – Cash Discount Payment)	\$400	(1) Diagnosis of a Bilateral Asbestos-Related Nonmalignant Disease or an asbestos-related malignancy other than mesothelioma, and (2) ASARCO Exposure.

5.3(b) Individual Review Process.

5.3(b)(1) In General. Subject to the provisions set forth below, a claimant may elect to have his or her Asbestos Personal Injury Claim reviewed for purposes of determining whether the claim would be compensable in the tort system even though it does not meet the presumptive Medical/Exposure Criteria for any of the Disease Levels set forth in Section 5.3(a)(3). In addition or alternatively, a claimant may elect to have a claim undergo the Individual Review Process for purposes of determining whether the liquidated value of a claim involving Disease Levels III, IV, V, VII or VIII exceeds the Scheduled Value for the relevant Disease Level also set forth in said provision. However, until the Asbestos Trust has made an offer on a claim pursuant to Individual Review, the claimant may change his or her Individual Review election and have the claim liquidated pursuant to the Asbestos Trust's Expedited Review Process. In the event of a change in the processing election, the claimant shall nevertheless retain his or her place in the FIFO Processing Queue.

The liquidated value of all Foreign Claims payable under this TDP shall be established only under the Asbestos Trust's Individual Review process. A "**Foreign Claim**" is an Asbestos Personal Injury Claim with respect to which the claimant's exposure to an asbestos-containing

product or conduct for which ASARCO has legal responsibility occurred outside of the United States and its Territories and Possessions.

In reviewing Foreign Claims, the Asbestos Trust shall take into account all relevant procedural and substantive legal rules to which the claims would be subject in the Claimant's Jurisdiction as defined in Section 5.3(b)(2), including the remedies available in the Claimant's Jurisdiction. The Asbestos Trust shall determine the liquidated value of Foreign Claims based on historical settlements and verdicts in the Claimant's Jurisdiction as well as the other valuation factors set forth in Section 5.3(b)(2).

For purposes of the Individual Review process for Foreign Claims, the Trustees, with the consent of the TAC and the FCR, may develop separate Medical/Exposure Criteria and standards, as well as separate requirements for physician and other professional qualifications, which shall be applicable to all Foreign Claims channeled to the Asbestos Trust; provided however, that the criteria, standards or requirements shall not effectuate substantive changes to the claims eligibility requirements under this TDP, but rather shall be made only for the purpose of adapting those requirements to the particular physician or other professional licensing provisions and/or medical customs or practices of the foreign country in question.

When the Asbestos Trust has sufficient historical settlement, verdict and other valuation data for claims from a particular foreign jurisdiction, the Trustees, with the consent of the TAC and the FCR, may establish a separate valuation matrix for the particular Foreign Claims based on that data.

5.3(b)(1)(A) Review of Medical/Exposure Criteria. The Asbestos Trust's Individual Review Process provides a claimant with an opportunity for individual consideration and evaluation of an Asbestos Personal Injury Claim that fails to meet

the presumptive Medical/Exposure Criteria for Disease Levels I–V, VII or VIII. In such a case, the Asbestos Trust shall either deny the claim or, if the Asbestos Trust is satisfied that the claimant has presented a claim that would be cognizable and valid in the tort system, the Asbestos Trust may offer the claimant a liquidated value amount up to the Scheduled Value for that Disease Level.

5.3(b)(1)(B) Review of Liquidated Value. Claimants holding claims in Disease Levels III–VIII shall also be eligible to seek Individual Review of the liquidated value of their claims, as well as of their medical/exposure evidence. The Individual Review Process is intended to result in payments equal to the full liquidated value for each claim multiplied by the Payment Percentage; however, the liquidated value of any Asbestos Personal Injury Claim that undergoes Individual Review may be determined to be less than the Scheduled Value the claimant would have received under Expedited Review. Moreover, the liquidated value for a claim involving Disease Levels III–VIII shall not exceed the Maximum Value for the relevant Disease Level set forth in Section 5.3(b)(3), unless the claim meets the requirements of an Extraordinary Claim described in Section 5.4(a), in which case its liquidated value cannot exceed the maximum extraordinary value set forth in Section 5.4(a) for such claims. Because the detailed examination and valuation process pursuant to Individual Review requires substantial time and effort, claimants electing to undergo the Individual Review Process may be paid the liquidated value of their Asbestos Personal Injury Claims later than would have been the case had the claimant elected the Expedited Review Process. Subject to the provisions of Section 5.8, the Asbestos Trust shall devote reasonable resources to the review of all claims to ensure that there is a reasonable balance maintained in reviewing all classes of claims.

5.3(b)(2) Valuation Factors to Be Considered in Individual Review.

The Asbestos Trust shall liquidate the value of each Asbestos Personal Injury Claim that undergoes Individual Review based on the historic liquidated values of other similarly situated claims in the tort system for the same Disease Level. The Asbestos Trust shall take into consideration all of the factors that affect the severity of damages and values within the tort system including, but not limited to, credible evidence of (i) the degree to which the characteristics of a claim differ from the presumptive Medical/Exposure Criteria for the Disease Level in question; (ii) factors such as the claimant's age, disability, employment status, disruption of household, family or recreational activities, dependencies, special damages, and pain and suffering; (iii) whether the claimant's damages were (or were not) caused by asbestos exposure, including exposure to an asbestos-containing product, or to conduct that exposed the claimant to an asbestos-containing product, for which ASARCO has legal responsibility (for example, alternative causes, and the strength of documentation of injuries); (iv) the industry of exposure; (v) settlement and verdict histories and other law firms' experience in the Claimant's Jurisdiction for similarly situated claims; and (vi) settlement and verdict histories for the claimant's law firm for similarly situated claims.

For these purposes, the “**Claimant's Jurisdiction**” is the jurisdiction in which the claim was filed (if at all) against ASARCO in the tort system prior to the Petition Date of the Subsidiary Debtors. If the claim was not filed against ASARCO in the tort system prior to the Petition Date of the Subsidiary Debtors, the claimant may elect as the Claimant's Jurisdiction either (i) the jurisdiction in which the claimant resides at the time of diagnosis or when the claim is filed with the Asbestos Trust; or (ii) a jurisdiction in which the claimant experienced exposure to an asbestos-containing product or to conduct for which ASARCO has legal responsibility.

With respect to the “Claimant’s Jurisdiction,” in the event a personal representative or authorized agent makes a claim under this TDP for wrongful death where the governing law of the Claimant’s Jurisdiction could only be the Alabama Wrongful Death Statute, the Claimant’s Jurisdiction for the claim shall be the Commonwealth of Pennsylvania. In this situation, the claimant’s damages shall be determined pursuant to the statutory and common laws of the Commonwealth of Pennsylvania without regard to its choice of law principles. This choice of law provision shall only govern the rights between the Asbestos Trust and the claimant including, but not limited to, suits in the tort system pursuant to Section 7.5. To the extent the Asbestos Trust seeks recovery from any entity that provided insurance coverage to ASARCO, the Alabama Wrongful Death Statute shall govern.

With respect to the “Claimant’s Jurisdiction,” in the event a claimant makes a claim for compensatory damages that would otherwise satisfy the criteria for payment under this TDP, where the claimant would have been foreclosed from payment because the governing law of the Claimant’s Jurisdiction (the “**Foreclosed Jurisdiction**”) describes the claim as a claim for “exemplary” or “punitive” damages and the claimant would have no other remedy for compensation under the law of the Foreclosed Jurisdiction, the claimant may elect the Commonwealth of Pennsylvania as the Claimant’s Jurisdiction. In this situation, the claimant’s damages shall be determined pursuant to the statutory and common laws of the Commonwealth of Pennsylvania without regard to its choice of law principles. This choice of law provision shall govern only the rights between the Asbestos Trust and the claimant including, but not limited to, suits in the tort system pursuant to Section 7.5. To the extent the Asbestos Trust seeks recovery from any entity that provided insurance coverage to ASARCO, the law of the Foreclosed Jurisdiction shall govern.

5.3(b)(3) Scheduled, Average and Maximum Values. The Scheduled, Average and Maximum Values for claims involving Disease Levels I–VIII are the following.

<u>Scheduled Disease</u>	<u>Scheduled Value</u>	<u>Average Value</u>	<u>Maximum Value</u>
Mesothelioma (Disease Level VIII)	\$170,000	\$280,000	\$900,000
Lung Cancer 1 (Disease Level VII)	\$60,000	\$90,000	\$150,000
Lung Cancer 2 (Disease Level VI)	None	\$15,000	\$35,000
Other Cancer (Disease Level V)	\$20,000	\$32,000	\$75,000
Severe Asbestosis (Disease Level IV)	\$50,000	\$70,000	\$125,000
Nonmalignant Asbestos Disease (Disease Level III)	\$7,500	\$8,000	\$25,000
Nonmalignant Asbestos Disease (Disease Level II)	\$3,000	None	None
Other Asbestos Disease – Cash Discount Payment (Disease Level I)	\$400	None	None

These Scheduled Values, Average Values and Maximum Values shall apply to all Asbestos Personal Injury Claims filed with the Asbestos Trust (except for a Pre-Petition Liquidated Asbestos Personal Injury Claim where the claimant has elected to retain the liquidated value) on or before the Initial Claims Filing Date as provided in Section 5.1. Thereafter, the Asbestos Trust, with the consent of the TAC and the FCR pursuant to Sections 5.7(b) and 6.6(b) of the Asbestos Trust Agreement, may change these valuation amounts for good cause and consistent with other restrictions on the amendment power.

5.3(b)(4) Claims Processing Under Individual Review. At the conclusion of the Individual Review Process, the Asbestos Trust shall: (1) determine the liquidated value, if any, of the claim; and (2) advise the claimant of its determination. If the Asbestos Trust establishes a liquidated value, it shall tender to the claimant an offer of payment of the aforementioned determined value multiplied by the applicable Payment Percentage, together with a form of release approved by the Asbestos Trust. If the claimant accepts the offer of payment and returns the release properly executed, the claim shall be placed in the FIFO Payment Queue, following which the Asbestos Trust shall disburse payment subject to the limitations of the Maximum Annual Payment and Claims Payment Ratio, if any.

5.3(c) Handling, Litigation and Payment of Asbestos Premises Liability

Claims. Notwithstanding anything to the contrary in this TDP or the Asbestos Trust Agreement, unless otherwise approved by the TAC and the FCR, this paragraph Section 5.3(c), shall govern the handling of the Asbestos Premises Liability Claims.

Claimants holding Asbestos Premises Liability Claims who wish to recover on such claims must file a lawsuit against the Asbestos Trust in the federal or state court of the claimant's choosing as permitted under applicable federal or state law. All lawsuits brought against the Asbestos Trust involving Asbestos Premises Liability Claims must be filed by the claimant in his or her own right and name and not as a member of a class. Service of process on the Asbestos Trust may be made, pursuant to applicable federal or state law where the lawsuit is filed, on the following: **[insert when available]**.

Where a lawsuit was pending against ASARCO LLC prior to the Petition Date of ASARCO LLC, the lawsuit may proceed, subject, however, to all defenses, including those based on venue, forum non conveniens and jurisdiction; provided, however, that within 180 days

of the Effective Date, the plaintiff in the lawsuit must file and serve an amendment to the lawsuit substituting the Asbestos Trust as successor to ASARCO LLC as party defendant.

The Asbestos Trust shall tender the lawsuit to the applicable Asbestos Insurance Company for defense and indemnification, with such notice and information as may be required under the terms and conditions of the Asbestos In-Place Insurance Coverage and/or CIP Agreements. The time within which the Asbestos Trust is required to answer or otherwise respond to any summons or complaint involving an Asbestos Premises Liability Claim that is served on the Asbestos Trust shall automatically be extended by twenty (20) days.

In the event that the Asbestos Insurance Company does not accept the tender of the lawsuit, the claimant may proceed against the Asbestos Trust for the entry of a judgment provided the claimant covenants not to execute on the judgment.

In exchange for the covenant not to execute on the judgment, the claimant may file a claim with the Asbestos Trust to be processed under Section 5.3(a) or 5.3(b). The claimant shall file a proof of claim with supporting material as provided under Section 6.1, with the claim placed in the FIFO Processing Queue as of the date of the filing of the lawsuit against the Asbestos Trust. The claim will be paid in the order of the FIFO Payment Queue. The Payment Percentage shall apply to the payment of the claim.

In the situation where the Asbestos Insurance Company does not accept the tender of the lawsuit, the Asbestos Trust will assess the good faith of the Asbestos Insurance Company. If the Asbestos Trust concludes that the Asbestos Insurance Company did not act in good faith, the Asbestos Trust shall provide the claimant with written notice of a right of the claimant to proceed with appropriate litigation against the Asbestos Insurance Company with the Asbestos Trust subrogated to any recovery by the claimant from the Asbestos Insurance Company to the extent

of a payment by the Asbestos Trust to the claimant under this Section 5.3(c). Within ninety (90) days of such written notice but, in no event, not later than six (6) months before the running of the applicable statute of limitations, the claimant shall provide written notice to the Asbestos Trust of whether the claimant will proceed with such litigation. The Asbestos Trust shall cooperate with the claimant in the prosecution of the litigation. If the claimant elects not to proceed with the litigation, the Asbestos Trust reserves the right to commence and prosecute the litigation against the Asbestos Insurance Company.

In the event that the Asbestos Insurance Company accepts the tender of the lawsuit but there is a subsequent determination that the Asbestos Premises Liability Claim is not covered or only partially covered by the CIP Agreements or any other Asbestos Insurance Policy covering Asbestos Premises Liability Claims, the claimant may file a claim with the Asbestos Trust. The claim shall be placed in the FIFO Processing Queue as of the date of the filing of the lawsuit provided herein, processed under Section 5.3(a) or (b), and paid in the order of the FIFO Payment Queue. The Payment Percentage shall apply to the payment of the claim.

Notwithstanding any judgment obtained by a claimant in the tort system, no punitive or exemplary damages may be recovered from the Asbestos Trust.

The Asbestos Trust shall define or specify in the Claims Materials to be adopted pursuant to Section 6.1 the procedural mechanisms for the determinations to be made by the Asbestos Trust hereunder.

The holder of both an Asbestos Premises Liability Claim and another Asbestos Personal Injury Claim may proceed under this Section 5.3(c) or under Section 5.3(a) or (b), at the option of the holder of the claim. An election to proceed under Section 5.3(a) or (b) shall constitute an

irrevocable waiver of the right to proceed under Section 5.3(c). This Section 5.3(c) shall not be amended without the approval of the TAC and the FCR.

5.4 Categorizing Claims as Extraordinary and/or Exigent Hardship.

5.4(a) Extraordinary Claims. “**Extraordinary Claim**” means an Asbestos Personal Injury Claim that otherwise satisfies the Medical Criteria for Disease Levels II–VIII, and that is held by a claimant whose exposure to asbestos was at least 75% the result of exposure to an asbestos-containing product or to conduct for which ASARCO has legal responsibility, and there is little likelihood of a substantial recovery elsewhere. All such Extraordinary Claims shall be presented for Individual Review and, if valid, shall be entitled to an award of up to a maximum extraordinary value of five (5) times the Scheduled Value set forth in Section 5.3(b)(3) for claims qualifying for Disease Levels II–V, VII and VIII, and five (5) times the Average Value for claims in Disease Level VI, multiplied by the applicable Payment Percentage.

Any dispute as to Extraordinary Claim status shall be submitted to a special panel established by the Asbestos Trust with the consent of the TAC and the FCR (the “Extraordinary Claims Panel”). All decisions of the Extraordinary Claims Panel shall be final as to the Asbestos Trust and not subject to any further administrative or judicial review by the Asbestos Trust. A claimant may either accept or reject the decision of the Extraordinary Claims Panel. In the event the claimant rejects the decision of the Extraordinary Claims Panel, the claimant may proceed under the ADR Procedures provided in Section 5.10. An Extraordinary Claim, following its liquidation, shall be placed in the FIFO Payment Queue ahead of all other Asbestos Personal Injury Claims except Disease Level I Claims and Exigent Claims, which shall be paid first in that order in the FIFO Payment Queue, based on the date of liquidation, subject to the Maximum Annual Payment and Claims Payment Ratio described above. For purposes of clarification,

holders of Pre-Petition Liquidated Asbestos Personal Injury Claims who have elected to retain the liquidated values will be maintained and paid separately from the FIFO Payment Queue for Asbestos Personal Injury Claims as provided in Section 5.2(a).

5.4(b) Exigent Claims. At any time the Asbestos Trust may liquidate and pay Asbestos Personal Injury Claims that qualify as Exigent Health Claims or Exigent Hardship Claims as defined below (“Exigent Claim”). Exigent Claims may be considered separately no matter what the order of processing otherwise would have been under this TDP. An Exigent Claim, following its liquidation, shall be placed first in the FIFO Payment Queue ahead of all other liquidated Asbestos Personal Injury Claims except Disease Level I Claims and shall be subject to the Maximum Annual Payment and Claims Payment Ratio described above.

(1) Exigent Health Claims. An Asbestos Personal Injury Claim qualifies as an Exigent Health Claim if the claim meets the Medical/Exposure Criteria for Mesothelioma (Disease Level VIII) and the claimant is living when the claim is filed. A claim in Disease Levels IV–VII qualifies as an Exigent Health Claim if the claim meets the Medical/Exposure Criteria for the Disease Level, and the claimant provides a declaration or affidavit, made under penalty of perjury by a physician who has examined the claimant within one hundred twenty (120) days of the date of declaration or affidavit, stating (a) that there is substantial medical doubt that the claimant will survive beyond six (6) months from the date of the declaration or affidavit, and (b) that the claimant’s terminal condition is caused by the relevant asbestos-related disease.

(2) Exigent Hardship Claims. An Asbestos Personal Injury Claim qualifies for payment as an Exigent Hardship Claim if the claim meets the Medical/Exposure Criteria for Severe Asbestosis (Disease Level IV) or an asbestos-related malignancy (Disease Levels V–

VIII), and the Asbestos Trust, in its sole discretion, determines (i) that the claimant needs immediate financial assistance based on the claimant's expenses and all sources of available income, and (ii) that there is a causal connection between the claimant's dire financial condition and the claimant's asbestos-related disease.

5.5 Secondary Exposure Claims. If a claimant alleges an asbestos-related disease resulting solely from exposure to an occupationally exposed person, such as a family member, the claimant must seek Individual Review of his or her claim pursuant to Section 5.3(b). In such a case, the claimant must establish that the occupationally exposed person would have met the exposure requirements under this TDP that would have been applicable had that person filed a direct claim against the Asbestos Trust. In addition, the claimant with secondary exposure must establish that he or she is suffering from one of the eight Disease Levels described in Section 5.3(a)(3) or an asbestos-related disease otherwise compensable under this TDP, that his or her own exposure to the occupationally exposed person occurred within the same time frame as the occupationally exposed person was exposed to asbestos mined by ASARCO or products manufactured, produced or distributed by ASARCO or to conduct for which ASARCO has legal responsibility, and that the secondary exposure was a cause of the claimed disease. All other liquidation and payment rights and limitations under this TDP shall be applicable to the claims.

5.6 Indirect Asbestos Personal Injury Claims. Indirect Asbestos Personal Injury Claims asserted against the Asbestos Trust based on theories of contribution or indemnification under applicable law shall be treated as valid and paid by the Asbestos Trust subject to the applicable Payment Percentage if (a) the claim satisfied the requirements of any applicable Bar Date established by the Bankruptcy Court, and is not otherwise disallowed by Section 502(e) of the Bankruptcy Code or subordinated under Section 509(c) of the Bankruptcy Code, and (b) the

holder of the claim (the “**Indirect Claimant**”) establishes to the satisfaction of the Trustees that (i) the Indirect Claimant has paid the liability and obligation of the Asbestos Trust to the individual claimant to whom the Asbestos Trust would otherwise have had a liability or obligation under this TDP (the “**Direct Claimant**”), (ii) the Direct Claimant and the Indirect Claimant have released the Asbestos Trust from all liability to the Direct Claimant, and (iii) the claim is not otherwise barred by a statute of limitations or repose or by other applicable law. In no event shall any Indirect Claimant have any rights against the Asbestos Trust superior to the rights of the related Direct Claimant against the Asbestos Trust, including any rights with respect to the timing, amount or manner of payment. In addition, no indirect Asbestos Personal Injury Claim may be liquidated and paid in an amount that exceeds what the Indirect Claimant has actually paid the related Direct Claimant.

To establish a presumptively valid indirect Asbestos Personal Injury Claim, the Indirect Claimant’s aggregate liability for the Direct Claimant’s claim must also have been fixed, liquidated and paid fully by the Indirect Claimant by settlement (with an appropriate full release in favor of the Asbestos Trust) or a Final Order provided that the claim is valid under the applicable state law. In any case where the Indirect Claimant has satisfied the claim of a Direct Claimant against the Asbestos Trust under applicable law by way of a settlement, the Indirect Claimant shall obtain for the benefit of the Asbestos Trust a release in form and substance satisfactory to the Trustees.

If an Indirect Claimant cannot meet the presumptive requirements set forth above, the Indirect Claimant may request that the Asbestos Trust review the indirect Asbestos Personal Injury Claim individually to determine whether the Indirect Claimant can establish under applicable state law that the Indirect Claimant has paid all or a portion of a liability or obligation

that the Asbestos Trust had to the Direct Claimant as of the Effective Date. If the Indirect Claimant can show that it has paid all or a portion of a liability or obligation, the Asbestos Trust may reimburse the Indirect Claimant the amount of the liability or obligation so paid, times the then applicable Payment Percentage. However, in no event shall the reimbursement to the Indirect Claimant be greater than the amount to which the Direct Claimant would have otherwise been entitled. Further, the liquidated value of any indirect Asbestos Personal Injury Claim paid by the Asbestos Trust to an Indirect Claimant shall be treated as an offset to or reduction of the full liquidated value of any Asbestos Personal Injury Claim that might be subsequently asserted by the Direct Claimant against the Asbestos Trust.

Any dispute between the Asbestos Trust and an Indirect Claimant over whether the Indirect Claimant has a right to reimbursement for any amount paid to a Direct Claimant shall be subject to the ADR Procedures provided in Section 5.10. If the dispute is not resolved pursuant to the ADR Procedures, the Indirect Claimant may litigate the dispute in the tort system pursuant to Sections 5.11 and 7.5.

The Trustees may develop and approve a separate proof of claim form for indirect Asbestos Personal Injury Claims. Indirect Asbestos Personal Injury Claims that have not been disallowed, discharged, or otherwise resolved by prior order of the Bankruptcy Court shall be processed in accordance with procedures to be developed and implemented by the Trustees consistent with the provisions of this Section 5.6, which procedures (a) shall determine the validity, allowability and enforceability of the claims; and (b) shall otherwise provide the same liquidation and payment procedures and rights to the holders of the claims as the Asbestos Trust would have afforded the holders of the underlying valid Asbestos Personal Injury Claims.

5.7 Evidentiary Requirements.

5.7(a) Medical Evidence.

5.7(a)(1) In General. All diagnoses of a Disease Level shall be accompanied by either (i) a statement by the physician providing the diagnosis that at least ten (10) years have elapsed between the date of first exposure to asbestos or asbestos-containing products and the diagnosis, or (ii) a history of the claimant's exposure sufficient to establish a 10-year latency period. A finding by a physician after the Effective Date that a claimant's disease is "consistent with" or "compatible with" asbestosis shall not alone be treated by the Asbestos Trust as a diagnosis.⁷

5.7(a)(1)(A) Disease Levels I–IV. Except for asbestos claims filed against ASARCO or any other defendant in the tort system prior to the Petition Date, all diagnoses of a non-malignant asbestos-related disease (Disease Levels I–IV) shall be based in the case of a claimant who was living at the time the claim was filed on a physical examination of the claimant by the physician providing the diagnosis of the asbestos-related disease. All living claimants must also provide (i) for Disease Levels I–III, evidence of Bilateral Asbestos-Related Nonmalignant Disease (as defined in Footnote 4 above); (ii) for Disease Level IV, an ILO reading of 2/1 or greater or pathological evidence of asbestosis, and (iii) for Disease Levels III and IV, pulmonary function testing.⁸

⁷ All diagnoses of Nonmalignant Asbestos Disease (Disease Levels II and III) not based on pathology shall be presumed to be based on findings of bilateral asbestosis or pleural disease, and all diagnoses of Mesothelioma (Disease Level VIII) shall be presumed to be based on findings that the disease involves a malignancy. However, the Asbestos Trust may rebut these presumptions.

⁸ "Pulmonary function testing" or "PFT" shall mean testing that is in material compliance with the quality criteria established by the American Thoracic Society ("ATS") and is performed on equipment which is in material compliance with ATS standards for technical quality and calibration. PFT performed in a hospital accredited by the JCAHO, or performed, reviewed or

In the case of a claimant who was deceased at the time the claim was filed, all diagnoses of a non-malignant asbestos-related disease (Disease Levels I–IV) shall be based upon (i) either (a) a physical examination of the claimant by the physician providing the diagnosis of the asbestos-related disease; (b) pathological evidence of the non-malignant asbestos-related disease; or (c) in the case of Disease Levels I–III, evidence of Bilateral Asbestos-Related Nonmalignant Disease (as defined in Footnote 4 above), and for Disease Level IV, either an ILO reading of 2/1 or greater or pathological evidence of asbestosis; and (ii) for either Disease Level III or IV, pulmonary function testing.

5.7(a)(1)(B) Disease Levels V–VIII. All diagnoses of an asbestos-related malignancy (Disease Levels V–VIII) shall be based upon either (i) a physical examination of the claimant by the physician providing the diagnosis of the asbestos-related disease, or (ii) a diagnosis of a malignant Disease Level by a board-certified pathologist or by a pathology report prepared at or on behalf of a hospital accredited by the Joint Commission on Accreditation of Healthcare Organizations (“JCAHO”).

5.7(a)(1)(C) Exception to the Exception for Certain Pre-Petition Claims. If the holder of an Asbestos Personal Injury Claim that was filed against ASARCO or any other defendant in the tort system prior to the Petition Date has available a report of a diagnosing physician engaged by the holder or his or her law firm who conducted a

supervised by a board certified pulmonologist or other Qualified Physician shall be presumed to comply with ATS standards, and the claimant may submit a summary report of the testing. If the PFT was not performed in an JCAHO-accredited hospital, or performed, reviewed or supervised by a board certified pulmonologist or other Qualified Physician, the claimant must submit the full report of the testing (as opposed to a summary report); provided, however, that if the PFT was conducted prior to the Effective Date and the full PFT report is not available, the claimant must submit a declaration signed by a Qualified Physician or other qualified party, in the form provided by the Asbestos Trust, certifying that the PFT was conducted in material compliance with ATS standards.

physical examination of the holder as described in Sections 5.7(a)(1)(A), or if the holder has filed that medical evidence and/or a diagnosis of the asbestos-related disease by a physician not engaged by the holder or his or her law firm who conducted a physical examination of the holder with another asbestos-related personal injury settlement trust that requires such evidence, without regard to whether the claimant or the law firm engaged the diagnosing physician, the holder shall provide that medical evidence to the Asbestos Trust notwithstanding the exception in Section 5.7(a)(1)(A).

5.7(a)(2) Credibility of Medical Evidence. Before making any payment to a claimant, the Asbestos Trust must have reasonable confidence that the medical evidence provided in support of the claim is credible and consistent with recognized medical standards. The Asbestos Trust may require the submission of X-rays or other diagnostic imaging, detailed results of pulmonary function tests, laboratory tests, tissue samples, results of medical examination or reviews of other medical evidence, and may require that medical evidence submitted comply with recognized medical standards regarding equipment, testing methods and procedures to assure that the evidence is reliable. Medical evidence (i) that is of a kind shown to have been received in evidence by a state or federal judge at trial, (ii) that is consistent with evidence submitted to ASARCO to settle for payment similar disease cases prior to the Petition Date, or (iii) that is a diagnosis by a physician shown to have previously qualified as a medical expert with respect to the asbestos-related disease in question before a state or federal judge using the same methodology and standard, is presumptively reliable, although the Asbestos Trust may seek to rebut the presumption. Notwithstanding the foregoing or any other provision of this TDP, any medical evidence submitted by a physician or entity that the Asbestos Trust has

determined, after consulting with the TAC and FCR, to be unreliable shall not be acceptable as medical evidence in support of any Asbestos Personal Injury Claim.

In addition, claimants who otherwise meet the requirements of this TDP for payment of an Asbestos Personal Injury Claim shall be paid irrespective of the results in any litigation at any time between the claimant and any other defendant in the tort system. However, any relevant evidence submitted in a proceeding in the tort system, other than any findings of fact, a verdict, or a judgment, involving another defendant may be introduced by either the claimant or the Asbestos Trust in any Individual Review proceeding conducted pursuant to 5.3(b) or any Extraordinary Claim proceeding conducted pursuant to 5.4(a).

5.7(b) Exposure Evidence.

5.7(b)(1) In General. As set forth above in Section 5.3(a)(3), to qualify for any Disease Level, the claimant must demonstrate a minimum exposure to any products or materials containing asbestos that were mined, manufactured, sold, supplied, produced, specified, selected, distributed or in any way marketed by ASARCO (or any past or present ASARCO Protected Party or Affiliate, or any of the predecessors of ASARCO or any of their past or present Affiliates, or any other Entity for whose products or operations ASARCO allegedly has liability or is otherwise liable). Claims based on conspiracy theories that involve no exposure to such products or materials are not compensable under this TDP. To meet the presumptive exposure requirements of Expedited Review set forth in Section 5.3(a)(3), the claimant must show (i) for all Disease Levels, ASARCO Exposure as defined in Section 5.7(b)(3); (ii) for Nonmalignant Asbestos Disease Level II, six (6) months ASARCO Exposure, plus five years cumulative occupational asbestos exposure; and (iii) for Nonmalignant Asbestos Disease (Disease Level III), Severe Asbestosis (Disease Level IV), Other Cancer (Disease Level

V) or Lung Cancer 1 (Disease Level VII), the claimant must show six (6) months ASARCO Exposure, plus Significant Occupational Exposure to asbestos as defined below. If the claimant cannot meet the relevant presumptive exposure requirements for a Disease Level eligible for Expedited Review, the claimant may seek Individual Review pursuant to Section 5.3(b) of his or her claim based on exposure to an asbestos-containing product or to conduct for which ASARCO has legal responsibility.

5.7(b)(2) Significant Occupational Exposure. “**Significant Occupational Exposure**” means employment for a cumulative period of at least five (5) years with a minimum of two (2) years in an industry and an occupation in which the claimant (a) handled raw asbestos fibers on a regular basis; (b) fabricated asbestos-containing products so that the claimant in the fabrication process was exposed on a regular basis to raw asbestos fibers; (c) altered, repaired or otherwise worked with an asbestos-containing product such that the claimant was exposed on a regular basis to asbestos fibers; or (d) was employed in an industry and occupation such that the claimant worked on a regular basis in close proximity to workers engaged in the activities described in (a), (b) and/or (c).

5.7(b)(3) ASARCO Exposure. The claimant must demonstrate meaningful and credible exposure: (A) to any products or materials containing asbestos that were mined, manufactured, sold, supplied, produced, specified, selected, distributed or in any way marketed by CAPCO or ASARCO (or any past or present ASARCO Protected Party or Affiliate, or any of the predecessors of ASARCO or any of their past or present Affiliates, or any other Entity for whose products or operations ASARCO allegedly has liability or is otherwise liable) (“**CAPCO Exposure**”); (B) to any products or materials containing asbestos mined, sold or distributed by LAQ or ASARCO (or any past or present ASARCO Protected Party or

Affiliate, or any of the predecessors of ASARCO or any of their past or present Affiliates, or any other Entity for whose products or operations ASARCO allegedly has liability or is otherwise liable) (“**LAQ Exposure**”); or (C) to asbestos or asbestos-containing materials at premises owned, leased, rented, occupied or controlled by ASARCO (or any past or present ASARCO Protected Party or Affiliate, or any of the predecessors of ASARCO or any of their past or present Affiliates, or any other Entity for whose products or operations ASARCO allegedly has liability or is otherwise liable) (“**Premises Exposure**”). A holder of an Asbestos Personal Injury Claim attempting to establish Premises Exposure must demonstrate 30 days exposure to asbestos or asbestos-containing materials at premises owned, leased, rented, occupied or controlled by ASARCO. The holder of an Asbestos Personal Injury Claim asserting more than one category of ASARCO Exposure (as defined below) may only recover on one claim under the TDP. For purposes of clarification, a claimant demonstrating both CAPCO Exposure and LAQ Exposure may only recover one Asbestos Personal Injury Claim. A claimant demonstrating CAPCO Exposure or LAQ Exposure and Premises Exposure must make the election provided under Section 5.3(c). A claimant demonstrating Premises Exposure may proceed with a claim pursuant to Section 5.3(c).

Meaningful and credible exposure evidence under (A), (B) or (C) of this Section 5.7(b)(3) (“**ASARCO Exposure**”) may be established by an affidavit or sworn statement of the claimant, by an affidavit or sworn statement of a co-worker or the affidavit or sworn statement of a family member in the case of a deceased claimant (providing the Asbestos Trust finds the evidence reasonably reliable), by invoices, employment, construction or similar records, or by other credible evidence. The specific exposure information required by the Asbestos Trust to process a claim under either Expedited or Individual Review shall be set forth on the proof of

claim form to be used by the Asbestos Trust. The Asbestos Trust may also require submission of other or additional evidence of exposure when deemed necessary.

Evidence submitted to establish proof of ASARCO Exposure is for the sole benefit of the Asbestos Trust, not third parties or defendants in the tort system. The Asbestos Trust has no need for, and therefore claimants are not required to furnish the Asbestos Trust with, evidence of exposure to specific asbestos products other than those for which ASARO has legal responsibility, except to the extent such evidence is required elsewhere in this TDP. Similarly, failure to identify ASARCO Exposure in the claimant's underlying tort action, or to other bankruptcy trusts, does not preclude the claimant from recovering from the Asbestos Trust, provided the claimant otherwise satisfies the medical and exposure requirements of this TDP.

5.8 Claims Audit Program. The Asbestos Trust, with the consent of the TAC and the FCR, may develop methods for auditing the reliability of medical evidence, including additional reading of X-rays and other diagnostic imaging, and verification of pulmonary function tests, as well as the reliability of evidence of exposure to asbestos, including exposure to asbestos-containing products mined, manufactured or distributed by ASARCO prior to April 11, 2005. In the event that the Asbestos Trust reasonably determines that any individual or entity has engaged in a pattern or practice of providing unreliable medical evidence to the Asbestos Trust, it may decline to accept additional evidence from the provider in the future.

Further, in the event that an audit reveals that fraudulent information has been provided to the Asbestos Trust, the Asbestos Trust may penalize any claimant or claimant's attorney by disallowing the Asbestos Personal Injury Claim or by other means including, but not limited to, requiring the source of the fraudulent information to pay the costs associated with the audit and any future audit or audits, reordering the priority of payment of all affected claimants' Asbestos

Personal Injury Claims, raising the level of scrutiny of additional information submitted from the same source or sources, refusing to accept additional evidence from the same source or sources, seeking the prosecution of the claimant or claimant's attorney for presenting a fraudulent claim in violation of 18 U.S.C. § 152, and seeking sanctions from the Bankruptcy Court.

5.9 Second Disease (Malignancy) Claims. The holder of an Asbestos Personal Injury Claim involving a non-malignant asbestos-related disease (Disease Levels I–IV) may assert a new Asbestos Personal Injury Claim against the Asbestos Trust for a malignant disease (Disease Levels V–VIII) that is subsequently diagnosed. Any additional payments to which the claimant may be entitled with respect to the malignant asbestos-related disease shall not be reduced by the amount paid for the non-malignant asbestos-related disease, provided that the malignant disease had not been diagnosed by the time the claimant was paid with respect to the original claim involving the non-malignant disease.

5.10 Arbitration.

5.10(a) Establishment of ADR Procedures. The Asbestos Trust, with the consent of the TAC and the FCR, shall institute pro bono evaluation, mediation and binding and non-binding arbitration procedures in accordance with the Alternative Dispute Resolution Procedures (“**ADR Procedures**”), included in Attachment A hereto or to be attached as an exhibit to the Claims Materials to be prepared by the Asbestos Trust under Section 6.1, for resolving disputes concerning whether a settlement agreement with ASARCO is binding and judicially enforceable in the absence of a Final Order of the Bankruptcy Court; determining whether the Asbestos Trust's rejection or denial of a claim was proper; determining whether the claimant's medical condition or exposure history meets the requirements of this TDP for purposes of categorizing a claim involving Disease Levels I–VIII; or determining any other dispute expressly

made eligible for ADR Proceedings by this TDP. Pro bono evaluation, mediation, binding and non-binding arbitration shall also be available for resolving disputes over the liquidated value of a claim involving Disease Levels II–VIII, as well as disputes over the unpaid portion of a Pre-Petition Liquidated Asbestos Personal Injury Claim described in Section 5.2 and disputes over the validity of an indirect Asbestos Personal Injury Claim.

In all arbitrations, the arbitrator shall consider the same medical and exposure evidentiary requirements that are set forth in Section 5.7. In the case of an arbitration involving the liquidated value of a claim involving Disease Levels II–VIII, the arbitrator shall consider the same valuation factors that are set forth in Section 5.3(b)(2). In order to facilitate the Individual Review Process, the Asbestos Trust may from time to time develop a valuation model that enables the Asbestos Trust to efficiently make initial liquidated value offers on those claims in the Individual Review Process. In an arbitration involving any such claim, the Asbestos Trust shall neither offer into evidence or describe any such model nor assert that any information generated by the model has any evidentiary relevance or should be used by the arbitrator in determining the presumed correct liquidated value in the arbitration. The underlying data that was used to create the model may be relevant and may be made available to the arbitrator but only if provided to the claimant or his or her counsel ten days prior to the arbitration proceeding. With respect to all claims eligible for arbitration, the claimant, but not the Asbestos Trust, may elect either non-binding or binding arbitration. The ADR Procedures set forth in Attachment A hereto or to be attached as an exhibit to the Claims Materials may be modified by the Asbestos Trust with the consent of the TAC and the FCR.

5.10(b) Claims Eligible for Arbitration. Except as otherwise provided herein, in order to be eligible for arbitration, the claimant must first complete the Individual Review Process

with respect to the disputed issue. The claimant may elect to submit to pro bono evaluation or to mediate the disputed issue prior to arbitration as set forth in the ADR Procedures. Individual Review shall be treated as completed for these purposes when the claim has been individually reviewed by the Asbestos Trust, the Asbestos Trust has made an offer on the claim, the claimant has rejected the liquidated value resulting from the Individual Review, and the claimant has notified the Asbestos Trust of the rejection in writing. Individual Review shall also be treated as completed if the Asbestos Trust has rejected the claim.

5.10(c) Limitations on and Payment of Arbitration Awards. In the case of a claim involving Disease Levels I and II, the arbitrator shall not return an award in excess of the Scheduled Value for such claim. In the case of a non-Extraordinary Claim involving Disease Levels III–VIII, the arbitrator shall not return an award in excess of the Maximum Value for the appropriate Disease Level as set forth in Section 5.3(a)(3), and for an Extraordinary Claim involving one of those Disease Levels, the arbitrator shall not return an award greater than the maximum extraordinary value for the claim as set forth in Section 5.4(a). The claim of a claimant who submits to arbitration and who accepts the arbitral award shall be placed in the FIFO Payment Queue as of the date of the arbitral award, and paid subject to the application of the Maximum Annual Payment, Claims Payment Ratio and Payment Percentage, as applicable.

5.11 Litigation.

5.11(a) In General. Claimants who elect non-binding arbitration and then reject the arbitral award retain the right to institute a lawsuit in the tort system against the Asbestos Trust pursuant to Section 7.5. The holder of an Asbestos Premises Liability Claim may recover any judgment from the Asbestos Insurance Company to the extent of coverage. All other

claimants shall be eligible for payment of a judgment for monetary damages obtained in the tort system from the Asbestos Trust's available cash only as provided in Section 7.6.

5.11(b) Asbestos Personal Injury Claims Covered by Asbestos Insurance

Policies. Notwithstanding any provision of this TDP, the holder of an Asbestos Personal Injury Claim who contends that the claim is covered by an Asbestos Insurance Policy may request that the Asbestos Trust suspend processing of the claim pending liquidation of the value of the claim by litigation in the tort system and the Asbestos Trust, with the consent of the TAC and the FCR, shall deal with that request appropriately.

5.11(c) The Right to Establish Certain Procedures. The Asbestos Trust has the right to establish procedures for claimants who hold direct action rights against an Asbestos Insurance Company other than a Settling Asbestos Insurance Company to pursue such rights in the tort system with the consent of the TAC and the FCR.

SECTION VI

Claims Materials

6.1 Claims Materials. The Asbestos Trust shall prepare suitable and efficient claims materials ("**Claims Materials**") for all Asbestos Personal Injury Claims, and shall provide the Claims Materials to the claimants upon written request. The proof of claim form shall require the claimant to assert the highest Disease Level for which the claim qualifies at the time of filing. The proof of claim form shall also include a certification by the claimant or his or her attorney sufficient to meet the requirements of Rule 11(b) of the Federal Rules of Civil Procedure. In developing its claim filing procedures, the Asbestos Trust shall make every effort to provide claimants with the opportunity to utilize currently available technology at their discretion, including filing claims and supporting documentation over the internet or by other electronic

means. The proof of claim form to be used by the Asbestos Trust shall be developed by the Asbestos Trust and submitted to the TAC and the FCR for approval; it may be changed by the Asbestos Trust with the consent of the TAC and the FCR. The Asbestos Trust shall also prepare procedures as otherwise mandated by this TDP.

6.2 Content of Claims Materials. The Claims Materials shall include a copy of this TDP, instructions adopted by the Trustees, and a detailed proof of claim form. If feasible, the forms used by the Asbestos Trust to obtain claims information shall be the same or substantially similar to those used by other asbestos claims resolution organizations. The claimant may, but shall not be required to, provide the Asbestos Trust with evidence of recovery from other defendants and claims resolution organizations.

6.3 Withdrawal or Deferral of Claims. A claimant can withdraw an Asbestos Personal Injury Claim at any time upon written notice to the Asbestos Trust and file another claim subsequently, provided, however, that the subsequent claim must be filed within the applicable statute of limitations in effect at the time the claim was initially filed. A claim filed after withdrawal shall be given a place in the FIFO Processing Queue based on the date of the subsequent filing. A claimant can also request that the processing of his or her Asbestos Personal Injury Claim by the Asbestos Trust be deferred for a period not to exceed two (2) years without affecting the status of the claim for statute of limitations purposes, in which case the claimant shall also retain his or her original place in the FIFO Processing Queue. During the period of deferral, a sequencing adjustment on the claimant's Asbestos Personal Injury Claim as provided in Section 7.4 shall not accrue and payment of a sequencing adjustment shall be deemed waived by the claimant. Except for Asbestos Personal Injury Claims held by representatives of deceased or incompetent claimants for which court or probate approval of the

Asbestos Trust's offer is required, or an Asbestos Personal Injury Claim for which deferral status has been granted, a claim shall be deemed to have been withdrawn if the claimant neither accepts, rejects, nor initiates ADR Procedures within six (6) months of the Asbestos Trust's written offer of payment or rejection of the claim. Upon written request and good cause, the Asbestos Trust may extend the withdrawal or deferral period for an additional six (6) months.

6.4 Filing Requirements and Fees. The Trustees shall have the discretion to determine, with the consent of the TAC and the FCR, (a) whether a claimant must have previously filed an asbestos-related personal injury claim in the tort system to be eligible to file the claim with the Asbestos Trust and (b) whether a filing fee should be required for any Asbestos Personal Injury Claims.

6.5 Confidentiality of Claimants' Submissions. All submissions to the Asbestos Trust by a holder of an Asbestos Personal Injury Claim or a proof of claim form and materials related to the claim shall be treated as made in the course of settlement discussions between the holder and the Asbestos Trust, and intended by the parties to be confidential and to be protected by all applicable state and federal privileges, including but not limited to those directly applicable to settlement discussions. The Asbestos Trust will preserve the confidentiality of the claimant's submissions, and shall disclose the contents thereof only with the permission of the holder to another trust established for the benefit of asbestos personal injury claimants pursuant to Section 524(g) and/or Section 105 of the Bankruptcy Code or other applicable law, to such other persons as authorized by the holder, or in response to a valid subpoena. Furthermore, the Asbestos Trust shall provide counsel for the holder a copy of any subpoena as soon as practical. The Asbestos Trust shall on its own initiative or on request of the claimant take all necessary and appropriate steps to preserve the privileges. Notwithstanding anything in the foregoing to the

contrary, with the consent of the TAC and the FCR, the Asbestos Trust may, in specific limited circumstances, disclose information, documents or other materials reasonably necessary in the Asbestos Trust's judgment to preserve, litigate, resolve or settle coverage, or to comply with an applicable obligation under an insurance policy or settlement agreement within the Asbestos Insurance Policies or the Asbestos Insurance Settlement Agreements; provided, however, that the Asbestos Trust shall take any and all steps reasonably feasible in its judgment to preserve the further confidentiality of such information, documents and materials, and prior to the disclosure of such information, documents or materials to a third party, the Asbestos Trust shall receive from the third party a written agreement of confidentiality that (a) ensures that the information, documents and materials provided by the Asbestos Trust shall be used solely by the receiving party for the purpose stated in the agreement and (b) prohibits any other use or further dissemination of the information, documents and materials by the third party.

SECTION VII

General Guidelines for Liquidating and Paying Claims

7.1 Costs Considered. Notwithstanding any provisions of this TDP to the contrary, the Trustees shall give appropriate consideration to the cost of investigating and uncovering invalid Asbestos Personal Injury Claims so that the payment of valid Asbestos Personal Injury Claims is not further impaired by such processes with respect to issues related to the validity of the medical evidence supporting an Asbestos Personal Injury Claim. The Trustees shall have discretion regarding the amount of transaction costs to be expended by the Asbestos Trust so that valid Asbestos Personal Injury Claims are not unduly further impaired by the costs of additional investigation. Nothing herein shall prevent the Trustees, in appropriate circumstances, from contesting the validity of any claim against the Asbestos Trust whatever the costs, or declining to

accept medical evidence from sources that the Trustees have determined to be unreliable pursuant to Section 5.7(a)(2) or to the Claims Audit Program described in Section 5.8.

7.2 Discretion to Vary the Order and Amounts of Payments in Event of Limited Liquidity. Consistent with the provisions hereof and subject to the FIFO Processing and Payment Queues, the Maximum Annual Payment and the Claims Payment Ratio requirements set forth above, the Trustees shall proceed as quickly as possible to liquidate valid Asbestos Personal Injury Claims, and shall make payments to holders of claims in accordance with this TDP promptly as funds become available and as claims are liquidated, while maintaining sufficient resources to pay future valid claims in substantially the same manner.

Because the Asbestos Trust's income over time remains uncertain, and decisions about payments must be based on estimates that cannot be done precisely, payments may have to be revised in light of experiences over time, and there can be no guarantee of any specific level of payment to claimants. However, the Trustees shall use their best efforts to treat similar claims in substantially the same manner, consistent with their duties as Trustees, the purposes of the Asbestos Trust, the established allocation of funds to claims in Categories A and B, and the practical limitations imposed by the inability to predict the future with precision.

In the event that the Asbestos Trust faces temporary periods of limited liquidity, the Trustees may, with the consent of the TAC and the FCR, suspend the normal order of payment and may temporarily limit or suspend payments altogether, and may offer a Reduced Payment Option as described in Section 2.5.

7.3 Punitive Damages. In determining the value of any liquidated or unliquidated Asbestos Personal Injury Claim, punitive or exemplary damages, *i.e.*, damages other than

compensatory damages, shall not be considered or allowed, notwithstanding their availability in the tort system.

Similarly, no punitive or exemplary damages shall be payable with respect to any claim litigated against the Asbestos Trust in the tort system pursuant to Sections 5.11 and 7.5. The only damages that may be awarded pursuant to this TDP to Alabama claimants who are deceased and whose personal representatives pursue their claims only under the Alabama Wrongful Death Statute shall be compensatory damages determined pursuant to the statutory and common law of the Commonwealth of Pennsylvania, without regard to its choice of law principles. Claims asserted by a claimant for compensatory damages that satisfy the criteria for payment under this TDP, where the claimant would have been foreclosed from payment because the governing law of the Foreclosed Jurisdiction defines the claim as “exemplary” or “punitive” damages and the claimant would have no other remedy for compensation under the law of the Foreclosed Jurisdiction, shall be treated as compensatory damages determined pursuant to the statutory and common law of the Commonwealth of Pennsylvania, without regard to its choice of law principles.

7.4 Sequencing Adjustment.

7.4(a) In General. Except for any Asbestos Personal Injury Claim involving Other Asbestos Disease (Disease Level I – Cash Discount Payment) and subject to the limitations set forth below, a sequencing adjustment shall be paid on all Asbestos Personal Injury Claims with respect to which the claimant has had to wait a year or more for payment following the date the claim was placed in the FIFO Processing Queue, or, with respect to certain holders of Pre-Petition Liquidated Asbestos Personal Injury Claims, the Petition Date, provided, however, that no claimant shall receive a sequencing adjustment for a period in excess of seven

(7) years. The sequencing adjustment factor shall be three percent (3%) per annum for each of the first five (5) years after the Effective Date; thereafter, the Asbestos Trust shall have the discretion to change the sequencing adjustment factor with the consent of the TAC and the FCR.

7.4(b) Unliquidated Asbestos Personal Injury Claims. A sequencing adjustment shall be payable on the Scheduled Value of any Asbestos Personal Injury Claim that meets the requirements of Disease Levels II–V, VII and VIII, liquidated under this TDP by Expedited Review, Individual Review, or the ADR Procedures. No sequencing adjustment shall be paid on any claim involving Disease Level I or on any claim liquidated in the tort system pursuant to Sections 5.3(c), 5.11 and 7.5. The sequencing adjustment on an Asbestos Personal Injury Claim liquidated under this TDP that meets the requirements of Disease Level VI shall be based on the Average Value for that Disease Level. Sequencing adjustments on all claims under this Section 7.4(b) shall be measured from the date of payment back to the date that is one year after the date the claim was placed in the FIFO Processing Queue.

7.4(c) Pre-Petition Liquidated Asbestos Personal Injury Claims. A sequencing adjustment shall be payable on the liquidated value of a Pre-Petition Liquidated Asbestos Personal Injury Claim where the claimant has elected to retain the liquidated value as described in Section 5.2(a). The sequencing adjustment shall be measured from the date of payment back to the date that is one year after the Petition Date.

7.5 Suits in the Tort System. If the holder of a disputed claim disagrees with the Asbestos Trust's determination regarding the Disease Level of the claim, the claimant's exposure history or the liquidated value of the claim, and if the holder has first submitted the claim to non-binding arbitration as provided in Section 5.10, the claimant may file a lawsuit in the Claimant's Jurisdiction as defined in Section 5.3(b)(2). Any lawsuit must be filed by the claimant in her or

her own right and name and not as a member or representative of a class, and no lawsuit may be consolidated with any other lawsuit. All defenses (including, with respect to the Asbestos Trust, all defenses which could have been asserted by ASARCO) shall be available to both sides at trial; however, the Asbestos Trust may waive any defense and/or concede any issue of fact or law. If the claimant was alive at the time the initial pre-petition complaint was filed or on the date the proof of claim form was filed with the Asbestos Trust, the case shall be treated as a personal injury case with all personal injury damages to be considered even if the claimant has died during the pendency of the claim.

7.6 Payment of Judgments for Money Damages. If and when a claimant obtains a judgment in the tort system, the claim shall be placed in the FIFO Payment Queue based on the date on which the judgment became final. Thereafter, the claimant shall receive from the Asbestos Trust an initial payment (subject to the applicable Payment Percentage, the Maximum Annual Payment and the Claims Payment Ratio provisions set forth above) of an amount equal to the greater of (i) the Asbestos Trust's last offer to the claimant or (ii) the award that the claimant declined in non-binding arbitration; provided, however, that in no event shall the payment amount exceed the amount of the judgment obtained in the tort system. The claimant shall receive the balance of the judgment, if any, in five (5) equal installments in years six (6) through ten (10) following the year of the initial payment (also subject to the applicable Payment Percentage, the Maximum Annual Payment and the Claims Payment Ratio provisions above in effect on the date of the payment of the subject installment).

In the case of a claim involving Disease Levels I and II, the total amounts paid with respect to the claim shall not exceed the Scheduled Value for that Disease Level. In the case of non-Extraordinary Claims involving Disease Levels III–VIII, the total amounts paid with respect to the

claims shall not exceed the Maximum Values for the Disease Levels set forth in Section 5.3(b)(3).

In the case of Extraordinary Claims, the total amounts paid with respect to the claims shall not exceed the maximum extraordinary values for the claims set forth in Section 5.4(a). Under no circumstances shall (a) sequencing adjustments be paid pursuant to Section 7.4 or (b) interest be paid under any statute on any judgments obtained in the tort system.

A judgment on an Asbestos Premises Liability Claim entered under Section 5.3(c) shall not be subject to this Section 7.6.

7.7 Releases. The Trustees shall have the discretion to determine the form and substance of the releases to be provided to the Asbestos Trust in order to maximize recovery for claimants against other tortfeasors without increasing the risk or amount of claims for indemnification or contribution from the Asbestos Trust. As a condition to making any payment to a claimant, the Asbestos Trust shall obtain a general, partial, or limited release as appropriate in accordance with the applicable state or other law. If allowed by state law, the endorsing of a check or draft for payment by or on behalf of a claimant may, in the discretion of the Asbestos Trust, constitute such a release. Holders of Asbestos Premises Liability Claims paid by an Asbestos Insurance Company shall also execute any releases required by the Insurer.

7.8 Third-Party Services. Nothing in this TDP shall preclude the Asbestos Trust from contracting with another asbestos claims resolution organization to provide services to the Asbestos Trust so long as decisions about the categorization and liquidated value of Asbestos Personal Injury Claims are based on the relevant provisions of this TDP, including the Disease Levels, Scheduled Values, Average Values, Maximum Values, and Medical/Exposure Criteria set forth above.

7.9 Asbestos Trust Disclosure of Information. Periodically, but not less often than once a year, the Asbestos Trust shall make available to claimants and other interested parties, the number of claims by Disease Levels that have been resolved by the Individual Review Process and by the ADR Procedures as well as by litigation in the tort system indicating the amounts of the awards and the averages of the awards by jurisdiction.

SECTION VIII

Miscellaneous

8.1 Amendments. Except as otherwise provided herein and in the CIP Agreements, the Trustees may amend, modify, delete, or add to any provisions of this TDP (including, without limitation, amendments to conform this TDP to advances in scientific or medical knowledge or other changes in circumstances), provided they first obtain the consent of the TAC and the FCR pursuant to the Consent Process set forth in Sections 5.7(b) and 6.6(b) of the Asbestos Trust Agreement, except that the right to amend the Claims Payment Ratio is governed by the restrictions in Section 2.5, and the right to adjust the Payment Percentage is governed by Section 4.2. Nothing herein is intended to preclude the TAC or the FCR from proposing to the Trustees, in writing, amendments to this TDP. Any amendment proposed by the TAC or the FCR shall remain subject to Section 7.3 of the Asbestos Trust Agreement.

8.2 Severability. A determination that any provision contained in this TDP is unenforceable shall in no way limit or affect the enforceability and operative effect of any and all other provisions of this TDP. Should any provision contained in this TDP be determined to be inconsistent with or contrary to ASARCO's obligations to any insurance company providing insurance coverage to ASARCO in respect of claims for personal injury based on exposure to an asbestos-containing product or to conduct for which ASARCO has legal responsibility, the

Asbestos Trust with the consent of the TAC and the FCR may amend this TDP and/or the Asbestos Trust Agreement to make the provisions of either or both documents consistent with the duties and obligations of ASARCO to the insurance company.

8.3 Governing Law. Except for purposes of determining the liquidated value of any Asbestos Personal Injury Claim, administration of this TDP shall be governed by, and construed in accordance with, the laws of the State of Delaware. The law governing the liquidation of Asbestos Personal Injury Claims in the case of Individual Review, pro bono evaluation, mediation, arbitration or litigation in the tort system shall be the law of the Claimant's Jurisdiction as described in Section 5.3(b)(2).

PARENT'S PLAN EXHIBIT 12
FORM OF ASARCO SECURITY AGREEMENT

SECURITY AGREEMENT

SECURITY AGREEMENT dated as of [____], 2009, between ASARCO LLC, a limited liability company duly organized and validly existing under the laws of the State of Delaware (the “Pledgor”), and ASARCO ASBESTOS PERSONAL INJURY SETTLEMENT TRUST, a statutory trust organized under the laws of the State of Delaware (the “Pledgee”).

The Pledgor is the maker of a promissory note dated as of the date hereof (as modified and supplemented and in effect from time to time, the “Asbestos Trust Promissory Note”) pursuant to which the Pledgor promised to pay to the order of the Pledgee the amount of \$280,000,000, subject to the terms and conditions thereof.

To induce the Pledgee to accept the Asbestos Trust Promissory Note, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Pledgor has agreed to grant a security interest in the Collateral (as hereinafter defined) as security for the Secured Obligations (as hereinafter defined).

Accordingly, the parties hereto agree as follows:

Section 1. Definitions, Etc.

1.01 Terms Generally. Terms used herein and not otherwise defined herein are used herein as defined in the Asbestos Trust Promissory Note.

1.02 Certain Uniform Commercial Code Terms. As used herein, the terms “Accession”, “Account”, “As-Extracted Collateral”, “Chattel Paper”, “Commodity Account”, “Commodity Contract”, “Deposit Account”, “Document”, “Electronic Chattel Paper”, “Equipment”, “Fixture”, “General Intangible”, “Goods”, “Instrument”, “Inventory”, “Investment Property”, “Letter-of-Credit Right”, “Payment Intangible”, “Proceeds”, “Promissory Note”, “Software” and “Tangible Chattel Paper” have the respective meanings set forth in Article 9 of the NYUCC, and the terms “Certificated Security”, “Entitlement Holder”, “Financial Asset”, “Instruction”, “Securities Account”, “Security”, “Security Certificate”, “Security Entitlement” and “Uncertificated Security” have the respective meanings set forth in Article 8 of the NYUCC.

1.03 Additional Definitions. In addition, as used herein:

“Collateral” has the meaning assigned to such term in Section 3.

“Copyright Collateral” means all Copyrights, whether now owned or hereafter acquired by the Pledgor, including each Copyright identified in Annex 4.

“Copyrights” means all copyrights, copyright registrations and applications for copyright registrations, including all renewals and extensions thereof, all rights to recover for past, present or future infringements thereof and all other rights whatsoever accruing thereunder or pertaining thereto.

“Foreign Subsidiary” means any Subsidiary with respect to which the Pledgee determines that a pledge of more than 66-2/3% of the total number of shares of voting stock of such Subsidiary would result in material adverse tax consequences under Section 956 of the Code.

“Initial Pledged Shares” means the Shares of each Issuer beneficially owned by the Pledgor on the date hereof and identified in Annex 3 (Part A).

“Intellectual Property” means, collectively, all Copyright Collateral, all Patent Collateral and all Trademark Collateral, together with (a) all inventions, processes, production methods, proprietary information, know-how and trade secrets; (b) all licenses or user or other agreements granted to the Pledgor with respect to any of the foregoing, in each case whether now or hereafter owned or used; (c) all information, customer lists, identification of suppliers, data, plans, blueprints, specifications, designs, drawings, recorded knowledge, surveys, engineering reports, test reports, manuals, materials standards, processing standards, performance standards, catalogs, computer and automatic machinery software and programs; (d) all field repair data, sales data and other information relating to sales or service of products now or hereafter manufactured; (e) all accounting information and all media in which or on which any information or knowledge or data or records may be recorded or stored and all computer programs used for the compilation or printout of such information, knowledge, records or data; (f) all licenses, consents, permits, variances, certifications and approvals of governmental agencies now or hereafter held by the Pledgor; and (g) all causes of action, claims and warranties now or hereafter owned or acquired by the Pledgor in respect of any of the items listed above.

“Issuers” means, collectively, (a) the respective Persons identified on Annex 3 (Part A) under the caption “Issuer”, (b) any other Person that shall at any time be a Subsidiary of the Pledgor, and (c) the issuer of any equity securities hereafter owned by the Pledgor.

“Motor Vehicles” means motor vehicles, tractors, trailers and other like property, if the title thereto is governed by a certificate of title or ownership.

“NYUCC” means the Uniform Commercial Code as in effect from time to time in the State of New York.

“Patent Collateral” means all Patents, whether now owned or hereafter acquired by the Pledgor, including each Patent identified in Annex 5, and all income, royalties, damages and payments now or hereafter due and/or payable under or with respect thereto.

“Patents” means all patents and patent applications, including the inventions and improvements described and claimed therein together with the reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof, all income, royalties, damages and payments now or hereafter due and/or payable with respect

thereto, all damages and payments for past or future infringements thereof and rights to sue therefor, and all rights corresponding thereto throughout the world.

“Person” means any natural person, corporation, company, voluntary association, partnership, limited liability company, joint venture, trust, unincorporated organization or governmental authority or other entity of whatever nature.

“Pledged Shares” means, collectively, (i) the Initial Pledged Shares and (ii) all other Shares of any Issuer now or hereafter owned by the Pledgor, together in each case with (a) all certificates representing the same, (b) all shares, securities, moneys or other property representing a dividend on or a distribution or return of capital on or in respect of the Pledged Shares, or resulting from a split-up, revision, reclassification or other like change of the Pledged Shares or otherwise received in exchange therefor, and any warrants, rights or options issued to the holders of, or otherwise in respect of, the Pledged Shares, and (c) all Shares of any successor entity of any merger or consolidation by an Issuer.

“Secured Obligations” means, collectively, (a) the obligations of the Pledgor under the Asbestos Trust Promissory Note to pay the principal of and interest on the Asbestos Trust Promissory Note and all other amounts whatsoever, whether direct or indirect, absolute or contingent, now or hereafter from time to time owing to the Pledgee under the Asbestos Trust Promissory Note, (b) all obligations of the Pledgor to the Pledgee hereunder and (c) in the case of each of the foregoing, including all interest thereon and expenses related thereto, including any interest or expenses accruing or arising after the commencement of any case with respect to the Pledgor under the United States Bankruptcy Code or any other bankruptcy or insolvency law (whether or not such interest or expenses are allowed or allowable as a claim in whole or in part in such case).

“Shares” means shares of capital stock of a corporation, limited liability company interests, partnership interests and other ownership or equity interests of any class in any Person.

“Subsidiary” of the Pledgor means any corporation or other entity more than 50% of the voting Shares in which is owned or controlled, directly or indirectly, by the Pledgor and/or by any Subsidiary of the Pledgor.

“Trademark Collateral” means all Trademarks, whether now owned or hereafter acquired by the Pledgor, including each Trademark identified in Annex 6, together, in each case, with the product lines and goodwill of the business connected with the use of, and symbolized by, each such trade name, trademark and service mark. Notwithstanding the foregoing, the Trademark Collateral does not and shall not include any Trademark that would be rendered invalid, abandoned, void or unenforceable by reason of its being included as part of the Trademark Collateral.

“Trademarks” means all trade names, trademarks and service marks, logos, trademark and service mark registrations, and applications for trademark and service

mark registrations, including all renewals of trademark and service mark registrations, all rights to recover for all past, present and future infringements thereof and all rights to sue therefor, and all rights corresponding thereto throughout the world.

Section 2. Representations and Warranties. The Pledgor represents and warrants to the Pledgee that:

2.01 Organizational Matters; Enforceability, Etc.

The Pledgor is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, has all requisite limited liability company power, and has all material governmental licenses, authorizations, consents and approvals, necessary to own its assets and carry on its business as now being or as proposed to be conducted and is qualified to do business in all jurisdictions in which the nature of the business conducted by it makes such qualification necessary.

None of the execution and delivery of this Agreement, the consummation of the transactions herein contemplated and compliance with the terms and provisions hereof will conflict with or result in a breach of, or require any consent under, the certificate of formation or the limited liability company agreement (or any equivalent documents) of the Pledgor, or any applicable law or regulation, or any order, writ, injunction or decree of any court or governmental authority or agency, or any agreement or instrument to which the Pledgor is a party or by which the Pledgor is bound or to which the Pledgor is subject, or constitute a default under, or, except for the security interests created pursuant hereto, result in the creation of any Lien under, any such agreement or instrument.

The Pledgor has all necessary limited liability company power and authority to execute, deliver and perform its obligations under this Agreement; the execution, delivery and performance by the Pledgor of this Agreement have been duly authorized by all necessary limited liability company action on its part; and this Agreement has been duly and validly executed and delivered by the Pledgor and constitutes its legal, valid and binding obligation, enforceable against the Pledgor in accordance with its terms, except as the enforceability of thereof is subject to the application of general principles of equity (regardless of whether considered in a proceeding in equity or at law), including, without limitation, (i) the possible unavailability of specific performance, injunctive relief or any other equitable remedy and (ii) concepts of materiality, reasonableness, good faith and fair dealing.

Except for (x) filings and registrations in respect of the security interests created pursuant hereto and (y) any authorization, approval, consent, filing or registration in connection with the bankruptcy proceedings of the Pledgor and certain related debtors under Chapter 11 of the United States Bankruptcy Code in cases jointly administered under Case No. 05-21207 in the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division, no authorizations, approvals or consents of, and no filings or registrations with, any governmental or regulatory authority or agency are necessary for the execution, delivery or performance by the Pledgor of this Agreement or for the validity or enforceability hereof.

2.02 Title. The Pledgor is the sole beneficial owner of the Collateral in which it purports to grant a security interest pursuant to Section 3 and no Lien exists upon the Collateral (and no right or option to acquire the same exists in favor of any other Person) other than the security interest created or provided for herein, which security interest constitutes a valid first and prior perfected Lien on the Collateral.

2.03 Names, Etc. The full and correct legal name, type of organization, jurisdiction of organization, organizational ID number (if applicable) and mailing address of the Pledgor as of the date hereof are correctly set forth in Annex 1.

2.04 Changes in Circumstances. The Pledgor has not (a) within the period of four months prior to the date hereof, changed its location (as defined in Section 9-307 of the NYUCC), (b) except as specified in Annex 1, heretofore changed its name, or (c) except as specified in Annex 2, heretofore become a "new debtor" (as defined in Section 9-102(a)(56) of the NYUCC) with respect to a currently effective security agreement previously entered into by any other Person.

2.05 Pledged Shares. The Initial Pledged Shares constitute (a) 100% of the issued and outstanding Shares of each Issuer other than a Foreign Subsidiary beneficially owned by the Pledgor on the date hereof (other than any Shares held in a Securities Account referred to in Annex 7), whether or not registered in the name of the Pledgor and (b) in the case of each Issuer that is a Foreign Subsidiary, (i) 65% of the issued and outstanding shares of voting stock of such Issuer and (ii) 100% of all other issued and outstanding shares of capital stock of whatever class of such Issuer beneficially owned by the Pledgor on the date hereof, in each case whether or not registered in the name of the Pledgor. Annex 3 (Part A) correctly identifies, as at the date hereof, the respective Issuers of the Initial Pledged Shares and (in the case of any corporate Issuer) the respective class and par value of such Shares and the respective number of such Shares (and registered owner thereof) represented by each such certificate.

The Initial Pledged Shares are, and all other Pledged Shares in which the Pledgor shall hereafter grant a security interest pursuant to Section 3 will be, (i) duly authorized, validly existing, fully paid and non-assessable (in the case of any Shares issued by a corporation) and (ii) duly issued and outstanding (in the case of any equity interest in any other entity), and none of such Pledged Shares are or will be subject to any contractual restriction, or any restriction under the charter, by-laws, partnership agreement or other organizational instrument of the respective Issuer thereof, upon the transfer of such Pledged Shares (except for any such restriction contained herein or under such organizational instruments).

2.06 Promissory Notes. Annex 3 (Part B) sets forth a complete and correct list of all Promissory Notes (other than any held in a Securities Account referred to in Annex 7) held by the Pledgor on the date hereof having an aggregate principal amount in excess of \$[_____].

2.07 Intellectual Property. Annexes 4, 5 and 6, respectively, set forth under the name of the Pledgor a complete and correct list of all copyright registrations, patents, patent applications, trademark registrations and trademark applications owned by the Pledgor on the

date hereof (or, in the case of any supplement to said Annexes 4, 5 and 6, effecting a pledge thereof, as of the date of such supplement).

Except pursuant to licenses and other user agreements entered into by the Pledgor in the ordinary course of business that are listed in said Annexes 4, 5 and 6 (including as supplemented by any supplement effecting a pledge thereof), the Pledgor has done nothing to authorize or enable any other Person to use any Copyright, Patent or Trademark listed in said Annexes 4, 5 and 6 (as so supplemented), and all registrations listed in said Annexes 4, 5 and 6 (as so supplemented) are, except as noted therein, in full force and effect.

To the Pledgor's knowledge, (i) except as set forth in said Annexes 4, 5 and 6 (as supplemented by any supplement effecting a pledge thereof), there is no violation by others of any right of the Pledgor with respect to any Copyright, Patent or Trademark listed in said Annexes 4, 5 and 6 (as so supplemented), respectively, and (ii) the Pledgor is not infringing in any respect upon any Copyright, Patent or Trademark of any other Person; and no proceedings alleging such infringement have been instituted or are pending against the Pledgor and no written claim against the Pledgor has been received by the Pledgor, alleging any such violation, except as may be set forth in said Annexes 4, 5 and 6 (as so supplemented).

The Pledgor does not own any Trademarks registered in the United States of America to which the last sentence of the definition of Trademark Collateral applies.

2.08 Deposit Accounts and Securities Accounts. Annex 7 sets forth a complete and correct list of all Deposit Accounts, Securities Accounts and Commodity Accounts of the Pledgor on the date hereof.

2.09 Commercial Tort Claims. Annex 8 sets forth a complete and correct list of all commercial tort claims of the Pledgor in existence on the date hereof.

2.10 Fair Labor Standards Act. Any goods now or hereafter produced by the Pledgor included in the Collateral have been and will be produced in compliance with the requirements of the Fair Labor Standards Act, as amended.

Section 3. Collateral. As collateral security for the payment by the Pledgor in full when due (whether at stated maturity, by acceleration or otherwise) of the Secured Obligations, the Pledgor hereby pledges and grants to the Pledgee a security interest in all of the Pledgor's right, title and interest in, to and under the following property, in each case whether tangible or intangible, wherever located, and whether now owned by the Pledgor or hereafter acquired and whether now existing or hereafter coming into existence (all of the property described in this Section 3 being collectively referred to herein as "Collateral"):

- (a) all Accounts;
- (b) all As-Extracted Collateral;
- (c) all Chattel Paper;

- (d) all Deposit Accounts;
- (e) all Documents;
- (f) all Equipment;
- (g) all Fixtures;
- (h) all General Intangibles;
- (i) all Goods not covered by the other clauses of this Section 3;
- (j) the Pledged Shares;
- (k) all Instruments, including all Promissory Notes;
- (l) all Intellectual Property;
- (m) all Inventory;
- (n) all Investment Property not covered by other clauses of this Section 3, including all Securities, all Securities Accounts and all Security Entitlements with respect thereto and Financial Assets carried therein, and all Commodity Accounts and Commodity Contracts;
- (o) all Letter-of-Credit Rights;
- (p) all commercial tort claims, as defined in Section 9-102(a)(13) of the NYUCC, arising out of the events described in Annex 8;
- (q) all other tangible and intangible personal property whatsoever of the Pledgor; and
- (r) all Proceeds of any of the Collateral, all Accessions to and substitutions and replacements for, any of the Collateral, and all offspring, rents, profits and products of any of the Collateral, and, to the extent related to any Collateral, all books, correspondence, credit files, records, invoices and other papers (including all tapes, cards, computer runs and other papers and documents in the possession or under the control of the Pledgor or any computer bureau or service company from time to time acting for the Pledgor),

IT BEING UNDERSTOOD, HOWEVER, that (A) in the case of any of the foregoing that consists of general or limited partnership interests in a general or limited partnership, the security interest hereunder shall be deemed to be created only to the maximum extent permitted under the applicable organizational instrument pursuant to which such partnership is formed, (B) in no

event shall the security interest granted under this Section 3 attach to any lease, license, contract, property rights or agreement to which the Pledgor is a party (or to any of its rights or interests thereunder) if the grant of such security interest would constitute or result in either (i) the abandonment, invalidation or unenforceability of any right, title or interest of the Pledgor therein or (ii) in a breach or termination pursuant to the terms of, or a default under, any such lease, license, contract, property rights or agreement (other than to the extent that any such term would be rendered ineffective by Section 9-406, 9-407, 9-408 or 9-409 of the Uniform Commercial Code as in effect in the relevant jurisdiction), and (C) the security interest created hereby in Shares constituting voting stock of any Issuer that is a Foreign Subsidiary shall be limited to that portion of such voting stock that does not exceed 65% of the aggregate issued and outstanding voting stock of such Issuer.

Section 4. Further Assurances; Remedies. In furtherance of the grant of the security interest pursuant to Section 3, the Pledgor hereby agrees with the Pledgee as follows:

4.01 Delivery and Other Perfection. The Pledgor shall promptly from time to time give, execute, deliver, file, record, authorize or obtain all such financing statements, continuation statements, notices, instruments, documents, agreements or consents or other papers as may be necessary or desirable in the judgment of the Pledgee to create, preserve, perfect, maintain the perfection of or validate the security interest granted pursuant hereto or to enable the Pledgee to exercise and enforce its rights hereunder with respect to such security interest, and without limiting the foregoing, shall:

(a) if any of the Pledged Shares, Investment Property or Financial Assets constituting part of the Collateral are received by the Pledgor, forthwith (x) deliver to the Pledgee the certificates or instruments representing or evidencing the same, duly endorsed in blank or accompanied by such instruments of assignment and transfer in such form and substance as the Pledgee may reasonably request, all of which thereafter shall be held by the Pledgee, pursuant to the terms of this Agreement, as part of the Collateral and (y) take such other action as the Pledgee may reasonably deem necessary or appropriate to duly record or otherwise perfect the security interest created hereunder in such Collateral;

(b) promptly from time to time deliver to the Pledgee any and all Instruments constituting part of the Collateral, endorsed and/or accompanied by such instruments of assignment and transfer in such form and substance as the Pledgee may request; provided that (other than in the case of the Promissory Notes described in Annex 3 (Part B)) so long as no Event of Default shall have occurred and be continuing, the Pledgor may retain for collection in the ordinary course any Instruments received by the Pledgor in the ordinary course of business and the Pledgee shall, promptly upon request of the Pledgor, make appropriate arrangements for making any Instrument delivered by the Pledgor available to the Pledgor for purposes of presentation, collection or renewal (any such arrangement to be effected, to the extent requested by the Pledgee, against trust receipt or like document);

(c) promptly from time to time enter into such control agreements, each in form and substance reasonably acceptable to the Pledgee, as may be required to perfect the security interest created hereby in any and all Deposit Accounts, Investment Property, Electronic Chattel Paper and Letter-of-Credit Rights, and will promptly furnish to the Pledgee true copies thereof;

(d) promptly from time to time upon the request of the Pledgee, execute and deliver such short-form security agreements as the Pledgee may reasonably deem necessary or desirable to protect the interests of the Pledgee in respect of that portion of the Collateral consisting of Intellectual Property;

(e) promptly upon request of the Pledgee, cause the Pledgee to be listed as the lienholder on any certificate of title or ownership covering any Motor Vehicle (other than Motor Vehicles constituting Inventory) and within 120 days of such request deliver evidence of the same to the Pledgee;

(f) keep full and accurate books and records relating to the Collateral, and stamp or otherwise mark such books and records in such manner as the Pledgee may reasonably require in order to reflect the security interests granted by this Agreement; and

(g) permit representatives of the Pledgee, upon reasonable notice, at any time during normal business hours to inspect and make abstracts from its books and records pertaining to the Collateral, and permit representatives of the Pledgee to be present at the Pledgor's place of business to receive copies of communications and remittances relating to the Collateral, and forward copies of any notices or communications received by the Pledgor with respect to the Collateral, all in such manner as the Pledgee may require.

4.02 Other Financing Statements or Control. The Pledgor shall not (a) file or suffer to be on file, or authorize or permit to be filed or to be on file, in any jurisdiction, any financing statement or like instrument with respect to any of the Collateral in which the Pledgee is not named as the sole secured party, or (b) cause or permit any Person other than the Pledgee to have "control" (as defined in Section 9-104, 9-105, 9-106 or 9-107 of the NYUCC) of any Deposit Account, Electronic Chattel Paper, Investment Property or Letter-of-Credit Right constituting part of the Collateral.

4.03 Preservation of Rights. The Pledgee shall not be required to take steps necessary to preserve any rights against prior parties to any of the Collateral.

4.04 Special Provisions Relating to Certain Collateral.

(a) Pledged Shares.

(i) The Pledgor will cause the Pledged Shares to constitute at all times (1) 100% of the total number of Shares of each Issuer other than a Foreign Subsidiary then outstanding owned by the Pledgor and (2) in the case of any Issuer that is a Foreign Subsidiary, 65% of the total number of shares of voting stock of such Issuer and 100% of

the total number of shares of all other classes of capital stock of such Issuer then issued and outstanding owned by the Pledgor.

(ii) So long as no Event of Default shall have occurred and be continuing, the Pledgor shall have the right to exercise all voting, consensual and other powers of ownership pertaining to the Pledged Shares for all purposes not inconsistent with the terms of this Agreement, the Asbestos Trust Promissory Note or any other instrument or agreement referred to herein or therein, provided that the Pledgee shall execute and deliver to the Pledgor or cause to be executed and delivered to the Pledgor all such proxies, powers of attorney, dividend and other orders, and all such instruments, without recourse, as the Pledgor may reasonably request for the purpose of enabling the Pledgor to exercise the rights and powers that the Pledgor is entitled to exercise pursuant to this Section 4.04(a)(ii).

(iii) Unless and until an Event of Default shall have occurred and be continuing, the Pledgor shall be entitled to receive and retain any dividends, distributions or proceeds on the Pledged Shares paid in cash out of earned surplus.

(b) Intellectual Property.

(i) For the purpose of enabling the Pledgee to exercise rights and remedies under Section 4.05 at such time as the Pledgee shall be lawfully entitled to exercise such rights and remedies, and for no other purpose, the Pledgor hereby grants to the Pledgee, to the extent assignable, an irrevocable, non-exclusive license (exercisable without payment of royalty or other compensation to the Pledgor) to use, assign, license or sublicense any of the Intellectual Property now owned or hereafter acquired by the Pledgor, wherever the same may be located, including in such license reasonable access to all media in which any of the licensed items may be recorded or stored and to all computer programs used for the compilation or printout thereof.

(ii) Notwithstanding anything contained herein to the contrary, so long as no Event of Default shall have occurred and be continuing, the Pledgor will be permitted to exploit, use, enjoy, protect, license, sublicense, assign, sell, dispose of or take other actions with respect to the Intellectual Property in the ordinary course of the business of the Pledgor. In furtherance of the foregoing, so long as no Event of Default shall have occurred and be continuing, the Pledgee shall from time to time, upon the request of the Pledgor, execute and deliver any instruments, certificates or other documents, in the form so requested, that the Pledgor shall have certified are appropriate in its judgment to allow it to take any action permitted above (including relinquishment of the license provided pursuant to clause (i) immediately above as to any specific Intellectual Property). Further, upon the payment in full of all of the Secured Obligations or earlier expiration of this Agreement or release of the Collateral, the Pledgee shall grant back to the Pledgor the license granted pursuant to clause (i) immediately above. The exercise of rights and remedies under Section 4.05 by the Pledgee shall not terminate the rights of the holders of any licenses or sublicenses theretofore granted by the Pledgor in accordance with the first sentence of this clause (ii).

(c) Chattel Paper. The Pledgor will (i) deliver to the Pledgee each original of each item of Chattel Paper at any time constituting part of the Collateral, and (ii) cause each such original and each copy thereof to bear a conspicuous legend, in form and substance reasonably satisfactory to the Pledgee, indicating that such Chattel Paper is subject to the security interest granted hereby and that purchase of such Chattel Paper by a Person other than the Pledgee without the consent of the Pledgee would violate the rights of the Pledgee.

4.05 Remedies.

(a) Rights and Remedies Generally upon Default. If an Event of Default shall have occurred and is continuing, the Pledgee shall have all of the rights and remedies with respect to the Collateral of a secured party under the NYUCC (whether or not the NYUCC is in effect in the jurisdiction where the rights and remedies are asserted) and such additional rights and remedies to which a secured party is entitled under the laws in effect in any jurisdiction where any rights and remedies hereunder may be asserted, including the right, to the fullest extent permitted by law, to exercise all voting, consensual and other powers of ownership pertaining to the Collateral as if the Pledgee were the sole and absolute owner thereof (and the Pledgor agrees to take all such action as may be appropriate to give effect to such right); and without limiting the foregoing:

(i) the Pledgee in its discretion may, in its name or in the name of the Pledgor or otherwise, demand, sue for, collect or receive any money or other property at any time payable or receivable on account of or in exchange for any of the Collateral, but shall be under no obligation to do so;

(ii) the Pledgee may make any reasonable compromise or settlement deemed desirable with respect to any of the Collateral and may extend the time of payment, arrange for payment in installments, or otherwise modify the terms of, any of the Collateral;

(iii) the Pledgee may require the Pledgor to notify (and the Pledgor hereby authorizes the Pledgee to so notify) each account debtor in respect of any Account, Chattel Paper or General Intangible, and each obligor on any Instrument, constituting part of the Collateral that such Collateral has been assigned to the Pledgee hereunder, and to instruct that any payments due or to become due in respect of such Collateral shall be made directly to the Pledgee or as it may direct (and if any such payments, or any other Proceeds of Collateral, are received by the Pledgor they shall be held in trust by the Pledgor for the benefit of the Pledgee and as promptly as possible remitted or delivered to the Pledgee for application as provided herein);

(iv) the Pledgee may require the Pledgor to assemble the Collateral at such place or places, reasonably convenient to the Pledgee and the Pledgor, as the Pledgee may direct;

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(v) the Pledgee may require the Pledgor to cause the Pledged Shares to be transferred of record into the name of the Pledgee or its nominee (and the Pledgee agrees that if any of such Pledged Shares is transferred into its name or the name of its nominee, the Pledgee will thereafter promptly give to the Pledgor copies of any notices and communications received by it with respect to the Pledged Shares); and

(vi) the Pledgee may sell, lease, assign or otherwise dispose of all or any part of the Collateral, at such place or places as the Pledgee deems best, and for cash or for credit or for future delivery (without thereby assuming any credit risk), at public or private sale, without demand of performance or notice of intention to effect any such disposition or of the time or place thereof (except such notice as is required by applicable statute and cannot be waived), and the Pledgee or anyone else may be the purchaser, lessee, assignee or recipient of any or all of the Collateral so disposed of at any public sale (or, to the extent permitted by law, at any private sale) and thereafter hold the same absolutely, free from any claim or right of whatsoever kind, including any right or equity of redemption (statutory or otherwise), of the Pledgor, any such demand, notice and right or equity being hereby expressly waived and released. In the event of any sale, assignment, or other disposition of any of the Trademark Collateral, the goodwill connected with and symbolized by the Trademark Collateral subject to such disposition shall be included. The Pledgee may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for the sale, and such sale may be made at any time or place to which the sale may be so adjourned.

The Proceeds of each collection, sale or other disposition under this Section 4.05, including by virtue of the exercise of any license granted to the Pledgee in Section 4.04(b), shall be applied in accordance with Section 4.09

(b) Certain Securities Act Limitations. The Pledgor recognizes that, by reason of certain prohibitions contained in the Securities Act of 1933, as amended, and applicable state securities laws, the Pledgee may be compelled, with respect to any sale of all or any part of the Collateral, to limit purchasers to those who will agree, among other things, to acquire the Collateral for their own account, for investment and not with a view to the distribution or resale thereof. The Pledgor acknowledges that any such private sales may be at prices and on terms less favorable to the Pledgee than those obtainable through a public sale without such restrictions, and, notwithstanding such circumstances, agrees that any such private sale shall be deemed to have been made in a commercially reasonable manner and that the Pledgee shall have no obligation to engage in public sales and no obligation to delay the sale of any Collateral for the period of time necessary to permit the Issuer thereof to register it for public sale.

(c) Notice. The Pledgor agrees that to the extent the Pledgee is required by applicable law to give reasonable prior notice of any sale or other disposition of any Collateral, ten Business Days' notice shall be deemed to constitute reasonable prior notice.

4.06 Deficiency. If the proceeds of sale, collection or other realization of or upon the Collateral pursuant to Section 4.05 are insufficient to cover the costs and expenses of

such realization and the payment in full of the Secured Obligations, the Pledgor shall remain liable for any deficiency.

4.07 Locations; Names, Etc. Without at least 30 days' prior written notice to the Pledgee, the Pledgor shall not (i) change its location (as defined in Section 9-307 of the NYUCC), (ii) change its name from the name shown as its current legal name on Annex 1, or (iii) agree to or authorize any modification of the terms of any item of Collateral that would result in a change thereof from one Uniform Commercial Code category to another such category (such as from a General Intangible to Investment Property), if the effect thereof would be to result in a loss of perfection of, or diminution of priority for, the security interests created hereunder in such item of Collateral, or the loss of control (within the meaning of Section 9-104, 9-105, 9-106 or 9-107 of the NYUCC) over such item of Collateral.

4.08 Private Sale. The Pledgee shall incur no liability as a result of the sale of the Collateral, or any part thereof, at any private sale pursuant to Section 4.05 conducted in a commercially reasonable manner. The Pledgor hereby waives any claims against the Pledgee arising by reason of the fact that the price at which the Collateral may have been sold at such a private sale was less than the price that might have been obtained at a public sale or was less than the aggregate amount of the Secured Obligations, even if the Pledgee accepts the first offer received and does not offer the Collateral to more than one offeree.

4.09 Application of Proceeds. Except as otherwise herein expressly provided and except as provided below in this Section 4.09 the Proceeds of any collection, sale or other realization of all or any part of the Collateral pursuant hereto, and any other cash at the time held by the Pledgee under this Section 4, shall be applied by the Pledgee:

First, to the payment of the costs and expenses of such collection, sale or other realization, including reasonable out-of-pocket costs and expenses of the Pledgee and the fees and expenses of its agents and counsel, and all expenses incurred and advances made by the Pledgee in connection therewith;

Next, to the payment in full of the Secured Obligations; and

Finally, to the payment to the Pledgor, or its successors or assigns, or as a court of competent jurisdiction may direct, of any surplus then remaining.

4.10 Attorney-in-Fact. Without limiting any rights or powers granted by this Agreement to the Pledgee while no Event of Default has occurred and is continuing, upon the occurrence and during the continuance of any Event of Default the Pledgee is hereby appointed the attorney-in-fact of the Pledgor for the purpose of carrying out the provisions of this Section 4 and taking any action and executing any instruments that the Pledgee may deem necessary or advisable to accomplish the purposes hereof, which appointment as attorney-in-fact is irrevocable and coupled with an interest. Without limiting the generality of the foregoing, so long as the Pledgee shall be entitled under this Section 4 to make collections in respect of the Collateral, the Pledgee shall have the right and power to receive, endorse and collect all checks

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made payable to the order of the Pledgor representing any dividend, payment or other distribution in respect of the Collateral or any part thereof and to give full discharge for the same.

4.11 Perfection and Recordation. The Pledgor authorizes the Pledgee to file Uniform Commercial Code financing statements describing the Collateral as "all assets" or "all personal property and fixtures" of the Pledgor (provided that no such description shall be deemed to modify the description of Collateral set forth in Section 3).

4.12 Termination. When all Secured Obligations shall have been paid in full, this Agreement shall terminate, and the Pledgee shall forthwith cause to be assigned, transferred and delivered, against receipt but without any recourse, warranty or representation whatsoever, any remaining Collateral and money received in respect thereof, to or on the order of the Pledgor and to be released and canceled all licenses and rights referred to in Section 4.04(b). The Pledgee shall also, at the expense of the Pledgor, execute and deliver to the Pledgor upon such termination such Uniform Commercial Code termination statements, certificates for terminating the Liens on the Motor Vehicles and such other documentation as shall be reasonably requested by the Pledgor to effect the termination and release of the Liens on the Collateral as required by this Section 4.12.

4.13 Further Assurances. The Pledgor agrees that, from time to time upon the written request of the Pledgee, the Pledgor will execute and deliver such further documents and do such other acts and things as the Pledgee may reasonably request in order fully to effect the purposes of this Agreement. The Pledgee shall release any Lien covering any asset that has been disposed of with the consent of the Pledgee.

Section 5. Miscellaneous.

5.01 Notices. All notices, requests, consents and demands hereunder shall be in writing and telecopied or delivered:

- (a) in the case of the Pledgor, to it at:

ASARCO LLC
 [Address]
 Attention: [_____]

Telephone No.: [_____]

Telecopier No.: [_____]

with a copy to:

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Americas Mining Corporation
ASARCO Incorporated
ASARCO USA Incorporated
c/o [ASARCO Incorporated]
[Address]
Attention: [_____]
Telephone No.: [_____]
Telecopier No.: [_____]

(b) in the case of the Pledgee, to it at:

Asarco Asbestos Personal Injury Settlement Trust
[Address]
Attention: [_____]
Telephone No.: [_____]
Telecopier No.: [_____]

(c) or, as to either the Pledgor or the Pledgee, at such other address as shall be designated by such party in a notice to the other party.

Except as otherwise provided in this Agreement, all such communications shall be deemed to have been duly given when transmitted by telecopier or personally delivered or, in the case of a mailed notice, upon receipt, in each case given or addressed as aforesaid.

5.02 No Waiver. No failure on the part of the Pledgee to exercise, and no course of dealing with respect to, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise by the Pledgee of any right, power or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The remedies herein are cumulative and are not exclusive of any remedies provided by law.

5.03 Amendments, Etc. The terms of this Agreement may be waived, altered or amended only by an instrument in writing duly executed by the Pledgor and the Pledgee. Any such amendment or waiver shall be binding upon the Pledgor and the Pledgee.

5.04 Expenses. The Pledgor agrees to reimburse the Pledgee for all reasonable costs and expenses incurred by the Pledgee (including the reasonable fees and expenses of legal counsel) in connection with (i) any Event of Default and any enforcement or collection proceeding resulting therefrom, including all manner of participation in or other involvement with (w) performance by the Pledgee of any obligations of the Pledgor in respect of the Collateral that the Pledgor has failed or refused to perform, (x) bankruptcy, insolvency, receivership, foreclosure, winding up or liquidation proceedings, or any actual or attempted sale, or any exchange, enforcement, collection, compromise or settlement in respect of any of the Collateral, and for the care of the Collateral and defending or asserting rights and claims of the Pledgee in respect thereof, by litigation or otherwise, including expenses of insurance, (y) judicial or regulatory proceedings and (z) workout, restructuring or other negotiations or

proceedings (whether or not the workout, restructuring or transaction contemplated thereby is consummated) and (ii) the enforcement of this Section 5.04, and all such costs and expenses shall be Secured Obligations entitled to the benefits of the collateral security provided pursuant to Section 3.

5.05 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the Pledgor and the Pledgee (provided that neither party shall assign or transfer any of its rights or obligations hereunder without the prior written consent of the other party).

5.06 Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart.

5.07 Governing Law; Submission to Jurisdiction; Etc.

(a) Governing Law. This Agreement shall be governed by, and construed in accordance with, the law of the State of New York.

(b) Submission to Jurisdiction. The Pledgor hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of the Supreme Court of the State of New York sitting in New York County and of the United States District Court for the Southern District of New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that the Pledgee may otherwise have to bring any action or proceeding relating to this Agreement against the Pledgor or its properties in the courts of any jurisdiction.

(c) Waiver of Venue. The Pledgor hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement in any court referred to in paragraph (b) of this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Service of Process. Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 5.01. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

5.08 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY

WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

5.09 Captions. The captions and section headings appearing herein are included solely for convenience of reference and are not intended to affect the interpretation of any provision of this Agreement.

5.10 Agents and Attorneys-in-Fact. The Pledgee may employ agents and attorneys-in-fact in connection herewith and shall not be responsible for the negligence or misconduct of any such agents or attorneys-in-fact selected by it in good faith.

5.11 Severability. If any provision hereof is invalid and unenforceable in any jurisdiction, then, to the fullest extent permitted by law, (a) the other provisions hereof shall remain in full force and effect in such jurisdiction and shall be liberally construed in favor of the Pledgee in order to carry out the intentions of the parties hereto as nearly as may be possible and (b) the invalidity or unenforceability of any provision hereof in any jurisdiction shall not affect the validity or enforceability of such provision in any other jurisdiction.

5.12 Entire Agreement. This Agreement constitutes the entire contract among the parties relating to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof.

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IN WITNESS WHEREOF, the parties hereto have caused this Security Agreement to be duly executed and delivered as of the day and year first above written.

ASARCO LLC

By _____

Name:

Title:

ASARCO ASBESTOS PERSONAL INJURY
SETTLEMENT TRUST
as Pledgee

By _____

Name:

Title:

Security Agreement

ANNEX 1

FILING DETAILS

[See Sections 2.03 and 2.04 and 4.06]

ANNEX 2

NEW DEBTOR EVENTS

[See Section 2.04]

ANNEX 3

PLEDGED SHARES AND PROMISSORY NOTES

[See definitions of “Initial Pledged Shares” and “Issuers” in Section 1.03,
and Sections 2.05, 3(a), 3(b) and 4.01(b)]

ANNEX 4

**LIST OF COPYRIGHTS, COPYRIGHT REGISTRATIONS AND
APPLICATIONS FOR COPYRIGHT REGISTRATIONS**

[See definition of “Copyright Collateral” in Section 1.03 and Section 2.06]

ANNEX 5

LIST OF PATENTS AND PATENT APPLICATIONS

[See definition of “Patent Collateral” in Section 1.03 and Section 2.06]

ANNEX 6

**LIST OF TRADE NAMES, TRADEMARKS, SERVICES MARKS,
TRADEMARK AND SERVICE MARK REGISTRATIONS AND
APPLICATIONS FOR TRADEMARK AND SERVICE MARK REGISTRATIONS**

[See definition of “Trademark Collateral” in Section 1.03 and Section 2.06]

ANNEX 7

**LIST OF DEPOSIT ACCOUNTS, AND SECURITIES ACCOUNTS
AND COMMODITY ACCOUNTS**

[See Sections 2.05 and 2.08]

ANNEX 8

LIST OF COMMERCIAL TORT CLAIMS

[See Sections 2.09 and 3(p)]

PARENT'S PLAN EXHIBIT 13
FORM OF ASARCO DEED OF TRUST

*[Local counsel is
requested to advise regarding
proper form and margins for recording]*

[County], [Arizona][Texas]

DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF RENTS
AND LEASES AND FIXTURE FILING

BY

ASARCO LLC,
as Trustor

TO

[_____
As Trustee

FOR THE BENEFIT OF

ASARCO ASBESTOS PERSONAL INJURY SETTLEMENT TRUST, as Payee,
as Beneficiary

Relating to Premises in:

_____, [Arizona][Texas]

DATED: As of [_____] , 2009

This instrument was prepared
by and after recording should be returned to:

Milbank, Tweed, Hadley & McCloy LLP
1 Chase Manhattan Plaza
New York, New York 10005
Attn: Erika Kuver-DelDuca, Esq.

Deed of Trust

DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT
OF RENTS AND LEASES AND FIXTURE FILING

KNOW ALL PERSONS BY THESE PRESENTS:

THIS DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FILING (this "Deed of Trust") is made as of _____, 2009 by ASARCO LLC, a limited liability company duly organized and validly existing under the laws of the State of Delaware and having an office at [_____] (the "Trustor"), in favor of [_____] a [_____] duly organized and validly existing under the laws of the [State/Commonwealth] of [_____] and having an office at [_____] as trustee (the "Trustee"), and ASARCO ASBESTOS PERSONAL INJURY SETTLEMENT TRUST, having an office at [_____] as payee of the Promissory Note referred to below (in such capacity, together with its successors in such capacity, the "Beneficiary").

W I T N E S S E T H:

WHEREAS, the Trustor is the maker of a Promissory Note dated as of [_____] 2009 (as modified and supplemented and in effect from time to time, the "Promissory Note"; except as otherwise herein expressly provided, all terms defined in the Promissory Note being used herein as defined therein) pursuant to which the Trustor promised to pay to the order of the Beneficiary the amount of \$280,000,000, subject to the terms and conditions thereof; and

WHEREAS, to induce the Beneficiary to accept the Promissory Note, the Trustor has executed and delivered this Deed of Trust to the Beneficiary;

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, and FOR THE PURPOSE OF SECURING the following (collectively, the "Obligations"):

(a) the obligations of the Trustor under the Promissory Note to pay the principal of and interest on the Promissory Note and all other amounts whatsoever, whether direct or indirect, absolute or contingent, now or hereafter from time to time owing to the Beneficiary under the Promissory Note, and

Deed of Trust

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(b) the obligations of the Trustor to the Beneficiary hereunder, and under any instrument evidencing, securing or delivered in connection with the Promissory Note including, without limitation, expenses of collection of the Promissory Note,

the Trustor hereby irrevocably grants, bargains, sells, releases, conveys, warrants, assigns, transfers, mortgages, pledges, sets over and confirms unto the Trustee, IN TRUST WITH POWER OF SALE and right of entry and possession, for the benefit and security of the Beneficiary, under and subject to the terms and conditions hereinafter set forth, the land and premises (collectively, the "Property") described in Schedule I;

TOGETHER WITH all interests, estates or other claims, both in law and in equity, that the Trustor now has or may hereafter acquire in (a) the Property, (b) all easements, rights-of-way and rights used in connection therewith or as a means of access thereto and (c) all tenements, hereditaments and appurtenances in any manner belonging, relating or appertaining thereto (all of the foregoing interests, estates and other claims being hereinafter collectively called "Easements and Rights of Way"); and

TOGETHER WITH all estate, right, title and interest of the Trustor, now owned or hereafter acquired, in and to any land lying within the right-of-way of any streets, open or proposed, adjoining the Property, and any and all sidewalks, alleys and strips and gores of land adjacent to or used in connection therewith (all of the foregoing estate, right, title and interest being hereinafter called "Adjacent Rights"); and

TOGETHER WITH all estate, right, title and interest of the Trustor, now owned or hereafter acquired, in and to any and all buildings and other improvements now or hereafter located on the Property and all building materials, building equipment and fixtures of every kind and nature located on the Property or, attached to, contained in or used in any such buildings and other improvements (all of the foregoing estate, right, title and interest being hereinafter collectively called "Improvements"); and

TOGETHER WITH all estate, right, title and interest of the Trustor in and to all such tangible property now owned or hereafter acquired by the Trustor (including all machinery and apparatus and equipment) and now or hereafter located on or at or attached to the Property such that an interest in such tangible property arises under applicable real estate law (all of the foregoing estate, right, title and interest, and products and accessions being hereinafter called "Fixtures"); and

TOGETHER WITH all estate, right, title and interest of the Trustor in and to all rights, royalties and profits in connection with all minerals, oil and gas and other hydrocarbon substances on or in the Property, development rights or credits, air rights, water, water rights

Deed of Trust

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(whether riparian, appropriative, or otherwise and whether or not appurtenant) and water stock (all of the foregoing estate, right, title and interest being hereinafter collectively called "Mineral and Related Rights"); and

TOGETHER WITH all reversion or reversions and remainder or remainders of the Property and Improvements and all estate, right, title and interest of the Trustor in and to any and all present and future leases of space in the Property and Improvements, and all rents, revenues, proceeds, issues, profits, royalties, income and other benefits now or hereafter derived from the Property, the Improvements and the Fixtures, subject to the right, power and authority hereinafter given to the Trustor to collect and apply the same (all of the foregoing reversions, remainders, leases of space, rents, revenues, proceeds, issues, profits, royalties, income and other benefits being hereinafter collectively called "Rents"); and

TOGETHER WITH all estate, right, title and interest and other claim or demand that the Trustor now has or may hereafter acquire with respect to any damage to the Property, the Improvements or the Fixtures and any and all proceeds of insurance in effect with respect to the Improvements or the Fixtures, including, without limitation, any title insurance, and any and all awards made for the taking by eminent domain, or by any proceeding or purchase in lieu thereof, of the Property, the Improvements or the Fixtures, including without limitation any awards resulting from a change of grade of streets or as the result of any other damage to the Property, the Improvements or the Fixtures for which compensation shall be given by any governmental authority (all of the foregoing estate, right, title and interest and other claims or demand, and any such proceeds or awards being hereinafter collectively called "Damage Rights");

All of the foregoing Easements and Rights of Way, Adjacent Rights, Improvements, Fixtures, Mineral and Related Rights, Rents and Damage Rights being sometimes hereinafter referred to collectively as the "Ancillary Rights and Properties" and the Property and Ancillary Rights and Properties being sometimes hereinafter referred to collectively as the "Trust Estate";

TO HAVE AND TO HOLD the Trust Estate with all privileges and appurtenances thereunto belonging, to the Trustee and the Beneficiary and its successors and assigns, forever, upon the terms and conditions and for the uses hereinafter set forth;

PROVIDED ALWAYS, that if the principal and interest of the Promissory Note and all of the other Obligations shall be paid in full then the Beneficiary shall cause this Deed of Trust to be reconveyed and the Lien and estate hereby granted to be released.

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, THE TRUSTOR HEREBY COVENANTS AND AGREES AS FOLLOWS:

Deed of Trust

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ARTICLE 1

Particular Covenants and Agreements of the Trustor

Section 1.01. Title, Etc. The Trustor represents and warrants that to the best of its knowledge it has [in Arizona, good and marketable; in Texas, good and indefeasible] fee simple title in and to the Property and the related Ancillary Rights and Properties, in each case subject only to those matters existing on the date hereof whether or not of record ("Permitted Encumbrances").

The Trustor represents and warrants that it has the full power and lawful authority to grant, bargain, sell, release, convey, warrant, assign, transfer, mortgage, pledge, set over and confirm unto the Trustee the Trust Estate as hereinabove provided and warrants that it will forever defend the title to the Trust Estate and the validity and priority of the Lien or estate hereof against the claims and demands of all persons whomsoever except for Permitted Encumbrances.

Section 1.02. Further Assurances; Filing; Re-Filing; Etc.

(a) Further Instruments. The Trustor shall execute, acknowledge and deliver, from time to time, such further instruments as the Beneficiary or the Trustee may reasonably require to accomplish the purposes of this Deed of Trust.

(b) Filing and Re-Filing. The Trustor, immediately upon the execution and delivery of this Deed of Trust, and thereafter from time to time, shall cause this Deed of Trust, any security agreement or deed of trust supplemental hereto and each instrument of further assurance to be filed, registered or recorded and re-filed, re-registered or re-recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and perfect the Lien or estate of this Deed of Trust upon the Trust Estate.

(c) Fees and Expenses. The Trustor shall pay all filing, registration and recording fees, all re-filing, re-registration and re-recording fees, and all expenses incident to the execution, filing, recording and acknowledgment of this Deed of Trust, any security agreement or deed of trust supplemental hereto and any instrument of further assurance, and all Federal, state, county and municipal stamp taxes and other taxes, duties, imposts, assessments and charges arising out of or in connection with the execution, delivery, filing and recording of this Deed of Trust or any of the other security agreement or deed of trust supplemental hereto or any

Deed of Trust

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instruments of further assurance. If Trustor shall fail to make such payment within 30 days following receipt of notice thereof from Trustee that such payment is required, than Beneficiary may (but shall not be obligated to) pay the amount due, and Trustor shall reimburse Beneficiary for the amount of such payment.

Section 1.03. Insurance Foreclosure. The Trustor shall maintain insurance in accordance with paragraph 8(c) of the Promissory Note. In the event of foreclosure of the Lien of this Deed of Trust or other transfer of title or assignment of the Trust Estate in extinguishment, in whole or in part, of the Obligations, all right, title and interest of the Trustor in and to all policies of casualty insurance covering all or any part of the Trust Estate shall inure to the benefit of and pass to the successors in interest to the Trustor or the purchaser or grantee of the Trust Estate or any part thereof.

Section 1.04. Impositions.

(a) Payment of Impositions. The Trustor shall pay or cause to be paid, before any fine, penalty, interest or cost attaches thereto, all taxes, assessments, water and sewer rates, utility charges and all other governmental or non-governmental charges or levies now or hereafter assessed or levied against any part of the Trust Estate (including, without limitation, non-governmental levies or assessments such as maintenance charges, owner association dues or charges or fees, levies or charges resulting from covenants, conditions and restrictions affecting the Trust Estate) or upon the Lien or estate of the Beneficiary or the Trustee therein (collectively, "Impositions"), as well as all claims for labor, materials or supplies that, if unpaid, might by law become a prior Lien thereon; provided, however, that if by law any such Imposition may be paid in installments (whether or not interest shall accrue on the unpaid balance thereof), the Trustor may pay the same in installments (together with accrued interest on the unpaid balance thereof) as the same respectively become due, before any fine, penalty or cost attaches thereto.

(b) Right to Contest Impositions. Notwithstanding anything contained in Section 1.05(a) to the contrary, the Trustor at its expense may, after prior notice to the Beneficiary, contest the amount or validity or application, in whole or in part, of any Imposition or Lien therefor or any claims of mechanics, materialmen, suppliers or vendors or Lien thereof, and may withhold payment of the same pending such proceedings if permitted by law.

Section 1.05. Limitations of Use. The Trustor shall not initiate, join in or consent to any change in any private restrictive covenant, zoning ordinance or other public or private restrictions limiting or defining the uses that may be made of the Property and the Improvements or any part thereof that would have a material adverse effect on the value or use of the Property or the Improvements.

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Section 1.06. Actions to Protect Trust Estate. If the Trustor shall fail to (a) effect the insurance required by and as provided in the Promissory Note or (b) perform or observe any of its covenants or agreements hereunder or under the Promissory Note, the Beneficiary may, without obligation to do so, and upon notice to the Trustor (except in an emergency) effect or pay the same. To the maximum extent permitted by law, all sums, including reasonable attorneys' fees and disbursements, so expended or expended to sustain the Lien or estate of this Deed of Trust or its priority, or to protect or enforce any of the rights hereunder, or to recover any of the Obligations, shall be a Lien on the Trust Estate and shall be deemed to be added to the Obligations secured hereby.

ARTICLE 2

Assignment of Rents, Issues and Profits

Section 2.01. Assignment of Rents, Issues and Profits. The Trustor hereby assigns and transfers to the Beneficiary, FOR THE PURPOSE OF SECURING the Obligations, all Rents, and hereby gives to and confers upon the Beneficiary the right, power and authority to collect the same. The Trustor appoints the Beneficiary its true and lawful attorney-in-fact, at its option at any time and from time to time following the occurrence and during the continuance of a Default, to demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, in the name of the Trustor or otherwise, for Rents and apply the same to the Obligations as provided in paragraph (a) of Section 4.01; provided, however, that the Trustor shall have the right to collect Rents at any time prior to the occurrence of a Default (but not more than one month in advance, except in the case of security deposits). Following the occurrence and during the continuance of a Default, Beneficiary may, with or without exercising any other rights or remedies, require Trustor to give notice to any or all tenants under any leases on the Mortgaged Estate authorizing and directing them to pay all Rents under the leases directly to Beneficiary.

Section 2.02. Collection Upon Default. To the extent permitted by law, upon the occurrence of any Default, the Beneficiary may, either in person, by agent or by a receiver appointed by a court, enter upon and take possession of the Property, the Improvements and the Fixtures or any part thereof, in its own name, sue for or otherwise collect Rents including those past due and unpaid, and, apply the same, less costs and expenses of operation and collection, including attorneys' fees and disbursements, to the payment of the Obligations as provided in paragraph (a) of Section 4.01, and in such order as the Beneficiary may determine. The collection of Rents or the entering upon and taking possession of the Property, the Improvements or the Fixtures or any part thereof, or the application thereof as aforesaid, shall not cure or waive

Deed of Trust

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any Default or notice thereof or invalidate any act done in response to such Default or pursuant to notice thereof.

ARTICLE 3

Security Agreement

Section 3.01. Creation of Security Interest. The Trustor hereby grants to the Beneficiary a security interest in the Fixtures for the purpose of securing the Obligations. The Beneficiary shall have, in addition to all rights and remedies provided herein and in the Promissory Note all the rights and remedies of a secured party under the Uniform Commercial Code of the state in which the applicable portion of the Fixtures is located. A statement describing the portion of the Trust Estate comprising the fixtures hereby secured is set forth in the granting clauses of this Deed of Trust. The Trustor represents and warrants to the Beneficiary and the Trustee that the Trustor is the record owner of the Trust Estate, the employer identification number of the Trustor is [_____] and the organizational identification number of the Trustor is [_____].

Section 3.02. Warranties, Representations and Covenants. The Trustor hereby warrants, represents and covenants that: (a) the Fixtures will be kept on or at the Property and the Trustor will not remove any Fixtures from the Property, except as permitted under the Security Documents and except such portions or items of the Fixtures that are consumed or worn out in ordinary usage, except as otherwise expressly provided in the Promissory Note, (b) all covenants and obligations of the Trustor contained herein relating to the Trust Estate shall be deemed to apply to the Fixtures whether or not expressly referred to herein and (c) this Deed of Trust constitutes a security agreement and "fixture filing" as those terms are used in the applicable Uniform Commercial Code. The Trustor is the "Debtor" and its name and mailing address are set forth on Page 1 hereof. The Beneficiary is the "Secured Party" and its name and mailing address from which information relative to the security interest created hereby are also set forth on Page 1 hereof. Prior to the release of this Deed of Trust, Trustor shall not file any termination statements concerning the Mortgage Estate without Beneficiary's prior consent, which consent shall not be unreasonably withheld. The information provided in this Section 3.02 is provided so that this Deed of Trust shall comply with the requirements of the Uniform Commercial Code as in effect in the state in which the Trust Estate is located for a mortgage instrument to be filed as a financing statement.

ARTICLE 4

Deed of Trust

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Remedies Upon Default

Section 4.01. Defaults; Default Remedies.

(a) Remedies Generally. If any Event of Default (as defined in the Promissory Note) (herein, a "Default") shall have occurred and be continuing, this Deed of Trust may, to the maximum extent permitted by law, be enforced, and the Trustee or the Beneficiary may exercise any right, power or remedy permitted to it hereunder, under the Promissory Note or by law, and, without limiting the generality of the foregoing, the Trustee or the Beneficiary may, personally or by its agents, to the maximum extent permitted by law:

(i) enter into and take possession of the Trust Estate or any part thereof, exclude the Trustor and all persons claiming under the Trustor whose claims are junior to this Deed of Trust, wholly or partly therefrom, and use, operate, manage and control the same either in the name of the Trustor or otherwise as the Trustee or the Beneficiary shall deem best, and upon such entry, from time to time at the expense of the Trustor and the Trust Estate, make all such repairs, replacements, alterations, additions or improvements to the Trust Estate or any part thereof as the Trustee or the Beneficiary may deem proper and, whether or not the Trustee or the Beneficiary has so entered and taken possession of the Trust Estate or any part thereof, collect and receive all Rents and apply the same to the payment of all expenses that the Trustee or the Beneficiary may be authorized to make under this Deed of Trust, the remainder to be applied to the payment of the Obligations until the same shall have been repaid in full; if the Trustee or the Beneficiary demands or attempts to take possession of the Trust Estate or any portion thereof in the exercise of any rights hereunder, the Trustor shall promptly turn over and deliver complete possession thereof to the Trustee or the Beneficiary, as the case may be; and

(ii) personally or by agents, with or without entry, if the Trustee or the Beneficiary shall deem it advisable:

(x) sell the Trust Estate at a sale or sales held at such place or places and time or times and upon such notice and otherwise in such manner as may be required by law, or, in the absence of any such requirement, as the Trustee or the Beneficiary may deem appropriate, and from time to time adjourn any such sale by announcement at the time and place specified for such sale or for such adjourned sale without further notice, except such as may be required by law;

(y) proceed to protect and enforce its rights under this Deed of Trust, by suit for specific performance of any covenant contained herein or in the Promissory Note or in aid of the execution of any power granted herein or in the

Deed of Trust

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Promissory Note, or for the foreclosure of this Deed of Trust (as a mortgage or otherwise) and the sale of the Trust Estate under the judgment or decree of a court of competent jurisdiction, or for the enforcement of any other right as the Trustee or the Beneficiary shall deem most effectual for such purpose, provided, that in the event of a sale, by foreclosure or otherwise, of less than all of the Trust Estate, this Deed of Trust shall continue as a Lien on, and security interest in, the remaining portion of the Trust Estate; or

(z) exercise any or all of the remedies available to a secured party under the applicable Uniform Commercial Code, including, without limitation:

(1) either personally or by means of a court appointed receiver, take possession of all or any of the Fixtures and exclude therefrom the Trustor and all persons claiming under the Trustor, and thereafter hold, store, use, operate, manage, maintain and control, make repairs, replacements, alterations, additions and improvements to and exercise all rights and powers of the Trustor in respect of the Fixtures or any part thereof; if the Beneficiary demands or attempts to take possession of the Fixtures in the exercise of any rights hereunder, the Trustor shall promptly turn over and deliver complete possession thereof to the Beneficiary;

(2) without notice to or demand upon the Trustor, make such payments and do such acts as the Beneficiary may deem necessary to protect its security interest in the Fixtures, including, without limitation, paying, purchasing, contesting or compromising any encumbrance that is prior to or superior to the security interest granted hereunder, and in exercising any such powers or authority paying all expenses incurred in connection therewith;

(3) require the Trustor to assemble the Fixtures or any portion thereof, at a place designated by the Beneficiary and reasonably convenient to both parties, and promptly to deliver the Fixtures to the Beneficiary, or an agent or representative designated by it; the Beneficiary, and its agents and representatives, shall have the right to enter upon the premises and property of the Trustor to exercise the Beneficiary's rights hereunder; and

(4) sell, lease or otherwise dispose of the Fixtures, with or without having the Fixtures at the place of sale, and upon such terms and in such

Deed of Trust

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manner as the Beneficiary may determine (and the Beneficiary, the Trustee or any Lender may be a purchaser at any such sale).

(b) Appointment of Receiver. If a Default shall have occurred and be continuing, the Beneficiary, to the maximum extent permitted by law, shall be entitled, to the appointment of a receiver of the Trust Estate. The Trustor hereby consents to such appointment and waives notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases and all the powers and duties of the Beneficiary in case of entry and shall continue as such and exercise all such powers until the date of confirmation of sale of the Trust Estate, unless such receivership is sooner terminated.

(c) Rents. If a Default shall have occurred and be continuing, the Trustor shall, to the maximum extent permitted by law, pay monthly in advance to the Beneficiary, or to any receiver appointed at the request of the Beneficiary to collect Rents, the fair and reasonable rental value for the use and occupancy of the Property, the Improvements and the Fixtures or of such part thereof as may be in the possession of the Trustor. Upon default in the payment thereof, the Trustor shall vacate and surrender possession of the Property, the Improvements and the Fixtures to the Beneficiary or such receiver, and upon a failure so to do may be evicted by summary proceedings.

(d) Sale. In any sale under any provision of this Deed of Trust or pursuant to any judgment or decree of court, the Trust Estate, to the maximum extent permitted by law, may be sold in one or more parcels or as an entirety and in such order as the Trustee or the Beneficiary may elect, without regard to the right of the Trustor or any person claiming under the Trustor to the marshalling of assets. The purchaser at any such sale shall take title to the Trust Estate or the part thereof so sold free and discharged of the estate of the Trustor therein, the purchaser being hereby discharged from all liability to see to the application of the purchase money. Any person, including the Trustee, the Beneficiary or any Lender, may purchase at any such sale. Upon the completion of any such sale by virtue of this Section 4.01 the Trustee shall execute and deliver to the purchaser an appropriate instrument that shall effectively transfer all of the Trustor's estate, right, title, interest, property, claim and demand in and to the Trust Estate or portion thereof so sold, but without any covenant or warranty, express or implied. The Trustee and the Beneficiary are each hereby irrevocably appointed the attorney-in-fact of the Trustor in its name and stead to make all appropriate transfers and deliveries of the Trust Estate or any portions thereof so sold and, for that purpose, the Trustee and the Beneficiary may execute all appropriate instruments of transfer, and may substitute one or more persons with like power, the Trustor hereby ratifying and confirming all that said attorneys or such substitute or substitutes shall lawfully do by virtue hereof. Nevertheless, the Trustor shall ratify and confirm, or cause to be ratified and confirmed, any such sale or sales by executing and delivering, or by causing to be executed and delivered, to the Trustee or the Beneficiary or to such purchaser or purchasers all such instruments as may be

Deed of Trust

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advisable, in the judgment of the Trustee or the Beneficiary, for such purpose, and as may be designated in such request. Any sale or sales made under or by virtue of this Deed of Trust, to the extent not prohibited by law, shall operate to divest all the estate, right, title, interest, property, claim and demand whatsoever, whether at law or in equity, of the Trustor in, to and under the Trust Estate, or any portions thereof so sold, and shall be a perpetual bar both at law and in equity against the Trustor and against any and all persons claiming or who may claim the same, or any part thereof, by, through or under the Trustor. The powers and agency herein granted are coupled with an interest and are irrevocable.

(e) Possession of Deed of Trust Not Necessary. All rights of action under the this Deed of Trust may be enforced by the Trustee or the Beneficiary without the possession of the Deed of Trust and without the production thereof at any trial or other proceeding relative thereto. Any such suit or proceeding instituted by the Trustee shall be brought in its name as trustee of an express trust, and any recovery of judgment shall, subject to the rights of the Trustee, be for the benefit of the Beneficiary.

[In Arizona only:

(f) Additional Provisions Regarding Remedies.

(i) Should the Beneficiary elect to foreclose by exercise of power of sale set forth in this Deed of Trust, then upon receipt of notice from the Beneficiary, Trustee shall cause to be recorded, published, posted and mailed to the Trustor and other persons as required by law a Notice of Trustee's Sale in the manner required by law. Without further notice to the Trustor and after the lapse of such time as may then be required by law, Trustee shall sell the Property at the time and place of sale fixed by it in said Notice of Trustee's Sale or as otherwise provided by law. The Property may be sold as a whole or in such separate lots, parcels or items as Trustee shall deem expedient, and such order as Trustee may determine, at public auction in the manner provided by law. Trustee shall deliver to the purchaser or purchasers its good and sufficient deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. Any person, including the Trustor, Trustee or the Beneficiary, may purchase at such sale.

(ii) After deducting all costs, fees and expenses of Trustee and of this Deed of Trust, including reasonable attorneys' fees and all costs of title reports and other evidence of title and any appraisals, environmental and other professional reports obtained by the Beneficiary or Trustee in connection with the sale, Trustee shall apply the proceeds of sale to payment of the Obligations and the remainder, if any, to the person or persons legally entitled thereto, or as provided in A.R.S. § 33-812.

Deed of Trust

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(iii) Trustee may postpone the sale of all or any portion of the Property or change the place of sale in the manner provided by law.

(iv) The power of sale under this Deed of Trust shall not be exhausted by any one or more sales (or attempted sales) as to all or any portion of the Property remaining unsold, but shall continue unimpaired until all of the Property has been sold and all of the Obligations have been paid in full.

(g) Additional Remedies. The Beneficiary shall have, in addition to all other rights and remedies provided herein, in the Promissory Note and in the Security Documents and at law or in equity, the rights and remedies afforded by A.R.S. § 33-702.B, without regard to the adequacy of the security or to the solvency of the Trustor or to whether Trustee or the Beneficiary has commenced to exercise any other right or remedy herein, in the Promissory Note or in any other Security Document or at law or in equity.

(h) Accurate Reflection. The Trustor hereby acknowledges and agrees that this Deed of Trust, the Promissory Note and the Security Documents accurately reflect the agreements and understandings of the parties thereto with respect to the subject matter thereof, and hereby waives any claims against the Beneficiary that the Trustor may now have or may hereafter acquire to the effect that the actual agreements and understandings of the parties thereto, with respect to the subject matter thereof, may not be accurately set forth therein.]

Section 4.02. Application of Proceeds. The proceeds of any sale made either under the power of sale hereby given or under a judgment, order or decree made in any action to foreclose or to enforce this Deed of Trust, or of any monies held by the Trustee or the Beneficiary hereunder shall, to the maximum extent permitted by law, be applied:

(i) first to the payment of all costs and expenses of such sale, including the Beneficiary's attorneys' fees and disbursements;

(ii) then to the payment of all charges, expenses and advances incurred or made by the Beneficiary in order to protect the Lien and estate of this Deed of Trust or the security afforded hereby;

(iii) then to the payment in full of the Obligations;

and after payment in full of all Obligations any surplus remaining shall be paid to the Trustor or to whomsoever may be lawfully entitled to receive the same.

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Section 4.03. Powers of the Trustee and the Beneficiary. The Trustee and the Beneficiary may at any time or from time to time renew or extend this Deed of Trust or (with the agreement of the Trustor) alter or modify the same in any way, or waive any of the terms, covenants or conditions hereof or thereof, in whole or in part, and may release any portion of the Trust Estate or any other security, and grant such extensions and indulgences in relation to the Obligations, or release any person liable therefor as the Trustee or the Beneficiary may determine without the consent of any junior lienor or encumbrancer, without any obligation to give notice of any kind thereto, without in any manner affecting the priority of the Lien and estate of this Deed of Trust on or in any part of the Trust Estate, and without affecting the liability of any other person liable for any of the Obligations.

Section 4.04. Remedies Cumulative.

(a) Remedies Cumulative. No right or remedy herein conferred upon or reserved to the Trustee or the Beneficiary is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy under this Deed of Trust, or under applicable law, whether now or hereafter existing; the failure of the Trustee or the Beneficiary to insist at any time upon the strict observance or performance of any of the provisions of this Deed of Trust or to exercise any right or remedy provided for herein or under applicable law, shall not impair any such right or remedy nor be construed as a waiver or relinquishment thereof.

(b) Other Security. The Trustee and the Beneficiary, and each of them, shall be entitled to enforce payment and performance of any of the obligations of the Trustor and to exercise all rights and powers under this Deed of Trust or under any other security document or any laws now or hereafter in force, notwithstanding that some or all of the Obligations may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, Lien, assignment or otherwise; neither the acceptance of this Deed of Trust nor its enforcement, whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect the Trustee's or the Beneficiary's right to realize upon or enforce any other security now or hereafter held by the Trustee or the Beneficiary, it being stipulated that the Trustee and the Beneficiary, and each of them, shall be entitled to enforce this Deed of Trust in such order and manner as the Trustee or the Beneficiary, in its sole discretion, may determine; every power or remedy given by the Promissory Note and this Deed of Trust may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by the Trustee or the Beneficiary, and either of them may pursue inconsistent remedies.

Section 4.05. Waiver of Stay, Extension, Moratorium Laws; Equity of Redemption. To the maximum extent permitted by law, the Trustor shall not at any time insist

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upon, or plead, or in any manner whatever claim or take any benefit or advantage of any applicable present or future stay, extension or moratorium law, that may affect observance or performance of the provisions of this Deed of Trust; nor claim, take or insist upon any benefit or advantage of any present or future law providing for the valuation or appraisal of the Trust Estate or any portion thereof prior to any sale or sales thereof that may be made under or by virtue of Section 4.01; and the Trustor, to the extent that it lawfully may, hereby waives all benefit or advantage of any such law or laws. The Trustor for itself and all who may claim under it, hereby waives, to the maximum extent permitted by applicable law, any and all rights and equities of redemption from sale under the power of sale created hereunder or from sale under any order or decree of foreclosure of this Deed of Trust and (if a Default shall have occurred) all notice or notices of seizure, and all right to have the Trust Estate marshalled upon any foreclosure hereof. Neither the Trustee nor the Beneficiary shall not be obligated to pursue or exhaust its rights or remedies as against any other part of the Trust Estate and the Trustor hereby waives any right or claim of right to have the Trustee or the Beneficiary proceed in any particular order.

ARTICLE 5

The Trustee

Section 5.01. Acceptance by Trustee. The Trustee accepts this trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law.

Section 5.02. Compensation. The Trustee waives any statutory fee and shall accept reasonable compensation from the Beneficiary in lieu thereof for any services rendered by it in accordance with the terms hereof.

Section 5.03. Action in Accordance With Instructions. Upon receipt by the Trustee of instructions from the Beneficiary at any time or from time to time, the Trustee shall (a) give any notice or direction or exercise any right, remedy or power hereunder or in respect of any part or all of the Trust Estate as shall be specified in such instructions and (b) approve as satisfactory all matters required by the terms hereof to be satisfactory to the Trustee or to the Beneficiary. The Trustee may, but need not, take any of such actions in the absence of such instructions. In addition, at any time or from time to time, upon request of the Beneficiary and presentation of this Deed of Trust for endorsement, and without affecting the liability of any person for payment of the Obligations, the Trustee may, upon such request, reconvey all or any part of the Trust Estate, consent to the making of any map or plat thereof, join in granting any easement thereon, or join in any extension agreement or any agreement subordinating the lien and estate hereof.

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Section 5.04. Resignation. The Trustee may resign at any time upon giving not less than 60 days' prior notice to the Beneficiary but shall continue to act as trustee until its successor shall have been qualified and appointed pursuant to Section 5.05.

Section 5.05 Successor Trustee. In the event of the death, removal, resignation or refusal or inability of the Trustee to act, for any reason, at any time, the Beneficiary shall have the irrevocable power, with or without cause, without notice of any kind and without applying to any court, to select and appoint a successor trustee. Each such appointment and substitution shall be made by notice to the Trustor, the Trustee and successor trustee and by recording notice of such in each office in which this Deed of Trust is recorded. Such notice shall be executed and acknowledged by the Beneficiary and shall contain reference to this Deed of Trust and when so recorded shall be conclusive proof of proper appointment of the successor trustee. Such successor shall not be required to give bond for the faithful performance of its duties unless required by the Beneficiary.

ARTICLE 6

Miscellaneous

Section 6.01. Reconveyance and Release by Trustee. Upon the payment in full of the Obligations the Beneficiary shall forthwith cause the Trustee to release the Lien of this Deed of Trust and reconvey, against receipt but without any recourse, warranty or representation whatsoever, any portion of the Trust Estate then held hereunder to the Trustor, or upon the request of the Trustor, and at the Trustor's expense, cause the Trustee to assign this Deed of Trust, against receipt but without any recourse, warranty or representation whatsoever, to the Trustor's designee, or to the person or persons legally entitled thereto, by an instrument duly acknowledged in form for recording. The Trustee shall, upon request by the Beneficiary, release and reconvey (or, as the case may be, assign) all or any portion of the Trust Estate as described in the preceding sentence whenever requested to do so by the Beneficiary and shall not require, as a condition to any such release, reconveyance or assignment, that the Beneficiary certify or demonstrate that all or any portion of the Obligations shall have been paid in full. Upon the sale of a portion of the Trust Estate, as provided for in Section 8(i) of the Promissory Note, the Beneficiary shall forthwith cause the Trustee to release the Lien of this Deed of Trust and reconvey, against receipt but without any recourse, warranty or representation whatsoever on such portion of the Trust Estate held by Trustor. The Trustee shall, upon request by the Beneficiary, release and reconvey any portion of the Trust Estate as described in the preceding sentence whenever requested to do so by the Beneficiary and shall not require, as a condition to any such release, reconveyance or assignment, that the Beneficiary certify or demonstrate that all or any portion of the Obligations shall have been paid in full.

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Section 6.02. Notices. All notices, requests, consents and demands hereunder shall be in writing and telecopied or delivered:

- (a) in the case of the Trustor, to it at:

ASARCO LLC

[Address]

Attention: [_____]

Telephone No.: [_____]

Telecopier No.: [_____]

- (b) in the case of the Beneficiary, to it at:

Asarco Asbestos Personal Injury Settlement Trust

[Address]

Attention: [_____]

Telephone No.: [_____]

Telecopier No.: [_____]

- (c) in the case of Trustee, to it at:

[_____]

[Address]

Attention: [_____]

Telephone No.: [_____]

Telecopier No.: [_____]

- (d) or, as to any of the Trustor, Beneficiary or Trustee, at such other address as shall be designated by such party in a notice to the other parties.

Except as otherwise provided in this Deed of Trust, all such communications shall be deemed to have been duly given when transmitted by telecopier or personally delivered or, in the case of a mailed notice, upon receipt, in each case given or addressed as aforesaid.

Section 6.03. Amendments; Waivers; Etc. This Deed of Trust cannot be modified, changed or discharged except by an agreement in writing, duly acknowledged in form for recording, signed by the Trustor and the Beneficiary.

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Section 6.04. Successors and Assigns. This Deed of Trust applies to, inures to the benefit of and binds the Trustor and the Beneficiary and their respective successors and assigns and shall run with the Property.

Section 6.05. Captions. The captions or headings at the beginning of Articles, Sections and paragraphs hereof are for convenience of reference and are not a part of this Deed of Trust and shall not be deemed to modify, explain, enlarge or restrict any of the provisions hereof.

Section 6.06. Severability. If any term or provision of this Deed of Trust or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Deed of Trust, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Deed of Trust shall be valid and enforceable to the maximum extent permitted by law. If any portion of the Obligations shall for any reason not be secured by a valid and enforceable Lien upon any part of the Trust Estate, then any payments made in respect of the Obligations (whether voluntary or under foreclosure or other enforcement action or procedure or otherwise) shall, for purposes of this Deed of Trust (except to the extent otherwise required by applicable law) be deemed to be made (i) first, in respect of the portion of the Obligations not secured by the Lien of this Deed of Trust, (ii) second, in respect of the portion of the Obligations secured by the Lien of this Deed of Trust, but which Lien is on less than all of the Trust Estate, and (iii) last, to the portion of the Obligations secured by the Lien of this Deed of Trust, and which Lien is on all of the Trust Estate.

Section 6.07. Promissory Note and Exhibits. All of the applicable agreements, conditions, covenants, provisions and stipulations contained in the Promissory Note, which are to be kept and performed by Trustor are hereby made a part of this Deed of Trust to the same extent and with the same force and effect as if they were fully set forth in this Deed of Trust. Each exhibit and schedule attached to this Deed of Trust are integral parts of this Deed of Trust and are incorporated herein by this reference.

Section 6.08. Legal Construction.

(a) The enforcement of this Deed of Trust shall be governed by, and construed and interpreted in accordance with, the laws of the State of [insert state].

(b) All terms contained herein shall be construed, whenever the context of this Deed of Trust so requires, so that the singular number shall include the plural, and the plural the singular, and the use of any gender shall include all genders.

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(c) The terms “include” and “including” as used in this Deed of Trust shall be construed as if followed by the phrase “without limitation”. The words “hereof”, “herein” and “hereunder” and words of similar import when used in this Deed of Trust shall refer to this Deed of Trust as a whole and not to any particular provision of this Deed of Trust, and Article, Section and Exhibit references contained in this Deed of Trust are references to Articles, Sections and Exhibits in or to this Deed of Trust unless otherwise specified.

[Remainder of page intentionally left blank.]

Deed of Trust

IN WITNESS WHEREOF, this Deed of Trust has been duly executed by the Trustor as of the day and year first above written.

ASARCO LLC

By: _____

Name:

Title:

Deed of Trust

STATE OF _____)
: ss.:
COUNTY OF _____)

On the ____ day of _____, 2009, before me, the undersigned, a notary public in and for said state, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he/she executed the same in his/her capacity and that by his/her signature on the instrument the individual or the person upon behalf of which the individual acted executed the instrument.

Notary Public

[SEAL]

Deed of Trust

SCHEDULE I

DESCRIPTION OF PROPERTY

[See attached legal description]

[In Texas only:

RIDER

to

Deed of Trust, Security Agreement, Assignment of Rents and Fixture Filing dated _____
_____, 200__ from Asarco LLC to _____, trustee for the benefit of Asarco Asbestos
Personal Injury Settlement Trust

APPLICABLE STATE LAW PROVISIONS (TEXAS)

Pursuant to the terms of Section 6.07 of the captioned Deed of Trust, this Rider and the following provisions shall be deemed incorporated into the Deed of Trust and made a part thereof for all purposes. In the event of any conflict between the terms set forth in this Rider and those set forth in the Deed of Trust, the terms set forth in this Rider will control for all purposes.

ARTICLE I

Foreclosure and Sale

1.01. Foreclosure. Upon the occurrence of an Event of Default, Trustee, his successor or substitute, is authorized and empowered and it shall be his special duty at the request of the Beneficiary to sell the Property or any part thereof situated in the State of Texas at the courthouse of any county in the State of Texas in which any part of the Property is situated, at public venue to the highest bidder for cash between the hours of 10:00 a.m. and 4:00 p.m. on the first Tuesday in any month after having given notice of such sale in accordance with the statutes of the State of Texas then in force governing sales of real estate under powers conferred by deed of trust. The sale must begin at the time stated in the notice of sale or not later than three hours after that time. Any sale made by Trustee hereunder may be as an entirety or in such parcels as the Beneficiary may request, and any sale may be adjourned by announcement at the time and place appointed for such sale without further notice except as may be required by law. Further, any sale made by Trustee hereunder may, in lieu of cash, be upon such other terms and conditions as the Beneficiary may from time to time hereafter elect. The sale by Trustee of less than the whole of the Property shall not exhaust the power of sale herein granted, and Trustee is specifically empowered to make successive sale or sales under such power until the whole of the Property shall be sold and, if the proceeds of such sale of less than the whole of the Property shall be less than the aggregate of the Obligations secured hereby and the expense of executing this trust as provided herein, this Deed of Trust and the lien hereof shall remain in full force and effect as to the unsold portion of the Property just as though no sale had been made; provided, however, that the Trustor shall never have any right to require the sale of less than the whole of the Property but the Beneficiary shall have the right, at its sole election, to request Trustee to sell

less than the whole of the Property. After each sale, Trustee shall make to the purchaser or purchasers at such sale good and sufficient conveyances in the name of the Trustor, conveying the property so sold to the purchaser or purchasers in fee simple with general warranty of title, and shall receive the proceeds of said sale or sales and apply the same as herein provided. Payment of the purchase price to Trustee shall satisfy the obligation of purchaser at such sale therefor, and such purchaser shall not be responsible for the application thereof. In the event any sale hereunder is not completed or is defective in the opinion of the Beneficiary, such sale shall not exhaust the power of sale hereunder and the Beneficiary shall have the right to cause a subsequent sale or sales to be made hereunder. Any and all statements of fact or other recitals made in any deed or deeds given by Trustee or any successor or substitute appointed hereunder as to nonpayment of the Obligations secured hereby, or as to the occurrence of any Event of Default, or as to the Beneficiary having declared all of such Obligations to be due and payable, or as to the request to sell, or as to notice of time, place and terms of sale and of the properties to be sold having been duly given, or as to the refusal, failure or inability to act of Trustee or any substitute or successor, or as to the appointment of any substitute or successor trustee, or as to any other act or thing having been duly done by the Beneficiary or by such Trustee, substitute or successor, shall be taken as conclusive (absent manifest error) evidence of the truth of the facts so stated and recited. Trustee, his successor or substitute, may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Trustee, including the posting of notices and the conduct of sale, but in the name and on behalf of Trustee, his successor or substitute.

1.02 Right to Require Proof of Financial Ability. At any time during the bidding of any sale conducted by Trustee under paragraph 1.01 of this Rider, Trustee may require a bidding party (a) to disclose its full name, state and city of residence, occupation, and specific business office location, and the name and address of the principal the bidding party is representing (if applicable); and (b) to demonstrate reasonable evidence of the bidding party's financial ability (or, if applicable, the financial ability of the principal of such bidding party), as a condition to the bidding party submitting bids at the foreclosure sale. If any such bidding party (the "Questioned Bidder") declines to comply with Trustee's requirement in this regard, or if such Questioned Bidder does respond but Trustee, in Trustee's sole and absolute discretion, deems the information or the evidence of the financial ability of the Questioned Bidder (or, if applicable, the principal of such bidding party) to be inadequate, Trustee may continue the bidding with reservation; and in such event (i) Trustee shall be authorized to caution the Questioned Bidder concerning the legal obligations to be incurred in submitting bids, and (ii) if the Questioned Bidder is not the highest bidder at the sale, or if having been the highest bidder the Questioned Bidder fails to deliver the cash purchase price payment promptly to Trustee, all bids by the Questioned Bidder shall be null and void. Trustee may, in Trustee's sole and absolute discretion, determine that a credit bid may be in the best interest of the Trustor and the Beneficiary and elect to sell the Property for credit or for a combination of cash and credit; provided, however, that Trustee shall have no obligation to accept any bid except an all cash bid. In the event Trustee requires a cash bid and cash is not delivered within a reasonable time after conclusion of the bidding process, as specified by Trustee (but in no event later than 3:45 p.m. local time on the date of sale), then said contingent sale shall be null and void, the bidding process may be recommenced, and any subsequent bids or sale shall be made as if no prior bids were made or accepted.

1.03. Judicial Foreclosure. This Deed of Trust shall be effective as a mortgage as well as a deed of trust and upon the occurrence of an Event of Default may be foreclosed as to any of the Property in any manner permitted by the laws of the State of Texas or of any other state in which any part of the Property is situated, and any foreclosure suit may be brought by Trustee or by the Beneficiary. In the event a foreclosure hereunder shall be commenced by Trustee or his substitute or successor, the Beneficiary may at any time before the sale of the Property direct the said Trustee to abandon the sale, and may then institute suit for the collection of the Promissory Note and the other secured Obligations, and for the foreclosure of this Deed of Trust. It is agreed that if the Beneficiary should institute a suit for the collection of the Promissory Note or any other secured Obligations and for the foreclosure of this Deed of Trust, the Beneficiary may at any time before the entry of a final judgment in said suit dismiss the same, and require Trustee, his substitute or successor to sell the Property in accordance with the provisions of this Deed of Trust.

1.04. Proceeds of Sale. The proceeds of any sale held by Trustee or any receiver or public officer in foreclosure of the liens evidenced hereby shall be applied:

FIRST, to the payment of all necessary costs and expenses incident to such foreclosure sale, including but not limited to all court costs and charges of every character in the event foreclosed by suit, and a reasonable fee to Trustee acting under the provisions of paragraph 1.01 of this Rider if foreclosed by power of sale as provided in said paragraph, not exceeding one percent (1%) of the proceeds of such sale;

SECOND, to the payment in full of the Obligations (including specifically without limitation the principal, interest and attorneys' fees due and unpaid on the Promissory Note and the amounts due and unpaid and owed to The Beneficiary under this Deed of Trust and the other Loan Documents) in such order as The Beneficiary may elect, in The Beneficiary's sole and absolute discretion; and

THIRD, the remainder, if any, there shall be, shall be paid to The Trustor or to such other party or parties as may be entitled thereto by law.

1.05. The Beneficiary as Purchaser. The Beneficiary shall have the right to become the purchaser at any sale held by any Trustee or substitute or successor or by any receiver or public officer, and any lender purchasing at any such sale shall have the right to credit upon the amount of the bid made therefor, to the extent necessary to satisfy such bid, the Obligations owing to such lender, or if such lender holds less than all of the Obligations the pro rata part thereof owing to such lender, accounting to all other lenders not joining in such bid in cash for the portion of such bid or bids apportionable to such non-bidding lender or lenders..

1.06. Partial Foreclosure. In the event of a default in the payment of any part of the Obligations, the Beneficiary shall have the right to proceed with foreclosure of the liens and security interests evidenced hereby without declaring the entire Obligations due, and in such event any such foreclosure sale may be made subject to the unmatured part of the Obligations; and any such sale shall not in any manner affect the unmatured part of the Obligations, but as to

such unmatured part, this Deed of Trust shall remain in full force and effect just as though no sale had been made. The proceeds of any such sale shall be applied as provided in paragraph 1.04 of this Rider except that the amount paid under subparagraph SECOND thereof shall be only the matured portion of the Obligations and any proceeds of such sale in excess of those provided for in subparagraphs FIRST and SECOND (modified as provided above) shall be applied to installments of principal of and interest on the Promissory Note in the inverse order of maturity. Several sales may be made hereunder without exhausting the right of sale for any unmatured part of the Obligations.

1.07. Waiver.

(a) To the full extent the Trustor may do so, the Trustor agrees that the Trustor will not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force pertaining to the rights and remedies of sureties or providing for any appraisal, valuation, stay, extension or redemption, and the Trustor, for the Trustor and the Trustor's heirs, devisees, representatives, successors and assigns, and for any and all persons ever claiming any interest in the Property, to the extent permitted by law, hereby waives and releases all rights of redemption, valuation, appraisal, stay of execution, notice of intention to mature or declare due the whole of the secured Obligations, notice of intent to accelerate, notice of acceleration (as to each such notice), and all rights to a marshaling of the assets of the Trustor, including the Property, or to a sale in inverse order of alienation in the event of foreclosure of the liens and security interests hereby created.

(b) The Trustor shall not have or assert any right under any statute or rule of law pertaining to the marshaling of assets, sale in inverse order of alienation, the exemption of homestead, the administration of estates of decedents whatever to defeat, reduce or affect the right of the Beneficiary under the terms of this Deed of Trust to a sale of the Property for the collection of the Obligations without any prior or different resort for collection, or the right of the Beneficiary under the terms of this Deed of Trust to the payment of such Obligations out of the proceeds of sale of the Property in preference to every other claimant whatever.

(c) To the extent that the Trustor, any partner thereof or any other entity responsible for the payment of the Obligations is now, or at any time or from time to time hereafter is, a partnership, the Trustor and the Beneficiary expressly acknowledge and agree that the Beneficiary is not required to comply with Section 3.05(d) of the Texas Revised Partnership Act, as same may be hereafter amended or modified, or any other or further laws, rules or regulations now or hereafter in effect which may limit the rights and remedies of a creditor to pursue partners of a partnership prior to the pursuit of such creditor's rights and remedies against such partnership.

(d) If any law referred to in this paragraph and now in force, of which the Trustor or the Trustor's heirs, devisees, representatives, successors and assigns and such other persons claiming any interest in the Property might take advantage despite this paragraph, shall hereafter be repealed and cease to be in force, such law shall not

thereafter be deemed to preclude the application of this paragraph.

1.08. Delivery of Possession After Foreclosure. In the event there is a foreclosure sale hereunder and at the time of such sale the Trustor or the Trustor's heirs, devisees, representatives, successors or assigns or any other persons claiming any interest in the Property by, through or under the Trustor are occupying or using the Property, or any part thereof, each and all shall immediately become the tenant of the purchaser at such sale, which tenancy shall be a tenancy from day-to-day, terminable at the will of either landlord or tenant, at a reasonable rental per day based upon the value of the property occupied, such rental to be due daily to the purchaser. In the event the tenant fails to surrender possession of said property upon demand, the purchaser shall be entitled to institute and maintain an action for forcible entry and detainer of said property in the Justice of the Peace Court in the Justice Precinct in which such property, or any part thereof, is situated.

1.09. Waiver of Deficiency Statute.

(a) In the event an interest in any of the Property is foreclosed upon pursuant to a judicial or nonjudicial foreclosure sale, The Trustor agrees that notwithstanding the provisions of Sections 51.003, 51.004, and 51.005 of the Texas Property Code (as the same may be amended from time to time), and to the extent permitted by law, the Beneficiary shall be entitled to seek a deficiency judgment from the Trustor and any other party obligated on the Promissory Note equal to the difference between the amount owing on the Promissory Note and the amount for which the Property was sold pursuant to judicial or nonjudicial foreclosure sale. The Trustor expressly recognizes that this paragraph constitutes a waiver of the above-cited provisions of the Texas Property Code which would otherwise permit the Trustor and other persons against whom recovery of deficiencies is sought (even absent the initiation of deficiency proceedings against them) to present competent evidence of the fair market value of the Property as of the date of the foreclosure sale and offset against any deficiency the amount by which the foreclosure sale price is determined to be less than such fair market value. The Trustor further recognizes and agrees that this waiver creates an irrebuttable presumption that the foreclosure sale price is equal to the fair market value of the Property for purposes of calculating deficiencies owed by the Trustor, and others against whom recovery of a deficiency is sought.

(b) Alternatively, in the event the waiver provided for in subsection (a) above is determined by a court of competent jurisdiction to be unenforceable, to the fullest extent not prohibited by applicable laws, the following shall be the basis for the finder of fact's determination of the fair market value of the Property as of the date of the foreclosure sale in proceedings governed by Sections 51.003, 51.004 and 51.005 of the Texas Property Code (as amended from time to time):

(i) the Property shall be valued in an "as is" condition as of the date of the foreclosure sale, without any assumption or expectation that the Property will be repaired or improved in any manner before a resale of the Property after foreclosure;

(ii) the valuation shall be based upon an assumption that the foreclosure purchaser desires a resale of the Property for cash promptly (but no later than twelve months) following the foreclosure sale;

(iii) all reasonable closing costs customarily borne by the seller in a commercial real estate transaction should be deducted from the gross fair market value of the Property, including, without limitation, brokerage commissions, title insurance, a survey of the Property, tax prorations, seller's attorneys' fees and marketing costs;

(iv) the gross fair market value of the Property shall be further discounted to account for any estimated holding costs associated with maintaining the Property pending sale, including, without limitation, utilities expenses, property management fees, taxes and assessments (to the extent not accounted for in subsection (iii) above) and other maintenance expenses; and

(v) any expert opinion testimony given or considered in connection with a determination of the fair market value of the Property must be given by persons having at least five years experience in appraising property similar to the Property and who have conducted and prepared a complete written appraisal of the Property taking into consideration the factors set forth above.

ARTICLE II

Interest Limitation

2.01. Limitation on Interest. It is expressly stipulated and agreed to be the intent of the Trustor and the Beneficiary at all times to comply with the applicable Texas law governing the maximum rate of interest payable on the Obligations evidenced by the Promissory Note and this Deed of Trust (or applicable United States federal law to the extent that it permits the Beneficiary to contract for, charge, take, reserve or receive a greater amount of interest than under Texas law). If the applicable law is ever judicially interpreted so as to render usurious any amount (i) contracted for, charged, taken, reserved or received pursuant to the Promissory Note, this Deed of Trust, any of the other Security Documents or any other communication or writing by or between the Trustor and the Beneficiary related to the transaction or transactions that are the subject matter of the Loan Documents, (ii) contracted for, charged, taken, reserved or received by reason of the Beneficiary's exercise of the option to accelerate the maturity of the Promissory Note, or (iii) the Trustor will have paid or the Beneficiary will have received by reason of any voluntary prepayment by the Trustor of the Promissory Note, then it is the Trustor's and the Beneficiary's express intent that all amounts charged in excess of the Maximum Lawful Rate (as hereinafter defined) shall be automatically canceled, ab initio, and all amounts in excess of the Maximum Lawful Rate theretofore collected by the Beneficiary shall be credited on the principal balance of this Promissory Note (or, if the Promissory Note has been or would thereby be paid in full, refunded to the Trustor), and the provisions of the Promissory

Note, this Deed of Trust and other Security Documents shall immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity for the execution of any new document, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder and thereunder; provided, however, if the Promissory Note has been paid in full before the end of the stated term of the Promissory Note, then the Trustor and the Beneficiary agree that the Beneficiary shall, with reasonable promptness after the Beneficiary discovers or is advised by the Trustor that interest was received in an amount in excess of the Maximum Lawful Rate, either refund such excess interest to the Trustor and/or credit such excess interest against the Promissory Note then owing by the Trustor to the Beneficiary. The Trustor hereby agrees that as a condition precedent to any claim seeking usury penalties against the Beneficiary, the Trustor will provide written notice to the Beneficiary, advising the Beneficiary in reasonable detail of the nature and amount of the violation, and the Beneficiary shall have sixty (60) days after receipt of such notice in which to correct such usury violation, if any, by either refunding such excess interest to the Trustor or crediting such excess interest against the Promissory Note then owing by the Trustor to the Beneficiary. All sums contracted for, charged, taken, reserved or received by the Beneficiary for the use, forbearance or detention of any debt evidenced by the Promissory Note shall, to the extent permitted by applicable law, be amortized or spread, using the actuarial method, throughout the stated term of the Promissory Note (including any and all renewal and extension periods) until payment in full so that the rate or amount of interest on account of the Promissory Note does not exceed the Maximum Lawful Rate from time to time in effect and applicable to this Promissory Note for so long as debt is outstanding. In no event shall the provisions of Chapter 346 of the Texas Finance Code (which regulates certain revolving credit loan accounts and revolving triparty accounts) apply to the Promissory Note. Notwithstanding anything to the contrary contained herein or in any other Security Documents, it is not the intention of the Beneficiary to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration. To the extent that the Beneficiary is relying on Chapter 303 of the Texas Finance Code to determine the Maximum Lawful Rate payable on the Promissory Note, the Beneficiary will utilize the weekly ceiling from time to time in effect as provided in such Chapter 303, as amended. To the extent United States federal law permits the Beneficiary to contract for, charge, take, receive or reserve a greater amount of interest than under Texas law, the Beneficiary will rely on United States federal law instead of such Chapter 303 for the purpose of determining the Maximum Lawful Rate. Additionally, to the extent permitted by applicable law now or hereafter in effect, the Beneficiary may, at its option and from time to time, utilize any other method of establishing the Maximum Lawful Rate under such Chapter 303 or under applicable law by giving notice, if required, to the Trustor as provided by applicable law now or hereafter in effect. As used hereunder the term "Maximum Lawful Rate" shall mean the maximum lawful rate of interest which may be contracted for, charged, taken, received or reserved by the Beneficiary in accordance with the applicable laws of the State of Texas (or applicable United States federal law to the extent that such law permits The Beneficiary to contract for, charge, take, receive or reserve a greater amount of interest than under Texas law), taking into account all Charges (as hereinafter defined) made in connection with the transaction evidenced by the Promissory Note and the other Security Documents. As used hereunder, the term "Charges" shall mean all fees, charges and/or any other things of value, if any, contracted for, charged, taken, received or reserved by the Beneficiary in connection with the transactions relating to the Promissory Note

and the other Security Documents, which are treated as interest under applicable law.

ARTICLE III

Trustee's Duties and Liability

3.01. No Liability. Trustee shall not be liable for any error of judgment or act done by Trustee, or be otherwise responsible or accountable under any circumstances whatsoever, except if the result of Trustee's gross negligence or willful misconduct. Trustee shall not be personally liable in case of entry by him or anyone acting by virtue of the powers herein granted him upon the Property for debts contracted or liability or damages or damages incurred in the management or operation of the Property. Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by him hereunder or believed by him to be genuine. Trustee shall be entitled to reimbursement for actual expenses incurred by him in the performance of his duties hereunder and to reasonable compensation for such of his services hereunder as shall be rendered. The Trustor will, from time to time, reimburse Trustee for and save and hold him harmless from and against any and all loss, cost, liability, damage and expense whatsoever incurred by him in the performance of his duties.

3.02. Retention of Monies. All monies received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other monies (except to the extent required by law) and Trustee shall be under no liability for interest on any monies received by him hereunder.

3.03. Successor Trustees. Trustee may resign by giving of notice of such resignation in writing to the Beneficiary. If Trustee shall die, resign or become disqualified from acting in the execution of this trust or shall fail or refuse to exercise the same when requested by the Beneficiary or if for any or no reason and without cause the Beneficiary shall prefer to appoint a substitute trustee to act instead of the original Trustee named herein, or any prior successor or substitute trustee, the Beneficiary shall, without any formality or notice to the Trustor or any other person, have full power to appoint a substitute trustee and, if The Beneficiary so elects, several substitute trustees in succession who shall succeed to all the estate, rights, powers and duties of the aforementioned Trustee.

3.04. Succession Instruments. Any new Trustee appointed pursuant to any of the provisions hereof shall, without any further act, deed or conveyance, become vested with all the estates, properties, rights, powers and trusts of its or his predecessor in the rights hereunder with like effect as if originally named as Trustee herein; but, nevertheless, upon the written request of the Beneficiary or his successor trustee, Trustee ceasing to act shall execute and deliver an instrument transferring to such successor trustee, upon the trust herein expressed, all the estates, properties, rights, powers and trusts of Trustee so ceasing to act, and shall duly assign, transfer and deliver any of the property and monies held by Trustee to the successor trustee so appointed in its or his place.

3.05. Performance of Duties by Agents. Trustee may authorize one or more parties to act on his behalf to perform the ministerial functions required of him hereunder, including

without limitation, the transmittal and posting of any notices.

ARTICLE IV

Fixture Filing and Assignment of Rents

4.01. Fixture Filing. Pursuant to the Code, this Deed of Trust shall be effective as a Financing Statement filed as a fixture filing from the date of its filing for record covering and including any and all fixtures of every kind and type affixed to all or any portion of the Property or forming part of all or any portion of the Improvements. The name and address of the Trustor, as debtor, and the Beneficiary (where information concerning the security interest granted hereby may be obtained), as secured party, are as set forth on the cover page of this Deed of Trust. The above described goods are or are to become fixtures related to the Property and the Improvements of which the Trustor is the record title owner. This Deed of Trust shall also be effective as a financing statement covering minerals or the like (including oil and gas) and accounts subject to Section 9.103(e) of the Code, as amended.

4.02. Assignment of Rents. The Trustor acknowledges and agrees that the assignment set forth in Section 2.01 of the body of this Deed of Trust shall be upon the following additional terms:

(a) until an Event of Default and receipt from the Beneficiary of written notice each tenant may pay any and all Rents and other sums set forth above directly to the Trustor, but after written notice, the Trustor covenants to hold any and all such sums in trust for the use and benefit of the Beneficiary;

(b) upon an Event of Default and receipt from The Beneficiary of a written notice, each tenant is hereby authorized and directed, without the need for the prior consent, approval or joinder by the Trustor or any other person, to pay directly to the Beneficiary any and all of such Rents and other sums thereafter accruing;

(c) the Beneficiary shall not be liable for its failure to exercise diligence in the collection of any and all of such Rents and other sums;

(d) the assignment set forth herein shall terminate upon the release of this instrument, but no tenant shall be required to accept notice of any such termination until a copy of any such release, as executed by the Beneficiary, has been delivered to such tenant;

(e) in no event shall the rights set forth in this assignment effect or be construed so as to effect a pro tanto reduction of the Obligations except to the extent, if at all, that the Beneficiary actually receives, after the occurrence of a default and the Beneficiary's election to pursue its rights under this paragraph, Rents and other sums directly from any tenant of all or any portion of the Property and applies same, in the Beneficiary's discretion, to the Obligations; and

(f) The Beneficiary need not institute, prosecute or resort to any legal, equitable or other action, nor deliver any notice or demand, nor take any affirmative action whatsoever after the occurrence of a default in order to enforce and obtain the benefits of the provisions set forth herein.

Notwithstanding anything to the contrary contained herein or otherwise, the Trustor and the Beneficiary intend, clearly and without ambiguity, that the assignment set forth herein shall be deemed and otherwise construed for all purposes to be an absolute, unconditional and presently effective assignment of the Rents and the provisions of clause (a) and clause (b) above are intended solely for the benefit of each tenant and shall never inure to the benefit of the Trustor or any person claiming by, through or under the Trustor.

ARTICLE V

Miscellaneous

5.01. No Partnership. That notwithstanding anything to the contrary contained herein or otherwise (a) the relationship between the Trustor and the Beneficiary hereunder and otherwise shall be deemed, construed and treated by the Trustor and the Beneficiary for all purposes to be solely that of debtor/creditor; (b) the various consent, approval and other rights afforded to the Beneficiary under this Deed of Trust have been granted and designed solely to protect the value of the Property and to assure the Trustor's payment of the Obligations and all of such rights are customarily granted the lenders in a secured lending transactions; (c) the Trustor and the Beneficiary hereby expressly disclaim any sharing of liabilities, losses, costs or expenses with respect to the ownership or operation of all or any portion of the Property, or otherwise; and (d) the terms contained herein are not intended by the Trustor and the Beneficiary and shall not for any purpose be deemed, construed or treated by the Trustor and the Beneficiary so as (i) to create a partnership or joint venture between the Beneficiary and the Trustor or between the Beneficiary and any other party, or (ii) to cause the Beneficiary to be or become liable in any way for the debts and obligations of the Trustor (including, without limitation, any losses attributable to the Trustor's operation of the Property) or any other party.

5.02. Indemnity. It is the express intention of the Trustor and the Trustor hereby agrees that the indemnities set forth in this Deed of Trust will apply to and fully protect each indemnified party even though any claims, demands, liabilities, losses, damages, causes of action, judgments, penalties, costs and expenses (including without limitation reasonable attorneys' fees) then the subject of indemnification may have been caused by, arise out of, or are otherwise attributable to, directly or indirectly, the negligence (excluding gross negligence or willful misconduct) in whole or in part of such indemnified party and/or any other party.

The Trustor's Initials: _____

5.03. Incorporation By Reference. The terms, covenants and provisions of the Promissory Note and the other Security Documents have been incorporated into this Deed of

Trust by this reference. All persons from time to time having an interest in all or any portion of the Property are hereby placed on notice of all of the terms, covenants and provisions of the instruments incorporated herein and that copies of same may be obtained by those having an appropriate interest in the Property or any portion thereof upon written request to the Beneficiary at the address set forth on the cover page of this Deed of Trust. Any such request shall include the name and address of the requesting party and also contain a brief explanation of the nature and reason for such request.

5.04. WAIVER OF JURY TRIAL. THE TRUSTOR AND THE BENEFICIARY BY ITS ACCEPTANCE HEREOF, EACH HEREBY ABSOLUTELY, IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY AND THE RIGHT TO CLAIM OR RECEIVE CONSEQUENTIAL OR PUNITIVE DAMAGES IN ANY LITIGATION, ACTION, CLAIM, SUIT OR PROCEEDING, AT LAW OR IN EQUITY, ARISING OUT OF, PERTAINING TO OR IN ANY WAY ASSOCIATED WITH THE OBLIGATIONS, THE RELATIONSHIP OF THE PARTIES HERETO AS THE BENEFICIARY AND THE TRUSTOR, THE PROMISSORY NOTE, THIS DEED OF TRUST, THE OTHER SECURITY DOCUMENTS, THE PROPERTY OR THE ACTIONS OF THE TRUSTOR AND/OR THE BENEFICIARY IN CONNECTION WITH ANY OF THE FOREGOING.

5.05. WAIVER OF CONSUMER RIGHTS. TO THE EXTENT NOW OR HEREFTER APPLICABLE, THE TRUSTOR HEREBY WAIVES THE TRUSTOR'S RIGHTS UNDER THE DECEPTIVE TRADE PRACTICES - CONSUMER PROTECTION ACT, SECTION 17.41 ET SEQ., BUSINESS & COMMERCE CODE, A LAW THAT GIVES CONSUMERS SPECIAL RIGHTS AND PROTECTIONS. AFTER CONSULTATION WITH AN ATTORNEY OF THE TRUSTOR'S OWN SELECTION, THE TRUSTOR VOLUNTARILY CONSENTS TO THIS WAIVER.

5.06. SECTION 26.02 NOTICE. IN ACCORDANCE WITH SECTION 26.02 OF THE TEXAS BUSINESS AND COMMERCE CODE, THIS DEED OF TRUST AND THE OTHER DOCUMENTS EVIDENCING, SECURING OR PERTAINING TO ALL OR ANY PORTION OF THE OBLIGATIONS REPRESENT THE FINAL AGREEMENT BETWEEN THE TRUSTOR AND THE BENEFICIARY AS TO THE SUBJECT MATTER THEREOF AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF SUCH PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN SUCH PARTIES.

5.07. TEXAS FINANCE CODE SECTION 307.052 COLLATERAL PROTECTION INSURANCE NOTICE: (A) THE TRUSTOR IS REQUIRED TO: (I) KEEP THE PROPERTY INSURED AGAINST DAMAGE IN THE AMOUNT THE BENEFICIARY SPECIFIES; (II) PURCHASE THE INSURANCE FROM AN INSURER THAT IS AUTHORIZED TO DO BUSINESS IN THE STATE OF TEXAS OR AN ELIGIBLE SURPLUS LINES INSURER; AND (III) NAME THE BENEFICIARY AS THE PERSON TO BE PAID UNDER THE POLICY IN THE EVENT OF A LOSS; (B) THE TRUSTOR MUST, IF REQUIRED BY THE BENEFICIARY, DELIVER TO THE BENEFICIARY A COPY OF THE POLICY AND PROOF OF THE PAYMENT OF PREMIUMS; AND (C) IF THE TRUSTOR FAILS TO MEET ANY REQUIREMENT LISTED IN PARAGRAPH (A) OR (B), THE BENEFICIARY MAY

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OBTAIN COLLATERAL PROTECTION INSURANCE ON BEHALF OF THE TRUSTOR AT THE TRUSTOR'S EXPENSE.]

PARENT'S PLAN EXHIBIT 14
FORM OF PARENT PLEDGE AGREEMENT

PLEDGE AGREEMENT

PLEDGE AGREEMENT dated as of [____], 2009, between ASARCO USA INCORPORATED, a corporation duly organized and validly existing under the laws of the State of Delaware (the “Pledgor”), and ASARCO ASBESTOS PERSONAL INJURY SETTLEMENT TRUST, a statutory trust organized under the laws of the State of Delaware (the “Pledgee”).

ASARCO LLC, a limited liability company organized under the laws of the State of Delaware (the “Payor”), is the maker of a promissory note dated as of the date hereof (as modified and supplemented and in effect from time to time, the “Asbestos Trust Promissory Note”) pursuant to which the Payor promised to pay to the order of the Pledgee the amount of \$280,000,000, subject to the terms and conditions thereof.

To induce the Pledgee to accept the Asbestos Trust Promissory Note, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Pledgor has agreed to grant a security interest in the Collateral (as hereinafter defined) as security for the Secured Obligations (as hereinafter defined).

Accordingly, the parties hereto agree as follows:

Section 1. Definitions, Etc.

1.01 Terms Generally. Terms used herein and not otherwise defined herein are used herein as defined in the Asbestos Trust Promissory Note.

1.02 Certain Uniform Commercial Code Terms. As used herein, the terms “General Intangible”, “Investment Property” and “Proceeds” have the respective meanings set forth in Article 9 of the NYUCC.

1.03 Additional Definitions. In addition, as used herein:

“Collateral” has the meaning assigned to such term in Section 3.

“Initial Pledged Shares” means the Shares of the Payor identified in Annex 3.

“NYUCC” means the Uniform Commercial Code as in effect from time to time in the State of New York.

“Pledged Shares” means, collectively, (i) the Initial Pledged Shares and (ii) all other Shares of the Payor now or hereafter owned by the Pledgor, together in each case with (a) all certificates representing the same, (b) all shares, securities, moneys or other property representing a dividend on or a distribution or return of capital on or in respect of the Pledged Shares, or resulting from a split-up, revision, reclassification or other like change of the Pledged Shares or otherwise received in exchange therefor, and any

warrants, rights or options issued to the holders of, or otherwise in respect of, the Pledged Shares, and (c) all Shares of any successor entity of any merger or consolidation by the Payor, provided that the Pledged Shares shall in no event constitute more than or less than 51% of the issued and outstanding Shares of the Payor (or any successor entity of any merger or consolidation by the Payor) beneficially owned by the Pledgor at any time.

“Secured Obligations” means, collectively, (a) the obligations of the Payor under the Asbestos Trust Promissory Note to pay the principal of and interest on the Asbestos Trust Promissory Note and all other amounts whatsoever, whether direct or indirect, absolute or contingent, now or hereafter from time to time owing to the Pledgee under the Asbestos Trust Promissory Note, (b) all obligations of the Pledgor to the Pledgee hereunder and (c) in the case of each of the foregoing, including all interest thereon and expenses related thereto, including any interest or expenses accruing or arising after the commencement of any case with respect to the Payor under the United States Bankruptcy Code or any other bankruptcy or insolvency law (whether or not such interest or expenses are allowed or allowable as a claim in whole or in part in such case).

“Shares” means the limited liability company interests of any class of the Payor.

Section 2. Representations and Warranties. The Pledgor represents and warrants to the Pledgee that:

2.01 Organizational Matters; Enforceability, Etc.

The Pledgor is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, has all requisite corporate power, and has all material governmental licenses, authorizations, consents and approvals, necessary to own its assets and carry on its business as now being or as proposed to be conducted and is qualified to do business in all jurisdictions in which the nature of the business conducted by it makes such qualification necessary.

None of the execution and delivery of this Agreement, the consummation of the transactions herein contemplated and compliance with the terms and provisions hereof will conflict with or result in a breach of, or require any consent under, the certificate of incorporation or by-laws (or any equivalent documents) of the Pledgor, or any applicable law or regulation, or any order, writ, injunction or decree of any court or governmental authority or agency, or any agreement or instrument to which the Pledgor is a party or by which the Pledgor is bound or to which the Pledgor is subject, or constitute a default under, or, except for the security interests created pursuant hereto, result in the creation of any Lien under, any such agreement or instrument.

The Pledgor has all necessary corporate power and authority to execute, deliver and perform its obligations under this Agreement; the execution, delivery and performance by the Pledgor of this Agreement have been duly authorized by all necessary corporate action on its part; and this Agreement has been duly and validly executed and delivered by the Pledgor and constitutes its legal, valid and binding obligation, enforceable against the Pledgor in accordance

with its terms, except as the enforceability of thereof is subject to the application of general principles of equity (regardless of whether considered in a proceeding in equity or at law), including, without limitation, (i) the possible unavailability of specific performance, injunctive relief or any other equitable remedy and (ii) concepts of materiality, reasonableness, good faith and fair dealing.

Except for (x) filings and registrations in respect of the security interests created pursuant hereto and (y) any authorization, approval, consent, filing or registration in connection with the bankruptcy proceedings of the Payor and certain related debtors under Chapter 11 of the United States Bankruptcy Code in cases jointly administered under Case No. 05-21207 in the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division, no authorizations, approvals or consents of, and no filings or registrations with, any governmental or regulatory authority or agency are necessary for the execution, delivery or performance by the Pledgor of this Agreement or for the validity or enforceability hereof.

2.02 Title. The Pledgor is the sole beneficial owner of the Collateral in which it purports to grant a security interest pursuant to Section 3 and no Lien exists upon the Collateral (and no right or option to acquire the same exists in favor of any other Person) other than the security interest created or provided for herein, which security interest constitutes a valid first and prior perfected Lien on the Collateral.

2.03 Names, Etc. The full and correct legal name, type of organization, jurisdiction of organization, organizational ID number (if applicable) and mailing address of the Pledgor as of the date hereof are correctly set forth in Annex 1.

2.04 Changes in Circumstances. The Pledgor has not (a) within the period of four months prior to the date hereof, changed its location (as defined in Section 9-307 of the NYUCC), (b) except as specified in Annex 1, heretofore changed its name, or (c) except as specified in Annex 2, heretofore become a "new debtor" (as defined in Section 9-102(a)(56) of the NYUCC) with respect to a currently effective security agreement previously entered into by any other Person.

2.05 Pledged Shares. The Initial Pledged Shares constitute 51% of the issued and outstanding Shares of the Payor beneficially owned by the Pledgor on the date hereof, whether or not registered in the name of the Pledgor.

The Initial Pledged Shares are, and all other Pledged Shares in which the Pledgor shall hereafter grant a security interest pursuant to Section 3 will be, duly issued and outstanding, and none of such Pledged Shares are or will be subject to any contractual restriction, or any restriction under the operating agreement or other organizational instrument of the Payor, upon the transfer of such Pledged Shares (except for any such restriction contained herein or under such organizational instruments).

Section 3. Collateral. As collateral security for the payment by the Payor in full when due (whether at stated maturity, by acceleration or otherwise) of the Secured Obligations, the Pledgor hereby pledges and grants to the Pledgee a security interest in all of the Pledgor's

right, title and interest in, to and under the following property, in each case whether now owned by the Pledgor or hereafter acquired and whether now existing or hereafter coming into existence (all of the property described in this Section 3 being collectively referred to herein as "Collateral"):

(a) the Pledged Shares; and

(b) all Proceeds of any of the Collateral and, to the extent related to any Collateral, all books, correspondence, credit files, records, invoices and other papers (including all tapes, cards, computer runs and other papers and documents in the possession or under the control of the Pledgor or any computer bureau or service company from time to time acting for the Pledgor).

Section 4. Further Assurances; Remedies. In furtherance of the grant of the security interest pursuant to Section 3, the Pledgor hereby agrees with the Pledgee as follows:

4.01 Delivery and Other Perfection. To the extent any Pledged Shares are certificated, the Pledgor shall promptly deliver to the Pledgee the certificates representing such Pledged Shares, together with duly executed forms of assignment in blank and undated sufficient to transfer title thereto, and the Pledged Shares shall be held by the Pledgee during the term of this Pledge Agreement subject to the terms and conditions contained herein. To the extent any Pledged Shares are not certificated, the Pledgor shall promptly from time to time give, execute, deliver, file, record, authorize or obtain all such financing statements, continuation statements, notices, instruments, documents, agreements or consents or other papers as may be necessary or desirable in the judgment of the Pledgee to create, preserve, perfect, maintain the perfection of or validate the security interest granted pursuant hereto or to enable the Pledgee to exercise and enforce its rights hereunder with respect to such security interest.

4.02 Other Financing Statements or Control. The Pledgor shall not (a) file or suffer to be on file, or authorize or permit to be filed or to be on file, in any jurisdiction, any financing statement or like instrument with respect to any of the Collateral in which the Pledgee is not named as the sole secured party, or (b) cause or permit any Person other than the Pledgee to have "control" (as defined in Section 9-106 of the NYUCC) over any part of the Collateral, it being understood that this Section 4.02 does not prohibit the filing of any such financing statement or like instrument or the granting of "control" to any such other Person with respect to any of the Shares of the Payor that is not part of the Collateral.

4.03 Preservation of Rights. The Pledgee shall not be required to take steps necessary to preserve any rights against prior parties to any of the Collateral.

4.04 Special Provisions Relating to Pledged Shares.

(a) Percentage Pledged. The Pledgor will cause the Pledged Shares to constitute at all times 51% of the issued and outstanding Shares of the Payor (or any successor entity of any merger or consolidation by the Payor) beneficially owned by the Pledgor.

(b) Certain Rights of Pledgor. So long as no Event of Default shall have occurred and be continuing, the Pledgor shall have the right to exercise all voting, consensual and other powers of ownership pertaining to the Pledged Shares for all purposes not inconsistent with the terms of this Agreement, the Asbestos Trust Promissory Note or any other instrument or agreement referred to herein or therein, provided that the Pledgee shall execute and deliver to the Pledgor or cause to be executed and delivered to the Pledgor all such proxies, powers of attorney, dividend and other orders, and all such instruments, without recourse, as the Pledgor may reasonably request for the purpose of enabling the Pledgor to exercise the rights and powers that the Pledgor is entitled to exercise pursuant to this Section 4.04(b).

(c) Dividends, Etc. Pre-Default. Unless and until an Event of Default shall have occurred and be continuing, the Pledgor shall be entitled to receive and retain any dividends, distributions or proceeds on the Pledged Shares paid in cash out of earned surplus.

4.05 Remedies.

(a) Rights and Remedies Generally upon Default. If an Event of Default shall have occurred and is continuing, the Pledgee shall have all of the rights and remedies with respect to the Collateral of a secured party under the NYUCC (whether or not the NYUCC is in effect in the jurisdiction where the rights and remedies are asserted) and such additional rights and remedies to which a secured party is entitled under the laws in effect in any jurisdiction where any rights and remedies hereunder may be asserted.

(b) Certain Securities Act Limitations. The Pledgor recognizes that, by reason of certain prohibitions contained in the Securities Act of 1933, as amended, and applicable state securities laws, the Pledgee may be compelled, with respect to any sale of all or any part of the Collateral, to limit purchasers to those who will agree, among other things, to acquire the Collateral for their own account, for investment and not with a view to the distribution or resale thereof. The Pledgor acknowledges that any such private sales may be at prices and on terms less favorable to the Pledgee than those obtainable through a public sale without such restrictions, and, notwithstanding such circumstances, agrees that any such private sale shall be deemed to have been made in a commercially reasonable manner and that the Pledgee shall have no obligation to engage in public sales and no obligation to delay the sale of any Collateral for the period of time necessary to permit the Payor to register it for public sale.

(c) Notice. The Pledgor agrees that to the extent the Pledgee is required by applicable law to give reasonable prior notice of any sale or other disposition of any Collateral, ten Business Days' notice shall be deemed to constitute reasonable prior notice.

4.06 Locations; Names, Etc. Without at least 30 days' prior written notice to the Pledgee, the Pledgor shall not (i) change its location (as defined in Section 9-307 of the NYUCC), (ii) change its name from the name shown as its current legal name on Annex 1, or (iii) agree to or authorize any modification of the terms of any item of Collateral that would

result in a change thereof from one Uniform Commercial Code category to another such category (such as from a General Intangible to Investment Property), if the effect thereof would be to result in a loss of perfection of, or diminution of priority for, the security interests created hereunder in such item of Collateral, or the loss of control (within the meaning of Section 9-106 of the NYUCC) over such item of Collateral.

4.07 Private Sale. The Pledgee shall incur no liability as a result of the sale of the Collateral, or any part thereof, at any private sale pursuant to Section 4.05 conducted in a commercially reasonable manner. The Pledgor hereby waives any claims against the Pledgee arising by reason of the fact that the price at which the Collateral may have been sold at such a private sale was less than the price that might have been obtained at a public sale or was less than the aggregate amount of the Secured Obligations, even if the Pledgee accepts the first offer received and does not offer the Collateral to more than one offeree.

4.08 Application of Proceeds. Except as otherwise herein expressly provided and except as provided below in this Section 4.08, the Proceeds of any collection, sale or other realization of all or any part of the Collateral pursuant hereto shall be applied by the Pledgee:

First, to the payment of the costs and expenses of such collection, sale or other realization, including reasonable out-of-pocket costs and expenses of the Pledgee and the fees and expenses of its agents and counsel, and all expenses incurred and advances made by the Pledgee in connection therewith;

Next, to the payment in full of the Secured Obligations; and

Finally, to the payment to the Pledgor, or its successors or assigns, or as a court of competent jurisdiction may direct, of any surplus then remaining.

4.09 Attorney-in-Fact. Without limiting any rights or powers granted by this Agreement to the Pledgee while no Event of Default has occurred and is continuing, upon the occurrence and during the continuance of any Event of Default the Pledgee is hereby appointed the attorney-in-fact of the Pledgor for the purpose of carrying out the provisions of this Section 4 and taking any action and executing any instruments that the Pledgee may deem necessary or advisable to accomplish the purposes hereof, which appointment as attorney-in-fact is irrevocable and coupled with an interest. Without limiting the generality of the foregoing, so long as the Pledgee shall be entitled under this Section 4 to make collections in respect of the Collateral, the Pledgee shall have the right and power to receive, endorse and collect all checks made payable to the order of the Pledgor representing any dividend, payment or other distribution in respect of the Collateral or any part thereof and to give full discharge for the same.

4.10 Perfection and Recordation. The Pledgor authorizes the Pledgee to file Uniform Commercial Code financing statements describing the Collateral as set forth in Section 3 (provided that no such description shall be deemed to modify the description of Collateral set forth in Section 3).

4.11 Termination. When all Secured Obligations shall have been paid in full, this Agreement shall terminate, and the Pledgee shall forthwith cause to be assigned, transferred and delivered, against receipt but without any recourse, warranty or representation whatsoever, any remaining Collateral and money received in respect thereof, to or on the order of the Pledgor. The Pledgee shall also, at the expense of the Pledgor, execute and deliver to the Pledgor upon such termination such Uniform Commercial Code termination statements and such other documentation as shall be reasonably requested by the Pledgor to effect the termination and release of the Liens on the Collateral as required by this Section 4.11.

4.12 Further Assurances. The Pledgor agrees that, from time to time upon the written request of the Pledgee, the Pledgor will execute and deliver such further documents and do such other acts and things as the Pledgee may reasonably request in order fully to effect the purposes of this Agreement.

Section 5. Miscellaneous.

5.01 Notices. All notices, requests, consents and demands hereunder shall be in writing and telecopied or delivered:

- (a) in the case of the Pledgor, to it at:

ASARCO USA Incorporated
[Address]
Attention: [_____]
Telephone No.: [_____]
Telecopier No.: [_____]

with a copy to:

Americas Mining Corporation
ASARCO Incorporated
c/o [ASARCO Incorporated]
[Address]
Attention: [_____]
Telephone No.: [_____]
Telecopier No.: [_____]

and

ASARCO LLC
[Address]
Attention: [_____]
Telephone No.: [_____]
Telecopier No.: [_____]

- (b) in the case of the Pledgee, to it at:

Asarco Asbestos Personal Injury Settlement Trust

[Address]

Attention: [_____]

Telephone No.: [_____]

Telecopier No.: [_____]

(c) or, as to either the Pledgor or the Pledgee, at such other address as shall be designated by such party in a notice to the other party.

Except as otherwise provided in this Agreement, all such communications shall be deemed to have been duly given when transmitted by telecopier or personally delivered or, in the case of a mailed notice, upon receipt, in each case given or addressed as aforesaid.

5.02 No Waiver. No failure on the part of the Pledgee to exercise, and no course of dealing with respect to, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise by the Pledgee of any right, power or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The remedies herein are cumulative and are not exclusive of any remedies provided by law.

5.03 Amendments, Etc. The terms of this Agreement may be waived, altered or amended only by an instrument in writing duly executed by the Pledgor and the Pledgee. Any such amendment or waiver shall be binding upon the Pledgor and the Pledgee.

5.04 Expenses. The Pledgor agrees to reimburse the Pledgee for all reasonable costs and expenses incurred by the Pledgee (including the reasonable fees and expenses of legal counsel) in connection with (a) any Event of Default and any enforcement or collection proceeding resulting therefrom, including all manner of participation in or other involvement with (i) performance by the Pledgee of any obligations of the Pledgor in respect of the Collateral that the Pledgor has failed or refused to perform, (ii) bankruptcy, insolvency, receivership, foreclosure, winding up or liquidation proceedings, or any actual or attempted sale, or any exchange, enforcement, collection, compromise or settlement in respect of any of the Collateral, and for the care of the Collateral and defending or asserting rights and claims of the Pledgee in respect thereof, by litigation or otherwise, including expenses of insurance, (iii) judicial or regulatory proceedings and (iv) workout, restructuring or other negotiations or proceedings (whether or not the workout, restructuring or transaction contemplated thereby is consummated) and (b) the enforcement of this Section 5.04, and all such costs and expenses shall be Secured Obligations entitled to the benefits of the collateral security provided pursuant to Section 3.

5.05 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the Pledgor and the Pledgee (provided that neither party shall assign or transfer any of its rights or obligations hereunder without the prior written consent of the other party).

5.06 Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart.

5.07 Governing Law; Submission to Jurisdiction; Etc.

(a) Governing Law. This Agreement shall be governed by, and construed in accordance with, the law of the State of New York.

(b) Submission to Jurisdiction. The Pledgor hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of the Supreme Court of the State of New York sitting in New York County and of the United States District Court for the Southern District of New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that the Pledgee may otherwise have to bring any action or proceeding relating to this Agreement against the Pledgor or its properties in the courts of any jurisdiction.

(c) Waiver of Venue. The Pledgor hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement in any court referred to in paragraph (b) of this Section 5.07. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Service of Process. Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 5.01. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

5.08 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE

BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 5.08.

5.09 Captions. The captions and section headings appearing herein are included solely for convenience of reference and are not intended to affect the interpretation of any provision of this Agreement.

5.10 Agents and Attorneys-in-Fact. The Pledgee may employ agents and attorneys-in-fact in connection herewith and shall not be responsible for the negligence or misconduct of any such agents or attorneys-in-fact selected by it in good faith.

5.11 Severability. If any provision hereof is invalid and unenforceable in any jurisdiction, then, to the fullest extent permitted by law, (a) the other provisions hereof shall remain in full force and effect in such jurisdiction and shall be liberally construed in favor of the Pledgee in order to carry out the intentions of the parties hereto as nearly as may be possible and (b) the invalidity or unenforceability of any provision hereof in any jurisdiction shall not affect the validity or enforceability of such provision in any other jurisdiction.

5.12. Entire Agreement. This Agreement constitutes the entire contract among the parties relating to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Pledge Agreement to be duly executed and delivered as of the day and year first above written.

ASARCO USA INCORPORATED

By _____

Name:

Title:

ASARCO ASBESTOS PERSONAL INJURY
SETTLEMENT TRUST

as Pledgee

By _____

Name:

Title:

ANNEX 1

FILING DETAILS

[See Sections 2.03 and 2.04 and 4.06]

ANNEX 2

NEW DEBTOR EVENTS

[See Section 2.04]

ANNEX 3

PLEDGED SHARES

[See definition of “Initial Pledged Shares” in
Sections 1.03 and 2.05]

PARENT'S PLAN EXHIBIT 15
SCHEDULE OF OWNED STRATEGIC PROPERTIES

OWNED STRATEGIC PROPERTIES
Ray Complex, Ray Complex Land Exchange, Ray Mine Area Pinal County, AZ
Mission Mine Complex, AZ
Hayden Mine Complex, AZ
Silver Bell Well Field, AZ
KCC Smelter, AZ
Amarillo Copper Refinery, TX

PARENT'S PLAN EXHIBIT 16
FORM OF LITIGATION TRUST AGREEMENT

LITIGATION TRUST AGREEMENT

This Litigation Trust Agreement (the “Litigation Trust Agreement” or this “Agreement”), dated as of _____, 2009, and effective as of the Effective Date, is established by ASARCO LLC (“ASARCO”), _____ (the “Litigation Trustee”) and _____ (the “Delaware Trustee” and, together with the Litigation Trustee, the “Trustees”), and is executed in connection with the Parent’s Modified Fifth Amended Plan of Reorganization for the Debtors under Chapter 11 of the United States Bankruptcy Code, dated as of July 2, 2009 (as the same may be modified or amended from time to time, the “Parent’s Plan”), which Parent’s Plan provides for, among other things, the establishment of a trust evidenced hereby (the “Litigation Trust”). Except with respect to the terms defined herein, all capitalized terms contained herein shall have the meanings ascribed to them in the Parent’s Plan.

WITNESSETH

1. 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.
2. The Parent’s Plan provides that 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. 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.
3. 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 Trustees; second, to the Litigation Trust Beneficiaries. In no event shall any holder of an Allowed Claim receive distributions from the Litigation Trust which, when combined with Available Cash or other forms of consideration provided to such holder with respect such Claim, exceed the Allowed amount of such Claim. Upon Payment in Full of all Allowed Claims, all remaining proceeds or other Cash of the Litigation Trust, if any, shall be distributed to Reorganized ASARCO.
4. 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.

5. 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. 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.

6. The Litigation Trustee shall distribute: (i) 50% of the Litigation Trust Interests (the "Distributed Litigation Trust Interests"), Pro Rata, to holders of Claims in Classes 3, 5 and 6; and (ii) 50% of the Litigation Trust Interests to Reorganized ASARCO (the "Retained Litigation Trust Interests").

7. Upon Payment in Full of all Allowed Claims in Classes 3, 5 and 6 (and the resolution of all Disputed Claims in Classes 3, 5 and 6), the Litigation Trustee shall redistribute the Distributed Litigation Trust Interests, Pro Rata, to the holders of Allowed Class 9 Claims (and, pending resolution of Disputed Claims in Class 9, the Disputed Claims Reserve). Upon Payment in Full of all Allowed Claims in Class 9, the Litigation Trustee shall redistribute the Distributed Litigation Trust Interests, Pro Rata, to the holders of Allowed Class 10 Claims (and, pending resolution of Disputed Claims in Class 10, the Disputed Claims Reserve). Upon Payment in Full of all Allowed Claims in Class 10, the Litigation Trustee shall redistribute the Distributed Litigation Trust Interests to Reorganized ASARCO.

8. 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 owners of their proportionate share of the assets of the Litigation Trust. Accordingly, for federal income tax purposes, 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) 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 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 shall be taxed to the Litigation Trust Beneficiaries on a current basis.

9. The Bankruptcy Court shall have jurisdiction over the Litigation Trust and the Litigation Trust Claims as provided herein and in the Parent's Plan and over any disputes hereunder not resolved by mediation in accordance with Section 12.7.

10. The 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, ASARCO and the Trustees agree as follows:

ARTICLE I. DEFINITIONS AND CONSTRUCTION

1.1 General Construction. As used in this Litigation Trust Agreement, the masculine, feminine and neuter genders, and the plural and singular numbers shall be deemed to include the others in all cases where they would apply. "Includes" and "including" are not limiting, and "or" is not exclusive. References to "Articles," "Sections" and other subdivisions, unless referring specifically to the Parent's Plan or provisions of the Bankruptcy Code, the Bankruptcy Rules, or other law, statute or regulation, refer to the corresponding Articles, Sections, and other subdivisions of this Litigation Trust Agreement, and the words "herein," "hereto," "hereafter," and words of similar import refer to this Litigation Trust Agreement as a whole and not to any particular Article, Section, or subdivision of this Agreement.

1.2 Incorporation of Parent's Plan. The Parent's Plan is hereby incorporated into this Agreement and made a part hereof by this reference; *provided, however*, that in the event of any conflict between the terms of the Parent's Plan and this Agreement, the terms of the Parent's Plan shall control and govern.

ARTICLE II. ESTABLISHMENT, PURPOSE AND FUNDING OF THE LITIGATION TRUST

2.1 Creation and Name. Pursuant to the Parent's Plan, the Litigation Trustee hereby establishes the Litigation Trust, which shall be known as the "ASARCO Litigation Trust." The Trustees may conduct the affairs of the Litigation Trust under the name of "ASARCO Litigation Trust."

2.2 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.

2.3 Transfer of Assets to the Litigation Trustee.

2.3.1 In accordance with the Parent's Plan and Section 2.5 hereof, 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' 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. 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.

2.3.2 When and as the Litigation Trust liquidates any Litigation Trust Claim, the Litigation Trust shall take any litigation proceeds subject to and net of any valid claim, Lien or other encumbrance that may be created under the Bankruptcy Code or other applicable law.

2.3.3 The Litigation Trust Claims, together with all income, proceeds, assets, properties, rights and securities arising therefrom transferred to the Litigation Trust shall be referred to herein as the "Trust Property." The Litigation Trustee agrees to accept and hold the Trust Property in trust for the Litigation Trust Beneficiaries, subject to the terms of the Parent's Plan and this Litigation Trust Agreement.

2.4 Funding of Litigation Trust.

2.4.1 Reorganized ASARCO shall reimburse the reasonable administrative fees and expenses of the Litigation Trust in the ordinary course.

2.5 Title to Assets.

2.5.1 Upon the transfer of the Litigation Trust Claims to the Litigation Trust, Reorganized ASARCO shall have no interest in or obligation with respect to the Litigation Trust Claims or the Litigation Trust, except as a Litigation Trust Beneficiary.

2.5.2 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 grantors and owners of their proportionate share of the assets of the Litigation Trust.

2.5.3 For federal income tax purposes, 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) 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 Litigation Trust pursuant to Section 2.3 hereof is a deemed transfer to the Litigation Trust Beneficiaries (as of the Initial Distribution Date), followed by a deemed transfer by such Litigation Trust Beneficiaries to the Litigation Trust, and all income and gain of the Litigation Trust which is earned after such deemed transfer shall be taxed to the Litigation Trust Beneficiaries on a current basis.

2.5.4 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 Section 2.5.3 hereof and as provided in the Parent's Plan, 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, shall 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) shall utilize such fair market value determined by the Litigation Trustee for all federal income tax purposes.

2.6 Securities Law. 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.

ARTICLE III. THE TRUSTEES

3.1 Appointment and Acceptance of Trustees.

3.1.1 In accordance with the provisions of the Parent’s Plan and subject to the provisions of the Confirmation Order, _____ is hereby named, constituted, and appointed as Litigation Trustee to hold, manage and liquidate the Trust Property, to distribute litigation proceeds and other Cash subject to the conditions set forth herein and in the Parent’s Plan and to manage the Trust Property in accordance with this Agreement and the Parent’s Plan. _____ is willing, and does hereby accept the appointment, to act and serve as Litigation Trustee of the Litigation Trust and to hold the Trust Property and administer the Litigation Trust pursuant to the terms of this Agreement and the Parent’s Plan.

3.1.2 In accordance with the provisions of the Parent’s Plan and subject to the provisions of the Confirmation Order, [_____] of Delaware is hereby named, constituted, and appointed as Delaware Trustee effective 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 Litigation Trust.

3.2 Generally. The Litigation Trustees’ powers are exercisable solely in a fiduciary capacity consistent with, and in furtherance of, the purposes of the Litigation Trust and not otherwise, except that the Litigation Trustees may deal with the Trust Property for their own account as permitted by Section 3.6.

3.3 Liability of Trustees.

3.3.1 In no event shall the Trustees be personally liable for any claim asserted against the Litigation Trust. Notwithstanding anything to the contrary set forth herein, no provision of this Litigation Trust Agreement shall be construed to relieve any of the Trustees from liability

for his own grossly negligent actions, his own grossly negligent failure to act, or his own fraud or willful misconduct, except that:

3.3.2 the Trustees shall be liable only for the performance of such duties and obligations as are specifically set forth in this Litigation Trust Agreement; and

3.3.3 a Trustee shall not be liable for any error of judgment made in good faith, or with respect to any action taken or omitted to be taken in good faith, unless such Trustee was reckless and grossly negligent.

3.4 Reliance by Trustees. Except as otherwise provided in Section 3.3:

3.4.1 the Trustees 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 either of them to be genuine and to have been signed or presented by the proper party or parties;

3.4.2 the Trustees may consult with independent legal counsel to be selected by each of them, and the Trustees shall not be liable for any action taken or omitted to be taken by each of them in accordance with the advice of such counsel; and

3.4.3 persons dealing with the Trustees shall look only to the Trust Property to satisfy any liability incurred by the Trustees to such person in carrying out the terms of this Litigation Trust Agreement, and the Trustees shall have no personal obligation to satisfy any such liability.

3.4.4 In the event that a Trustee is unable to decide between alternative courses of action, or is unsure as to the application of any provision of this Agreement, or such provision is ambiguous as to its application, or is, or appears to be, in conflict with any other applicable provision, or in the event that this Agreement permits any determination by the Trustees or is silent or is incomplete as to the course of action which the Trustees are required to take with respect to a particular set of facts, such Trustee or Trustees may give notice (in such form as shall be appropriate under the circumstances) to the Bankruptcy Court requesting instructions and, to the extent that such Trustee or Trustees shall have acted or refrained from acting in good faith in accordance with any instructions received from the Bankruptcy Court, the Trustee or Trustees shall not be liable on account of such action or inaction to any person. If the Trustee or Trustees shall not have received appropriate instructions within ten days of such notice (or within such shorter period of time as may be specified in such notice), the Trustee or Trustees may, but shall be under no duty to, take or refrain from taking the action, not inconsistent with this Agreement, as the Trustee or Trustees shall deem to be in the best interest of the Litigation Trust Beneficiaries and the Trustee or Trustees shall have no liability to any person for the action or inaction.

3.5 Compensation. As compensation, the Litigation Trustee shall be entitled to receive \$[] per hour, payable monthly, for the performance of services provided under and pursuant to this Litigation Trust Agreement. The Delaware Trustee shall be entitled to receive \$[] per annum, payable on [_____].

3.6 Expense Reimbursement.

3.6.1 The Trust Property shall be subject to the claims of the Trustees. The Litigation Trustee shall be entitled to reimburse the Trustees out of any available Cash in the Litigation Trust for their actual out-of-pocket expenses and against and from any and all loss, liability, expense, or damage which the Trustees or any member may sustain in good faith and without willful misconduct, gross negligence, or fraud in the exercise and performance of any of the powers and duties of the Trustees.

3.6.2 All reasonable compensation and other amounts payable to the Trustees shall be paid from the assets of the Litigation Trust and not by Reorganized ASARCO, the Parent, or the Parent's Plan Administrator (unless otherwise consented to by same). If the Cash in the Litigation Trust shall be insufficient to compensate and reimburse the Trustees, as the case may be, for any amounts to which they are entitled hereunder, then the Litigation Trustees are hereby authorized, subject to Section 5.5 hereof, to reduce to Cash that portion of the Trust Property necessary to pay the compensation and reimbursement.

3.7 Indemnification. The Litigation Trust Beneficiaries shall indemnify, defend and hold harmless out of Trust Property, as set forth below in this Section 3.7, the Trustees (in both their individual and trustee capacities) and all agents and employees of the Trustees (collectively, including the Trustees in their individual capacities, the "Indemnified Persons") from and against any and all losses, damages, liabilities, claims, actions, suits, costs, expenses, disbursements (including the reasonable fees and expenses of counsel), taxes and penalties of any kind and nature whatsoever, to the extent that such expenses arise out of or are imposed upon or asserted at any time against one or more Indemnified Persons with respect to the performance of this Agreement, the creation, operation, administration or termination of the Litigation Trust, or the transactions contemplated hereby (collectively, "Indemnified Expenses"), *provided* that no Litigation Trust Beneficiary be required to indemnify an Indemnified Person for Indemnified Expenses to the extent the Indemnified Expenses result from the bad faith, willful misconduct or gross negligence of the Indemnified Person; and the Litigation Trust Beneficiaries shall authorize the advance to each Indemnified Person Indemnified Expenses (including reasonable legal fees) incurred by the Indemnified Person in defending any claim, demand, action, suit or proceeding, prior to the final disposition of the claim, demand, action, suit or proceeding, upon receipt by the Litigation Trust of a written request therefore and of an undertaking by or on behalf of the Indemnified Person to repay the amount if it shall ultimately be determined that the Indemnified Person is not entitled to be indemnified therefore under this Article III. Notwithstanding anything to the contrary contained herein, in no event shall the liability of any Litigation Trust Beneficiary hereunder exceed, in aggregate, the aggregate amount of proceeds of Trust Property distributed or allocated to the Litigation Trust Beneficiary pursuant to the terms of this Agreement. With respect to reimbursement or indemnity provided hereunder, an Indemnified Person shall have a lien on the Trust Property prior to any rights in the property of the Litigation Trust Beneficiaries or any other Person. The Litigation Trustee shall be entitled to deduct from Trust Property amounts necessary to compensate the Trustees for their fees and expenses under this Section 3.7.

3.8 No Bond. The Trustees shall serve without bond.

3.9 Confidentiality. The Trustees shall, during the period that each serves as Trustee under this Litigation Trust Agreement and for a period of twelve (12) months following the termination

of this Litigation Trust Agreement or following his removal 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 Litigation Trust Claims or any other Trust Property relates or of which the Trustee becomes aware in the Trustee's capacity as Trustee.

3.10 Termination of the Trustees. The duties, responsibilities, rights, and obligations of the Trustees for the Litigation Trust shall terminate in accordance with the terms of this Litigation Trust Agreement.

ARTICLE IV. SUCCESSOR TRUSTEE

4.1 Removal. The Litigation Trustee may be removed for cause by order of the Bankruptcy Court or in accordance with a mediation conducted pursuant to section 12.7 herein. In the event of a removal for cause, the Bankruptcy Court or the mediator, as the case may be, shall appoint a successor Litigation Trustee.

4.2 Resignation. The Litigation Trustee may resign by giving not less than ninety (90) days' prior written notice thereof to the Bankruptcy Court. The resignation shall become effective on the later to occur of: (i) the day specified in the notice; and (ii) the appointment of a successor by the Bankruptcy Court. If a successor Litigation Trustee is not appointed or does not accept an appointment within ninety (90) days following delivery of the notice of resignation, then the resigning Litigation Trustee may petition the Bankruptcy Court for the appointment of a successor Litigation Trustee. In the event of the death or incapacity of the Litigation Trustee, the Bankruptcy Court shall appoint a successor Litigation Trustee. If the Delaware Trustee resigns, the Litigation Trustee shall appoint a successor Delaware Trustee, or the resigning Delaware Trustee may petition the Chancery Court of the State of Delaware for the appointment of a successor Delaware Trustee.

4.3 Acceptance of Appointment by Successor Trustee. Any successor Trustee appointed hereunder shall execute an instrument accepting the appointment and shall file the acceptance with the Litigation Trust records. Thereupon, the successor Trustee shall, without any further act, become vested with all the estates, properties, rights, powers, trusts and duties of his predecessor in the Litigation Trust with like effect as if originally named herein; *provided, however,* that a removed or resigning Trustee shall, nevertheless, when requested in writing by the successor Trustee, execute and deliver an instrument or instruments conveying and transferring to the successor Trustee under the Litigation Trust all the estates, properties, rights, powers, and trusts of the predecessor Trustee.

ARTICLE V. POWERS AND RESPONSIBILITIES OF THE TRUSTEES

5.1 Responsibilities of Trustees.

5.1.1 The Delaware Trustee shall have no obligation or duty to manage the Trust Property or to take any other act except as expressly required hereunder. The Delaware Trustee's duties shall be limited to the following:

- (a) serve as registered agent for service of process for the Litigation Trust under Section 3804(b) of the Delaware Statutory Trust Act, 12 Del. C., § 3801 et seq. (the “Act”);
- (b) serve as the Delaware resident trustee under Section 3807(a) of the Act;
- (c) maintain the registered office of the Litigation Trust and forward to the Litigation Trustees within a reasonable time any process served upon it; and
- (d) perform all other requirements so that the Litigation Trust qualifies as a Delaware statutory trust under the Act.

5.1.2 Limited Responsibility of Delaware Trustee. The Delaware Trustee shall not have any duty or obligation with respect to the Litigation Trust Claims or any other Trust Property or the Litigation Trust except as otherwise specifically provided in this Agreement, and the Delaware Trustee shall be a trustee of the 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 Litigation Trustee deems necessary, convenient or incidental to effect the purposes of the Litigation Trust, all as set forth in written instructions from the Litigation Trustee in accordance with this Litigation Trust Agreement. The right of the Delaware Trustee to perform any act enumerated herein shall not be construed as a duty.

5.1.3 The Litigation Trustee shall, in an expeditious but orderly manner, liquidate and convert to Cash (unless impracticable) the Litigation Trust Claims, make timely distributions and not unduly prolong the duration of the Litigation Trust. In so doing, the Litigation Trustee shall exercise its reasonable business judgment in liquidating the Litigation Trust Claims. The liquidation of the Litigation Trust Claims may be accomplished either through the prosecution, compromise and settlement, abandonment, release, or dismissal of any or all claims, rights or causes of action, or otherwise without need for approval by the Bankruptcy Court. In connection therewith, and subject to the limitations of Section 5.5, the Litigation Trustee shall have the power to prosecute for the benefit of the Litigation Trust all claims, rights and causes of action transferred to the Litigation Trust, whether such suits are brought in the name of the Litigation Trust, or otherwise. Any and all proceeds generated from the claims, rights, and causes of action shall be the property of the Litigation Trust. Except as expressly set forth herein, the Litigation Trustee shall have the discretion to pursue or not to pursue any and all claims, rights, or causes of action, as it determines are in the best interests of the Litigation Trust Beneficiaries and consistent with the purposes of the Litigation Trust, and shall have no liability for the outcome of any such decision. The Litigation Trustee may incur any reasonable and necessary expenses in liquidating and converting the assets to Cash.

5.1.4 Without limitation on the foregoing Section 5.1.3, in connection with the administration of the Litigation Trust, the Litigation Trustee’s responsibilities shall specifically include:

- (a) receipt (and acceptance), management, supervision, and protection of the Trust Property on behalf of and for the benefit of the Litigation Trust Beneficiaries;
- (b) holding legal title to any and all rights of the Litigation Trust Beneficiaries in or arising from the Trust Property, and protecting and enforcing the rights to the Trust Property vested in the Litigation Trustee by this Agreement 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;
- (c) investigation, analysis, filing, initiation, prosecution, and if necessary and appropriate, compromise of the Litigation Trust Claims;
- (d) commence and/or pursue any and all actions involving Trust Property that could arise or be asserted at any time, unless otherwise waived or relinquished in the Parent's Plan;
- (e) calculation and implementation of all distributions to be made to the Litigation Trust Beneficiaries;
- (f) filing of all required tax and information returns and paying of taxes and all other obligations of the Litigation Trust;
- (g) requesting any appropriate tax determination with respect to the Litigation Trust;
- (h) paying all expenses and making all other payments relating to any Trust Property;
- (i) obtaining insurance coverage with respect to (a) the liabilities and obligations of the Trustees under this Agreement (in the form of an errors and omissions policy or otherwise), and (b) real and personal property which may become Trust Property, if any;
- (j) consulting with and obtaining the required prior approval of the Litigation Trust Beneficiaries as set forth in this Litigation Trust Agreement;
- (k) negotiation, receipt, or acceptance 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 Litigation Trust is deemed to be in the best interests of the Litigation Trust Beneficiaries;
- (l) determination of 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;

- (m) compromising, adjusting, arbitrating, suing on or defending, abandoning, or otherwise dealing with and settling, in accordance with the terms set forth in Section 5.5 hereof, claims in favor of or against the Litigation Trust as the Litigation Trustee shall deem advisable;
- (n) determining and satisfying any and all liabilities created, incurred or assumed by the Litigation Trust;
- (o) retaining and paying independent law firms as counsel to the Litigation Trust as the Litigation Trustee may deem necessary and appropriate, with the prior approval of Reorganized ASARCO, to aid in the prosecution and liquidation of any claims that constitute the Litigation Trust Claims or other Trust Property, and to perform other functions as may be appropriate in the Litigation Trustee's discretion;
- (p) retaining and paying an independent public accounting firm to perform reviews and/or audits of the financial books and records of the Litigation Trust as the Litigation Trustee may deem necessary and appropriate, with the prior approval of Reorganized ASARCO, and to prepare and file any tax returns or informational returns for the Litigation Trust as may be required;
- (q) retaining and paying experts, advisors, consultants, investigators, appraisers, agents, employees, or other professionals and third parties as the Litigation Trustee may deem necessary or appropriate, with the prior approval of Reorganized ASARCO, to assist the Trustee in carrying out its powers and duties under this Agreement;
- (r) invest any moneys held as part of the Trust Property in accordance with the terms of Section 5.2 hereof; and
- (s) such other responsibilities as may be vested in the Litigation Trustee pursuant to the Parent's Plan, this Litigation Trust Agreement, orders of the Bankruptcy Court, or as may be necessary and proper to carry out the provisions of the Parent's Plan.

5.2 Investment and Safekeeping of Trust Assets. All moneys and other assets received by the Litigation Trustee shall, until distributed or paid as herein provided, be held in trust for the benefit of the Litigation Trust Beneficiaries, but need not be segregated from other Trust Property, unless and to the extent required by law, and except as set forth in Article IX hereof. The Litigation Trustee shall be under no liability for interest or producing income on any moneys received by him hereunder and held for distribution or payment to the Litigation Trust Beneficiaries, except as interest shall actually be received by the Litigation Trustee. Investments of any moneys held by the Litigation Trustee shall be administered in view of the manner in which individuals of ordinary prudence, discretion and judgment would act in the management of their own affairs; *provided, however*, that the right and power of the Litigation Trustee to invest the Trust Property, the proceeds thereof, or any income earned by the Litigation Trust,

shall be limited to the right and power to invest assets (pending periodic distributions in accordance with Section 7.1 hereof) in direct obligations of the United States of America or obligations of any agency or instrumentality thereof which are guaranteed by the full faith and credit of the United States of America; and *provided further*, that the scope of any 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 Section 301.7701-4(d) of the Treasury Regulations, may be permitted to hold pursuant to the Treasury Regulations, IRS guidelines, IRS rulings, other IRS pronouncements or otherwise.

5.3 Authorization to Expend Trust Assets. The Litigation Trustee may expend the assets of the Litigation Trust (i) as reasonably necessary to meet contingent liabilities and to maintain the value of the assets of the Litigation Trust during liquidation, (ii) to pay reasonable administrative expenses of the Litigation Trust (including, but not limited to, any taxes imposed on the Litigation Trust or fees and expenses in connection with litigation), and (iii) to satisfy other liabilities incurred or assumed by the Litigation Trust (or to which the assets are otherwise subject) in accordance with the Litigation Trust Agreement or the Parent's Plan.

5.4 Authority of Litigation Trustee.

5.4.1 In connection with the administration of the Litigation Trust, except as set forth in this Agreement, the Litigation Trustee is authorized to perform any and all acts necessary and desirable to accomplish the purposes of the Litigation Trust. The Delaware Trustee is hereby specifically authorized to execute and file a certificate of trust with the Secretary of State of the State of Delaware at any time on or after the Effective Date.

5.4.2 Without limiting, but subject to, the foregoing, the Litigation Trustee shall be expressly authorized to take any action contemplated by the Parent's Plan and/or the Litigation Trust Agreement, including but not limited to the duties set forth in Section 5.1.4 hereof.

5.4.3 The Litigation Trustee shall exercise the powers and authority granted in this Section 5.4 in accordance with the provisions of the Parent's Plan and this Litigation Trust Agreement without the need for court approval.

5.4.4 The Litigation Trustee may retain such law firms, accounting firms, experts, advisors, consultants, investigators, appraisers, agents, employees, or other professionals and third parties as it 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.

5.5 Resolution of Litigation Trust Claims By the Litigation Trustee.

5.5.1 The Litigation Trustee shall be empowered to and, subject to Sections 6.2, 5.4 and 5.5.2 hereof, may take all appropriate action with respect to the prosecution, settlement or other resolution of the Litigation Trust Claims. Notwithstanding the foregoing, the Litigation Trustee shall follow the procedures set forth in Section 5.5.2 prior to entering into any proposed settlement or series of related settlements with respect to claims stated or asserted in an amount in excess of \$1,000,000.

5.5.2 The Litigation Trustee shall, prior to effecting any settlement referred to in Section 5.5.1 (and after complying with the requirements contained therein), provide the Litigation Trust Beneficiaries with prior written notice describing in reasonable detail the action proposed to be taken and the reasons why the Litigation Trustee believes the action to be in the best interest of the Litigation Trust Beneficiaries and advising the Litigation Trust Beneficiaries that the Litigation Trustee shall take the action unless the Litigation Trustee receives written notice from the Litigation Trust Beneficiaries objecting to the action within thirty days after the notice is sent by the Litigation Trustee. The Litigation Trust Beneficiaries may reduce or waive the thirty day written notice requirement in writing or by conference attended telephonically or in person by the Litigation Trust Beneficiaries and the Litigation Trustee. If the Litigation Trustee receives timely written objections from the Litigation Trust Beneficiaries, then the Litigation Trustee shall not be authorized to take the action. In all other events, unless otherwise set forth herein, the Litigation Trustee is authorized to consummate a settlement or action and shall be held harmless in taking such action, *provided* that the Litigation Trustee shall not settle any claim unless a release in favor of the Litigation Trust satisfactory in form and substance to the Litigation Trustee is granted.

5.5.3 Anything contained in this Agreement to the contrary notwithstanding, the Litigation Trustee may, but is not required to, submit a proposed settlement to the Bankruptcy Court for its approval, on notice to the Litigation Trust Beneficiaries, and may comply with any settlement approved by the Bankruptcy Court, and shall have no obligation to submit any settlement approved by the Bankruptcy Court to the procedures set forth in Section 5.5.2 hereof.

5.6 Limitation of Litigation Trustee's Authority.

5.6.1 The Litigation Trustee shall not and shall not be authorized to continue or engage in any trade or business with respect to the Trust Property or any proceeds therefrom, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Litigation Trust. The Litigation Trustee shall take actions consistent with the orderly liquidation of the Trust Property as are required by applicable law, and take other actions permitted hereunder or under the Parent's Plan.

5.6.2 The Litigation Trustee shall not and shall not be authorized to engage in any investments or activities or to take any position inconsistent with the treatment of the Litigation Trust as a liquidating trust, within the meaning of section 301.7701-4(d) of the Treasury Regulations, that is a grantor trust owned by the Litigation Trust Beneficiaries within the meaning of Section 671 et seq. of the Code, the Treasury Regulations promulgated thereunder and the comparable provisions of any applicable state and local laws (except to the extent a contrary position is permitted under Section 8.2).

5.7 Additional Powers. Except as otherwise set forth in this Litigation Trust Agreement, the Parent's Plan, or in any order of the Bankruptcy Court, and subject to section 301.7701-4(d) of the Treasury Regulations and to the Treasury Regulations governing trusts intended to be treated as "grantor trusts" under Section 671 et seq. of the Code, without prior or further authorization, the Litigation Trustee may control and exercise authority over the Trust Property and over the protection, conservation and disposition thereof. No person dealing with the Litigation Trust

shall be obligated to inquire into the authority of the Litigation Trustee in connection with the protection, conservation or disposition of Trust Property.

ARTICLE VI. BENEFICIARIES

6.1 Identification of Litigation Trust Beneficiaries.

6.1.1 The Litigation Trust Interests of each Litigation Trust Beneficiary in the Litigation Trust shall be recorded in the Trust Register maintained by the Litigation Trustee. The Trust Register shall contain the names, addresses, and number of Litigation Trust Interests of the Litigation Trust Beneficiaries as provided in the Parent's Plan and as set forth herein. Ownership of a Litigation Trust Interest shall not be evidenced by any certificate, security, or receipt or in any form or manner other than by a book entry in the Trust Register.

6.1.2 The Litigation Trustee agrees that upon seven days' prior written notice delivered by a Litigation Trust Beneficiary, the Litigation Trustee shall make available, during regular business hours, the Trust Register for inspection by the Litigation Trust Beneficiary or the Litigation Trust Beneficiary's authorized representative.

6.1.3 Each distribution by the Litigation Trustee to the Litigation Trust Beneficiaries shall be made in accordance with the terms set forth in Section 7.1 hereof.

6.2 Distributions of Litigation Trust Interests.

6.2.1 On the Effective Date, the Litigation Trustee shall distribute: (i) the Distributed Litigation Trust Interests, Pro Rata, to holders of Claims in Classes 3, 5 and 6; and (ii) the Retained Litigation Trust Interests to Reorganized ASARCO.

6.2.2 Upon Payment in Full of all Allowed Claims in Classes 3, 5, and 6 (and the resolution of all Disputed Claims in Classes 3, 5 and 6), the Litigation Trustee shall redistribute the Distributed Litigation Trust Interests, Pro Rata, to the holders of Allowed Class 9 Claims (and, pending resolution of Disputed Claims in Class 9, the Disputed Claims Reserve). Upon Payment in Full of all Allowed Claims in Class 9, the Litigation Trustee shall redistribute the Distributed Litigation Trust Interests, Pro Rata, to the holders of Allowed Class 10 Claims (and, pending resolution of Disputed Claims in Class 10, the Disputed Claims Reserve). Upon Payment in Full of all Allowed Claims in Class 10, the Litigation Trustee shall redistribute the Distributed Litigation Trust Interests to Reorganized ASARCO.

6.3 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 vests 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.

ARTICLE VII. DISTRIBUTION OF THE TRUST ESTATE

7.1 Application of Trust Property and Other Property. The Litigation Trustee shall apply all Trust Property, and any proceeds therefrom, as follows:

7.1.1 The Litigation Trustee shall apply all litigation proceeds, any proceeds therefrom and any other Cash of the Litigation Trust in the order and reflecting the priorities set forth below:

FIRST, to pay all the costs and expenses of the Litigation Trust, including, without limitation, compensation payable to the Trustees.

SECOND, ratably to the Litigation Trust Beneficiaries. All distributions to the holders of Litigation Trust Interests shall be based on the number of Litigation Trust Interests held by each Litigation Trust Beneficiary compared with the aggregate number of Litigation Trust Interests and shall be governed by the terms of the Parent's Plan and this Litigation Trust Agreement. In no event shall any holder of an Allowed Claim receive distributions from the Litigation Trust which, when combined with Available Cash or other forms of consideration provided to such holder with respect such Claim, exceed the Allowed amount of such Claim. Upon Payment in Full of all Allowed Claims, all remaining proceeds or other Cash of the Litigation Trust, if any, shall be distributed to Reorganized ASARCO.

Notwithstanding anything to the contrary in this Section 7.1.1, prior to making any distribution pursuant to the SECOND paragraph hereof, the Litigation Trustee may retain such amounts (i) as are reasonably necessary to meet contingent liabilities and to maintain the value of the assets of the Litigation Trust, (ii) to pay reasonable estimated administrative expenses (including any taxes imposed on the Litigation Trust or in respect of the assets of the Litigation Trust), and (iii) to satisfy other liabilities incurred or assumed by the Litigation Trust (or to which the assets are otherwise subject), all for the term of the Litigation Trust and in accordance with this Litigation Trust Agreement or the Parent's Plan.

7.1.2 Subject to Section 7.1.1 and Article IX hereof, and in accordance with the terms of the Parent's Plan, the Litigation Trustee, in its discretion, may make periodic distributions of litigation proceeds beginning on the Effective Date. The Litigation Trustee shall withhold from amounts distributable any and all amounts, determined in the Litigation Trustee's discretion, required by any law, regulation, rule, ruling, directive or other governmental requirement. Any amount so withheld from a distribution to a distributee shall be treated as having been paid to, and received by, such distributee for purposes of this Agreement.

7.1.3 The Litigation Trustee shall distribute at least annually to the Litigation Trust Beneficiaries its net income and all net proceeds from the liquidation of its assets, except to the extent consistent with the classification of the Litigation Trust as a liquidating trust under section 301.7701-4(d) of the Treasury Regulations. The Litigation Trust shall not retain Cash (or cash equivalents) in excess of a reasonable amount (as determined by the Litigation Trustee) to meet the expenses and liabilities described in Section 5.3 of this Agreement.

7.2 Compliance with Laws. Any and all distributions by the Litigation Trustee of Trust Property shall be in compliance with applicable laws, including, but not limited to, applicable federal and state securities laws.

ARTICLE VIII. REPORTS TO BENEFICIARIES

8.1 Tax and Other Reports.

8.1.1 As soon as practicable after the end of each calendar year, and as soon as practicable upon termination of the Litigation Trust, the Litigation Trustee shall submit to each Litigation Trust Beneficiary a written report including: (i) audited financial statements of the Litigation Trust at the end of the calendar year or period and the receipts and disbursements of the Litigation Trustee for the period; and (ii) a description of any action taken by the Litigation Trustee in the performance of the Litigation Trustee's duties which materially affects the Litigation Trust and of which notice has not previously been given to the Litigation Trust Beneficiaries. The Litigation Trustee shall promptly submit additional reports to the Litigation Trust Beneficiaries whenever a material event or change occurs which effects either the Litigation Trust or the rights of the Litigation Trust Beneficiaries hereunder.

8.1.2 As soon as practicable after the end of each calendar year, and as soon as practicable upon the termination of the Litigation Trust, the Litigation Trustee shall submit to the Litigation Trust Beneficiaries a statement setting forth, for federal income tax purposes, their allocable portion of items of income, gain, loss, deduction and credit of the Litigation Trust for such calendar year, and for the calendar year that includes the Effective Date, the fair market value (as of the Effective Date) of the assets deemed to have been transferred to such Litigation Trust Beneficiary pursuant to Section 2.5.4 of this Agreement. The Litigation Trustee shall allocate such items for federal income tax purposes among the Litigation Trust Beneficiaries, such allocation shall be binding on all Litigation Trust Beneficiaries for all federal, state, and local income tax purposes and the Litigation Trust Beneficiaries shall be responsible (on a current basis) for the payment of any federal and, if applicable, state and local income tax due on the income and gain so allocated to them. In addition, the Litigation Trustee shall submit to Reorganized ASARCO and ASARCO USA Incorporated, 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 Litigation Trust (including, without limitation, the Litigation Trust Claims), and the portion of such fair market value allocated to each Litigation Trust Beneficiary pursuant to Section 2.5.4 of this Agreement.

8.2 Grantor Trust Status. 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 Litigation Trustee of a private letter ruling if the Litigation Trustee so requests one, or the receipt of an adverse determination by the IRS upon audit if not contested by the Litigation Trustee), the 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 Litigation Trust as a grantor trust of which the Litigation Trust Beneficiaries are the deemed owners pursuant to

Treasury Regulation section 1.671-4(a) and any comparable provisions under applicable state and local law.

8.3 Other. The Litigation Trustee shall also file (or cause to be filed) any other statements, returns or disclosures relating to the Litigation Trust that are required by any governmental unit or regulatory agency.

ARTICLE IX. TERMINATION OF LITIGATION TRUST

9.1 Termination of Litigation Trust.

9.1.1 The Litigation Trust shall terminate on the earlier of: (1) thirty days after the distribution of all of the assets of the Litigation Trust in accordance with the terms of this 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 an extension is necessary to facilitate or complete the liquidation of the assets 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.

9.1.2 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 Trust Property to the holders of Litigation Trust Interests in accordance with the terms of this Litigation Trust Agreement and the Parent's Plan and terminate the Litigation Trust as soon as practicable.

9.1.3 Prior to and upon termination of the Litigation Trust, the litigation proceeds and all other Trust Property shall be distributed to the Litigation Trust Beneficiaries in accordance with their Litigation Trust Interests subject to the provisions set forth in Section 7.1 hereof.

ARTICLE X. AMENDMENT AND WAIVER

10.1 Amendment and Waiver. Except as provided herein, any provision of this Litigation Trust Agreement may be amended or waived with the approval of the Bankruptcy Court; *provided, however*, (1) that no change shall be made to this Litigation Trust Agreement that would adversely affect the federal income tax status of the Litigation Trust as a "liquidating trust" (in accordance with Sections 8.2 and 12.1 hereof), if applicable; (2) that no substantive change may be made to the Litigation Trust Interests or to distributions thereto without the consent of the holders of the Litigation Trust Interests; and (3) that no substantive change may be made to the treatment of Claims pursuant to the Parent's Plan. Upon notice to the Litigation Trust Beneficiaries, technical amendments to this Litigation Trust Agreement may be made as

necessary to clarify this Litigation Trust Agreement or to enable the Trustees to effectuate the terms of this Litigation Trust Agreement, with the consent of the Trustees.

ARTICLE XI. MAINTENANCE OF BOOKS AND RECORDS

11.1 Books and Records.

11.1.1 The Litigation Trustee shall maintain in respect of the Litigation Trust and the Litigation Trust Beneficiaries, books and records relating to the assets and income of the Litigation Trust and the payment of expenses of, and liabilities of claims against or assumed by, the Litigation Trust in such detail and for such period of time as may be necessary to enable the 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. Except as provided in Sections 9.1 and 12.1, nothing in this Litigation Trust Agreement requires the Litigation Trustee to file any accounting or seek approval of any court with respect to the administration of the Litigation Trust, or as a condition for any payment or distribution out of the Trust Property. The Litigation Trust Beneficiaries shall have the right upon thirty days' prior written notice delivered to the Litigation Trustee to inspect the Litigation Trust's books and records, *provided* that, if so requested, the Litigation Trust Beneficiary shall have entered into a confidentiality agreement satisfactory in form and substance to the Litigation Trustee. In no event shall any such review or inspection constitute a waiver or impairment of any Privileges held by the Litigation Trustee.

11.1.2 Upon distribution of all litigation proceeds and all other Cash from the Litigation Trust or the termination of the Litigation Trust, the Litigation Trustee shall retain the books, records and files which shall have been delivered to or created by the Litigation Trustee. At the Litigation Trustee's discretion, all of the Litigation Trust's records and documents may be destroyed at any time after three years from the distribution of all litigation proceeds and all other Cash from the Litigation Trust (unless the records and documents are necessary to fulfill the Litigation Trustee's obligations pursuant to this Agreement).

ARTICLE XII. MISCELLANEOUS PROVISIONS

12.1 Intention of Parties to Establish Grantor Trust.

12.1.1 This Litigation Trust Agreement is intended to create a liquidating trust, within the meaning of Section 301.7701-4(d) of the Treasury Regulations, that is also a "grantor trust" in which the Litigation Trust Beneficiaries are treated as the owners of the Trust Property for federal and, to the extent permitted, state and local tax purposes (pursuant to section 671, et seq. of the Code, the Treasury Regulations promulgated thereunder and the comparable provisions of any applicable state and local laws). To the extent provided by law, this Litigation Trust Agreement shall be governed and construed in all respects as a grantor trust and any ambiguity herein shall be construed consistent herewith and, if necessary, this Litigation Trust Agreement may be amended to comply with such tax laws, which amendments may apply retroactively. Any items of income, gain, deduction, loss and credit relating to the Trust Property or the disposition thereof shall be reported on the Litigation Trust Beneficiaries' federal income tax

return and, to the extent required, state and local tax returns and the Litigation Trust Beneficiaries shall be responsible for the taxes due on such returns. To the extent that the Litigation Trust is not treated as a “grantor trust” with respect to any federal, state and/or local tax, then the Litigation Trustee shall prepare and file the appropriate tax returns in respect of such tax and pay any taxes relating to such returns using Trust Property.

12.1.2 Reorganized ASARCO will make an election on a protective basis to treat the Litigation Trust as a grantor trust all of which is owned by Reorganized ASARCO for federal and, to the extent permitted, state and local tax purposes (pursuant to section 671 et seq. of the Code, the Treasury Regulations promulgated thereunder and the comparable provisions of any applicable state and local laws) in the event that the IRS were to successfully assert that the Litigation Trust is treated as a qualified settlement fund within the meaning of Treasury Regulation section 1.468B-1. If the Litigation Trust were so treated as a grantor trust, any items of income, gain, deduction, loss and credit relating to the Trust Property shall be reported on Reorganized ASARCO’s U.S. federal income tax return and, to the extent required, state and local tax returns and Reorganized ASARCO shall be responsible for the taxes due on such returns. The Litigation Trust will be liable for and pay any other taxes that may be imposed on it. As soon as practicable after the end of each calendar year, and as soon as practicable upon the termination of the Litigation Trust, the Litigation Trustee will submit to Reorganized ASARCO a statement setting forth, for federal income tax purposes, the items of income, gain, loss, deduction and credit of the Litigation Trust for such calendar year. In addition, for any calendar year for which the Litigation Trust is determined to be a grantor trust with respect to Reorganized ASARCO, the Litigation Trustee will distribute to Reorganized ASARCO from the Litigation Trust within 30 days following the close of such calendar year (or with respect to calendar years prior to the Litigation Trustee becoming aware that the Litigation Trust is so treated, promptly upon demand of Reorganized Asarco) an amount equal to the product of (x) the taxable income for such calendar year of the Litigation Trust derived from assets other than the Litigation Trust Claims (computed as if the Litigation Trust were a corporation for U.S. federal income tax purposes) and (y) the sum of (1) highest rate of tax imposed by section 11 of the Internal Revenue Code with respect to such calendar year and (2) five percent.

12.2 Preservation of Privilege. In connection with the rights, claims, and causes of action that constitute the Litigation Trust Claims, any attorney-client privilege, work-product privilege, or other privilege or immunity attaching to any documents or communications (whether written or oral) transferred to the Litigation Trust pursuant to the terms of the Parent’s Plan or otherwise shall vest in the Litigation Trustee and its representatives, and ASARCO, the Parent, the Parent’s Plan Administrator and the Trustees are authorized to take all necessary actions to effectuate the transfer of such privileges, as necessary.

12.3 Office. The principal office of the Litigation Trust shall be in care of the Litigation Trustee at [_____], or at such other address as the Litigation Trustee may designate. The office of the Delaware Trustee is [_____].

12.4 Status of the Trust. The Litigation Trust shall be located in the State of Delaware and administered in the State of [_____].

12.5 Service on Boards of Directors. Neither the Trustees nor any of their respective employees shall serve as a member of the board of directors of any corporation fifty percent (50%) or more of the issued and outstanding stock of which is held by the Litigation Trust.

12.6 Cooperation. Notwithstanding any provision of this Litigation Trust Agreement, Reorganized ASARCO, the Parent and the Parent's Plan Administrator 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 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 this Agreement and the Parent's Plan.

12.7 Dispute Resolution. Any disputes that arise under this Litigation Trust Agreement among the parties hereto, other than the liquidation of Litigation Trust Claims, shall be resolved by submission of the matter to mediation by Reorganized ASARCO, the Parent, or the holders of 25% of the beneficial interests that are distributed to unsecured creditors, with a mediator mutually agreeable to the parties involved. In the event the mediation does not resolve the dispute, any party to the mediation may apply to the Bankruptcy Court for a judicial determination of the matter. Any review conducted by the Bankruptcy Court shall be *de novo*. Should the dispute not be resolved by mediation within thirty (30) days after the commencement of the mediation process, the parties are relieved of the requirement to pursue mediation prior to application to the Bankruptcy Court. If the Trustees determine that the matter in dispute involves a determination of their fiduciary duties, requires the direction of the supervisory court over the Litigation Trust, or is exigent and cannot await the completion of mediation, the Trustees have the right to elect out of the mediation altogether or at any stage of the process and seek resolution of the dispute in the Bankruptcy Court. Notwithstanding anything else herein contained, to the extent any provision of this Litigation Trust Agreement is inconsistent with any provision of the Plan, the Plan shall control.

12.8 Laws as to Construction. This Litigation Trust Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to rules governing the conflict of laws.

12.9 Severability. If any provision of this Litigation Trust Agreement 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 Litigation Trust Agreement, or the application of the provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and the provision of this Litigation Trust Agreement shall be valid and enforced to the fullest extent permitted by law.

12.10 Notices. Any notice or other communication hereunder shall be in writing and delivered by mail, postage prepaid, at the addresses designated below or sent by electronic mail or telecopy pursuant to the instructions listed below. All notices and communications shall be effective three (3) days after mailing to the designated addresses or, if electronically transmitted, when the communication is received at the designated addresses and confirmed by the recipient by return transmission or by electronic receipt.

If to Reorganized ASARCO:

[_____]

with copies to:

[Counsel]

If to the Litigation Trustee:

[_____]

_____, in his capacity as Litigation Trustee

with copies to:

[Counsel]

If to the Delaware Trustee:

[_____]

with a copies to:

[_____]

If to a Litigation Trust Beneficiary:

[_____]

12.11 Headings. The section headings contained in this Litigation Trust Agreement are solely for convenience of reference and shall not affect the meaning or interpretation of this Litigation Trust Agreement or of any term or provision hereof.

IN WITNESS WHEREOF, the parties hereto have either executed and acknowledged this Litigation Trust Agreement, 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:

TRUSTEES:

_____, LITIGATION TRUSTEE

By: _____
Name:
Title:

[_____], DELAWARE TRUSTEE

By: _____
Name:
Title:

PARENT'S PLAN EXHIBIT 17
AMENDED AGREEMENT IN PRINCIPLE

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SUBJECT TO BANKRUPTCY PROCESS

**AMENDED AGREEMENT IN PRINCIPLE
REGARDING SUMMARY TERMS OF PARENT'S FIFTH AMENDED
PLAN OF REORGANIZATION FOR ASARCO LLC AND SUBSIDIARIES
UNDER CHAPTER 11 OF THE UNITED STATES BANKRUPTCY CODE¹**

This Amended Agreement in Principle Regarding Summary Terms of Parent's Fifth Amended Plan of Reorganization for ASARCO LLC and Subsidiaries Under Chapter 11 of The United States Bankruptcy Code (as the same may be amended, modified or supplemented from time to time, the "**Agreement**") is made and entered into as of June __, 2009 by and among ASARCO Incorporated, a Delaware corporation, Americas Mining Corporation, a Delaware corporation ("**AMC**", and collectively with ASARCO Incorporated, the "**Parent**"), Robert C. Pate, in his capacity as the Future Claims Representative (the "**FCR**"), and the Official Committee of Asbestos Claimants (the "**Asbestos Committee**"). The Parent, the FCR and the Asbestos Committee hereinafter are referred to individually as a "**Party**" and collectively as the "**Parties**."

W I T N E S S E T H:

WHEREAS, ASARCO LLC, a Delaware limited liability company ("**ASARCO**"), and certain of its affiliates (ASARCO together with such affiliates, the "**Debtors**") are Debtors and Debtors in Possession in an administratively consolidated bankruptcy case captioned *In re ASARCO LLC, et al.*, Case No. 05-21207 (the "**Case**"), pending in the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division (the "**Court**");

WHEREAS, the Parent, directly and indirectly, owns all of the outstanding equity interests of ASARCO;

WHEREAS, the Asbestos Committee and the FCR (collectively, the "**Asbestos Representatives**") have been appointed in the bankruptcy cases of ASARCO and of the Subsidiary Debtors to represent individuals holding Asbestos Claims and/or Demands against ASARCO and/or the Subsidiary Debtors (collectively, "**Asbestos Claims**");

WHEREAS, on June 1, 2009, the Parent filed the Parent's Fourth Amended Plan Of Reorganization for the Debtors (the "**Fourth Amended Parent's Plan**"), to be amended substantially on the terms described herein (the "**Reorganization Plan**");

WHEREAS, on June 12, 2009, the Debtors and the Asbestos Representatives executed the Sterlite Plan Agreement in Principle Term Sheet ("**Sterlite Term Sheet**"); and

WHEREAS, on June 15, 2009 the Debtors filed the Debtors Sixth Amended Plan Of Reorganization (the "**Debtors' Plan**"), sponsored by Sterlite (USA) Inc. ("**Sterlite**");

¹ Capitalized terms used herein, and not otherwise defined, shall have the meanings ascribed to them in the Asarco Incorporated and Americas Mining Corporation's Fifth Amended Plan of Reorganization for the Debtors Under Chapter 11 of The United States Bankruptcy Code.

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NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound hereby, agree as follows:

I. Asbestos Channeling Injunction/Neutrality.

In recognition of the Parent increasing the consideration paid in its Reorganization Plan by no less than \$189.4 million over the consideration paid in the Fourth Amended Plan, and other improvements set forth in the Reorganization Plan designed to provide material enhancements to the treatment of the holders of Unsecured Claims and described more completely herein, the Asbestos Representatives shall exercise the Fiduciary Out as that term is defined in the Sterlite Term Sheet and shall (1) recommend that holders of Asbestos Claims vote to accept both the Reorganization Plan and the Debtors' Plan, (2) not recommend that holders of Asbestos Claims indicate a preference for any plan, (3) inform that Court that the Asbestos Representatives are neutral or have no preference between confirmation of the Reorganization Plan or the Debtors' Plan, (4) recommend that holders of Asbestos Claims vote to reject all plans other than the Reorganization Plan and the Debtors' Plan, and inform the Court that the Asbestos Representative prefer confirmation of the Reorganization Plan and the Debtors' Plan over all plans other than the Reorganization Plan and the Debtors' Plan, provided, however, that if the Bankruptcy Court determines that a plan of reorganization filed after the date of this Agreement provides materially superior treatment to Asbestos Claims and Demands such that the Asbestos Representatives would have a fiduciary obligation to support that plan of reorganization, the Asbestos Representatives shall not be required to recommend its rejection or to recommend that the Reorganization Plan or the Debtor's Plan be preferred over such plan. The foregoing recommendations shall be reflected in a letter from the Asbestos Committee to the holders of Asbestos Claims (the "**Recommendation Letter**") to be included in the solicitation material with respect to the plans. The Asbestos Representatives shall provide the Parent with the draft of the Recommendation Letter no later than one (1) day prior to the date of the disclosure statement hearing with respect to the plans, with the understanding that the actual content of the letter may change as a result of committee deliberations or suggestions or order of the Bankruptcy Court.

The Asbestos Representatives agree that, even if the Debtors' Plan or any other plan of reorganization is proposed that increases the aggregate consideration payable to holders of Asbestos Claims and/or to holders of Unsecured Claims over the amounts set forth in the Reorganization Plan or the Debtors' Plan, the Asbestos Representatives shall continue to recommend that holders of Asbestos Claims vote in favor of the Reorganization Plan and support the section 524(g) channeling injunction set forth in the Reorganization Plan.

II. Premises of Plan

Overview:

The Reorganization Plan is premised upon the Parent receiving 100 percent of the equity interest in Reorganized ASARCO and a release of all claims by the Debtors against the Parent and its Affiliates upon exit from bankruptcy in exchange for contributing new value to the Debtors' Estates consisting of (i) Cash or readily marketable and liquid Cash equivalents adequate to fund a

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confirmable and feasible plan (in an amount asserted by Parent to be \$1,462.5 million), (ii) the issuance of a \$280 million promissory note payable to the section 524(g) asbestos trust (as more particularly described in subsection (iv) of the section captioned “*Asbestos Claims*,” below), (iii) a release of the Parent’s claims against the estate, including a claim for reimbursement of \$161.7 million for taxes paid on the Debtors’ income and a claim to a tax refund that is presently estimated to be worth approximately \$60 million, and (iv) the provision of a \$200 million Working Capital Facility to fund Reorganized ASARCO’s operations upon emergence from bankruptcy.

Escrow: The Parent shall deposit or maintain the sum of \$1.3 billion in Cash or Cash equivalents (which may include shares of Southern Copper Corporation stock) (the “*Parent Initial Contribution*”) in an escrow account with Bank of New York to backstop the Parent’s obligations under this Agreement. To the extent the Parent Initial Contribution is funded with Cash equivalents, the Parent may replace such portion with Cash at any time.

Assets: Reorganized ASARCO shall retain ownership of all assets except for those assets, if any, specifically designated as Excluded Assets in a supplemental filing to be made no later than ten (10) days prior to a confirmation hearing on the Reorganization Plan, which Excluded Assets will be liquidated or disposed of pursuant to the Reorganization Plan; provided, however, that the scope or value of the Excluded Assets shall not materially adversely affect the treatment of holders of Asbestos Claimants, Demand Holders and other Creditors set forth in this Agreement or described in the Fourth Amended Parent’s Plan or the Disclosure Statement in connection therewith.

No Breakup Fee: The Parent does not require a breakup fee to effectuate the Reorganization Plan.

Timing: The Effective Date of the Reorganization Plan is anticipated to be on or before September 30, 2009, or such later date as may be required by reason of the Court's calendar.

Treatment and Classification of Claims:

**Administrative and
Priority Claims:**

Each allowed administrative claim (to the extent not previously paid) shall be paid in full, in Cash, on the later of (a) the Effective Date or (b) the date on which each such claim becomes an allowed claim; provided, however, that (i) claims representing ordinary course obligations shall be assumed by Reorganized ASARCO and

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paid or performed in the ordinary course, and (ii) claims of professional advisors (including any success fee) shall be paid after their respective final fee applications have been approved. Priority claims will be paid in accordance with the Bankruptcy Code.

Secured Claims:

At the discretion of the Parent, (a) allowed Secured Claims shall be reinstated in accordance with the Bankruptcy Code, (b) holders of allowed Secured Claims shall be paid in Cash the full value of their respective collateral on the later of (i) the Effective Date or (ii) the date on which each such claim becomes an allowed claim; (c) Reorganized ASARCO shall surrender to the claimant collateral securing such allowed Secured Claims; or (d) receive such other treatment as may be agreed upon between the Parent and the holder of an allowed Secured Claim.

Asbestos Claims:

The Reorganization Plan shall establish a trust pursuant to section 524(g) of the Bankruptcy Code (the “*Asbestos Trust*”). Asbestos Claims shall be treated as follows:

- (i) All liquidated, undisputed, non-contingent Asbestos Claims against ASARCO LLC (which are believed to be based on settlement agreements entered into by ASARCO LLC (or its predecessor ASARCO Inc.) prior to the Petition Date shall be treated pursuant to Asbestos Claim distribution procedures approved by the Court.
- (ii) All other unliquidated, disputed or contingent Asbestos Claims (including claims arising from those settlements entered into prepetition that were conditioned upon the effectiveness of a “prepackaged” plan of reorganization including a section 524(g) trust) shall be allowed in the aggregate amount of \$1.0 billion.
- (iii) The Asbestos Claims shall be channeled to the Asbestos Trust, and the holders of such Asbestos Claims shall look solely to the Asbestos Trust for payment on such Asbestos Claims. The Asbestos Trust shall be established and funded on the Effective Date with (a) Cash in the amount of \$500 million, (b) a promissory note made payable by Reorganized ASARCO with the terms described in clause (iv) below, (c) rights to all insurance proceeds with respect to Asbestos Claims, and (d) Cash in the amount of \$27.5 million to administer the Asbestos Trust, which shall be allowed as an Administrative Claim. Among other things, a cooperation agreement regarding treatment of and access to information in the possession of the Debtors relating to Asbestos Claims from and after the Effective

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Date will be negotiated in good faith by the Parties, it being understood that the Parent has no control over the maintenance or quality of the information that the Debtors will turn over on the Effective Date.

- (iv) The original principal amount of the promissory note shall be \$280 million, subject to an upward adjustment, for the benefit of Asbestos Trust only, if the Bankruptcy Court determines, upon a challenge brought by a party other than any of the Parties hereto, that the aggregate increase in consideration provided hereunder does not satisfy the “Fiduciary Out” set forth in the Sterlite Term Sheet. It is understood that, due to the economics of the Parent’s offer, any increase in the amount of the promissory note above \$280 million shall be treated as an Allowed Administrative Claim, which will not necessarily reduce the total recovery to holders of Allowed General Unsecured Claims but which will reduce the Available Parent’s Plan Funds available for distribution to holders of Allowed General Unsecured Claims so that such holders must rely upon the Distributed Litigation Trust Interests to collect a correspondingly greater portion of their recovery. The promissory note shall be for a term of one year from the Effective Date, shall bear interest at the rate of 6.0% per annum, shall be guaranteed by AMC and shall be secured by (a) a first lien on the assets of Reorganized ASARCO, and (b) a pledge by the Parent of 51% of the equity in Reorganized ASARCO. The promissory note shall be prepayable at any time, without penalty.

**Treatment of
Unsecured Claims:**

Holders of Allowed General Unsecured Claims shall receive (i) a Pro Rata share of the Available Parent’s Plan Funds, and (ii) a Pro Rata share of the Distributed Litigation Trust Interests. For the avoidance of doubt, “Distributed Litigation Trust Interests” shall mean 100% of the Litigation Trust Interests. In no event shall holders of Allowed General Unsecured Claims holders receive more than 100% of the Allowed amount of such General Unsecured Claims.

Equity Interests:

Upon confirmation of the Reorganization Plan, the equity of Reorganized ASARCO shall be retained by the Parent.

Other Features of the Reorganization Plan:

Collective Bargaining

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- Agreement:** Pursuant to the Reorganization Plan, the Parent intends to maintain the current Collective Bargaining Agreements with such modifications as are mutually agreed with the Unions; provided, however, that if the Unions withhold their consent to this Agreement and/or to the Reorganization Plan, the Parent reserves all rights and remedies against the Unions. Discussions have reconvened between the Parent and the Unions to address labor matters.
- Retained Employees:** The Parent intends to provide the Retained Employees with the same compensation and benefits (including salary) for one year following the Effective Date as was provided to such employees prior to the Effective Date, subject to management's authority to make adjustments to wages and benefits in the ordinary course as necessary to address the needs of the business and market conditions.
- Conditions Precedent to Confirmation:** Confirmation is contingent upon the form of all required documentation, including the confirmation order, trust agreements and protocols, being in form and substance satisfactory to the Parent. Insofar as the Asbestos Claim-related trust agreements and protocols are concerned, such trusts and protocols shall be in a form and substance satisfactory to the Asbestos Committee and the FCR and, in consultation with the Parent, otherwise consistent with the Bankruptcy Code and applicable laws.
- Conditions Precedent to Plan Effective Date:** The Effective Date is contingent upon satisfaction of the following conditions:
- (a) The Bankruptcy Court shall have entered an order confirming the Reorganization Plan, in form and substance satisfactory to the Parent, that has become a final order; and
 - (b) All required documentation, including trust agreements and protocols, shall be in form and substance satisfactory to the Parent. Insofar as the Asbestos Claim-related trust agreements and protocols are concerned, such trusts and protocols shall be in a form and substance satisfactory to the Asbestos Committee and the FCR and, in consultation with the Parent, otherwise consistent with the Bankruptcy Code and applicable laws.
- Exculpation, Discharge and Releases:** The Reorganization Plan shall contain customary exculpation provisions for chapter 11 and plan related activities, for all parties

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involved in the Reorganization Plan process (including the Parent and their affiliates).

Upon the Effective Date of the Reorganization Plan, all Released Litigation (as identified in the Reorganization Plan) shall be dismissed with prejudice. Without limitation, the Parent and any affiliate shall be relieved from judgment in the Brownsville Litigation and the Parties shall take all steps necessary to cause the judgment in the Brownsville Litigation to have no further force and effect.

The Reorganization Plan shall provide for complete satisfaction, discharge, and release of all claims and demands of any nature whatsoever, including past, present and future environmental liability of ASARCO and Reorganized ASARCO (and to the extent applicable, the Parent and their affiliates), and each of their Representatives, against ASARCO LLC and any of the other Debtors, the Parent, Americas Mining Corporation, Grupo México, S.A.B. de C.V., Southern Copper Corporation and each of their affiliates, or any of their assets, properties, or interests in property. Upon the Effective Date, all claims, demands, and equity interests shall be satisfied, discharged and released in full except as specifically provided elsewhere in the Reorganization Plan or as required to render the Reorganization Plan confirmable.

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The Reorganization Plan shall provide that all other entities are forever barred from asserting claims against the Reorganized Debtors, the Parent, Americas Mining Corporation, Grupo México, S.A.B. de C.V., Southern Copper Corporation and each of their affiliates, or any of their assets, properties, or interests in property, and shall include an injunction to the full extent contemplated by section 524(g) of the Bankruptcy Code to protect the Reorganized Debtors, the Parent, Americas Mining Corporation, Grupo México, S.A.B. de C.V., Southern Copper Corporation and each of their affiliates, or any of their assets, properties, or interests in property, from, claims, demands, causes of action, or rights of setoff or recoupment based upon any act or omission, transaction, or other activity, event, or occurrence of any kind or nature that occurred prior to the Effective Date of the Reorganization Plan, whether or not the facts of or legal bases therefore were known or existed prior to the Effective Date, that was or could have been asserted against the Debtors, or any of them, or against the Parent, Americas Mining Corporation, Grupo México, S.A.B. de C.V., Southern Copper Corporation and each of their affiliates that are derivative of claims, demands, causes of action, or rights of setoff or recoupment against the Debtors, or any of them, unless expressly provided for in the Reorganization Plan or otherwise prohibited by applicable law.

The Reorganization Plan shall provide that neither the Debtors, nor any other party, in any capacity, is discharged, released or relieved of Pension Benefit Guaranty Corporation liability with respect to the pension plans under any law, governmental policy, or regulatory provision.

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PARENT:

ASARCO INCORPORATED, a Delaware corporation

By: 
Name: _____
Title: _____

By: 
Name: _____
Title: _____

AMERICAS MINING CORPORATION, a Delaware corporation

By: 
Name: _____
Title: _____

By: 
Name: _____
Title: _____

FCR:

ROBERT C. PATE, in his capacity as Future Claims Representative

By: _____
Name: _____
Title: _____

ASBESTOS COMMITTEE:

Official Committee of Asbestos Claimants

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

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PARENT:

ASARCO INCORPORATED, a Delaware corporation

By: _____
Name:
Title:

By: _____
Name:
Title:

AMERICAS MINING CORPORATION, a Delaware corporation

By: _____
Name:
Title:

By: _____
Name:
Title:

FCR:

ROBERT C. PATE, in his capacity as Future Claims Representative

By: R. C. Pate 6/29/2009 @ 7:45 AM EDT
Name: ROBERT C. PATE
Title: FCR

ASBESTOS COMMITTEE:

Official Committee of Asbestos Claimants

By: _____
Name:
Title:

By: _____
Name:
Title:

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SUBJECT TO BANKRUPTCY PROCESS**

PARENT:

ASARCO INCORPORATED, a Delaware corporation

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

AMERICAS MINING CORPORATION, a Delaware corporation

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

FCR:

ROBERT C. PATE, in his capacity as Future Claims Representative

By: _____
Name: _____
Title: _____

ASBESTOS COMMITTEE:

Official Committee of Asbestos Claimants

By: Alan R. Brayton
Name: ALAN R. BRAYTON
Title: CO-CHAIR

By: _____
Name: _____
Title: _____

PARENT'S PLAN EXHIBIT 18

**LIST OF DESIGNATED PROPERTIES TO BE TRANSFERRED TO
ENVIRONMENTAL CUSTODIAL TRUSTS AND SCHEDULE OF
ENVIRONMENTAL CUSTODIAL TRUST FUNDING**

CUSTODIAL TRUST PROPERTIES & FUNDING¹			
Designated Site	Remedial Cost	Administrative Cost	Total
Montana Custodial Trust			
East Helena, MT	\$ 100,000,000		
East Helena, MT (NRD)	\$ 5,000,000		
Black Pine, MT	\$ 17,500,000		
Mike Horse, MT	\$ 10,000,000		
Iron Mountain, MT	\$ 1,900,000		
<i>Trust Subtotal</i>	<i>\$ 134,400,000</i>	<i>\$ 8,900,000</i>	<i>\$ 143,300,000</i>
Texas Custodial Trust²			
El Paso Smelter, TX	\$ 43,800,000		
Amarillo, TX	\$ 80,000		
<i>Trust Subtotal</i>	<i>\$ 43,880,000</i>	<i>\$ 8,200,000</i>	<i>\$ 52,080,000</i>
Other Custodial Trust			
Sacaton, AZ	\$ 20,000,000		
Globe, CO	\$ 16,000,000		
Alton, IL	\$ 7,000,000		
Taylor Springs, IL	\$ 4,200,000		
Silverton, CO	\$ 4,000,000		
Trench/Salero, AZ	\$ 2,825,000		
Murray Smelter, UT (future costs)	\$ 2,430,000		
Magdalena, NM	\$ 1,340,000		
Whiting, IN	\$ 1,200,000		
Columbus/Blue Tee, OH	\$ 420,000		
Beckemeyer, IL	\$ 200,000		
McFarland, WA	\$ 200,000		
Ragland, AL	\$ 200,000		
Van Buren, AR	\$ 200,000		
Murray Smelter, UT (past costs)	\$ 167,486		
Sand Springs, OK ³	\$ 130,000		
Deming, NM	\$ 120,493		
Gold Hill/Belshazzar, UT	\$ 100,000		
<i>Trust Subtotal</i>	<i>\$ 60,732,979</i>	<i>\$ 10,400,000</i>	<i>\$ 71,132,979</i>
Total Costs	\$ 239,012,979	\$ 27,500,000	\$ 266,512,979

¹ East Helena NRD (\$5,000,000), Murray Smelter, UT (\$167,486), and Sand Springs, OK past costs (\$10,000) are Miscellaneous Federal and State Sites, but are included in the Custodial Trust Site Settlement Agreements.

² Pursuant to the terms of the Environmental Custodial Trust Settlement Agreement for the Designated Properties in Texas, the Environmental Custodial Trust Funding and the Environmental Custodial Trust Administration Funding to be paid by ASARCO to the Environmental Custodial Trust for such properties will be combined in a single account and, in accordance with the terms of the Environmental Custodial Trust Agreement governing such Environmental Custodial Trust, may be used by the custodial trustee of such trust either for remediation and restoration of, and other environmental costs related to the Designated Properties located in Texas or for administration of such properties.

³ Includes \$10,000 in past costs.

PARENT'S PLAN EXHIBIT 19

LIST OF SITES RELATED TO ENVIRONMENTAL CLAIMS

CUSTODIAL TRUST SITES¹	
<i>Montana Custodial Trust</i>	
East Helena, MT (including NRD)	
Black Pine, MT	
Mike Horse, MT	
Iron Mountain, MT	
<i>Texas Custodial Trust</i>	
El Paso Smelter, TX	
Amarillo, TX	
<i>Other Custodial Trust</i>	
Sacaton, AZ	
Globe, CO	
Alton, IL	
Taylor Springs, IL	
Silverton, CO	
Trench/Salero, AZ	
Murray Smelter, UT (past and future costs)	
Magdalena, NM	
Whiting, IN	
Columbus/Blue Tee, OH	
Beckemeyer, IL	
McFarland, WA	
Ragland, AL	
Van Buren, AR	
Deming, NM	
Sand Springs, OK (including past costs)	
Gold Hill/Belshazzar, UT	

¹ East Helena NRD, Murray Smelter, UT, and Sand Springs, OK past costs are Miscellaneous Federal and State Sites, but are included in the Custodial Trust Site Settlement Agreements.

PREVIOUSLY SETTLED ENVIRONMENTAL CLAIMS	
Site	
Cal Gulch/Black Cloud, CO	
El Paso County Metal Survey, TX	
Golinsky, CA	
Taylor Springs, IL	
Azurite, WA	
Iron Mountain, MT	
Upper Blackfoot/Mike Horse, MT	
Silver Bow Creek/Butte, MT	
B&L Woodwaste, WA	
Tacoma Smelter Plume, WA - Past Costs/NRD & PRP	
Everett Smelter, WA	
Southeast MO	
Encycle, TX	
Bunker Hill/CDA (Box), ID - Unowned Portion	
Selby Smelter, CA	
Tri-State	
Nueces Bay, TX	
Barker Hughesville (Block P), MT	
East Helena, MT - US/MT Costs - Unowned Portion	
CDA, ID - Hecla	
Triumph Mine, ID	
New Mexico	

MISCELLANEOUS STATE & FEDERAL SITES	
Site	
Tacoma Federal, WA	
USIBWC, TX	
Jack Waite Mine, ID	
Monte Cristo, WA	
Lower Silver Creek/Richardson Flats, UT	
Circle Smelting, IL	
Van Stone, WA	
Kusa, OK	
Vasquez Blvd. / I-70, CO	
Terrible Mine, CO	
South Plainfield, NJ	
Helvetia, AZ	
Stephenson Bennett Mine, NM	
Combination, MT	
Flux Mine, AZ	
Bonanza, CO	
Golden King, WA	
Cholett, WA	
Coy Mine, TN	
Black Pine, MT (unowned)	
Henryetta, OK	
Summitville, CO	
Colorado Permits & Fees	
Northport Smelter, WA	
Anderson Calhoun, WA	
Azurite, WA	
Troy Mine, MT	

OTHER SITES	
<i>Site</i>	
Perth Amboy, NJ:	past costs of remediation on the owned site and NRD on owned sites. The parties are also negotiating the potential resolution of the claim for future remediation of the owned site.
Arizona NRD:	Agreement in principle, subject to the 9019 process, allowance of general unsecured claim of \$4,000,000 and the transfer of certain real property
Hayden (Past Costs):	the parties are negotiating the allowance of a general unsecured claim
Kelly Mine, WA	
Blue Ledge, CA	
Coeur d'Alene, ID	
Tacoma, WA	
Omaha Lead Site, NB	

PARENT'S PLAN EXHIBIT 20

**LIST OF PREVIOUSLY SETTLED ENVIRONMENTAL SETTLED CLAIMS
AND MISCELLANEOUS FEDERAL AND STATE ENVIRONMENTAL CLAIMS**

Previously Settled Environmental Claims

Site	Claimant	Allowed Claim	Cash	Total
Cal Gulch/Black Cloud, CO	Subtotal	\$ 25,300,000	\$ 10,000,000	\$ 35,300,000
	United States	\$ 13,833,000	\$ -	\$ 13,833,000
	Colorado	\$ 5,467,000	\$ -	\$ 5,467,000
	Resurrection	\$ 6,000,000	\$ 10,000,000	\$ 16,000,000
El Paso County Metal Survey, TX	Subtotal	\$ 13,700,000	\$ -	\$ 13,700,000
	United States	\$ 13,280,780	\$ -	\$ 13,280,780
	Texas	\$ 419,220	\$ -	\$ 419,220
Golinsky, CA	Subtotal	\$ 4,050,000	\$ -	\$ 4,050,000
	United States	\$ 4,050,000	\$ -	\$ 4,050,000
Taylor Springs, IL	Subtotal	\$ 1,662,541	\$ -	\$ 1,662,541
	United States	\$ 1,662,541	\$ -	\$ 1,662,541
	Blue Tee	\$ -	\$ -	\$ -
Azurite, WA	Subtotal	\$ 5,000,000	\$ -	\$ 5,000,000
	United States	\$ 5,000,000	\$ -	\$ 5,000,000
Iron Mountain, MT	Subtotal	\$ 2,200,000	\$ -	\$ 2,200,000
	United States	\$ 500,000	\$ -	\$ 500,000
	Montana	\$ 1,700,000	\$ -	\$ 1,700,000
Upper Blackfoot/Mike Horse, MT - Unowned Portion	Subtotal	\$ 20,000,000	\$ 8,500,000	\$ 28,500,000
	United States	\$ 228,446	\$ 500,000	\$ 728,446
	Montana	\$ 19,771,554	\$ 8,000,000	\$ 27,771,554
	Atlantic Richfield	\$ -	\$ -	\$ -
Silver Bow Creek/Butte, MT	Subtotal	\$ 18,779,255	\$ -	\$ 18,779,255
	United States	\$ -	\$ -	\$ -
	Montana	\$ -	\$ -	\$ -
	MRI	\$ 18,779,255	\$ -	\$ 18,779,255
B&L Woodwaste, WA	Subtotal	\$ 20,000,000	\$ -	\$ 20,000,000
	Washington	\$ -	\$ -	\$ -
	Murray Pacific	\$ 20,000,000	\$ -	\$ 20,000,000
	Louisiana Pacific	\$ -	\$ -	\$ -
	Wasser & Winters	\$ -	\$ -	\$ -
Tacoma Smelter Plume, WA - Past Costs/NRD & PRP	Subtotal	\$ 15,300,000	\$ -	\$ 15,300,000
	Washington	\$ 14,000,000	\$ -	\$ 14,000,000
	BNSF	\$ 1,300,000	\$ -	\$ 1,300,000
Everett Smelter, WA	Subtotal	\$ 38,012,500	\$ -	\$ 38,012,500
	Washington	\$ 38,000,000	\$ -	\$ 38,000,000
	BNSF	\$ 12,500	\$ -	\$ 12,500
Southeast MO	Subtotal	\$ 79,513,163	\$ -	\$ 79,513,163
	United States	\$ 72,500,000	\$ -	\$ 72,500,000
	Missouri	\$ 3,750,000	\$ -	\$ 3,750,000
	Doe Run	\$ 3,263,163	\$ -	\$ 3,263,163

Previously Settled Environmental Claims

Site	Claimant	Allowed Claim	Cash	Total
Encycle, TX	Subtotal	\$ 10,520,498	\$ -	\$ 10,520,498
	United States	\$ -	\$ -	\$ -
	Texas	\$ -	\$ -	\$ -
	Encycle/Texas Inc.	\$ 10,000,000	\$ -	\$ 10,000,000
	Meaney Walsh	\$ 520,498	\$ -	\$ 520,498
Bunker Hill/CDA (Box), ID - Unowned Portion	Subtotal	\$ 16,800,000	\$ -	\$ 16,800,000
	United States	\$ 6,800,000	\$ -	\$ 6,800,000
	US/ID Shared	\$ 10,000,000	\$ -	\$ 10,000,000
	Idaho	\$ -	\$ -	\$ -
Selby Smelter, CA	Subtotal	\$ 33,888,541	\$ -	\$ 33,888,541
	California DTSC	\$ 33,370,751	\$ -	\$ 33,370,751
	CA State Lands	\$ 258,895	\$ -	\$ 258,895
	CS Land, Inc.	\$ 258,895	\$ -	\$ 258,895
Tri-State	Subtotal	\$ 170,458,000	\$ -	\$ 170,458,000
	United States	\$ 144,000,000	\$ -	\$ 144,000,000
	Oklahoma	\$ 7,500,000	\$ -	\$ 7,500,000
	Kansas	\$ 3,250,000	\$ -	\$ 3,250,000
	Missouri	\$ 3,250,000	\$ -	\$ 3,250,000
	Quapaw	\$ 11,500,000	\$ -	\$ 11,500,000
	Blue Tee	\$ 958,000	\$ -	\$ 958,000
Nueces Bay, TX	Subtotal	\$ 10,000,000	\$ -	\$ 10,000,000
	Texas	\$ 10,000,000	\$ -	\$ 10,000,000
	Encycle/Texas Inc.	\$ -	\$ -	\$ -
Barker Hughesville (Block P), MT	Subtotal	\$ 9,000,000	\$ -	\$ 9,000,000
	United States	\$ 1,000,000	\$ -	\$ 1,000,000
	Montana	\$ 7,100,000	\$ -	\$ 7,100,000
	Doe Run	\$ 900,000	\$ -	\$ 900,000
East Helena, MT - US/MT Costs - Unowned Portion	Subtotal	\$ 13,209,783	\$ -	\$ 13,209,783
	United States	\$ 13,000,000	\$ -	\$ 13,000,000
	Montana	\$ 209,783	\$ -	\$ 209,783
CDA, ID - Hecla	Subtotal	\$ 3,333,550	\$ -	\$ 3,333,550
	Hecla	\$ 3,333,550	\$ -	\$ 3,333,550
Triumph Mine, ID ¹	Subtotal	\$ 1,675,000	\$ -	\$ 1,675,000
	Idaho	\$ 1,675,000	\$ -	\$ 1,675,000
New Mexico	Subtotal	\$ 1,200,000	\$ -	\$ 1,200,000
	New Mexico	\$ 1,200,000	\$ -	\$ 1,200,000
TOTAL AMOUNTS		\$ 513,602,831	\$ 18,500,000	\$ 532,102,831

¹ The Triumph Settlement is an agreement in principle.

Miscellaneous Federal and State Environmental Claims

Site ¹	Claimant	Settlement
Tacoma Federal, WA	United States	\$ 27,000,000
USIBWC, TX	United States	\$ 19,000,000
Jack Waite Mine, ID	United States	\$ 11,300,000
Monte Cristo, WA	United States/Washington	\$ 11,000,000
Lower Silver Creek/Richardson Flats, UT	United States	\$ 7,400,000
Circle Smelting, IL	United States	\$ 6,052,390
Van Stone, WA	Washington	\$ 3,000,000
Kusa, OK	Oklahoma	\$ 1,780,000
Vasquez Blvd. / I-70, CO	United States	\$ 1,500,000
Terrible Mine, CO	United States	\$ 1,400,000
South Plainfield, NJ	New Jersey	\$ 1,000,000
Helvetia, AZ	Arizona	\$ 880,000
Stephenson Bennett Mine, NM	United States	\$ 550,000
Combination, MT	United States	\$ 542,000
Flux Mine, AZ	United States	\$ 487,000
Bonanza, CO	Colorado	\$ 400,000
Golden King, WA	Washington	\$ 400,000
Cholett, WA	Washington	\$ 300,000
Coy Mine, TN	United States	\$ 200,000
Black Pine, MT (unowned)	United States/Montana	\$ 190,000
Henryetta, OK	Oklahoma	\$ 109,000
Summitville, CO	Colorado	\$ 86,000
Colorado Permits & Fees	Colorado	\$ 2,800
Northport Smelter, WA	Washington	\$ -
Anderson Calhoun, WA	Washington	\$ -
Azurite, WA	Washington	\$ -
Troy Mine, MT	Montana	\$ -
TOTAL AMOUNT		\$ 94,579,190

¹East Helena NRD (\$5,000,000), Murray Smelter, UT (\$167,486), and Sand Springs, OK past costs (\$10,000) are Miscellaneous Federal and State Sites, but are included in the Custodial Trust Site Settlement Agreements.

PARENT'S PLAN EXHIBIT 21

LIST OF ASBESTOS INSURANCE SETTLEMENT AGREEMENTS

LIST OF ASBESTOS INSURANCE
SETTLEMENT AGREEMENTS

1. Settlement Agreement and Release with Certain Participating London Market Companies dated July 13, 2006 and approved by order entered on September 14, 2006 (Docket No. 3019). The Participating London Market Companies that are part of this settlement are:
 - a. Compagnie D'Assurances Maritimes Aeriennes et Terrestres
 - b. CNA Reinsurance of London Limited
 - c. Assicurazioni Generali Spa (UK Branch)
 - d. Heddington Insurance Company (UK) Limited
 - e. Companhia de Seguros Imperio S.A.
 - f. Allianz International Insurance Company Limited
 - g. Storebrand Insurance Company (UK) Limited
 - h. Taisho Marine & Fire Insurance Company (UK) Limited
 - i. The Tokio Marine & Fire Insurance Company (UK) Limited
 - j. Royale Belge SA
 - k. St. Katherine Insurance Company PLC
 - l. Turegum Insurance Company Limited
 - m. Unionamerica Insurance Company Limited
 - n. Yasuda Fire & Marine Insurance Company (UK) Limited
2. Supplemental Agreement between ASARCO and Sovereign Marine & General Insurance Company Limited (Subject to Scheme of Arrangement) Regarding the Resolution of Various Liability Claims dated September 23, 2006 and approved by order entered on March 23, 2007 (Docket No. 4242).
3. **[Settlement Agreement and Release between ASARCO and Aviva Canada Incorporated effective March 12, 2009 and pending Bankruptcy Court approval pursuant to a motion filed on April 1, 2009 (Docket No. 10673).]**

PARENT'S PLAN EXHIBIT 22

MISSION MINE SETTLEMENT AGREEMENT

Exhibit 22-A Original Mission Mine Settlement Agreement

Exhibit 22-B Amendment to Mission Mine Settlement Agreement

Exhibit 22-A

Settlement Agreement **Mission Mine Leases**

This Settlement Agreement ("Agreement") is entered into by the following parties (each a "Party," and together "the Parties"): (i) the Tohono O'odham Nation, which is a federally recognized Indian tribe ("the Nation"); (ii) the San Xavier District, which is a political subdivision of the Nation ("the District"); (iii) the San Xavier Allottees Association ("the Allottees Association"); (iv) the United States of America, on behalf of the Department of the Interior, including the Bureau of Land Management, Bureau of Indian Affairs, and Minerals Management Service ("the United States"), in its capacity as trustee of the interests of the Landowners defined below; and (v) ASARCO LLC, a Delaware limited liability company ("ASARCO"), which is currently a debtor in possession under chapter 11 of title 11 of the United States Code ("the Bankruptcy Code").

Recitals

A. In 1959, the United States entered into or approved certain leases with ASARCO Incorporated, predecessor in interest to ASARCO LLC, on behalf of owners of interests in trust allotments, currently held by the Nation and several individuals, within the leaseholds ("the Landowners"). The agreements consisted of two mining leases under the Allotted Lands Mining Act of 1909 (25 U.S.C. § 396) and twenty-one business leases under the Indian Long Term Leasing Act of 1955 (25 U.S.C. § 415). The first mining lease, designated number 454-2-60, authorized ASARCO to prospect for and mine minerals other than oil and gas and to conduct related operations on a parcel of land known as Tract I on the San Xavier Reservation ("the Tract I Mining Lease"). The second mining lease, designated number 454-3-60, authorized ASARCO to prospect for and mine minerals other than oil and gas and to conduct related operations on a parcel of land known as Tract II on the San Xavier Reservation ("the Tract II Mining Lease"). The twenty-one business leases, designated numbers 454-6-59 through 454-26-59, authorized ASARCO to deposit overburden alluvium, waste rock and tailings generated from ASARCO's mining and related operations on or adjacent to the San Xavier Reservation on a parcel of land known as Tract III on the San Xavier Reservation ("the Tract III Business Leases").

B. The Tract I Mining Lease, Tract II Mining Lease, and Tract III Business Leases (collectively "the Leases") provide in part that, in exchange for the privilege of conducting its operations on Tracts I, II and III, ASARCO must make certain rental and royalty payments to the United States for the use and benefit of the Landowners and comply with certain provisions in the Leases and federal regulations governing the condition of the premises that might arise as a result of the operations. The regulations, in particular, include specifications for the reclamation of the premises during the operations and after the cessation of the operations. Since the early nineteen-seventies, if

not earlier, the Parties have not been able to agree on the nature and extent of some of ASARCO's rights and obligations under the Leases and regulations, including, but not limited to, ASARCO's reclamation obligations.

C. On November 3, 1971, the Nation (formerly known as the Papago Tribe), individual members of the Nation, the Bureau of Indian Affairs, and ASARCO Incorporated entered into an agreement settling a lawsuit, filed in 1970 in the United States District Court for the District of Arizona, that had alleged ASARCO Incorporated was in violation of the Tract I Mining Lease and Tract II Mining Lease ("the 1971 Settlement Agreement"). As a function of the 1971 Settlement Agreement, ASARCO must make certain production royalty payments that are greater than those specified in the Tract I Mining Lease and Tract II Mining Lease and, under certain circumstances, must make minimum royalty payments in addition to the minimum royalty payments specified in the Tract I Mining Lease and Tract II Mining Lease, to the United States for the use and benefit of the Landowners.

D. On January 5, 2005, the United States issued an order formally canceling the Tract I Mining Lease, which order included a demand that ASARCO perform reclamation on Tract I, on the grounds that ASARCO failed to comply with the payment and regulatory obligations imposed by the Tract I Mining Lease and 1971 Settlement Agreement. ASARCO has not operated on Tract I since October of 2001.

E. On August 9, 2005 ("the Petition Date"), ASARCO LLC filed a voluntary chapter 11 petition for relief under the Bankruptcy Code ("the Bankruptcy Case") in the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division ("the Bankruptcy Court"). During the pendency of the Bankruptcy Case, ASARCO has continued to operate on Tracts II and III pursuant to the Tract II Mining Lease, the 1971 Settlement Agreement and Tract III Business Leases.

F. On July 28, 2006, the United States on behalf of the Department of the Interior and the Landowners filed a proof of claim in the Bankruptcy Case, alleging ASARCO is liable for delinquent rental and royalty payment and reclamation obligations and certain damages arising from ASARCO's mining and related operations on Tracts I, II and III ("Claim No. 10744").

G. On July 28, 2006, the District filed a proof of claim in the Bankruptcy Case, alleging ASARCO is liable for delinquent rental and royalty payment and reclamation obligations and certain damages arising from ASARCO's mining and related operations on Tracts I, II and III ("Claim No. 10506"). On July 31, 2006, the District filed a duplicative claim which was assigned Claim No. 10845.

H. On July 28, 2006, the Allottees Association filed a proof of claim in the Bankruptcy Case, alleging ASARCO is liable for delinquent rental and royalty payment

and reclamation obligations and certain damages arising from ASARCO's mining and related operations on Tracts I, II and III ("Claim No. 10507"). On July 31, 2006, the Allottees Association filed a duplicative claim which was assigned Claim No. 10846.

I. Pursuant to timely motions filed by ASARCO under the Bankruptcy Code, the Bankruptcy Court has extended until May 9, 2008 the date by which ASARCO must assume or reject lease agreements in effect when ASARCO filed its chapter 11 petition. ASARCO requested the additional time in order to decide whether to assume or reject those lease agreements and to investigate and analyze the cost of reclamation if those agreements were assumed.

J. The Parties have filed with the Bankruptcy Court certain pleadings and motions seeking estimation and litigated resolution of Claim No. 10744, Claim No. 10506, Claim No. 10845, Claim No. 10507 and Claim No. 10846 (collectively "the Proofs of Claim").

K. The Parties prefer to avoid litigation regarding the payment and reclamation obligations due under the Leases and federal regulations and arising out of the Proofs of Claim and, instead, achieve a settlement of the Proofs of Claim that is acceptable to all the Parties, the Bankruptcy Court and ASARCO's creditors. The Parties believe that this Agreement economically and practicably resolves the disputed issues in a manner that is in the best interests of ASARCO and its creditors and the Landowners.

Terms of Agreement

1. The foregoing recitals shall be construed as terms of this Agreement and the Parties agree to those terms.

2. The Parties agree legal authority for this Agreement is found, in part, in the Bankruptcy Code; the federal statutes governing the management of Indian affairs and agreements with Indian tribes and Indians, including 25 U.S.C § 2; and the federal statutes and regulations governing the conduct and settlement of litigation by the United States, including 28 U.S.C. §§ 516 and 519 and 28 C.F.R. § 61.4.

3. The signatories to this Agreement warrant they are fully authorized to sign on behalf of the Parties and so legally bind all the Parties to the Agreement. Resolutions by ASARCO, the Allottees Association, and the relevant councils of the Nation and the District authorizing the execution of the Agreement on behalf of those Parties have, where necessary, been secured and are attached hereto as Exhibit A. The Parties agree that any recitals or other statements in those resolutions shall have no bearing on any future interpretation of the meaning of the Agreement, except concerning the authority of the signatories to sign on behalf of the Parties and legally bind them to the Agreement.

4. Notwithstanding the signing of the Agreement by and for all the Parties, the Agreement shall become fully effective (hereinafter, "the Effective Date") only after all of the following events have occurred: (a) the Bankruptcy Court approves the Agreement; (b) the Bankruptcy Court approves ASARCO's assumption of the Tract II Mining Lease, Tract III Business Leases, Business Lease No. H-54-16-72 ("the Well Site Lease"), the 1971 Settlement Agreement, and the 1997 Intergovernmental Agreement with the Arizona Department of Environmental Quality (collectively, "the Unexpired Agreements"); (c) the portion of the notice requirements in Exhibit B, attached hereto, that relates to court approval of this Agreement is fully satisfied; (d) the Bankruptcy Court approves the settlement agreement with St. Paul Travelers Insurance Company and its affiliates and subsidiaries ("St. Paul"), attached hereto as Exhibit C; (e) the Legislative Council of the Nation has passed a resolution authorizing the Nation to execute this Agreement and to waive sovereign immunity as described in Paragraph 11, which resolution may be part of the resolution of the council of the Nation described in Paragraph 3; and (f) the Bankruptcy Court's approvals of this Agreement, the agreement with St. Paul, and ASARCO's assumption of the Unexpired Agreements are entered and have not been stayed pending appeal within ten (10) days after entry. ASARCO may elect (but is not obligated) to waive the condition contained in subparagraph (e) of this paragraph. If ASARCO waives the condition contained in subparagraph (e), then the Effective Date will occur without the condition contained in subparagraph (e) being met.

5. In exchange for ASARCO's covenants and promises to perform its obligations under this Agreement, the parties other than ASARCO ("the Non-ASARCO Parties") are obligated as follows:

a. As of the Effective Date, the Non-ASARCO Parties hereby release and covenant not to sue ASARCO from and for: (i) any and all pre-petition claims (as defined in the Bankruptcy Code and current Fifth Circuit precedent) related to ASARCO's mining and related operations and physical disturbance resulting from those operations at the Mission Mine Complex (which is composed of the Tract I Mining Lease, the Tract II Mining Lease, the Tract III Business Leases, the Well Site Lease, fee lands owned by ASARCO, and lands rented by ASARCO from the State of Arizona) including, but not limited to, the claims asserted in the Proofs of Claim; (ii) any and all claims arising post-petition through the Effective Date related to the Tract I Mining Lease; and (iii) all mining plan and reclamation obligations that might, under the law or contracts, burden ASARCO as a result of ASARCO's past, present and future operations and physical disturbance resulting from those operations within the Footprint; *save and except* that:

(1) This paragraph does not affect the Non-ASARCO Parties' rights to assert claims in order to enforce the obligations imposed on ASARCO under Paragraph 6 and the other terms of this Agreement;

(2) The Non-ASARCO Parties reserve the right to assert post-petition groundwater contamination claims, if any. The Non-ASARCO Parties also reserve the right to argue that groundwater contamination claims, if any, are not pre-petition claims under subparagraph 5.a.(i) and hence are not released under subparagraph 5.a.(i). ASARCO reserves the right to argue that groundwater contamination claims, if any, are pre-petition claims under subparagraph 5.a.(i) and hence are released under subparagraph 5.a.(i). The Parties agree that subparagraphs 5.a.(ii) and 5.a.(iii) do not apply to post-petition groundwater contamination claims, if any;

(3) The foregoing releases do not apply to criminal matters, tax matters, or claims sounding in fraud;

(4) Nothing in this paragraph shall be deemed to be in derogation of the ASARCO Settlement Agreement, executed on June 12, 2006, and effective on December 14, 2007, pursuant to the Statement of Findings: Southern Arizona Water Rights Settlement Amendments Act of 2004, 72 Fed. Reg. 71,145 (2007);

(5) This paragraph does not apply to agencies of the federal government other than the Department of the Interior, and it does not affect the United States' (including on behalf of the Department of the Interior in any capacity) right to assert common law or other claims not released on behalf of the Department of the Interior in its capacity as trustee of the interests of the Landowners under subparagraph 5.a.(i), (ii) and (iii) above. The Parties agree that cost recovery claims or natural resource damage claims under section 107 of the Comprehensive Environmental Response Compensation and Liability Act are not released under subparagraph 5.a.(i), (ii) and (iii) above. Nothing in the preceding sentence shall be deemed to be a waiver by ASARCO of its right to defend against any such claims under any theory (including the theory that the claims are barred or discharged under the Bankruptcy Code).

b. Upon the payment of the funds referenced in subparagraph 6.g. into the Account, the United States shall release St. Paul and ASARCO from any and all obligations under the following numbered St. Paul bonds: 420669, 420670, 420668, 143432, 297126, 297127 and 396702 (hereinafter the "St. Paul Bonds"). The Parties acknowledge and agree that there are no legal obligees of these bonds other than the Bureau of Indian Affairs of the Department of the Interior, which is bound by the terms of this Agreement. Upon the deposit of the funds into the Account, as described in subparagraph 6.g., the Department of the Interior (on behalf of the Bureau of Indian Affairs), as appropriate, shall execute a release substantially in the form attached hereto as Exhibit D releasing the St. Paul Bonds without need for further court order.

c. Within forty (40) days after the Effective Date, the Bureau of Land Management shall cancel all notices of deficiency and related notices concerning mine plans of operation and corresponding reclamation plans for Tracts I, II and III that

ASARCO submitted to the Bureau of Land Management prior to the execution of this Agreement.

6. In exchange for the Non-ASARCO Parties' releases, covenants and promises to perform their obligations under this Agreement, ASARCO is obligated as follows:

a. As of the Effective Date, ASARCO hereby releases and covenants not to sue the Non-ASARCO Parties from and for any and all claims related to ASARCO's mining and related operations and physical disturbance resulting from those operations on Tracts II and III through the Petition Date and on Tract I through the Effective Date; *save and except* that:

(1) This paragraph does not affect ASARCO's right to assert claims in order to enforce the obligations imposed on the Non-ASARCO Parties under Paragraph 5 and the other terms of this Agreement; and

(2) The foregoing releases do not apply to tax matters, claims sounding in fraud, or to agencies of the federal government other than the Department of the Interior.

b. Upon finalization of the Agreement, and with the permission of the representatives of the Non-ASARCO Parties, ASARCO shall file with the Bankruptcy Court a motion to assume the Unexpired Agreements and motions to approve this Agreement and the settlement agreement with St. Paul. ASARCO shall make good faith efforts to secure the Bankruptcy Court's approval of the motions. The motion to assume the Unexpired Agreements shall provide that, once the assumption is approved and that order is either final or not stayed pending appeal, the order shall be binding on any owner or purchaser of, or any successor to the interest of ASARCO in, the entire Mission Mine (consisting of the Tract II Mining Lease, the Tract III Business Leases, the Well Site Lease, fee lands owned by ASARCO, and lands rented by ASARCO from the State of Arizona) regardless of whether the purchase or succession is made pursuant to a confirmed plan of reorganization.

c. Simultaneously with the release of the St. Paul Bonds, as described in subparagraph 5.b., ASARCO shall obtain a performance bond or equivalent financial assurance to secure ASARCO's rental and royalty obligations on those leases in an amount of \$820,000.

d. On the Effective Date of the Agreement, the claim of the United States for prepetition royalties that the Non-ASARCO parties allege are due under the Tract I Mining Lease and 1971 Settlement Agreement shall be allowed as a general unsecured claim in the amount of \$225,000, for the use and benefit of the Landowners.

No other pre-petition claims of the Non-ASARCO Parties other than those listed in subparagraphs 6.d. and 6.e. will be allowed.

e. Within ten (10) days after the Effective Date, ASARCO shall pay the United States, for the use and benefit of the Landowners, \$172,755.53 in cash as a cure payment for prepetition royalties and penalties that the Non-ASARCO parties allege are due under the Tract II Mining Lease and 1971 Settlement Agreement. The Non-ASARCO Parties stipulate that, once the above sum is paid (except for any subsequent audits that might need to be performed in the ordinary course of business during the post-petition period with respect to royalty calculations), as of the Effective Date, there are no other defaults under the Tract II Mining Lease, Tract III Business Leases or 1971 Settlement Agreement that are not being cured to allow assumption of those leases and the 1971 Settlement Agreement pursuant to this Agreement.

f. Within ten (10) days after the Effective Date, ASARCO will dismiss its objection to claims and motion to estimate the claims of the Non-ASARCO Parties and will dismiss with prejudice Adversary No. 06-2078-C. Within ten (10) days after the Effective Date, ASARCO will dismiss the Office of Trust Funds Management, U.S. Department of the Interior, as a defendant with prejudice in Adversary No. 07-2059-C.

g. Within ten (10) days after the Effective Date, ASARCO shall deposit \$33 million into an escrow account ("Account") which shall be managed in accordance with the requirements contained in Exhibit E, attached hereto, for the purpose of funding the implementation of the mine reclamation component of the agreed mining and reclamation plan ("MARP") which is attached hereto as Exhibit F. If the deposit does not occur until after January 31, 2008 as a result of good faith delays, ASARCO shall increase the amount of the deposit above \$33 million to account for inflation by \$2,600 per day for each day starting on and including February 1, 2008 until the date of the deposit. Upon the deposit of funds into the Account, ASARCO shall commence the work necessary to implement the mine reclamation component of the MARP as soon as possible. ASARCO shall perform this work in accordance with the terms of the MARP and the budgets approved by the Panel described in Exhibit E.

h. As ASARCO performs the work necessary to implement the mine reclamation component of the MARP, it will be reimbursed from the Account for its actual and necessary expenses in performing said work, in accordance with the procedure described in Exhibit E. The obligation to perform the reclamation work necessary to implement the MARP shall continue until the MARP is fully implemented or the Account is exhausted, whichever occurs first. In the event that the Account is exhausted before all of the reclamation work is completed, then ASARCO shall be relieved of any obligation to complete the reclamation component of the MARP.

i. Within thirty (30) days after the Effective Date, ASARCO shall send a notice to the Bureau of Land Management formally withdrawing all mine plans of operation and corresponding reclamation plans for Tracts I, II and III that ASARCO submitted to the Bureau prior to the execution of this Agreement.

j. Within sixty (60) days after the Effective Date, ASARCO shall make a submission to the Arizona Department of Environmental Quality ("ADEQ") under A.A.C. § R18-9-106 (2007) to determine the scope of the aquifer protection permit ("APP") application required under the 1997 Intergovernmental Agreement ("IGA") with the ADEQ. Subject to the ADEQ's determination, ASARCO shall within ninety (90) days after the ADEQ's determination submit to the ADEQ an administratively complete application for an APP in accordance with, and which shall be treated in accordance with, the IGA. As part of the APP application, ASARCO shall submit all data from groundwater sampling locations on or adjacent to the San Xavier Reservation collected by or on behalf of ASARCO as of the date of the application, including, but not limited to, the test results from Turner Laboratories, Inc. of the six samples taken on October 25, 2007. The IGA provides that the ADEQ will forward copies of ASARCO's APP submittals to the Nation, the District, the Bureau of Land Management and the Bureau of Indian Affairs, but ASARCO shall provide any such submittals directly to a Non-ASARCO Party upon reasonable request. Until closure of the Mission Mine Complex, ASARCO shall submit to the District all data collected after the submission of the APP application from groundwater sampling locations on or adjacent to the San Xavier Reservation by or on behalf of ASARCO.

k. Upon the Effective Date of the Agreement, ASARCO shall implement the stormwater control construction and maintenance measures specified in the Order of the United States Environmental Protection Agency dated June 20, 2002, the corresponding National Pollution Discharge Elimination System permit in effect as of February 22, 2008, the Stormwater Pollution Prevention Plan ("SWPPP") dated August 2, 2002, and the SWPPP Addendum dated June 14, 2003, all of which are attached hereto as Exhibit G (collectively "the Stormwater Documents"). ASARCO shall, at its sole cost and expense, complete the construction measures specified in the Stormwater Documents within one (1) year after the Effective Date of the Agreement. ASARCO shall maintain the constructed stormwater controls as long as ASARCO is mining or performing reclamation on any part of the Mission Mine Complex, whether or not said mining or reclamation is occurring on ASARCO-owned land or land of the Landowners. ASARCO's maintenance of the stormwater controls shall be subject to the oversight of the Quality Assurance Inspector described in Exhibit E. The Quality Assurance Inspector periodically shall inspect the stormwater controls and shall monitor how they function after significant rainfalls. ASARCO shall perform any construction or repair necessary to correct any deficiencies in the operation of the stormwater controls documented by the Quality Assurance Inspector, including any necessary corrective measures on the waste piles for proper operation of the stormwater controls. Nothing in this Agreement affects

ASARCO's procedural due process rights and substantive rights under the Clean Water Act, including, but not limited to, ASARCO's right to challenge in a federal administrative or judicial proceeding the applicability of Sections 402 and 404 of the Clean Water Act to ASARCO's operations and physical disturbance resulting from those operations on Tracts I, II and III; *provided, however*, that any such challenge shall not diminish ASARCO's contractual obligation under this Agreement to implement the stormwater control construction and maintenance measures specifically described in this subparagraph.

7. The Parties agree that, as to and specifically concerning ASARCO's past, present and future mining and related operations and physical disturbance resulting from those operations within the operational "Footprint" on Tracts I, II and III, defined and depicted in Exhibit H attached hereto, the Parties' performance of their obligations under Paragraphs 5 and 6 shall: (i) satisfy current federal mining and reclamation regulations; (ii) satisfy current mining and reclamation obligations imposed by the Leases; and (iii) satisfy the United States' trust obligation to the Landowners with respect to reclamation required to be performed within the Lease boundaries.

a. In satisfying its trust obligation to the Landowners, the United States' involvement in the implementation of the Agreement does not extend to granting approvals or making decisions and shall be limited to monitoring and providing recommendations to the Landowners and ASARCO concerning matters associated with the performance of the work described in the MARP and the management and disbursement of monies from the Account. This paragraph does not limit the United States' ability to enforce the Agreement in accordance with Paragraph 11.

b. As to and specifically concerning future mining and related operations conducted by ASARCO and physical disturbance resulting from those operations outside the operational "Footprint" on Tracts II and III, nothing in this Agreement shall prevent the application of federal mining and reclamation obligations, and the National Environmental Policy Act and Endangered Species Act and implementing regulations; *provided, however*, that ASARCO continues to reserve its rights to challenge the applicability of the statutes and regulations.

c. Nothing in this Agreement shall affect ASARCO's rental and royalty payment obligations or any other obligations not specifically addressed or released under this Agreement with respect to the Tract II Mining Lease, the Tract III Business Leases, and the 1971 Settlement Agreement, including but not limited to ASARCO's obligation to maintain accurate monthly statements of its mining operations, submit monthly production and royalty reports to the Bureau of Land Management and the Bureau of Indian Affairs, conduct at its own expense annual audits of its operations, and allow the Minerals Management Service to review its accounting pursuant to federal regulations. Nothing in this paragraph or other provisions of this Agreement shall operate to relieve

ASARCO of its obligations under the 1971 Settlement Agreement. ASARCO agrees that it is fully bound by the 1971 Settlement Agreement, and (absent a contrary future agreement by the Parties) shall continue to satisfy all of its obligations under the 1971 Settlement Agreement.

8. The Parties understand and intend that because ASARCO needs to perform work on Tract I in order to implement the MARP and perform other obligations under this Agreement, ASARCO shall do so to the extent necessary, pursuant to the Access Agreement executed by certain of the Parties on April 13, 2007 and corresponding Tribal Council Resolution numbers 07-192 and 07-562, attached hereto as Exhibit I. The Parties also understand and intend that, if, following the expiration of the Tract II Mining Lease or a Tract III Business Lease, ASARCO needs to perform work on that tract in order to implement the MARP or perform other obligations under this Agreement, then the Parties shall work together to accord ASARCO the necessary access to that tract, under an access agreement in substance identical to that provided in Exhibit I. If access to other land or water not owned or controlled by either Party or both Parties is necessary to implement the MARP or perform other obligations under this Agreement, then the Parties shall work together to grant or secure such access.

9. The Parties understand and agree that, if a Non-ASARCO Party, a Landowner, or a member of the Nation, District or Allottees Association tampers with or otherwise engages in unlawful conduct that delays progress on ASARCO's implementation of the mine reclamation component of the MARP (hereinafter "the Injury"), then the cost of remedying the Injury shall be payable from the Account as if it is a cost of implementing the mine reclamation component of the MARP.

10. The Parties' execution of this Agreement shall not constitute an admission of liability and shall not bind the Parties except to the extent necessary to implement and give full faith and credit to the Agreement.

11. The Parties agree that, once the Agreement becomes effective: (a) any Party may file suit against any other Party in the Bankruptcy Court to interpret this Agreement and to enforce the Agreement (which includes a suit to enforce the terms of Exhibit E); (b) if and only if the Bankruptcy Court declines jurisdiction or is determined to lack jurisdiction, then such lawsuits may be brought by and against any and all Parties in the Federal District Court for the Southern District of Texas, Corpus Christi Division or the Federal District Court for the District of Arizona. The Nation and District by their execution of this Agreement hereby provide a waiver of sovereign immunity limited solely to actions to enforce or interpret this Agreement in the Bankruptcy Court or Federal District Court for the District of Arizona, and limited solely to declaratory and injunctive relief and not including money damages, attorney fees, court costs or any other costs, damages or remedy of any other kind. No Party shall argue or assert independently that the Nation's sovereign immunity is waived beyond such express waiver. This waiver

shall terminate at the time that all performance obligations of the Parties under this Agreement are satisfied. The United States agrees that it shall not assert failure to exhaust administrative or tribal judicial remedies as a defense against a lawsuit brought by ASARCO under this paragraph, unless specifically required by an Act of Congress or federal regulations. The United States reserves the right to assert sovereign immunity as a defense against a lawsuit under this paragraph in any forum. ASARCO reserves the right to oppose assertions of sovereign immunity by the United States and to argue that there are no applicable administrative remedies that must be exhausted before bringing a lawsuit to enforce the Agreement.

12. The Parties are aware of canons of interpretation where ambiguities in contracts are resolved by courts in favor of a party based upon status such as that of an Indian Tribe or of a drafter. Such canons notwithstanding, counsel for the Parties have negotiated, read and approved the language of this Agreement, and agree the language shall be construed in its entirety according to its fair meaning and not strictly or necessarily for or against any of the Parties, who have worked together in preparing the final version of this Agreement.

13. This Agreement shall bind and inure to the benefit of the Parties' successors and assigns. The Agreement shall be binding upon any purchaser of the Mission Mine (consisting of the Tract II Mining Lease, the Tract III Business Leases, the Well Site Lease, fee lands owned by ASARCO, and lands rented by ASARCO from the State of Arizona). ASARCO will provide in its plan of reorganization that this Agreement is part of that plan of reorganization and it will be a condition precedent to confirmation of any such plan that this Agreement is assumed by any purchaser under that plan of reorganization. The Non-ASARCO Parties hereby consent to the assumption and assignment of this Agreement, and all agreements (including the Unexpired Agreements) related to any such purchase, and will execute any and all consents or assignments necessary to effectuate such assumption and assignment.

14. If, subsequent to the Effective Date, any material part of the Agreement is determined by a court of competent jurisdiction to be unlawful and unenforceable and the Parties cannot agree on an amendment of the Agreement to address the court's determination, then, at any Party's election, the Agreement shall be rescinded; the residual dollar value of the Account shall be disbursed to ASARCO in accordance with the below distribution scheme; and the Parties' rights and obligations concerning Tracts I, II and III shall, if necessary, be resolved in the courts described in Paragraph 11. If rescission occurs as described above, the Non-ASARCO parties will return to ASARCO all funds deposited in the Account, plus any securities purchased by the manager of the Account in accordance with Exhibit E, plus accrued interest *less* (i) any amounts expended in implementing the mine reclamation component of the MARP and (ii) the face amount (\$11,654,896) of the St. Paul Bonds. Upon return of these funds to ASARCO, the manager of the Account will deliver the balance of the Account to the

Department of the Interior and it will hold the cash transferred to it in replacement of the St. Paul Bonds. ASARCO has the right at any time to substitute equivalent replacement collateral or to provide other equivalent financial assurance in place of the St. Paul Bonds, at which time the United States will refund to ASARCO an amount equal to the face amount of the St. Paul Bonds.

15. Provided they all agree to do so, the Parties may, from time to time, amend this Agreement, including without limitation provisions relating to the MARP and Account to satisfy the purposes of the Agreement and plan of reorganization, and provided the amendment does not frustrate the purposes of the Agreement and plan of reorganization. Under such an amendment, all provisions of the Agreement not affected by the amendment shall continue to have force and effect as if an amendment had not occurred.


16. This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof and there are no agreements, understandings, representations or warranties between the Parties, written or oral, with respect to the subject matter hereof other than those set forth or referred to herein.

17. This Agreement may be executed in counterparts, by either an original signature or signature transmitted by facsimile transmission or other similar process and each copy so executed shall be deemed to be an original and all copies so executed shall constitute one and the same agreement.

18. Exhibits A-I, attached hereto, are incorporated fully as part of this Agreement.

AGREED TO BY THE PARTIES, AS FOLLOWS:

UNITED STATES OF AMERICA

 3-14-08
Signature Date

John T. Stanglewicz Senior Trial Counsel
Name Title

TOHONO O'ODHAM NATION

[Signature] 03/10/2008
Signature Date

Ned Norris, Jr. Chairman
Name Title

SAN XAVIER DISTRICT

[Signature] 3/13/08
Signature Date

Arstin Nuñez Chairman
Name Title

SAN XAVIER ALLOTTEES ASSOCIATION

Philbert Bailey March 17, 2008
Signature Date

Philbert Bailey Chairman
Name Title

ASARCO LLC

Signature Date

Name Title

Signature Date

Name Title

TOHONO O'ODHAM NATION

Signature

Date

Name

Title

SAN XAVIER DISTRICT

Signature

Date

Name

Title

SAN XAVIER ALLOTTEES ASSOCIATION

Signature

Date

Name

Title

ASARCO LLC

Th L Aldrich

Signature

3/12/08

Date

D E McAllister 3/12/08

Signature

Date

Thomas L. Aldrich VP Env. Affairs

Name

Title

Douglas E. McAllister, Executive Vice President

Name

Title

The exhibits to the Mission Mine Settlement Agreement are voluminous, and are not attached. Please contact Rory Fontenla at 214.953.6648; *rory.fontenla@bakerbotts.com* or Mary Gregory at 713.229.1138; *mary.gregory@bakerbotts.com* to request copies of these documents.

Exhibit 22-B

**AMENDMENT TO SETTLEMENT AGREEMENT
MISSION MINE LEASES**

WHEREAS, on or about March 14, 2008, the Tohono O'Odham Nation (the "Nation"), the San Xavier District (the "District"), the San Xavier Allottees Association (the "Allottees Association"), the United States of America, on behalf of the Department of the Interior, in its capacity as trustee on behalf of certain owners of interests in trust allotments (the "United States") and ASARCO LLC ("ASARCO") (collectively, the "Parties") executed that certain Settlement Agreement—Mission Mine Leases (the "Settlement Agreement").

WHEREAS, on April 9, 2008, the United States Bankruptcy Court for the Southern District of Texas approved the terms of the Settlement Agreement and the Parties implemented the Settlement Agreement.

WHEREAS, it has become necessary to amend the Settlement Agreement to reflect further agreements among the Parties.

IT IS, THEREFORE, AGREED that:

1. All terms of the Settlement Agreement shall remain the same and are incorporated herein by reference, except as specifically modified by this Agreement.
2. Exhibit E of the Settlement Agreement is replaced with the attached Exhibit E.
3. Exhibit H of the Settlement Agreement is replaced with the attached Exhibit H.
4. Exhibit F of the Settlement Agreement remains the same except that a) Figures 12a, 12b and 12c of the MARP are replaced with the attached Figures 12a, 12b and 12c; and b) Figure 15 of the MARP is replaced with the attached Figure 15.

SIGNED this 1st day of July, 2008.

UNITED STATES OF AMERICA

<u>Beth E. Cook</u>	<u>7/1/08</u>
Signature	Date

<u>Beth E. Cook</u>	<u>Trial Attorney</u>
Name	Title

TORONTO O'ODHAM NATION

Signature

Date

Ned Norris, Jr.

Chairman

Name

Title

SAN XAVIER DISTRICT

Signature

Date

Name

Title

SAN XAVIER ALLOTTEES ASSOCIATION

Signature

Date

Name

Title

ASARCO LLC

Signature

Date

Name

Title

TOHONO O'ODHAM NATION

Signature

Date

Name

Title

SAN XAVIER DISTRICT

AA
Signature

7/1/08
Date

ASTW NUNEZ, Chairman
Name Title

SAN XAVIER ALLOTTEES ASSOCIATION

Philbert Bailey July 2, 2008
Signature Date

Philbert Bailey President
Name Title

ASARCO LLC

Signature

Date

Name

Title

TOHONO O'ODHAM NATION

Signature Date

Name Title

SAN XAVIER DISTRICT

Signature Date

Name Title

SAN XAVIER ALLOTTEES ASSOCIATION

Signature Date

Name Title

ASARCO LLC

D. E. McAllister July 1, 2008
Signature Date

D. E. McAllister, Exco. V.P.
Name Title

The exhibits to the Mission Mine Settlement Agreement and the amendment thereto are voluminous, and are not attached. Copies of the exhibits are available at the Debtors' restructuring website at www.asarcoreorg.com.

PARENT'S PLAN EXHIBIT 23

FORM OF ASARCO NOTE

PROMISSORY NOTE

\$280,000,000

[_____] , 2009
New York, New York

1. Promise to Pay Principal. FOR VALUE RECEIVED, ASARCO LLC, a limited liability company organized under the laws of the State of Delaware (the "Payor"), hereby unconditionally promises to pay to the order of ASARCO ASBESTOS PERSONAL INJURY SETTLEMENT TRUST, a statutory trust organized under the laws of the State of Delaware (the "Payee"), the principal sum of TWO-HUNDRED AND EIGHTY MILLION DOLLARS on [_____, 20__]¹.

2. Interest. The Payor hereby unconditionally promises to pay to the order of the Payee interest on the unpaid principal amount of this Promissory Note for the period from and including the date hereof to but excluding the date that the principal of this Promissory Note shall be paid in full, at a rate per annum equal to 6.00%. Accrued interest shall be payable in arrears (a) on [_____, 20[___], [_____, 20[___], [_____, 20[___] and [_____, 20[___]² and (b) upon the payment or prepayment of any principal owing under this Promissory Note (but only on the principal amount so paid or prepaid). Interest payable under this Promissory Note shall be computed on the basis of a year of 365 days and actual days elapsed (including the first day but excluding the last day) occurring in the period for which payable.

3. Amounts Owed. The Payee shall maintain records of the amounts owing under this Promissory Note, and such records shall, absent manifest error, be conclusive evidence of such amounts. Prior to any permitted sale, assignment or transfer of this Promissory Note, each payment of principal theretofore made under this Promissory Note shall be endorsed by the Payee on Annex A hereto (or any continuation of said Annex).

4. Manner of Payment. All payments of principal and interest to be made by the Payor under this Promissory Note shall be made in Dollars, in immediately available funds, by wire transfer to an account at a commercial bank located in the United States of America (which account shall be identified in a notice to the Payor not later than three Business Days prior to the date of such payment), not later than 1:00 p.m. New York time on the date on which such payment shall become due (each such payment made after such time on such due date to be deemed to have been made on the next succeeding Business Day). All amounts payable under this Promissory Note shall be paid free and clear of, and without reduction by reason of, any deduction, set-off or counterclaim. The amounts payable by the Payor under this Promissory Note shall be applied first to interest accrued on the unpaid principal amount of this Promissory Note and then to the unpaid principal amount of this Promissory Note (if an Event of Default has

¹ Insert date one year after the date of the Promissory Note.

² Insert the last business day of each calendar quarter occurring after the date of the Promissory Note.

occurred and is continuing, such payment shall be applied in such manner as is determined to be appropriate by the Payee).

5. Payments on Business Days. If the due date of any payment under this Promissory Note would otherwise fall on a day that is not a Business Day, such due date shall be extended to the next succeeding Business Day, and interest shall be payable on any principal so extended for the period of such extension.

6. Prepayments. The Payor shall have the right to prepay all or any portion of the principal amount owing under this Promissory Note at any time or from time to time, provided that the Payor shall give the Payee three (3) Business Days' notice of each such prepayment, which notice shall include the amount of prepayment and the date on which such prepayment is to occur, along with any and all other or additional information as may be reasonably requested by the Payee. Upon the prepayment date identified in any such notice, the amount to be prepaid shall become due and payable under this Promissory Note.

7. Representations and Warranties. The Payor hereby represents and warrants to the Payee as follows:

(a) Organizational Matters. The Payor is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, has all requisite limited liability company power, and has all material governmental licenses, authorizations, consents and approvals, necessary to own its assets and carry on its business as now being or as proposed to be conducted and is qualified to do business in all jurisdictions in which the nature of the business conducted by it makes such qualification necessary.

(b) No Breach. The execution and delivery of this Promissory Note, the making of the extension(s) of credit evidenced hereby, the consummation of the transactions herein contemplated and compliance with the terms and provisions hereof will in no way conflict with or result in a breach of, or, except as set forth in Section 7(d) hereof, require any consent under, the certificate of formation or the limited liability company agreement (or any equivalent documents) of the Payor, or any applicable law or regulation, or any order, writ, injunction or decree of any court or governmental authority or agency, or any agreement or instrument to which the Payor is a party or by which the Payor is bound or to which the Payor is subject, or constitute a default under, or result in the creation of any Lien under, any such agreement or instrument.

(c) Action; Execution and Delivery; Enforceability. The Payor has all necessary limited liability company power and authority to execute, deliver and perform its obligations under this Promissory Note; the execution, delivery and performance by the Payor of this Promissory Note have been duly authorized by all necessary limited liability company action on its part; and this Promissory Note has been duly and validly executed and delivered by the Payor and constitutes its legal, valid and binding obligation, enforceable against the Payor in accordance with its terms, except as the enforceability of thereof is subject to the application of general principles of equity

(regardless of whether considered in a proceeding in equity or at law), including, without limitation, (i) the possible unavailability of specific performance, injunctive relief or any other equitable remedy and (ii) concepts of materiality, reasonableness, good faith and fair dealing.

(d) Approvals. Except for any authorization, approval, consent, filing or registration in connection with the bankruptcy proceedings of the Payor and certain related debtors under Chapter 11 of the United States Bankruptcy Code in cases jointly administered under Case No. 05-21207 in the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division, no authorizations, approvals or consents of, and no filings or registrations with, any governmental or regulatory authority or agency are necessary for the execution, delivery or performance by the Payor of this Promissory Note or for the validity or enforceability hereof.

(e) Anti-Terrorism Laws.

(i) Neither the Payor nor, to the Payor's knowledge, any of its affiliates is in violation of any laws relating to terrorism or money laundering ("Anti-Terrorism Laws"), including, without limitation, Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (the "Executive Order"), and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56 (signed into law on October 26, 2001).

(ii) Neither the Payor nor, to the Payor's knowledge, any affiliate or broker or other agent of the Payor acting or benefiting in any capacity in connection with this Promissory Note is any of the following:

(A) a person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(B) a person owned or controlled by, or acting for or on behalf of, any person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(C) a person with which the Payee is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law;

(D) a person that commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Order; or

(E) a person that is named as a "specially designated national and blocked person" on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control ("OFAC") at its official website or any replacement website or other replacement official publication of such list.

(iii) Neither the Payor nor, to the Payor's knowledge, any affiliate or broker or other agent of the Payor acting in any capacity in connection with this Promissory Note (A) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any person described in clause (ii) of this paragraph (e), (B) deals in, or otherwise engages in any transaction relating to, any Property or interests in Property blocked pursuant to the Executive Order, or (C) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

(f) Benefits of Security and Guaranty. The obligations of the Payor under this Promissory Note are (i) secured by (x) the Pledge Agreement dated [____], 2009 (as amended, supplemented and otherwise modified and in effect from time to time, the "Pledge Agreement") between ASARCO USA Incorporated, a Delaware corporation ("ASARCO USA"), and the Payee, (y) the Security Agreement dated [____], 2009 (as amended, supplemented and otherwise modified and in effect from time to time, the "Security Agreement") between the Payor and the Payee and (z) the [*describe mortgages*] (the "Mortgage[s]" and, together with the Pledge Agreement and the Security Agreement, the "Security Documents") between the Payor and the Payee; and (ii) entitled to the benefit of the Guaranty made as of [____], 2009 (as amended, supplemented and otherwise modified and in effect from time to time, the "Guaranty") by Americas Mining Corporation, a Delaware corporation ("AMC"), in favor of the Payee.

8. Covenants. Until the principal of and interest on this Promissory Note and all other amounts payable hereunder and under any of the Security Documents have been paid in full, the Payor covenants and agrees with the Payee that the Payor will:

(a) do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence and the rights, licenses, permits, privileges and franchises material to the conduct of its business;

(b) pay its obligations, including tax liabilities, that, if not paid, could result in a Material Adverse Effect before the same shall become delinquent or in default, except where (i) the validity or amount thereof is being contested in good faith by appropriate proceedings, (ii) the Payor has set aside on its books adequate reserves with respect thereto in accordance with generally accepted accounting principles in the United States of America and (iii) the failure to make payment pending such contest could not reasonably be expected to result in a Material Adverse Effect;

(c) keep and maintain all Property material to the conduct of its business in good working order and condition, ordinary wear and tear excepted;

(d) (i) maintain, with financially sound and reputable insurance companies, insurance in such amounts and against such risks as are customarily maintained by companies engaged in the same or similar businesses operating in the same or similar

locations, (ii) not settle or compromise losses in excess of \$5,000,000 without the prior written consent of the Payee, (iii) within 30 days after the date hereof, deliver to the Payee copies of the certificates of insurance evidencing the existence of all insurance required to be maintained by the Payor pursuant to clause (i) above in respect of any property securing the Mortgages and (iv) at least 15 days prior to the expiration by its terms of any insurance required to be maintained by the Payor pursuant to clause (i) above in respect of any property securing the Mortgages, deliver to the Payee a copy of a certificate of insurance evidencing the renewal of such insurance;

(e) keep proper books of record and account in which full, true and correct entries are made of all dealings and transactions in relation to its business and activities;

(f) permit any representatives designated by the Payee, upon reasonable prior notice, to visit and inspect its Properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its officers and independent accountants, all at such reasonable times and as often as reasonably requested;

(g) comply with all laws, rules, regulations and orders of any Governmental Authority applicable to the Payor or its Property, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect;

(h) comply with all of the terms, covenants and provisions of the Security Documents to which it is a party, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect;

(i) not sell, mortgage or encumber all or any legal or beneficial interest in any property securing the Mortgages if the market value of the property subject to such sale, mortgage or encumbrance, when aggregated with the market value of any prior sale, mortgage, or encumbrance of any property securing the Mortgages, exceeds \$100,000,000; and

(j) apply all insurance proceeds and condemnation awards in excess of \$5,000,000 and not used in rebuilding and/or restoring any material property securing the Mortgages to the payment of the principal of this Promissory Note.

9. Default; Remedies; Expenses. If one or more of the following events (herein called "Events of Default") shall occur and be continuing:

(a) the Payor shall default in the payment of any amount owing under this Promissory Note when due (whether at stated maturity, by acceleration, upon optional or mandatory prepayment or otherwise); or

(b) any representation, warranty or certification made herein or pursuant hereto (or in any modification or supplement hereto) by the Payor shall prove to have been false or misleading as of the time made in any material respect; or

(c) (i) the Payor shall fail to observe or perform its covenant under (A) paragraph 8(a) with respect to its existence and/or (B) paragraph 8(d)(i); (ii) the Payor shall fail to observe or perform any covenant, condition or agreement contained herein (other than those specified in clauses (a) and (c)(i) of this paragraph 9) and such failure shall continue unremedied for a period of 30 days after notice thereof (without duplication of any notice thereof provided by the Payee pursuant to the Security Documents to which the Payor is a party); or (iii) ASARCO USA shall fail to observe or perform any covenant, condition or agreement contained in any of the Security Documents to which it is a party and such failure shall continue unremedied for a period of 30 days after notice thereof (without duplication of any notice thereof provided by the Payee pursuant to the Security Documents to which ASARCO USA is a party); or

(d) the Payor, ASARCO USA or AMC shall (i) apply for or consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee, examiner or liquidator of itself or of all or a substantial part of its Property, (ii) make a general assignment for the benefit of its creditors, (iii) commence a voluntary case under the Federal Bankruptcy Code, (iv) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, liquidation, dissolution, arrangement or winding-up, or composition or readjustment of debts, (v) fail to controvert in a timely and appropriate manner, or acquiesce in writing to, any petition filed against it in an involuntary case under the Federal Bankruptcy Code, or (vi) take any corporate action for the purpose of effecting any of the foregoing; or

(e) the Payor, ASARCO USA or AMC shall (i) become unable or fail to pay its debts generally as they become due, or (ii) admit in writing its respective inability to pay debts generally; or

(f) a proceeding or case shall be commenced, without the application or consent of the Payor, ASARCO USA or AMC, in any court of competent jurisdiction, seeking (i) its reorganization, liquidation, dissolution, arrangement or winding-up, or the composition or readjustment of its debts, (ii) the appointment of a receiver, custodian, trustee, examiner, liquidator or the like of the Payor, ASARCO USA or AMC, as applicable, or of all or any substantial part of its Property, or (iii) similar relief in respect of the Payor, ASARCO USA or AMC, as applicable, under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case shall continue undismissed, or an order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect, for a period of 60 or more days; or an order for relief against the Payor, ASARCO USA or AMC, as applicable, shall be entered in an involuntary case under the Federal Bankruptcy Code; or

(g) an ERISA Event shall occur that, alone or together with any other ERISA Events that have occurred, could reasonably be expected to result in a Material Adverse Effect; or

(h) the Guaranty or any Security Document shall cease to be in full force or effect; or

(i) AMC shall fail to own, directly or indirectly, at least 40% of the issued and outstanding common stock of Southern Copper Corporation, a Delaware corporation;

THEREUPON: (1) in the case of an Event of Default other than one referred to in clause (d) or (f) of this paragraph 9, the Payee may, by notice to the Payor, declare the principal and interest payable by the Payor hereunder to be forthwith due and payable, whereupon such amounts shall be immediately due and payable without presentment, demand, protest or other formalities of any kind, all of which are hereby expressly waived by the Payor; and (2) in the case of the occurrence of an Event of Default referred to in clause (d) or (f) of this paragraph 9, the principal and interest payable by the Payor hereunder shall automatically become immediately due and payable without presentment, demand, protest or other formalities of any kind, all of which are hereby expressly waived by the Payor.

10. Default Interest Rate. The whole of the principal sum and interest shall become due and payable at the option of the Payee hereof upon the occurrence of an Event of Default under the provisions of any of the Security Documents, together with (to the extent permitted under applicable law) costs of collection and attorneys' fees incurred by the Payee hereof in collecting or enforcing payment thereof, including all costs associated with the default, any workout negotiations, foreclosure and bankruptcy, whether or not suit is filed. The whole of the principal sum and, to the extent permitted by law, any accrued interest shall bear interest from and after maturity, whether or not resulting from acceleration, at a rate of nine percent (9%) per annum (the "Default Interest Rate").

11. Severability. In the event any one or more of the provisions contained in this Promissory Note and/or any of the Security Documents shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Promissory Note or any of the Security Documents, but this Promissory Note and the Security Documents shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein.

12. Usury. The Payee and the undersigned intend to comply at all times with applicable usury laws. In no event, whether by reason of demand for payment, prepayment, acceleration of the maturity hereof or otherwise, shall the interest contracted for, charged or received by the Payee hereunder or otherwise exceed the maximum amount permissible under applicable law. If from any circumstance whatsoever interest would otherwise be payable to the Payee in excess of the maximum lawful amount, the interest payable to the Payee shall be reduced automatically to the maximum amount permitted by applicable law. If the Payee shall ever receive anything of value deemed interest under applicable law which would apart from this provision be in excess of the maximum lawful amount, an amount equal to any amount which

would have been excessive interest shall be applied to the reduction of the principal amount owing hereunder and not to the payment of interest, or if such amount which would have been excessive interest exceeds the unpaid balance of principal hereunder, such excess shall be refunded to the undersigned. All interest paid or agreed to be paid to the Payee shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full stated term (including any renewal or extension) of this Promissory Note so that the amount of interest on account of this Promissory Note does not exceed the maximum permitted by applicable law.

13. No Waiver. Any failure by the Payee hereof to insist upon the strict performance of any of the terms and provisions of this Promissory Note or of any of the Security Documents shall not be deemed to be a waiver of any of the terms and provisions hereof or thereof, and the Payee, notwithstanding any such failure, shall have the right thereafter to insist upon the strict performance by the undersigned of any and all of the terms and provisions of this Promissory Note and the Security Documents.

14. Waivers and Extensions. As to this Promissory Note and any of the Security Documents, the undersigned and endorers severally waive all applicable exemption rights, whether under the state Constitution, Homestead laws or otherwise, and also severally waive valuation and appraisal, presentment, protest and demand, notice of protest, demand and dishonor and nonpayment of this Promissory Note, and expressly agree that the maturity of this Promissory Note, or any payment hereunder, may be extended from time to time without in any way affecting the liability of the undersigned or said endorers.

15. Reinstatement of Indebtedness. Notwithstanding any provision herein to the contrary, the Payor agrees that, to the extent that the Payor makes a payment or payments to the Payee on account of any amount(s) due under this Promissory Note, or the Payee receives any proceeds of collateral (if any), securing any such amount(s), which payments or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required or agreed to be repaid or returned by the Payee under any bankruptcy law, state or federal law, common law, equitable cause, then, to the extent of the amount of such payments and proceeds, this Promissory Note and the indebtedness represented hereby which has been paid, reduced or satisfied by such amount shall be reinstated and continued in full force and effect as of the time immediately preceding such initial payment, reduction or satisfaction.

16. Amendments. Neither this Promissory Note nor any provisions hereof may be waived, modified, amended, discharged or terminated except by an instrument signed by the Payor and the Payee, and then only to the extent set forth in such instrument.

17. Construction. As used in this Promissory Note, the masculine shall include the feminine and neuter and vice versa; the singular shall include the plural and the plural shall include the singular, as the context may require.

18. Fees and Costs. The Payor agrees to pay or reimburse the Payee for paying: (a) all costs and expenses of the Payee (including, without limitation, reasonable counsels' fees) in connection with any default and any enforcement or collection proceedings

resulting therefrom; and (b) all transfer, stamp, documentary or other similar taxes, assessments or charges levied by any governmental or revenue authority in respect of this Promissory Note or any other document referred to herein.

19. Definitions. As used herein, the following terms shall have the following respective meanings:

“Business Day” shall mean any day on which commercial banks are not authorized or required to close in New York City.

“Dollars” and “\$” shall mean lawful money of the United States of America.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“ERISA Affiliate” means any trade or business (whether or not incorporated) that, together with the Payor, is treated as a single employer under Section 414(b) or (c) of the Internal Revenue Code, or, solely for purposes of Section 302 of ERISA and Section 412 of the Internal Revenue Code, is treated as a single employer under Section 414 of the Internal Revenue Code.

“ERISA Event” means (a) any “reportable event”, as defined in Section 4043 of ERISA or the regulations issued thereunder with respect to a Plan (other than an event for which the 30 day notice period is waived); (b) any failure by any Plan to satisfy the minimum funding standard (as defined in Section 412 of the Internal Revenue Code or Section 302 of ERISA), whether or not waived; (c) the filing pursuant to Section 412(c) of the Internal Revenue Code or Section 303(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (d) the incurrence by the Payor or any ERISA Affiliate of any liability under Title IV of ERISA with respect to the termination of any Plan; (e) the receipt by the Payor or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (f) the incurrence by the Payor or any ERISA Affiliate of any liability with respect to the withdrawal or partial withdrawal from any Plan or Multiemployer Plan; (g) the receipt by the Payor or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from the Payor or any ERISA Affiliate of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA or (h) a determination that any Plan is, or is expected to be, in “at risk” status (as defined in Section 430 of the Internal Revenue Code or Section 303 of ERISA).

“Governmental Authority” means the government of the United States of America or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“Internal Revenue Code” means the Internal Revenue Code of 1986, as amended.

“Lien” shall mean, with respect to any Property, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such Property.

“Material Adverse Effect” means a material adverse effect on (a) the business, assets, operations, prospects or condition, financial or otherwise, of the Payor and its subsidiaries taken as a whole, (b) the ability of the Payor or ASARCO USA to perform any of its obligations under this Promissory Note or any of the Security Documents to which it is a party, (c) the legality, validity, binding effect or enforceability of this Promissory Note or any of the Security Documents or (d) the rights of or benefits available to the Payee under this Promissory Note or any of the Security Documents.

“Multiemployer Plan” means a multiemployer plan as defined in Section 4001(a)(3) of ERISA, to which the Borrower or any ERISA Affiliate makes or is obligated to make contributions, or, during the preceding five plan years, has made or been obligated to make contributions.

“PBGC” means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

“Plan” means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Internal Revenue Code or Section 302 of ERISA, and in respect of which the Payor or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA.

“Property” shall mean any right or interest in or to property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible.

“Withdrawal Liability” means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

20. Waiver of Presentment. Etc. The Payor hereby waives acceptance, presentment and demand for payment, notice of dishonor, protest and notice of protest of this Promissory Note. The Payor hereby waives the pleading of any statute of limitations as a defense to any demand hereunder against the Payor.

21. Waiver. No failure on the part of the Payee to exercise, and no course of dealing with respect to, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise by the Payee of any right, power or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The remedies herein are cumulative and are not exclusive of any remedies provided by law.

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22. Notices. All notices and other communications in respect of this Promissory Note (including, without limitation, any modifications of, or requests, waivers or consents under, this Promissory Note) shall be given or made in writing (including, without limitation, by telecopy):

(a) in the case of the Payor, to it at:

ASARCO LLC
[Address]
Attention: [_____]
Telephone No.: [_____]
Telecopier No.: [_____]

with a copy to:

Americas Mining Corporation
ASARCO Incorporated
c/o [ASARCO Incorporated]
[Address]
Attention: [_____]
Telephone No.: [_____]
Telecopier No.: [_____]

(b) in the case of the Payee, to it at:

ASARCO Asbestos Personal Injury Settlement Trust
[Address]
Attention: [_____]
Telephone No.: [_____]
Telecopier No.: [_____]

(c) or, as to either the Payor or the Payee, at such other address as shall be designated by such party in a notice to the other party.

Except as otherwise provided in this Promissory Note, all such communications shall be deemed to have been duly given when transmitted by telecopier or personally delivered or, in the case of a mailed notice, upon receipt, in each case given or addressed as aforesaid.

23. Successors; Assignments. This Promissory Note shall be binding upon and inure to the benefit of the Payor and the Payee and their respective successors and permitted assigns. Neither the Payor nor the Payee shall assign any of its rights or obligations under this Promissory Note without the prior consent of the other party; provided that, if an Event of Default has occurred and is continuing, the Payee may assign any of its rights or obligations under this Promissory Note without the prior consent of the Payor.

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24. Governing Law; Submission to Jurisdiction; Venue. This Promissory Note shall be governed by, and construed in accordance with, the law of the State of New York. The Payor hereby irrevocably and unconditionally submits, for itself and its Property, to the nonexclusive jurisdiction of the Supreme Court of the State of New York sitting in New York County and of the United States District Court for the Southern District of New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Promissory Note or the transactions contemplated hereby. The Payor irrevocably waives, to the fullest extent permitted by applicable law, any objection which it may now or hereafter have to the laying of the venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum.

25. Waiver of Jury Trial. **EACH OF THE PAYOR AND THE PAYEE, BY ITS ACCEPTANCE OF THE BENEFITS OF THIS PROMISSORY NOTE, HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS PROMISSORY NOTE OR THE TRANSACTIONS CONTEMPLATED HEREBY.**

ASARCO LLC

By _____
Name:
Title:

ANNEX A

<u>Amount of Principal Paid</u>	<u>Date of Payment</u>	<u>Notation Made By</u>
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GUARANTY

(\$280,000,000 PROMISSORY NOTE)

This GUARANTY (as the same may be amended, restated, supplemented or otherwise modified from time to time, this “Guaranty”) is made as of [____], 2009 by AMERICAS MINING CORPORATION, a Delaware corporation (the “Guarantor”), in favor of ASARCO ASBESTOS PERSONAL INJURY SETTLEMENT TRUST (the “Payee”), a trust established pursuant to the Fifth Amended Plan of Reorganization (the “Plan”) in an administratively consolidated bankruptcy case captioned *In re ASARCO LLC, et al.*, Case No. 05-21207, pending in the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division pursuant to §524(g) of Title 11 of the United States Code (11 U.S.C. §§ 101 et seq.) (the “Bankruptcy Code”). This Guaranty is the Guaranty described and defined in the Plan and is effective as of the Effective Date.

W I T N E S S E T H

WHEREAS, the Guarantor has agreed to guarantee the obligations of ASARCO, LLC, a Delaware limited liability company (the “Maker”) to make payments pursuant to the Promissory Note with a principal amount of \$280,000,000 (the “Promissory Note”) made by the Maker in favor of the Payee on the date hereof;

WHEREAS, the Maker is an affiliate of the Guarantor and the Maker and the Guarantor will benefit from the Plan and the consummation of the transactions contemplated thereby, including the making of the Promissory Note;

NOW, THEREFORE, in consideration of the premises set forth above, the terms and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Definitions. As used in this Guaranty, the following terms shall have the following meanings:

“Entity” means any individual, corporation, limited liability company, partnership, association, joint stock company, joint venture, estate, trust, unincorporated organization, or government or any political subdivision thereof, or other person or entity.

“Guaranteed Obligations” means all indebtedness and other amounts owing or outstanding under, or arising under or in respect of, the Promissory Note in accordance with its terms.

“Plan Document” has the meaning set forth in the Plan.

Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. All references herein to Sections, Exhibits and Schedules shall be deemed references to Sections of, and Exhibits and Schedules to, this Guaranty unless the context shall otherwise require. The term "including" means "including without limitation".

Unless otherwise defined herein, capitalized terms used herein shall have the meanings ascribed to them in the Promissory Note.

2. Guaranty.

(a) The Guarantor hereby absolutely, irrevocably and unconditionally guarantees for the benefit of the Payee, as a primary obligor and not merely as a surety the full and prompt payment of all Guaranteed Obligations when due, whether at maturity or earlier, by reason of acceleration or otherwise, and at all times thereafter.

(b) The Guarantor hereby agrees that this Guaranty is an absolute, unconditional guarantee of payment and performance and is not merely a guaranty of collection. The Guarantor is liable for the Guaranteed Obligations as set forth in the immediately preceding sentence, which liability is a continuing, absolute and unconditional obligation of payment and performance, regardless of the solvency or insolvency of the Maker or the Guarantor at any time.

(c) For so long as an Event of Default shall have occurred and be continuing, the Payee shall have the right to proceed first and directly against the Guarantor under this Guaranty without proceeding against any other Entity (including the Maker), without exhausting any other remedies which it may have and without resorting to any other security (if any) held by the Payee to secure the Guaranteed Obligations.

3. Obligations Unconditional. (a) The Guarantor hereby agrees that its obligations under or in respect of this Guaranty shall be enforceable against the Guarantor irrespective of:

(i) the legality, validity, enforceability, avoidance or subordination of any of the Guaranteed Obligations or the Promissory Note;

(ii) any law, regulation, or order of any jurisdiction, or any other event, affecting any term of the Guaranteed Obligations or the Promissory Note;

(iii) the absence of any attempt by, or on behalf of, the Payee to collect, or to take any other action to enforce, all or any part of the Guaranteed Obligations whether from or against the Maker or any other Entity;

(iv) the election of any remedy available under the Promissory Note, applicable law, at equity or under any other Plan Document by, or on behalf of, the Payee with respect to all or any part of the Guaranteed Obligations;

(v) any change in the corporate existence, structure or ownership of the Maker or the Guarantor;

(vi) any impairment of the capital of the Maker or the Guarantor, or any insolvency, bankruptcy, reorganization or other similar proceeding affecting any of the Maker, the Guarantor or their assets, or any resulting release or discharge of the Guaranteed Obligations;

(vii) any exchange, substitution, release, non-perfection or impairment of collateral (if any) securing payment of the Guaranteed Obligations; or any failure of the Payee to take any steps to perfect and maintain its security interest (if any) in, or to preserve its rights to, any security or collateral (if any) for the Guaranteed Obligations;

(viii) any amendment, waiver, consent, extension, forbearance or granting of any indulgence by, or on behalf of, the Payee with respect to any provision of the Promissory Note, or any other act or thing or omission or delay to do any other act or thing which may or might in any manner or to any extent vary the risk of the Maker or the Guarantor, including any renewal or extension of the time or change of the manner or place of payment of the Guaranteed Obligations;

(ix) any borrowing or grant of a security interest by the Maker or the Guarantor, as debtor-in-possession, under Section 364 of the Bankruptcy Code;

(x) the disallowance, under Section 502 of the Bankruptcy Code, of all or any portion of the claims against the Maker or the Guarantor held by the Payee for repayment of all or any part of the Guaranteed Obligations;

(xi) the existence of any right, claim, set-off, or defense whether arising from or relating to the Guaranteed Obligations or the Maker or otherwise, that Guarantor may have at any time against the Maker, the Payee or any other Entity, whether in connection herewith or any unrelated transactions, provided, however, that nothing herein shall prevent the assertion of a separate suit or compulsory counterclaim; or

(xii) the cessation for any reason (other than the payment in full of the Guaranteed Obligations) of the liability of the Maker under the Promissory Note or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of the Maker or the Guarantor;

it being the intent of the parties to this Guaranty that the obligations of the Guarantor hereunder are absolute and unconditional under any and all circumstances.

4. Waivers. (a) The Guarantor hereby waives promptness, diligence, presentment, demand of payment, filing of claims with a court in the event of receivership or bankruptcy of the Maker, protest or notice with respect to the Guaranteed Obligations, all setoffs and counterclaims and all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor and notices of acceptance of this Guaranty, the benefits of all statutes of limitation, and all other demands and defenses whatsoever (and shall not require that the same be made on the Maker as a condition to the Guarantor's obligations hereunder).

(b) The Payee is hereby authorized, without notice or demand and without affecting the liability of the Guarantor hereunder, by written agreement with the Maker and from time to time, (i) to renew, extend or otherwise change the time for payment of, or other terms relating to, all or any part of the Guaranteed Obligations, or to otherwise modify, amend or change the terms of the Promissory Note; (ii) to accept partial payments on all or any part of the Guaranteed Obligations; (iii) to settle, release, exchange, enforce, waive, compromise or collect or otherwise liquidate all or any part of the Guaranteed Obligations or any other guaranty of all or any part of the Guaranteed Obligations. Any of the foregoing may be done in any manner, without affecting or impairing the obligations of the Guarantor hereunder.

5. Payments. All payments to be made by the Guarantor pursuant to this Guaranty shall be made in lawful currency of the United States of America by wire transfer of immediately available funds to the Payee in accordance with such wire transfer instructions that are provided by the Payee. All payments under the Guaranty shall be made in full, without any set-off or counterclaim or any deduction or withholding whatsoever, including for any and all present or future taxes. The application of payments and credits (if any) from the Guarantor, the Maker or any other Entity on account of the Guaranteed Obligations, shall be determined by the Payee.

6. Representations and Warranties. The Guarantor represents and warrants that:

(a) The Guarantor is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, has all requisite corporate power, and has all material governmental licenses, authorizations, consents and approvals, necessary to own its assets and carry on its business as now being or as proposed to be conducted and is qualified to do business in all jurisdictions in which the nature of the business conducted by it makes such qualification necessary.

(b) None of the execution and delivery of this Guaranty, the consummation of the transactions herein contemplated and compliance with the terms and provisions hereof will conflict with or result in a breach of, or, except as set forth in Section 6(d) hereof, require any consent under, the certificate of incorporation or by-laws (or any equivalent documents) of the Guarantor, or any applicable law or regulation, or any order, writ, injunction or decree of any court or governmental authority or agency, or any agreement or instrument to which the Guarantor is a party or by which the Guarantor is bound or to which the Guarantor is subject, or constitute a default under, or result in the creation of any Lien under, any such agreement or instrument.

(c) The Guarantor has all necessary corporate power and authority to execute, deliver and perform its obligations under this Guaranty; the execution, delivery and performance by the Guarantor of this Guaranty have been duly authorized by all necessary corporate action on its part; and this Guaranty has been duly and validly executed and delivered by the Guarantor and constitutes its legal, valid and binding obligation, enforceable against the Guarantor in accordance with its terms, except as the enforceability of thereof is subject to the application of general principles of equity (regardless of whether considered in a proceeding in equity or at law), including (i) the

possible unavailability of specific performance, injunctive relief or any other equitable remedy and (ii) concepts of materiality, reasonableness, good faith and fair dealing.

(d) Except for any authorization, approval, consent, filing or registration in connection with the bankruptcy proceedings of the Payor and certain related debtors under Chapter 11 of the United States Bankruptcy Code in cases jointly administered under Case No. 05-21207 in the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division, no authorizations, approvals or consents of, and no filings or registrations with, any governmental or regulatory authority or agency are necessary for the execution, delivery or performance by the Guarantor of this Guaranty or for the validity or enforceability hereof.

7. Setoff. At any time after all or any part of the Guaranteed Obligations have become due and payable (by acceleration or otherwise), the Payee may, without notice to the Guarantor and regardless of the acceptance of any security or collateral (if any) for the payment thereof, and up to the unpaid amount of the Guaranteed Obligations then due, appropriate and apply toward the payment of all or any part of the Guaranteed Obligations then owing to such Entities (i) any indebtedness due or to become due from the Payee to the Guarantor, and (ii) any moneys, credits or other property belonging to the Guarantor, at any time validly held by or coming into the possession of the Payee.

8. Financial Information. The Guarantor hereby acknowledges that it has adequate means of, and assumes sole responsibility for, keeping itself informed of the financial condition of the Maker, and of all other circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations, or any part thereof, that diligent inquiry would reveal, and the Guarantor hereby agrees that the Payee shall have no duty to advise the Guarantor of information known to it regarding such condition or any such circumstances. In the event the Payee in its reasonable discretion, undertakes at any time or from time to time to provide any such information to the Guarantor, the Payee shall be under no obligation (i) to undertake any investigation not a part of its regular business routine, (ii) to disclose any information which the Payee, pursuant to accepted or reasonable practices, wishes to maintain confidential, or (iii) to make any other or future disclosures of such information or any other information to the Guarantor.

9. Reinstatement. Notwithstanding any other provision to the contrary contained herein, the Guarantor further agrees that, to the extent that any Entity makes a payment or payments to the Payee on account of the Guaranteed Obligations, or the Payee receives any proceeds of collateral (if any) securing the Guaranteed Obligations, which payments or proceeds, or any part thereof subsequently are rescinded or otherwise must be repaid or returned by the Payee (including under any bankruptcy law, state or federal law, common law, equitable cause or settlement), then, to the extent of the amount of such payments and proceeds (plus without duplication any interest or expenses in connection therewith, if any), this Guaranty and the Guaranteed Obligations in the amount that has been rescinded or has been repaid or returned by the Payee (in each case, but without duplication, plus any interest or expenses in connection therewith) shall be reinstated and continued in full force and effect as of the time immediately preceding the time such initial payment, reduction or satisfaction became due hereunder.

10. Subrogation. The Guarantor hereby agrees that it will not assert, enforce, or otherwise exercise any rights which it may acquire against the Maker by way of subrogation pursuant to this Guaranty, by any payment made hereunder or otherwise.

11. Amendments; Waivers. (a) Neither this Guaranty nor any provisions hereof may be waived, modified, amended, discharged or terminated except by an instrument signed by the Guarantor and the Payee, and then only to the extent set forth in such instrument.

(b) No failure on the part of the Payee to exercise, and no course of dealing with respect to, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise by the Payee of any right, power or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The remedies herein are cumulative and are not exclusive of any remedies provided by law.

(c) Failure by the Payee at any time or times hereafter to require strict performance by the Maker, the Guarantor or any other guarantor of all or any part of the Guaranteed Obligations or of any of the provisions, warranties, terms and conditions contained in the Promissory Note shall not waive, affect or diminish any right of the Payee at any time or times hereafter to demand strict performance thereof.

12. Effectiveness; Termination. This Guaranty shall become effective against the Guarantor upon its execution by the Guarantor and the occurrence of the Effective Date and shall continue in full force and effect and may not be terminated or otherwise revoked until the Guaranteed Obligations shall have been paid in full. When all Guaranteed Obligations shall have been paid in full, this Guaranty shall terminate without any action on the part of any party hereto or any other Entity.

13. Successors and Assigns. This Guaranty shall be binding upon and inure to the benefit of the Guarantor and the Payee and their respective successors and permitted assigns. Neither the Guarantor nor the Payee shall assign any of its rights or obligations under this Promissory Note without the prior consent of the other party; provided that (i) if an Event of Default has occurred and is continuing, the Payee may assign any of its rights or obligations under this Guaranty without the prior consent of the Guarantor and (ii) the Payee shall not assign any of its rights or obligations under this Guaranty to any assignee without the concurrent assignment of the Promissory Note to such assignee.

14. Governing Law. This Guaranty shall be governed by, and construed in accordance with, the law of the State of New York.

15. Jurisdiction. The Guarantor 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 Guaranty or the transactions contemplated hereby. The Guarantor hereby irrevocably waives, to the fullest extent permitted by applicable law, any objection that it may now or hereafter have to the laying of the venue of any such proceeding

brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum.

16. Waiver of Jury Trial. **EACH OF THE GUARANTOR AND THE PAYEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.**

17. Captions. The captions and section headings appearing herein are included solely for convenience of reference and are not intended to affect the interpretation of any provision of this Agreement.

18. Advice of Counsel. The Guarantor and the Payee represent and warrant to each other that each has analyzed this Guaranty with, and has been advised as to its legal effects by, its legal counsel.

19. Notices. All notices and other communications in respect of this Guaranty (including any modifications of, or requests, waivers or consents under, this Guaranty) shall be given or made in writing (including by telecopy):

(a) in the case of the Guarantor, to it at:

Americas Mining Corporation
[Address]
Attention: [_____]
Telephone No.: [_____]
Telecopier No.: [_____]

(b) in the case of the Payee, to it at:

ASARCO Asbestos Personal Injury Settlement Trust
[Address]
Attention: [_____]
Telephone No.: [_____]
Telecopier No.: [_____]

(c) or, as to either the Guarantor or the Payee, at such other address as shall be designated by such party in a notice to the other party.

Except as otherwise provided in this Guaranty, all such communications shall be deemed to have been duly given when transmitted by telecopier or personally delivered or, in the case of a mailed notice, upon receipt, in each case given or addressed as aforesaid.

20. Severability. If any provision hereof is invalid and unenforceable in any jurisdiction, then, to the fullest extent permitted by law, (a) the other provisions hereof shall remain in full force and effect in such jurisdiction and shall be liberally construed in favor of the

Payee in order to carry out the intentions of the parties hereto as nearly as may be possible and (b) the invalidity or unenforceability of any provision hereof in any jurisdiction shall not affect the validity or enforceability of such provision in any other jurisdiction.

21. Entire Agreement. This Guaranty constitutes the entire contract among the parties relating to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof.

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22. Execution in Counterparts. This Guaranty may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Guaranty by signing any such counterpart.

IN WITNESS WHEREOF, this Guaranty has been duly executed by the Guarantor as of the day and year first set forth above.

AMERICAS MINING CORPORATION

By _____
Name:
Title:

Acknowledged and agreed to
as of the ____ day of _____, 2009.

ASARCO ASBESTOS PERSONAL
INJURY SETTLEMENT TRUST

By: _____
Name:
Title: