

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

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

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**JOINT PLAN OF REORGANIZATION FOR THE DEBTORS UNDER CHAPTER 11  
OF THE UNITED STATES BANKRUPTCY CODE**

BAKER BOTTS L.L.P.  
Jack L. Kinzie  
James R. Prince  
2001 Ross Avenue  
Dallas, Texas 75201-2980  
Telephone: 214.953.6500  
Facsimile: 214.661.6503

BAKER BOTTS L.L.P.  
Tony M. Davis  
Mary Millwood Gregory  
One Shell Plaza  
910 Louisiana  
Houston, Texas 77002  
Telephone: 713.229.1234  
Facsimile: 713.229.1522

JORDAN, HYDEN, WOMBLE,  
CULBRETH, & HOLZER, P.C.  
Shelby A. Jordan  
Harlin C. Womble  
Nathaniel Peter Holzer  
Suite 900, Bank of America  
500 North Shoreline  
Corpus Christi, Texas 78471  
Telephone: 361.884.5678  
Facsimile: 361.888.5555

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Counsel for the Debtors

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**EXHIBITS TO THE PLAN**

<b><u>Exhibit Designation</u></b>	<b><u>Exhibit Title</u></b>
Plan Exhibit 1	List of ASARCO Protected Non-Debtor Affiliates
Plan Exhibit 2	List of Executory Contracts and Unexpired Leases to be Assumed by a Debtor
Plan Exhibit 3	Form of Plan Administration Agreement
Plan Exhibit 4	Form of Litigation Trust Agreement
Plan Exhibit 5	List and Copies of Environmental Custodial Trust Agreements
Plan Exhibit 6	Form of Asbestos Trust Agreement
Plan Exhibit 7	List of Asbestos Insurance Settlement Agreements
Plan Exhibit 8	List of Asbestos Insurance Policies
Plan Exhibit 9	Asbestos Settlement Agreement
Plan Exhibit 10	List of Designated Properties to be Transferred to Environmental Custodial Trusts and Schedule of Environmental Custodial Trust Funding
Plan Exhibit 11	Lists of Class 7 Previously Settled Environmental Claims and Class 8 Miscellaneous Federal and State Environmental Claims
Plan Exhibit 12	List and Copies of Environmental Custodial Trust Settlement Agreements, Miscellaneous Federal and State Environmental Settlement Agreement and Residual Environmental Settlement Agreement
Plan Exhibit 13	Form of Organizational Documents for the Reorganized Debtors
Plan Exhibit 14	Schedules of the Litigation Claims
Plan Exhibit 15	Mission Mine Settlement Agreement
Plan Exhibit 16	List of Class 2 Secured Claims

ASARCO LLC and certain of its related companies<sup>1</sup> (each a “Debtor” and collectively, the “Debtors”), as the debtors and debtors in possession, respectfully propose the following joint plan of reorganization 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 this Plan have the meanings set forth in the Uniform Glossary of Defined Terms for Plan Documents (the “Glossary”), which is Exhibit A to the Disclosure Statement. Capitalized terms used in the Plan which are not defined in the Glossary but which are defined in the Bankruptcy Code shall have the respective meaning specified in the Bankruptcy Code.

1.2 Rules of Interpretation. Unless otherwise provided herein for purposes of this 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 this 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 this 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 this Plan; (d) any reference to any Entity as a holder of a Claim includes that Entity’s successors and assigns; (e) all references in this Plan to sections, articles, and exhibits are references to sections, articles, and exhibits of or to this Plan; (f) the words “herein,” “hereof,” “hereunder,” “hereto” and others of similar import refer to this Plan in its entirety rather than to a particular portion of this 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, this Plan; and (h) the rules of construction set forth in section 102 of the Bankruptcy Code will apply.

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

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<sup>1</sup> The related debtor entities are 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., ASARCO Master, Inc., ASARCO Oil and Gas Company, Inc., Bridgeview Management Company, Inc., ALC, Inc., American Smelting and Refining Company, AR Mexican Explorations, Inc., Government Gulch Mining Company, Limited, Covington Land Company, 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.

## 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 other, lesser treatment) shall receive the Allowed Amount of such holder's Administrative Claim, in Cash, in full satisfaction, settlement, release, extinguishment, and discharge of such Claim, on the Effective Date; *provided, however,* that (a) Allowed Administrative Claims representing (1) postpetition liabilities incurred in the ordinary course of business by a Debtor or (2) postpetition contractual liabilities arising under loans or advances to any Debtor, whether or not incurred in the ordinary course of business, shall be paid 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 order of the Bankruptcy Court; and *further provided* that all Assumed Liabilities shall be paid by the Plan Sponsor. Chase shall receive the Allowed Amount of any Administrative Claim under the Credit Facility (which is discussed in Section 2.15(b) of the Disclosure Statement) in Cash, on the Effective Date, in full satisfaction, settlement, release, extinguishment, and discharge of such Claim. Any Administrative Claims of the United States or the States under civil Environmental Laws relating to the Designated Properties shall be addressed through the Environmental Custodial Trust Settlement Agreements, the Environmental Custodial Trust Funding and the Environmental Custodial Trust Administration Funding to be paid by ASARCO to the Environmental Custodial Trusts pursuant to the Plan. The Settling Asbestos Insurance Companies shall each have an Allowed Administrative Claim for the Pre-524(g) Indemnity (as such term is defined in the Asbestos Insurance Settlement Agreement), in accordance with the terms and conditions of the Asbestos Insurance Settlement Agreement.

2.2 Priority Tax Claims. Each holder of an Allowed Priority Tax Claim (except any holder that agrees to other, lesser treatment) shall be Paid in Full, in full satisfaction, settlement, release, extinguishment, and discharge of such Claim, on the Effective Date.

2.3 Demands. Demands shall be included in the treatment accorded Class 5 Unsecured Asbestos Personal Injury Claims, as set forth in Articles 4.1 and 4.2(e) of this Plan, and shall be determined, processed, liquidated and paid pursuant to the terms and conditions of the Asbestos TDP and the Asbestos Trust Agreement.

## 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 this 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 this Plan.

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

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

(c) Class 3 – Trade and General Unsecured Claims. Class 3 consists of all Trade and General Unsecured Claims against the Debtors.

(d) Class 4 – Bondholders’ Claims. Class 4 consists of all Bondholders’ Claims against the Debtors.

(e) Class 5 – Unsecured Asbestos Personal Injury Claims. Class 5 consists of all Unsecured Asbestos Personal Injury Claims against the Debtors.

(f) Class 6 – Toxic Tort Claims. Class 6 consists of all Toxic Tort Claims against the Debtors.

(g) Class 7 – Previously Settled Environmental Claims. Class 7 consists of all Previously Settled Environmental Claims against the Debtors.

(h) Class 8 – Miscellaneous Federal and State Environmental Claims. Class 8 consists of all Miscellaneous Federal and State Environmental Claims against the Debtors.

(i) Class 9 –Residual Environmental Claims. Class 9 consists of all Residual Environmental Claims against the Debtors.

(j) Class 10 – Late-Filed Claims. Class 10 consists of all Late-Filed Claims against the Debtors.

(k) Class 11 – Subordinated Claims. Class 11 consists of all Subordinated Claims against the Debtors.

(l) Class 12 – Interests in ASARCO. Class 12 consists of all Interests in ASARCO.

(m) Class 13 – Interests in the Asbestos Subsidiary Debtors. Class 13 consists of all Interests in the Asbestos Subsidiary Debtors.

(n) Class 14 – Interests in the Other Subsidiary Debtors. Class 14 consists of all Interests in the Other Subsidiary Debtors.

## 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 and a Demand shall receive the treatment set forth respectively for each such category in Article II of this Plan.

4.2 Classes of Claims and Interests.

(a) *Class 1 – Priority Claims*.

On the Effective Date, or, if later, the date or dates that such Priority Claim becomes due in the ordinary course, each holder of an Allowed Priority Claim (except any holder that agrees to other, lesser treatment) shall be Paid in Full, in full satisfaction, settlement, release, extinguishment, and discharge of such Claim.

This Class is unimpaired. Holders of Priority Claims in Class 1 are presumed to have accepted this Plan and, accordingly, are not entitled to vote on this Plan.

(b) *Class 2 – Secured Claims*.

Each holder of an Allowed Secured Claim shall, at the election of the Debtors, either (1) be Paid in Full on the later of the Effective Date or the date or dates that such Secured Claim becomes due in the ordinary course, or (2) be Reinstated on the Effective Date, in full satisfaction, settlement, release, extinguishment and discharge of such Claim.

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

Each Secured Claim shall be deemed to be in a separate sub-Class of Class 2 for all purposes hereunder. **Exhibit 16** 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 Debtors shall make their election prior to the Confirmation Hearing. The Debtors will solicit the votes of the holders of Secured Claims. If the Debtors elect

to Reinstate a particular Secured Claim, that sub-Class will be unimpaired, and that sub-Class's vote will not be counted. If the Debtors elect the Cash payment option as to a particular Secured Claim, that sub-Class will be impaired, and that sub-Class's vote will be counted.

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

Each holder of an Allowed Trade and General Unsecured Claim (except any holder that agrees to other, lesser treatment) (1) shall, on the Effective Date, be paid the Allowed Amount of such holder's Claim, in Cash and (2) shall, on or after the Effective Date, be paid the Pro Rata Post-Petition Interest Payment out of (A) any Available Plan Funds after the Class 5 and Class 9 Principal Payment is paid in its entirety and (B) the Class 3, 4, 6, 7 and 8 Litigation Proceeds (if any), until the Pro Rata Post-Petition Interest Payment is fully paid, in full satisfaction, settlement, release, extinguishment and discharge of such Claim, on the Effective Date.

This Class is impaired. Holders of Trade and General Unsecured Claims in Class 3 are entitled to vote to accept or reject this Plan.

(d) *Class 4 – Bondholders' Claims.*

Each holder of an Allowed Bondholders' Claim, at the option of the Debtors, (1) shall be Reinstated or (2) shall, on the Effective Date, be paid the Allowed Amount of such holder's Claim, in Cash, and shall, on or after the Effective Date, be paid the Pro Rata Post-Petition Interest Payment out of (A) any Available Plan Funds after the Class 5 and Class 9 Principal Payment is paid in its entirety and (B) the Class 3, 4, 6, 7 and 8 Litigation Proceeds (if any), until the Pro Rata Post-Petition Interest Payment is fully paid, in full satisfaction, settlement, release, extinguishment and discharge of such Claim, on the Effective Date.

The Debtors shall make their election prior to the Confirmation Hearing. The Debtors will solicit the votes of the Bondholders. If the Debtors elect to Reinstate the Bondholders' Claims, this Class will be unimpaired, and the Bondholders' votes will not be counted. If the Debtors elect the Cash payment option, this Class will be impaired, and the Bondholders' votes will be counted.

(e) *Class 5 – Unsecured Asbestos Personal Injury Claims.*

On the Effective Date, liability of all of the Debtors for all Unsecured Asbestos Personal Injury Claims and Demands shall be assumed by, and channeled to, the Asbestos Trust without further act or deed and satisfied as set forth herein.

All Unsecured Asbestos Personal Injury Claims and Demands shall be processed, liquidated and paid pursuant to the terms and provisions of the Asbestos TDP and the Asbestos Trust Agreement. The Asbestos Trust is described in Article VIII below. The sole recourse of the holder of an Unsecured Asbestos Personal Injury Claim or Demand shall be the Asbestos Trust and the Asbestos TDP, and such holder shall have no rights whatsoever at any time to assert such holder's Claim or Demand against any

Debtor, Reorganized Debtor, or 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 the property or interest in property of any ASARCO Protected Party) for the purpose of, directly or indirectly, collecting, recovering, or receiving payment of, on or with respect to any Unsecured Asbestos Personal Injury Claim or Demand.

This Class is impaired. Holders of Unsecured Asbestos Personal Injury Claims in Class 5 are entitled to vote to accept or reject this Plan.

(1) *Class 5A – Asbestos Premises Liability Claims.*

The Asbestos Trust shall create an Asbestos Premises Liability Claims Fund for payment of Asbestos Premises Liability Claims and Demands. The Asbestos Premises Liability Claims Fund shall be funded with, directly or indirectly: (a) proceeds from certain Asbestos Insurance Policies that are subject to prepetition settlement agreements regarding Asbestos Premises Liability Claims and Demands, and the rights thereunder will be transferred to the Asbestos Trust as of the Effective Date in accordance with Article 8.3 below; (b) additional proceeds, if any, from the Asbestos Insurance Recoveries that are applicable to Asbestos Premises Liability Claims and Demands; and (c) a percentage of the Asbestos Trust Assets that are set aside by the Asbestos Trustees for the Asbestos Personal Injury Claims Fund, as described below in Article 4.2(e)(2). The exact percentage is to be determined by the Asbestos Trustees, in their sole discretion, but should be no less than the percentage, if any, of the Asbestos Premises Liability Claims and Demands that are not subject to coverage under the prepetition settlement agreements referenced herein. Class 5A Claims and Demands shall be processed, liquidated and paid pursuant to the terms and provisions of the Asbestos TDP and the Asbestos Trust Agreement.

(2) *Class 5B – Unsecured Asbestos Personal Injury Claims other than Asbestos Premises Liability Claims.*

The Asbestos Trust shall create an Asbestos Personal Injury Claims Fund for payment of all Unsecured Asbestos Personal Injury Claims and Demands other than Asbestos Premises Liability Claims and Demands. The Asbestos Personal Injury Claims Fund shall be funded with (a) the Asbestos Trust's share of the Class 5 and Class 9 Principal Payment; (b) the Asbestos Trust's share of the Class 5 and Class 9 Supplemental Distribution (if any); (c) directly or indirectly, the Asbestos Insurance Recoveries other than those specified in Article 4.2(e)(1) above; (d) the Asbestos Trust's share of the Litigation Trust Interests, and the right to the Asbestos Trust's Priority Litigation Proceeds; and (e) 100% of the interests in Reorganized Covington. Class 5B Claims and Demands shall be processed, liquidated and paid pursuant to the terms and provisions of the Asbestos TDP and the Asbestos Trust Agreement. A Claimant may assert separate Claims and Demands against the Asbestos Premises Liability Claims Fund and the Asbestos Personal Injury Claims Fund based on separate products and/or premises Claims and Demands against the Debtors; *provided, however*, that the amounts paid by the Asbestos Premises Liability Claims Fund on a Claimant's Class 5A Asbestos

Premises Liability Claim or Demand shall reduce the amount of that Claimant's Class 5B Claim or Demand.

(f) *Class 6 – Toxic Tort Claims.*

On the Effective Date, each holder of an Allowed Toxic Tort Claim (except any holder that agrees to other, lesser treatment) (1) shall, on the Effective Date, be paid the Allowed Amount of such holder's Claim, in Cash and (2) shall, on or after the Effective Date, be paid the Pro Rata Post-Petition Interest Payment out of (A) any Available Plan Funds after the Class 5 and Class 9 Principal Payment is paid in its entirety and (B) the Class 3, 4, 6, 7 and 8 Litigation Proceeds (if any), until the Pro Rata Post-Petition Interest Payment is fully paid, in full satisfaction, settlement, release, extinguishment, and discharge of such Claim.

This Class is impaired. Holders of Toxic Tort Claims in Class 6 are entitled to vote to accept or reject this Plan.

(g) *Class 7 – Previously Settled Environmental Claims.*

Each holder of an Allowed Previously Settled Environmental Claim (except any holder that agrees to other, lesser treatment) (1) shall, on the Effective Date, be paid the Allowed Amount of such holder's Claim, in Cash and (2) shall, on or after the Effective Date, be paid the Pro Rata Post-Petition Interest Payment out of (A) any Available Plan Funds after the Class 5 and Class 9 Principal Payment is paid in its entirety and (B) the Class 3, 4, 6, 7 and 8 Litigation Proceeds (if any), until the Pro Rata Post-Petition Interest Payment is fully paid, in full satisfaction, settlement, release, extinguishment and discharge of such Claim against the Debtors as provided in the settlement agreement relating to such Claim.

This Class is impaired. Holders of Previously Settled Environmental Claims in Class 7 are entitled to vote to accept or reject this Plan.

(h) *Class 8 – Miscellaneous Federal and State Environmental Claims.*

Each holder of an Allowed Miscellaneous Federal and State Environmental Claim (except any holder that agrees to other, lesser treatment and as otherwise provided herein) (1) shall, on the Effective Date, be paid the Allowed Amount of such holder's Claim, in Cash and (2) shall, on or after the Effective Date, be paid the Pro Rata Post-Petition Interest Payment out of (A) any Available Plan Funds after the Class 5 and Class 9 Principal Payment is paid in its entirety and (B) the Class 3, 4, 6, 7 and 8 Litigation Proceeds (if any), until the Pro Rata Post-Petition Interest Payment is fully paid, in full satisfaction, settlement, release, extinguishment and discharge of such Claim against the Debtors as provided in the Miscellaneous Federal and State Environmental Settlement Agreement(s) relating to such Claim, attached hereto as **Exhibit 12-B** and incorporated herein.

The Class 8 Claims of the State of Texas relating to the El Paso County Metals site shall be disallowed by Confirmation of the Plan.

This Class is impaired. Holders of Miscellaneous Federal and State Environmental Claims in Class 8 are entitled to vote to accept or reject this Plan.

(i) *Class 9 – Residual Environmental Claims.*

Each holder of an Allowed Residual Environmental Claim (or with respect to the Coeur d'Alene Basin site in Idaho, the United States and the Environmental Custodial Trust for that site for which the United States is the legal beneficiary, as provided in the Residual Environmental Settlement Agreement) shall receive (a) such holder's share of the Class 5 and Class 9 Principal Payment; (b) such holder's share of the Class 5 and Class 9 Supplemental Distribution (if any); and (c) such holder's share of the Litigation Trust Interests (provided that Litigation Proceeds shall first be paid to satisfy the Class 3, 4, 6, 7 and 8 Litigation Proceeds and the Asbestos Trust's Priority Litigation Proceeds), in full satisfaction, settlement, release, extinguishment and discharge of such Claim against the Debtors as provided in the Residual Environmental Settlement Agreement relating to such Claims, attached hereto as **Exhibit 12-C** and incorporated herein. The respective shares for each Allowed Residual Environmental Claim are set forth in the Residual Environmental Settlement Agreement.

This Class is impaired. Holders of Residual Environmental Claims in Class 9 are entitled to vote to accept or reject this Plan.

(j) *Class 10 – Late-Filed Claims.*

Each holder of an Allowed Late-Filed Claim (except any holder that agrees to other, lesser treatment) shall, to the extent of any Available Plan Funds remaining after the Class 5 and Class 9 Supplemental Distribution has been paid in its entirety, be Paid in Full or receive a pro rata distribution of any such Available Plan Funds, in full satisfaction, settlement, release, extinguishment and discharge of such Claim against the Debtors. If the remaining Available Plan Funds are not sufficient to permit all such Claims to be Paid in Full, each such holder shall receive a pro rata distribution on the amount of such holder's Claim as provided in a settlement agreement establishing the amount of the Allowed Late-Filed Claim or a Final Order adjudicating the amount of the Allowed Late-Filed Claim. If Available Plan Funds remain after such payment, each holder shall receive a pro rata distribution of Post-Petition Interest. Such distributions shall be made within sixty (60) days after the Plan Administrator determines that funds are available to make a distribution.

This Class is impaired. Holders of Late-Filed Claims in Class 10 are entitled to vote to accept or reject this Plan.

(k) *Class 11 – Subordinated Claims.*

To the extent of any Available Plan Funds remaining after the Class 10 Late-Filed Claims are Paid in Full, each holder of an Allowed Subordinated Claim (except any holder that agrees to other, lesser treatment) shall be Paid in Full or receive a pro rata distribution of any such Available Plan Funds, in full satisfaction, settlement, release, extinguishment and discharge of such Claim. If the remaining Available Plan

Funds are not sufficient to permit all such Claims to be Paid in Full, each such holder shall receive a pro rata distribution on the Allowed Amount of such holder's Claim. If Available Plan Funds remain after such payment, each holder shall receive a pro rata distribution of Post-Petition Interest. Such distribution shall be made within sixty (60) days after the Plan Administrator determines that funds are available to make a distribution.

This Class is impaired. Holders of Subordinated Claims in Class 11 are entitled to vote to accept or reject this Plan.

(l) *Class 12 – Interests in ASARCO.*

The Interests in ASARCO shall be cancelled, and the holder of such Interests shall receive any Available Plan Funds after the Class 11 Subordinated Claims have been Paid in Full.

This Class is impaired. The holder of Interests in Class 12 is entitled to vote to accept or reject this Plan.

(m) *Class 13 – Interests in the Asbestos Subsidiary Debtors.*

The Interests in the Asbestos Subsidiary Debtors shall be cancelled, and holders of such Interests will not receive or retain any property under the Plan on account of such Interests. This Class is impaired. Holders of Interests in Class 13 are presumed to have rejected this Plan and, accordingly, are not entitled to vote on this Plan.

(n) *Class 14 – Interests in the Other Subsidiary Debtors.*

The Interests in the Other Subsidiary Debtors shall be cancelled, and holders of such Interests will not receive or retain any property under this Plan on account of such Interests. This Class is impaired. Holders of Interests in Class 14 are presumed to have rejected this Plan and, accordingly, are not entitled to vote on this Plan.

4.3 Intercompany Claims. Intercompany Claims (other than (a) Derivative Asbestos Claims, which are resolved pursuant to the Asbestos Settlement Agreement, and (b) any Claims or causes of action asserted in the Litigation Trust Claims) shall be released and extinguished pursuant to this Plan, and no distributions shall be made under this Plan with respect to such Claims. Holders of such Claims shall not be entitled to vote on this Plan.

4.4 Non-Dischargeability of Obligations Under the Flow Through Bonds and the SPT Indemnity Agreement. In accordance with the SPT Settlement Agreement, ASARCO's obligations under and relating to the Flow Through Bonds and the SPT Indemnity Agreement as it relates to the Flow Through Bonds shall not be discharged by Confirmation of the Plan or upon ASARCO's emergence from bankruptcy, except that in accordance with section 7.9 of the Plan Sponsor PSA, the Plan Sponsor shall (a) cause the Debtors to be fully, unconditionally and irrevocably released and discharged from SPT Bond Nos. 394729 and 403998 (identified in section 7.9 of the Disclosure Schedule); and shall (b) replace SPT Bond Nos. 394729 and

403998 or act as a substituted obligor, guarantor or other counterparty to the SPT Bond Nos. 394729 and 403998.

## ARTICLE V

### VOTING RIGHTS

5.1 Each Impaired Class Entitled to Vote Separately. The holders of Claims in each impaired Class of Claims (Classes 2 through 12, unless the Class 2 Secured Claims and Class 4 Bondholders' Claims are Reinstated, in which case they shall be unimpaired) shall be entitled to vote separately to accept or reject this Plan. If no holders of Claims or Interests eligible to vote in a particular Class vote to accept or reject the Plan, the Plan shall be deemed accepted by the holders of such Claims or Interests in such Class. Moreover, any Class of Claims or Interests that does not have a holder of an Allowed Claim or Interest or a Claim or Interest temporarily Allowed by the Bankruptcy Court as of the date of the Confirmation Hearing shall be deemed eliminated from the Plan for purposes of voting to accept or reject the Plan and for purposes of determining acceptance or rejection of the Plan pursuant to section 1129(a)(8) of the Bankruptcy Code.

5.2 Presumed Acceptance of Plan. Class 1 is not impaired. If the Class 2 Secured Claims and Class 4 Bondholders' Claims are Reinstated, they shall also be unimpaired. Pursuant to section 1126(f) of the Bankruptcy Code, the holders of Claims in such Classes are conclusively presumed to have voted to accept this Plan.

5.3 Presumed Rejection of Plan. Classes 13 and 14 will not receive or retain any property under the Plan on account of their Interests. Pursuant to section 1126(g) of the Bankruptcy Code, the holders of Interests in such Classes are conclusively presumed to have voted to reject this Plan.

5.4 Cramdown. If all applicable requirements for Confirmation of the Plan are met as set forth in section 1129(a)(1) through (13) of the Bankruptcy Code *except* subsection (8) thereof, the Plan shall be treated as a request by the Plan Proponents for Confirmation of the Plan in accordance with section 1129(b) of the Bankruptcy Code, notwithstanding the failure to satisfy the requirements of section 1129(a)(8), on the basis that the 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 Plan.

## ARTICLE VI

### THE LITIGATION TRUST

6.1 Creation of the Litigation Trust. On the Effective Date, the Litigation Trust shall be created, and the Litigation Trust Claims shall be transferred to the Litigation Trust.



6.2 Appointment of Litigation Trustee.

(a) The Litigation Trustee shall be named in the Confirmation Order and, upon approval by the Bankruptcy Court in the Confirmation Order, shall become the Litigation Trustee on the Effective Date.

(b) The Litigation Trustee shall have and perform all of the duties, responsibilities, rights and obligations set forth in the Litigation Trust Agreement.

6.3 Litigation Trust Board. As more fully described in the Litigation Trust Agreement, on the Effective Date, the Litigation Trust Board shall be formed and constituted. The Litigation Trust Board shall initially consist of three members, who shall be named in the Confirmation Order and selected by the Debtors upon the recommendation of the Committees, the FCR and the DOJ. The members of the Litigation Trust Board shall be identified at or prior to the Confirmation Hearing.

6.4 Purpose of the Litigation Trust. The Litigation Trust shall be established for the sole purpose of liquidating its assets for the benefit of the Litigation Trust Beneficiaries, with 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 liquidation purpose of the Litigation Trust. Accordingly, upon direction of the Litigation Trust Board, the Litigation Trustee will, in an expeditious but orderly manner, liquidate and convert to Cash the Litigation Trust Claims, make timely distributions to the Litigation Trust Beneficiaries and not unduly prolong the Litigation Trust's duration.

6.5 Transfer of Litigation Trust Claims to the Litigation Trustee. On the Effective Date, the Debtors shall transfer to the Litigation Trustee for the benefit of the Litigation Trust Beneficiaries (a) all of their 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, (b) all of the Debtors' rights, title and interest in the Debtors' Privileges associated with the Litigation Trust Claims, (c) the Litigation Expense Fund in an amount sufficient to fund the operations of the Litigation Trust and (d) all documents in connection with the Litigation Trust Claims.

6.6 The Litigation Trust.

(a) On the Effective Date, the Litigation Trust shall be established and become effective for the benefit of the Litigation Trust Beneficiaries entitled to distributions from the Litigation Trust under the Plan. The Litigation Trust Agreement, substantially in the form of **Exhibit 4** to the Plan, contains provisions customary to trust agreements utilized in comparable circumstances, including but not limited to, provisions to ensure the continued existence of the Litigation Trust as a grantor trust and the Litigation Trust Beneficiaries (and any other Claimants that may be entitled to receive distributions from the Litigation Trust) as the grantors and owners thereof for federal income purposes. The Debtors, the Litigation Trustee, the members of the Litigation Trust Board, the Litigation Trust Beneficiaries (and any other Claimants that may be entitled to receive distributions from the Litigation Trust) and the

Delaware Trustee will execute any document or other instruments as necessary to cause title to the Litigation Trust Claims to be transferred to the Litigation Trust.

(b) Upon direction of the Litigation Trust Board, 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.

(c) All costs and expenses associated with the administration of the Litigation Trust shall be the responsibility of and paid by the Litigation Trust. Notwithstanding the foregoing, Reorganized ASARCO and the Plan Sponsor 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 Plan Sponsor 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 this Plan.

(d) The Litigation Trustee may retain such law firms, accounting firms, experts, advisors, consultants, investigators, appraisers, or other professionals as it may deem necessary, in consultation with the Litigation Trust Board, and at the sole expense of the Litigation Trust, to aid in the performance of the Litigation Trustee's responsibilities pursuant to the terms of this Plan including, without limitation, the liquidation and distribution of Litigation Trust Claims.

(e) For federal income tax purposes, the Litigation Trust Beneficiaries (and any other Claimants that may be entitled to receive distributions from the Litigation Trust) will be treated as grantors and owners of the Litigation Trust, and it is intended that the Litigation Trust be classified as a liquidating trust under section 301.7701-4(d) of the Treasury Regulations and that such trust is owned by the Litigation Trust Beneficiaries (and any other Claimants that may be entitled to receive distributions from the Litigation Trust). Accordingly, for federal income tax purposes, the transfer of assets to the Litigation Trust will be treated as a deemed transfer to the Litigation Trust Beneficiaries (and any other Claimants that may be entitled to receive distributions from the Litigation Trust), followed by a deemed transfer by the Litigation Trust Beneficiaries (and any other Claimants that may be entitled to receive distributions from the Litigation Trust) to the Litigation Trust and all income and gain of the Litigation Trust which is earned after such deemed transfer will be taxed to the Litigation Trust Beneficiaries (and any other Claimants that may be entitled to receive distributions from the Litigation Trust) on a current basis. In addition, the investment powers of the Litigation Trustee shall 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 Claims that is treated as having been transferred to each Litigation Trust Beneficiary (and any other Claimants that may be entitled to receive distributions from the Litigation Trust) as described in the preceding paragraph shall be determined by the Litigation Trustee, and all parties (including the Debtors, Reorganized ASARCO, the Litigation Trustee, the Litigation Trust Beneficiaries and any other Claimants that may be entitled to receive distributions from the Litigation Trust) shall utilize such fair market value determined by the Litigation Trustee in all federal income tax returns filed by such parties.

(g) The Litigation Trustee shall be responsible for filing all federal, state and local tax returns for the Litigation Trust. The Litigation Trustee shall comply with all withholding and reporting requirements imposed by any federal, state, local or foreign taxing authority, and all distributions made by the Litigation Trustee shall be subject to any such withholding and reporting requirements.

(h) Any items of income, deduction, credit or loss of the Litigation Trust shall be allocated by the Litigation Trustee for federal income tax purposes among the Litigation Trust Beneficiaries (and any other Claimants that may be entitled to receive distributions from the Litigation Trust) pro rata on the basis of their beneficial interests in the Litigation Trust, such allocation shall be binding on all parties for all federal and state and local income tax purposes and the Litigation Trust Beneficiaries (and any other Claimants that may be entitled to receive distributions from the Litigation Trust) shall be responsible for the payment of any federal and state and local 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 Asbestos Trust and Class 9 in the same manner as the Litigation Trust Interests (*i.e.*, 50% to the Asbestos Trust and 50% to holders of Allowed Class 9 Residual Environmental Claims, subject to payment of the Class 3, 4, 6, 7 and 8 Litigation Proceeds and the Asbestos Trust's Priority Litigation Proceeds in accordance with Article 6.8 below). 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.

#### 6.7 Litigation Trust Interests.

##### (a) *Distributions of Litigation Trust Interests.*

On the Initial Distribution Date, the Litigation Trustee shall distribute the Litigation Trust Interests 50/50 between the Asbestos Trust and the holders of the Residual Environmental Claims.

##### (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 register (the "Trust Register") of the names, addresses and number of Litigation Trust Interests of the Litigation Trust Beneficiaries.

(d) *Evidence of Litigation Trust Interests.*

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.

(e) *Non-Transferability of Litigation Trust Interests.*

The Litigation Trust Beneficiaries shall have no right to convey, assign, sell or otherwise transfer the Litigation Trust Interests; *provided, however*, that this subsection shall have no effect upon the Asbestos Trust's right to receive the first \$50 million paid on account of the Residual Environmental Claims' Litigation Trust Interests.

6.8 Distributions of Litigation Proceeds.

(a) The holders of Unsecured Asbestos Personal Injury Claims and Residual Environmental Claims have agreed that the Litigation Proceeds shall first be distributed to the holders of Class 3, 4 (if the Debtors make the Cash payment election), 6, 7 and 8 Claims until such Claimants receive the Allowed Amount of their Claims plus Post-Petition Interest (from either Available Plan Funds or Litigation Proceeds). The Asbestos Trust shall then receive the next \$100 million of the Litigation Proceeds. Thereafter, the Asbestos Trust and the holders of Residual Environmental Claims shall each receive 50% of the remaining Litigation Proceeds. Prior to termination of the Litigation Trust, the Litigation Trustee shall distribute the net distributable assets of the Litigation Trust (meaning the Litigation Proceeds, the Litigation Expense Fund and any additions thereto, less the Litigation Trustee's costs and expenses) to the Litigation Trust Beneficiaries, based on the number of Litigation Trust Interests held by each beneficiary.

(b) The Litigation Trust shall distribute at least annually to the Litigation Trust Beneficiaries (or any other Claimants that may be entitled to receive distributions from the Litigation Trust) all its Cash income and all its net proceeds from the liquidation of the assets of the Litigation Trust, except to the extent provided in the Litigation Trust Agreement and consistent with the classification of the Litigation Trust as a liquidating trust under section 301.7701-4(d) of the Treasury Regulations.

6.9 Termination of the Litigation Trust.

(a) The Litigation Trust shall terminate on the earlier of: (1) thirty (30) days after the distribution of all of the assets of the Litigation Trust in accordance with the terms of this Trust Agreement and the Plan; and (2) the fifth (5th) anniversary of the Effective Date; *provided, however*, that, on or prior to a date not less than three (3) months (or more than six (6) 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, such 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 not less than three (3) months (or more than six (6) 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.

## ARTICLE VII

### THE ENVIRONMENTAL CUSTODIAL TRUSTS

7.1 Creation of Environmental Custodial Trusts. Separate Environmental Custodial Trusts shall be created to address Designated Properties as set forth in the Environmental Custodial Trust Agreements attached hereto as **Exhibit 5** and incorporated herein. On the Effective Date, the Debtors shall transfer the Environmental Custodial Trust Assets to the Environmental Custodial Trusts, in accordance with the Environmental Custodial Trust Agreements.

7.2 Appointment of Environmental Custodial Trustees.

(a) An Environmental Custodial Trustee for each Environmental Custodial Trust shall be named in the Confirmation Order. Upon approval by the Bankruptcy Court in the Confirmation Order, each such Person shall become an Environmental Custodial Trustee on the Effective Date.

(b) Each Environmental Custodial Trustee shall have and perform all of the duties, responsibilities, rights and obligations set forth in the relevant Environmental Custodial Trust Agreement.

7.3 Transfer of Designated Properties to the Environmental Custodial Trusts.

(a) On the Effective Date, all of the Debtors' rights, title and interests in the Designated Properties shall be transferred to the respective Environmental Custodial Trusts free and clear of all Claims against the Estate other than any liability to Governmental Units as provided in the Environmental Custodial Trust Agreements, but subject to any *in rem* Claims other than Liens for the payment of monetary Claims such as property taxes or other monetary Claims asserted or that could have been asserted in the Reorganization Cases. The Environmental Custodial Trusts shall each take title to the Designated Properties pursuant to the applicable Custodial Trust Agreement. ASARCO and the Reorganized Debtors shall have no responsibility or involvement with respect to the Environmental Custodial Trusts once they are established and funded in accordance with the Plan.

(b) The Globe, Colorado property is subject to a pending sales contract. If this property has not been sold prior to the Effective Date, this property and ASARCO's obligations as seller under the sales contract shall be transferred to the Environmental Custodial Trust. Any proceeds from the sale of the Globe property shall be paid to the Debtors or

Reorganized ASARCO and distributed in accordance with the Plan, but the Environmental Custodial Trust Funding set aside for this property shall be reallocated to other Environmental Custodial Trusts as directed by the United States.

(c) Any property placed into an Environmental Custodial Trust may be sold or transferred with the approval of the United States and the State in which the property is located, and the proceeds shall be retained by the trust to be used as provided in the applicable Environmental Custodial Trust Agreement: (1) for costs of administration of the applicable Environmental Custodial Trust, (2) to conduct any remaining remediation and restoration relating to such property or (3) to reimburse any Entity performing such remediation or restoration and (4) thereafter as provided in Article 7.10 below.

7.4 Purpose of the Environmental Custodial Trusts. The purpose and objective of each of the Environmental Custodial Trusts shall be as set forth in the applicable Environmental Custodial Trust Agreement, but shall include: (a) owning the Designated Properties in the trust's particular state or region; (b) conducting remediation and restoration or funding remediation and restoration of or related to those Designated Properties; (c) implementing the terms of any Environmental Custodial Trust Settlement Agreements; and (d) with the approval of the United States and the State in which the property is located, selling, transferring or otherwise disposing of the Designated Properties.

7.5 The Environmental Custodial Trusts.

(a) On the Effective Date, the Environmental Custodial Trusts shall be established and become effective. All Entities (including the Debtors and the Environmental Custodial Trustees) shall execute any document or other instruments as necessary to cause title to the Designated Properties to be transferred to the appropriate Environmental Custodial Trust.

(b) Each of the Environmental Custodial Trustees shall have full authority to take any steps necessary to administer the Designated Properties in such trustee's particular state or region.

7.6 Environmental Custodial Trust Funding. On the Effective Date, the Environmental Custodial Trusts shall be funded by the Debtors' deposit of the Environmental Custodial Trust Funding and the Environmental Custodial Administration Funding in the Environmental Custodial Trust Accounts established by the Environmental Custodial Trusts pursuant to the terms of the Environmental Custodial Trust Agreements.

7.7 Environmental Custodial Trust Settlement Agreements.

(a) The Environmental Custodial Trust Settlement Agreements are attached to this Plan as **Exhibit 5-A** to **Exhibit 5-** and are subject to a public comment period under applicable Environmental Laws. If the Debtors reach additional settlement agreement(s) with the EPA and/or other applicable Environmental Agencies with respect to treatment under the Plan of the Designated Properties or any part thereof, the Debtors shall file such settlement agreement(s) with the Bankruptcy Court and seek approval thereof at the Confirmation Hearing.

(b) [The Environmental Custodial Trust Settlement Agreements shall have covenants not to sue, similar to other settlements in the Reorganization Cases. The covenants not to sue shall include, but not be limited to, the liabilities and other obligations asserted in any Proofs of Claim and other pleadings filed in the Bankruptcy Court by the United States or the States relating to the applicable Designated Properties. The Environmental Custodial Trust Settlement Agreements shall be submitted for public comments under federal Environmental Law and, where applicable, state Environmental Law of the state in which the applicable Designated Property is located. The Environmental Custodial Trust Settlement Agreements shall determine how the Environmental Custodial Trusts shall be operated by the Environmental Custodial Trustees, and the role of the United States and the relevant State in approving funding of remediation and restoration for the duration of the trusts.]

7.8 Not an Owner or Operator. Neither Reorganized ASARCO, the United States, the States, nor the Plan Sponsor shall be or be deemed to be an owner, operator, trustee, partner, agent, shareholder, officer or director of any of the Environmental Custodial Trusts, or an owner or operator of the Designated Properties.

7.9 Tax Treatment of the Environmental Custodial Trusts. The Environmental Custodial Trusts will each seek to be treated as a “qualified settlement fund” as that term is defined in Treasury Regulation section 1.468B-1. The Environmental Custodial Trustees will not elect to have such funds treated as grantor trusts. The Environmental Custodial Trusts will be treated as separate taxable entities. The Environmental Custodial Trustees shall cause all taxes imposed on the earnings of their respective Environmental Custodial Trusts to be paid out of such earnings and shall comply with all tax reporting and withholding requirements imposed on the Environmental Custodial Trusts under applicable tax laws.

7.10 Termination of the Environmental Custodial Trusts. Upon an Environmental Custodial Trust’s completion of remediation and restoration and reimbursement of any costs therefore, any funds held by that trust shall be transferred as provided in the applicable Environmental Custodial Trust Agreement: (1) first, in accordance with instructions provided by the United States and the appropriate State, to any other Environmental Custodial Trusts in that State with remaining remediation and restoration to be performed related to the sites and a need for additional trust funding; (2) second, in accordance with instructions provided by the United States after consultation with the States, to other open and operating Environmental Custodial Trusts in other States with remaining remediation and restoration to be performed related to the sites and a need for additional trust funding; and (3) third, then to the Superfund.

7.11 Termination of the Environmental Custodial Trustees. The duties, responsibilities, rights and obligations of the Environmental Custodial Trustees shall terminate in accordance with the terms of the Environmental Custodial Trust Agreements.

## ARTICLE VIII

THE ASBESTOS TRUST

8.1 Establishment and Purpose of the Asbestos Trust. On the Effective Date or such earlier date that the Debtors deem appropriate, the Asbestos Trust shall be established in accordance with the Plan Documents. On the Effective Date, the Asbestos Trust shall be empowered in accordance with the Plan and the Plan Documents. The Asbestos Trust will be a “qualified settlement fund” within the meaning of Treasury Regulations section 1.468B-1. The purposes of the Asbestos Trust shall be to, among other things, (a) liquidate, resolve, pay, and satisfy all Unsecured Asbestos Personal Injury Claims and Demands in accordance with this Plan, the Asbestos Trust Agreement, Asbestos TDP, and the Confirmation Order, (b) receive, preserve, hold, manage, and maximize the Asbestos Trust Assets for use in paying and satisfying Allowed Unsecured Asbestos Personal Injury Claims and Demands in accordance with the terms of the Asbestos Trust Agreement, and (c) take other actions deemed by the Asbestos Trustees to be in the best interest of the holders of the Unsecured Asbestos Personal Injury Claims and Demands, who are the sole beneficiaries of the Asbestos Trust.

8.2 Asbestos Trust Agreement. The Asbestos Trust Agreement, substantially in the form of **Exhibit 6** to this Plan, contains provisions customary to documents utilized in comparable circumstances. ASARCO, the Asbestos Subsidiary Debtors, the Asbestos Subsidiary Committee, the Asbestos Trustees, the members of the Asbestos TAC, and the FCR shall execute the Asbestos Trust Agreement.

8.3 Transfers and Assignments to the Asbestos Trust. On the Effective Date, the Debtors shall transfer and assign to the Asbestos Trust for the benefit of the Asbestos Trust Beneficiaries (a) the Asbestos Trust Assets, as provided in Article 11.5 herein; (b) all of their rights, title, and interests in the Asbestos Personal Injury Claims and Demands and other recoveries, including but not limited to any extracontractual claims for bad faith, late payments, reimbursement of Asbestos Trust Expenses or otherwise; (c) all of the Debtors’ rights, title and interest in the Debtors’ Privileges associated with the Asbestos Personal Injury Claims and Demands and other recoveries; (d) all of the Debtors’ rights, title and interest in the Asbestos Insurance Policies, including but not limited to the right to pursue and receive any and all insurance proceeds for Asbestos Personal Injury Claims and Demands from the Asbestos Insurance Policies; and (e) all of their rights, title, and interests in the Asbestos Insurance Actions and Asbestos Insurance Recoveries.

8.4 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 Asbestos Trust on and after the Effective Date. Notwithstanding the foregoing, Reorganized ASARCO, the Plan Administrator and the Plan Sponsor shall cooperate with the Asbestos Trustees in pursuing the Asbestos Insurance Actions through such means, and shall provide reasonable access to personnel and books and records of Reorganized ASARCO and the Plan Sponsor relating to the Asbestos Insurance Actions to representatives of the Asbestos Trust to enable the Asbestos Trustees to perform the Asbestos Trustees’ tasks under the Asbestos Trust Agreement and this Plan, as is discussed below in Article 8.11 in regards to Reorganized ASARCO.



8.5 Assumption of Liabilities by the Asbestos Trust. Upon occurrence of the Effective Date, in exchange for funding in accordance with Article 11.5 of the Plan, the Asbestos Trust shall be deemed without need for further action to have assumed responsibility and liability for all Unsecured Asbestos Personal Injury Claims.

8.6 Tax Matters. No election will be made to treat the Asbestos Trust as a grantor trust for U.S. federal income tax purposes. Accordingly, the Asbestos Trust will be treated as a taxable entity for federal income tax purposes. The Asbestos Trustees shall cause all taxes imposed on the Asbestos Trust to be paid using assets of the Asbestos Trust and shall comply with all tax reporting and withholding requirements imposed on the Asbestos Trust under applicable tax laws.

8.7 Asbestos Trust Expenses. The Asbestos Trust shall pay all Asbestos Trust Expenses (including applicable taxes) from the assets of the Asbestos Trust. Neither the Debtors nor the Reorganized Debtors shall have any obligation to pay or reimburse any Asbestos Trust Expenses. However, nothing shall preclude the Asbestos Trustees from seeking reimbursement of such expenses from any Asbestos Insurance Company.

8.8 Initial Asbestos Trustees. The initial Asbestos Trustees shall be those Persons designated in the Confirmation Order.

8.9 The FCR. On and after the Effective Date, Judge Robert C. Pate shall serve as the FCR, as such term is defined in section VI of the Asbestos Trust Agreement, and shall have and exercise the functions, rights, duties, powers and privileges provided in the Asbestos Trust Documents.

8.10 Asbestos TAC. The initial members of the Asbestos TAC shall be those Persons designated in the Confirmation Order. They shall consult with and advise the Asbestos Trustees regarding the administration of the Asbestos Trust and the liquidation and resolution of Unsecured Asbestos Personal Injury Claims in accordance with the provisions of this Plan and the Asbestos Trust Documents.

8.11 Asbestos Books. Subject to the conditions set forth herein, the Asbestos Trust, through its duly authorized representatives, shall have the right, upon reasonable prior written notice to Reorganized ASARCO: (a) to have Reorganized ASARCO transfer into the Asbestos Trust's possession all or part of the Asbestos Books in their current condition upon request of the Asbestos Trust and on the condition that the Asbestos Trust will incur all costs and expenses of the transfer or (b) to inspect and, at the sole expense of the Asbestos 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 Asbestos Trust shall have entered into a confidentiality agreement satisfactory in form and substance to Reorganized ASARCO. All costs and expenses associated with the storage of and access to the Asbestos Books shall be the responsibility of, and paid by, the Plan Administrator. Reorganized ASARCO, the Plan Administrator and the Plan Sponsor shall cooperate with the Asbestos 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. Subject to the conditions set forth herein, the Asbestos 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 Asbestos 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 Asbestos Trust may select. If the Asbestos 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 Asbestos Trust shall be deemed an agent of the 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. Production of materials to the Asbestos Trust does not constitute a waiver or an impairment of any privilege held by Reorganized ASARCO, Reorganized Covington or any of the Debtors. In the event that any third party challenges any such privilege, Reorganized ASARCO may seek protection from a court of competent jurisdiction. References in this Article 8.11 to Reorganized ASARCO shall also include its successors in interest.

8.12 Cooperation with Respect to Insurance Matters. Reorganized ASARCO and the Plan Sponsor shall cooperate with the Asbestos 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 Asbestos Trust. By way of enumeration and not of limitation, Reorganized ASARCO and the Debtors each shall be obligated (a) to provide the Asbestos Trust with copies of insurance policies and settlement agreements included within or relating to the Unsecured Asbestos Personal Injury Claims and Demands; (b) to provide the Asbestos Trust with information necessary or helpful to the Asbestos Trust in connection with its efforts to obtain insurance coverage for the Asbestos Personal Injury Claims and Demands as well as other recoveries, including but not limited to recoveries of extracontractual damages; (c) to execute assignments or allow the Asbestos Trust to pursue claims in its own name (subject to appropriate disclosure of the fact that the Asbestos 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 Asbestos Trust to obtain insurance coverage for the Unsecured Asbestos Personal Injury Claims and Demands as well as other recoveries, including but not limited to recoveries of extracontractual damages; and (d) to pursue and recover insurance coverage for the Unsecured Asbestos Personal Injury Claims and Demands as well as other recoveries, including but not limited to recoveries of extracontractual damages, in its own name or right to the extent that any or all of the transfers and assignments identified herein are not able to be fully effectuated, with any and all recoveries therefrom to be turned over to the Asbestos Trust. The Asbestos Trust shall be obligated to compensate the Reorganized ASARCO and the Debtors for all costs and expenses reasonably incurred in connection with providing assistance to the Asbestos Trust under this Article 8.12, including, without limitation, out-of-pocket costs and expenses, consultant fees and attorneys' fees.

## ARTICLE IX

TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

9.1 Assumption or Rejection of Unexpired Leases and Executory Contracts. On the Effective Date, except as otherwise provided in this Plan, any unexpired lease or executory contract that has not been previously assumed or rejected by a Debtor pursuant to an order of the Bankruptcy Court shall be deemed rejected 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 **Exhibit 2** hereto (as such list may be amended, supplemented or modified up to and including the Confirmation Date) or (b) subject to a motion to assume that is pending on the Effective Date. Entry of the Confirmation Order shall constitute approval of (a) such rejections, and (b)(1) the assumption by ASARCO and assignment to the Plan Sponsor of the executory contracts and/or unexpired leases listed in **Exhibit 2-A** hereto, (2) the assumption by ASARCO and assignment to an Environmental Custodial Trust of the executory contracts and/or unexpired leases listed in **Exhibit 2-B** hereto, and (3) the assumption by the applicable Debtor and assignment to Reorganized ASARCO or Reorganized Covington of the executory contracts and/or unexpired leases listed in **Exhibit 2-C** hereto (as each such list may be amended, supplemented or modified up to and including the Confirmation Date), pursuant to sections 365(a) and 1123 of the Bankruptcy Code. Any motions to assume 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. The executory contracts and unexpired leases assumed pursuant to this Article 9.1 or by any order of the Bankruptcy Court shall be assigned to the Plan Sponsor, an Environmental Custodial Trust, Reorganized ASARCO or Reorganized Covington (as specified on **Exhibit 2** or the applicable order) as of the Effective Date.

9.2 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 by one of the Debtors and assignment to the Plan Sponsor, an Environmental Custodial Trust, Reorganized ASARCO, or Reorganized Covington (as specified on **Exhibit 2**) of the executory contracts and unexpired leases assumed, or assumed and assigned, pursuant to Article 9.1 of this Plan; (b) the extension of time, pursuant to section 365(d)(4) of the Bankruptcy Code, within which the Debtors may assume, assume and assign, or reject the unexpired leases specified in Article 9.1 of this 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 9.1 of this Plan.

9.3 Inclusiveness. Unless otherwise specified on **Exhibit 2** hereto, each executory contract and unexpired lease listed or to be listed on **Exhibit 2** 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 **Exhibit 2**.

9.4 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.

9.5 Rejection Damages Bar Date. If the rejection by a Debtor, pursuant to Article 9.1 of the 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 any Debtor, Reorganized Debtor, or their respective properties, unless a Proof of Claim is filed and served upon Reorganized ASARCO and the 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 Plan as, a Trade and General Unsecured Claim, and the holder thereof shall receive distributions as a holder of an Allowed Trade and General Unsecured Claim, pursuant to the Plan.

9.6 Payments Related to Assumption of Executory Contracts and Unexpired Leases.

(a) To the extent that such Claims constitute monetary defaults, the Cure Amount Claims shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by the Debtors: (1) by payment of the Cure Amount Claim on the Effective Date; or (2) on such other terms as are agreed to by the Debtors 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; (B) the ability of the Plan Sponsor to provide “adequate assurance of future performance” (within the meaning of section 365 of the Bankruptcy Code) under the contract or lease to be assumed and assigned; or (C) 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 (except as otherwise provided in Article 9.6(b) of the Plan).

(b) Pursuant to section 2.5(d) of the Plan Sponsor PSA, at the Closing, ASARCO shall deliver to the Plan Sponsor a statement of any Unpaid Cure Claims Amount (as such term is defined in the Plan Sponsor PSA) and the executory contract or unexpired lease corresponding thereto, including a calculation thereof. The Plan Sponsor shall be permitted (but not required), within 30 days after receipt of such statement, to pay any Unpaid Cure Claims Amount, and within 10 days after any such payment, the Plan Sponsor shall provide a written notice to ASARCO of such payment. To the extent the Plan Sponsor pays any Unpaid Cure Claims Amount pursuant to section 2.5(d) of the Plan Sponsor PSA, Reorganized ASARCO shall, within 10 days of receipt of notice from the Plan Sponsor delivered in accordance with section 2.5(d) thereof, reimburse the Plan Sponsor in the amount of such payment; provided that, the Confirmation Order shall provide that, as between the Sellers and the counterparty of the underlying contract or lease, (1) neither the payment nor the reimbursement of a disputed Unpaid Cure Claims Amount shall constitute a waiver, admission or estoppel in respect of any claims or defenses that ASARCO or Reorganized ASARCO may have related to such Unpaid Cure Claims Amount or the underlying contract or lease and (2) the right of ASARCO or Reorganized ASARCO to object, assert any counterclaim or exercise any setoff or other rights in connection with such Unpaid Cure Claims Amount or the underlying contractor lease shall be preserved

regardless of any such payment or reimbursement; *provided, however*, that failure of the Confirmation Order to so provide shall not relieve the Sellers of their payment obligations as set forth in section 2.5(d) of the Plan Sponsor PSA.

9.7 Contracts and Leases Entered Into After the Petition Date. Contracts and leases entered into after the Petition Date (including any executory contracts and unexpired leases assumed by ASARCO prior to the date of the Plan Sponsor PSA or that are assumed by ASARCO in accordance with section 2.5 of the Plan Sponsor PSA), but if entered into after the date of the Plan Sponsor PSA, solely to the extent entered into by ASARCO in the Ordinary Course of Business, shall be assigned to the Plan Sponsor pursuant to the Plan Sponsor PSA and performed by the Plan Sponsor in the ordinary course of its business.

9.8 Employee Benefits Plans and Other Benefits.

(a) As of the Closing Date, the Plan Sponsor shall adopt and become the sponsor and employer for purposes of each and every Employee Benefit Plan set forth in section 8.3 of the Disclosure Schedule and shall be substituted for ASARCO or its Subsidiaries that had theretofore been the sponsor of any such Employee Benefit Plan. Effective as of the Closing, the Plan Sponsor shall be responsible for all benefits and liabilities with respect to such Employee Benefit Plans, as such Employee Benefit Plans may be amended or modified from time to time by written agreement between the Plan Sponsor and the Unions after the Closing Date.

(b) With respect to each Transferred Employee (as such term is defined in the Plan Sponsor PSA) (including any beneficiary or the dependent thereof), all of ASARCO's liabilities and obligations arising under any 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 Closing Date, shall be deemed to be, and shall be treated as though they are, executory contracts that are deemed assumed and assigned to the Plan Sponsor under this Plan pursuant to sections 365(a), 365(f) and 1123 of the Bankruptcy Code.

(c) Effective as of the Closing Date, the Plan Sponsor shall be responsible for providing coverage under the Consolidated Omnibus Budget Reconciliation Act ("COBRA") to any Employee (as such term is defined in section 8.1 of the Plan Sponsor PSA), his or her spouse or dependent person as to whom a "qualifying event" as defined in section 4890B of the Internal Revenue Code has occurred (1) prior to the Closing Date in the case of a "qualifying event" other than a termination of employment and (2) in the case of a termination of employment "qualifying event" on or prior to the Closing Date. The Plan Sponsor shall also be responsible for providing COBRA coverage to any Employee, his or her spouse or dependent person as to whom a "qualifying event" occurs on or after the Closing Date including for a "qualifying event" that is a termination of employment on the Closing Date.

(d) The Plan Sponsor shall assume and be responsible for all of ASARCO'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).

9.9 Bonds and Assurances. Pursuant to section 7.9 of the Plan Sponsor PSA, prior to Closing, the Plan Sponsor shall cause ASARCO to be fully, unconditionally and irrevocably released and discharged from the Bonds and Assurances (as such term is defined in the Plan Sponsor PSA) and replace the Bonds and Assurances or act as a substituted obligor, guarantor or other counterparty to the Bonds and Assurances as required for the continued operation of the Business; *provided, however*, that the surety bonds listed in section 2.2(j) of the Disclosure Schedule shall be retained by ASARCO and shall revest in Reorganized ASARCO on the Effective Date.

## ARTICLE X

### CONDITIONS TO EFFECTIVENESS

10.1 Conditions to Effectiveness. Notwithstanding any other provision of the Plan or any order entered in connection with the Reorganization Cases, the Effective Date of the Plan shall not occur until and unless each of the following conditions to effectiveness have been satisfied or waived pursuant to Article 10.2 of this 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, ASARCO and the Asbestos Subsidiary Debtors have each 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 Plan has been approved by creditors in Class 5 under the Plan in the requisite numbers and amounts required by sections 524(g), 1126, and 1129 of the Bankruptcy Code;

(3) On the Effective Date, the Asbestos Trust shall assume the liabilities of ASARCO and the Asbestos Subsidiary Debtors with respect to the Unsecured 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 Asbestos Trust is to be funded in part by securities of Reorganized Covington and by the obligation of such debtor to make future payments;

(6) The Asbestos Trust, upon the Effective Date, is to own 100% of the Interests in Reorganized Covington;

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

(8) ASARCO and the Asbestos Subsidiary 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 Unsecured 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 this Plan is likely to threaten this 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 this Plan and in the Disclosure Statement;

(12) The Asbestos 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 Unsecured Asbestos Personal Injury Claims and Demands, or other comparable mechanisms, that provide reasonable assurance that the Asbestos Trust will value, and be in a financial position to pay, all Unsecured 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 Asbestos Trust in accordance with the Asbestos Trust Documents;

(14) In light of the respective benefits provided, or to be provided, to the Asbestos 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 Asbestos 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 Unsecured 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 Plan and may not be vacated, amended or modified after Confirmation except to the extent expressly provided in Article 12.3(a)(2) and 12.3(b)(2) of this Plan;

(18) This Plan complies with all applicable sections of the Bankruptcy Code, including section 524(g) of the Bankruptcy Code, and the Debtors have complied with all applicable sections of the Bankruptcy Code;

(19) The Plan Sponsor PSA and all other documents necessary to consummate the sale of the Sold Assets to the Plan Sponsor are approved in all respects, and all parties thereto are authorized and directed to perform all their obligations thereunder;

(20) The sale of the Sold Assets to the Plan Sponsor pursuant to the Plan is approved pursuant to section 363, 1123 and 1129 of the Bankruptcy Code, and the Plan Sponsor has acted in good faith for the purposes of section 363(m) of the Bankruptcy Code; and

(21) Approval of the settlements and compromises set forth in Articles 11.26, 11.27, 11.28 and 11.29 hereof as 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.*

The Confirmation Order entered or affirmed by the District Court is (1) acceptable to the Debtors and, (2) to the extent the Confirmation Order relates to the Plan Sponsor PSA, the Plan Sponsor (and the Plan Sponsor Parent) or the transactions contemplated by the Plan Sponsor PSA, is reasonably satisfactory to the Plan Sponsor.

(d) *No Stay.*

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



(e) *Plan Documents.*

The Plan Documents necessary or appropriate to implement this Plan have been (1) executed (A) in a form acceptable to the Debtors, and, (B) with respect to the Disclosure Statement, to the extent it relates to the Plan Sponsor PSA, the Plan Sponsor (and the Plan Sponsor Parent) or the transactions contemplated by the Plan Sponsor PSA, is in a form reasonably satisfactory to the Plan Sponsor, (2) delivered and, (3) where applicable, filed with the appropriate governmental or supervisory authorities.

(f) *Funding of the Trusts.*

The Trusts have been funded as provided in Articles 11.4 to 11.6 of the 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) *Closing of the Sale of Sold Assets to Plan Sponsor.*

The Confirmation Order provides for the sale of the Sold Assets to the Plan Sponsor on the Closing Date.

(i) *Approval of Environmental Settlements.*

The settlement agreements for the Previously Settled Environmental Claims, the Miscellaneous Federal and State Environmental Claims, the Residual Environmental Claims, and the Environmental Custodial Trust Settlement Agreements have been approved by the Bankruptcy Court and, where so required by the terms of the settlement agreement, by the appropriate federal district court.

(j) *Assumption and Assignment of the Mission Mine Settlement Agreement.*

The Mission Mine Settlement Agreement, all related agreements (including the Mission Mine Unexpired Agreements), and escrowed funds and financial assurances shall be assumed and assigned to the Plan Sponsor.

(k) *Approval of Asbestos Settlement Agreement.*

The Confirmation Order approves the Asbestos Settlement Agreement.

(l) *Assumption and Assignment of Hayden Settlement Agreement.*

The Hayden Settlement Agreement, all related agreements and escrowed funds and financial assurances shall be assumed and assigned to the Plan Sponsor.

(m) *HSR Act Approval.*

Any waiting period (including any extension thereof) applicable to the sale to and purchase by the Plan Sponsor of the Sold Assets under the HSR Act or under the regulations of any other applicable governmental antitrust or competition authority, where failure to comply with such regulations would prohibit the consummation of the transactions contemplated by the Plan Sponsor PSA, shall have been terminated or expired.

10.2 Waiver of Conditions to Effectiveness. The Debtors, in their sole discretion, may waive any condition to effectiveness in Article 10.1 of the 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 Plan Sponsor, the U.S. Trustee, the Committees, the FCR, and the DOJ; *provided, however*, that:

(a) the DOJ and any affected State must consent to any waiver of any of the conditions to effectiveness set forth in Article 10.1(e)(1), (f), (i), (j) and (l);

(b) the Asbestos Subsidiary Committee and the FCR must consent to any waiver of any of the conditions to effectiveness set forth in Article 10.1(e)(1), (f) and (k); and

(c) the Plan Sponsor must consent to any waiver of any of the conditions to effectiveness set forth in Article 10.1(c)(2), (e)(1)(B) and (m);

*provided*, that in each instance described in clauses (a), (b) and (c) of this Article 10.2, such consent is not unreasonably withheld, delayed or conditioned.

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

10.4 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 this Plan, Disclosure Statement, or any 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.

## ARTICLE XI

### IMPLEMENTATION OF THIS PLAN

#### 11.1 Sale of Sold Assets to Plan Sponsor.

(a) On the Closing Date, the Sold Assets shall be sold to the Plan Sponsor on the terms and subject to the conditions contained in the Plan Sponsor PSA.

(b) Pursuant to section 3.3(c) of the Plan Sponsor PSA, the Plan Sales Proceeds are subject to upward or downward adjustment in the amount of the Adjustment Payment (as defined therein). ASARCO shall place Cash in the amount of \$\_\_\_\_\_ in reserve to be used to make any payment that Reorganized ASARCO is required to make to the

Plan Sponsor pursuant to section 3.3(c)(ii) of the Plan Sponsor PSA. Such funds shall be held in reserve (the “Adjustment Payment Reserve”) by the Plan Administrator until the Closing Accounts Amount (as defined in the Plan Sponsor PSA) has been finally determined and, if applicable, shall be used to satisfy the payment obligations of Reorganized ASARCO under section 3.3(c)(ii) of the Plan Sponsor PSA.

(c) Pursuant to section 2.5(d) of the Plan Sponsor PSA, the Plan Sponsor is entitled to reimbursement from ASARCO of any Unpaid Cure Claims Amount paid by the Plan Sponsor in accordance with such section 2.5(d). ASARCO shall place Cash in the amount of \$\_\_\_\_\_ in reserve (the “Unpaid Cure Claims Reserve”) to be used to make payment in respect of any Unpaid Cure Claims Amount for which ASARCO may be required to reimburse the Plan Sponsor pursuant to section 2.5(d) thereof. Such funds shall be held in the Unpaid Cure Claims Reserve until notice is provided by the Plan Sponsor pursuant to section 2.5(d) of the Plan Sponsor PSA (or the period in which any such notice is required to be provided has expired), whichever occurs later, and shall be applied in accordance with section 2.5(d) thereof, if and as applicable.

#### 11.2 Appointment of Plan Administrator and Plan Administration Committee, and Funding of Miscellaneous Plan Administration Accounts.

(a) Upon approval by the Bankruptcy Court in the Confirmation Order, the Plan Administrator shall be appointed. The Plan Administrator shall have and perform all of the duties, responsibilities, rights and obligations set forth in the Plan Administration Agreement. **[This should include residual environmental cleanups for identified matters using Prepetition ASARCO Environmental Trust funding and any transition cleanup under the Hayden AOC prior to assumption by the Plan Sponsor.]**

(b) The initial members of the Plan Administration Committee shall be those Persons designated in the Confirmation Order. They shall consult with and advise the Plan Administrator, as is set forth in greater detail in the Plan Administration Agreement.

(c) On the Effective Date, the Plan Administration Account shall be funded with sufficient Cash to pay the Plan Administrator’s estimated compensation and expenses, the Bonds (if ASARCO elects to Reinstate the Bondholders’ Claims), and all other anticipated costs of administration of the Plan and initial operations of the Reorganized Debtors. The Plan Administrator shall also establish, and Reorganized ASARCO shall fund, the Reorganized Covington Account (in the name of Reorganized Covington and funded with sufficient Cash to pay the anticipated costs of Reorganized Covington’s initial operations), the Adjustment Payment Reserve, the Unpaid Cure Claims Reserve, the Disputed Claims Reserve, Disputed Secured Claims Escrow Accounts, the Prepetition ASARCO Environmental Trust Escrow, the Indemnification Escrow, and the Undeliverable and Unclaimed Distribution Reserve (the “Miscellaneous Plan Administration Accounts”). The Plan Administrator may also establish such general accounts as it deems necessary and appropriate.

(d) The Plan Administrator shall allocate the funds in the Plan Administration Account to subaccounts corresponding to the enumerated functions of the Plan Administrator. If the Plan Sponsor is required to make the Plan Sponsor Adjustment Payment, such funds shall be

placed in a subaccount of the Plan Administration Account. Until the Plan Administrator has discharged its obligations, the funds in those subaccounts and the Miscellaneous Plan Administration Accounts may only be used for the purpose designated for that particular account or subaccount. In addition, any taxes attributable to the earnings of a subaccount or a Miscellaneous Plan Administration Account (as well as any taxes directly imposed on a subaccount or a Miscellaneous Plan Administration Account) shall be paid out of the assets of such account.

(e) To the extent there are any excess funds in the Plan Administration Account (or any subaccount thereof) or the Miscellaneous Plan Administration Accounts, the Plan Administrator shall, after consultation with and approval by the Plan Administration Committee, distribute such funds to unpaid Claimants and/or the holder of the Class 12 Interest, in accordance with the priorities established by the Plan and Section \_\_ of the Plan Administration Agreement.

11.3 Approval of Asbestos Settlement Agreement, the Environmental Custodial Trust Settlement Agreements, Miscellaneous Federal and State Environmental Settlement Agreement, and Residual Environmental Settlement Agreement. The Plan implements an agreement in principal with holders of asbestos-related and environmental Claims, which are memorialized in the Asbestos Settlement Agreement attached to this Plan as **Exhibit 9**, and the Environmental Custodial Trust Settlement Agreements, the Miscellaneous Federal and State Environmental Settlement Agreement, and the Residual Environmental Settlement Agreement, which are attached to this Plan as **Exhibits 12-B** through **12-\_\_**. Confirmation of the Plan will approve of the Debtors' entry into each of these agreements. Among other things, the Residual Environmental Settlement Agreement provides for the payment of \$750 million to holders of Residual Environmental Claims. The United States and the State of Washington have reserved the right to oppose Confirmation if either believes that there is a significant risk that this \$750 million payment will not be made pursuant to the Plan.

11.4 Distribution of Available Plan Funds. On the Initial Distribution Date, Reorganized ASARCO (and thereafter the Plan Administrator) shall distribute the Available Plan Funds, in accordance with this Plan.

11.5 Litigation Trust Creation and Funding. On the Effective Date, the Litigation Trust shall be created and the Litigation Expense Fund shall be established with sufficient Cash to pay for the operations of the Litigation Trust. Also on the Effective Date, the Debtors' right, title and interests in the Litigation Trust Claims and the Debtors' Privileges associated therewith shall be transferred to the Litigation Trust. The Litigation Trust shall take title to the Litigation Trust Claims in accordance with the Litigation Trust Agreement.

11.6 Asbestos Trust Creation and Funding. On or after the Effective Date, the Asbestos Trust shall receive the Asbestos Trust Assets.

11.7 Environmental Custodial Trusts Creation and Funding. On the Effective Date, the Environmental Custodial Trusts shall be created, and the Debtors' rights, title and interests in the Designated Properties, together with the appropriate Environmental Custodial Trust Funding and Environmental Custodial Administration Trust Funding for such properties, shall be transferred

to the applicable Environmental Custodial Trusts, which shall take title pursuant to the applicable Environmental Custodial Trust Agreements.

#### 11.8 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 Plan Administrator shall succeed to ASARCO's administrative role, and will, in its sole discretion, act as Performing Entity (as defined in the 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 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 the Debtors, the Plan Administrator or the United States would be reimbursed from the Prepetition ASARCO Environmental Trust).

(b) The funds remaining in the Prepetition ASARCO Environmental Trust are separate from and without prejudice to the distributions to be made to holders of Class 7 Previously Settled Environmental Claims, Class 8 Miscellaneous Federal and State Environmental Claims, and Class 9 Residual Environmental Claims, as described in Article IV of the Plan.

(c) Reorganized ASARCO shall hold back from distributions under this Plan **[\$4.2 million]** (the "Prepetition ASARCO Environmental Trust Escrow") to allow for the possibility that AMC fails to make a required payment due under the note that funds the Prepetition ASARCO Environmental Trust. In the event that AMC fails to make any of the payments remaining due under the note, the Plan Administrator and the United States shall reasonably cooperate in determining the most efficient mechanism to recover the amounts owed by AMC. Upon AMC's payment of amounts due under the note, the Plan Administrator may release a corresponding amount from the Prepetition ASARCO Environmental Trust Escrow and distribute such funds in accordance with the terms and conditions of the Plan and the Confirmation Order, in the following order of priority: first, to satisfy the Class 5 and Class 9 Principal Payment; second, to satisfy the Pro Rata Post-Petition Interest Payment; third, to satisfy the Class 5 and Class 9 Supplemental Distribution; fourth, to holders of Allowed Class 10 Late-Filed Claims; fifth, to holders of Allowed Class 11 Subordinated Claims; and finally, to the holders of Class 12 Interests.

11.9 Operations Between the Confirmation Date and the Effective Date. Except as set forth herein with respect to the appointment of the 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.

11.10 Cancellation of Existing Interests. Unless otherwise agreed to by the Debtors, on the Effective Date, and except to the extent otherwise provided herein, all instruments, certificates, and other documents evidencing the Interests in the Debtors shall be cancelled and the obligations of the Debtors or the Reorganized Debtors in any way related thereto (except any obligations provided for under this Plan) shall be discharged.

11.11 Substantive Consolidation of ASARCO and the Subsidiary Debtors (Other than Reorganized Covington). As part of the Debtors' settlement with the Asbestos Subsidiary Committee, the FCR, and the holders of the Residual Environmental Claims, on the Effective Date, the Estates of ASARCO and the Subsidiary Debtors (other than Covington) shall be substantively consolidated as follows: (a) the Subsidiary Debtors (other than Covington) shall be merged with and into ASARCO, with the surviving entity being ASARCO; (b) all Intercompany Claims by, between and among ASARCO and the Subsidiary Debtors (other than Covington) (except for (1) the Derivative Asbestos Claims, which are resolved pursuant to the Asbestos Settlement Agreement and (2) any Claims and causes of action asserted in the Litigation Trust Claims) shall be forgiven and eliminated; (c) all assets and liabilities of the Subsidiary Debtors (other than Covington) shall be merged or treated as if they were merged with the assets and liabilities of ASARCO; (d) any obligation of ASARCO or one of the Subsidiary Debtors (other than Covington) and all guarantees thereof by ASARCO or one of the Subsidiary Debtors (other than Covington) shall be deemed to be one obligation of ASARCO; and (e) each Proof of Claim filed or to be filed against ASARCO or one of the Subsidiary Debtors (other than Covington) shall be deemed filed only against ASARCO and shall be deemed a single Claim against and a single obligation of ASARCO. On the Effective Date, and in accordance with the terms of the Plan and the consolidation of the assets and liabilities of ASARCO and the Subsidiary Debtors (other than Covington), all Claims based upon guarantees of collection, payment or performance made by ASARCO or the Subsidiary Debtors (other than Covington) as to the obligations of ASARCO or one of the Subsidiary Debtors (other than Covington) shall be released and of no further force and effect.

11.12 Closing of Bankruptcy Cases of Subsidiary Debtors (Other than Covington's Bankruptcy Case). On the Effective Date or as soon thereafter as practicable, the Reorganization Cases of the Subsidiary Debtors (other than Covington) shall be closed, following which any and all proceedings that could have been brought or otherwise commenced in the Reorganization Case of any of the Subsidiary Debtors (other than Covington) shall be brought or otherwise commenced in ASARCO's bankruptcy case. The bankruptcy cases of ASARCO and Covington shall continue to be jointly administered after the Effective Date.

11.13 Interests in Reorganized ASARCO. The interests in Reorganized ASARCO shall represent all of the equity interests in Reorganized ASARCO as of the Effective Date. They shall be held by the Plan Administrator.

11.14 Interests in Reorganized Covington. The interests in Reorganized Covington shall represent all of the equity interests in Reorganized Covington as of the Effective Date. The Asbestos Trust shall own 100% of the interests in Reorganized Covington. ASARCO shall transfer the Madera Property to Reorganized Covington.

11.15 Limited Liability Company Agreement, Certificate of Incorporation and Bylaws. The limited liability company agreements or certificates of incorporation and bylaws, as appropriate, of each of the Reorganized Debtors shall be deemed amended, as of the Effective Date, to prohibit the issuance of nonvoting equity securities.

11.16 Management of the Reorganized Debtors. On the Effective Date, (a) the current directors and officers of ASARCO and the Subsidiary Debtors shall be deemed to have been removed (without the necessity of further action) and shall have no further obligations, and (b) to the fullest extent permitted by applicable law, the rights, powers and duties of such directors and officers shall vest in the Plan Administrator, and the Plan Administrator or its designee shall be the presiding officer and the sole director of each applicable Debtor. As provided in the Plan Administration Agreement, the Plan Administrator shall make all determinations with respect to employment of any other directors, officers and employees of the Reorganized Debtors on and after the Effective Date.

11.17 Reorganized Debtors' Name Changes. On the Effective Date, Reorganized ASARCO shall change its name to ASARCO Administration Company, LLC, and Reorganized Covington shall change its name to \_\_\_\_\_.

11.18 Continued Corporate Existence and Business Operations of the Reorganized Debtors. Except as otherwise provided in this Article XI, the Reorganized Debtors shall continue their existences as separate entities after the Effective Date for the purposes of satisfying their obligations under the Plan, in accordance with applicable law and pursuant to their applicable organizational documents. The Plan Administrator shall, in accordance with the Plan Administration Agreement, operate the businesses of the Reorganized Debtors. On or after the Effective Date, the Plan Administrator may take such action as permitted by applicable law and each of the Reorganized Debtors' organization documents, as the Plan Administrator may determine is reasonable and appropriate, including to cause (a) each of the Reorganized Debtors' legal name to be changed; (b) the closure of the Reorganized Debtors' bankruptcy cases; or (c) the Reorganized Debtors to be engaged in such businesses or activities as are appropriate to their respective corporate purposes.

11.19 Plan Sponsor's Assumption of Certain Environmental Liabilities. Except as provided in sections 2.4(f), (g) and (h) of the Plan Sponsor PSA, from and after the Closing, the Plan Sponsor shall assume, pay, perform and discharge when due all Liabilities relating to any Environmental Laws regarding any of the Real Property (including all Liabilities relating to Releases of Hazardous Materials at such properties or that have migrated or in the future migrate off-site from such properties) irrespective of whether such Liabilities relate to actions, omissions or events that occur or exist prior to or after the Closing Date. These Liabilities are referred to in section 2.3(e) of the Plan Sponsor PSA as the "Assumed Environmental Liabilities." The Plan Sponsor shall have no recourse from the Sellers in respect of the Assumed Environmental Liabilities. Further, the Plan Sponsor shall defend, indemnify and hold harmless each Seller, and each Seller's respective officers, directors, employees, agents, representatives and Affiliates, from and against any costs, damages, demands, causes of action, Liabilities, lawsuits, judgments, losses and expenses of any kind associated with the Assumed Environmental Liabilities.

Sections 2.4(f), (g) and (h) of the Plan Sponsor PSA exclude the following Liabilities from the Assumed Environmental Liabilities, which shall instead be included among the Liabilities that will be retained by the Debtors (the “Retained Liabilities”):

(a) all Liabilities relating to any Environmental Laws regarding any Non-Target Properties (other than Liabilities relating to the off-site migration of Hazardous Materials from a Real Property or Silver Bell Property to a Non-Target Property) irrespective of whether such Liabilities relate to actions, omissions or events that occur or exist prior to or after the Closing Date, including any Liabilities relating to Hazardous Materials that, prior to the Closing Date, were sent from a Real Property (other than by natural migration or to another Real Property or a Silver Bell Property) off-site for treatment, storage or disposal, in accordance with section 2.4(f) of the Plan Sponsor PSA;

(b) all Liabilities relating to any toxic tort claim or other claim by a Person other than a Governmental Authority to the extent it relates to exposure prior to the Closing Date to Hazardous Materials (for the avoidance of doubt, with respect to any such claim that alleges exposure to Hazardous Materials that occurred prior to the Closing Date and continued or continues after the Closing Date, the portion of the Liability attributable to the pre-Closing exposure shall be a Retained Liability and the portion attributable to the continuation of the exposure post-Closing shall be an Assumed Environmental Liability), in accordance with section 2.4(g) of the Plan Sponsor PSA; and

(c) all Liabilities for any natural resource damages at any Non-Target Property that result from migrations or Releases of Hazardous Materials from Real Property that occurred prior to the Closing Date and did not continue thereafter, in accordance with section 2.4(h) of the Plan Sponsor PSA.

11.20 Revesting. Except as otherwise expressly provided in this Plan, on the Effective Date, the Sold Assets shall vest in the Plan Sponsor, free and clear of all Claims, Liens, encumbrances, charges, and other interests of holders of Claims, Demands or Interests except for Permitted Liens and the Assumed Liabilities. Except as otherwise expressly provided in this Plan or the Plan Documents, on the Effective Date, the Plan Sales Proceeds, the Distributable Cash and the Remaining Assets shall vest in Reorganized ASARCO, which may operate free of any restrictions imposed by the Bankruptcy Code or by the Bankruptcy Court. The Madera Property and \$\_\_\_\_\_ in Cash shall vest in Reorganized Covington, which may operate free of any restrictions imposed by the Bankruptcy Code or by the Bankruptcy Court.

#### 11.21 Vesting and Enforcement of Causes of Action.

(a) The causes of action retained by ASARCO (as listed in **Exhibit 14-A**) shall vest in Reorganized ASARCO (the “Vested Causes of Action”). The Plan Administrator (after consultation with and approval by the Plan Administration Committee) shall be authorized to prosecute, compromise and settle, abandon, release or dismiss the Vested Causes of Action, without need for approval by the Bankruptcy Court.

(b) The Litigation Trust Claims (as listed in **Exhibit 14-B**) shall vest in the Litigation Trustee. The Litigation Trust, upon the direction of the Litigation Trust Board, may



prosecute, compromise and settle, abandon, release or dismiss the Litigation Trust Claims, without need for approval by the Bankruptcy Court.

(c) The Asbestos Insurance Actions (as listed in **Exhibit 14-C**) shall vest in the Asbestos Trustees and may be pursued or compromised as deemed fit by the Asbestos Trustees in their sole discretion without need for approval of the Bankruptcy Court.

11.22 Dismissal of Certain Litigation. Adversary Proceeding No. 05-02030 filed by the Asbestos Subsidiary Debtors against Anne M. Aaberg, *et al.*, and Adversary Proceeding No. 06-02056, filed by ASARCO, *et al.*, against Anne M. Aaberg, *et al.*, both pending in the Bankruptcy Court and discussed in section 2.19(a) of the Disclosure Statement, shall be dismissed upon Confirmation. Each lawsuit sought injunctive relief against Asbestos Personal Injury Claims. The injunctions granted in these adversary proceedings shall be replaced by this Plan's Permanent Channeling Injunction and the Asbestos Insurance Company Injunction.

11.23 Further Authorizations. The Debtors, Reorganized ASARCO, the Plan Administrator, the Trustees, or the FCR may seek such orders, judgments, injunctions, and rulings that 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, this Plan.

11.24 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 each Debtor or of Reorganized ASARCO shall be authorized, to the extent consistent with the Debtor'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 this Plan. The secretary or any assistant secretary of each Debtor or of Reorganized ASARCO shall be authorized to certify or attest to any of the foregoing actions.

11.25 Corporate Action. All matters provided for under this Plan involving the corporate structure of a Debtor or Reorganized ASARCO, or any corporate action to be taken by, or required of such Debtor 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.

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

11.27 Approval of Asbestos Insurance Settlement Agreements. Confirmation of this Plan shall constitute approval pursuant to Bankruptcy Rule 9019 of all Asbestos Insurance Settlement Agreements executed as of the Confirmation Date (which are listed in **Exhibit 7** to this Plan, which may be amended, supplemented or modified at any time prior to the Confirmation Date) as evidenced by entry of the Confirmation Order.

11.28 Approval of Environmental Settlement Agreements. Confirmation of this Plan shall constitute approval pursuant to Bankruptcy Rule 9019 of all Environmental Custodial Trust Settlement Agreements, the Miscellaneous Federal and State Environmental Settlement

Agreements, and the Residual Environmental Settlement Agreement, executed as of the Confirmation Date (which are listed in **Exhibit 12** to this Plan, which may be amended, supplemented or modified at any time prior to the Confirmation Date) as evidenced by entry of the Confirmation Order.

11.29 **Approval of Mission Mine Settlement Agreement.** Confirmation of this Plan shall constitute approval pursuant to Bankruptcy Rule 9019 of the Mission Mine Settlement Agreement (which is attached as **Exhibit 15** to this Plan) as evidenced by entry of the Confirmation Order.

11.30 **Approval of Asbestos Settlement Agreement.** Confirmation of this Plan shall constitute approval pursuant to Bankruptcy Rule 9019 of the Asbestos Settlement Agreement (which is attached as **Exhibit 9** to this Plan) as evidenced by entry of the Confirmation Order.

11.31 **Option to Create Work Trusts.** The United States 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.

## ARTICLE XII

### **INJUNCTIONS, RELEASES, AND DISCHARGE**

12.1 **Discharge and Release.** Except as otherwise expressly provided in this Plan, the rights afforded in this 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 the Debtors or their respective Estates, 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.

12.2 **Discharge Injunction.** Except as otherwise expressly provided in this Plan, the discharge and release set forth in Article 12.1 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 and Demand discharged and released in Article 12.1 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 12.1. Except as otherwise expressly provided in this Plan, all 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 therefore were known or existed prior to the Effective Date.

12.3 **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) or 105(a) of the Bankruptcy Code (or both), the Confirmation Order shall provide for issuance of the following injunction 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 this Plan, and pursuant to section 524(g) or 105(a) of the Bankruptcy Code (or both), all Unsecured Asbestos Personal Injury Claims and Demands shall be channeled to the Asbestos Trust for a remedy under the Asbestos TDP, and all holders of Unsecured 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 Unsecured 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 Unsecured 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 Unsecured Asbestos Personal Injury Claim or Demand, including, but not limited to:

(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 Unsecured 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 Unsecured 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 Unsecured Asbestos Personal Injury Claim or Demand;

(D) except as otherwise specifically provided in this 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 Unsecured 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 Plan, the Plan Documents or the Asbestos Trust Documents relating to any Unsecured Asbestos Personal Injury Claim or Demand.

(2) Reservations. Notwithstanding anything to the contrary above, this Permanent Channeling Injunction shall not enjoin, alter, diminish or impair:

(A) the rights of Entities to the treatment accorded them under Articles II and IV of this Plan, as applicable, including the rights of Entities with Unsecured Asbestos Personal Injury Claims or Demands to assert such Unsecured Asbestos Personal Injury Claims or Demands in accordance with the Asbestos TDP;

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

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

(D) the rights of the Asbestos Trustees, if any, with regard to any Asbestos Insurance Company that is not a Settling Asbestos Insurance Company (with the Asbestos Trust being, and being 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);

(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 this Plan; or

(F) the rights of the Asbestos Trust or the Asbestos Trustees to seek relief from the Permanent Channeling Injunction should the Debtors and/or Reorganized ASARCO fail to fulfill all obligations under this Plan or the Plan Documents; *provided, however*, that so long as the Plan Sponsor and the Plan Sponsor Parent perform their respective obligations under the Plan Sponsor PSA, the Permanent Channeling Injunction shall not be lifted, amended or modified in any way with respect to the Plan Sponsor, the Plan Sponsor Parent or their Affiliates, representatives, properties or interests in property.

(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 this Plan, and to supplement where necessary the injunctive effect of the discharge and releases provided for in this Plan, pursuant to section 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, but not limited to any Unsecured Asbestos Personal Injury Claim or Demand or any Claim for or respecting any Asbestos Trust Expense) against a Settling Asbestos Insurance Company based upon, relating to, arising out of, attributable to, or in any way connected with any Unsecured 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, but not limited to:

(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 this 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 Plan Documents relating to such Claim, Demand or cause of action.

(2) Reservations. Notwithstanding anything to the contrary above, this Asbestos Insurance Company Injunction shall not enjoin, alter, diminish or impair:

(A) the rights of Entities to the treatment accorded them under Articles II and IV of this Plan, as applicable, including the rights of Entities with

Unsecured Asbestos Personal Injury Claims to assert Unsecured Asbestos Personal Injury Claims or Demands against the Asbestos Trust in accordance with the Asbestos TDP;

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

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

(D) the rights of the Asbestos Trustees, if any, with regard to any Asbestos Insurance Company that is not a Settling Asbestos Insurance Company (with the Asbestos Trust being, and being 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);

(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 this Plan; or

(F) the rights of the Asbestos Trust or the Asbestos 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.

12.4 Limitation of Injunctions. Notwithstanding any other provision of this Plan to the contrary, the releases set forth in Article 12.1 and the Injunctions set forth in Articles 12.2 and 12.3, respectively, shall not serve to satisfy, discharge, release, or enjoin Claims by any Entity against the Asbestos Trust for payment of (a) Unsecured Asbestos Personal Injury Claims and Demands in accordance with the Asbestos TDP, or (b) Asbestos Trust Expenses, and such releases and/or Injunctions shall not enjoin Reorganized ASARCO or the Asbestos Trust from enforcing any Asbestos Insurance Policy or any Asbestos Insurance Settlement Agreement.

12.5 346 Injunction. In accordance with section 346 of the Bankruptcy Code, for purposes of any state or local law imposing a tax, the Debtors and/or Reorganized ASARCO will not realize income by reason of any forgiveness or discharge of indebtedness resulting from the consummation of this Plan. As a result, each state or local taxing authority is permanently enjoined and restrained, after the Effective Date, from commencing, continuing, or taking any act to impose, collect, or recover in any manner any tax against the Debtors and/or Reorganized ASARCO arising by reason of the forgiveness or discharge of indebtedness under this Plan.

12.6 Exoneration and Reliance. The ASARCO Protected Parties shall not 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 the Debtors or the

discharge of their duties under the Bankruptcy Code, (b) the implementation of any of the transactions provided for, or contemplated in, this Plan or other Plan Documents, (c) any action taken in connection with either the enforcement of the rights of any Debtor against any Entities or the defense of Claims or Demands asserted against any such Debtor with regard to the Reorganization Cases, (d) any action taken in the negotiation, formulation, preparation, development, proposal, solicitation, disclosure, Confirmation, or implementation of this Plan, other Plan Documents, or related agreements, instruments or other documents, (e) the administration of this Plan or the assets and property to be distributed pursuant to this Plan, or (f) the administration of the Estates. The ASARCO Protected Parties shall be deemed to have participated in the Reorganization Cases in good faith and in compliance with the applicable provisions of the Bankruptcy Code. Nothing in this Article 12.6 shall prevent the enforcement of the terms of this Plan.

12.7 Fee Shifting. If any holder of a Claim or Interest or other Entity other than a Governmental Unit brings an action, suit or proceeding, against any ASARCO Protected Party (or any property or interest in property of any ASARCO Protected Party) by reason of any action or inaction described in Article 12.6 hereof or in any other way arising from or related to the Reorganization Cases, the Debtors or the Trusts (other than as expressly provided in the Plan or the Asbestos TDP), and does not prevail in any such action, suit, or proceeding, such holder of a Claim, Demand or Interest or other Entity shall be liable for and must pay the reasonable attorneys' fees and costs of such ASARCO Protected Party, and as a condition to going forward with such action, suit, or proceeding at the outset thereof, such holder of a Claim, Demand or Interest or other Entity shall be required to provide appropriate proof and assurances of its capacity to make such payment of reasonable attorneys' fees and costs in the event it fails to prevail. In order for a holder of a Claim, Demand or Interest or other Entity to be considered a prevailing party, such party must be awarded an enforceable judgment on the merits that constitutes a material alteration of the legal relationship between such party and an ASARCO Protected Party, and does not include a judgment that awards nominal damages. This Article 12.7 shall not impose any obligation on any ASARCO Protected Party to pay, or provide appropriate proof and financial assurance of its capacity to pay, reasonable attorneys' fees and costs in the event that the holder of a Claim, Demand or Interest or other Entity prevails in an action, suit or proceeding that is filed against such ASARCO Protected Party.

12.8 Additional Releases. On and as of the Effective Date and for good and valuable consideration, each ASARCO Protected Party (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, rights 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 Plan in the Reorganization Cases and further including any derivative claims asserted on behalf of the Debtors, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity or otherwise, that the Debtors, their Estates, or the Reorganized Debtors would have been legally entitled to assert in their own right, whether individually or collectively) which any of the Debtors, their Estates, the Reorganized Debtors, Claimants, holders of Demands or other Persons receiving or who are entitled to receive distributions under the Plan may have against them in any way related to the Reorganization Cases or the Debtors (or their predecessors or Affiliates). The ASARCO

Protected Parties shall not be responsible for any obligations of the Debtors except those expressly assumed by those parties in this Plan (and only to the extent so assumed). 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.

12.9 Exculpation and Indemnities.

(a) *Exculpation.*

Except in the case of a judicial finding by a Final Order of (i) willful misconduct or bad faith or (ii) any criminal liability or liability for ultra vires acts asserted by any governmental agency, 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 and/or any of the Reorganization Cases, including those activities described in Article 12.6 above, 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 (i) actions for willful misconduct or bad faith, or (ii) any criminal liability or liability for ultra vires acts asserted by any governmental agency. Any such action shall be brought in the Bankruptcy Court within ninety (90) days after the Effective Date. Nothing in this Article 12.9 shall prevent the enforcement of the terms of this Plan.

(b) *Indemnities.*

Reorganized ASARCO shall defend, hold harmless, and indemnify to the fullest extent permitted by applicable law the Protected Directors and Officers and other appropriate parties with respect to any Claim, Demand or liability arising from any action, failure or omission to act or other matter related to the Debtors and/or any of the Reorganization Cases through and including the Effective Date. If and whenever any indemnified party is, or is threatened to be made, a party to any action, suit, arbitration, investigation or other proceeding that might give rise to a right of indemnification under this Article 12.9, Reorganized ASARCO shall, to the extent permitted by applicable law, reimburse that indemnified party all expenses (including attorneys' fees) reasonably incurred by or on behalf of that indemnified party in connection therewith within sixty (60) days after Reorganized ASARCO receives a statement or statements from that indemnified party requesting reimbursement from time to time, whether prior to or after final disposition of such action, suit, arbitration or investigation or other proceeding. In furtherance of these obligations, Reorganized ASARCO shall maintain an escrow account in the amount of \$20 million to address its anticipated indemnification obligations (the "Indemnification Escrow"). Prior to the Effective Date, ASARCO shall purchase an errors and omissions insurance policy for the benefit of such indemnified parties in an amount equal to the coverage currently maintained by the Debtors. The term of the policy shall be six (6) years following the Effective Date. In addition, prior to the Effective Date, ASARCO shall exercise the six-year run-off option available under its existing directors and officers liability insurance. The Protected Officers and Directors shall be entitled to retain independent counsel in connection with any Claim or liability asserted against them in connection with their service in the Reorganization Cases and to



assist them with any issues arising in connection with the termination of their services as officers or directors. The fees and expenses of such counsel shall be paid out of the Indemnification Escrow.

As soon as practicable after the sixth year anniversary of the Effective Date or upon such later date as Reorganized ASARCO deems it appropriate, Reorganized ASARCO shall distribute any funds remaining in the Indemnification Escrow as a Subsequent Distribution, in accordance with the terms and conditions of the Plan and the Confirmation Order, in the following order of priority: first, to satisfy the Class 5 and Class 9 Principal Payment; second, to satisfy the Pro Rata Post-Petition Interest Payment; third, third, to satisfy the Class 5 and Class 9 Supplemental Distribution; fourth, to holders of Allowed Class 10 Late-Filed Claims; fifth, to holders of Allowed Class 11 Subordinated Claims; and finally, to the holders of Class 12 Interests.

12.10 Releases by Holders of Claims, Demands and Interests. On the Effective Date, holders of Claims, Demands and Interests (a) voting to accept the Plan or (b) abstaining from voting on the Plan and failing to opt out of the release contained in this Article 12.10 shall be deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged the ASARCO Protected Parties from any and all Claims, Demands, Interests, obligations, rights, suits, damages, causes of action, remedies and liabilities whatsoever, including any derivative claims asserted on behalf of a Debtor, 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) the Debtors, (2) 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 Debtor 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 this Plan, the Plan Documents or related agreements, instruments or other documents, (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.

12.11 Release of Fraudulent Transfer Claims Against Settling Asbestos Insurance Companies. All fraudulent transfer claims against any Settling Asbestos Insurance Company arising under sections 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 Asbestos 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 12.11 does not apply to any of the existing Avoidance Actions against certain Asbestos Insurance Companies that entered into prepetition settlement agreements, as listed on Exhibit 14-C hereto.

12.12 Limitation Regarding Governmental Agencies. The releases, discharges, satisfactions, exonerations, exculpations and injunctions provided under this Plan (including but not limited to those in Articles 12.1, 12.2, 12.6, 12.8, 12.9 and 12.10 hereof) or the Confirmation Order shall not apply to any liability to a governmental agency arising after the Effective Date; *provided, however*, that, except as otherwise expressly provided in the Plan, no governmental agency shall assert any Claim or other cause of action under Environmental Laws against the Plan Administrator, Plan Administration Reserve, or Miscellaneous Plan Administration Accounts, except provided, further, however, that nothing in this Plan or the Confirmation Order releases, discharges, precludes, or enjoins the enforcement of any liability to a governmental agency under Environmental Law that any Entity would be subject to as the owner or operator of property after the date of entry of the Confirmation Order or any criminal liability (other than criminal liabilities that are dischargeable). Nothing in this Article 12 shall be construed to preclude enforcement by the United States or a State of any requirements under an Environmental Custodial Trust Agreement against an Environmental Custodial Trustee.

### ARTICLE XIII

#### MATTERS INCIDENT TO PLAN CONFIRMATION

##### 13.1 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 this Plan, the Confirmation Order, or by their own terms. In addition, on and after the Confirmation Date, the Debtors may seek such further orders as they 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 this 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.

13.2 No Liability for Tax Claims. Unless a taxing authority has asserted a Claim against a Debtor prior to the applicable Bar Date, no Claim of such taxing authority shall be Allowed against a Debtor or Reorganized ASARCO for taxes, penalties, interest, additions to tax, or other charges arising out of the failure, if any, of a Debtor, Reorganized ASARCO, or any other Entity to have paid taxes or to have filed any tax return (including, but not limited to, any income tax return or franchise tax return) in or for any prior year or arising out of an audit of any return for a period before the Petition Date.

### 13.3 No Successor Liability.

(a) Except as otherwise expressly provided in this Plan, none of the ASARCO Protected Parties shall be deemed a successor or successor-in-interest to 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.

(b) Except as otherwise expressly provided in this Plan, the ASARCO Protected Parties do not agree to perform, pay, indemnify creditors for, or otherwise have any responsibilities for any liabilities or obligations of the Debtors or the Reorganized Debtors, whether arising before, on, or after the Confirmation Date.

13.4 Asbestos Insurance Actions and Preservation of Insurance Claims and Defenses. Subject to the remaining terms of this Article 13.4 and the terms of the Confirmation Order, Asbestos Insurance Actions and Asbestos Insurance Recoveries shall be preserved pursuant to this provision for pursuit by the Asbestos Trust for the benefit of the Asbestos Trust Beneficiaries. On or after the Effective Date, the Asbestos Trustees shall be entitled, in their sole and complete discretion, to pursue, compromise or settle any and all Asbestos Insurance Actions and Asbestos Insurance Recoveries, and to move the Bankruptcy Court to extend the Asbestos Insurance Company Injunction to any Asbestos Insurance Company that becomes a party to an Asbestos Insurance Settlement Agreement after the Effective Date. Extension of the Asbestos Insurance Company Injunction, if ordered by the Bankruptcy Court, shall be accomplished by amending and/or supplementing **Exhibit 7** hereto to add the name of the Settling Asbestos Insurance Company. All proceeds from the Asbestos Insurance Actions shall be paid to the Asbestos Trust.

### 13.5 Insurance Neutrality.

(a) Confirmation of the 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 ASARCO, the Asbestos Subsidiary Debtors, the Asbestos Subsidiary Committee, the ASARCO Committee, the FCR, an Asbestos Insurance Company nor the Asbestos 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 this Court relating to Confirmation of

the 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.*, No. BC 116835, 2002 WL 398672 (Cal. Super. Ct. Feb. 26, 2002) and 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 the Debtors and transferred to the Asbestos Trustees in accordance with the provisions herein. Nothing herein shall limit the ability of ASARCO, the Asbestos Subsidiary Debtors, the Asbestos Subsidiary Committee, the ASARCO Committee, the FCR, an Asbestos Insurance Company or the Asbestos Trust to offer the Plan, any of the 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 Asbestos Trust are so bound.

(c) Nothing in the Plan shall operate to expand the rights of ASARCO, the Asbestos Subsidiary Debtors, the Asbestos Subsidiary Committee, the ASARCO Committee, the FCR, an Asbestos Insurance Company or the Asbestos Trust, or diminish their 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 13.5(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 Plan had not been confirmed except as set out in Article 13.5(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 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 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 Plan or the Confirmation process. An Asbestos Insurance Company shall have no such discovery rights in 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 Debtors on account of any asbestos-related liabilities. Without limiting the foregoing, except as set out in Article 13.5(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 Theory, 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 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 ASARCO, the Asbestos Subsidiary Debtors, the Asbestos Subsidiary Committee, the ASARCO Committee, the FCR, an Asbestos Insurance Company or the Asbestos Trust may offer the Plan, any of the 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 as part of the 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 reserves 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 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) ASARCO, the Asbestos Subsidiary Debtors, the Asbestos Subsidiary Committee, the ASARCO Committee, the FCR, an Asbestos Insurance Company and the Asbestos Trust may offer in any court, including any court resolving any insurance coverage litigation, any relevant portion of the Plan and any of the Plan Documents and/or the Confirmation Order for any purpose including, without limitation, that the Plan was a reasonable

settlement; *provided, however*, such offer shall be subject to the rights, defenses (including affirmative defenses) and objections, if any, of ASARCO, the Asbestos Subsidiary Debtors, the Asbestos Subsidiary Committee, the ASARCO Committee, the FCR, an Asbestos Insurance Company and the Asbestos Trust.

## ARTICLE XIV

### PROVISIONS GOVERNING DISTRIBUTIONS

14.1 Plan Distributions. Distributions to holders of Unsecured Asbestos Personal Injury Claims and Demands shall be made by the Asbestos Trust in accordance with the Asbestos Trust Documents. All other distributions or payments required or permitted to be made under this Plan, other than to Professional Persons, shall be made by Reorganized ASARCO on the Initial Distribution Date and thereafter by the Plan Administrator at the time or times and in the manner provided herein, unless otherwise ordered by the Bankruptcy Court. Distributions to Professional Persons shall be made by Reorganized ASARCO on the Initial Distribution Date and thereafter by the 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.

14.2 Plan Administrator. Not less than ten days prior to commencement of the Confirmation Hearing, and subject to Bankruptcy Court approval in connection with Confirmation of the Plan, ASARCO shall designate the Entity that shall initially serve as the Plan Administrator. The Plan Administrator shall serve without bond, may employ or contract with other Persons to assist in the performance of the Plan Administrator's duties, which shall be set forth in the Plan Administration Agreement, and shall procure appropriate directors and officers liability insurance and other insurance coverage appropriate to the business in which the Reorganized Debtors are to be engaged. The 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 of such services. On the Effective Date, the Debtors shall (a) place in the Plan Administration Account sufficient Cash to pay for the Bonds (if ASARCO elects to Reinstate the Bondholders' Claims), the Plan Administrator's estimated compensation and expenses, and all other anticipated costs of administration of the Plan and initial operations of the Reorganized Debtors; and (b) fund the Miscellaneous Plan Administration Accounts. Upon completion of the Plan Administrator's other responsibilities under this Plan, any funds remaining in the Plan Administration Reserve shall be distributed, in accordance with the priorities established by the Plan and in accordance with the terms and conditions of the Plan and the Confirmation Order, in the following order of priority: first, to satisfy the Class 5 and Class 9 Principal Payment; second, to satisfy the Pro Rata Post-Petition Interest Payment; third, to satisfy the Class 5 and Class 9 Supplemental Distribution; fourth, to holders of Allowed Class 10 Late-Filed Claims; fifth, to holders of Allowed Class 11 Subordinated Claims; and finally, to the holders of Class 12 Interests.

### 14.3 Delivery of Distributions.

(a) Except as otherwise expressly provided in this 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 will be made to such Nominee, and such Nominee shall, in turn, make appropriate distributions and book entries to reflect such distributions to such holders; *provided, however*, that where an Indenture Trustee is acting on behalf of certain Bondholders, distributions on account of those Bondholder Claims shall be made to such Indenture Trustee for its subsequent distribution, subject to the terms and conditions of the applicable indenture or other governing document, to the holders of such Claims. Payments may be made at the election of Reorganized ASARCO or the Plan Administrator by check, wire transfer, or the customary method used for payment by the Debtors prior to the Petition Date.

(b) Except as otherwise expressly provided in an environmental settlement agreement, **[instructions for delivery to the United States to come]**.

14.4 Distribution Record Date. Reorganized ASARCO and the 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.

14.5 Unclaimed Property.

(a) *Distributions by the Asbestos Trust*.

Any Cash, assets, or other property to be distributed under this Plan by the Asbestos Trust that remains unclaimed (including by an Entity's failure to negotiate a check issued to such Entity) or otherwise is not deliverable to the Entity entitled thereto one year after the initial distribution is made or attempted shall become vested in, and shall be transferred and delivered to, the Asbestos Trust, for use in accordance with the terms of the Asbestos Trust Agreement.

(b) *Distributions by the Plan Administrator*.

(1) If the distribution to any holder of an Allowed Claim (other than the holder of an Unsecured Asbestos Personal Injury Claim or Demand) is returned to Reorganized ASARCO or the Plan Administrator as undeliverable or is otherwise unclaimed (including by a Claimant's failure to negotiate a check issued to such Claimant), the amounts in respect of such undeliverable and/or unclaimed distributions shall be returned to the Plan Administrator until such distributions are claimed. The Plan Administrator will 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 14.5(b)(2).

(2) Any funds in the Undeliverable and Unclaimed Distribution Reserve that remain unclaimed (including by 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 Plan Administrator. In such event, Claimant shall be deemed to have waived its rights to such payments or distributions under this 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 this Plan with respect to such Claim. Reorganized ASARCO shall then distribute the Forfeited Distributions to unpaid Claimants, in accordance with the terms and conditions of the Plan and the Confirmation Order, in the following order of priority: first, to satisfy the Class 5 and Class 9 Principal Payment; second, to satisfy the Pro Rata Post-Petition Interest Payment; third, to satisfy the Class 5 and Class 9 Supplemental Distribution; fourth, to holders of Allowed Class 10 Late-Filed Claims; fifth, to holders of Allowed Class 11 Subordinated Claims; and finally, to the holders of Class 12 Interests.

14.6 Compliance with Tax Requirements. Reorganized ASARCO, the Plan Administrator and the Asbestos 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 Plan Document shall be subject to such withholding and reporting requirements, if any. Notwithstanding any other provision of this Plan, each Person receiving a distribution pursuant to this Plan, or any other Plan Document, will have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any Governmental Unit, including income and other tax obligations, on account of that distribution.

14.7 Setoffs and Recoupments. Subject to the limitations provided in section 553 of the Bankruptcy Code, Reorganized ASARCO or the 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 Plan any Claims of any nature whatsoever the Estates 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 Plan Administrator, as the case may be, of any such Claim against such holder or right of setoff or recoupment that the Estates may have against the holder of such Allowed Claim.

14.8 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.

14.9 Disputed Claims Reserve.

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

(b) On the Effective Date (or as soon thereafter as is reasonably practicable), Reorganized ASARCO or the Plan Administrator, as the case may be, shall deposit Cash 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 pursuant to section 502(c) of the Bankruptcy Code, or (3) the amount otherwise agreed to by the Debtors and the holders of such Disputed Claims.

(c) In the case of objections to allegedly Secured Claims, any Lien asserted by the holder of such a Claim against Remaining Assets that revest in Reorganized ASARCO shall remain in place, pending resolution of the objection to the allegedly Secured Claim. Any Lien asserted by the holder of an allegedly Secured Claim against an asset that is sold to the Plan Sponsor shall attach to Cash held by the Plan Administrator in an amount equal to the lesser of (1) the amount of the allegedly Secured Claim, (2) the amount, if any, estimated by the Bankruptcy Court pursuant to section 502(c) of the Bankruptcy Code, or (3) the amount otherwise agreed to by the Debtors and the holders of such Disputed Claims, which Cash shall be held by the Plan Administrator in a separate escrow account (a “Disputed Secured Claims Escrow Account”), pending resolution of the objection to the allegedly Secured Claim.

(d) The Plan Administrator shall distribute from the Disputed Claims Reserve or a Disputed Secured Claims Escrow Account 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 pursuant to a Final Order, an amount equal to the Allowed 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 Plan Administrator shall on a quarterly basis (and in no event later than the tenth Business Day after the end of each calendar quarter) distribute the Cash reserved in respect of such disallowed Disputed Claim, in accordance with the terms and conditions of the Plan and the Confirmation Order, in the following order of priority: first, to satisfy the Class 5 and Class 9 Principal Payment; second, to satisfy the Pro Rata Post-Petition Interest Payment; third, to satisfy the Class 5 and Class 9 Supplemental Distribution; fourth, to holders of Allowed Class 10 Late-Filed Claims; fifth, to holders of Allowed Class 11 Subordinated Claims; and finally, to the holders of Class 12 Interests.

(f) The law is unclear as to whether the Disputed Claims Reserve or a Disputed Secured Claims Escrow Account will be treated, for U.S. federal income tax purposes, as a disputed ownership fund within the meaning of Treasury Regulations section 1.468B-9(b)(1). If the Disputed Claims Reserve or a Disputed Secured Claims Escrow Account qualifies as a disputed ownership fund within the meaning of Treasury Regulations section 1.468B-9(b)(1), it would be subject to entity level U.S. federal income taxation on its income as if it were a corporation and such entity level taxes imposed on the Disputed Claims Reserve or the Disputed Secured Claims Escrow Account would be paid out of the Disputed Claims Reserve or the Disputed Secured Claims Escrow Account, respectively. If the Disputed Claims Reserve or a Disputed Secured Claims Escrow Account does not qualify as a disputed ownership fund within the meaning of Treasury Regulations section 1.468B-9(b)(1), then it will not be a separate taxable entity subject to entity level taxation, and the person that is deemed to “own” the Disputed Claims Reserve or the Disputed Secured Claims Escrow Account for U.S. federal income tax purposes would be required to pay federal income taxes on its earnings. The Plan

contemplates that the Plan Administrator will take the position that the Disputed Claims Reserve and the Disputed Secured Claims Escrow Accounts do not qualify as disputed ownership funds within the meaning of Treasury Regulations section 1.468B-9(b)(1). The Plan Administrator will cause taxes attributable to the earnings of the Disputed Claims Reserve or a Disputed Secured Claims Escrow Account (as well as any taxes directly imposed on the Disputed Claims Reserve or a Disputed Secured Claims Escrow Account) to be paid out of the assets of the Disputed Claims Reserve or the Disputed Secured Claims Escrow Account, respectively.

## ARTICLE XV

### PROCEDURES FOR TREATING DISPUTED CLAIMS

15.1 Objections to Claims. After the Effective Date, Reorganized ASARCO and the Plan Administrator shall have the exclusive right to file objections to Claims (other than objections to Unsecured 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. Without limiting the preceding, Reorganized ASARCO and the 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 Asbestos Trust shall have the authority to file objections to Unsecured Asbestos Personal Injury Claims and Demands and litigate to judgment, settle, or withdraw such objections. Unsecured Asbestos Personal Injury Claims and Demands, whether or not a Proof of Claim is filed, shall be satisfied exclusively in accordance with this Plan, the Asbestos Trust Agreement, and the Asbestos TDP. For the avoidance of doubt, no objection to Unsecured Asbestos Personal Injury Claims or Demands shall be filed in the Bankruptcy Court.

15.2 Objection Deadline. Within the later of (a) ninety days after the Confirmation Date or (b) ninety days after a Proof of Claim is filed, objections to Claims (other than Unsecured Asbestos Personal Injury Claims and Demands, which shall be Allowed or disallowed as provided in the Asbestos TDP) shall be filed with the Bankruptcy Court; *provided, however*, that Reorganized ASARCO and/or the Plan Administrator may seek to extend such period (or any extended period) for cause.

15.3 Disallowance of Improperly Filed Claims. Any Administrative Claim or other Claim (except for an Unsecured Asbestos Personal Injury Claim and 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.

## ARTICLE XVI

### MISCELLANEOUS

16.1 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 this Plan are carried out, (b) to enforce and interpret the terms and conditions of the Plan Documents, and (c) to enter such orders or judgments, including, without limitation, injunctions necessary to enforce the rights, title, and powers of a Debtor, a Reorganized Debtor, a Settling Asbestos Insurance Company, the Plan Sponsor and/or other ASARCO Protected Party. Except as otherwise provided in this 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 Plan Administrator, the Asbestos Trustees or the Litigation Trustees (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 Debtors, 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.

16.2 Jurisdiction over the Asbestos Trust and the Environmental Custodial Trusts. The Asbestos Trust and the Environmental Custodial Trusts 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.

16.3 Specific Purposes. Without limiting the effect of Articles 16.1 and 16.2, the Bankruptcy Court shall retain jurisdiction after Confirmation to:

(a) modify this Plan after entry of the Confirmation Order, pursuant to the provisions of this 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 this Plan, the Plan Documents, or the Confirmation Order as may be necessary to carry out the purposes and intent of this 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 Plan, the 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 Plan, including without limitation the Plan Documents, and to enforce, including by specific performance, the provisions of the Plan and the Plan Documents;

(e) hear and determine disputes arising in connection with the execution, interpretation, implementation, consummation, or enforcement of the Plan Sponsor PSA, settlement agreements, asset purchase agreements or other agreements entered into by 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 Plan, including, without limitation, to issue, administer, and enforce injunctions, releases,

assignments, transfers of property or property rights, or other obligations contained in the Plan and the Confirmation Order;

(g) assure the performance by the Plan Administrator and the Trustees of their respective obligations to make distributions under the Plan and other Plan Documents;

(h) enter such orders or judgments, including injunctions as necessary to enforce the title, rights, and powers of the Debtors, the Reorganized Debtors, the Plan Sponsor, the Plan Administrator and 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 Plan;

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

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

(l) 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;

(m) 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;

(n) 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 the Debtors, the Reorganized Debtors, the Plan Administrator and/or the Trusts arising on or prior to the Effective Date, arising on account of transactions contemplated by the Plan Documents, or relating to the period of administration of the Reorganization Cases;

(o) 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;

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

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

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

(s) 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;

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

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

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

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

(x) retain continuing jurisdiction with regard to the Asbestos Trust and the Environmental Custodial Trusts (including the Environmental Custodial Trust Accounts) sufficient to satisfy the requirements of Treas. Reg. section 1.468B-1;

(y) hear and determine any and all applications brought by the Asbestos Trustees to amend, modify, alter, or repeal any provision of the Asbestos Trust Agreement or the Asbestos TDP pursuant to the Asbestos Trust Agreement and to declare or resolve all issues or disputes contemplated by the Asbestos Trust Agreement;

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

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

(bb) 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 related to the Plan.

#### 16.4 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 enforcement, validity, application, construction or modification 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: (a) the Bankruptcy Court or District Court in fact have jurisdiction with respect to any Asbestos Insurance Action or Asbestos Insurance Recovery; (b) any such jurisdiction is exclusive with respect to any Asbestos Insurance Action or Asbestos Insurance Recovery; or (c) 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 16.4 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.

16.5 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 the Debtors to pay the reasonable fees and expenses of the Committees and the FCR and their counsel and advisors through that date in accordance with the fee and expense procedures promulgated during the Reorganization Cases; *provided, however*, that notwithstanding the foregoing, the Committees and the FCR shall continue in existence after the Effective Date for the duration of any appeal of the Confirmation Order, *provided further*, that 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 for services rendered during the pendency of the Reorganization Cases and for services rendered to the Committees or the FCR during the pendency of any appeal of the Confirmation Order. On and after the Effective Date, the position of FCR shall continue pursuant to orders issued by the Bankruptcy Court during the Reorganization Cases, providing that the FCR thereafter shall have and exercise the rights, duties, and responsibilities set forth in the Asbestos Trust Documents. Except as provided 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.

16.6 Modification of Plan. The Debtors may alter, amend or modify the Plan under section 1127(a) of the Bankruptcy Code at any time prior to the Confirmation Date; *provided, however*, that ASARCO shall not, without the prior written consent of the Plan Sponsor, seek to amend or modify any provision of the Bid Protections Order, the Disclosure Statement, the Plan or the Confirmation Order to effect a change in the terms and conditions of the transactions contemplated by the Plan Sponsor PSA which would reasonably be expected to have a material adverse effect on the Plan Sponsor (or the Plan Sponsor Parent) or on the ability of the Sellers and Plan Sponsor (and Plan Sponsor Parent) to consummate the transactions contemplated by the

Plan Sponsor PSA within the time periods set forth in sections 7.7(a) and 12.1 thereof. After the Confirmation Date, the Debtors may, under section 1127(b) of the Bankruptcy Code, seek Bankruptcy Court approval to remedy any defects or omissions or reconcile any inconsistencies in this Plan or the Confirmation Order in such manner as may be necessary to carry out the purposes and intent of this Plan, so long as the proposed alteration, amendment or modification does not adversely affect the treatment of Claims or Interests under the Plan and would not reasonably be expected to have a material adverse effect on the Plan Sponsor, the Plan Sponsor Parent or on the ability to consummate the transactions contemplated by the Plan Sponsor PSA.

16.7 Revocation, Withdrawal or Non-Consummation. The Debtors reserve the right to revoke or withdraw the Plan prior to the Confirmation Hearing and to file subsequent plans of reorganization. If the Debtors revoke or withdraw this Plan, or if Confirmation or Consummation does not occur, then (a) the Plan shall be null and void in all respects, (b) any settlement or compromise embodied in the Plan, assumption or rejection of executory contracts or unexpired leases under the Plan, and any document or agreement executed pursuant to the Plan, shall be deemed null and void, and (c) nothing contained in the Plan shall (i) constitute a waiver or release of any Claims by or against, or Interests in, such Debtors or any other Person, (ii) prejudice in any manner the rights of such Debtors or any other Person, or (iii) constitute an admission of any sort by the Debtors or any other Person.

16.8 Entire Agreement. Except as otherwise expressly provided in this Plan or the Plan Documents, the Plan and the Plan Documents set forth the entire agreement and undertakings relating to the subject matter thereof and supersedes all prior discussions and documents.

16.9 Rules Governing Conflicts Between Documents. In the event of a conflict between the terms or provisions of this Plan and the Plan Documents, the terms of this Plan shall control over the Plan Documents. In the event of a conflict between the terms of the Plan or the 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.

16.10 Severability. In the event any provision in this Plan should be determined to be unenforceable either on its face or as applied to any Claim, Demand, Interest or transaction, the Debtors may modify the Plan in accordance with Article 16.6 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 this Plan or (b) require the re-solicitation of any acceptance or rejection of the Plan.

16.11 Headings. Headings are utilized in this Plan for convenience and reference only and shall not constitute a part of this Plan for any other purpose.

16.12 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 ninety 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.

16.13 Subsequent Administrative Claims Bar Date. Claimants, other than Professionals Persons, holding Administrative Claims against a Debtor 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 forty-five 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 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 twenty 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 the States under civil Environmental Laws relating to the Designated Properties shall be addressed through the Environmental Custodial Trust Settlement Agreements, the Environmental Custodial Trust Funding and the Environmental Custodial Trust Administration Funding to be paid by ASARCO to the Environmental Custodial Trusts pursuant to the Plan.

16.14 Governing Law. Except to the extent that federal law (including, but not limited to, the Bankruptcy Code and the Bankruptcy Rules) is applicable or this Plan provides otherwise, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of Texas without giving effect to its conflicts of law principles.

16.15 Consent to Jurisdiction. Except for the matters within the exclusive jurisdiction of the District Court as described in Article 16.4 hereof, the Debtors, Reorganized ASARCO, the Plan Administrator, the Trustees, the Trusts, the Asbestos TAC, and the FCR consent to the jurisdiction of the Bankruptcy Court, or any successor thereto, for all proceedings relating to the enforcement of the Plan and/or the 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 16.4 hereof, the Debtors, Reorganized ASARCO, the Plan Administrator, the Asbestos Trustees, the Asbestos Trust, the Asbestos TAC, 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 16.4.

16.16 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, this Plan or the making or delivery of an instrument of transfer under, or in connection with, this 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.



16.17 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.

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

16.19 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 this Plan or any order issued in furtherance of the 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.

16.20 Notices. All notices, requests, elections, or demands in connection with this Plan or the 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 Debtors**

Jack L. Kinzie  
Baker Botts L.L.P.  
2001 Ross Avenue  
Dallas, TX 75201-2980  
Facsimile: (214) 661-6503  
Email: *jack.kinzie@bakerbotts.com*

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

**Counsel for the ASARCO Committee**

Paul M. Singer  
Reed Smith LLP  
435 Sixth Avenue  
Pittsburgh, PA 15219  
Facsimile: (412) 288-3063  
Email: *psinger@reedsmith.com*

James C. McCarroll  
Reed Smith LLP  
599 Lexington Ave.  
29th Floor  
New York, NY 10022  
Facsimile: (212) 521-5450  
Email: *jmccarroll@reedsmith.com*

Derek J. Baker  
Reed Smith LLP  
2500 One Liberty Place  
1650 Market Street  
Philadelphia, PA 19103  
Facsimile: (215) 851-1420  
Email: *dbaker@reedsmith.com*

**Counsel for the Asbestos Subsidiary Committee**

Sandy Esserman  
Steven A. Felsenthal  
Stutzman, Bromberg, Esserman & Plifka, PC  
2323 Bryan Street, Suite 2200  
Dallas, TX 75201-2689  
Facsimile: (214) 969-4999  
Email: *esserman@sbep-law.com*  
*felsenthal@sbep-law.com*

**The FCR**

Judge Robert C. Pate  
Frost Bank Plaza  
802 North Carancahua, Suite 1350  
Corpus Christi, TX 78470-0165  
Facsimile: (361) 887-6207  
Email: *judgepate@swbell.net*

John H. Tate, II  
Oppenheimer, Blend, Harrison & Tate, Inc.  
711 Navarro Street, Sixth Floor  
San Antonio, TX 78205  
Facsimile: (210) 224-7540  
Email: *jtate@obht.com*

**The DOJ**

David L. Dain  
Alan S. Tenenbaum  
United States Department of Justice  
Environmental Enforcement Section  
*Regular Mailing Address:*  
Ben Franklin Station  
P.O. Box 7611  
Washington, DC 20044  
*Overnight Mailing Address:*  
601 D Street NW  
Washington, DC 20004  
Facsimile: (202) 514-4180 (Mr. Dain)  
(202) 514-0097 (Mr. Tenenbaum)  
Email: *david.dain@usdoj.gov*  
*alan.tenenbaum@usdoj.gov*

**Counsel for the Plan Sponsor**

Douglas P. Bartner  
Shearman & Sterling LLP  
599 Lexington Avenue  
New York, NY 10022  
Facsimile: (646) 848-8190  
Email: *dbartner@shearman.com*

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Dated: July 31, 2008

Respectfully submitted,

ASARCO LLC, a Delaware limited liability  
company

By: /s/ Joseph F. Lapinsky  
Joseph F. Lapinsky  
Chief Executive Officer and President

ALC, INC., a Tennessee corporation

By: /s/ Douglas E. McAllister  
Douglas E. McAllister  
President

ALTA MINING AND DEVELOPMENT  
COMPANY, a Utah corporation

By: /s/ Douglas E. McAllister  
Douglas E. McAllister  
President and Secretary

AMERICAN SMELTING AND REFINING  
COMPANY, a New Jersey corporation

By: /s/ Douglas E. McAllister  
Douglas E. McAllister  
President and Secretary

AR MEXICAN EXPLORATIONS, INC., a  
Delaware corporation

By: /s/ Douglas E. McAllister  
Douglas E. McAllister  
President and Secretary

AR SACATON, LLC, a Delaware limited liability company

By: /s/ Douglas E. McAllister  
Douglas E. McAllister  
President and Secretary

ASARCO CONSULTING, INC., a Delaware corporation

By: /s/ Douglas E. McAllister  
Douglas E. McAllister  
President and Secretary

ASARCO EXPLORATION COMPANY, INC., a New York corporation

By: /s/ Douglas E. McAllister  
Douglas E. McAllister  
President and Secretary

ASARCO MASTER, INC., a Delaware corporation

By: /s/ Douglas E. McAllister  
Douglas E. McAllister  
President and Secretary

ASARCO OIL AND GAS COMPANY, INC., a New York corporation

By: /s/ Douglas E. McAllister  
Douglas E. McAllister  
President and Secretary

BLACKHAWK MINING AND  
DEVELOPMENT COMPANY, LIMITED, an  
Idaho corporation

By: /s/ Douglas E. McAllister

Douglas E. McAllister  
President and Secretary

BRIDGEVIEW MANAGEMENT COMPANY,  
INC., a New Jersey corporation

By: /s/ Douglas E. McAllister

Douglas E. McAllister  
President and Secretary

CAPCO PIPE COMPANY, INC., an Alabama  
corporation

By: /s/ William Perrell

William Perrell  
President and Secretary

CEMENT ASBESTOS PRODUCTS  
COMPANY, an Alabama corporation

By: /s/ William Perrell

William Perrell  
President and Secretary

COVINGTON LAND COMPANY, a Delaware  
corporation

By: /s/ Douglas E. McAllister

Douglas E. McAllister  
President and Secretary

ENCYCLE, INC., a Delaware corporation

By: /s/ Douglas E. McAllister

Douglas E. McAllister  
President and Secretary

GOVERNMENT GULCH MINING  
COMPANY LIMITED, an Idaho corporation

By: /s/ Douglas E. McAllister  
Douglas E. McAllister  
President and Secretary

GREEN HILL CLEVELAND MINING  
COMPANY, a Nevada corporation

By: /s/ Douglas E. McAllister  
Douglas E. McAllister  
President and Secretary

LAC D'AMIANTE DU QUÉBEC LTÉE, a  
Delaware corporation

By: /s/ William Perrell  
William Perrell  
President and Secretary

LAKE ASBESTOS OF QUEBEC, LTD., a  
Delaware corporation

By: /s/ William Perrell  
William Perrell  
President and Secretary

LAQ CANADA, LTD., a Delaware corporation

By: /s/ William Perrell  
William Perrell  
President and Secretary

PERU MINING EXPLORATION AND  
DEVELOPMENT COMPANY, a Delaware  
corporation

By: /s/ Douglas E. McAllister  
Douglas E. McAllister  
President and Secretary

SOUTHERN PERU HOLDINGS, LLC, a  
Delaware limited liability company

By: /s/ Douglas E. McAllister  
Douglas E. McAllister  
President and Secretary

TULIPAN COMPANY, INC., a Delaware  
corporation

By: /s/ Douglas E. McAllister  
Douglas E. McAllister  
President and Secretary

WYOMING MINING AND MILLING  
COMPANY, an Idaho corporation

By: /s/ Douglas E. McAllister  
Douglas E. McAllister  
President and Secretary