the WARN Act) or who have been placed on temporary layoff (with no reasonable expectation of recall) at any site of employment or facility of Sellers or any of its Subsidiaries during the 90-day period prior to the date hereof, together with the date of each such employment loss or temporary layoff (with no reasonable expectation of recall), which schedule shall be updated with respect to the period between the date hereof and the Closing Date. Seller represents that with respect to each such "employment loss," it complied in all material respects with the notice requirements contained in the WARN Act.

ARTICLE X
TAX MATTERS

10.1 *Transaction Taxes.* Purchaser shall bear and be responsible for paying any sales, use, value added, goods and services, gross receipts, stamp, duty, stamp duty, transfer, documentary, registration, business and occupation, severance (to the extent imposed on the transfer of the Inventory) and other similar Taxes (including related penalties (civil or criminal), additions to Tax and interest) imposed by any Governmental Authority with respect to the transfer of the Purchased Assets under this Agreement ("***Transaction Taxes***"), regardless of whether any Tax authority seeks to collect such taxes from Sellers or Purchaser; *provided, however,* that Purchaser shall in no event bear or be responsible for Transaction Taxes in excess of $1,000,000. Purchaser shall also be responsible for (i) administering the payment of such Transaction Taxes required to be paid by Purchaser hereunder; (ii) defending or pursuing any proceedings related thereto; and (iii) paying any expenses, interest and penalties related thereto. Sellers shall cooperate with Purchaser and take actions reasonably requested by Purchaser to permit Transaction Taxes, if any, to be paid on a timely basis. Sellers shall give prompt written notice to Purchaser of any proposed adjustment or assessment of any Transaction Taxes with respect to the transactions contemplated hereby. In any proceedings, whether formal or informal, Sellers shall permit Purchaser to participate and control the defense of such proceeding with respect to such Transaction Taxes, and shall take all actions and execute all documents required to allow such participation.

10.2 *Tax Prorations.* As to any Purchased Assets acquired by Purchaser, Sellers and Purchaser shall apportion the liability for real and personal property taxes, ad valorem taxes and other similar Taxes imposed on a periodic basis and measured by the level of any item ("***Periodic Taxes***") for all Tax periods including but not beginning or ending on the Closing Date (the "***Proration Periods***"). The Periodic Taxes described in this Section 10.2 shall be apportioned between Sellers and Purchaser as of the Closing Date, with Purchaser liable for that portion of the Periodic Taxes equal to the Periodic Tax for the Proration Period multiplied by a fraction, the numerator of which is the number of days remaining in the Proration Period after the Closing Date, and the denominator of which is the total number of days covered by such Proration Period. Sellers shall be liable for that portion of the Periodic Taxes for the Proration Period for which Purchaser is not liable under the preceding sentence. Purchaser and Sellers shall pay or be reimbursed for Periodic Taxes (including instances in which such Taxes have been paid before the Closing Date) on this prorated basis. If a payment on a tax bill is due after the Closing, the party that is legally required to make such payment shall make such payment and promptly forward an invoice to the other party for its pro rata share, if any. If the other party does not pay the invoice within 30 calendar days of receipt, the amount of such payment shall

bear interest at the rate of 6% per annum. The party responsible for paying a tax described in this Section 10.2 shall be responsible for administering the payment of (and any reimbursement for) such Tax. For purposes of this Section 10.2, the Proration Period for Periodic Taxes shall be the fiscal period for which such Taxes were assessed by the relevant Tax jurisdiction. Notwithstanding anything to the contrary contained herein, Purchaser shall be solely responsible for, promptly pay, and indemnify Sellers from and against, any and all assessments of taxes for the year in which Closing occurs, for all subsequent years and for prior years, in each case, due to change in land usage.

10.3 *Tax Refunds.* Any Tax refunds (including any interest related thereto) for which claims were filed prior to the Closing Date and which are received by Purchaser, its Affiliates or successors relating to Taxes attributable to the ownership or operation of the Purchased Assets during Tax periods or portions thereof ending on or before the Closing Date shall be for the account of Sellers, and Purchaser shall pay over to Sellers any such amount within five business days of receipt thereof. Any Tax refunds (including any interest related thereto) received by any Seller or its Affiliates or successors relating to Taxes attributable to the ownership or operation of the Purchased Assets during Tax periods or portions thereof beginning after the Closing Date shall be for the account of Purchaser, and Sellers shall pay over to Purchaser any such amount within five Business Days of receipt thereof. Each party shall, if the other party so requests and at such other party's direction and expense, file or cause its Affiliates to file for and obtain any Tax refunds relating to Taxes attributable to the ownership or operations of the Purchased Assets that such other party is entitled to under this Section 10.3, and each party shall pay over to such other party any such amount within five Business Days of receipt thereof.

ARTICLE XI
CONDITIONS TO CLOSING

11.1 *Conditions Precedent to Obligations of Each Party.* The respective obligations of Sellers, Purchaser and Guarantor to consummate the transactions contemplated by this Agreement are subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions:

(a) The Bankruptcy Court or the United States District Court that has jurisdiction over the Bankruptcy Cases shall have approved and entered the Plan Confirmation Order, and the Plan Confirmation Order shall have become an Effective Order;

(b) The United States District Court that has jurisdiction over the Bankruptcy Cases shall have issued or affirmed the Plan Confirmation Order in accordance with Section 524(g)(3)(A) of the Bankruptcy Code;

(c) If this Agreement is not consummated prior to October 22, 2009, any waiting period (including any extension thereof) applicable to the sale to and purchase by Purchaser of the Purchased 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 this Agreement, shall have been terminated or expired;

(d) No Order issued by any court of competent jurisdiction preventing the consummation of the transactions contemplated hereby shall be in effect; and

(e) All conditions precedent to the effectiveness of the Plan (other than the Closing) shall have been satisfied or waived by the relevant parties.

11.2 *Conditions Precedent to Obligations of Purchaser and Guarantor.* The obligations of Purchaser and Guarantor to consummate the transactions contemplated by this Agreement are subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived by Purchaser or Guarantor, in whole or in part, subject to Applicable Law):

(a) All of the representations and warranties of Sellers contained herein shall be true and correct on and as of the Closing Date, except those representations and warranties of Sellers that speak of a certain date, which representations and warranties shall have been true and correct as of such date; provided, however, that this condition shall be deemed to have been satisfied so long as any failure of such representations and warranties to be true and correct, individually or in the aggregate, would not reasonably be expected to result in a Seller Material Adverse Effect, ignoring solely for purposes of the satisfaction of this Section 11.2(a) any reference to Seller Material Adverse Effect or other materiality qualifiers contained in such representations and warranties;

(b) Sellers shall have performed, in all material respects, all obligations required by this Agreement to be performed by Sellers on or prior to the Closing Date; and

(c) Purchaser shall have been furnished with the deliveries referred to in Section 5.2.

11.3 *Conditions Precedent to Obligations of Sellers.* The obligations of Sellers to consummate the transactions contemplated by this Agreement are subject to the fulfillment, prior to or on the Closing Date, of each of the following conditions (any or all of which may be waived by Sellers, in whole or in part, subject to Applicable Law):

(a) All of the representations and warranties of Purchaser and Guarantor contained herein shall be true and correct on and as of the Closing Date, except those representations and warranties of Purchaser and Guarantor that speak of a certain date, which representations and warranties shall have been true and correct as of such date; *provided, however*, that this condition shall be deemed to have been satisfied so long as any failure of such representations and warranties to be true and correct, individually or in the aggregate, would not reasonably be expected to prevent, impede or materially delay or otherwise affect in any material respect the transactions contemplated by this Agreement ignoring solely for purposes of the satisfaction of this Section 11.3(a) any materiality qualifiers contained in such representations and warranties;

(b) Purchaser and Guarantor shall have performed, in all material respects, all obligations required by this Agreement to be performed by them on or prior to the Closing Date;

(c) Sellers shall have been furnished with the deliveries referred to in Section 5.3; and

(d) The consents and waivers set forth in Sections 6.3(a) and 6.3(b) of the Seller Disclosure Schedule shall have been obtained.

ARTICLE XII
LIMITATIONS

12.1 *Purchaser's Review.*

(a) *Disclaimer Regarding Projections.* In connection with Purchaser's and Guarantor's investigation of Sellers, Purchaser and/or Guarantor has received from Sellers and their Affiliates and agents certain projections and other forecasts, including projected financial statements, cash flow items, certain business plan information and other data of Sellers. Purchaser and Guarantor acknowledge that (i) there are uncertainties inherent in attempting to make such projections, forecasts and plans and, accordingly, is not relying on them, (ii) Purchaser and Guarantor is familiar with such uncertainties and is taking full responsibility for making its own evaluation of the adequacy and accuracy of all projections, forecasts and plans so furnished to it and (iii) neither Purchaser nor Guarantor shall have any claim against anyone with respect to any of the foregoing nor any termination right hereunder as a result of any inaccuracy thereof. Accordingly, each of Purchaser and Guarantor acknowledges that notwithstanding anything to the contrary in this Agreement, Sellers have made no representation or warranty with respect to such projections and other forecasts and plans.

(b) *Limited Duties.* Any and all duties and obligations which any party hereto may have to any other party hereto with respect to or in connection with the Purchased Assets, this Agreement or the transactions contemplated hereby are limited to those specifically set forth in this Agreement. Neither the duties nor obligations of any party hereto, nor the rights of any party hereto, shall be expanded beyond the terms of this Agreement on the basis of any legal or equitable principle or on any other basis whatsoever. Neither any equitable nor legal principle nor any implied obligation of good faith or fair dealing nor any other matter requires any party hereto to incur, suffer or perform any act, condition or obligation contrary to the terms of this Agreement, whether or not existing and whether foreseeable or unforeseeable. Each of the parties hereto acknowledges that it would be unfair, and that it does not intend, to increase any of the obligations of any other party under this Agreement on the basis of any implied obligation or otherwise.

12.2 *"As-Is"; Sale.* AS A MATERIAL PART OF THE CONSIDERATION FOR THIS AGREEMENT, SELLERS, PURCHASER AND GUARANTOR EACH AGREE THAT PURCHASER IS TAKING THE PURCHASED ASSETS "AS IS", "WHERE IS" AND "WITH ALL FAULTS" AND WITH ANY AND ALL LATENT AND PATENT DEFECTS AND THAT THERE IS NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OF ANY KIND OR NATURE (INCLUDING, WITHOUT LIMITATION, WARRANTIES WITH RESPECT TO HABITABILITY, MARKETABILITY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, TITLE, ZONING, TAX CONSEQUENCES, LATENT OR PATENT PHYSICAL OR ENVIRONMENTAL CONDITION, UTILITIES, VALUATION,

GOVERNMENTAL APPROVALS, THE COMPLIANCE OF THE PURCHASED ASSETS WITH LAWS, THE TRUTH, ACCURACY OR COMPLETENESS OF THE DOCUMENTS OR ANY OTHER INFORMATION PROVIDED BY OR ON BEHALF OF SELLERS TO OR FOR THE BENEFIT OF PURCHASER OR GUARANTOR OR ANY OTHER MATTER OR THING REGARDING THE REAL PROPERTY) MADE BY SELLERS WITH RESPECT TO THE REAL PROPERTY (EXCEPT FOR THE REPRESENTATIONS OF SELLERS EXPRESSLY SET FORTH IN SECTIONS 6.1 THROUGH 6.15 AND LIMITED BY SECTIONS 15.1 AND 15.2 OF THIS AGREEMENT), ALL OTHER REPRESENTATIONS AND WARRANTIES, BOTH EXPRESS AND IMPLIED, ARE HEREBY EXPRESSLY DISCLAIMED AND DENIED. EACH OF PURCHASER AND GUARANTOR ACKNOWLEDGE THAT IT HAS BEEN OR WILL BE GIVEN ADEQUATE TIME TO CONDUCT WHATEVER EXAMINATION, EVALUATIONS, INSPECTIONS, REVIEWS, STUDIES OR TESTS OF THE PURCHASED ASSETS AND ITS CONDITION AS PURCHASER AND GUARANTOR MAY DESIRE OR DETERMINE WARRANTED, AND THAT NEITHER PURCHASER NOR GUARANTOR ARE RELYING ON, AND SELLERS SHALL NOT BE LIABLE FOR OR BOUND BY, ANY EXPRESSED OR IMPLIED REPRESENTATION, GUARANTY, WARRANTY, STATEMENT OR OTHER ASSERTION WITH RESPECT TO THE REAL PROPERTY OR ITS CONDITION MADE BY OR FURNISHED BY OR ON BEHALF OF ANY SELLER, OR ANY REAL ESTATE BROKER OR AGENT REPRESENTING OR PURPORTING TO REPRESENT ANY SELLER, TO WHOMEVER MADE OR GIVEN, DIRECTLY OR INDIRECTLY, ORALLY OR IN WRITING (EXCEPT FOR THE REPRESENTATIONS OF SELLERS EXPRESSLY SET FORTH IN SECTIONS 6.1 THROUGH 6.15 AND LIMITED BY SECTIONS 15.1 AND 15.2 OF THIS AGREEMENT).

PURCHASER IS AWARE OF THE REAL PROPERTY'S HISTORIC MINING AND SMELTING OPERATIONS AND THE USE, STORAGE AND HANDLING OF HAZARDOUS MATERIALS ON THE REAL PROPERTY IN CONNECTION WITH SUCH OPERATIONS. PURCHASER AND GUARANTOR REPRESENT THAT IT IS A KNOWLEDGEABLE, EXPERIENCED AND SOPHISTICATED PURCHASER OF MINING, COMMERCIAL AND INDUSTRIAL ASSETS, SECURITIES, REAL ESTATE AND THE OTHER TYPES OF ASSETS AND INTERESTS CONTEMPLATED TO BE SOLD AS PART OF THE PURCHASED ASSETS HEREUNDER AND IN DECIDING TO ENTER INTO THIS AGREEMENT, AND TO CONSUMMATE THE TRANSACTIONS CONTEMPLATED HEREBY, PURCHASER AND GUARANTOR HAVE RELIED SOLELY UPON THEIR OWN KNOWLEDGE, INVESTIGATION, AND ANALYSIS (AND THAT OF THEIR ATTORNEYS, ACCOUNTANTS, CONSULTANTS AND REPRESENTATIVES) AND NOT ON ANY DISCLOSURE OR REPRESENTATION MADE BY, OR ANY DUTY TO DISCLOSE ON THE PART OF, SELLERS OR THEIR AFFILIATES OR ANY OF THEIR REPRESENTATIVES, OTHER THAN THE EXPRESS REPRESENTATIONS AND WARRANTIES OF SELLERS SET FORTH IN ARTICLE VI.

12.3 *Waivers and Releases.* PURCHASER AND GUARANTOR ACKNOWLEDGE THAT PURCHASER HAS, OR BY THE CLOSING DATE SHALL HAVE, CONDUCTED SUCH INVESTIGATIONS OF THE PURCHASED ASSETS, INCLUDING THE PAST AND PRESENT PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, THE STATUS AND REQUIREMENTS OF PERMITS APPLICABLE THERETO AND THE SCOPE AND

EXTENT OF MINING OPERATION ACTIVITIES AND RECLAMATION ACTIVITIES AND REQUIREMENTS ON THE REAL PROPERTY, AS PURCHASER DEEMS NECESSARY TO SATISFY ITSELF AS TO THE CONDITION OF THE PURCHASED ASSETS AND THE EXISTENCE OR NONEXISTENCE OR CURATIVE ACTION TO BE TAKEN WITH RESPECT TO ANY HAZARDOUS MATERIALS ON, IN, UNDER OR DISCHARGED FROM OR POTENTIALLY MIGRATING UPON THE REAL PROPERTY AND SHALL RELY SOLELY UPON THE SAME AND NOT UPON ANY INFORMATION PROVIDED BY OR ON BEHALF OF SELLERS OR THEIR AGENTS OR EMPLOYEES WITH RESPECT THERETO, OTHER THAN THE REPRESENTATIONS AND WARRANTIES OF SELLERS SET FORTH IN SECTIONS 6.1 THROUGH 6.15 AND LIMITED BY SECTIONS 15.1 AND 15.2 OF THIS AGREEMENT. EXCEPT AS EXPRESSLY SET FORTH IN SECTIONS 6.1 THROUGH 6.15 AND LIMITED BY SECTIONS 15.1 AND 15.2 OF THIS AGREEMENT, UPON CLOSING, PURCHASER AND GUARANTOR SHALL ASSUME THE RISK THAT ADVERSE MATTERS AND ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS (INCLUDING ALL RESPONSIBILITY, LIABILITY, OBLIGATIONS, AND CLAIMS THAT HAVE ARISEN OR MAY ARISE UNDER LAWS (INCLUDING, WITHOUT LIMITATION, ENVIRONMENTAL LAWS) MAY NOT HAVE BEEN REVEALED BY PURCHASER'S INVESTIGATIONS, AND PURCHASER AND GUARANTOR AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, UPON CLOSING, SHALL BE DEEMED TO HAVE WAIVED, RELINQUISHED, AND RELEASED SELLERS (AND SELLERS' OFFICERS, PARTNERS, MEMBERS, MANAGERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AND AGENTS) FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION (INCLUDING CAUSES OF ACTION IN TORT), LOSSES, DAMAGES, LIABILITIES, COSTS, AND EXPENSES (INCLUDING ATTORNEYS' FEES AND COURT COSTS) OF ANY AND EVERY KIND OR CHARACTER, KNOWN OR UNKNOWN, INCLUDING COST RECOVERY, CONTRIBUTION OR OTHER CLAIMS PURCHASER AND/OR GUARANTOR MIGHT HAVE UNDER LAWS (INCLUDING, WITHOUT LIMITATION, ENVIRONMENTAL LAWS) AND CLAIMS BASED ON THE NEGLIGENCE OR STRICT LIABILITY OF SELLERS (OR ANY OF SELLERS' OFFICERS, PARTNERS, MEMBERS, MANAGERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AND AGENTS), WHICH PURCHASER AND/OR GUARANTOR MIGHT HAVE ASSERTED OR ALLEGED AGAINST SELLERS (AND ANY OF SELLERS' OFFICERS, PARTNERS, MEMBERS, MANAGERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AND AGENTS) AT ANY TIME BY REASON OF OR ARISING OUT OF ANY LATENT OR PATENT CONSTRUCTION DEFECTS OR PHYSICAL CONDITIONS, VIOLATIONS OF ANY APPLICABLE LAWS OR PERMITS (INCLUDING ANY ENVIRONMENTAL LAWS), SUITS OF ANY KIND, INCLUDING SUITS UNDER ENVIRONMENTAL LAWS BROUGHT BY ANY THIRD PARTY, INCLUDING GOVERNMENTAL AUTHORITIES, RELATING TO THE PURCHASED ASSETS, AND ANY AND ALL OTHER ACTS, OMISSIONS, EVENTS, CIRCUMSTANCES, OR MATTERS REGARDING THE PURCHASED ASSETS. NOTWITHSTANDING THE FOREGOING, THE WAIVERS AND RELEASES CONTAINED IN THIS SECTION 12.3 SHALL NOT APPLY TO THE EXTENT ANY CLAIM ARISES OUT OF OR RESULTS FROM SELLERS' FRAUD.

12.4 *Acceptance and Discharge.* The acceptance of the Deeds, the Leasehold Deeds, the Bill of Sale, the Assignment and Assumption Agreement and the Assignment and Assumption of Ground Lease Agreement by Purchaser, and the entry of the Plan Confirmation Order by the Bankruptcy Court, shall be deemed an acknowledgement by Purchaser and Guarantor that Sellers have fully performed, discharged and complied with all of Sellers' obligations, representations and warranties, covenants and agreements hereunder, that Sellers are discharged therefrom and that Sellers shall have no further liability with respect thereto, except for those, if any, which are specifically stated herein to survive the Closing.

12.5 *No Consequential or Punitive Damages.* NO PARTY HERETO (OR ITS AFFILIATES) SHALL, UNDER ANY CIRCUMSTANCE, BE LIABLE TO ANY OTHER PARTY (OR ITS AFFILIATES), BY STATUTE, IN TORT OR CONTRACT OR OTHERWISE, FOR ANY CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL, INDIRECT OR PUNITIVE DAMAGES CLAIMED BY SUCH OTHER PARTY UNDER THE TERMS OF OR DUE TO ANY BREACH OF THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, LOSS OF REVENUE OR INCOME, COST OF CAPITAL, OR LOSS OF BUSINESS REPUTATION, OTHER THAN IN RESPECT OF A BREACH OF SECTIONS 8.5, 8.6 OR ARTICLE XIV.

ARTICLE XIII
TERMINATION

13.1 *Termination of Agreement.* This Agreement may be terminated prior to the Closing Date as follows:

(a) By the mutual written consent of Sellers and Purchaser;

(b) By Sellers if the Plan Confirmation Order has not been entered on or before August 31, 2009 (or such later date, which in no event will be later than September 30, 2009, if requested by Sellers and consented to by Purchaser, which consent may not be unreasonably delayed or denied) (the "***Confirmation Deadline***"); *provided, however*, that Sellers shall not be permitted to terminate this Agreement under this Section 13.1(b) if (i) the failure by Sellers to fulfill any obligation under this Agreement has been the primary cause of the Plan Confirmation Order not having been entered on or before the Confirmation Deadline or (ii) the Plan Confirmation Order not having been entered is caused primarily by a breach by Sellers of any covenant or obligation in this Agreement required to be performed by Sellers or the inaccuracy of any representation or warranty of Sellers made herein;

(c) By Sellers if the Closing has not occurred on or before November 30, 2009 (or such later date, which in no event will be later than December 31, 2009, if requested by Sellers and consented to by Purchaser, which consent may not be unreasonably delayed or denied; *provided*, that if the Plan Confirmation Order has been entered by the Bankruptcy Court (rather than the United States District Court having jurisdiction over the Bankruptcy Cases), such date shall automatically be extended to December 31, 2009) (the "***Termination Date***"); *provided, however*, that Sellers shall not be permitted to terminate this Agreement under this Section 13.1(c) if (i) the failure by Sellers to fulfill any obligation under this Agreement has been the primary cause of the failure of such consummation to occur on or before the Termination Date or

(ii) the failure of the Closing to occur is caused primarily by a breach by Sellers of any covenant or obligation in this Agreement required to be performed by Sellers or the inaccuracy of any representation or warranty of Sellers made herein;

(d) By either Sellers or Purchaser, at any time after the Bankruptcy Court approves a Superior Proposal to be consummated between ASARCO and a Person other than Purchaser, Guarantor or any of their respective Affiliates;

(e) By either Sellers or Purchaser at any time after the Bankruptcy Court approves a Stand-Alone Plan and such plan has been approved by the Board of Directors of ASARCO and is supported by ASARCO;

(f) By Purchaser if the Plan Confirmation Order has not been entered on or before the Confirmation Deadline; *provided, however*, that Purchaser shall not be permitted to terminate this Agreement under this Section 13.1(f) if (i) the failure by Purchaser or Guarantor to fulfill any obligation under this Agreement has been the primary cause of the Plan Confirmation Order not having been entered on or before the Confirmation Deadline or (ii) the Plan Confirmation Order not having been entered is caused primarily by a breach by Purchaser or Guarantor of any covenant or obligation in this Agreement required to be performed by Purchaser or the inaccuracy of any representation or warranty of Purchaser or Guarantor made herein;

(g) By Purchaser if the Closing has not occurred on or before the Termination Date; *provided, however*, that Purchaser shall not be permitted to terminate this Agreement under this Section 13.1(g) if (i) the failure by Purchaser or Guarantor to fulfill any obligation under this Agreement has been the primary cause of the failure of such consummation to occur on or before the Termination Date or (ii) the failure of the Closing to occur is caused primarily by a breach by Purchaser or Guarantor of any covenant or obligation in this Agreement required to be performed by Purchaser or Guarantor, or the inaccuracy of any representation or warranty of Purchaser or Guarantor made herein;

(h) By Purchaser (provided that neither Purchaser nor Guarantor is in material breach of any representation, warranty or covenant or other agreement contained herein) if: (i) the Bankruptcy Court shall not have entered the Sterlite Agreed Order on or prior to April 15, 2009 or (ii) the Bankruptcy Court shall not have entered an order approving the Disclosure Statement on or prior to May 31, 2009 (or such later date, which in no event will be later than July 1, 2009, if requested by Sellers and consented to by Purchaser, which consent may not be unreasonably delayed or denied);

(i) By Purchaser upon the conversion of ASARCO's Bankruptcy Case to a case under chapter 7 of the Bankruptcy Code;

(j) By Purchaser if there shall be a breach by Sellers of any representation, warranty or covenant contained in this Agreement which would result in a failure of a condition to Purchaser's or Guarantor's obligation to close set forth in Sections 11.2(a) or (b) to be satisfied, which breach has not been cured by the earlier of (i) 60 days after the giving of written notice by Purchaser to Sellers of such breach and (ii) the Termination Date;

(k) By Sellers if there shall be a breach by Purchaser or Guarantor of any representation, warranty or covenant contained in this Agreement which would result in a failure of a condition to Sellers' obligation to close set forth in Sections 11.3(a) or (b) to be satisfied, which breach has not been cured by the earlier of (i) 60 days after the giving of written notice by Sellers to Purchaser of such breach and (ii) the Termination Date;

(l) By either Sellers or Purchaser, if there shall be any final non-appealable Order entered by a Governmental Authority of competent jurisdiction permanently restraining, prohibiting or enjoining Sellers or Purchaser from consummating the transactions contemplated hereby;

(m) By Sellers if the Plan (i) fails to satisfy the voting requirements under 11 U.S.C. § 524(g)(2)(B)(ii)(IV)(bb) and § 1126 for any class of claimants seeking recovery for damages allegedly caused by the presence of, or exposure to, asbestos or asbestos-containing products or (ii) is rejected by Persons listed in Exhibit P that hold at least one-half in number and/or one-third in amount of the environmental claims set forth in Exhibit P;

(n) By either Sellers or Purchaser if the Bankruptcy Court denies confirmation of the Plan; or

(o) By Sellers pursuant to Section 8.10(a)(iv); *provided*, that the termination right contained in this Section 13.1(o) may be exercised only prior to the entry of the Sterlite Agreed Order.

13.2 *Effect of Termination.*

(a) No termination of this Agreement pursuant to Section 13.1 shall be effective until written notice thereof is given to the non-terminating party specifying the provision hereof pursuant to which such termination is made.

(b) In the event of termination of this Agreement by either or both of the parties pursuant to Section 13.1, this Agreement shall terminate and the transactions contemplated hereby shall be abandoned, without further action by any of the parties hereto. If this Agreement is terminated:

(i) Except as otherwise provided in Section 13.2(b)(v) and in Section 4.2, such termination shall be the sole and exclusive remedy of Purchaser and Guarantor with respect to breaches by any Seller of any covenant, representation or warranty contained in this Agreement and none of the Sellers nor any of their respective past, present or future trustees, directors, officers, employees, members, shareholders, incorporators, partners and/or Affiliates, as the case may be, shall have any liability or further obligation to Purchaser or Guarantor or any of their respective past, present or future trustees, directors, officers, employees, members, shareholders, incorporators, partners and/or Affiliates, as the case may be, and each Seller (and their respective past, present or future trustees, directors, officers, employees, members, shareholders, incorporators, partners and/or Affiliates, as the case may be) shall be fully released and discharged from any

liability or obligation under or resulting from this Agreement and neither Purchaser nor Guarantor shall have any other remedy, right, claim or cause of action under or relating to this Agreement or any Applicable Law, including for reimbursement of expenses;

(ii) Sellers shall have all rights and remedies existing at law or in equity and shall have the right to pursue all legal and equitable remedies that may be available to Sellers, at law or in equity; and in any successful action for damages, Sellers shall be entitled to recover its demonstrated legal damages, which shall not be limited to out of pocket costs in pursuing the transaction contemplated by this Agreement;

(iii) All filings, applications and other submissions made pursuant to this Agreement, to the extent practicable, shall be withdrawn from the agency or other Person to which they were made;

(iv) All Evaluation Material (as defined in the Confidentiality Agreement) shall be returned to ASARCO;

(v) If, following the entry of the Sterlite Agreed Order by the Bankruptcy Court, this Agreement is terminated pursuant to (A) Section 13.1(d) due to the Bankruptcy Court's approval of a Superior Proposal and such Superior Proposal is consummated between ASARCO and a Person other than Purchaser, Guarantor or any of their respective Affiliates or (B) Section 13.1(e) due to the Bankruptcy Court's approval of a Stand-Alone Plan approved by the Board of Directors of ASARCO and supported by ASARCO and such Stand-Alone Plan is consummated, Sellers shall pay to Purchaser as soon as practicable (but no later than three Business Days) following the consummation of such Superior Proposal or Stand-Alone Plan, as applicable, a fee in the amount of $26,000,000.00. If, following the entry of the Sterlite Agreed Order by the Bankruptcy Court, this Agreement is terminated pursuant to Section 13.1(j), Sellers shall reimburse Purchaser within two Business Days following such termination for actual and documented expenses of Purchaser not to exceed the sum of $10,000,000.00. Such payment shall be made by wire transfer of immediately available funds to an account designated by Purchaser. Purchaser's claim in connection with the amounts due hereunder shall constitute a first priority administrative expense claim under section 507(a)(1) of the Bankruptcy Code; and

(vi) Payment of funds shall be made to Sellers and/or one or more of the Letters of Credit may be drawn or returned for cancellation, in each case, in accordance with Section 4.2.

(c) Notwithstanding the foregoing, no fee pursuant to Section 13.2(b)(v) shall be due and payable if (i) Purchaser or Guarantor has materially breached this Agreement, (ii) Purchaser or Guarantor has engaged in bad faith conduct with respect to the transactions contemplated by this Agreement or (iii) Purchaser or Guarantor has violated in any material respect the provisions of the Bankruptcy Code, other Applicable Law or an Order of the

Bankruptcy Court, in each case relating to the transactions contemplated by this Agreement (any one of the foregoing is referred to herein as a "***Purchaser Bad Faith Event***").

(d) Notwithstanding Section 13.2(b), the obligations of Purchaser and Guarantor under the Confidentiality Agreement and the obligations of the parties under this Section 13.2 and Sections 4.2, 8.5, 8.6, 8.10(f), 15.4, 15.6, 15.7, 15.8, 15.11, 15.13, and 15.14, the last two sentences of Section 8.1, and Articles II, XII, and XIV of this Agreement shall survive any termination of this Agreement and shall remain in full force and effect.

ARTICLE XIV
GUARANTEE

14.1 *Guarantee.*

(a) Guarantor hereby irrevocably, unconditionally and absolutely guarantees as a primary obligor and not as a surety, to Sellers the full and timely payment and due and punctual performance and discharge of all of Purchaser's obligations under this Agreement and the Ancillary Agreements existing on the date hereof or hereafter of any kind or nature whatsoever, including the due and punctual payment of the Purchase Price and any other amount that Purchaser is or may become obligated to pay pursuant to this Agreement or the Ancillary Agreements (collectively, the "***Obligations***"). The guarantee under this Section 14.1 is an unconditional, irrevocable and absolute guaranty of timely payment and performance of the Obligations and not merely of collection. If for any reason whatsoever the Obligations shall not be fully and timely paid or performed, Guarantor shall promptly honor and perform its obligations to Sellers hereunder upon demand.

(b) To the fullest extent permitted by Applicable Law, the obligations of Guarantor hereunder shall remain in full force and effect without regard to, and shall not be affected or impaired by, (i) any change in the structure or ownership of Purchaser or Guarantor or the bankruptcy, insolvency, reorganization, dissolution, liquidation, or other similar proceeding relating to Purchaser, Guarantor or any Affiliate of either Purchaser or Guarantor; (ii) any neglect, delay, omission, failure or refusal of Purchaser or Sellers to take or prosecute any action in connection with this Agreement, the Ancillary Agreements or any other agreement, delivered in connection herewith or therewith; (iii) any extension, compromise, settlement, renewal or waiver of the time for any performance of or compliance with any of the Obligations; (iv) the existence of any claim, set-off or other right which Guarantor may have against Purchaser, Sellers or any other Person, whether in connection herewith or any unrelated transaction; (v) any invalidity or unenforceability of the Obligations; or (vi) any other act (other than prior full and indefeasible payment in cash and timely performance of the Obligations) or omission or delay by Purchaser or Sellers or any other Person that might, but for the provisions of this paragraph, constitute a legal or equitable discharge of Guarantor hereunder.

(c) In connection with this Section 14.1, Guarantor unconditionally waives: (i) any right to receive demands, protests, or other notices of any kind or character whatsoever, as the same may pertain to Purchaser; (ii) any right to require Sellers to proceed first against Purchaser or to exhaust any security held by Sellers or to pursue any other remedy; (iii) any defense based upon an election of remedies by Sellers; (iv) any duty of Sellers to advise

Guarantor of any information known to Sellers regarding Purchaser or its ability to perform under this Agreement or any Ancillary Agreement; (v) all suretyship and other defenses of every kind and nature; (vi) all rights to and benefits under any defense based on or arising out of the voluntary or involuntary bankruptcy, insolvency, liquidation, dissolution, receivership, or other similar proceeding affecting Purchaser, or lack of capacity of Purchaser, which Purchaser or Guarantor may have to performance of any of the Obligations; (vii) notice of the creation of any Obligation or any notice of or proof of reliance by Sellers upon this Section 14.1 (the Obligations shall conclusively be deemed to have been created, contracted, incurred or renewed, extended, amended or waived in reliance upon this Section 14.1 and all dealings between Purchaser or Guarantor and Sellers shall be conclusively presumed to have been had or consummated in reliance upon this Section 14.1) or any notice of any other facts that may come to the attention of Sellers or Guarantor regarding the financial position of Purchaser; (viii) requirements of promptness or diligence on the part of Sellers; (ix) requirements on the part of Sellers to mitigate the damages resulting from any default hereunder or under the Obligations; (x) notice of acceptance hereof, of any action taken or omitted in reliance hereon, of any defaults by Purchaser in the payment or performance of the Obligations; (xi) all notices which may be required by Law or otherwise to preserve any of the rights of Sellers against Guarantor; and (xii) any other act or omission or thing or delay to do any other act or thing, which might in any manner or to any extent vary or limit Guarantor's obligations hereunder or which might otherwise operate as a discharge of Guarantor.

(d) The obligations of Guarantor hereunder are primary, absolute, unconditional and irrevocable and will not be discharged by, and this Section 14.1 shall remain in full force and effect notwithstanding: (a) the assignment, conveyance or other transfer by Purchaser of any or all of its Obligations; (b) any insolvency, bankruptcy, reorganization, arrangement, composition, liquidation, dissolution or similar proceedings with respect to Purchaser; (c) any other occurrence whatsoever, except timely full and indefeasible payment and timely performance in full of all Obligations; or (d) any other circumstances whatsoever which might otherwise constitute a legal or equitable discharge, release or defense of a guarantor or surety, or which might otherwise limit recourse against Guarantor.

(e) The obligations of Guarantor under this Section 14.1 shall be automatically reinstated if and to the extent that for any reason any payment or other performance by or on behalf of Purchaser in respect of the Obligations is rescinded or must be otherwise restored, and Guarantor agrees that it will indemnify Sellers on demand for all costs and expenses (including reasonable attorneys' fees and expenses) incurred by Sellers in connection with such rescission or restoration. If in connection with the foregoing, Sellers are required to refund part or all of any payment of Purchaser, such payment by Sellers shall not constitute a release of Guarantor from any liability hereunder, and Guarantor's liability hereunder shall be reinstated to the fullest extent allowed under Applicable Law and shall not be construed to be diminished in any manner.

(f) Guarantor shall not be entitled to be subrogated to any of the rights of Sellers against Purchaser or any collateral, security or guarantee or right of set-off held by Sellers for the payment or performance of the Obligations, nor shall Guarantor seek or be entitled to

seek any reimbursement from Purchaser in respect of performance made by Guarantor hereunder, until the Obligations are indefeasibly paid and performed in full.

(g) If any claim arising under or related to this Agreement or the Ancillary Agreements is reduced to judgment denominated in a currency (the "***Judgment Currency***") other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (collectively the "***Obligations Currency***"), the judgment shall be for the equivalent in the Judgment Currency of the amount of the claim denominated in the Obligations Currency included in the judgment, determined as of the date of judgment. The equivalent of any Obligations Currency amount in any Judgment Currency shall be calculated at the spot rate for the purchase of the Obligations Currency with the Judgment Currency based on the daily noon day rate quoted by JPMorgan Chase Bank, N.A. (any costs of exchange payable in connection with such purchase shall be paid by Guarantor). Guarantor shall indemnify Sellers and hold Sellers harmless from and against all loss or damage resulting from any change in exchange rates between the date any claim is reduced to judgment and the date of payment thereof by Guarantor.

(h) All payments whatsoever made by the Guarantor under this Agreement and the Ancillary Agreement will be in lawful currency of the United States of America free and clear of, and without liability for withholding or deduction for or on account of, any present or future Taxes of whatever nature imposed or levied by or on behalf of any jurisdiction other than the United States (or any political subdivision or Taxing Authority of or in such jurisdiction) (hereinafter a "***Non-US Taxing Jurisdiction***"), unless the withholding or deduction of such Tax is compelled by law. If any deduction or withholding for any Tax of a Non-US Taxing Jurisdiction shall at any time be required in respect of any amounts to be paid by Guarantor under this Agreement or the Ancillary Agreements, Guarantor will pay to the relevant Non-US Taxing Jurisdiction the full amount required to be withheld, deducted or otherwise paid before penalties attach thereto or interest accrues thereon and pay to the Sellers such additional amounts as may be necessary in order that the net amounts paid to the Sellers pursuant to the terms of this Agreement or the Ancillary Agreements after such deduction, withholding or payment (including any required deduction or withholding of Tax on or with respect to such additional amount), shall be not less than the amounts then due and payable to such holder under the terms of this Agreement or the Ancillary Agreements before the assessment of such Tax.

(i) This Section 14.1 shall survive the Closing and shall remain in full force and effect. Guarantor agrees to indemnify and hold Sellers harmless from and against and to pay on demand all out-of-pocket costs and expenses (including reasonable legal fees and expenses) incurred by or on behalf of Sellers in any way relating to the collection and/or enforcement of Guarantor's obligations under this Section 14.1.

14.2 *Limitation.* . Each of the Sellers hereby acknowledges and agrees that, notwithstanding anything to the contrary contained herein, Guarantor is not a guarantor or surety of, and does not guarantee, any of the obligations of Purchaser under the Purchaser Promissory Note.

ARTICLE XV
MISCELLANEOUS

15.1 *Nonsurvival of Representations, Warranties and Covenants.* None of the representations, warranties, covenants or other agreements of the parties made herein, in the Seller Disclosure Schedule with respect to Sellers, in any Ancillary Agreement or any other agreement or instrument delivered pursuant to this Agreement, including any rights arising out of any breach of such representations, warranties, covenants or other agreements, shall survive the Closing except for those covenants and agreements contained herein and therein, which, by their terms, contemplate performance in whole or in part after the Closing, which shall survive in accordance with their terms (including, for the avoidance of doubt, Sections 8.1, 8.5, 8.6, and 8.10(f) and Articles IX, X, XII and XIV).

15.2 *Remedies.* Purchaser and Guarantor acknowledge and agree that the only remedy for breach of any representation or warranty made by Sellers, or any covenant required to be performed by Sellers prior to the Closing, shall be Purchaser's option to terminate this Agreement pursuant to and to the extent permitted by Section 13.1, to receive the Deposit to the extent permitted by Section 4.2, to receive the expense reimbursement to the extent permitted by Section 13.2(b)(v) and to receive a release to the extent permitted by Section 2.1. Notwithstanding the foregoing, each party acknowledges and agrees that the other parties would be irreparably damaged if any provision of this Agreement is not performed in accordance with its specific terms and that any breach of this Agreement could not be adequately compensated in all cases by monetary damages alone. Accordingly, prior to the termination of this Agreement pursuant to Section 13.1 or otherwise, in addition to any other right or remedy to which each party may be entitled, at law or in equity, it shall be entitled to enforce any provision of this Agreement by a decree of specific performance and to temporary, preliminary and permanent injunctive relief to prevent breaches or threatened breaches of any provision of this Agreement, without posting any bond or other undertaking. In any successful action for damages, Sellers shall be entitled to recover their demonstrated legal damages, which shall not be limited to out of pocket costs in pursuing the transaction contemplated by this Agreement.

15.3 *Bankruptcy Court Approval.* The obligations of Sellers under this Agreement are subject to approval of the Bankruptcy Court to the extent (and only to the extent) required by Law.

15.4 *Expenses.* Except as otherwise set forth in this Agreement, Sellers, Purchaser and Guarantor shall each bear their own expenses (including attorneys' fees) incurred in connection with the negotiation and execution of this Agreement and the Ancillary Agreements and each other agreement, document and instrument contemplated hereby and thereby and the consummation of the transactions contemplated hereby and thereby. In addition, Purchaser shall pay at Closing (i) all premiums and other costs associated with each Title Report and each Title Policy and any endorsements thereto, including any search and exam fees, (ii) all premiums and other costs for any mortgagee policy of title insurance, including any endorsements or deletions, (iii) the cost to obtain each Survey and the costs associated with any modifications, updates or recertifications of an existing Survey, to the extent one is available, (iv) all of the Title Company's escrow and closing fees, if any, (v) all recording fees, (vi) the documentary fee payable at the time of recording the Deeds, the Leasehold Deeds and the Assignment and

Assumption of Ground Lease Agreement and (vii) any transfer tax imposed by the City, County or State in which the Real Property is located to the extent the Bankruptcy Court requires such transfer taxes to be paid. Any other costs and expenses of Closing not provided for in this Section 15.4 or in other provisions of this Agreement shall be allocated between Purchaser and Seller in accordance with the custom in the county in which the Real Property is located.

15.5 *Disclosure Schedules.* For purposes of the representations and warranties of Sellers contained herein, disclosure in any section of the Seller Disclosure Schedule of any facts or circumstances shall be deemed to be adequate disclosure of such facts or circumstances with respect to the representations or warranties made by Sellers in the corresponding section of Article VI of this Agreement, unless it is readily apparent on the face of the disclosure contained in such section of the Seller Disclosure Schedule that such disclosure is applicable to another section of Article VI of this Agreement. Any information provided in the Seller Disclosure Schedule is solely for informational purposes, and the inclusion of such information shall not be deemed to enlarge or enhance any of the representations or warranties of Sellers. The inclusion of any information in any section of the Seller Disclosure Schedule or other document delivered by the parties pursuant to this Agreement shall not be deemed to be an admission or evidence of the materiality of such item, nor shall it establish a standard of materiality for any purpose whatsoever.

15.6 *Governing Law.* THIS AGREEMENT, THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS AGREEMENT, AND ANY CLAIM OR CONTROVERSY DIRECTLY OR INDIRECTLY BASED UPON OR ARISING OUT OF THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT (WHETHER BASED ON CONTRACT, TORT, OR ANY OTHER THEORY), INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, SHALL IN ALL RESPECTS BE GOVERNED BY AND INTERPRETED, CONSTRUED, AND DETERMINED IN ACCORDANCE WITH, THE APPLICABLE PROVISIONS OF THE BANKRUPTCY CODE AND THE INTERNAL LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO ANY CONFLICTS OF LAW PROVISION THAT WOULD REQUIRE THE APPLICATION OF THE LAW OF ANY OTHER JURISDICTION).

15.7 *Submission to Jurisdiction; Consent to Service of Process.*

(a) Without limiting any party's right to appeal any Order of the Bankruptcy Court, (i) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes which may arise or result from, or be connected with, this Agreement, any breach or default hereunder, or the transactions contemplated hereby, and (ii) any and all Legal Proceedings related to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the parties hereby consent to and submit to the jurisdiction and venue of the Bankruptcy Court and shall receive notices at such locations as indicated in Section 15.13; *provided, however*, that if the Bankruptcy Cases have been closed, the parties agree to file any such claim or dispute in the United States District Court for the Northern District of Texas and any appellate court thereof.

(b) The parties hereby unconditionally and irrevocably waive, to the fullest extent permitted by Applicable Law, any objection which they may now or hereafter have to the

laying of venue of any dispute arising out of or relating to this Agreement or any of the transactions contemplated hereby brought in any court specified in paragraph (a) above, or any defense of inconvenient forum for the maintenance of such dispute. Each of the parties hereto agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law.

(c) Each of the parties hereto hereby consents to process being served by any party to this Agreement in any suit, action or proceeding by the mailing of a copy thereof in accordance with the provisions of Section 15.13. Each of the Purchaser and Guarantor has appointed Corporation Service Company to receive for it, and on its behalf, service of process in the United States.

15.8 *Waiver of Jury Trial.* THE PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT THAT THEY MAY HAVE TO TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION, OR IN ANY LEGAL PROCEEDING, DIRECTLY OR INDIRECTLY BASED UPON OR ARISING OUT OF THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT (WHETHER BASED ON CONTRACT, TORT, OR ANY OTHER THEORY). EACH PARTY (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT, OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTIES WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

15.9 *No Right of Set-Off.* Each of Purchaser and Guarantor for itself and for its Subsidiaries, Affiliates, successors and assigns hereby unconditionally and irrevocably waives any rights of set-off, netting, offset, recoupment, or similar rights that Purchaser, Guarantor or any of their respective Subsidiaries, Affiliates, successors and assigns has or may have with respect to the payment of the Purchase Price or any other payments to be made by Purchaser or Guarantor pursuant to this Agreement, any Ancillary Agreement or any other document or instrument delivered by Purchaser or Guarantor in connection herewith.

15.10 *Time of Essence.* With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

15.11 *Entire Agreement; Amendments and Waivers.* This Agreement (including the Seller Disclosure Schedule and exhibits hereto), the Confidentiality Agreement and the Ancillary Agreements represent the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and can be amended, supplemented or changed, and any provision hereof can be waived, only by written instrument making specific reference to this Agreement signed by the party against whom enforcement of any such amendment, supplement, modification or waiver is sought. No action taken pursuant to this Agreement, including any investigation by or on behalf of any party, shall be deemed to constitute a waiver by the party taking such action of compliance with any representation, warranty, covenant or agreement contained herein. The waiver by any party hereto of a breach of any provision of this Agreement

shall not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such party preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The parties acknowledge that all parties, through their legal counsel, played an equal role in drafting and/or had an equal opportunity to review and/or modify the provisions set forth in this Agreement. Thus, in the event of any misunderstanding, ambiguity, or dispute concerning this Agreement's provisions, or interpretations, no rule of construction shall be applied that would result in having this Agreement interpreted against any party.

15.12 *Table of Contents and Headings.* The table of contents and section headings of this Agreement are for reference purposes only and are to be given no effect in the construction or interpretation of this Agreement.

15.13 *Notices.* All notices and other communications under this Agreement shall be in writing and shall be deemed duly given (i) when delivered personally or by prepaid overnight courier, with a record of receipt or (ii) the day of transmission, if sent by facsimile during regular business hours, or the day after transmission, if sent after regular business hours (with a copy promptly sent by prepaid overnight courier with record of receipt or by certified mail, return receipt requested), to the parties at the following addresses or facsimile numbers (or to such other address or facsimile number as a party may have specified by notice given to the other party pursuant to this provision):

If to Sellers, to:

ASARCO LLC
5285 East Williams Circle, Suite 2000
Tucson, Arizona 85711
Attention: Joseph F. Lapinsky
Telephone: (520) 798-7728
Facsimile: (520) 798-7781

With a copy (which shall not constitute notice) to:

Baker Botts L.L.P.
2001 Ross Avenue Suite 800
Dallas, Texas 75201
Attention: Jack Kinzie
Telephone: (214) 953-6727
Facsimile: (214) 661-4727

If to Purchaser or Guarantor, to:

Sterlite (USA), Inc.
c/o Sterlite Industries (India) Ltd
Vedanta, 75 Nehru Road
Vile Parle (East)
Mumbai - 400 099
India
Attention: Sanjay Khattry
Telephone: +91 22 6646 1310
Facsimile: +91 22 6646 1450

With a copy (which shall not constitute notice) to:

Shearman & Sterling LLP
599 Lexington Avenue
New York, New York 10022
Attention: Douglas P. Bartner
Telephone: (212) 848-8190
Facsimile: (646) 848-8190

If to Purchaser or Guarantor for service of process (which may be made by registered mail):

Corporation Service Company
2711 Centerville Road Suite 400
Wilmington, Delaware 19808
Attention: Sterlite (USA), Inc. or Sterlite Industries (India) Ltd. (as applicable)
Telephone: (302) 636-5401

15.14 *Severability.* The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of this Agreement, or the application thereof to any Person or any circumstance, is found to be invalid or unenforceable in any jurisdiction, (i) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid or enforceable, such provision and (ii) the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected by such invalidity or unenforceability, nor shall such invalidity or unenforceability affect the validity or enforceability of such provision, or the application thereof, in any other jurisdiction.

15.15 *Binding Effect; Assignment.* This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. No assignment of this Agreement or of any rights or obligations hereunder may be made by any of Sellers, Purchaser or Guarantor (by operation of Law or otherwise) without the prior written consent of each of the other parties hereto (which consent shall not be unreasonably withheld, delayed or conditioned) and any attempted assignment without the required consents shall be void;

provided, however, that any Seller may assign, in whole or in part, all or any rights that it may have under this Agreement to any Person without the prior consent of Purchaser or Guarantor.

15.16 *No Third-Party Beneficiaries.* Nothing in this Agreement shall create or be deemed to create any third-party beneficiary rights in any Person not a party to this Agreement, except for the indemnitees identified in Section 3.3.

15.17 *Counterparts.* This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Any counterpart may be executed by facsimile signature and such facsimile signature shall be deemed an original.

* * * * *

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first written above.

SELLERS:

ASARCO LLC, a Delaware limited liability company

By: Joseph F. Lapinsky
Name: JOSEPH F. LAPINSKY
Title: CHIEF EXECUTIVE OFFICER AND PRESIDE

AR SILVER BELL, INC., a Delaware corporation

By: D. E. McAllister
Name: D.E. MC ALLISTER
Title: PRESIDENT

COPPER BASIN RAILWAY, INC., a Delaware corporation

By: D. E. McAllister
Name: D.E. MC ALLISTER
Title: VICE PRESIDENT

ASARCO SANTA CRUZ, INC., a Delaware corporation

By: D. E. McAllister
Name: D. E. MC ALLISTER
Title: PRESIDENT

PURCHASER:

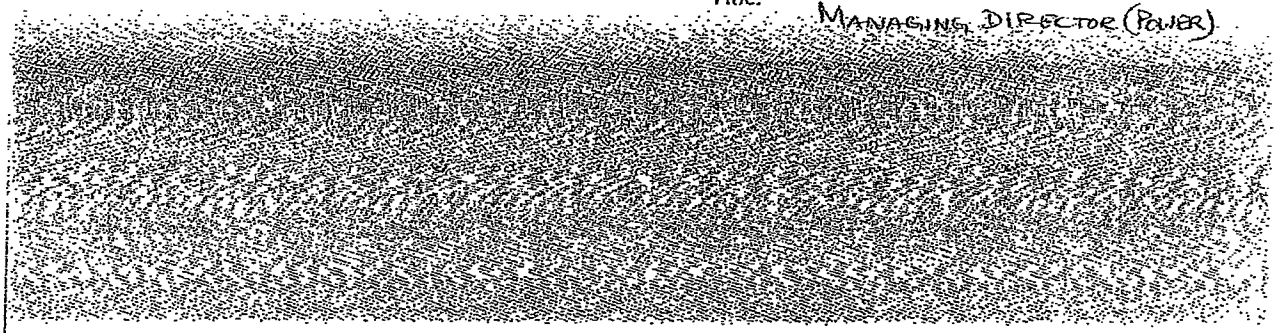
STERLITE (USA), INC.

By: C.V. Krishnan
Name: C. V. KRISHNAN
Title: PRESIDENT

GUARANTOR:

STERLITE INDUSTRIES (INDIA) LTD.

By: C.V. Krishnan
Name: C. V. KRISHNAN
Title: MANAGING DIRECTOR (POWER)



AMENDMENT NO. 1 TO

SETTLEMENT AND PURCHASE AND SALE AGREEMENT

This Amendment No. 1 to Settlement and Purchase and Sale Agreement (this "**Amendment**") is entered into on April 15, 2009 and amends that certain Settlement and Purchase and Sale Agreement, dated March 6, 2009 (the "**PSA**"), by and among ASARCO LLC, a Delaware limited liability company; AR Silver Bell, Inc., a Delaware corporation; Copper Basin Railway, Inc., a Delaware corporation; ASARCO Santa Cruz, Inc., a Delaware corporation; Sterlite (USA), Inc., a Delaware corporation; and Sterlite Industries (India) LTD, an Indian limited liability company. Capitalized terms used herein, but not otherwise defined, shall have the respective meanings ascribed to such terms in the PSA.

WHEREAS, the parties desire to amend the PSA to extend the date by which the Bankruptcy Court shall have entered the Sterlite Agreed Order to avoid a termination right in favor of Purchaser pursuant to Section 13.1(h) thereof;

NOW, THEREFORE, in consideration of the premises and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties agree as follows:

1. Section 13.1(h)(i) of the PSA is hereby amended to replace the date "April 15, 2009" with the date "April 22, 2009."

2. Except as set forth herein, all other terms of the PSA shall remain unchanged and in full force and effect.

3. This Amendment shall be subject to all of the terms and provisions set forth in the PSA that apply to the PSA (and such terms and provisions shall apply to this Amendment) or to any amendments or modifications thereto, including, without limitation, Article XV thereof.

* * * * *

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their respective officers thereunto duly authorized, as of the date first written above.

SELLERS:

ASARCO LLC, a Delaware limited liability company

By: Joseph F. Lapinsky
Name: JOSEPH F. LAPINSKY
Title: CHIEF EXECUTIVE OFFICER & PRESIDENT

AR SILVER BELL, INC., a Delaware corporation

By: D. E. McAllister
Name: DOUGLAS E. McALLISTER
Title: PRESIDENT

COPPER BASIN RAILWAY, INC., a Delaware corporation

By: D. E. McAllister
Name: DOUGLAS E. McALLISTER
Title: VICE PRESIDENT

ASARCO SANTA CRUZ, INC., a Delaware corporation

By: D. E. McAllister
Name: DOUGLAS E. McALLISTER
Title: PRESIDENT

PURCHASER:

STERLITE (USA), INC.

By: _____
Name: C.V. KRISHNAN
Title: President

GUARANTOR:

STERLITE INDUSTRIES (INDIA) LTD.

By: _____
Name: C.V. KRISHNAN
Title: Managing Director (Power)

AMENDMENT NO. 2 TO

SETTLEMENT AND PURCHASE AND SALE AGREEMENT

This Amendment No. 2 to Settlement and Purchase and Sale Agreement (this "**Amendment**") is made effective as of April 22, 2009, and amends that certain Settlement and Purchase and Sale Agreement, dated March 6, 2009, as amended on April 15, 2009, (the "**PSA**"), by and among ASARCO LLC, a Delaware limited liability company; AR Silver Bell, Inc., a Delaware corporation; Copper Basin Railway, Inc., a Delaware corporation; ASARCO Santa Cruz, Inc., a Delaware corporation; Sterlite (USA), Inc., a Delaware corporation; and Sterlite Industries (India) LTD, an Indian limited liability company. Capitalized terms used herein, but not otherwise defined, shall have the respective meanings ascribed to such terms in the PSA.

WHEREAS, the parties desire to amend the term "Sterlite Agreed Order," as defined by the PSA, by replacing Exhibit M-2 to the PSA with the order attached hereto as Exhibit A;

NOW, THEREFORE, in consideration of the premises and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties agree as follows:

1. For all purposes under the PSA, Exhibit M-2 to the PSA is hereby replaced with the order attached hereto as Exhibit A, and the Parties agree that the term "Sterlite Agreed Order," as defined by the PSA, is meant to refer to such attached order.

2. Except as set forth herein, all other terms of the PSA shall remain unchanged and in full force and effect.

3. This Amendment shall be subject to all of the terms and provisions set forth in the PSA that apply to the PSA (and such terms and provisions shall apply to this Amendment) or to any amendments or modifications thereto, including, without limitation, Article XV thereof.

* * * * *

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their respective officers thereunto duly authorized, as of the date first written above.

SELLERS:

ASARCO LLC, a Delaware limited liability company

By: Joseph F. Lapinsky
Name: JOSEPH F. LAPINSKY
Title: PRESIDENT & CEO

AR SILVER BELL, INC., a Delaware corporation

By: _____
Name:
Title:

COPPER BASIN RAILWAY, INC., a Delaware corporation

By: _____
Name:
Title:

ASARCO SANTA CRUZ, INC., a Delaware corporation

By: _____
Name:
Title:

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their respective officers thereunto duly authorized, as of the date first written above.

SELLERS:

ASARCO LLC, a Delaware limited liability company

By: _____
Name:
Title:

AR SILVER BELL, INC., a Delaware corporation

By: D. E McAllister
Name: DOUGLAS E. MCALLISTER
Title: PRESIDENT + SECRETARY

COPPER BASIN RAILWAY, INC., a Delaware corporation

By: D. E McAllister
Name: DOUGLAS E. MCALLISTER
Title: VICE PRESIDENT

ASARCO SANTA CRUZ, INC., a Delaware corporation

By: D. E McAllister
Name: DOUGLAS E. MCALLISTER
Title: PRESIDENT + SECRETARY

PURCHASER:

STERLITE (USA), INC.

By: _____
Name: C.V. KRISHNAN
Title: President

GUARANTOR:

STERLITE INDUSTRIES (INDIA) LTD.

By: _____
Name: C.V. KRISHNAN
Title: Managing Director (Power)

AMENDMENT NO. 3 TO

SETTLEMENT AND PURCHASE AND SALE AGREEMENT

This Amendment No. 3 to Settlement and Purchase and Sale Agreement (this "**Amendment**") is made effective as of June 12, 2009, and amends that certain Settlement and Purchase and Sale Agreement, dated March 6, 2009, as amended on April 15, 2009 and April 22, 2009 (the "**PSA**"), by and among ASARCO LLC, a Delaware limited liability company; AR Silver Bell, Inc., a Delaware corporation; Copper Basin Railway, Inc., a Delaware corporation; ASARCO Santa Cruz, Inc., a Delaware corporation; Sterlite (USA), Inc., a Delaware corporation; and Sterlite Industries (India) LTD, an Indian limited liability company. Capitalized terms used herein, but not otherwise defined, shall have the respective meanings ascribed to such terms in the PSA.

WHEREAS, the parties desire to amend (i) the terms "Agreed Working Capital" and "Purchaser Promissory Note" as defined by the PSA and (ii) Section 4.3(c) of the PSA to eliminate any potential reduction in the aggregate principal amount of the Purchaser Promissory Note;

NOW, THEREFORE, in consideration of the premises and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties agree as follows:

1. The definition of "Agreed Working Capital" is hereby amended to mean "an amount equal to $328,000,000.00."

2. The definition of "Purchaser Promissory Note" is hereby amended to replace the principal amount of "$600,000,000.00" with the principal amount of "$770,000,000.00."

3. Exhibit D to the PSA is hereby amended and restated in its entirety with the Form of Purchaser Promissory Note attached hereto as Exhibit A.

4. Section 4.3(c) of the PSA is hereby amended and restated in its entirety to read as follows:

> "(c) On the date that a binding determination of the Closing Accounts Amount has been made in accordance with Section 4.4, the aggregate principal amount of the Purchaser Promissory Note shall automatically be increased by the Adjustment Amount if the Closing Accounts Amount is greater than the Agreed Working Capital without any action on the part of Purchaser or Sellers."

5. Exhibit E to the PSA is hereby amended and restated in its entirety with the Closing Accounts Statement Principles and Illustration attached hereto as Exhibit B.

6. Except as set forth herein, all other terms of the PSA shall remain unchanged and in full force and effect.

7. This Amendment shall be subject to all of the terms and provisions set forth in the PSA that apply to the PSA (and such terms and provisions shall apply to this Amendment) or to any amendments or modifications thereto, including, without limitation, Article XV thereof.

* * * * *

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their respective officers thereunto duly authorized, as of the date first written above.

SELLERS:

ASARCO LLC, a Delaware limited liability company

By: Joseph F. Lapinsky
Name: JOSEPH F. LAPINSKY
Title: CHIEF EXECUTIVE OFFICER & PRESIDENT

AR SILVER BELL, INC., a Delaware corporation

By: D. E McAlister
Name: DOUGLAS E. McALLISTER
Title: PRESIDENT

COPPER BASIN RAILWAY, INC., a Delaware corporation

By: D. E McAlister
Name: DOUGLAS E. McALLISTER
Title: VICE PRESIDENT

ASARCO SANTA CRUZ, INC., a Delaware corporation

By: D. E McAlister
Name: DOUGLAS E. McALLISTER
Title: PRESIDENT

PURCHASER:

STERLITE (USA), INC.

By: _____
Name: C.V. KRISHNAN
Title: PRESIDENT

GUARANTOR:

STERLITE INDUSTRIES (INDIA) LTD.

By: _____
Name: C.V KRISHNAN
Title: MANAGING DIRECTOR (POWER)

AMENDMENT NO. 4 TO

SETTLEMENT AND PURCHASE AND SALE AGREEMENT

This Amendment No. 4 to Settlement and Purchase and Sale Agreement (this "**Amendment**") is made effective as of August 6, 2009, and amends that certain Settlement and Purchase and Sale Agreement, dated March 6, 2009, as amended on April 15, 2009, April 22, 2009 and June 12, 2009 (the "**PSA**"), by and among ASARCO LLC, a Delaware limited liability company; AR Silver Bell, Inc., a Delaware corporation; Copper Basin Railway, Inc., a Delaware corporation; ASARCO Santa Cruz, Inc., a Delaware corporation; Sterlite (USA), Inc., a Delaware corporation; and Sterlite Industries (India) LTD, an Indian limited liability company. Capitalized terms used herein, but not otherwise defined, shall have the respective meanings ascribed to such terms in the PSA.

WHEREAS, the parties desire to delete in its entirety, the (i) term "Confirmation Deadline" from the PSA, (ii) Section 13.1(b) of the PSA and (ii) Section 13.1(f) of the PSA (including any and all references to Section 13.1(b), Section 13.1(f) or the term "Confirmation Deadline" in the PSA);

NOW, THEREFORE, in consideration of the premises and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties agree as follows:

1. The definition of "Confirmation Deadline" is hereby deleted from the PSA in its entirety (including any and all references to such term in the PSA).

2. Section 13.1(b) of the PSA (including any and all references thereto in the PSA) is hereby deleted in its entirety.

3. Section 13.1(f) of the PSA (including any and all references thereto in the PSA) is hereby deleted in its entirety.

4. Except as set forth herein, all other terms of the PSA shall remain unchanged and in full force and effect.

5. This Amendment shall be subject to all of the terms and provisions set forth in the PSA that apply to the PSA (and such terms and provisions shall apply to this Amendment) or to any amendments or modifications thereto, including, without limitation, Article XV thereof.

* * * * *

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their respective officers thereunto duly authorized, as of the date first written above.

SELLERS:

ASARCO LLC, a Delaware limited liability company

By: Joseph F. Lapinsky
Joseph F. Lapinsky

Title: President and Chief Executive Officer

AR SILVER BELL, INC., a Delaware corporation

By: _____
Name:
Title:

COPPER BASIN RAILWAY, INC., a Delaware corporation

By: _____
Name:
Title:

ASARCO SANTA CRUZ, INC., a Delaware corporation

By: _____
Name:
Title:

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their respective officers thereunto duly authorized, as of the date first written above.

SELLERS:

ASARCO LLC, a Delaware limited liability company

By: _____
Name:
Title:

AR SILVER BELL, INC., a Delaware corporation

By: D. E McAllister
Name: DOUGLAS E. McALLISTER
Title: PRESIDENT

COPPER BASIN RAILWAY, INC., a Delaware corporation

By: D. E McAllister
Name: DOUGLAS E. McALLISTER
Title: VICE PRESIDENT ASARCO

ASARCO SANTA CRUZ, INC., a Delaware corporation

By: D. E McAllister
Name: DOUGLAS E. McALLISTER
Title: PRESIDENT

PURCHASER:

STERLITE (USA), INC.

By: [signature]
Name: C.V. KRISHNAN
Title: PRESIDENT

GUARANTOR:

STERLITE INDUSTRIES (INDIA) LTD.

By: [signature]
Name: C.V KRISHNAN
Title: MANAGING DIRECTOR (POWER)

AMENDMENT NO. 5 TO

SETTLEMENT AND PURCHASE AND SALE AGREEMENT

This Amendment No. 5 to Settlement and Purchase and Sale Agreement (this "**Amendment**") is made effective as of August 10, 2009, and amends that certain Settlement and Purchase and Sale Agreement, dated March 6, 2009, as amended on April 15, 2009, April 22, 2009, June 12, 2009 and August 6, 2009 (the "**PSA**"), by and among ASARCO LLC, a Delaware limited liability company; AR Silver Bell, Inc., a Delaware corporation; Copper Basin Railway, Inc., a Delaware corporation; ASARCO Santa Cruz, Inc., a Delaware corporation; Sterlite (USA), Inc., a Delaware corporation; and Sterlite Industries (India) LTD, an Indian limited liability company. Capitalized terms used herein, but not otherwise defined, shall have the respective meanings ascribed to such terms in the PSA.

WHEREAS, the parties desire to amend the PSA to include (i) the purchase and sale of certain "Sterlite Purchased SCC Trust Interests," (ii) a mechanism whereby a portion of consideration previously attributable to the Purchaser Promissory Note instead shall be paid to the Sellers as an additional cash payment in exchange for a reduction in the amount of the Purchaser Promissory Note and its issuance solely to the Asbestos Trust, and (iii) the other terms and conditions set forth in this Amendment;

NOW, THEREFORE, in consideration of the premises and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties agree as follows:

1. Section 1.1 of the PSA is hereby amended by the addition of the following new defined terms, each of which shall be deemed added to Section 1.1 in the appropriate alphabetical order:

"Actual Class 3 Ratio" means the ratio that is equal to (a) the Class 3 Claims, divided by (b) the Class 3 Claims plus $750,000,000.00.

"Actual Class 4 Ratio" means the ratio that is equal to (a) $750,000,000.00, divided by (b) the Class 3 Claims plus $750,000,000.00.

"Causes of Action" means the SCC Judgment, along with the Grupo Litigation and the Derivative D&O Litigation.

"Class 3 Claims" means the aggregate amount of (i) all Allowed Claims in Class 3 plus (ii) all Disputed Claims in Class 3.

"Class 3 Monetization Payment" means $224,840,000.00 (which is the amount that is equal to the product of $770,000,000.00, multiplied by the Preliminary Class 3 Ratio, divided by 2.5).

"Preliminary Class 3 Ratio" means 73%.

"Preliminary Class 4 Ratio" means 27%.

"SCC Litigation Trust Joinder Agreement" means the SCC Litigation Trust Joinder Agreement, dated as of the Supplemental Closing date, substantially in the form of Exhibit Q hereto.

"Sterlite Purchased SCC Trust Interests" means the Class A-2 SCC Litigation Trust Interests and the Class B-2 SCC Litigation Trust Interests.

"Sterlite Purchased SCC Trust Interests Payment" means an amount equal to $262,460,000.00, minus the product of (i) the Actual Class 3 Ratio multiplied by (ii) the amount of any proceeds payable to Class 3 and Class 4, if any, from the auction and sale of the interests in the SCC Litigation Trust contemplated by Article 6.2(a) of the Plan.

"SCC Trust Interest Bill of Sale" means the Bill of Sale executed by ASARCO, dated as of the Supplemental Closing date, substantially in the form of Exhibit R hereto.

"Supplemental Closing" shall have the meaning set forth in Section 16.3.

2. The definition of "Purchaser Promissory Note" set forth in Section 1.1 of the PSA is hereby amended and restated in its entirety as follows:

"***Purchaser Promissory Note***" means a promissory note in the principal amount of $207,900,000.00 (which is the amount equal to the product of $770,000,000.00 multiplied by the Preliminary Class 4 Ratio) (as adjusted pursuant to Section 4.3(c), (d) and (e) herein and Section 2.7 therein) which shall be issued at Closing by Purchaser to the Asbestos Trust (or such other Person as ASARCO may designate in accordance with the Plan) and in the form of Exhibit D hereto."

3. Section 1.2 of the PSA is hereby amended and restated in its entirety to read as follows:

"1.2 *Other Terms*. Capitalized terms used and not otherwise defined herein shall have the respective meanings ascribed to such terms in the Plan. Other terms may be defined elsewhere in this Agreement and, unless otherwise indicated, shall have such meaning throughout this Agreement."

4. Exhibit D to the PSA is hereby amended and restated in its entirety with the Form of Purchaser Promissory Note attached hereto as Exhibit A.

5. Exhibit E to the PSA is hereby amended and restated in its entirety with the Closing Accounts Statement Principles and Illustration attached hereto as Exhibit B.

6. The PSA is hereby amended to add the SCC Litigation Trust Joinder Agreement as Exhibit Q thereto and attached hereto as Exhibit C.

7. The PSA is hereby amended to add the SCC Trust Interest Bill of Sale as Exhibit R thereto and attached hereto as Exhibit D.

8. Section 4.1 of the PSA is hereby amended and restated in its entirety to read as follows:

> "4.1 *Purchase Price.* The total consideration to be paid by Purchaser to Sellers in consideration of the sale, conveyance, transfer, assignment and delivery of the Purchased Assets is (i) an amount equal to: (A) $1,100,000,000.00 (the "***Closing Payment***"), plus (B) the Class 3 Monetization Payment, plus (C) the Purchaser Promissory Note (collectively, the "***Purchase Price***") and (ii) the assumption by Purchaser of the Assumed Liabilities."

9. Section 4.3(c) of the PSA is hereby amended and restated in its entirety to read as follows:

> "(c) On the date that a binding determination of the Closing Accounts Amount has been made in accordance with Section 4.4, if the Closing Accounts Amount is greater than the Agreed Working Capital, the aggregate principal amount of the Purchaser Promissory Note shall automatically be increased by the amount that is equal to the product of the Adjustment Amount multiplied by the Actual Class 4 Ratio (unless at such time the Actual Class 4 Ratio has yet to be determined, and in that case, the Preliminary Class 4 Ratio shall be used) without any action on the part of Purchaser or Sellers."

10. Section 4.3 of the PSA is hereby amended to add paragraphs (d), and (e) as follows:

> "(d) At Closing (or on the date that the Actual Class 4 Ratio is determined if not determined at Closing), the aggregate principal amount of the Purchaser Promissory Note shall automatically be (i) increased by the difference between (x) $770,000,000.00 multiplied by the Actual Class 4 Ratio, minus (y) $770,000,000.00 multiplied by the Preliminary Class 4 Ratio if the Actual Class 4 Ratio is greater than the Preliminary Class 4 Ratio or (ii) decreased by the difference between (A) $770,000,000.00 multiplied by the Preliminary Class 4 Ratio, minus (B) $770,000,000.00 multiplied by the Actual Class 4 Ratio if the Preliminary Class 4 Ratio is greater than the Actual Class 4 Ratio, in each case without any action on the part of Purchaser or Sellers.
>
> (e) If the Actual Class 4 Ratio is determined after the principal amount of the Purchaser Promissory Note is adjusted pursuant to Section 4.3(c), then on the date that the Actual Class 4 Ratio is determined, if the Closing Accounts Amount is greater than the Agreed Working Capital, the aggregate principal amount of the Purchaser Promissory Note shall automatically be (i) increased by the difference between (x) the Adjustment Amount multiplied by the Actual Class 4 Ratio, minus (y) the Adjustment Amount multiplied by the Preliminary Class 4 Ratio if the Actual Class 4 Ratio is greater than the Preliminary Class 4 Ratio or (ii) decreased by the difference between (A) the Adjustment Amount multiplied by the Preliminary Class 4 Ratio, minus (B) the Adjustment Amount

multiplied by the Actual Class 4 Ratio if the Preliminary Class 4 Ratio is greater than the Actual Class 4 Ratio, in each case without any action on the part of Purchaser or Sellers."

11. Section 5.3 of the PSA is hereby amended to add paragraph (n) as follows:

"(n) the Class 3 Monetization Payment by wire transfer of immediately available funds (to such account or accounts as Sellers shall have specified to Purchaser at least 24 hours prior to the Closing)."

12. The PSA is hereby amended to add Article XVI as follows:

ARTICLE XVI
STERLITE PURCHASED SCC TRUST INTERESTS

16.1 *Purchase and Sale of Sterlite Purchased SCC Trust Interests..* Upon the terms and subject to the conditions contained in this Article XVI, at the Supplemental Closing, ASARCO shall sell, convey, transfer, assign and deliver to Purchaser, and Purchaser shall purchase, acquire, assume and accept from ASARCO, free and clear of all Liens, claims (as defined in the Bankruptcy Code), Encumbrances and other interests (other than Permitted Liens), all of ASARCO's right, title and interest in and to the Sterlite Purchased SCC Trust Interests.

16.2 *Consideration.* The total consideration to be paid by Purchaser to ASARCO in consideration of the conveyance, transfer, assignment and delivery of the Sterlite Purchased SCC Trust Interests shall be an amount equal to the Sterlite Purchased SCC Trust Interests Payment. Purchaser shall bear and be responsible for paying any sales, use, value added, goods and services, gross receipts, stamp, duty, stamp duty, transfer, documentary, registration, business and occupation and other similar Taxes (including related penalties (civil or criminal), additions to Tax and interest) imposed by any Governmental Authority with respect to the transactions contemplated by this Article XVI to the extent the transaction is subject to any such taxes notwithstanding section 1146 of the Bankruptcy Code, regardless of whether any Tax authority seeks to collect such taxes from Sellers or Purchaser.

16.3 *Supplemental Closing.* The closing of the sale and purchase of the Sterlite Purchased SCC Trust Interests (the "***Supplemental Closing***") shall occur on the Closing Date, or any subsequent date mutually agreed upon by ASARCO and Sterlite, but in any event on or prior to the Effective Date.

(a) At the Supplemental Closing, ASARCO shall deliver, or cause to be delivered, to Purchaser the following:

(i) the SCC Trust Interest Bill of Sale duly executed by ASARCO; and

(ii) a duly executed counterpart of the SCC Litigation Trust Joinder Agreement.

(b) At the Supplemental Closing, Purchaser shall deliver, or cause to be delivered, to ASARCO the following:

(i) the Sterlite Purchased SCC Trust Interests Payment by wire transfer of immediately available funds (to such account or accounts as ASARCO shall have specified to Purchaser at least 24 hours prior to the Supplemental Closing); and

(ii) the SCC Litigation Trust Joinder Agreement duly executed by Purchaser.

16.4 *ASARCO Representations and Warranties Concerning the Sterlite Purchased SCC Trust Interests.*

(a) Prior to the consummation of the Supplemental Closing, the SCC Litigation Trust will be duly formed as a Delaware trust and will be validly existing and in good standing under the laws of the State of Delaware.

(b) Following receipt by ASARCO of the SCC Litigation Trust Interests in exchange for ASARCO's assignment of all of its right, title and interest in and to the Causes of Action to the SCC Litigation Trust, ASARCO will be the sole record and beneficial owner of the Sterlite Purchased SCC Trust Interests and will own and have good and valid title to the Sterlite Purchased SCC Trust Interests free and clear of all Liens (other than Permitted Liens). Subject to the confirmation of the Plan by a final order of the Bankruptcy Court which is not subject to any stay, ASARCO will have full legal right, power and authority to transfer the Sterlite Purchased SCC Trust Interests to Purchaser in accordance with Article XVI of this Agreement. Upon consummation of the transactions contemplated by Article XVI of this Agreement, at the Supplemental Closing Purchaser will acquire good and valid title to the Sterlite Purchased SCC Trust Interests, free and clear of any Lien (other than (i) Permitted Liens and (ii) obligations arising under the SCC Litigation Trust Agreement).

(c) As of August 10, 2009, all of the statements concerning the SCC Litigation and related matters contained in the Plan and related disclosure statement are true and correct in all material respects, except as individually or in the aggregate, would not reasonably be expected to prevent, impede or materially delay or otherwise affect in any material respect the transactions contemplated by this Article XVI.

16.5 *Purchaser Representations and Warranties Concerning the Sterlite Purchased SCC Trust Interests.*

(a) *Purchaser's Review.* Purchaser represents, warrants and acknowledges that (i) it is aware and fully understands that the outcome of the Causes of Action, including any appeal, is inherently speculative and that the SCC Litigation Trustee, acting on behalf of the SCC Litigation Trust, may not be successful in prosecuting the Causes of Action or defending or prosecuting, as applicable, any appeal of the Causes of Action and any damage award, including the damage award related to the SCC Judgment, could be significantly reduced or eliminated, (ii) it is aware and fully understands that there could be a significant delay before any recovery is obtained, even if the SCC Litigation Trustee,

acting on behalf of the SCC Litigation Trust, is successful in the Causes of Action or on all appeals of the Causes of Action, (iii) the expenses related to defending or prosecuting, as applicable, any appeals of the Causes of Action may be significant and, even if the SCC Litigation Trustee, acting on behalf of the SCC Litigation Trust, obtains a favorable final judgment or settlement, the expenses may be in excess of the amount of recovery and (iv) notwithstanding anything to the contrary in this Agreement, Sellers make no representation or warranty with respect to the outcome of the Causes of Action, or the ability of the SCC Litigation Trustee, acting on behalf of the SCC Litigation Trust, to recover any judgment or any expenses related thereto. Purchaser represents, warrants and acknowledges that (i) any and all duties and obligations which Sellers may have to Purchaser with respect to or in connection with the Sterlite Purchased SCC Trust Interests, the Causes of Action, this Agreement, the Ancillary Agreements, or the transactions contemplated hereby are limited to those specifically set forth in this Agreement, (ii) none of the duties, obligations or rights of any Seller shall be expanded beyond the terms of this Agreement on the basis of any legal or equitable principle or on any other basis whatsoever, (iii) neither any equitable nor legal principle nor any implied obligation of good faith or fair dealing nor any other matter requires any Seller to incur, suffer or perform any act, condition or obligation contrary to the terms of this Agreement, whether or not existing and whether foreseeable or unforeseeable, and (iv) it would be unfair, and that Purchaser does not intend, to increase any of the obligations of any Seller under this Agreement on the basis of any implied obligation or otherwise.

(b) *"As-Is Where-Is" Transaction.* PURCHASER REPRESENTS, WARRANTS AND ACKNOWLEDGES THAT, AS A MATERIAL PART OF THE CONSIDERATION FOR THIS AGREEMENT, PURCHASER IS TAKING THE STERLITE PURCHASED SCC TRUST INTERESTS "AS IS", "WHERE IS" AND "WITH ALL FAULTS" AND THAT THERE IS NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OF ANY KIND OR NATURE (INCLUDING, WITHOUT LIMITATION, WARRANTIES WITH RESPECT TO MARKETABILITY, TITLE (INCLUDING AS A RESULT OF ANY RESTRICTIONS OR PROHIBITIONS CREATED BY STATE AND/OR FEDERAL LAW RELATED TO THE ASSIGNMENT OF THE CAUSES OF ACTION OR THE STERLITE PURCHASED SCC TRUST INTERESTS), TAX CONSEQUENCES, LATENT OR PATENT DEFECTS, VALUATION, GOVERNMENTAL APPROVALS, THE TRUTH, ACCURACY OR COMPLETENESS OF THE DOCUMENTS OR ANY OTHER INFORMATION PROVIDED BY OR ON BEHALF OF ASARCO TO OR FOR THE BENEFIT OF PURCHASER OR ANY OTHER MATTER OR THING REGARDING THE PURCHASED SCC TRUST INTERESTS OR THE CAUSES OF ACTION) MADE BY ASARCO WITH RESPECT TO THE STERLITE PURCHASED SCC TRUST INTERESTS (EXCEPT FOR THE REPRESENTATIONS OF ASARCO EXPRESSLY SET FORTH IN SECTION 16.4, WHICH ARE SUBJECT TO THE LIMITATIONS CONTAINED IN THIS AGREEMENT), ALL OTHER REPRESENTATIONS AND WARRANTIES, BOTH EXPRESS AND IMPLIED, ARE HEREBY EXPRESSLY DISCLAIMED AND DENIED.

PURCHASER REPRESENTS, WARRANTS AND ACKNOWLEDGES THAT IT HAS BEEN GIVEN ADEQUATE TIME TO CONDUCT WHATEVER EXAMINATION,

EVALUATIONS, ANALYSES, REVIEWS OR STUDIES OF THE CAUSES OF ACTION AND THE STERLITE PURCHASED SCC TRUST INTERESTS AND THEIR RESPECTIVE CONDITIONS AS PURCHASER MAY DESIRE OR DETERMINE TO BE WARRANTED, AND THAT PURCHASER IS NOT RELYING ON, AND ASARCO SHALL NOT BE LIABLE FOR OR BOUND BY, ANY EXPRESSED OR IMPLIED REPRESENTATION, GUARANTY, WARRANTY, STATEMENT OR OTHER ASSERTION WITH RESPECT TO THE STERLITE PURCHASED SCC TRUST INTERESTS OR THE CAUSES OF ACTION MADE BY, OR FURNISHED BY OR ON BEHALF OF, ASARCO, OR ANY AGENT OR LEGAL COUNSEL REPRESENTING OR PURPORTING TO REPRESENT ASARCO, TO WHOMEVER MADE OR GIVEN, DIRECTLY OR INDIRECTLY, ORALLY OR IN WRITING (EXCEPT FOR THE REPRESENTATIONS OF ASARCO EXPRESSLY SET FORTH IN SECTION 16.4, WHICH ARE SUBJECT TO THE LIMITATIONS CONTAINED IN THIS AGREEMENT).

PURCHASER REPRESENTS, WARRANTS AND ACKNOWLEDGES THAT IN DECIDING TO ENTER INTO THIS AGREEMENT, AND TO CONSUMMATE THE TRANSACTIONS CONTEMPLATED HEREBY, PURCHASER HAS RELIED SOLELY UPON ITS OWN KNOWLEDGE, INVESTIGATION, AND ANALYSIS (AND THAT OF ITS ATTORNEYS, ACCOUNTANTS, CONSULTANTS AND REPRESENTATIVES) AND NOT OF ANY DISCLOSURE OR REPRESENTATION MADE BY, OR ANY DUTY TO DISCLOSE ON THE PART OF, ASARCO OR ITS AFFILIATES OR THEIR RESPECTIVE REPRESENTATIVES, OTHER THAN THE EXPRESS REPRESENTATIONS AND WARRANTIES OF ASARCO SET FORTH IN SECTION 16.4.

(c) *Waivers and Releases.* PURCHASER REPRESENTS, WARRANTS AND ACKNOWLEDGES THAT PURCHASER HAS CONDUCTED SUCH INVESTIGATIONS OF THE CAUSES OF ACTION AND THE STERLITE PURCHASED SCC TRUST INTERESTS, AS PURCHASER DEEMS NECESSARY TO SATISFY ITSELF AS TO ALL ASPECTS OF THE CAUSES OF ACTION AND THE PURCHASED SCC TRUST INTERESTS AND SHALL RELY SOLELY UPON THE SAME AND NOT UPON ANY INFORMATION PROVIDED BY OR ON BEHALF OF ASARCO OR ITS AGENTS, LEGAL COUNSEL OR EMPLOYEES WITH RESPECT THERETO, OTHER THAN THE REPRESENTATIONS AND WARRANTIES OF ASARCO SET FORTH IN SECTION 16.4, WHICH ARE SUBJECT TO THE LIMITATIONS CONTAINED IN THIS AGREEMENT. UPON THE SUPPLEMENTAL CLOSING, PURCHASER SHALL ASSUME THE RISK THAT ADVERSE MATTERS (INCLUDING ALL RESPONSIBILITY AND LIABILITY FOR OBLIGATIONS AND CLAIMS THAT HAVE ARISEN OR MAY ARISE, EVEN IF SUCH MAY NOT HAVE BEEN REVEALED BY PURCHASER'S INVESTIGATIONS) MAY OCCUR, AND PURCHASER AND ITS SUCCESSORS AND ASSIGNS, UPON THE SUPPLEMENTAL CLOSING, SHALL BE DEEMED TO HAVE WAIVED, RELINQUISHED, AND RELEASED ASARCO (AND ASARCO'S OFFICERS, PARTNERS, MANAGERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES, LEGAL COUNSEL AND AGENTS) FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION (INCLUDING

CAUSES OF ACTION IN TORT), LOSSES, DAMAGES, LIABILITIES, COSTS, AND EXPENSES (INCLUDING ATTORNEYS' FEES AND COURT COSTS) OF ANY AND EVERY KIND OF CHARACTER, KNOWN OR UNKNOWN, INCLUDING COSTS RECOVERY, CONTRIBUTION OR OTHER CLAIMS PURCHASER MIGHT HAVE UNDER LAWS AND CLAIMS BASED ON THE NEGLIGENCE OR STRICT LIABILITY OF ASARCO (OR ANY OF ASARCO'S OFFICERS, PARTNERS, MANAGERS, DIRECTORS, EMPLOYEES, LEGAL COUNSEL, REPRESENTATIVES AND AGENTS), WHICH PURCHASER MIGHT HAVE ASSERTED OR ALLEGED AGAINST ASARCO (AND ANY OF ASARCO'S OFFICERS, PARTNERS, MANAGERS, DIRECTORS, EMPLOYEES, LEGAL COUNSEL, REPRESENTATIVES AND AGENTS) AT ANY TIME BY REASON OF OR ARISING OUT OF ANY LATENT OR PATENT CONDITIONS OR DEFECTS, VIOLATIONS OF ANY APPLICABLE LAWS, SUITS OF ANY KIND, INCLUDING THOSE BROUGHT BY GOVERNMENTAL AUTHORITIES, RELATING TO THE CAUSES OF ACTION OR THE STERLITE PURCHASED SCC TRUST INTERESTS, AND ANY AND ALL OTHER ACTS, OMISSIONS, EVENTS, CIRCUMSTANCES, OR MATTERS REGARDING THE CAUSES OF ACTION OR THE STERLITE PURCHASED SCC TRUST INTERESTS.

(d) *Sophisticated Purchaser; Access to Information; Investment Intent.* Purchaser is an informed and sophisticated entity with sufficient knowledge and experience (or Purchaser has ready access to legal counsel who has such knowledge and experience) in litigation matters, judgments (including judgments on appeal) and the types of assets contemplated to be part of the assets of the SCC Litigation Trust to be capable of evaluating the risks and merits of its purchase of the Sterlite Purchased SCC Trust Interests. Purchaser understands that (i) its investment in the Sterlite Purchased SCC Trust Interests involves a high degree of risk and it is financially able to bear such risk and (ii) upon consummation of the transactions contemplated by this Article XVI, Purchaser will be bound by the terms and conditions of the SCC Litigation Trust Agreement. Purchaser understands that the Purchased Sterlite SCC Trust Interests have not been registered under the Securities Act or the applicable securities or blue sky laws of any state or other jurisdiction and, accordingly, must be held indefinitely unless a subsequent sale or other transfer thereof is registered under the Securities Act and such securities or blue sky laws or is exempt from registration thereunder. Purchaser is an "accredited investor" as defined in Rule 501(a) under the Securities Act.

16.6 *Conditions to Purchase and Sale of Sterlite Purchased SCC Trust Interests.* Sterlite's obligation to purchase, and ASARCO's obligation to sell, the Sterlite Purchased SCC Trust Interests at the Supplemental Closing shall be subject to the conditions that: (a) the Closing hereunder shall have occurred before or contemporaneously with the Supplemental Closing, (b) the SCC Litigation Trust shall have been duly and validly organized in accordance with the SCC Litigation Trust Agreement, and all of ASARCO's right, title and interest in and to the Causes of Action shall have been assigned, transferred and conveyed to the SCC Litigation Trust, (c) the deliveries required to be made by ASARCO and Purchaser pursuant to Section 16.3 shall have been made by each of them, and (d) all of the representations and warranties of ASARCO as set forth in Section 16.4 and Purchaser as set forth in Section 16.5 shall be

true and correct on and as of the Supplemental Closing date; *provided, however*, that this condition shall be deemed to have been satisfied so long as any failure of such representations and warranties to be true and correct, individually or in the aggregate, would not reasonably be expected to prevent, impede or materially delay or otherwise affect in any material respect the transactions contemplated by this Article XVI ignoring solely for purposes of the satisfaction of this Section 16.6 any materiality qualifiers contained in such representations and warranties. Notwithstanding anything to the contrary in this Agreement, Sterlite's obligation to purchase the Sterlite Purchased SCC Trust Interests at the Supplemental Closing shall not be subject to any other condition or contingency whatsoever, including, but not limited to, the occurrence of any event or development adversely affecting the Causes of Action.

16.7 *Sterlite Purchased SCC Trust Interests Go-Shop.* Notwithstanding anything to the contrary in this Agreement (including but not limited to Sections 8.2 and 8.10 hereof) or any other contract or instrument pertaining to the subject matter hereof, Sellers and their Subsidiaries and their respective officers, directors, employees, attorneys, investment bankers, accountants and other agents and Representatives shall be permitted and free at all times to continue all efforts Sellers shall deem necessary, appropriate or advisable to market, solicit proposals for, provide information regarding, auction, sell, transfer, assign or otherwise dispose of all or any portion of ASARCO's interest in the Causes of Action or the SCC Litigation Trust; *provided, however*, that ASARCO shall not enter into any legally binding agreement or commitment to sell, transfer, assign, convey or otherwise dispose of the entirety of the Causes of Action or the Sterlite Purchased SCC Trust Interests or any interest therein (other than as contemplated under this Agreement) without first obtaining the prior written consent of Sterlite, which consent shall not be unreasonably withheld, conditioned or delayed.

16.8 *Nonsurvival of Representations, Warranties and Covenants.* None of the representations, warranties, covenants or other agreements of the parties made in this Article XVI or in any other agreement or instrument delivered pursuant to this Article XVI, including any rights arising out of any breach of such representations, warranties, covenants or other agreements, shall survive the Supplemental Closing.

13. Except as set forth herein, all other terms of the PSA shall remain unchanged and in full force and effect.

14. This Amendment shall be subject to all of the terms and provisions set forth in the PSA that apply to the PSA (and such terms and provisions shall apply to this Amendment) or to any amendments or modifications thereto, including, without limitation, Article XV thereof.

* * * * *

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their respective officers thereunto duly authorized, as of the date first written above.

SELLERS:

ASARCO LLC, a Delaware limited liability company

By: Joseph F. Lapinsky
Joseph F. Lapinsky

Title: President and Chief Executive Officer

AR SILVER BELL, INC., a Delaware corporation

By: _____
Name:
Title:

COPPER BASIN RAILWAY, INC., a Delaware corporation

By: _____
Name:
Title:

ASARCO SANTA CRUZ, INC., a Delaware corporation

By: _____
Name:
Title:

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their respective officers thereunto duly authorized, as of the date first written above.

SELLERS:

ASARCO LLC, a Delaware limited liability company

By: _____
Name:
Title:

AR SILVER BELL, INC., a Delaware corporation

By: D. E McAllister
Name: DOUG McALLISTER
Title: PRESIDENT

COPPER BASIN RAILWAY, INC., a Delaware corporation

By: D E McAllister
Name: Doug McALLISTER
Title: VICE PRESIDENT

ASARCO SANTA CRUZ, INC., a Delaware corporation

By: D. E McAllister
Name: DOUG McALLISTER
Title: PRESIDENT

PURCHASER:

STERLITE (USA), INC.

By: _____
Name:
Title:

GUARANTOR:

STERLITE INDUSTRIES (INDIA) LTD.

By: _____
Name:
Title:

AMENDMENT NO. 6 TO

SETTLEMENT AND PURCHASE AND SALE AGREEMENT

This Amendment No. 6 to Settlement and Purchase and Sale Agreement (this "**Amendment**") is made effective as of August 20, 2009, and amends that certain Settlement and Purchase and Sale Agreement, dated March 6, 2009, as amended on April 15, 2009, April 22, 2009, June 12, 2009, August 6, 2009 and August 10, 2009 (the "**PSA**"), by and among ASARCO LLC, a Delaware limited liability company; AR Silver Bell, Inc., a Delaware corporation; Copper Basin Railway, Inc., a Delaware corporation; ASARCO Santa Cruz, Inc., a Delaware corporation; Sterlite (USA), Inc., a Delaware corporation; and Sterlite Industries (India) LTD, an Indian limited liability company. Capitalized terms used herein, but not otherwise defined, shall have the respective meanings ascribed to such terms in the PSA.

WHEREAS, the parties desire to amend the PSA to increase the Deposit to an amount equal to funds in the aggregate of $225,000,000.00 by the addition of a Fourth L/C in the amount of $100,000,000.00; and

WHEREAS, the parties desire to amend the PSA to (i) amend the definition of the Sterlite Purchased SCC Trust Interests (to increase the percentage of such interests to be sold and purchased pursuant to this Agreement from approximately 36.5% to approximately 72.5% of such interests), (ii) to increase the amount of the Sterlite Purchased SCC Trust Interests Payment as herein set forth, and (iii) amend other terms and conditions as herein set forth;

NOW, THEREFORE, in consideration of the premises and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties agree as follows:

1. Section 1.1 of the PSA is hereby amended by the addition of the following new defined terms, and such terms shall be deemed added to Section 1.1 in the appropriate alphabetical order:

"***District Court***" means the United States District Court for the Southern District of Texas, Brownsville Division.

"***Fourth L/C***" shall have the meaning set forth in Section 4.2(c).

"***Plan Recommendation Date***" means the date on which the Bankruptcy Court issues proposed findings of fact and conclusions of law for the District Court's consideration that propose or recommend confirmation of the Plan (and do not propose or recommend confirmation of any other plan of reorganization).

2. The definition of following terms set forth in Section 1.1 of the PSA are hereby amended and restated in their entirety as follows:

"***Deemed Value***" means, in respect of (i) the Purchase Price and the Sterlite Purchased SCC Trust Interests Payment, or (ii) a Superior Proposal, the aggregate dollar

value to Sellers of all cash and non-cash (as applicable) consideration comprising (x) the Purchase Price and the Sterlite Purchased SCC Trust Interests Payment, or (y) Superior Proposal, as applicable, as determined by the Board of Directors of ASARCO after consultation with its financial and legal advisors, the Creditor Constituents and such other advisors as the Board of Directors of ASARCO chooses, in its sole discretion, to consult.

"Sterlite Purchased SCC Trust Interests" means the Class A SCC Litigation Trust Interests and the Class B SCC Litigation Trust Interests.

"Sterlite Purchased SCC Trust Interests Payment" means an amount equal to $722,060,000.00, (a) minus the product of (i) the Actual Class 3 Ratio multiplied by (ii) the amount by which the Distributable Cash exceeds $1.4 billion (if any), and (b) minus the product of (i) the Actual Class 3 Ratio multiplied by (ii) the amount of any proceeds payable to Class 3 and Class 4, if any, from the auction and sale of the interests in the SCC Litigation Trust contemplated by Article 6.2(a) of the Plan.

3. The introductory language of Section 4.2 of the PSA is hereby amended and restated in its entirety to read as follows:

"4.2 *Deposit*. Purchaser shall make available to ASARCO funds in the aggregate amount of $225,000,000.00 (the "***Deposit***") as follows:"

4. Section 4.2(c) of the PSA is hereby amended and restated in its entirety to read as follows:

"(c) As promptly as practicable following (but not later than 5:00 p.m., Dallas, Texas time, on the third Business Day following) the Disclosure Statement Approval Date, Purchaser will post a third letter of credit (the ***"Third L/C"***) in the form of Exhibit O-3 hereto issued in favor of ASARCO by a Qualified Bank in the amount of $25,000,000.00 and ASARCO shall have received such originally executed Third L/C enforceable against the issuer thereof. As promptly as practicable following (but not later than 5:00 p.m., Dallas, Texas time, on the third Business Day following) the Plan Recommendation Date, Purchaser will post a fourth letter of credit (the "***Fourth L/C***") in the form of Exhibit O-4 hereto issued in favor of ASARCO by a Qualified Bank in the amount of $100,000,000.00 and ASARCO shall have received such originally executed Fourth L/C enforceable against the issuer thereof. The First L/C, the Second L/C, the Third L/C and the Fourth L/C are collectively referred to herein as the "***Letters of Credit***."

5. Section 4.2(f) of the PSA is hereby amended and restated in its entirety to read as follows:

"(f) Immediately following the termination of this Agreement for any reason other than (i) a Purchaser Breach or (ii) by Purchaser pursuant to Section 13.1(j) upon the occurrence of a Manipulative Breach, Sellers shall (x) be entitled to receive from Purchaser and retain $50,000,000.00, (y) be entitled to draw upon any outstanding Letter of Credit at anytime thereafter to obtain such funds and the receipt

by Sellers of immediately available funds in an account designated by ASARCO in an amount equal to $50,000,000.00 pursuant to such draw (or any draws pursuant to Section 4.2(h)) shall satisfy Purchaser's payment obligation in clause (x) above), and (z) at such time as Purchaser's payment obligation in clause (x) above has been satisfied, Sellers shall: (A) to the extent the Second L/C, the Third L/C or the Fourth L/C has not been drawn upon (and related funds received) pursuant to Section 4.2(h), as promptly as practicable, and in any event within twenty-four hours, mark each page of the Second L/C, the Third L/C and the Fourth L/C, as applicable, "cancelled," send a copy of same by facsimile to the Purchaser and on the same day (if such day is a Business Day, otherwise on the next Business Day) return by prepaid overnight courier the original(s) to the issuer(s) thereof, and (B) as promptly as practicable, and in any event within one Business Day, return to Purchaser any cash drawn (and received) pursuant to Section 4.2(h) in excess of $50,000,000.00; *provided, that* if (and only if) a Release Condition occurs following the termination of this Agreement, ASARCO shall either (1) as promptly as practicable, and in any event within twenty-four hours, following the occurrence of such Release Condition, mark each page of the First L/C "cancelled," send a copy of same by facsimile to the Purchaser and return by prepaid overnight courier the original to the issuer thereof, or (2) if Sellers have already drawn on the First L/C, including pursuant to Section 4.2(h) (and received $50,000,000.00 in respect of such draw), Sellers shall, as promptly as practicable, and in any event within one Business Day, following the occurrence of such Release Condition, deliver the amount of $50,000,000.00 to Purchaser and such payment shall be made by wire transfer of immediately available funds to an account designated by Purchaser.

6. Section 4.2(g) of the PSA is hereby amended and restated in its entirety to read as follows:

"(g) As promptly as practicable, and in any event within twenty-four hours, following the termination of this Agreement by Purchaser pursuant to Section 13.1(j) due to a Manipulative Breach, ASARCO shall mark each page of the Letters of Credit "cancelled," send a copy of same by facsimile to the Purchaser and on the same day (if such day is a Business Day, otherwise on the next Business Day) return by prepaid overnight courier originals of the Letters of Credit to the issuer(s) thereof; and as promptly as practicable, and in any event within one Business Day, return to Purchaser any cash drawn (and received) pursuant to Section 4.2(h)."

7. The PSA is hereby amended to add the Form of Fourth L/C as Exhibit O-4 thereto and attached hereto as Exhibit A.

8. Section 13.1(n) of the PSA is hereby amended and restated in its entirety to read as follows:

"(n) By either Sellers or Purchaser if (i) the Bankruptcy Court or (ii) the District Court denies confirmation of the Plan (for clarification, in the event the Bankruptcy Court issues proposed findings of fact and conclusions of law for the District Court's consideration that propose or recommend confirmation of a plan of

reorganization other than the Plan, such shall be deemed to be a denial of confirmation of the Plan by the Bankruptcy Court. Notwithstanding anything to the contrary contained in this Agreement, any order or other formal action taken by the Bankruptcy Court or the District Court that recommends, approves or effects confirmation of a plan of reorganization other than the Plan shall be deemed to be a denial of confirmation of the Plan for all purposes under this Agreement; or"

9. Except as set forth herein, all other terms of the PSA shall remain unchanged and in full force and effect.

10. This Amendment shall be subject to all of the terms and provisions set forth in the PSA that apply to the PSA (and such terms and provisions shall apply to this Amendment) or to any amendments or modifications thereto, including, without limitation, Article XV thereof.

* * * * *

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their respective officers thereunto duly authorized, as of the date first written above.

SELLERS:

ASARCO LLC, a Delaware limited liability company

By: Joseph F. Lapinsky
Name: Joseph F. Lapinsky
Title: Chief Executive Officer and President

AR SILVER BELL, INC., a Delaware corporation

By: _____
Name:
Title:

COPPER BASIN RAILWAY, INC., a Delaware corporation

By: _____
Name:
Title:

ASARCO SANTA CRUZ, INC., a Delaware corporation

By: _____
Name:
Title:

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their respective officers thereunto duly authorized, as of the date first written above.

SELLERS:

ASARCO LLC, a Delaware limited liability company

By: _____
Name:
Title:

AR SILVER BELL, INC., a Delaware corporation

By: D E McAllister
Name: DOUGLAS E. McALLISTER
Title: PRESIDENT

COPPER BASIN RAILWAY, INC., a Delaware corporation

By: D E McAllister
Name: DOUGLAS E. McALLISTER
Title: VICE PRESIDENT

ASARCO SANTA CRUZ, INC., a Delaware corporation

By: D. E McAllister
Name: DOUGLAS E. McALLISTER
Title: PRESIDENT

PURCHASER:

STERLITE (USA), INC.

By: _____
Name: C.V. KRISHNAN
Title: PRESIDENT

GUARANTOR:

STERLITE INDUSTRIES (INDIA) LTD.

By: _____
Name: C.V. KRISHNAN
Title: MANAGING DIRECTOR- POWER

Exhibit D

[for exhibits to the New Plan Sponsor PSA, please see *www.asarcoreorg.com*]

EXECUTION VERSION

SETTLEMENT

AND

PURCHASE AND SALE

AGREEMENT

AMONG

ASARCO LLC,

AR SILVER BELL, INC.,

COPPER BASIN RAILWAY, INC.,

ASARCO SANTA CRUZ, INC.,

STERLITE (USA), INC.

AND

STERLITE INDUSTRIES (INDIA) LTD

Dated as of March 6, 2009

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SETTLEMENT AND PURCHASE AND SALE AGREEMENT

This SETTLEMENT AND PURCHASE AND SALE AGREEMENT (the "***Agreement***"), dated as of March 6, 2009 (the "***Effective Date***"), is entered into by and among ASARCO LLC, a Delaware limited liability company ("***ASARCO***"); AR Silver Bell, Inc., a Delaware corporation ("***ARSB***"); Copper Basin Railway, Inc., a Delaware corporation ("***CBRI***"); and ASARCO Santa Cruz, Inc., a Delaware corporation ("***Santa Cruz***", together with ARSB and CBRI, "***Non-Debtor Sellers***"; ASARCO and Non-Debtor Sellers collectively referred to herein as "***Sellers***", and each individually, a "***Seller***"); and Sterlite (USA), Inc., a Delaware corporation ("***Purchaser***"); and Sterlite Industries (India) Ltd, an Indian limited liability company ("***Guarantor***").

WITNESSETH:

WHEREAS, ASARCO filed its voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "***Bankruptcy Code***") on August 9, 2005;

WHEREAS, ASARCO owns 100% of the Equity Securities (as defined below) of each of the Non-Debtor Sellers;

WHEREAS, the assets and liabilities of ASARCO are subject to the supervision and control of ASARCO as debtor-in-possession subject and pursuant to the jurisdiction of the Bankruptcy Court (as defined below);

WHEREAS, Sellers have determined that a prompt sale of the Purchased Assets (as defined below) is necessary in order to preserve the value inherent in the Purchased Assets ultimately available to the creditors of ASARCO;

WHEREAS, Sellers, Purchaser and Guarantor entered into that certain Purchase and Sale Agreement, dated as of May 30, 2008 (the "***Original PSA***"), for the prompt sale of the Purchased Assets by Sellers to Purchaser and such Original PSA was terminated by Sellers on October 22, 2008;

WHEREAS, notwithstanding the termination of the Original PSA, pursuant to Sections 363, 105(a) and 1123(a)(5)(D) of the Bankruptcy Code and the applicable Federal Rules of Bankruptcy Procedure, Sellers desire to sell to Purchaser, and Purchaser desires to purchase from Sellers, the Purchased Assets on the terms and subject to the conditions contained in this Agreement; and

WHEREAS, in connection with the transactions contemplated hereby, Purchaser has delivered to Sellers the Purchaser Opinion (as defined below) and Guarantor has delivered the Guarantor Opinion (as defined below).

NOW, THEREFORE, in consideration of the premises and the representations, warranties, covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties agree as follows:

ARTICLE I
DEFINITIONS

1.1 *Certain Definitions.* For purposes of this Agreement, the following terms shall have the meanings specified in this Section 1.1:

"***Acquisition Proposal***" means any proposal or offer for a merger, recapitalization, share exchange, debt-for-equity exchange, distribution of securities for the benefit of the stakeholders of ASARCO, consolidation or similar transaction involving a sale or purchase (directly or through a proposed investment in equity securities, debt securities or claims of creditors) of all or substantially all of the Purchased Assets or all or substantially all of the Equity Securities of ASARCO or of the Non-Debtor Sellers, other than the transactions contemplated by the terms of this Agreement. For the avoidance of doubt, an Acquisition Proposal does not include a proposal or offer for a Stand-Alone Plan.

"***Adjustment Amount***" means, as of the date that a binding determination of the Closing Accounts Amount has been made in accordance with Section 4.4, the product of (a) 1.6 multiplied by (b) Agreed Working Capital minus the Closing Accounts Amount. In all cases, the Adjustment Amount shall be expressed as a positive number.

"***Affiliate***" (and, with a correlative meaning "***affiliated***") means, with respect to any Person, (a) any other Person that directly, or through one or more intermediaries, controls or is controlled by or is under common control with such Person or (b) any Subsidiary of such Person. As used in this definition, "***control***" (including with correlative meanings, "***controlled by***" and "***under common control with***") means possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other ownership interests, by Contract or otherwise).

"***Agreed Working Capital***" means an amount equal to $253,000,000.00.

"***Agreement***" shall have the meaning set forth in the preamble hereto.

"***Allocation***" shall have the meaning set forth in Section 4.5.

"***Ancillary Agreements***" means the Assignment and Assumption Agreement, the Bill of Sale, the Transition Services Agreement, the Patent Assignment, the Trademark Assignment, the Deeds, the Leasehold Deeds, the Mortgages, the Security Agreement and the other documents to be delivered in connection therewith, Purchaser Promissory Note and the Assignment and Assumption of Ground Lease Agreement.

"***Applicable Law***" means, with respect to any Person, any Law applicable to such Person or its business, properties or assets.

"***ARSB***" shall have the meaning set forth in the preamble hereto.

"***ASARCO***" shall have the meaning set forth in the preamble hereto.

"***Asbestos Committee***" means the official committee of unsecured creditors appointed for the Lac d'Amiante du Québec Ltée (f/k/a Lake Asbestos of Quebec, Ltd.), Lake Asbestos of Quebec, Ltd., LAQ Canada, Ltd., CAPCO Pipe Company, Inc. (f/k/a Cement Asbestos Products Company) and Cement Asbestos Products Company cases.

"***Asbestos FCR***" means Judge Robert C. Pate, appointed by the Bankruptcy Court pursuant to section 524(g) of the Bankruptcy Code to represent future asbestos-related claimants and any and all Persons that may assert demands against ASARCO or any of its affiliated debtors but have not presently done so.

"***Asset Retirement Obligations***" means those obligations associated with the retirement of tangible long-lived assets and the associated asset retirement costs.

"***Assignment and Assumption Agreement***" means an Assignment and Assumption Agreement among Sellers and Purchaser, dated as of the Closing Date, substantially in the form of Exhibit A hereto.

"***Assignment and Assumption of Ground Lease Agreement***" shall have the meaning set forth in Section 5.2(d).

"***Assumed Contracts***" shall have the meaning set forth in Section 3.1(e).

"***Assumed Environmental Liabilities***" shall have the meaning set forth in Section 3.3(e).

"***Assumed Liabilities***" shall have the meaning set forth in Section 3.3.

"***Assumed Pre-Petition Contracts***" shall have the meaning set forth in Section 3.1(e).

"***Assumption-Pending Pre-Petition Contracts***" shall have the meaning set forth in Section 3.5(a).

"***Back-Up Bid Agreement***" shall have the meaning set forth in Section 8.10(f).

"***Back-Up Bid Option***" shall have the meaning set forth in Section 8.10(f).

"***Bankruptcy Cases***" means the chapter 11 cases commenced by ASARCO and its affiliated debtors on or after August 9, 2005 (including any case commenced after the date of this Agreement), jointly administered under Case No. 05-21207, but excluding the chapter 11 case commenced by Encycle/Texas, Inc which was converted to a chapter 7 case.

"***Bankruptcy Code***" shall have the meaning set forth in the recitals hereto.

"***Bankruptcy Court***" means the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division or any other court having jurisdiction over the Bankruptcy Cases from time to time.

"***Bill of Sale***" means a Bill of Sale executed by Sellers, dated as of the Closing Date, substantially in the form of Exhibit B hereto.

"***Bonds***" means (i) the $100,000,000 ASARCO Incorporated 7.875% Debentures due 2013; (ii) the $150,000,000 ASARCO Incorporated 8.50% Debentures due 2025; (iii) the $71,900,000 Industrial Development Authority of the County of Gila, Arizona Debentures due 2027; (iv) the $33,160,000 Lewis and Clark County, Montana Debentures due 2027; (v) the $27,740,000 Nueces River Authority Debentures due 2027; (vi) the $34,800,000 Lewis & Clark County, Montana Debentures due 2033; and (vii) the $22,200,000 Nueces River Authority Debentures due 2018.

"***Bonds and Assurances***" shall have the meaning set forth in Section 8.9.

"***Books and Records***" means all books, records, data and files (in any form or medium, including computerized or electronic) of the Business relating to the Purchased Assets including (i) all books and records of account and other financial records (including Tax records or copies thereof); (ii) all catalogues, brochures, advertising materials, forms of purchase orders, sales orders and invoices and similar sales or marketing materials; (iii) all price lists, customer lists, supplier lists, mailing lists and credit records; (iv) all manuals pertaining to software, products, operations, research, development or maintenance; (v) all records or lists pertaining to supply, production or distribution; (vi) all engineering reports and studies, environmental reports and studies, surveys, engineering design plans, blueprints, or mine plans relating to Purchased Real Property; (vii) operating records and operating, safety and maintenance manuals; and (viii) all personnel records (including, personnel files, time and medical records) of all Transferred Employees, personnel policies and procedures, labor relations records (including, all records pertaining to collective bargaining, grievance files and settlements, arbitration decisions and awards), and records relating to affirmative action plans, in each case, to the extent relating specifically to the Purchased Assets, but excluding (A) any such items to the extent relating to any Excluded Assets or Retained Liabilities, (B) any such items to the extent related or pertaining to asbestos or asbestos-containing materials or products or to asbestos personal injury claims or demands against Sellers, including claims which have been litigated, settled or otherwise dealt with by Sellers or any one of the Sellers, and (C) bids, letters of intent, expressions of interest, or other proposals received in connection with the transactions contemplated by the Original PSA, this Agreement or any of the Ancillary Agreements or otherwise and information and analyses relating to such communications (such items described in (A) through (C), the "***Retained Books and Records***").

"***Business***" means the business of mining, smelting and refining of copper and other metals as conducted by Sellers on the date of this Agreement.

"***Business Day***" means a day other than a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by Law to close. Any event the scheduled occurrence of which would fall on a day that is not a Business Day shall be deferred until the next succeeding Business Day.

"***Cash***" shall have the meaning set forth in Section 3.2(a).

"***Casualty***" shall have the meaning set forth in Section 8.11.

"***CBRI***" shall have the meaning set forth in the preamble hereto.

"***CFIUS***" shall have the meaning set forth in Section 8.3(d).

"***CFIUS Notice***" shall have the meaning set forth in Section 8.3(d).

"***Closing***" shall have the meaning set forth in Section 5.1.

"***Closing Accounts Amount***" shall have the meaning set forth in Exhibit E hereto.

"***Closing Accounts Statement***" shall have the meaning set forth in Section 4.3(a).

"***Closing Date***" means the date on which the Closing occurs.

"***Closing Payment***" shall have the meaning set forth in Section 4.1.

"***Coal Act***" means the Coal Industry Retiree Health Benefit Act of 1992, as amended.

"***COBRA***" shall have the meaning set forth in Section 9.6(b).

"***Code***" shall mean the Internal Revenue Code of 1986, as amended.

"***Collective Bargaining Agreements***" means all collective bargaining agreements between ASARCO and its Subsidiaries and any labor union or other representative of current ASARCO employees (including material local agreements, amendments, supplements, letters and memoranda of understanding of any kind) in effect on the Closing Date.

"***Committee***" shall mean the official committee of unsecured creditors of ASARCO appointed in connection with the Bankruptcy Cases.

"***Confidentiality Agreement***" shall have the meaning set forth in Section 8.5.

"***Confirmation Deadline***" shall have the meaning set forth in Section 13.1(b).

"***Contract***" means any written contract, indenture, note, bond, loan, instrument, lease, commitment or other agreement.

"***Creditor Constituents***" means the Committee, the Asbestos Committee, the Asbestos FCR, the United States Department of Justice, the United Steel Workers Union, and the States of Washington, Montana, Missouri, Arizona and Texas.

"***Cure Claims***" means all defaults as of the Closing Date, as determined by the Bankruptcy Court, and all actual or pecuniary losses that have resulted therefrom and are necessary to cure such defaults under any Assumption-Pending Pre-Petition Contract.

"***Deeds***" shall have the meaning set forth in Section 5.2(c).

"***Deemed Value***" means, in respect of the Purchase Price or a Superior Proposal, the aggregate dollar value to Sellers of all cash and non-cash (as applicable) consideration comprising the Purchase Price or Superior Proposal, as applicable, as determined by the Board of Directors of ASARCO after consultation with its financial and legal advisors, the Creditor Constituents and such other advisors as the Board of Directors of ASARCO chooses, in its sole discretion, to consult.

"***Definitive Agreement***" means a binding definitive written agreement, enforceable against the parties thereto, that effects the consummation of a Superior Proposal. A Definitive Agreement does not include an executed letter of intent or any other preliminary written agreement, nor does it include any oral or written agreement in principle or acceptance of an offer or bid by any Person.

"***Deposit***" shall have the meaning set forth in Section 4.2.

"***Disclosure Statement***" means the disclosure statement relating to the Plan to be filed after the date hereof by ASARCO with the Bankruptcy Court pursuant to Section 1125 of the Bankruptcy Code (including all schedules and exhibits thereto), as such disclosure statement may be amended or modified from time to time, that, to the extent it describes this Agreement, Purchaser (and Guarantor) and the transactions contemplated hereby, is in form and substance reasonably satisfactory to Purchaser.

"***Disclosure Statement Approval Date***" means the date on which the Disclosure Statement shall have been approved by the Bankruptcy Court.

"***Effective Date***" shall have the meaning set forth in the preamble hereto.

"***Effective Order***" means a Plan Confirmation Order entered by the Bankruptcy Court or the United States District Court that has jurisdiction over the Bankruptcy Cases: (a) which the time to appeal or seek certiorari, review, reargument, stay or rehearing has expired or has been waived; or (b) as to which an appeal, petition for certiorari, review, reargument, stay or rehearing has been filed, but no stay of the Plan Confirmation Order has been granted or is in effect (and no request for such stay is pending); provided, that no order or judgment shall fail to be an "Effective Order" solely because of the possibility that a motion pursuant to section 502(j) or 1144 of the Bankruptcy Code, Rule 59 or 60 of the Federal Rules of Civil Procedure or Rule 9024 of the Federal Rules of Bankruptcy Procedure may be filed with respect to such order or judgment.

"***Employees***" shall have the meaning set forth in Section 9.1(a).

"***Enforceability Exceptions***" means, with reference to the enforcement of the terms and provisions of this Agreement or any other Contract, that the enforcement thereof is or may be subject to the effect of (i) applicable bankruptcy, receivership, insolvency, reorganization, moratorium, fraudulent conveyance, fraudulent transfer and other similar laws relating to or affecting the enforcement of the rights and remedies of creditors or parties to

executory contracts generally; (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding at law or in equity) and the exercise of equitable powers by a court of competent jurisdiction; and (iii) Applicable Law or public policy limiting the enforcement of provisions providing for the indemnification of any Person.

"***Environmental Claims***" means any and all actions, suits, demands, demand letters, claims, liens, notices of noncompliance or violation, notices of liability or potential liability, investigations, proceedings, consent orders or consent agreements relating in any way to any Environmental Law, any Environmental Permit or any Hazardous Materials.

"***Environmental Law***" means any Law pertaining to health, industrial hygiene, public safety, occupational safety, mining, mine reclamation, natural or cultural resources, fish, wildlife or other protected species or the environment, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601, *et. seq.*); the Resource, Conservation and Recovery Act of 1976 (42 U.S.C. § 6901, *et. seq.*); the Toxic Substances Control Act (15 U.S.C. § 2601, *et. seq.*); the Clean Water Act (33 U.S.C. § 1251, *et. seq.*); the Oil Pollution Act of 1990 (33 U.S.C. § 2701, *et. seq.*); the Clean Air Act (42 U.S.C. § 7401, *et. seq.*); the Atomic Energy Act (42 U.S.C. § 2011, *et. seq.*); the Hazardous Materials Transportation Act (49 U.S.C. § 5101, *et. seq.*); the Emergency Planning and Community Right-To-Know Act (42 U.S.C. 11001, *et. seq.*); the Endangered Species Act of 1973 (16 U.S.C. §1531, *et. seq.*); the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1701, *et. seq.*); the Lead-Based Paint Exposure Reduction Act (15 U.S.C. § 2681, *et. seq.*); the Safe Water Drinking Act Amendments of 1996 (42 U.S.C. § 300); the National Historic Preservation Act of 1966; the Mine Safety and Health Act (30 U.S.C. 801 et seq.); the Surface Mining Control and Reclamation Act (30 U.S.C. 1201 et seq.) and state and local counterparts of each of the foregoing.

"***Environmental Permit***" means any Permit required under any applicable Environmental Law.

"***Equity Securities***" means (i) with respect to any corporation, all shares, interests, participations or other equivalents of capital stock of such corporation (however designated), and any warrants, options or other rights to purchase or acquire any such capital stock and any securities convertible into or exchangeable or exercisable for any such capital stock, (ii) with respect to any partnership, all partnership interests, participations or other equivalents of partnership interests of such partnership (however designated), and any warrants, options or other rights to purchase or acquire any such partnership interests and any securities convertible into or exchangeable or exercisable for any such partnership interests and (iii) with respect to any limited liability company, all membership interests, participations or other equivalents of membership interests of such limited liability company (however designated), and any warrants, options or other rights to purchase or acquire any such membership interests and any securities convertible into or exchangeable or exercisable for any such membership interests.

"***ERISA***" means the Employee Retirement Income Security Act of 1974, as amended.

"***Exchange Arrangements***" shall have the meaning set forth in Exhibit E.

"***Excluded Assets***" shall have the meaning set forth in Section 3.2.

"***Excluded Payables***" means all accounts payable (trade and other) of any Seller on the Closing Date arising out of the Retained Liabilities or owing to any Affiliate of any Seller (other than trade payables owing to Silver Bell).

"***Excluded Receivables***" shall have the meaning set forth in Section 3.2(l).

"***Exon-Florio Provision***" shall have the meaning set forth in Section 8.3(d).

"***Final Arbiter***" shall have the meaning set forth in Section 4.4(d).

"***Financial Statements***" shall have the meaning set forth in Section 6.4.

"***First L/C***" shall have the meaning set forth in Section 4.2(a).

"***GAAP***" means generally accepted accounting principles as in effect from time to time in the United States.

"***Governmental Authority***" means any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, foreign or domestic, including any governmental authority, agency, department, board, commission or instrumentality of the United States or other country, any state, province, tribal authority or any political subdivision of any of the foregoing, and any tribunal, court, arbitrator(s) or other private adjudicator whose decisions are binding of competent jurisdiction, and shall include the Bankruptcy Court.

"***Grupo***" means Grupo Mexico S.A.B. de C.V. and its subsidiaries or Affiliates other than ASARCO and any subsidiary or affiliate owned or controlled by ASARCO.

"***Guarantor***" shall have the meaning set forth in the preamble hereto.

"***Guarantor Opinion***" means the opinion of counsel to Guarantor attached as Exhibit C-2 hereto, delivered to Sellers in connection with the execution and delivery of this Agreement.

"***Hayden Settlement Agreement***" means the Administrative Settlement Agreement and Order on Consent for Removal Action, U.S. EPA Region IX, CERCLA Docket No. 2008-09, and the Administrative Settlement Agreement and Order on Consent for Removal Action, U.S. EPA Region IX, CERCLA Docket No. 2008-13, by and among the U.S. Environmental Protection Agency, the Arizona Department of Environmental Quality and ASARCO.

"***Hazardous Materials***" means any substance, material, pollutant, contaminant, waste, or special waste, whether solid, liquid or gaseous, that is infectious, toxic, hazardous, explosive, corrosive, flammable or radioactive or which is defined, designated, listed, regulated or included in any Environmental Law, including asbestos or asbestos-containing material, petroleum or petroleum additive substances, polychlorinated biphenyls or sewage.

"***HSR Act***" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder.

"***Included Payables***" shall have the meaning set forth in Exhibit E hereto.

"***Included Receivables***" shall have the meaning set forth in Exhibit E hereto.

"***Inventory***" means the inventories of raw materials, in-process and finished products of the Business, including, supplies, materials and spare parts but excluding, to the extent owned by a Seller, materials provided to a Seller pursuant to Tolling Arrangements or Exchange Arrangements.

"***Inventory Amount***" shall have the meaning set forth in Exhibit E hereto.

"***Judgment Currency***" shall have the meaning set forth in Section 14.1(g).

"***Law***" means any federal, tribal, state or local or provincial law (including common law), statute, code, ordinance, rule, regulation, executive order, Order, administrative or judicial decision, judgment or decree or other requirement enacted, promulgated, issued or entered by a Governmental Authority.

"***Leasehold Deeds***" shall have the meaning set forth in Section 5.2(d).

"***Leasehold Property***" shall have the meaning set forth in Section 3.1(e)(i).

"***Legal Proceeding***" means any action, claim, suit, arbitration, inquiry, proceeding or investigation by or before any Governmental Authority of any nature, civil, criminal, regulatory or otherwise, in law or in equity.

"***Letters of Credit***" shall have the meaning set forth in Section 4.2(c).

"***Liabilities***" means any and all debts, losses, liabilities, claims (including claims as defined in the Bankruptcy Code), damages, demands under Section 524(g) of the Bankruptcy Code, expenses, fines, costs, royalties, proceedings, deficiencies or obligations (including those arising out of any Legal Proceeding, such as any settlement or compromise thereof or judgment or award therein), of any nature, whether known or unknown, absolute, accrued, contingent or otherwise and whether due or to become due, and whether or not resulting from third party claims, and any reasonable out-of-pocket costs and expenses (including reasonable legal counsels', accountants', or other fees and expenses incurred in defending any Legal Proceeding or in investigating any of the same or in asserting any rights hereunder).

"***Lien***" means any lien, pledge, mortgage, deed of trust, security interest, attachment, levy or other encumbrance affecting title.

"***Manipulative Breach***" means an intentional and willful material breach by ASARCO of its obligations under Sections 8.2(d) (but only as it relates to Purchased Assets other than Inventory or Included Receivables), 8.7(a), (b) and (d) or 8.10(b) and (d) that gives rise to a termination right pursuant to Section 13.1(j) and such act or omission giving rise to such

breach was performed with the intent to materially breach this Agreement and to prevent the Closing hereunder, as determined by the Bankruptcy Court, after notice and opportunity to be heard, which may be on an expedited basis.

"***Matching/Topping Right***" shall have the meaning set forth in Section 8.10(e).

"***Material Contracts***" shall have the meaning set forth in Section 6.8(a).

"***Mission Mine Settlement Agreement***" means that certain Settlement Agreement between the United States of America, ASARCO, the Tohono O'odham Nation, the San Xavier Allottee's Association, and the San Xavier District.

"***Mortgages***" shall have the meaning set forth in Section 5.3(k).

"***Negotiation Period***" shall have the meaning set forth in Section 4.4(b).

"***Non-Debtor Contracts***" shall have the meaning set forth in Section 3.1(e).

"***Non-Debtor Sellers***" shall have the meaning set forth in the preamble hereto.

"***Non-Target Properties***" means all real property that is not (i) a Real Property or (ii) a Silver Bell Property.

"***Non-Union Employees***" shall have the meaning set forth in Section 9.1(a).

"***Non-US Taxing Jurisdiction***" shall have the meaning set forth in Section 14.1(h).

"***Objection Date***" shall have the meaning set forth in Section 4.4(a).

"***Objection Notice***" shall have the meaning set forth in Section 4.4(a).

"***Obligations***" shall have the meaning set forth in Section 14.1(a).

"***Obligations Currency***" shall have the meaning set forth in Section 14.1(g).

"***Order***" means any final and non-appealable order, injunction, judgment, stipulation, decree, ruling, writ, assessment or arbitration award issued by a Governmental Authority or any legally binding and enforceable conciliation or settlement agreement with any Governmental Authority.

"***Ordinary Course of Business***" means the ordinary conduct of business of Sellers, taken as a whole, relating to the Business, either (i) consistent with past practice during the pendency of and, as applicable, taking into account the Bankruptcy Cases, or (ii) consistent with reasonably prudent management of the Business (as determined by the Board in its business judgment) in response to economic and industry conditions.

"***Organizational Documents***" means (i) in the case of any Person organized as a corporation, the certificate or articles of incorporation of such corporation (or, if applicable, the memorandum and articles of association of such corporation) and the bylaws of such corporation, (ii) in the case of any Person organized as a limited liability company, the certificate of formation or organization and the limited liability company agreement, operating agreement or regulations of such limited liability company, (iii) in the case of any Person organized as a limited partnership, the certificate of limited partnership and partnership agreement of such limited partnership and (iv) in the case of any other Person, all constitutive or organizational documents of such Person which address all matters relating to the business and affairs of such Person similar to the matters addressed by the documents referred to in clauses (i) through (iii) above in the case of Persons organized as corporations, limited liability companies or limited partnerships.

"***Original PSA***" shall have the meaning set forth in the recitals hereto.

"***OSHA***" means the Occupational Safety and Health Act of 1970, as amended.

"***Patent Assignment***" shall have the meaning set forth in Section 5.2(j).

"***Patents***" means issued United States and foreign patents and pending patent applications.

"***Pension Plan***" shall have the meaning set forth in Section 6.10(b).

"***Periodic Taxes***" shall have the meaning set forth in Section 10.2.

"***Permits***" means any approvals, authorizations, consents, licenses, permits or certificates.

"***Permitted Liens***" means (i) all Liens set forth in Section 1.1A of the Seller Disclosure Schedule, (ii) statutory Liens for current taxes, assessments or other governmental charges not yet delinquent or the amount or validity of which is being contested in good faith by appropriate proceedings, to the extent that a reserve has been established therefor or such amount has been deposited with the appropriate Governmental Authority or other adjudicating Person, (iii) mechanic's, materialman's, warehouseman's, carrier's and similar liens for labor, materials or supplies, as would not reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect, (iv) purchase money security interests arising in the Ordinary Course of Business, (v) any Lien arising out of a Tolling Arrangement or Exchange Arrangement, to the extent not arising out of a breach of such Tolling Arrangement or Exchange Arrangement, (vi) rights of landlords in respect of any Leasehold Property where the applicable lease is not in default, (vii) any Lien that, pursuant to Section 363(f) of the Bankruptcy Code, will be released upon entry of the Plan Confirmation Order; and (viii) such other Liens as would not reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect.

"***Person***" means any natural person, corporation, limited partnership, limited liability company, general partnership, joint stock company, joint venture, association, company,

trust, bank, trust company, land trust, business trust or other organization, whether or not a legal entity, and any Governmental Authority.

"***Plan***" means the plan of reorganization prepared by ASARCO and filed after the date hereof with the Bankruptcy Court as (or intended to be) confirmed by the Plan Confirmation Order that contains terms and conditions, that to the extent they relate to this Agreement, Purchaser, Guarantor and the transactions contemplated hereunder, are reasonably satisfactory to Purchaser.

"***Plan Confirmation Order***" means an order of the Bankruptcy Court or the United States District Court that has jurisdiction over the Bankruptcy Cases, that, to the extent the order relates to this Agreement, Purchaser (and Guarantor) or the transactions contemplated hereunder is reasonably satisfactory to Purchaser, and in a form acceptable to Sellers in all respects, approving this Agreement and all of the terms and conditions hereof, and approving and authorizing Sellers to consummate the transactions contemplated hereby, including the transfer of the Purchased Assets to Purchaser. The Plan Confirmation Order shall find and provide, among other things, that (i) the transfer of the Purchased Assets by Sellers to Purchaser pursuant to this Agreement (A) will be legal, valid and effective transfers of the Purchased Assets; (B) will vest Purchaser with all right, title and interest of Sellers in and to the Purchased Assets, free and clear of any Liens, claims, interests and encumbrances, other than Permitted Liens and the Assumed Liabilities, pursuant to Section 363(f) of the Bankruptcy Code (including any right of setoff, recoupment, netting or deduction); (C) constitute transfers for reasonably equivalent value and fair consideration under the Bankruptcy Code and under Applicable Law; and (D) qualifies for exemption under section 1146(c) of the Bankruptcy Code such that Transaction Taxes will be exempted pursuant to, and to the fullest extent allowed by, Section 1146(c) of the Bankruptcy Code; (ii) the transactions contemplated by this Agreement are undertaken by Purchaser and ASARCO at arm's length, without collusion and in good faith within the meaning of Section 363(m) of the Bankruptcy Code; (iii) ASARCO has complied with the notice requirements of Rules 2002, 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure and any applicable rules of the Bankruptcy Court with respect to the transactions contemplated by this Agreement, the Ancillary Agreements and by all other agreements, documents and instruments contemplated in connection with this Agreement; (iv) ASARCO has satisfied all of the requirements of, and are authorized pursuant to, Section 363(b) and (f) of the Bankruptcy Code to enter into this Agreement and to consummate the transactions contemplated hereby; and (v) present and future asbestos claims and demands are enjoined from being asserted against ASARCO; ASARCO's officers, directors and Subsidiaries; Purchaser, Guarantor and the Purchased Assets (and against any officer, director, Affiliate or assets of Purchaser or Guarantor) pursuant to a channeling injunction issued in compliance with Section 524(g) of the Bankruptcy Code.

"***Pre-Petition Contracts***" shall have the meaning set forth in Section 3.1(e).

"***Post-Petition Contracts***" shall have the meaning set forth in Section 3.1(e).

"***Proprietary Software***" shall have the meaning set forth in Section 3.1(i).

"***Proration Periods***" shall have the meaning set forth in Section 10.2.

"***Purchase Price***" shall have the meaning set forth in Section 4.1.

"***Purchased Assets***" shall have the meaning set forth in Section 3.1.

"***Purchased Real Property***" shall have the meaning set forth in Section 3.1(c).

"***Purchaser***" shall have the meaning set forth in the preamble hereto.

"***Purchaser Bad Faith Event***" shall have the meaning set forth in Section 13.2(c).

"***Purchaser Breach***" shall have the meaning set forth in Section 4.2(e).

"***Purchaser Claims***" shall have the meaning set forth in Section 2.1(b).

"***Purchaser Opinion***" means an opinion of counsel to Purchaser delivered to Sellers in connection with the execution and delivery of this Agreement attached as Exhibit C-1 hereto.

"***Purchaser Promissory Note***" means a promissory note in the principal amount of $600,000,000.00 (as adjusted pursuant to Section 4.3(c) herein and Section 2.7 therein) issued at Closing by Purchaser to ASARCO Administration Company LLC (or such other Person as ASARCO may designate in accordance with the Plan) in the form of Exhibit D hereto.

"***Purchaser Released Parties***" shall have the meaning set forth in Section 2.1(a).

"***Purchaser Releasing Party***" shall have the meaning set forth in Section 2.1(b).

"***Qualified Bank***" means ABN AMRO Bank N.V., Chicago or any commercial bank with a rating of at least A+ (S&P) and Aa2 (Moody's) (except that if a bank is only rated by either S&P or Moody's and not both, such bank must have the minimum rating by either S&P or Moody's, as applicable) that is organized or domiciled in the United States of America and that is reasonably satisfactory to Sellers.

"***Real Property***" shall have the meaning set forth in Section 3.1(e)(i).

"***Release***" means disposing, discharging, injecting, spilling, leaking, leaching, dumping, emitting, escaping, emptying, seeping, placing and the like into or upon any land or water or air or otherwise entering into the environment.

"***Release Conditions***" shall have the meaning set forth in Section 2.1(c).

"***Remedial Action***" means all action to (a) investigate, clean up, remove, treat or handle in any other way Hazardous Materials in the environment; (b) restore or reclaim the environment or natural resources; (c) prevent the Release of Hazardous Materials so that they do not migrate, endanger or threaten to endanger public health or the environment; or (d) perform remedial investigations, feasibility studies, corrective actions, closures and post-remedial or post-closure studies, investigations, operations, maintenance and monitoring on, about or in any Real Property.

"***Representatives***" shall have the meaning set forth in Section 8.10(a)(ii).

"***Retained Books and Records***" shall have the meaning set forth in the definition of Books and Records.

"***Retained Liabilities***" shall have the meaning set forth in Section 3.4.

"***Santa Cruz***" shall have the meaning set forth in the preamble hereto.

"***Santa Cruz JV Agreement***" means the Santa Cruz Joint Venture Agreement, dated as of July 1, 1977, between Freeport Copper Company and Santa Cruz, as amended, and as modified by that certain Modification Agreement, dated as of April 11, 1990, among FCC, Freeport-McMoRan Inc., ASARCO Santa Cruz and ASARCO Incorporated, as further modified and amended.

"***Second L/C***" shall have the meaning set forth in Section 4.2(b).

"***Securities Act***" shall have the meaning set forth in Section 7.5.

"***Security Agreement***" means the Security Agreement, dated as of the Closing Date, between Purchaser and ASARCO substantially in the form of Exhibit L hereto.

"***Seller Claims***" shall have the meaning set forth in Section 2.1(a).

"***Seller Data Room***" means the online IntraLinks data room set up by Sellers.

"***Seller Disclosure Schedule***" means the Disclosure Schedule delivered to Purchaser pursuant to this Agreement.

"***Seller Employee Benefit Plan***" means each "employee pension benefit plan" (as defined in Section 3(2) of ERISA), "employee welfare benefit plan" (as defined in Section 3(1) of ERISA), stock option, stock purchase, stock appreciation right, incentive, deferred compensation plan or arrangement, and other employee fringe benefit plan or arrangement maintained, contributed to or required to be maintained or contributed to by Sellers or with respect to which any of Sellers or their Affiliates have any obligation or liability.

"***Seller Material Adverse Effect***" means (a) a material adverse effect on the financial condition of the Business (to the extent related to the Purchased Assets and Assumed Liabilities) or the condition of the Purchased Assets, taken as a whole, or (b) any change, circumstance or event that, individually or in the aggregate, would materially hinder or materially and adversely affect Sellers' ability to consummate the transactions contemplated by this Agreement, excluding, in each case, any such effect, change, circumstance or event attributable to or resulting from (i) the announcement, pendency or consummation of this Agreement, the sale of the Purchased Assets or any other action by Sellers or its Affiliates required or expressly contemplated by this Agreement, (ii) the conversion or dismissal of any Bankruptcy Case or the filing of additional petitions under Chapter 11 of the Bankruptcy Code by or involving any of Sellers' Affiliates, (iii) any outbreak of hostility, terrorist activities or war, (iv) any changes in general economic (including changes in the securities markets, commodity

prices or foreign exchange rates), political or regulatory conditions generally, (v) any changes in economic, political or regulatory conditions in the mining or smelting industries or other industries in which Sellers operate, (vi) any change in Applicable Law or accounting regulations or interpretations thereof by any court, accounting regulatory authority or other Governmental Authority, (vii) any action or omission of any Seller taken in accordance with the terms of this Agreement or with the prior written consent of Purchaser, (viii) any failure by any Seller to meet any projections, budgets, plans or forecasts (but not excluding the underlying cause of such failure to meet projections, budgets, plans or forecasts) or (ix) any expenses incurred by any Seller in the Ordinary Course of Business or in connection with this Agreement, the Ancillary Agreements or the transactions contemplated hereby or thereby; *provided, however,* that in the case of clauses (iv), (v) and (vi), such changes do not affect Sellers in a materially disproportionate manner compared to other businesses conducting a business substantially similar to the Business of Sellers. Any determination as to whether any condition or other matter has a Seller Material Adverse Effect shall be made only after taking into account all proceeds or amounts that are expected to be received by Purchaser with respect to such condition or matter from insurance policies.

"***Seller Released Parties***" shall have the meaning set forth in Section 2.1(b).

"***Seller Releasing Party***" shall have the meaning set forth in Section 2.1(a).

"***Sellers***" shall have the meaning set forth in the preamble hereto.

"***Sellers' Accountants***" means Keegan, Linscott & Kenon, P.C., Grant Thornton LLP, or such other firm of independent accountants that ASARCO's Board of Directors may approve and appoint to audit Sellers' financial statements.

"***Sellers' Knowledge***" means the actual knowledge, without any requirement of inquiry or investigation, of any of the individuals listed in Section 1.1B of the Seller Disclosure Schedule.

"***Silver Bell***" means Silver Bell Mining, L.L.C., a Delaware limited liability company.

"***Silver Bell Interests***" shall have the meaning set forth in Section 3.1(h).

"***Silver Bell LLC Agreement***" means that certain Membership Interest Agreement, dated February 5, 1996, among Ginrei, Inc., MSB Copper Corp. and ARSB, as amended, as located in section 2.05.04 of the Seller Data Room.

"***Silver Bell Property***" means all real property owned or leased by Silver Bell.

"***Stand-Alone Plan***" means a plan of reorganization sponsored by a Person other than Purchaser or Guarantor which the Board of Directors of ASARCO determines (after consultation with its legal and financial advisors and the Creditor Constituents) in good faith would, if consummated and taking into account all factors deemed relevant by the Board of Directors of ASARCO, be more favorable to ASARCO and its stakeholders than the transactions

contemplated by this Agreement; *provided, however*, that, for purposes of the stand-alone plan proposal only, any costs or benefits of any claims which may be made against Purchaser or Guarantor under the Original PSA shall be excluded from the analysis of such stand-alone plan.

"***Sterlite Agreed Order***" shall have the meaning set forth in Section 2.2.

"***Sterlite Settlement Motion***" shall have the meaning set forth in Section 2.2.

"***Subsidiary***" means, with respect to any Person, any corporation, limited liability company, joint venture or partnership of which such Person (a) beneficially owns, either directly or indirectly, more than 50% of (i) the total combined voting power of all classes of voting securities of such entity, (ii) the total combined equity interests, or (iii) the capital or profit interests, in the case of a partnership; or (b) otherwise has the power to vote or to direct the voting of sufficient securities to elect a majority of the board of directors or similar governing body.

"***Superior Proposal***" means a bona fide written Acquisition Proposal that the Board of Directors of ASARCO determines (after consultation with its legal and financial advisors) in good faith (i) is reasonably likely to be consummated in a timely manner, taking into account all factors deemed relevant by the Board of Directors of ASARCO (including all legal, financial and regulatory aspects of the proposal and the Person making the proposal), (ii) if consummated would, taking into account all factors deemed relevant by the Board of Directors of ASARCO (including the amounts that would be owed to Purchaser under Section 13.2(b)(v) (if any) and if, and only to the extent, this Agreement has not been terminated prior to the execution of a Definitive Agreement in respect of such Acquisition Proposal, the costs reasonably likely to be incurred in connection with the negotiation of an Acquisition Proposal), result in a transaction more favorable to ASARCO and its stakeholders than the transactions contemplated by this Agreement and (iii) provides a Deemed Value to ASARCO and its bankruptcy estate that exceeds, by the Superior Proposal Threshold, the Deemed Value of this Agreement and the transactions contemplated hereby; *provided, however*, that, in the case of each of the foregoing clauses, for purposes of the Acquisition Proposal only, any costs or benefits of any claims which may be made against Purchaser or Guarantor under the Original PSA shall be excluded from the analysis of such Acquisition Proposal.

"***Superior Proposal Threshold***" means $25,000,000 plus the amount that would be owed to Purchaser under Section 13.2(b)(v) (if anything) following termination of this Agreement.

"***Suppliers***" shall have the meaning set forth in Section 6.9.

"***Survey***" shall have the meaning set forth in Section 8.8.

"***Tax***" means any (a) federal, state, provincial, territorial, municipal, local or foreign income, profits, franchise, gross receipts, customs, duties, net worth, sales, use, goods and services, gross receipts, withholding, value added, ad valorem, employment, social security, disability, occupation, pension, real property, personal property (tangible and intangible), stamp, duty, stamp duty, transfer, conveyance, severance, production, excise and other taxes,

withholdings, duties, levies, imposts and other similar charges and assessments (including any and all fines, penalties and additions attributable to or otherwise imposed on or with respect to any such taxes, charges, fees, levies or other assessments, and interest thereon) imposed by or on behalf of any Taxing Authority, and (b) liability for the payment of any Tax (i) as a result of being a member of a consolidated, combined, unitary or affiliated group that includes any other Person, (ii) by reason of any obligation to indemnify or otherwise assume or succeed to the liability of any other Person for Taxes, including, a Tax sharing, Tax indemnity or similar agreement, or (iii) by reason of transferee or successor liability.

"***Tax Return***" means any return, report, declaration, election, statement, information return or other document required to be filed with any Taxing Authority with respect to Taxes, including any amendments thereof.

"***Taxing Authority***" means any Governmental Authority exercising any authority to impose, regulate, levy, assess or administer the imposition of any Tax.

"***Termination Date***" shall have the meaning set forth in Section 13.1(c).

"***Third L/C***" shall have the meaning set forth in Section 4.2(c).

"***Title Company***" shall have the meaning set forth in Section 8.8.

"***Title Policy***" shall have the meaning set forth in Section 8.8.

"***Title Report***" shall have the meaning set forth in Section 8.8.

"***Tolling Arrangements***" means those commercial arrangements between ASARCO and certain third parties pursuant to which ASARCO agrees to receive raw materials from such third parties for toll conversion and return certain finished products to such third parties.

"***Trademark Assignment***" shall have the meaning set forth in Section 5.2(k).

"***Trademarks***" means United States, state and foreign trademarks, service marks, trade names and logos and all applications to register the foregoing.

"***Transaction Taxes***" shall have the meaning set forth in Section 10.1.

"***Transferred Employees***" shall have the meaning set forth in Section 9.1(a).

"***Transition Services Agreement***" means the Transition Services Agreement, dated as of the Closing Date, between Purchaser and ASARCO, to be negotiated in accordance with Section 8.14, which will include, among other things, the services and terms described in Exhibit K hereto.

"***Union Employees***" shall have the meaning set forth in Section 9.1(a).

"***Unions***" means those unions listed in Section 11.3 of the Seller Disclosure Schedule.

"***Unpaid Cure Claims Amount***" means, with respect to any Assumption-Pending Pre-Petition Contract, the aggregate amount of any Cure Claims that remains unpaid as of the Closing Date for any reason, provided that if such amount remains disputed as of such date, the "Unpaid Cure Claims Amount" shall be such amount as is asserted by the non-debtor counterparty to such Contract.

"***WARN Act***" shall have the meaning set forth in Section 9.9.

1.2 *Other Terms.* Other terms may be defined elsewhere in this Agreement and, unless otherwise indicated, shall have such meaning throughout this Agreement.

1.3 *Certain Rules of Construction.* Whenever the context may require, any pronoun used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa. In addition, as used in this Agreement, unless otherwise provided to the contrary, (a) all references to days, months or years shall be deemed references to calendar days, months or years or (b) any reference to a "Section," "Article" or "Exhibit" shall be deemed to refer to a section or article of this Agreement, a Disclosure Schedule or an exhibit attached to this Agreement. Unless the context otherwise requires, the words "hereof," "herein," and "hereunder" and words of similar import referring to this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. The words "include," "includes," or "including" shall be deemed to be followed by the words "without limitation." Unless otherwise specifically provided for herein, the term "or" shall not be deemed to be exclusive. All references to dollar amounts are to the lawful currency of the United States of America. A reference to any Law shall include all modifications, amendments and re-enactments thereof.

ARTICLE II
SETTLEMENT AND RELEASE

2.1 *Settlement and Release.*

(a) Effective only if and when a Release Condition occurs, each Seller, on behalf of itself and its successors, assigns, Representatives and Subsidiaries (each, a "***Seller Releasing Party***"), will fully and forever irrevocably and unconditionally release and discharge each of Purchaser and Guarantor and its successors, permitted assigns, Representatives and Affiliates (each a "***Purchaser Released Party***" and collectively, "***Purchaser Released Parties***") from any and all Liabilities both at law and in equity which a Seller Releasing Party has, has ever had, or may hereafter have against any Purchaser Released Party arising out of the Original PSA (collectively, the "***Seller Claims***"). No release is made by any Seller Releasing Party unless and until a Release Condition occurs and unless and until a Release Condition occurs all of the Seller Claims against each of Purchaser and Guarantor shall remain fully enforceable. If no Release Condition occurs, the release contained in this Section 2.1(a) shall not become operational or effective.

(b) Effective only if and when a Release Condition occurs, each of Purchaser and Guarantor, on behalf of itself and its successors, assigns, Representatives and Subsidiaries (each, a "***Purchaser Releasing Party***"), will fully and forever irrevocably and unconditionally release and discharge each Seller and its successors, assigns, Representatives and Affiliates (each a "***Seller Released Party***" and collectively, "***Seller Released Parties***") from any and all Liabilities both at law and in equity which a Purchaser Releasing Party has, has ever had, or may hereafter have against any Seller Released Party arising out of the Original PSA (collectively, "***Purchaser Claims***"). No release is made by any Purchaser Releasing Party unless and until a Release Condition occurs and unless and until a Release Condition occurs all of the Purchaser Claims against Sellers shall remain fully enforceable. If no Release Condition occurs, the release contained in this Section 2.1(b) shall not become operational or effective.

(c) For purposes of this Agreement, a "***Release Condition***" means the occurrence after the entry of the Sterlite Agreed Order by the Bankruptcy Court of any of the following: (i) the Closing hereunder prior to or on the Termination Date; (ii) both (A) the termination of this Agreement pursuant to Section 13.1(d) due to the Bankruptcy Court's approval of a Superior Proposal that is evidenced by a Definitive Agreement duly executed by all parties thereto and (B) subsequent to such termination, the consummation by ASARCO and a Person other than Purchaser or Guarantor (or any of their respective Affiliates) of such Superior Proposal; (iii) both (A) the termination of this Agreement pursuant to Section 13.1(e) due to the Bankruptcy Court's approval of a Stand-Alone Plan approved and supported by the Board of Directors of ASARCO and (B) subsequent to such termination, the consummation of such Stand-Alone Plan; (iv) both (A) the termination of this Agreement pursuant to Section 13.1(b), (c), (f), (g), (h)(ii), (j) or (m), and (B) subsequent to such termination, the consummation by ASARCO and a Person other than Purchaser or Guarantor (or any of their respective Affiliates) of a Superior Proposal; *provided*, that a Definitive Agreement for such Superior Proposal is duly executed by all parties thereto no later than the 180th day following such termination; or (v) the termination of this Agreement by Purchaser pursuant to Section 13.1(j) upon the occurrence of a Manipulative Breach; *provided*, however, that, with respect to the foregoing clauses (ii), (iii), (iv) and (v), in no event shall a Release Condition be deemed to have occurred if any Purchaser Bad Faith Event has occurred. For purposes of this Article II and Section 13.2(b)(v), the Board of Directors of ASARCO shall make its determination of whether or not an Acquisition Proposal is a Superior Proposal at the time the Definitive Agreement for such Acquisition Proposal is executed by all parties thereto. For avoidance of doubt, no Release Condition will occur if the Sterlite Agreed Order is not entered by the Bankruptcy Court.

(d) Notwithstanding anything to the contrary contained herein, (i) Sellers agree that if this Agreement has not been terminated, they shall not, and they shall cause the other Seller Releasing Parties not to, commence any Legal Proceeding based on any Seller Claims and (ii) Purchaser and Guarantor each agree that if this Agreement has not been terminated, neither shall, and each shall cause the other Purchaser Releasing Parties not to, commence any Legal Proceeding based on any Purchaser Claims.

2.2 *Bankruptcy Court Approval of Settlement and Release.* ASARCO shall file with the Bankruptcy Court, as soon as practicable following the execution of this Agreement but in no event later than five Business Days following the Effective Date, a motion pursuant to Rule 9019

of the Federal Rules of Bankruptcy Procedure in substantially the form of Exhibit M-1 hereto (the "***Sterlite Settlement Motion***"), and supporting papers seeking the entry of an agreed order of the Bankruptcy Court in substantially the form of Exhibit M-2 hereto (the "***Sterlite Agreed Order***") approving the terms of this Article II, the Superior Proposal Threshold, Sections 8.10(b), (c), (e) and (f), and Section 13.2(b)(v). Sellers shall use their commercially reasonable efforts to have the Sterlite Agreed Order entered as soon as practicable following the filing of the Sterlite Settlement Motion.

2.3 *Reservation of Rights.* Except as set forth in this Article II, Purchaser, Guarantor and Sellers reserve any and all rights and remedies existing at law or in equity or arising out of or relating to the Original PSA, including those contained in Section 12.2 thereof, or otherwise, and except as set forth in this Article II nothing herein shall be construed as or constitute a waiver or release of any such rights or remedies.

ARTICLE III
SALE AND PURCHASE OF THE PURCHASED ASSETS

3.1 *Purchased Assets.* Upon the terms and subject to the conditions contained herein, at the Closing, Sellers shall sell, convey, transfer, assign and deliver to Purchaser, and Purchaser shall purchase and acquire from Sellers, free and clear of all Liens (other than Permitted Liens), all of Sellers' right, title and interest in and to all properties and assets, whether tangible or intangible, used or held for use by Sellers in the conduct of the Business (other than the Excluded Assets) (the "***Purchased Assets***"). Without limiting the generality of the foregoing, the Purchased Assets shall include all of Sellers' right, title and interest in and to the following to the extent used or held for use in the conduct of the Business:

(a) all Inventory;

(b) all machinery, equipment, fixtures, furniture, computers, tools, parts, supplies and other tangible personal property used, or held for use, in connection with the operation of the Business, including the equipment and machinery listed in Section 3.1(b) of the Seller Disclosure Schedule;

(c) the real property identified in Section 3.1(c) of the Seller Disclosure Schedule (***"Purchased Real Property"***), including, all mines, dumps, impoundments, leach pads, tailings, buildings, plants, warehouses, railroad tracks, rights of way, easements, facilities and other improvements and fixtures thereon and appurtenances thereto and all mining rights, mineral rights, mineral claims, riparian rights, water rights, water claims, water allocations and water delivery contracts associated therewith;

(d) all accounts receivable of Sellers identified on the Books and Records as of the close of business on the Closing Date other than any Excluded Receivables;

(e) subject to Section 3.2(j), all Contracts (A) that were entered into prior to the filing of the Bankruptcy Cases to which ASARCO is a party that (i) have been assumed by ASARCO prior to the date hereof (the "***Assumed Pre-Petition Contracts***") or (ii) are assumed by ASARCO in accordance with Section 3.5 (Contracts referred to in (i) and (ii) collectively

referred to herein as, the "***Pre-Petition Contracts***"), (B) that have been entered into by ASARCO subsequent to the filing by ASARCO of its voluntary petition for relief under Chapter 11 of the Bankruptcy Code, but if entered into after the date hereof, solely to the extent entered into in the Ordinary Course of Business (the "***Post-Petition Contracts***"), and (C) to which any Non-Debtor Seller is a party on the date hereof or entered into after the date hereof in the Ordinary Course of Business (the "***Non-Debtor Contracts***", together with the Pre-Petition Contracts and the Post-Petition Contracts, the "***Assumed Contracts***"), which may include (to the extent assignable):

(i) all leases, subleases, licenses or other agreements relating to the occupancy of real property identified in Section 3.1(e)(i) of the Seller Disclosure Schedule, together with all of Sellers' right, title and interest in and to all fixtures and improvements located thereon and all appurtenances, rights, easements, rights-of-way and other interests incidental thereto, leased, subleased, licensed or occupied by Sellers and used or held for use in the Business (the "***Leasehold Property***," the Leasehold Property and the Purchased Real Property collectively the "***Real Property***");

(ii) all leases of equipment, fixtures, furniture, computers, tools, parts, supplies and other tangible personal property leased by Sellers and used or held for use in the Business and identified in Section 3.1(e)(ii) of the Seller Disclosure Schedule;

(iii) all Contracts with any Transferred Employees, which for clarification shall not include the Collective Bargaining Agreements which are expressly excluded from Assumed Contracts;

(iv) all Contracts through which any computer software system or program is licensed to any Seller;

(v) all Contracts governing Tolling Arrangements with other Persons;

(vi) all Contracts with any customer of any Seller;

(vii) all Contracts with any supplier of any Seller;

(viii) the insurance policies identified in Section 3.1(e)(viii) of the Seller Disclosure Schedule;

(ix) certain Seller Employee Benefit Plans as and to the extent provided in Article IX, and the assets related thereto;

(x) all confidentiality agreements entered into between ASARCO and any prospective bidder in connection with the transactions contemplated hereunder;

(xi) the leases and other assets assumed pursuant to the Mission Mine Settlement Agreement and the Order of the Bankruptcy Court entered on April 9, 2008 approving the Mission Mine Settlement Agreement, including the Access

Agreement executed by certain of the parties to the Mission Mine Settlement Agreement on April 13, 2007 and corresponding Tribal Council Resolution numbers 07-192 and 07-562, and two settlement agreements related to water rights issues in Arizona and the Southern Arizona Water Rights Settlement Agreement that were approved by the Bankruptcy Court in the Order entered under Docket No. 2320;

(xii) all rights of ASARCO under the Hayden Settlement Agreement and the Mission Mine Settlement Agreement, including in respect of those certain trusts created pursuant thereto;

(xiii) all leases of real property identified in Section 3.1(e)(xiii) of the Seller Disclosure Schedule pursuant to which any Seller is a lessor of any Purchased Real Property;

(xiv) the royalty agreements identified in Section 3.1(e)(xiv) of the Seller Disclosure Schedule;

(xv) the other Contracts identified in Section 3.1(e)(xv) of the Seller Disclosure Schedule;

(xvi) Santa Cruz JV Agreement and, subject to Section 3.6, Silver Bell LLC Agreement; and

(xvii) ASARCO's right, title and interest in and to the Agreement among Noranda Exploration, Inc., Four Metals Mining Company and ASARCO, dated July 6, 1978, entered into in connection with the exploration venture referred to as "Ventura."

(f) all prepaid rentals, deposits, security deposits, advances and other prepaid expenses of any Seller other than those paid in connection with or relating to any Excluded Asset;

(g) all motor vehicles identified in Section 3.1(g) of the Seller Disclosure Schedule;

(h) subject to Section 3.6, the limited liability company interests of Silver Bell owned by any Seller ("***Silver Bell Interests***");

(i) all copyrights, including copyrights in software, and all software and associated documentation developed or owned by Sellers for use in the Business (the "***Proprietary Software***"), including all goodwill associated with such Proprietary Software and all rights of Sellers to sue for and receive damages or other relief in respect of any past infringement or other violation of any rights thereto;

(j) all Patents identified in Section 3.1(j) of the Seller Disclosure Schedule, including all goodwill associated with such Patents and all rights of Sellers to sue for and receive

damages or other relief in respect of any past infringement or other violation of any rights thereto;

(k) all Trademarks identified in Section 3.1(k) of the Seller Disclosure Schedule (including the name "ASARCO"), including all goodwill associated with such Trademarks and all rights of Sellers to sue for and receive damages or other relief in respect of any past infringement or other violation of any rights thereto;

(l) all Books and Records;

(m) all Permits used or held for use in the operation of the Business and listed in Section 3.1(m) of the Seller Disclosure Schedule, in each case to the extent the same are assignable;

(n) rights to any Tax refunds or credits for Taxes related to the ownership or operation of the Business or the Purchased Assets and that are attributable to any taxable periods (or portions thereof) beginning after the Closing Date or that relate to the portion of Transaction Taxes paid by Purchaser pursuant to Section 10.1 if (and only if) Sellers have not borne any Transaction Taxes or Sellers have received refunds or credits of all Transaction Taxes borne by them pursuant to Section 10.1;

(o) all patented and unpatented mining claims identified in Section 3.1(o) of the Seller Disclosure Schedule; and

(p) all rights and claims (whether contingent or absolute, matured or unmatured and whether in tort, contract or otherwise) against any Person relating to the adversary proceedings listed in Section 3.1(p) of the Seller Disclosure Schedule.

3.2 *Excluded Assets*. Notwithstanding the provisions of Section 3.1 to the contrary, the properties, assets and rights of any Seller described below are expressly excluded from the transactions contemplated by this Agreement and are not included in the Purchased Assets (the "***Excluded Assets***"):

(a) all of Sellers' cash and cash equivalents, on hand or in banks, certificates of deposit, bank or savings and loan accounts and U.S. government securities of any kind or nature on the Closing (collectively, "***Cash***");

(b) rights to any Tax refunds or credits for Taxes (including credits against post-Closing Taxes) related to the ownership or operation of the Business or the Purchased Assets and that are attributable to any taxable periods (or portions thereof) ending on or prior to the Closing Date but excluding any Tax refunds or credits for Taxes relating to the portion of Transaction Taxes paid by Purchaser pursuant to Section 10.1 if (and only if) Sellers have not borne any Transaction Taxes or Sellers have received refunds or credits of all Transaction Taxes borne by them pursuant to Section 10.1;

(c) all Equity Securities (i) representing ownership in Sellers and (ii) listed in Section 3.2(c) of the Seller Disclosure Schedule and, in the case of each of the entities listed in

Section 3.2(c) of the Seller Disclosure Schedule, all right, title and interest of any such entities in their respective assets, claims and causes of action, property or business;

(d) all insurance policies except those set forth in Section 3.1(e)(viii) of the Seller Disclosure Schedule;

(e) all rights, claims, causes of action, rights of recovery and rights of set-off, recoupment or counterclaim of any kind arising under the Bankruptcy Code or applicable bankruptcy law, including but not limited to claims against any Person relating to the adversary proceedings listed in Section 3.2(e) of the Seller Disclosure Schedule;

(f) all rights, claims, causes of action, rights of recovery and rights of set-off of any kind against current or former directors, officers or other employees of, or agents, accountants or other advisors of or to, any Seller or any Affiliate of any Seller;

(g) the real property listed in Section 3.2(g) of the Seller Disclosure Schedule including, all mines, dumps, impoundments, leach pads, tailings, equipment, vehicles, personal property, buildings, plants, warehouses, railroad tracks, rights of way, easements, facilities and other improvements and fixtures thereon and appurtenances thereto, all mining and mineral rights associated therewith (whether pursuant to patented or unpatented mining claims, mineral leases or otherwise), and any leases or subleases thereto or by any Seller and all Permits to the extent relating thereto;

(h) all rights of ASARCO under, including in respect of that certain trust created pursuant to, the Consent Decree entered in *United States v. ASARCO Inc., et al.*, Civil Action No. 02-2079, filed in the United States District Court for the District of Arizona;

(i) all rights of any Seller under this Agreement, the Ancillary Agreements and all other agreements, documents and instruments contemplated in connection with this Agreement;

(j) the following Contracts:

(i) all Contracts related to the Bonds;

(ii) the Collective Bargaining Agreements;

(iii) all Seller Employee Benefit Plans, and the assets related thereto, except as and to the extent provided in Article IX;

(iv) all Contracts between any Seller on the one hand and any Affiliate of any Seller on the other, other than contracts solely between or among Sellers;

(v) the Contracts listed in Section 3.2(j) of the Seller Disclosure Schedule;

(k) the deposits and prepaid expenses related to the Contracts described in Section 3.2(j) or any other asset described in this Section 3.2;

(l) all rights, if any, of ASARCO in and to (i) the two promissory notes from Americas Mining Corporation, due October 31, 2009 and May 31, 2010, respectively, in the aggregate original principal amount of $223,250,000, (ii) all accounts receivable (trade and other) of any Seller arising out of or in connection with any item described in this Section 3.2 and (iii) all accounts receivable and any other rights to payment owing from any Affiliate of any Seller (other than trade accounts receivable owing from Silver Bell) (collectively, the "***Excluded Receivables***");

(m) all Retained Books and Records; and

(n) except as described in Section 3.1(p), all rights, claims, causes of action, rights of recovery and rights of set-off, recoupment or counterclaim of any kind against any person (whether contingent or absolute, matured or unmatured and whether in tort, contract or otherwise) (i) relating to the assets, properties, business or operations of any Seller arising out of events occurring prior to the Closing Date except to the extent arising out of (A) the operation of the Business in the Ordinary Course of Business and (B) the Purchased Assets or Assumed Liabilities, but not including any such rights described in Section 3.2(e) or clauses (ii) and (iii) of this Section 3.2(n), (ii) which may arise in connection with discharge by Sellers of the Retained Liabilities, including all rights and claims, (iii) relating to the adversary proceedings listed in Section 3.2(n) of the Seller Disclosure Schedule, or (iv) against Grupo.

3.3 *Assumed Liabilities.* From and after the Closing, Purchaser shall assume, pay, perform and discharge when due, and Purchaser acknowledges that it shall have no recourse from Sellers in respect of, and further that Purchaser 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 following Liabilities (the "***Assumed Liabilities***"):

(a) all Liabilities of any and all Sellers under or with respect to the Assumed Contracts (other than Cure Claims);

(b) all amounts due and payable pursuant to all of the accounts payable (trade and other) of Sellers on the Books and Records as of the close of business on the Closing Date (other than the Excluded Payables);

(c) all Liabilities (i) arising on or after the Closing Date with respect to any Transferred Employee or any Seller Employee Benefit Plan (as and to the extent such Seller Employee Benefit Plan is being assumed pursuant to Article IX) or (ii) that are allocated to Purchaser pursuant to Article IX or (iii) that are agreed to between Purchaser and the respective Union;

(d) all Liabilities with respect to Taxes that are assumed by, or allocated to, Purchaser pursuant to Article X, including, without limitation, the portion of Transaction Taxes and Periodic Taxes for which Purchaser is liable under Sections 10.1 and 10.2;

(e) except as provided in Sections 3.4(f), (g) and (h), 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 (the "***Assumed Environmental Liabilities***");

(f) all Liabilities of any and all Sellers under or with respect to the Permits (to the extent related to the Purchased Assets); and

(g) except as described in Sections 3.4(a) and (c), all Liabilities arising on or after the Closing Date out of the operation of the Business or the ownership of the Purchased Assets, including Liabilities in respect of Asset Retirement Obligations.

3.4 *Retained Liabilities*. Purchaser shall not assume or be obligated to pay, perform or otherwise discharge any Liabilities of Sellers, other than those that are expressly assumed by Purchaser hereunder as Assumed Liabilities (collectively, the "***Retained Liabilities***"). Without limiting the generality of the foregoing, the Retained Liabilities include the following Liabilities of Sellers:

(a) Liabilities (other than the Assumed Liabilities) incurred in the Ordinary Course of Business existing prior to the filing of the Bankruptcy Cases that are subject to compromise under the Bankruptcy Cases;

(b) all Taxes of Sellers, and all Taxes related to Sellers' ownership or operation of the Purchased Assets or the Business, except (i) those Taxes related to the ownership or operation of the Purchased Assets or the Business which are attributable to taxable periods or portions thereof beginning on or after the Closing and (ii) those Taxes specified in Section 3.3(d);

(c) all Liabilities arising out of (but only to the extent relating to) any of the Excluded Assets;

(d) all Liabilities arising out of the Bonds;

(e) all Liabilities relating to current or former employees of Sellers or any of their current or former Affiliates, other than Transferred Employees, and all Liabilities with respect to Transferred Employees arising prior to the Closing Date, except as may otherwise be provided in Article IX or that are agreed to between Purchaser and the respective Union;

(f) 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;

(g) 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 Liability); and

(h) 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.

3.5 *Contract Designation Rights.*

(a) Contracts that were entered into prior to the filing of the Bankruptcy Cases to which ASARCO is a party that, as of the date of this Agreement, have not been assumed by Sellers and are to be assigned to Purchaser (the "***Assumption-Pending Pre-Petition Contracts***") are identified in Section 3.5(a) of the Seller Disclosure Schedule and all such contracts shall be assumed and assigned hereunder. Purchaser shall timely deliver to Sellers such information or documentation relating to "adequate assurance of future performance" as shall be reasonably required in connection with the assumption and assignment of such Contracts pursuant to the Plan.

(b) At or prior to the Closing, to the extent not previously paid, Sellers shall pay any and all Cure Claims with respect to all Assumption-Pending Pre-Petition Contracts; *provided*, that any Unpaid Cure Claims Amounts shall be subject to Section 3.5(d).

(c) Nothing in this Agreement shall be construed as an attempt by any Seller to assign any Contract to the extent that such Contract is not assignable without the necessary notice to or consent of the other party or parties thereto, and such notice to or consent of such other party has not been given or received, as applicable. Purchaser acknowledges that no adjustment to the Purchase Price shall be made for any such Contracts that are not assigned and that Purchaser shall have no claim against Sellers or any other Person in respect of such unassigned Contracts. Notwithstanding the absence at Closing of one or more required consents to the assignment of a Contract that is intended to be an Assumed Contract, following the Closing at such time as consent has been obtained, or any requisite notice has been made or delivered, as applicable, the related Contract shall be assigned to Purchaser automatically without any other conveyance or other action by Purchaser. From and after the Closing, pending receipt or in the absence of any such consent, Sellers will hold the benefit of such Contract that is intended to be an Assumed Contract for Purchaser and subcontract to Purchaser all rights and obligations of Sellers thereunder to the extent allowed by such Contract. As between Sellers and Purchaser, Purchaser will be deemed to have fully assumed Sellers' performance obligations for any such Contract that is intended to be an Assumed Contract at Closing in accordance with this Agreement.

(d) At the Closing, ASARCO shall deliver to Purchaser a statement of any Unpaid Cure Claims Amount (and the Contract(s) corresponding thereto), including a calculation

thereof. Purchaser 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, Purchaser shall provide a written notice to ASARCO of such payment (and the Contract(s) corresponding thereto). To the extent Purchaser pays any Unpaid Cure Claims Amount pursuant to this Section 3.5(d), Sellers shall, within 10 days of receipt of notice from Purchaser delivered in accordance with this Section 3.5(d), reimburse Purchaser in the amount of such payment; provided that, the Plan Confirmation Order shall provide that, as between the Sellers and the counterparty of the underlying Contract, (i) 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 may have related to such Unpaid Cure Claims Amount or the underlying Contract and (ii) ASARCO's right to object, assert any counterclaim or exercise any setoff or other rights in connection with such Unpaid Cure Claims Amount or the underlying Contract shall be preserved regardless of any such payment or reimbursement; *provided, however,* that failure of the Plan Confirmation Order to so provide shall not relieve the Sellers of their payment obligations as set forth in this Section 3.5(d).

3.6 *Silver Bell.* The parties acknowledge that pursuant to the Silver Bell LLC Agreement, the sale, assignment and transfer by ARSB of its Silver Bell Interests is subject to the consent of the other members of Silver Bell. If such consent is not obtained prior to Closing, then (i) the Silver Bell Interests and Sellers' right in and to the Silver Bell LLC Agreement will each be an Excluded Asset and the shares of capital stock of ARSB will be a Purchased Asset and (ii) references in Section 7.5 to Silver Bell Interests will be deemed to refer to the capital stock of ARSB.

ARTICLE IV
PURCHASE PRICE AND PAYMENT

4.1 *Purchase Price.* The total consideration paid by Purchaser to Sellers in consideration of the sale, conveyance, transfer, assignment and delivery of the Purchased Assets is (i) an amount equal to: (A) $1,100,000,000.00 (the "***Closing Payment***"), plus (B) the Purchaser Promissory Note (collectively, the "***Purchase Price***") and (ii) the assumption by Purchaser of the Assumed Liabilities.

4.2 *Deposit.* Purchaser shall make available to ASARCO funds in the aggregate amount of $125,000,000.00 (the "***Deposit***") as follows:

(a) Prior to the execution of this Agreement, Purchaser posted a letter of credit (the "***First L/C***") attached as Exhibit O-1 hereto issued in favor of ASARCO by ABN AMRO Bank N.V., Chicago in the amount of $50,000,000.00. After the entry of the Sterlite Agreed Order by the Bankruptcy Court, Purchaser may amend the First L/C solely to add the following to Annex A of the First L/C: "Funds under the Letter of Credit are payable in accordance with the terms set forth in Section 4.2 of that certain Settlement and Purchase and Sale Agreement, dated as of February __, 2009, among, *inter alia*, the Beneficiary and the Account Party." Purchaser, with the prior written consent of Sellers (which consent shall not be unreasonably withheld), shall have the right to exchange the First L/C for a replacement letter of credit issued by a Qualified Bank in substantially the same form as the First L/C and on terms and conditions reasonably satisfactory to Sellers.

(b) Simultaneously with the execution of this Agreement, Purchaser has posted a second letter of credit (the "***Second L/C***") attached as Exhibit O-2 hereto issued in favor of ASARCO by ABN AMRO Bank N.V., Chicago in the amount of $50,000,000.00. Purchaser, with the prior written consent of Sellers (which consent shall not be unreasonably withheld), shall have the right to exchange the Second L/C for a replacement letter of credit issued by a Qualified Bank in substantially the same form as the Second L/C and on terms and conditions reasonably satisfactory to Sellers.

(c) As promptly as practicable following (but not later than 5:00 p.m., Dallas, Texas time, on the third Business Day following) the Disclosure Statement Approval Date, Purchaser will post a third letter of credit (the ***"Third L/C"***) in the form of Exhibit O-3 hereto issued in favor of ASARCO by a Qualified Bank in the amount of $25,000,000.00 and ASARCO shall have received such originally executed Third L/C enforceable against the issuer thereof. The First L/C, the Second L/C and the Third L/C are collectively referred to herein as the "***Letters of Credit***."

(d) Subject to Section 4.2(h), in anticipation of Closing and upon the agreement of the parties, ASARCO shall draw on the Letters of Credit. All cash received by ASARCO (in immediately available funds in an account designated by ASARCO) prior to or on the Closing Date pursuant to such draw shall be credited against the Closing Payment at Closing and retained by Sellers as a component of the Purchase Price. Alternatively, at least three Business Days prior to the Closing Date, Purchaser may deliver a written notice to ASARCO instructing ASARCO that it shall deliver the full amount of the Closing Payment to ASARCO pursuant to Section 5.3(a) at Closing. In such case, at Closing, upon receipt of the Closing Payment pursuant to Section 5.3(a), ASARCO shall deliver to Purchaser each of the Letters of Credit for return to the issuer thereof for cancellation (or any cash drawn and received pursuant to Section 4.2(h)).

(e) Immediately following the termination of this Agreement due to a material breach by Purchaser or Guarantor of any of their respective representations, warranties or covenants or other agreements hereunder (a "***Purchaser Breach***"), Sellers shall (i) be entitled to receive from Purchaser and retain the Deposit and (ii) be entitled to draw upon all Letters of Credit at anytime thereafter to obtain the Deposit and the receipt by Sellers of immediately available funds in an account designated by ASARCO in an amount equal to the Deposit pursuant to such draw (or any draw pursuant to Section 4.2(h)) shall satisfy Purchaser's payment obligation in clause (i); *provided*, that only $100,000,000.00 shall be paid to and may be drawn by Sellers if such termination occurs prior to the Disclosure Statement Approval Date.

(f) Immediately following the termination of this Agreement for any reason other than (i) a Purchaser Breach or (ii) by Purchaser pursuant to Section 13.1(j) upon the occurrence of a Manipulative Breach, Sellers shall (x) be entitled to receive from Purchaser and retain $50,000,000.00, (y) be entitled to draw upon any outstanding Letter of Credit at anytime thereafter to obtain such funds and the receipt by Sellers of immediately available funds in an account designated by ASARCO in an amount equal to $50,000,000.00 pursuant to such draw (or any draws pursuant to Section 4.2(h)) shall satisfy Purchaser's payment obligation in clause (x)) and (z) as promptly as practicable, and in any event within 10 Business Days, return the Second L/C and (if posted) the Third L/C to the issuer thereof for cancellation (or any cash

drawn (and received) pursuant to Section 4.2(h) in excess of $50,000,000.00; *provided*, that if (and only if) a Release Condition occurs following the termination of this Agreement, as promptly as practicable, and in any event within 10 Business Days, following the occurrence of such Release Condition, ASARCO shall either (1) return the First L/C to the issuer thereof for cancellation or (2) if Sellers have already drawn on the First L/C, including pursuant to Section 4.2(h), (and received $50,000,000.00 in respect of such draw), Sellers shall deliver the amount of $50,000,000.00 to Purchaser and such payment shall be made by wire transfer of immediately available funds to an account designated by Purchaser.

(g) As promptly as practicable, and in any event within 10 Business Days, following the termination of this Agreement by Purchaser pursuant to Section 13.1(j) due to a Manipulative Breach, ASARCO shall return the Letters of Credit to the issuer thereof for cancellation (or any cash drawn and received pursuant to Section 4.2(h)).

(h) At all times the remaining period until the stated expiry of each Letter of Credit shall be at least 30 days. From time to time, Purchaser shall cause the Letters of Credit to be amended to extend the expiry dates thereunder (without any other modifications thereto) in order to comply with the immediately preceding sentence. If at any time the remaining period until the stated expiry of any Letter of Credit is less than 30 days, ASARCO shall be entitled to draw upon such Letter of Credit at anytime thereafter; *provided, however*, that if the parties mutually agree that the Closing is reasonably likely to occur during such 30 day period, then ASARCO shall not draw upon such Letter of Credit until the remaining period until the stated expiry of such Letter of Credit is 20 days or less and all cash received by ASARCO (in immediately available funds in an account designated by ASARCO) prior to or on the Closing Date pursuant to such draw shall be credited against the Closing Payment at Closing and retained by Sellers as a component of the Purchase Price; *provided, further*, that, notwithstanding anything to the contrary contained herein, any cash drawn and received pursuant to this Section 4.2(h) that is to be returned to Purchaser pursuant to any other provision of this Section 4.2 shall be returned to Purchaser immediately.

(i) Notwithstanding anything to the contrary contained herein, except pursuant to Section 4.2(d), any draw upon any of the Letters of Credit shall be approved by the Bankruptcy Court as an act outside the ordinary course of business under 11 U.S.C. § 363(b)(1). For clarification, Sellers' right to draw upon a Letter of Credit is not conditioned upon any other finding by the Bankruptcy Court; *provided, however*, that such Bankruptcy Court approval shall not be required for any draw upon the First L/C prior to the entry of the Sterlite Agreed Order by the Bankruptcy Court.

4.3 *Purchase Price Adjustment.*

(a) No later than 45 days after the Closing Date, Sellers shall deliver to Purchaser a statement (the "***Closing Accounts Statement***") prepared in accordance with the illustration set forth in Exhibit E setting forth (i) the Included Receivables, the Included Payables and the Inventory Amount, each calculated as of the Closing Date, and (ii) a calculation of the Closing Accounts Amount.

(b) From and after the Closing Date until the delivery of the Closing Accounts Statement, Purchaser shall give Sellers reasonable access during normal business hours and upon reasonable notice to the Books and Records, the accounting and other appropriate personnel and the independent accountants of the Business in order to enable Sellers to prepare the Closing Accounts Statement and to calculate the Closing Accounts Amount.

(c) On the date that a binding determination of the Closing Accounts Amount has been made in accordance with Section 4.4, the aggregate principal amount of the Purchaser Promissory Note shall automatically be (i) increased by the Adjustment Amount if the Closing Accounts Amount is greater than the Agreed Working Capital or (ii) decreased by the Adjustment Amount if the Closing Accounts Amount is less than the Agreed Working Capital, in each case without any action on the part of Purchaser or Sellers.

4.4 *Dispute Resolution.*

(a) Purchaser shall be entitled to dispute the calculation of the Closing Accounts Amount set forth in the Closing Accounts Statement if, but only if, Purchaser delivers a written notice (an "***Objection Notice***") to Sellers within 30 days after receipt of the Closing Accounts Statement in which Purchaser objects to the calculation by Sellers of the Closing Accounts Amount and provides a reasonably detailed description of each item to which Purchaser objects, the amount Purchaser believes is correct with respect to each such item and the basis therefor (the date upon which Purchaser delivers an Objection Notice to Sellers being hereinafter referred to as the "***Objection Date***"). If no Objection Notice is delivered within the time required in this Section 4.4(a), the Closing Accounts Statement delivered by Sellers and the calculation of the Closing Accounts Amount set forth therein shall be final and binding on each of the parties.

(b) If Purchaser delivers an Objection Notice to Sellers within the time period specified in paragraph (a) above, Purchaser and Sellers shall attempt in good faith to agree upon the Closing Accounts Amount during the period commencing on the Objection Date and ending 10 days thereafter (the "***Negotiation Period***").

(c) If Purchaser and Sellers agree in writing prior to the expiration of the Negotiation Period on the Closing Accounts Amount, whether such amount is the same as or different from the amount calculated based upon the Closing Accounts Statement, the amount agreed to in writing shall be the Closing Accounts Amount for all purposes hereunder.

(d) If Purchaser and Sellers do not agree in writing prior to the expiration of the Negotiation Period on the Closing Accounts Amount, the items in dispute (but no other

matters) shall be submitted to KPMG LLP or such other firm of independent public accountants as may be mutually agreed between Purchaser and Sellers (in either case, the "***Final Arbiter***"). The Final Arbiter shall make a final and binding determination as to all matters in dispute relating to the calculation of the Closing Accounts Amount as promptly as practicable after its appointment (but no later than 45 days after the date of its appointment). The determination by the Final Arbiter of the amounts in dispute shall be based solely on presentations by Purchaser and Sellers, and shall not involve the Final Arbiter's independent review. Any determination by the Final Arbiter shall not be outside the range defined by the respective amounts proposed by Purchaser and Sellers. The Final Arbiter shall send its written determination of the Included Payables, Included Receivables and Inventory Amount, each calculated as of the Closing Date, to Purchaser and Sellers, together with a calculation of the Closing Accounts Amount that results from such determination, and such determination of the Final Arbiter, and the resulting calculation of the Closing Accounts Amount, shall be binding on the parties, absent fraud or manifest error. The fees and expenses of the Final Arbiter shall be borne equally by Purchaser and Sellers.

4.5 *Allocation of Purchase Price.* Purchaser and Sellers shall use good faith efforts to attempt to reach agreement on the allocation of the Purchase Price and other relevant items (including, for example, the amount of Assumed Liabilities, adjustments to the Purchase Price and other consideration for Tax purposes) among the Purchased Assets, including goodwill and other assets, by the earlier of (x) six (6) months following the Closing Date, and (y) 60 days prior to the extended due date of the federal income tax return which includes the transactions contemplated herein, in accordance with Section 1060 of the Code and the Treasury regulations promulgated thereunder and any comparable provision of state, local or foreign Law, as appropriate (the "***Allocation***"). If Purchaser and Sellers reach a timely agreement regarding the Allocation, (a) such Allocation shall be binding on the parties, (b) the parties shall prepare and timely file all applicable federal and state income Tax forms (including Internal Revenue Service Form 8594) in a manner consistent with the Allocation, cooperate with each other in the preparation of such forms, and furnish each other with a copy of the final version of Form 8594 within a reasonable period before the filing date thereof, and (c) except as otherwise required pursuant to a "determination" within the meaning of Section 1313(a) of the Code (or any comparable provision of any state, local or foreign law), none of the parties shall take a position inconsistent with the Allocation on any Tax Return (including any forms required to be filed pursuant to Section 1060 of the Code), or otherwise. The parties recognize that the Allocation will not include Purchaser's acquisition expenses or Sellers' selling expenses, and Purchaser and Sellers will unilaterally allocate such expenses appropriately. If the parties are unable to reach a timely agreement regarding the Allocation, each party shall be entitled to adopt its own position regarding the Allocation.

ARTICLE V
CLOSING

5.1 *Time and Place of Closing.* The closing of the sale and purchase of the Purchased Assets and the assumption of the Assumed Liabilities provided for in Article III (the "***Closing***") shall take place at the offices of Baker Botts L.L.P., located at 2001 Ross Avenue, Suite 1100, Dallas, Texas, at 10:00 a.m. local time, on the second Business Day after the conditions to

Closing set forth in Article XI (excluding conditions that, by their terms, cannot be satisfied until the Closing) have been satisfied (or waived by the party entitled to waive such condition), or at such other place, date and time as the parties may agree.

5.2 *Items to Be Delivered by Sellers.* At the Closing, Sellers shall deliver, or cause to be delivered, to Purchaser the following:

(a) the Bill of Sale duly executed by Sellers;

(b) the Assignment and Assumption Agreement duly executed by Sellers;

(c) for each parcel of Purchased Real Property, a recordable quit-claim deed (collectively, the "***Deeds***") substantially in the forms of Exhibit F-1 through Exhibit F-4 as applicable, executed by the appropriate Seller, with all appropriate notarizations and certifications as required by the applicable Governmental Authority;

(d) for each parcel of Leasehold Property, a (i) recordable quit-claim deed conveying title to all improvements located on the Leasehold Property (collectively, the "***Leasehold Deeds***") substantially in the form of Exhibit G and (ii) an assignment and assumption agreement for any applicable ground lease agreement relating to such parcel of Leasehold Property substantially in the form of Exhibit H (the "***Assignment and Assumption of Ground Lease Agreement***"), executed by the appropriate Seller, with all appropriate notarizations and certifications as required by the applicable Governmental Authority;

(e) certificates of title for all motor vehicles identified in Section 3.1(g) of the Seller Disclosure Schedule, each executed by the appropriate Seller and in a form reasonably satisfactory to the appropriate state agencies where such motor vehicles are titled;

(f) the Transition Services Agreement duly executed by ASARCO;

(g) a non-foreign affidavit of each Non-Debtor Seller dated as of the Closing Date in form and substance as required under the Treasury regulations issued pursuant to Section 1445 of the Code;

(h) a certificate signed by a duly authorized representative of each Seller certifying that the closing conditions set forth in Sections 11.2(a) and 11.2(b) have been satisfied;

(i) certificates of an authorized officer of each Seller to which is attached: (i) true and correct copies of the Organizational Documents of such Seller; (ii) true and correct copies of the resolutions of the Board of Directors for such Seller respecting the transactions contemplated by this Agreement and the Ancillary Agreements; (iii) a certificate respecting the incumbency and true signatures of the officers of such Seller who execute this Agreement and other transaction documents on behalf of such Seller; and (iv) a certificate from the Secretary of State or other applicable Governmental Authority of the State of formation or incorporation, as applicable, dated within 10 days of the Closing Date, with respect to the existence and good standing of such Seller. The certificates required pursuant to this Section 5.2(i) shall certify that the documents referred to in (i) and (ii) above and attached thereto are true and correct copies,

have been duly and validly adopted and have not been amended or altered except as reflected therein;

(j) the Patent Assignment, dated as of the Closing Date, in the form attached hereto as Exhibit I (the "***Patent Assignment***"), duly executed by ASARCO;

(k) the Trademark Assignment, dated as of the Closing Date, in the form attached hereto as Exhibit J (the "***Trademark Assignment***"), duly executed by ASARCO;

(l) a certified copy of the Plan Confirmation Order authorizing and ratifying the execution and delivery of this Agreement by Sellers, and the consummation by Sellers of the transactions contemplated hereby;

(m) for each Arizona water right, claim, Permit, Certificate of Water Right, Statement of Claim, Statement of Claimant, and grandfathered groundwater withdrawal right associated with the Real Property a recordable quit-claim deed conveying title to such rights, permits, certificates, and claims substantially in the form of Exhibit F-3, executed by the appropriate Seller, with all appropriate notarizations and certifications as required by the applicable Governmental Authority;

(n) a recordable quitclaim deed substantially in the form of Exhibit F-4 with respect to the unpatented mining claims listed in Section 3.1(o) of the Seller Disclosure Schedule, executed by the appropriate Seller with all appropriate notarizations and certifications as required by the applicable Governmental Authorities;

(o) the Security Agreement duly executed by ASARCO Administration LLC; and

(p) a receipt for the Closing Payment.

5.3 *Items to Be Delivered by Purchaser.* At the Closing, Purchaser shall deliver (or shall cause the delivery) to Sellers of the following:

(a) the Closing Payment by wire transfer of immediately available funds (to such account or accounts as Sellers shall have specified to Purchaser at least 24 hours prior to the Closing);

(b) the Purchaser Promissory Note duly executed by Purchaser;

(c) the Assignment and Assumption Agreement duly executed by Purchaser;

(d) the Transition Services Agreement duly executed by Purchaser;

(e) the Patent Assignment duly executed by Purchaser;

(f) the Trademark Assignment duly executed by Purchaser;

(g) the Assignment and Assumption of Ground Lease Agreement executed by Purchaser, with all appropriate notarizations and certifications as required by the applicable Governmental Authority;

(h) a certificate signed by a duly authorized representative of Purchaser and Guarantor certifying that the closing conditions set forth in Sections 11.3(a) and 11.3(b) have been satisfied;

(i) certificates of an authorized officer of each of Purchaser and Guarantor to which is attached: (i) true and correct copies of the Organizational Documents of Purchaser or Guarantor, as applicable; (ii) true and correct copies of the resolutions of the board of directors of Purchaser or Guarantor, as applicable, respecting the transactions contemplated by this Agreement and the Ancillary Agreements; (iii) a certificate respecting the incumbency and true signatures of the officers of Purchaser or Guarantor, as applicable, who execute this Agreement and other transaction documents on behalf of Purchaser or Guarantor; and (iv) a certificate from the Secretary of State of the State (or jurisdiction) of formation or incorporation, as applicable, dated within 10 days of the Closing Date, with respect to the existence and good standing of Purchaser or Guarantor, as applicable. The certificates required pursuant to this Section 5.3(i) shall certify that the documents referred to in (i) and (ii) above and attached thereto are true and correct copies, have been duly and validly adopted and have not been amended or altered except as reflected therein;

(j) the Security Agreement duly executed by Purchaser;

(k) a mortgage substantially in the form of either Exhibit N-1 or Exhibit N-2, as applicable, hereto with respect to each parcel of Purchased Real Property (collectively, the "***Mortgages***");

(l) all documents required to perfect the security interest in the Collateral (as defined in the Security Agreement) pursuant to the Security Agreement, each in form and substance reasonably acceptable to ASARCO, including documents required to perfect the pledge of the Silver Bell Interests and the security interest in the Patents and Trademarks; and

(m) evidence reasonably satisfactory to Sellers that Purchaser has complied with its obligations set forth in Section 8.9.

ARTICLE VI
REPRESENTATIONS AND WARRANTIES OF SELLERS

Sellers, jointly and severally, hereby represent and warrant to Purchaser that, on and as of the date of this Agreement, except as set forth in the Seller Disclosure Schedule:

6.1 *Organization and Good Standing.* Each Seller is a limited liability company or corporation duly formed or incorporated, validly existing and in good standing under the laws of the jurisdiction of its formation or incorporation and Sellers have the requisite power and authority to own the Purchased Assets, subject to, in the case of ASARCO, the limitations imposed on ASARCO as a result of having filed a petition for relief under the Bankruptcy Code.

Sellers are duly licensed or qualified to transact business and are in good standing in each jurisdiction in which their ownership or leasing of the Purchased Assets or the operation of its respective business makes such qualification necessary, except where the failure to be so qualified would not reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect.

6.2 *Authorization of Agreement.* Subject to the entry of the Plan Confirmation Order, each Seller has the requisite limited liability company or corporate power and authority to execute this Agreement and each of the Ancillary Agreements and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and each of the Ancillary Agreements by Sellers and the consummation by Sellers of the transactions contemplated hereby and thereby have been duly authorized by the Board of Directors of each Seller and no other limited liability company or corporate proceedings on the part of Sellers are necessary to authorize this Agreement or the Ancillary Agreements or to consummate the transactions contemplated hereby and thereby. This Agreement has been, and at the Closing each of the Ancillary Agreements will be, duly executed and delivered by each Seller and, assuming due execution and delivery by Purchaser and Guarantor of this Agreement, the Ancillary Agreements and entry of the Plan Confirmation Order, this Agreement constitutes, and at Closing, each of the Ancillary Agreements will constitute, a valid and binding obligation of each Seller, enforceable against each Seller in accordance with its terms subject to the Enforceability Exceptions.

6.3 *No Violation; Consents.*

(a) Assuming the receipt of the consents or waivers referred to in Section 6.3(a) and Section 6.3(b) of the Seller Disclosure Schedule and in Section 6.3(b), the execution and delivery by Sellers of this Agreement and each of the Ancillary Agreements and the consummation of the transactions contemplated hereby and thereby do not and will not (i) violate any provision of the Organizational Documents of any Seller, (ii) violate any Order of any Governmental Authority existing after the filing of the Bankruptcy Cases to which any Seller is bound or subject, (iii) violate any Applicable Law or (iv) except as provided for herein, result in the imposition or creation of any Lien (other than Permitted Liens) upon the Purchased Assets other than, in the case of clauses (ii), (iii) and (iv), any conflict, violation, breach, default, requirement for consents, rights of acceleration, cancellation or termination that would not reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect.

(b) Assuming entry of the Plan Confirmation Order, no Order or Permit issued by, or declaration or filing with, or notification to, or waiver from any Governmental Authority is required on the part of any Seller in connection with the execution and delivery of this Agreement or any Ancillary Agreement, or the compliance with or performance by any Seller with any provision contained in this Agreement or any Ancillary Agreement, except for (i) in the event the Closing fails to occur prior to the first anniversary of the expiration of the "waiting period" under the previously filed notification under the HSR Act, the filing by or on behalf of ASARCO or its "ultimate parent entity" of notification with the Federal Trade Commission and Antitrust Division of the United States Department of Justice under the HSR Act and the expiration or termination of the applicable "waiting period" thereunder and (ii) any such

requirements, the failure of which to be obtained or made would not reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect.

6.4 *Financial Information.* The Seller Data Room contains the unaudited consolidated balance sheet of ASARCO at December 31, 2008 and the unaudited consolidated statements of income and cash flows of ASARCO for the twelve months ended thereon (collectively, the "***Financial Statements***"). The Financial Statements, in each case, only to the extent relating to the Purchased Assets and Assumed Liabilities, (a) present fairly in all material respects the consolidated financial position of ASARCO as of the respective dates thereof, and the consolidated results of operations of ASARCO for the periods covered thereby and (b) have been prepared in all material respects in accordance with GAAP applied on a basis consistent with the past practices of Sellers during the pendency of the Bankruptcy Cases, in each case, subject to (i) the absence of footnotes thereto and (ii) audit adjustments resulting from the Sellers' Accountants' audit, review and finalization of ASARCO's financial statements for the years ended December 31, 2005, 2006, 2007 and 2008, which would not individually or in the aggregate reasonably be expected to result in a Seller Material Adverse Effect.

6.5 *Compliance with Laws; Permits.*

(a) Since August 9, 2005, Sellers have conducted their operations of the Business that are situated on the Purchased Real Property in compliance with all Applicable Laws except where the failure to comply with such laws would not reasonably be expected to have a Seller Material Adverse Effect.

(b) Sellers hold (or are in the process of renewing) all Permits that are required to conduct the operations of the Business that are situated on the Purchased Real Property as they are currently conducted except for any such Permits the absence of which would not reasonably be expected to have a Seller Material Adverse Effect. No Legal Proceeding by any Governmental Authority is pending nor, to Sellers' Knowledge, has been threatened in writing since August 9, 2005, to cancel, modify or fail to renew any such Permit except for any such cancellation, modification or failure that would not reasonably be expected to result in a Seller Material Adverse Effect.

(c) The representations and warranties in this Section 6.5 do not address Environmental Laws or labor, employment and benefit plan matters.

6.6 *Sufficiency of Purchased Assets.* The Purchased Assets constitute all of the assets material to Sellers' conduct of the Business as it is currently conducted as of the date of this Agreement.

6.7 *Purchased Real Property.* With respect to each parcel of Purchased Real Property, there are no pending, or to Sellers' Knowledge, threatened condemnation proceedings or other Legal Proceedings that materially and adversely affect the current use or occupancy thereof.

6.8 *Material Contracts.*

(a) Section 6.8(a) of the Seller Disclosure Schedule identifies the following Contracts in effect as of the date of this Agreement and to which any Seller is a party and relating to the Business and identifies whether such Contracts are Assumed Pre-Petition Contracts, Assumption-Pending Pre-Petition Contracts, Post-Petition Contracts or Non-Debtor Contracts, as applicable (collectively, the "***Material Contracts***"):

(i) all leases, subleases, licenses or other Contracts relating to the occupancy of the Leasehold Property that are necessary to the operation of the Business;

(ii) all leases, subleases, licenses or other Contracts relating to the Purchased Real Property under which any Seller is a lessor and (A) during the twelve months ended December 31, 2008, received rental payments in excess of $200,000, or (B) that have a non-cancelable term in excess of 12 months;

(iii) all leases of equipment or other tangible personal property that are necessary to the operation of the Business;

(iv) all Contracts with Suppliers;

(v) all Contracts included in the Purchased Assets pursuant to which any Seller retains the right to receive a royalty for production from a parcel of real property;

(vi) all settlement agreements for the settlement of any Environmental Claims to the extent related to the Real Property;

(vii) all agreements with trade vendors providing services material to the operation of the Business to which any Seller paid more than $3,000,000 during the twelve month period ended December 31, 2008; and

(viii) all Contracts granting a third party an option or right of first refusal to purchase any Purchased Real Property.

(b) Each Material Contract (other than any Assumption-Pending Pre-Petition Contract) is in full force and effect, enforceable against Seller that is a party thereto in accordance with its terms, subject to the Enforceability Exceptions, other than Material Contracts that (i) have expired or terminated pursuant to their terms, (ii) have been terminated by the Seller party thereto in the Ordinary Course of Business or (iii) have been terminated by a counterparty in connection with or attributable to economic and industry conditions, but not as a result of a material breach of such Material Contract by the Seller party thereto.

(c) No Seller has received written notice that it is in violation, breach of or default in any material respect under any Material Contract (other than any Assumption-Pending Pre-Petition Contract) (or with notice or lapse of time or both, would be in violation or breach of or default under any such Contract).

6.9 *Suppliers.* Section 6.9 of the Seller Disclosure Schedule lists the ten most significant suppliers (by payable) of raw materials, supplies, merchandise and other goods for the Business for the twelve-month period ended December 31, 2008 and the amount for which each such supplier invoiced Sellers during such period ("***Suppliers***"). Since January 1, 2009, no Supplier has delivered a written notice to any Seller that it intends to terminate its relationship with Sellers or materially reduce its business with Sellers from the levels achieved during the twelve months ended December 31, 2008 other than terminations or reductions made in connection with or attributable to economic and industry conditions.

6.10 *Employee Benefit Matters.*

(a) All Seller Employee Benefit Plans are listed in Section 6.10(a) of the Seller Disclosure Schedule. True and complete copies of all Seller Employee Benefit Plans, including, but not limited to, any trust instruments and insurance contracts forming a part of any such Seller Employee Benefit Plans, and all amendments thereto, have been made available to Purchaser.

(b) Each Seller Employee Benefit Plan which is an "employee pension benefit plan" within the meaning of Section 3(2) of ERISA (a "***Pension Plan***") and which is intended to be qualified under Section 401(a) of the Code, has received a favorable determination letter from the Internal Revenue Service, and to Sellers' Knowledge there are no circumstances likely to result in revocation of any such favorable determination letter or the loss of the qualification of such Pension Plan under Section 401(a) of the Code.

(c) To Sellers' Knowledge, there has not been any prohibited transaction (within the meaning of Section 406 of ERISA or Section 4975 of the Code) with respect to any Seller Employee Benefit Plan. None of the Sellers has incurred any material liability under, arising out of or by operation of Title IV of ERISA, and, to Seller's Knowledge, no fact or event exists which would reasonably be expected to give rise to any such material liability.

(d) Each of the Seller Employee Benefit Plans has been operated and administered in all material respects in accordance with its terms and with Applicable Law, including ERISA and the Code, to the extent required by such Applicable Law. There is no material Legal Proceeding pending or, to the Seller's Knowledge, threatened in writing against any Seller relating to any Seller Employee Benefit Plans.

6.11 *Environmental Matters.*

(a) Except (i) for matters that do not constitute Assumed Liabilities and (ii) for matters that individually or in the aggregate would not reasonably be expected to have a Seller Material Adverse Effect: (w) since August 9, 2005, Sellers operate and have operated the Business on and in connection with the Real Property in compliance with all applicable Environmental Laws, (x) Sellers hold all Environmental Permits necessary to operate the Business on the Real Property as it is currently conducted and, except for matters that have been resolved, since August 9, 2005, have been in compliance with such Environmental Permits, (y) to Sellers' Knowledge, there has been no migration or Release of Hazardous Materials at or from the Real Property that, as of the Closing Date, requires any Remedial Action pursuant to

Environmental Law, except with respect to any such migration or Release specifically identified in any document included in Section 14 of the Seller Data Room, as of the date of this Agreement and (z) there are no Environmental Claims pending or, to the Sellers' Knowledge, threatened as of the date of this Agreement against Sellers arising out of or relating to the Real Property or the operation of the Business on the Real Property.

(b) Purchaser acknowledges that, except with respect to Sections 6.3(a)(ii), (iii) and (iv), 6.3(b), 6.8(a)(vi), 6.8(b), 6.8(c) and 6.14, this Section 6.11 shall be deemed to be the only representation and warranty in the Agreement with respect to environmental matters.

6.12 *Labor Matters.*

(a) Sellers are in compliance, in respect of the operation of the Business as currently conducted at any Real Property, with the requirements of Applicable Laws relating to the employment of labor (including the proper classification of employees), the payment of wages, the payment and withholding of taxes, overtime and other compensation and benefits, employment standards or retaliation, except for such non-compliance as would not reasonably be expected to have a Seller Material Adverse Effect. There is no claim with respect to the foregoing pending, or, to Sellers' Knowledge, threatened against any Seller before any Governmental Authority which, if adversely decided would reasonably be expected to have a Seller Material Adverse Effect. Sellers have not received written notice of the intent of any Governmental Authority responsible for the enforcement of labor or employment laws to conduct an investigation with respect to or relating to the Business and, to Sellers' Knowledge, no such investigation is in progress.

(b) Sellers are not a party to, or otherwise bound by, any unsatisfied or pending conciliation agreement, settlement agreement, arbitration award or consent decree with, or a citation by, any Governmental Authority in each case relating to claims of unfair labor practices, employment discrimination or other claims with respect to employment practices and policies in respect of the operation of the Business (other than claims attributable to or arising out of decisions, practices and policies made in the Ordinary Course of Business, including layoffs and reductions in force), the failure to comply with which would reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect.

(c) There are no unfair labor or employment practice charges or complaints, charges or complaints alleging breach by Sellers of any express or implied contract of employment, charges or complaints alleging discriminatory, wrongful or tortious conduct in connection with the employment relationship, or other employee-related charges or complaints, pending against Sellers before any Governmental Authority or, to Sellers' Knowledge, threatened against Sellers before any Governmental Authority, in each case relating to the Business (other than charges or complaints attributable to or arising out of decisions, practices and policies made in the Ordinary Course of Business, including layoffs and reductions in force), which, if adversely decided, would reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect.

(d) There are no grievances, or requests or demands for arbitration pending, or, to Sellers' Knowledge, threatened in writing against Sellers, or arbitration awards or Orders

outstanding against Sellers under the Collective Bargaining Agreements (other than grievances, requests or demands attributable to or arising out of decisions, practices and policies made in the Ordinary Course of Business, including layoffs and reductions in force) that would reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect.

(e) No employment contracts or severance agreements exist with any current employee of Sellers.

(f) As of the Effective Date, since January 1, 2006, (i) Sellers have not effectuated a "plant closing" (as defined in the WARN Act) affecting any site of employment or one or more facilities or operating units within any site of employment or facility of the Business and (ii) there has not occurred a "mass layoff" (as defined in the WARN Act) affecting any site of employment or facility of Sellers; nor have Sellers been affected by any transaction or engaged in layoffs or employment terminations sufficient in number to trigger application of any similar Law.

(g) Except for the current Local Supplemental Agreements between Sellers and the Unions that were negotiated pursuant to the Letter of Understanding on Local Supplemental Agreements after January 6, 2007 (set forth on page 124 of the master collective bargaining agreement between Sellers and the Unions that expires by its terms on June 30, 2011), there are no other local agreements that may affect, impact or govern in any material respect wages, benefits, and/or terms and conditions of employment of any Transferred Employees, or operations at any of the facilities covered by the Collective Bargaining Agreements.

6.13 *Taxes.* All material Tax Returns relating to the Business or the Purchased Assets (including Tax Returns of Silver Bell) required to be filed have been timely filed (taking into account validly obtained extensions) and all material Taxes relating to the Business or the Purchased Assets (including Taxes of Silver Bell) required to be paid have been timely paid. There are no current or pending audits or other administrative or court proceedings for the assessment, adjustment or collection of material Taxes relating to the Business or the Purchased Assets and no Seller has received, within the past three years, any written notice of any claims, actions, suits, proceedings or investigations for the assessment, adjustment or collection of material Taxes relating to the Business or the Purchased Assets including, any written notice or inquiry from any jurisdiction in which Tax Returns have not been filed with respect to the Business or the Purchased Assets to the effect that the filing of Tax Returns may be required. There are no liens for Taxes against any of the Purchased Assets.

6.14 *Insurance.* Section 6.14 of the Seller Disclosure Schedule lists the insurance policies maintained by Sellers that provide casualty, property damage and general liability coverage for the Purchased Assets. As of the Effective Date, all of such policies are in full force and effect. At Closing, all of such policies shall either be in full force and effect or Seller shall have complied with Section 8.2(e).

6.15 *Financial Advisors.* Neither Purchaser nor Guarantor is or will become obligated to pay any fee or commission or like payment to any broker, finder or financial advisor as a

result of the consummation of the transactions contemplated by this Agreement based upon any arrangement made by or on behalf of any Seller.

ARTICLE VII
REPRESENTATIONS AND WARRANTIES OF PURCHASER AND GUARANTOR

Each of Purchaser and Guarantor, jointly and severally, hereby represents and warrants to Sellers:

7.1 *Organization and Good Standing.* Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. Guarantor is a corporation duly organized, validly existing and in good standing under the laws of India.

7.2 *Authorization of Agreement.* Each of Purchaser and Guarantor has the requisite limited liability company or corporate power and authority to execute this Agreement and each of the Ancillary Agreements and to consummate the transactions contemplated hereby and thereby. The execution and delivery of each of this Agreement and each of the Ancillary Agreements by Purchaser and Guarantor and the consummation by Purchaser and Guarantor of the transactions contemplated hereby and thereby have been duly authorized by the Board of Directors of each of Purchaser and Guarantor and no other corporate proceedings on the part of Purchaser or any Guarantor are necessary to authorize this Agreement or the Ancillary Agreements or to consummate the transactions contemplated hereby and thereby. This Agreement has been, and at the Closing each of the Ancillary Agreements will be, duly executed and delivered by Purchaser and Guarantor and, assuming due execution and delivery by each Seller of this Agreement and the Ancillary Agreements, this Agreement constitutes, and at the Closing each of the Ancillary Agreements will constitute, a valid and binding obligation of each of Purchaser and Guarantor, enforceable against each of Purchaser and Guarantor in accordance with its terms subject to the Enforceability Exceptions.

7.3 *No Violation; Consents.*

(a) The execution and delivery by Purchaser and Guarantor of this Agreement and each of the Ancillary Agreements and the consummation of the transactions contemplated hereby and thereby do not and will not (i) violate any provision of the Organizational Documents of Purchaser or Guarantor, (ii) violate any Order of any Governmental Authority to which Purchaser or Guarantor is bound or subject, or (iii) violate any Applicable Law, other than, in the case of clauses (ii) and (iii), any conflict, violation, breach, default, requirement for consents, rights of acceleration, cancellation, termination or Lien that would not reasonably be expected to prevent, impede or materially delay or otherwise affect in any material respect the transactions contemplated by this Agreement.

(b) No Order or Permit issued by, or declaration or filing with, or notification to, or waiver from any Governmental Authority is required on the part of Purchaser or Guarantor in connection with the execution and delivery of this Agreement or any Ancillary Agreement, or the compliance or performance by Purchaser or Guarantor with any provision contained in this Agreement or any Ancillary Agreement, except for (i) in the event the Closing fails to occur

prior to the first anniversary of the expiration of the "waiting period" under the previously filed notification under the HSR Act, the filing by or on behalf of Purchaser or its "ultimate parent entity" of notification with the Federal Trade Commission and Antitrust Division of the United States Department of Justice under the HSR Act and the expiration or termination of the applicable "waiting period" thereunder and (ii) any such requirements, the failure of which to be obtained or made would not reasonably be expected to prevent, impede or materially delay or otherwise affect in any material respect the transactions contemplated by this Agreement.

7.4 *Litigation.* Other than (i) matters before the Bankruptcy Court involving Sellers or their Affiliates or (ii) matters that will otherwise be resolved by the Plan Confirmation Order, there are no Legal Proceedings pending, or to knowledge of Purchaser or Guarantor, threatened in writing against or affecting Purchaser or Guarantor, at law or in equity, before or by any Governmental Authority, and neither Purchaser nor Guarantor is subject to any Order rendered specifically against any of them which would or seeks to enjoin, rescind or materially delay the transactions contemplated in this Agreement or any Ancillary Agreement or otherwise hinder any of them from timely complying with the terms and provisions of this Agreement or any Ancillary Agreement.

7.5 *Investment Intention.* Purchaser is acquiring the Silver Bell Interests for its own account, for investment purposes only and not with a view to the distribution (as such term is used in Section 2(a)(11) of the Securities Act of 1933, as amended (the "***Securities Act***")) thereof. Purchaser understands that such securities have not been registered under the Securities Act and may not be sold unless subsequently registered under the Securities Act or an exemption from such registration is available.

7.6 *Financial Capability.* Guarantor has on the date hereof, and Purchaser will have on the Closing Date, sufficient cash available (and has provided Sellers with evidence thereof) to purchase the Purchased Assets and to consummate the transactions contemplated by this Agreement and each Ancillary Agreement, including, without limitation, payments of fees and expenses contemplated hereunder.

7.7 *Bankruptcy.* There are no bankruptcy, reorganization or arrangement proceedings pending against, being contemplated by, or to the knowledge of Purchaser or Guarantor, threatened against Purchaser or Guarantor.

7.8 *Financial Advisors.* Sellers are not and will not become obligated to pay any fee or commission or like payment to any broker, finder or financial advisor as a result of the consummation of the transactions contemplated by this Agreement based upon any arrangement made by or on behalf of Purchaser or Guarantor.

7.9 *Subsequent Sales.* Other than this Agreement and the Ancillary Agreements, no agreements or understandings exist between any of Purchaser or Guarantor and any other Person with respect to a possible transaction involving any of the Purchased Assets (other than transactions of the Business made in the Ordinary Course of Business).

ARTICLE VIII
COVENANTS

8.1 *Access to Information.* Prior to Closing, Sellers shall permit Purchaser and its representatives (including its legal advisors and accountants) to have reasonable access, during normal business hours and upon reasonable advance notice, to the Books and Records and senior management personnel of Sellers pertaining to the Purchased Assets, including access to conduct any Phase I environmental site assessments that accord with the American Society for Testing and Materials 05-1527 standard and any mining, real property or water resources assessments (including property condition evaluations, visual inspections, soil tests, dam safety evaluations and water resource evaluations) so long as no such assessments include any sampling and analysis of any environmental media for the presence or absence of Hazardous Materials; *provided*, that in no event shall Sellers be obligated to provide (i) access or information in violation of Applicable Law or (ii) any information, the disclosure of which would jeopardize any privilege available to Sellers or any of its Affiliates relating to such information or would cause Sellers or any of its Affiliates to breach a confidentiality obligation to which they are bound. In connection with such access, Purchaser's representatives shall cooperate with Sellers' representatives (one or more of whom may be present during any such inspection by Purchaser and Purchaser's representatives) and shall use their reasonable best efforts to minimize any disruption of the Business. Purchaser agrees to abide by the terms of the Confidentiality Agreement and any safety rules or rules of conduct reasonably imposed by Sellers with respect to such access and any information furnished to it or its representatives pursuant to this Section 8.1. Purchaser shall indemnify, defend and hold harmless Sellers, their officers, directors, employees and agents from and against any and all Liabilities asserted against or suffered by them relating to, resulting from, or arising out of, examinations or inspections made by Purchaser or its representatives pursuant to this Section 8.1. The indemnity provided for in this Section 8.1 shall expressly survive any termination of this Agreement or the Closing of the transactions contemplated hereby.

8.2 *Conduct of the Business Pending the Closing.* Except as otherwise expressly contemplated by this Agreement, the Ancillary Agreements and Section 8.2 of the Seller Disclosure Schedule attached hereto or with the prior written consent of Purchaser (which consent shall not be unreasonably withheld, delayed or conditioned), and except for any violations that would not reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect, during the period from and after the date hereof until the Closing Date, Sellers:

(a) shall use commercially reasonable efforts to conduct the Business in the Ordinary Course of Business;

(b) will maintain levels of material inventories of consumables and parts and supplies as ASARCO determines are reasonably adequate for operations in the Ordinary Course of Business and it is acknowledged by Purchaser and Guarantor that ASARCO anticipates reducing levels of material inventories of consumables and parts and supplies in the Ordinary Course of Business in response to economic and industry conditions;

(c) will maintain in full force and effect policies of insurance that provide casualty, property damage and general liability coverage for the Purchased Assets comparable in all material respects in amount and scope of coverage to that now maintained by or on behalf of Seller;

(d) will not sell, lease or otherwise transfer or dispose of any Purchased Assets used or held in the Ordinary Course of Business, or any interest therein, other than transfers and dispositions in the Ordinary Course of Business or de minimus sales approved by the Bankruptcy Court;

(e) will not grant or announce any material increase in the salaries, bonuses or other benefits payable by Sellers to any of the employees to be offered employment by Purchaser pursuant to Article IX, other than (i) as may be required by any Governmental Authority, Applicable Law, Collective Bargaining Agreement, Seller Employee Benefit Plan or employment Contract with any such employee, (ii) in the Ordinary Course of Business, or (iii) in accordance with Sellers' annual performance, promotion and salary reviews;

(f) will not change any method of accounting or accounting practice or policy used by Sellers (as it relates to the Business), other than such changes required by Sellers' Accountants or GAAP;

(g) will use commercially reasonable efforts to maintain in all material respects the relationships and goodwill of the Business with its Employees, suppliers and customers;

(h) will not fail to exercise any rights of renewal with respect to any lease listed in Section 6.8(a)(i) of the Seller Disclosure Schedule that by its terms would otherwise expire;

(i) will not hire any new employees or transfer employees from any other operations of Sellers, if any such employees are to be offered employment by Purchaser pursuant to Article IX, except (i) as may be required to replace any employees who terminate voluntarily or who were terminated involuntarily in the Ordinary Course of Business, (ii) in the Ordinary Course of Business or (iii) as set forth under Section 8.2 of the Seller Disclosure Schedule;

(j) will make capital expenditures or commitments for capital expenditures as necessary to maintain the material Purchased Assets, in each case, in the Ordinary Course of Business and it is acknowledged by Purchaser and Guarantor that ASARCO anticipates a reduction in capital expenditures and commitments for capital expenditures in the Ordinary Course of Business; and

(k) will not agree to take any of the actions specified in this Section 8.2, except as contemplated by this Agreement and the Ancillary Agreements.

For the avoidance of doubt, the foregoing shall not require Sellers to make any payments, incur any costs, or enter into or amend any Contracts or understandings, unless such payment,

incurrence or other action is required by Applicable Law, by Contract with a third party or to operate in the Ordinary Course of Business.

8.3 *Cooperation; Consents and Filings.*

(a) From and after the date hereof until the Closing Date, Sellers, Purchaser and Guarantor will each cooperate with each other and use (and will cause their respective representatives to use) commercially reasonable efforts (subject, solely to the extent required by Applicable Law, to entry of the Plan Confirmation Order) (i) to take, or to cause to be taken, all actions, and to do, or to cause to be done, all things reasonably necessary, proper or advisable on its part under this Agreement, the Ancillary Agreements, Applicable Law or otherwise to consummate and make effective the transactions contemplated by this Agreement as promptly as practicable; (ii) to obtain promptly from any Person or Governmental Authority any consent, Order or Permit required to be obtained by Sellers, Purchaser or Guarantor or any of their respective Affiliates in connection with the authorization, execution, delivery and performance of this Agreement, the Ancillary Agreements and the consummation of the transactions contemplated hereby and thereby; (iii) to promptly make all necessary filings and thereafter make any other required submissions with respect to this Agreement and the Ancillary Agreements and prompt consummation of the transactions contemplated hereby and thereby required under any Applicable Law; and (iv) to provide prompt notification to the other parties hereto of any actions pursuant to clauses (i) – (iii) of this Section 8.3(a). In addition, no party shall take any action after the date hereof (other than any action required to be taken under this Agreement or to which the other parties shall have granted their consent) that could reasonably be expected to materially delay the obtaining of, or result in not obtaining, any consent, Order, Permit, qualification, exemption or waiver from any Governmental Authority or other Person required to be obtained prior to Closing; *provided, however*, that nothing in this Section 8.3 shall be construed as altering the rights and obligations of the parties under Section 3.5 or Section 8.10. To the extent any consideration is required to be paid to a third party in order to obtain any consents from third parties that may be necessary, proper or advisable to consummate the transactions contemplated by this Agreement and the Ancillary Agreements, such cost will be borne equally by Sellers and Purchaser.

(b) To the extent permitted by Applicable Law and subject to any limitations on access to information provided for in Section 8.1, each party shall consult with the other parties with respect to, and provide any information reasonably requested by the other party in connection with, all material filings made with any Governmental Authority in connection with this Agreement and the transactions contemplated hereby. If any party or any of its Affiliates receives a request for information or documentary material from any Governmental Authority with respect to this Agreement or any of the transactions contemplated hereby, then such party shall endeavor in good faith to make, or cause to be made, as soon as reasonably practicable and, to the extent permitted by Applicable Law, after consultation with the other parties, an appropriate response in compliance with such request.

(c) In connection with the Original PSA, the parties made the required filing under the HSR Act with the Federal Trade Commission and Antitrust Division of the United States Department of Justice and the applicable "waiting period" thereunder expired on October 22, 2008 and the filing remains effective for a period of twelve months from the date of such

expiration. In addition to and without limiting any of the other covenants of the parties contained in this Section 8.3, the parties shall, in connection with the transactions contemplated hereby, (i) comply, at the earliest practicable date, with any request for additional information or documentary material received by them, or any of their respective Affiliates from the Federal Trade Commission or Antitrust Division of the United States Department of Justice pursuant to the HSR Act or from any state attorney general or other Governmental Authority in connection with antitrust matters, (ii) cooperate with each other in connection with any filing under the HSR Act and in connection with resolving any investigation or other inquiry concerning the transactions contemplated hereby commenced by the Federal Trade Commission, Antitrust Division of the United States Department of Justice, any state attorney general or any other Governmental Authority, (iii) use commercially reasonable efforts to resolve such objections, if any, as may be asserted with respect to the transactions contemplated hereby under any antitrust Law, (iv) advise the other parties promptly of any material communication received by such party from the Federal Trade Commission, Antitrust Division of the United States Department of Justice, any state attorney general or any other Governmental Authority regarding any of the transactions contemplated hereby, and of any understandings, undertakings or agreements (oral or written) such party proposes to make or enter into with the Federal Trade Commission, Antitrust Division of the United States Department of Justice, any state attorney general or any other Governmental Authority in connection with the transactions contemplated hereby, and (v) in the event this Agreement fails to close prior to October 22, 2009, take promptly all actions necessary to make the filings required of them or their "ultimate parent entities" under the HSR Act and concurrently with the filing of notifications under the HSR Act or as soon thereafter as practicable, Purchaser and Sellers shall each request early termination of the applicable "waiting period" under the HSR Act.

(d) In connection with the Original PSA, Purchaser and Sellers prepared and filed a joint notice under Section 721 of Title VII of the Defense Production Act of 1950, as amended (50 U.S.C. App. § 2170 et seq.) (the "***Exon-Florio Provision***") with the Committee on Foreign Investment in the United States ("***CFIUS***") with respect to the transactions contemplated by the Original PSA (the "***CFIUS Notice***"). The Purchaser and Sellers shall use commercially reasonable efforts to provide any additional information required by CFIUS in connection with this Agreement to obtain confirmation from CFIUS that the transactions contemplated by this Agreement do not fall within the scope of transactions requiring investigation under the Exon-Florio Provision. If requested by CFIUS in connection with its consideration of the transactions contemplated by this Agreement, the Purchaser and Sellers shall use commercially reasonable efforts to mitigate any concerns raised by CFIUS.

(e) Before and after the Closing Date, Sellers will use commercially reasonable efforts to cooperate with Purchaser in the conduct of the Arizona water rights adjudication cases to preserve Seller's existing rights in the adjudication for Purchaser's benefit after the Closing Date; *provided, however*, that Sellers shall have no obligation to continue such efforts upon the dissolution and winding up of ASARCO.

8.4 *Preservation of Records.* Subject to the other provisions of this Agreement, Purchaser and Guarantor shall, and shall cause their respective Affiliates to, preserve and keep in their possession all records held by them on and after the date hereof relating to the Purchased

Assets, for a period of seven years or such longer period as may be required by Applicable Law and shall make such records and personnel available to Sellers, or their Affiliates, as may reasonably be required by such party in connection with, among other things, any insurance claims, Legal Proceedings, collective bargaining or governmental investigations of Sellers or any of their Affiliates or in order to enable Sellers or any of their Affiliates to comply with their obligations under this Agreement, the Ancillary Agreements and each other agreement, document or instrument contemplated hereby or thereby. After the expiration of any applicable retention period, before Purchaser or any Guarantor shall dispose of any of such records, at least 90 days' prior notice to such effect shall be given by Purchaser or Guarantor to Sellers (or a Person designated by Sellers) and Sellers shall have the opportunity (but not the obligation), at their sole cost and expense, to remove and retain all or any part of such records as they may in their sole discretion select.

8.5 *Confidentiality.* The parties acknowledge that Guarantor and ASARCO previously executed a confidentiality agreement, dated July 6, 2007, (the "***Confidentiality Agreement***"), which Confidentiality Agreement shall continue in full force and effect in accordance with its terms and shall survive the execution and delivery of (and any termination of) this Agreement. Purchaser and Guarantor agree that this Agreement, the Ancillary Agreements and the terms and conditions of the transactions contemplated hereby and thereby shall be considered Evaluation Material as defined in, and subject to the terms of, the Confidentiality Agreement.

8.6 *Public Announcements.* Prior to the Closing Date, neither Sellers, nor Purchaser or Guarantor, or any of their respective Affiliates, agents or representatives, shall issue any press release or public statement concerning this Agreement or the transactions contemplated hereby without obtaining the prior written approval of the other parties hereto, unless such disclosure is required by Applicable Law, an Order of the Bankruptcy Court or by obligations pursuant to any agreement with any national securities exchange; *provided*, that the party intending to make such release shall give the other parties prior notice and shall use its commercially reasonable efforts consistent with such Applicable Law, Order or obligation to consult with the other party with respect to the text thereof.

8.7 *Bankruptcy Matters.*

(a) ASARCO shall use its reasonable best efforts to obtain prompt entry of the Plan Confirmation Order.

(b) ASARCO shall provide Purchaser with final drafts (promptly after such final drafts are prepared) of all documents, motions, orders, filings or pleadings that Sellers propose to file with the Bankruptcy Court which relate to (i) this Agreement or the transactions contemplated hereunder, (ii) the Sterlite Settlement Motion and the Sterlite Agreed Order, (iii) the Disclosure Statement, (iv) the Plan Confirmation Order and (v) the acquisition by Purchaser of the Purchased Assets, and will provide Purchaser with a reasonable opportunity to review such documents in advance of their service and filing to the extent reasonably practicable. Sellers shall consult and cooperate with Purchaser, and consider in good faith the views of Purchaser, with respect to all such filings. Except as permitted by Section 8.10, without the prior written consent of Purchaser (which consent shall not be unreasonably delayed or denied), once

filed with the Bankruptcy Court, Seller shall not seek to amend or modify any provision in the Sterlite Agreed Order, Disclosure Statement, the Plan or the Plan Confirmation Order to effect a change in the terms and conditions of the transactions contemplated by the Agreement which would reasonably be expected to have a material adverse effect on Purchaser (or Guarantor) or on the ability of Sellers and Purchaser (and Guarantor) to consummate the transactions contemplated hereby on or before the Termination Date; except that, Sellers may seek to amend or modify any provision in the Disclosure Statement, the Plan or the Plan Confirmation Order in connection with an Acquisition Proposal or Stand-Alone Plan in accordance with Section 8.10.

(c) Sellers, Purchaser and Guarantor shall each use commercially reasonable efforts to cooperate, assist and consult with each other to secure the entry of the Plan Confirmation Order following the date hereof, and to consummate the transactions contemplated by this Agreement (including (i) the assignment to and assumption by Purchaser of any Contract that is intended to be an Assumed Contracts in accordance with this Agreement, (ii) obtaining any consents required in connection therewith, and (iii) identifying any Contracts to allow Purchaser to furnish affidavits or other documents or information for filing with the Bankruptcy Court for the purposes, among others, of providing necessary assurances of performance by Purchaser and Guarantor under Section 3.5(a) of this Agreement). In the event that any Orders of the Bankruptcy Court relating to this Agreement shall be appealed by any Person (or a petition for certiorari or motion for reconsideration, amendment, clarification, modification, vacation, stay, rehearing or reargument shall be filed with respect to any such Order), subject to Section 13.1, Sellers, Purchaser and Guarantor will each cooperate in taking such steps to diligently defend against such appeal, petition or motion and Sellers and Purchaser shall use their commercially reasonable efforts to obtain an expedited resolution of any such appeal, petition or motion. Neither Purchaser nor Guarantor shall, without the prior written consent of Sellers, file, join in, or otherwise support in any manner whatsoever any motion or other pleading relating to the sale of the Purchased Assets. Nothing in this Section 8.7 shall be construed as altering the rights and obligations of Sellers under Section 8.10.

(d) By Order entered on January 14, 2009, ASARCO's exclusive periods to file a chapter 11 plan and to obtain acceptances of such chapter 11 plan were extended to March 17, 2009 and May 18, 2009, respectively. From time to time, ASARCO will timely file a motion(s) as required to extend (i) ASARCO's exclusive period to file a chapter 11 plan and (ii) ASARCO's exclusive period to obtain acceptances of such chapter 11 plan. Purchaser acknowledges that the Bankruptcy Court terminated exclusivity under Section 1121(d) of the Bankruptcy Code to allow ASARCO Incorporated and Americas Mining Corporation, ASARCO's direct and indirect parent companies, to file a chapter 11 plan and thus ASARCO's motion to extend its exclusive periods as provided in this paragraph does not apply to ASARCO Incorporated and Americas Mining Corporation.

8.8 *Title Insurance.* Purchaser, at its own expense and at its option, may obtain commitments (each, a "***Title Report***") for owner's policies of title insurance with extended coverage, each in the aggregate amount of the Purchase Price allocable to the applicable Purchased Real Property, and leasehold policies of title insurance in the aggregate amount of the Purchase Price allocable to the applicable Leasehold Property (each such policy, a "***Title Policy***") from a title company acceptable to Purchaser in its sole discretion (the "***Title***

Company"), and, at Purchaser's election and sole cost and expense, a survey of each parcel of Real Property (each, a "***Survey***"). Sellers have delivered to Purchaser or shall promptly deliver to Purchaser after the date hereof, any existing Surveys of any parcel of Real Property any Seller may have in its possession. Seller shall have no obligation to obtain any new Surveys or updates to any existing Surveys. Purchaser shall provide to Sellers, to the extent obtained by Purchaser, a copy of each Title Report, each Title Policy and each Survey and all supplemental reports amending such Title Reports, Title Policies or revisions amending such Surveys.

8.9 *Bonds and Assurances.* Prior to Closing, Purchaser shall (i) cause Sellers to be fully, unconditionally and irrevocably released and discharged from the bonds, financial assurance obligations and guaranty obligations identified in Section 8.9 of the Seller Disclosure Schedule outstanding on the Closing Date and all such other bonds, financial assurance obligations and similar obligations incurred in the Ordinary Course of Business on or after the date of this Agreement and prior to the Closing (the "***Bonds and Assurances***") and (ii) 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.

8.10 *Solicitation Provisions; Matching Right; Back-Up Bid Option.*

(a) Prior to entry of the Sterlite Agreed Order by the Bankruptcy Court:

(i) Purchaser, Guarantor and Sellers acknowledge that Sellers may take any action deemed necessary by Sellers to demonstrate that (i) they have sought to obtain the highest and best value for the Purchased Assets and that (ii) consummation of the transactions contemplated by this Agreement will in fact yield the highest and best value for the Purchased Assets, including giving notice thereof to Sellers' creditors, other bidders for the Purchased Assets and other interested parties, providing information about the Business to prospective bidders, entertaining and negotiating offers from such prospective bidders, and, if necessary, conducting an auction.

(ii) Without limiting the generality of Section 8.10(a)(i), each Seller and any director, officer, employee, investment banker, financial advisor, attorney, accountant or other advisor, agent or representative (collectively "***Representatives***") of any Seller shall have the right (but not the obligation), acting under the direction of the Board of Directors of ASARCO or any committee thereof, to, directly or indirectly: (i) solicit, initiate, facilitate or encourage any Acquisition Proposal or proposal for a Stand-Alone Plan, including by way of providing access to third parties to non-public information pursuant to one or more confidentiality agreements; and (ii) enter into and maintain discussions or negotiations with respect to one or more Acquisition Proposals or any Stand-Alone Plan proposal or otherwise cooperate with or assist or participate in, or facilitate, any such discussions or negotiations.

(iii) Purchaser and Guarantor agree that none of them nor any of their respective Affiliates or Subsidiaries shall, and that each of them shall use their reasonable best efforts to cause each of their respective Representatives not to, directly or indirectly, discourage or interfere with any Acquisition Proposal or Stand-Alone Plan, or contact or participate in discussions with any Person regarding an Acquisition Proposal or proposal for a Stand-Alone Plan that, to Purchaser or Guarantor's knowledge, has made, or is considering or participating in discussions or negotiations with any Seller or any Representative of any Seller regarding an Acquisition Proposal or proposal for a Stand-Alone Plan.

(iv) No Seller, nor any of its Representatives, shall have any liability to Purchaser or Guarantor, either under or relating to this Agreement, the Ancillary Agreements or any Applicable Law, by virtue of entering into or seeking Bankruptcy Court approval of an Acquisition Proposal or Stand-Alone Plan or the definitive agreement for any such Acquisition Proposal or Stand-Alone Plan. Any Seller may in its sole discretion enter into a definitive agreement with respect to such Acquisition Proposal or Stand-Alone Plan and Sellers may terminate this Agreement prior to or after entry into such a definitive agreement.

(v) Any action taken by any Seller or any Representative of any Seller in accordance with the provisions of this Section 8.10(a) are expressly acknowledged and agreed to be not in breach or violation of any covenant contained in this Agreement or that could be implied in this Agreement (including a covenant of good faith and/or fair dealing).

(b) Following the entry of the Sterlite Agreed Order by the Bankruptcy Court, ASARCO agrees that neither it nor any of its wholly-owned Subsidiaries shall, and that it shall direct its Representatives and its wholly-owned Subsidiaries' Representatives not to, directly or indirectly, solicit any Acquisition Proposal; *provided, however*, that, nothing shall prevent ASARCO, its Board of Directors or any of its Representatives from taking any of the following actions:

(i) complying with its obligations under Applicable Law with regard to an Acquisition Proposal; or

(ii) (A) engaging in any negotiations or discussions with any Person who has made an unsolicited bona fide written Acquisition Proposal or (B) recommending an unsolicited Acquisition Proposal to the Creditor Constituents, if in the case of each of clause (A) and (B) above, the Board of Directors of ASARCO determines in good faith (after consultation with its legal and financial advisors and the Creditor Constituents) that (1) such action would be reasonably likely to be required in order to comply with its fiduciary duties under Applicable

Law and (2) such Acquisition Proposal is a Superior Proposal or is likely to lead to a Superior Proposal; or

(iii) communicating or engaging in discussions with any of the Creditor Constituents or their respective advisors or Representatives regarding any matter, whether Acquisition Proposal, proposal relating to a Stand-Alone Plan or otherwise.

(c) Notwithstanding anything herein to the contrary, Sellers and their Subsidiaries and their respective officers, directors, employees, attorneys, investment bankers, accountants and other agents and Representatives shall be permitted to (i) maintain and continue to provide access to the Seller Data Room to Persons that have executed a confidentiality agreement with ASARCO prior to the entry of the Sterlite Agreed Order and (ii) respond to any inquiries from and provide access to the Seller Data Room to Persons that have submitted a written bona fide (and unsolicited) Acquisition Proposal that ASARCO determines in good faith is a Superior Proposal (or is reasonably likely to lead to a Superior Proposal) and that have executed a confidentiality agreement with ASARCO. No Seller, nor any of its Affiliates shall have any liability to Purchaser or Purchaser Parent, either under or relating to this Agreement, the Ancillary Agreements or any Applicable Law, by virtue of entering into or seeking Bankruptcy Court approval of a Superior Proposal or the definitive agreement for such Superior Proposal, in each case, in accordance with the terms of this Section 8.10, following the receipt of any Superior Proposal, except as provided in Section 13.2(b)(v) upon termination of this Agreement.

(d) Sellers shall, as soon as practicable, provide Purchaser with the material terms and conditions of any Acquisition Proposal, and identity of the Person making such Acquisition Proposal, received by Sellers after the entry of the Sterlite Agreed Order by the Bankruptcy Court that the Board of Directors of ASARCO determines in accordance with Section 8.10(b)(ii) above to take any affirmative action to approve, or authorize negotiations of, a definitive agreement in respect of.

(e) Purchaser shall have the right (a "***Matching/Topping Right***"), within four Business Days after Purchaser receives a copy of the material terms and conditions of any Acquisition Proposal, and identity of the Person making such Acquisition Proposal, pursuant to Section 8.10(d), to deliver to Sellers an unconditional written offer to improve the terms and conditions contained in this Agreement so long as the Deemed Value of such improved offer (which Deemed Value will include the value of the amounts that would be owed to Purchaser under Section 13.2(b)(v) if such Acquisition Proposal were accepted and consummated) is at least equal to the Deemed Value of such pending Acquisition Proposal. Purchaser shall be under no obligation to exercise its Matching/Topping Right or to participate in any proceedings designed to elicit from Purchaser an equal or higher and better offer.

(f) If ASARCO terminates this Agreement pursuant to Section 13.1(d) or (e), and such Superior Proposal or Stand-Alone Plan, as applicable, that prompted such termination is definitively terminated prior to consummation thereof, then ASARCO shall offer Purchaser the right (the "***Back-Up Bid Option***") to consummate the purchase and sale of the Purchased Assets and the assumption of the Assumed Liabilities in a transaction on substantially the same

terms and conditions as this Agreement; *provided, however,* the Back-Up Bid Option will expire with no further obligation to Purchaser at 5:00 p.m., Dallas, Texas time, on the tenth Business Day following the date on which the Back-Up Bid Option was offered to Purchaser unless prior to such time (A) ASARCO receives a definitive purchase and sale agreement executed by Purchaser and Guarantor in the form of this Agreement (including Article II) with only such modifications as are described in this Section 8.10(f) (the "***Back-Up Bid Agreement***") and (B) ASARCO shall have received an originally executed letter of credit, enforceable against the issuer thereof, in the amount of $125,000,000.00 issued in favor of ASARCO by a Qualified Bank; *provided, however,* that if ASARCO has retained or drawn on the First L/C pursuant to Section 4.2(f), then the letter of credit shall be issued in the amount of $75,000,000.00. The Back-Up Bid Agreement shall contain the following modifications to this Agreement:

(i) all dates and deadlines shall be extended to such dates following execution of the Back-Up Bid Agreement as are consistent with the respective time periods between the Effective Date and the dates or deadlines contained in this Agreement;

(ii) the covenants contained in the subsections of Section 8.2 shall be reasonably revised as appropriate to reflect ASARCO's operations at such time; *provided, however,* that Purchaser, Guarantor and Sellers, each acting reasonably, are able to agree in writing on such revisions prior to expiration of the Back-Up Bid Option; and

(iii) such other non-substantive changes as may be reasonably required under the circumstances and as may be agreed in writing among Purchaser, Guarantor and Sellers, each acting reasonably, prior to expiration of the Back-Up Bid Option.

Purchaser shall be entitled to seek specific performance to enforce its right to receive the offer of the Back-Up Bid Option from Sellers in accordance with this Section 8.10(f) without the necessity of proving actual damages or of posting any bond.

8.11 *Risk of Loss; Casualty Loss.* All risk of loss or damage to or destruction of the Purchased Assets, in whole or in part, shall be and remain with Sellers until Closing and upon Closing, the risk of loss or damages to or destruction of the Purchased Assets in whole or in part shall be and remain with Purchaser. If, between the date of this Agreement and the Closing, any of the Purchased Assets shall be destroyed or damaged in whole or in part by fire, earthquake, flood, other casualty or any other cause (the "***Casualty***"), then Purchaser shall acquire such Purchased Assets on an "as is" basis and take an assignment from Sellers of any insurance proceeds payable to Sellers in respect of the Casualty.

8.12 *Further Assurances.* Sellers, Purchaser and Guarantor agree that from and after the Closing Date, each of them will, and will cause their respective Affiliates to, execute and deliver such further instruments of conveyance and transfer and take such other action as may reasonably be requested by any party hereto to carry out the purposes and intents hereof.

8.13 *Payments and Proceeds.*

(a) If, at any time on or after Closing, any Seller receives any asset or any proceeds in respect of any Purchased Asset, whether or not in payment of any sum due to Purchaser, or otherwise comes into possession of any Purchased Asset or product or proceed thereof, such Seller shall turn over such asset or proceed to Purchaser and pending such turn over, such Seller shall hold such asset or proceed in trust for Purchaser's benefit. This Section 8.13(a) shall not apply to transactions contemplated by, or Purchased Assets, proceeds or products received pursuant to, the Purchaser Promissory Note or Security Agreement.

(b) If, at any time on or after Closing, Purchaser receives any asset or any proceeds in respect of any Excluded Asset, whether or not in payment of any sum due to any Seller, or otherwise comes into possession of any Excluded Asset or product or proceed thereof, Purchaser shall turn over such asset or proceed to Sellers and pending such turn over, Purchaser shall hold such asset or proceed in trust for Sellers' benefit.

8.14 *Transition Services Agreement.* The parties shall negotiate in good faith as promptly as practicable following the date of this Agreement a form of Transition Services Agreement whereby from and after the Closing until the completion by ASARCO and its subsidiaries (and any successor entities to ASARCO in the Bankruptcy Cases) of the wind down of its operations and the implementation of the Plan, Purchaser will provide to ASARCO the litigation support services, closing accounts statement services, and access to Real Property and Books and Records as set forth in Exhibit K and will make available the Transferred Employees or other personnel to provide to ASARCO the other wind down services described in Exhibit K in order to wind down operations, implement the Plan and otherwise administer the Bankruptcy Cases.

ARTICLE IX
EMPLOYEES AND EMPLOYEE BENEFITS

9.1 *Employment.*

(a) All of the employees of Sellers who are not union-represented and who are employed on the Closing Date, including those actively at work or on vacation, leave of absence or other approved absence from work and individuals who have received offers of employment but have not reported to work ("***Non-Union Employees***"), shall be offered employment with Purchaser on or before the Closing Date, subject to completion of all applications and forms for employment and benefits required by Applicable Law or required of similarly-situated employees of Guarantor, on the terms which, in the aggregate, are substantially equivalent to those provided to such Non-Union Employees prior to Closing. All union-represented employees of Sellers who are employed on the Closing Date, including those actively at work or on vacation, leave of absence or other approved absence from work and individuals who have received offers of employment but have not reported to work ("***Union Employees***", and together with the Non-Union Employees, the "***Employees***") shall be offered employment with Purchaser on or before the Closing Date, subject to completion of all applications and forms for employment and benefits required by Applicable Law or required of similarly-situated employees of Guarantor, in accordance with the terms of the labor agreement negotiated between Purchaser and the respective Union. Such persons who accept such offer on or before the

Closing Date shall be referred to as "***Transferred Employees***." Notwithstanding the foregoing, this Section 9.1(a) shall not apply to those employees of Sellers whose principal services relate to litigation and bankruptcy administration (which employees Sellers agree to identify to Purchaser at least 30 days prior to Closing), and Purchaser will be under no obligation to offer employment to such employees of Sellers.

(b) Any liability or obligation that Sellers shall incur with respect to severance, benefits or termination of Employees as a result of Purchaser's failure to provide Employees with pay, benefits and other terms and conditions of employment comparable in the aggregate to those provided to Employees as of the Closing or, where Purchaser's provision of a comparable, in the aggregate, benefit is impracticable or impossible, Purchaser's failure to provide a compensation and benefits package of comparable value at least sufficient to provide Purchaser and Sellers with a good faith defense to any allegation or claim that such Transferred Employees might make for severance or termination, will be an Assumed Liability.

(c) Purchaser and Sellers shall comply with the requirements of Applicable Law in respect of the Transferred Employees.

9.2 *Terms of Continued Employment.*

(a) Purchaser agrees to provide to those Transferred Employees who were Non-Union Employees, for a period of at least 24 months following the Closing Date (i) levels of total compensation (including salary) and participation in Seller Employee Benefit Plans which, in the aggregate, are substantially equivalent to the levels of total compensation (including salary) and Seller Employee Benefit Plan participation, in the aggregate, of such Employees as in effect as of the Closing Date and (ii) at a work location no more than 50 miles from the individual's work location as of the Closing Date; provided, however, that this shall not be construed to grant to any Transferred Employee a right to employment by Purchaser for any particular length of time. Nothing in this Section 9.2(a) shall in any way restrict the right of Purchaser to terminate any Transferred Employee who was a Non-Union Employee at any time for any reason not in violation of Contract or Applicable Law.

(b) Notwithstanding Section 9.2(a), if at any time during the 24-month period following the Closing Date the employment of any Transferred Employee is terminated other than for cause or is constructively terminated under the severance plan set forth in Section 9.2(b) of the Seller Disclosure Schedule, Purchaser shall provide the terminated Transferred Employee with severance benefits which are comparable, in the aggregate, to the severance benefits described in Section 9.2(b) of the Seller Disclosure Schedule.

9.3 *Assumption of Plans.* As of the Closing Date, Purchaser shall adopt and become the sponsor and employer for purposes of each and every Seller Employee Benefit Plan set forth in Section 9.3 of the Seller Disclosure Schedule and shall be substituted for Seller or its Subsidiaries who had theretofore been the sponsor of any such Seller Employee Benefit Plan. Effective as of the Closing, Purchaser shall be responsible for all benefits and liabilities with respect to such Seller Employee Benefit Plans, as such Seller Employee Benefit Plans may be amended or modified from time to time by written agreement between Purchaser and the Unions after the Closing Date.

9.4 *Service Credit.* Except as may otherwise be agreed in writing after the Closing Date between Purchaser and the Unions with respect to the applicable unionized employees, Purchaser shall cause to be provided to each Transferred Employee credit for prior service with Sellers or their Subsidiaries since their last day of hire for all purposes (including vesting, eligibility, benefit accrual and/or level of benefits) in all Purchaser employee benefit plans, programs, practices or arrangements, including fringe benefit plans, vacation and sick leave policies, severance plans or policies, retiree medical plans, defined benefit plans, matching contributions under defined contribution plans (including defined contribution retiree medical plans) maintained or provided by Purchaser or its Subsidiaries or Affiliates in which such Transferred Employees are eligible to participate after the Closing Date, to the extent such prior service credit would be extended under each applicable Seller Employee Benefit Plan; *provided, however,* that no such past service credit shall be granted to the extent that it would result in the duplication of benefits for the same period of service.

9.5 *Vacation and Leave.* Except for amounts of vacation and other accrued time off paid to Transferred Employees by Sellers at or promptly after the Closing Date, Purchaser shall provide each Transferred Employee credit for all of the Transferred Employee's earned but unused vacation and sick leave and other time-off as of the Closing Date as determined under Seller's time-off policies and Purchaser shall thereafter be responsible for providing commensurate vacation pay or pay in lieu of vacation as well as sick leave with respect to such employees for the credited vacation and sick leave. At least three days prior to Closing, Sellers shall provide Purchaser with a calculation of all of the Transferred Employee's earned but unused vacation and sick leave and other accrued time-off.

9.6 *Welfare Benefit Plans; Workers' Compensation; Other Benefits.*

(a) With respect to each Transferred Employee (including any beneficiary or the dependent thereof), Purchaser shall assume all liabilities and obligations for workers' compensation benefits even if such liability or obligation relates to claims incurred (whether or not reported or paid) prior to the Closing Date. For purposes of this Section 9.6, a claim shall be deemed to be incurred when (i) with respect to medical, dental, health related benefits, accident and disability (including worker's compensation benefits but not including wage continuation/replacement type benefits), the medical, dental, health related, accident or disability services with respect to such claim are performed and (ii) with respect to life insurance, when the death occurs.

(b) Effective as of the Closing Date, Purchaser shall be responsible for providing coverage under the Consolidated Omnibus Budget Reconciliation Act ("***COBRA***") to any Employee, his or her spouse or dependent person as to whom a "qualifying event" as defined in Section 4890B of the Code has occurred (i) prior to the Closing Date in the case of a "qualifying event" other than a termination of employment and (ii) in the case of a termination of employment "qualifying event" on or prior to the Closing Date. Purchaser 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.

(c) Purchaser acknowledges that ASARCO has obligations under the Coal Act, including the obligations (i) to provide retiree health benefits to eligible beneficiaries and their dependents pursuant to Section 9711 of the Coal Act, 26 U.S.C. § 9711, (ii) 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 (iii) 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). Accordingly, Purchaser assumes and is responsible for all of the Coal Act obligations of ASARCO, including the obligations set forth in this paragraph.

(d) In addition to the obligations assumed pursuant to the other sections of Article IX and not in limitation thereof, Purchaser shall assume and be responsible for all of ASARCO's obligations under the Collective Bargaining Agreement, as amended by that certain letter agreement entered into between the United Steelworkers of America and the Purchaser, dated June 23, 2008, which shall become effective on the Closing Date, and the retiree class action settlement agreement approved by the Bankruptcy Court by order dated March 15, 2007 (Docket No. 4178), which settled the cause of action captioned *Asarco Incorporated et al. v. United Steelworkers of America, AFL-CIO/CLC, et al., No. CV-03-1297.*

9.7 *OSHA Medical Records; Other Records; Payroll Deductions.* Purchaser shall accept delivery from Sellers of all OSHA exposure and other records with respect to the Business, and shall maintain such records and provide copies thereof to current and former employees engaged primarily in the conduct of the Business in compliance with OSHA. Purchaser shall obtain from Transferred Employees, as part of its hiring process or otherwise, their consents to the transfer of their medical and other records and all payroll deduction authorizations from Sellers to Purchaser. Notwithstanding anything to the contrary contained in Section 9.1, receipt of the consent contemplated by the immediately preceding sentence shall be considered a condition to the offer of employment required in Section 9.1, and any Employee who fails to provide such consent promptly shall cease to be a Transferred Employee, effective (retroactively, if applicable) as of the Closing Date.

9.8 *Announcement.* On or prior to the date hereof, Sellers and Purchaser have agreed (after consultation with the Unions) upon a form of joint announcement to employees concerning this Agreement and the transactions contemplated hereby and a communication plan concerning the method and timing of the delivery of such announcement. Contemporaneously with the execution and delivery of this Agreement (or promptly thereafter), the parties will deliver such announcement to employees in accordance with such communication plan.

9.9 *Warn Act.* Before the Closing Date, Sellers shall be responsible with respect to all current and former employees of Sellers for compliance with the Worker Adjustment and Retraining Notification Act of 1988 (the "***WARN Act***") and any similar state or local law for an "employment loss" (as defined in the WARN Act) and occurring before the Closing Date as a result of actions take by Sellers. After the Closing Date, Purchaser shall be responsible with respect to all Transferred Employees for compliance with the WARN Act and any similar state or local Laws for an "employment loss" (as defined in the WARN Act) or temporary layoff (with no reasonable expectation of recall) occurring on or after the Closing Date as a result of actions taken by Purchaser. Section 9.9 of the Seller Disclosure Schedule lists the names and the sites of employment or facilities of those individuals who suffered an "employment loss" (as defined in

Exhibit C

DECLARATION OF TRUST

FOR THE

ASARCO SCC LITIGATION TRUST

BY AND AMONG

ASARCO ADMINISTRATION COMPANY, LLC

AND

THE TRUSTEES (AS NAMED HEREIN)

Dated as of _____, 2009

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DECLARATION OF TRUST

This Declaration of Trust (this "Declaration"), dated as of [_____] [__], 2009, by and among ASARCO Administration Company, LLC ("Reorganized ASARCO"), Joseph F. Lapinsky, as the trustee (the "SCC Litigation Trustee"), and [_____], as the Delaware trustee (the "Delaware Trustee"), is executed in order to establish a liquidating trust (the "SCC Litigation Trust") in connection with the Sixth Amended Joint Plan of Reorganization for the Debtors under Chapter 11 of the United States Bankruptcy Code, dated _____ ___, 2009 (as it may be amended, modified, or supplemented, the "Plan"). Capitalized terms used in this Declaration and not otherwise defined herein shall have the respective meanings ascribed to them in the Glossary of Defined Terms for the Debtors' Plan Documents; all other capitalized terms used herein are defined in Section 11.8 hereof.

W I T N E S S E T H

WHEREAS, the Debtors filed voluntary petitions pursuant to Chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division (the "Bankruptcy Court"), commencing the jointly administered cases known as In re ASARCO LLC, *et al.*, Case No. 05-21207 (the "Bankruptcy Cases");

WHEREAS, the Bankruptcy Court, through the Plan, has ordered the establishment and creation of the SCC Litigation Trust to (a) in an expeditious but orderly manner, prosecute, settle, or otherwise dispose of the SCC Litigation Trust Claims, as successor to and representative of the estates of the Debtors in accordance with Sections 1145(a)(1) and 1123(b)(3)(B) of the Bankruptcy Code and (b) make timely distributions to the SCC Litigation Trust Beneficiaries;

WHEREAS, in fulfilling its purpose, the SCC Litigation Trust shall have no objective or authority to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the purpose of the SCC Litigation Trust;

WHEREAS, the SCC Litigation Trust is created for the benefit of the SCC Litigation Trust Beneficiaries;

WHEREAS, the SCC Litigation Trust is created pursuant to, and to effectuate, the Plan.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein and in the Plan, the Debtors and the Trustees agree as follows:

ARTICLE 1
ESTABLISHMENT OF THE SCC LITIGATION TRUST

1.1 Declaration of Trust.

(a) Pursuant to the Plan, the Debtors and the SCC Litigation Trustee hereby establish the SCC Litigation Trust, which shall be known as the "ASARCO SCC

Litigation Trust" on behalf of the SCC Litigation Trust Beneficiaries and the Trustees hereby accept such rights and properties assigned and transferred to them and the trust imposed upon them pursuant to this Declaration.

(b) The principal office of the SCC Litigation Trust shall be in care of the SCC Litigation Trustee at [_____], or at such other address as the SCC Litigation Trustee may designate.

1.2 SCC Litigation Trust Assets.

(a) In accordance with the Plan and this Declaration, as of the Effective Date, the Debtors, subject to the provisions of the Confirmation Order, hereby transfer, assign, and deliver to the SCC Litigation Trustee for the benefit of the SCC Litigation Trust Beneficiaries, and the SCC Litigation Trustee hereby accepts on behalf of the SCC Litigation Trust Beneficiaries, (i) all of the Debtors' respective rights, title, and interests in and to the SCC Litigation Trust Claims, free and clear of any and all Liens, Claims, encumbrances, or interests of any kind in such property of any other Person or entity, other than Liens or encumbrances arising under the Bankruptcy Code or other applicable law; (ii) all of the Debtors' respective rights, title, and interest in the Debtors' Privileges associated with the SCC Litigation Trust Claims; and (iii) the SCC Litigation Expense Fund. Upon the transfer of the assets to the SCC Litigation Trust, the Debtors shall have no interest in or obligation with respect to such assets or, except as described in this Section 1.2, Section 1.3 or Section 1.4, the SCC Litigation Trust.

(b) The SCC Litigation Trustee shall collect all income earned with respect to, and all SCC Litigation Proceeds attributable to, and all payments made on account of, the assets of the SCC Litigation Trust, which shall thereupon be added to the assets of the SCC Litigation Trust and held as a part thereof (and which title shall be vested in the SCC Litigation Trustee).

(c) On or as promptly as practicable after the Effective Date, Reorganized ASARCO shall (i) deliver or cause to be delivered to the SCC Litigation Trustee any and all documents (or copies thereof) to the extent relating to the SCC Litigation Trust Claims held by the Debtors, their employees, agents, advisors, attorneys, accountants, or any other professionals hired by the Debtors and (ii) provide reasonable access to the SCC Litigation Trustee and its advisors to such employees of the Debtors, their agents, advisors, attorneys, accountants, or any other professionals hired by the Debtors with knowledge of matters relevant to the SCC Litigation Trust Claims for the purpose of enabling the SCC Litigation Trustee to fulfill its obligations under this Declaration, including the prosecution of the SCC Litigation Trust Claims. Reorganized ASARCO shall, pursuant to and subject to the terms and conditions of the Plan, the Transition Services Agreement, or the New Plan Sponsor PSA, as applicable, facilitate access to the SCC Litigation Trustee and its advisors to employees and books and records of the Plan Sponsor in connection with the obligations of the SCC Litigation Trustee under this Declaration, including the prosecution of the SCC Litigation Trust Claims. Requests for such access shall be made through Reorganized ASARCO or its representatives.

(d) At any time and from time to time on and after the Effective Date, the Trustees and Reorganized ASARCO agree (i) at the reasonable request of the SCC Litigation

Trustee to execute and/or deliver any instruments, documents, books, and records (including those maintained in electronic format and original documents as may be needed) and (ii) to take, or cause to be taken, all such further actions as the SCC Litigation Trustee may reasonably request, in each case, in order to evidence or effectuate the transfer of the SCC Litigation Trust Claims and the Privileges to the SCC Litigation Trustee and to otherwise carry out the intent of the Plan.

1.3 Funding of the SCC Litigation Trust.

(a) In accordance with the Plan, Reorganized ASARCO shall, on the Effective Date, (i) transfer to the SCC Litigation Trust the SCC Litigation Expense Fund and (ii) from time to time thereafter deliver additions to the SCC Litigation Expense Fund to the extent required by the Plan. Except pursuant to the terms of the Plan, none of the Debtors shall have any further obligation to provide any funding with respect to the SCC Litigation Trust. The SCC Litigation Trustee shall use the SCC Litigation Expense Fund consistent with the purposes of the SCC Litigation Trust and subject to the terms and conditions of the Plan and this SCC Litigation Trust Agreement.

(b) All costs and expenses associated with the administration of the SCC Litigation Trust shall be the responsibility of and paid by the SCC Litigation Trust.

1.4 Tax Matters.

(a) Solely for tax purposes, the SCC Litigation Trust Beneficiaries and Reorganized ASARCO (to the extent of its retained interest in the SCC Litigation Trust for federal income tax purposes) (collectively, the "Trust Tax Owners") are treated as grantors and owners of the SCC Litigation Trust pursuant to Section 671 et seq. of the Internal Revenue Code and the Treasury Regulations promulgated thereunder (the "Treasury Regulations") and any similar provisions of state or local law. It is intended that the SCC Litigation Trust be classified as a liquidating trust under Section 301.7701-4(d) of the Treasury Regulations.

(b) For all federal, state and local income tax purposes, all persons (including, without limitation, the Debtors, the Trustees, and the Trust Tax Owners) shall take the position, subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary, that the transfer of assets to the SCC Litigation Trust is a deemed transfer to the Trust Tax Owners (as of the Initial Distribution Date), followed by a deemed transfer by such Trust Tax Owners to the SCC Litigation Trust.

(c) The fair market value of the portion of the SCC Litigation Trust assets that is treated as having been transferred to each Trust Tax Owner pursuant to Section 1.4(b) hereof, and the fair market value of the portion of the SCC Litigation Trust assets that is treated for federal income tax purposes as having been transferred to any Trust Tax Owner or other distributee as a result of the allowance or disallowance of a Disputed Claim, shall be determined by the SCC Litigation Trustee, and all persons (including, without limitation, the SCC Litigation Trustee, the Trust Tax Owners, and the transferors, for tax purposes, of any assets transferred to the SCC Litigation Trust) shall utilize the fair market value determined by the SCC Litigation Trustee for all federal income tax purposes.

(d) The SCC Litigation Trustee shall allocate any items of income, gain, loss, deduction, and credit of the SCC Litigation Trust for federal income tax purposes among current and/or former Trust Tax Owners, such allocation shall be binding on all current and former Trust Tax Owners for all federal, state, and local income tax purposes and the current and former Trust Tax Owners shall be responsible (on a current basis) for the payment of any federal, state, and local income tax due on the income and gain so allocated to them.

1.5 Nature and Purpose of the SCC Litigation Trust.

(a) Purpose. Upon compliance with Section 3810 of the Delaware Statutory Trust Act, 12 Del. C., § 3801 et seq. (hereinafter the "Act"), the SCC Litigation Trust shall be organized and established as a statutory trust pursuant to which the SCC Litigation Trustee, subject to the terms and conditions contained herein and in the Plan, is to (i) hold the assets of the SCC Litigation Trust and dispose of the same in accordance with this Declaration and the Plan in accordance with Treasury Regulation Section 301.7701-4(d) and (ii) oversee and direct the expeditious but orderly liquidation of the assets of the SCC Litigation Trust. Accordingly, the primary purpose of the SCC Litigation Trust is to liquidate the SCC Litigation Trust Claims with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the SCC Litigation Trust.

(b) Relationship. This Declaration is intended to create a trust and a trust relationship and to be governed and construed in all respects as a trust. The SCC Litigation Trust is not intended to be, and shall not be deemed to be or treated as, a general partnership, limited partnership, joint venture, corporation, joint stock company or association, nor shall the SCC Litigation Trustee, the SCC Litigation Trust Board (or any of its members or ex officio members), or the SCC Litigation Trust Beneficiaries, or any of them, for any purpose be, or be deemed to be or treated in any way whatsoever to be, liable or responsible hereunder as partners or joint venturers. The relationship of the SCC Litigation Trust Beneficiaries to the SCC Litigation Trustee and the SCC Litigation Trust Board shall be solely that of beneficiaries of a trust and shall not be deemed a principal or agency relationship, and their rights shall be limited to those conferred upon them by this Declaration.

1.6 Incorporation of Plan. The Plan and the Confirmation Order are each hereby incorporated into this Declaration and made a part hereof by this reference; *provided, however*, to the extent that there is conflict between the provisions of this Declaration, the provisions of the Plan, and/or the Confirmation Order, each such document shall have controlling effect in the following rank order: (1) the Confirmation Order; (2) the Plan; and (3) this Declaration.

1.7 Appointment as Representative. Pursuant to section 1123(b)(3) of the Bankruptcy Code, the Plan appointed the SCC Litigation Trustee as the duly appointed representative of the Debtors' Estates, and, as such, the SCC Litigation Trustee succeeds to all of the rights and powers of a trustee in bankruptcy with respect to prosecution, sale, transfer, or other disposition, as applicable, of the SCC Litigation Trust Claims for the ratable benefit of the SCC Litigation Trust Beneficiaries. To the extent that any SCC Litigation Trust Claims cannot be transferred to the SCC Litigation Trust because of a restriction on transferability under

applicable non-bankruptcy law that is not superseded or preempted by section 1123 of the Bankruptcy Code or any other provision of the Bankruptcy Code, such SCC Litigation Trust Claims shall be deemed to have been retained by Reorganized ASARCO, and the SCC Litigation Trustee shall be deemed to have been designated as a representative of the Estates pursuant to section 1123 (b)(3)(B) of the Bankruptcy Code to enforce, pursue, sale, transfer, or otherwise dispose of, as applicable, such SCC Litigation Trust Claims on behalf of the Estates.

ARTICLE 2
TRUSTEES

2.1 Delaware Trustee. In accordance with the Plan and subject to the Confirmation Order, [_____] of Delaware is hereby named, constituted, and appointed as Delaware Trustee effective as of the date hereof, to have all the rights, powers, and duties set forth herein and as otherwise provided by law. The Delaware Trustee is willing and does hereby accept the appointment to act and serve as Delaware Trustee of the SCC Litigation Trust.

2.2 SCC Litigation Trustee. In accordance with the Plan and subject to the Confirmation Order, the Plan Administrator is hereby named, constituted, and appointed as SCC Litigation Trustee effective as of the date hereof, to have all the rights, powers, and duties set forth herein and as otherwise provided by law. The SCC Litigation Trustee is willing, and does hereby accept the appointment, to act and serve as SCC Litigation Trustee of the SCC Litigation Trust.

2.3 Tenure, Removal, and Replacement of the SCC Litigation and Delaware Trustee.

(a) The SCC Litigation Trustee and the Delaware Trustee (each, a "Trustee" and, together, the "Trustees") will each serve until resignation and the appointment of a successor pursuant to subsection (b) below, removal pursuant to subsection (c) below, or death (if applicable).

(b) A Trustee may resign by giving not less than 90 days' prior written notice to the SCC Litigation Trust Board. Such resignation will become effective on the later to occur of: (i) the day specified in such notice and (ii) the appointment of a successor trustee as provided herein and the acceptance by such successor trustee of such appointment. If a successor trustee is not appointed or does not accept its appointment within 90 days following delivery of notice of resignation, (i) in the case of the SCC Litigation Trustee, the SCC Litigation Trustee may file a motion with the Bankruptcy Court (at the expense of the SCC Litigation Trust), upon notice and hearing, for the appointment of a successor trustee and (ii) in the case of the Delaware Trustee, the Delaware Trustee may file a motion with the Delaware Court of Chancery (at the expense of the SCC Litigation Trust), upon notice and hearing, for the appointment of a successor trustee.

(c) A Trustee may be removed by order of the Bankruptcy Court upon the unanimous motion made by all the members of the SCC Litigation Trust Board; *provided, however,* that, notwithstanding the foregoing, Joseph F. Lapinsky, as the initial SCC Litigation Trustee, may be removed at any time by order of the Bankruptcy Court upon a motion made by

the SCC Asbestos Board Member (as hereinafter defined). Except in the case of a motion made by the SCC Asbestos Board Member for the removal of Joseph F. Lapinsky as the initial SCC Litigation Trustee, which may be made in the sole discretion of the SCC Asbestos Board Member, any motion to remove a Trustee shall be for cause shown.

(d) In the event of a vacancy in the position of a Trustee (whether by removal, resignation, or (if applicable) death), the vacancy will be filled by the appointment of a successor trustee by (i) unanimous vote and resolution of the SCC Litigation Trust Board, and the acceptance by the successor trustee in accordance with Section 2.3(e) or (ii) an order of the Bankruptcy Court after an opportunity for a hearing; *provided, however*, that only the SCC Litigation Trust Board shall have standing to seek such an order, except as provided in Section 2.3(b). If a successor trustee is appointed by resolution, as provided in clause (i) of the preceding sentence, and such appointment is accepted by the successor trustee, the SCC Litigation Trust Board shall file notice of such appointment and acceptance with the Bankruptcy Court, which notice will include the name, address, and telephone number of the successor trustee; provided that the filing of such notice shall not be a condition precedent to the vesting in the successor Trustee of all the estates, properties, rights, powers, trusts, and duties of its predecessor.

(e) Any successor trustee appointed hereunder shall execute an instrument accepting such appointment and assuming all of the obligations of the predecessor Trustee hereunder and thereupon the successor trustee shall, without any further act, become vested with all the estates, properties, rights, powers, privileges, authorities, and duties of its predecessor in the SCC Litigation Trust hereunder with like effect as if originally named herein and the successor trustee will not be liable personally for any act or omission of the predecessor Trustee.

(f) Upon the appointment of a successor trustee, the predecessor Trustee (or the duly appointed legal representative of a deceased Trustee) shall, if applicable, when requested in writing by the successor trustee, execute and deliver an instrument or instruments conveying and transferring to such successor trustee upon the trust herein expressed, without recourse to the predecessor Trustee, all the estates, properties, rights, powers, and trusts of such predecessor Trustee, and shall duly assign, transfer, and deliver to such successor trustee all property and money held hereunder, and all other assets and documents relating to the SCC Litigation Trust, the SCC Litigation Trust Claims, or the SCC Litigation Trust Interests then in its possession and held hereunder.

(g) During any period in which there is a vacancy in the position of a Trustee, the SCC Litigation Trust Board may (to the extent permitted by the Act) appoint one of its members to serve as an interim Trustee, (the "Interim Trustee"). The Interim Trustee shall be subject to all the terms and conditions applicable to a SCC Litigation Trustee hereunder. Such Interim Trustee shall not be limited in any manner from exercising any rights or powers as a member of the SCC Litigation Trust Board merely by its appointment as Interim Trustee.

(h) The death, resignation, retirement, removal, bankruptcy, dissolution, liquidation, incompetence, or incapacity to perform the duties of a Trustee shall not operate to dissolve, terminate, or annul the SCC Litigation Trust.

2.4 Compensation of the Trustees.

(a) As compensation, the SCC Litigation Trustee shall be entitled to receive $_____ per annum (or such other amount as agreed to from time to time by the SCC Litigation Trustee and the SCC Litigation Trust Board), payable in advance in quarterly installments, for the performance of services provided under and pursuant to this Declaration, and shall be reimbursed for all reasonable and documented expenses incurred in connection with the performance of its services hereunder.

(b) The Delaware Trustee shall be entitled to receive $_____ per annum, payable on [_____], and shall be reimbursed for all reasonable and documented expenses incurred in connection with the performance of its services hereunder.

2.5 No Bond. The Trustees shall serve without bond.

2.6 Inquiries into Trustee's Authority. Except as otherwise set forth in the SCC Litigation Trust or in the Plan, no Person dealing with the SCC Litigation Trust shall be obligated to inquire into the authority of the SCC Litigation Trustee in connection with the prosecution, protection, conservation, sale, or other disposition, as applicable, of the SCC Litigation Trust Claims.

ARTICLE 3
DUTIES AND LIMITATIONS OF TRUSTEES

3.1 Role of the SCC Litigation Trustee. In furtherance of and consistent with the purpose of the SCC Litigation Trust and the Plan, the SCC Litigation Trustee, subject to the terms and conditions contained herein and in the Plan, shall, in an expeditious but orderly manner, liquidate and convert to Cash the assets of the SCC Litigation Trust, engage in acts that would constitute ordinary performance of the obligations of a trustee under a liquidating litigation trust, make timely distributions of such Cash and not unduly prolong the duration of the SCC Litigation Trust. The liquidation of the SCC Litigation Trust Claims may be accomplished either through the prosecution, compromise and settlement, abandonment, dismissal, or other disposition of any or all claims, rights, or causes of action, or otherwise. In all circumstances, the SCC Litigation Trustee shall act in the best interests of maximizing the value of the assets of the SCC Litigation Trust for the SCC Litigation Trust Beneficiaries and in furtherance of the purpose of the SCC Litigation Trust and shall, where required pursuant to the terms of this Declaration, consult with or obtain the required approval of the SCC Litigation Trust Board. All of the SCC Litigation Trustee's decisions with respect to the pursuit or settlement of the SCC Litigation Trust Claims shall be taken in good faith.

3.2 Authority of SCC Litigation Trustee. Subject to any limitations contained herein (including, without limitation, Article 4 hereof) or in the Plan, the SCC Litigation Trustee shall have the full power, authority, and discretion to take any and all actions as are necessary or advisable to carry out its responsibilities hereunder and to effectuate the purposes of the SCC Litigation Trust, including, without limitation:

(a) full power, authority, and discretion to interpret, construe, and decide all questions and issues arising under any provision of this Declaration or of any

agreement, notification, certificate, or document relating to or evidencing a SCC Litigation Trust Interest (including, without limitation, the power, authority, and discretion to determine whether any particular holder or beneficial owner of a SCC Litigation Trust Interest shall be entitled to exercise any right conferred hereunder or under any other relevant agreement, notification, certificate, document, or similar instrument), and the decisions of the SCC Litigation Trustee with respect to all such matters shall be final, conclusive, and binding on all parties who have an interest in the SCC Litigation Trust or any SCC Litigation Trust Interest;

(b) receiving (and accepting), managing, supervising, and protecting the assets of the SCC Litigation Trust on behalf of and for the benefit of the SCC Litigation Trust Beneficiaries;

(c) holding legal title to any and all rights of the SCC Litigation Trust Beneficiaries in or arising from the assets of the SCC Litigation Trust, and, in consultation with and subject to the approval of the SCC Litigation Trust Board, protecting and enforcing the rights to the assets of the SCC Litigation Trust vested in the SCC Litigation Trustee by this Declaration by any method deemed appropriate, including, without limitation, by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium, or similar law, and general principles of equity;

(d) in consultation with and subject to the approval of the SCC Litigation Trust Board, filing, initiating, prosecuting, and if necessary and appropriate, selling, compromising and settling, abandoning, or dismissing the SCC Litigation Trust Claims;

(e) in consultation with and subject to the approval of the SCC Litigation Trust Board, commencing and/or pursuing any and all actions involving assets of the SCC Litigation Trust that could arise or be asserted at any time, unless otherwise waived or relinquished in the Plan;

(f) distributing to some or all of the SCC Litigation Trust Beneficiaries (as deemed appropriate by the SCC Litigation Trustee) information regarding the SCC Litigation Trust Claims and executing confidentiality agreements with such SCC Litigation Trust Beneficiaries satisfactory to the SCC Litigation Trustee in connection therewith, and the SCC Litigation Trustee shall have the full power, authority, and discretion to withhold or restrict the delivery of any such information to any SCC Litigation Trust Beneficiary if the SCC Litigation Trustee determines in its reasonable discretion that such action is in the best interests of the SCC Litigation Trust;

(g) making all necessary filings in accordance with any applicable law, statute or regulation, and in consultation with counsel, seeking any advice or determination that may be necessary or appropriate under any such laws, statutes, or regulations;

(h) executing and filing one or more registration statements and prospectuses (including any amendments or supplements thereto) under the Securities Act (if applicable) relating to the SCC Litigation Trust Beneficial Interests and the preparation and filing of all periodic and other reports, forms, and other filings required under the Exchange Act and any other applicable federal or state securities laws;

(i) taking of any action to cause the SCC Litigation Trust to not be deemed an Investment Company under the Investment Act or subject to the Trust Indenture Act;

(j) calculating and implementing of all distributions to be made to the SCC Litigation Trust Beneficiaries;

(k) filing of all required tax and information returns and paying of taxes and all other obligations of the SCC Litigation Trust;

(l) requesting any appropriate tax determination with respect to the SCC Litigation Trust;

(m) paying all expenses and making all other payments relating to any assets of the SCC Litigation Trust;

(n) obtaining insurance coverage with respect to (i) the liabilities and obligations of the Trustees under this Agreement (in the form of an errors and omissions policy or otherwise) and (ii) real and personal property, which may become assets of the SCC Litigation Trust, if any;

(o) in consultation with and subject to the approval of the SCC Litigation Trust Board, negotiating, receiving, or accepting of the assignment or transfer of claims, rights, suits, judgments, causes of action, recoveries and/or proceeds therefrom, from the holders thereof, to the extent that an assignment and/or transfer to the SCC Litigation Trust is deemed to be in the best interests of maximizing the value of the assets of the SCC Litigation Trust for the SCC Litigation Trust Beneficiaries;

(p) in consultation with and subject to the approval of the SCC Litigation Trust Board, determining the amount of consideration to be provided for the assignment or transfer of claims, rights, suits, judgments, causes of action, recoveries, and/or proceeds therefrom;

(q) in consultation with and subject to the approval of the SCC Litigation Trust Board, compromising, adjusting, arbitrating, suing on or defending, abandoning, or otherwise dealing with and settling claims in favor of or against the SCC Litigation Trust as the SCC Litigation Trustee shall deem advisable;

(r) determining and satisfying any and all liabilities created, incurred or assumed by the SCC Litigation Trust;

(s) in consultation with and subject to the approval of the SCC Litigation Trust Board, retaining and paying such law firms, accounting firms, experts, advisors, consultants, investigators, appraisers, agents, employees, or other professionals and third parties as the SCC Litigation Trustee may deem necessary or appropriate to assist the SCC Litigation Trustee in carrying out the SCC Litigation Trustee's powers and duties under this Declaration. The SCC Litigation Trustee may commit the SCC Litigation Trust to and shall pay all persons or

entities retained or employed by the SCC Litigation Trust reasonable compensation for services rendered and reasonable expenses incurred;

(t) investing any moneys held as part of the assets of the SCC Litigation Trust in accordance with, and subject to the limitations of, the terms of Section 3.7 and 3.8 hereof;

(u) performing such other responsibilities as may be vested in the SCC Litigation Trustee pursuant to the Plan, this Declaration, orders of the Bankruptcy Court, or as may be necessary and proper to carry out the provisions of the Plan; and

(v) conducting the affairs of the SCC Litigation Trust and operating the SCC Litigation Trust so that the SCC Litigation Trust will not fail to be classified as a liquidating trust within the meaning of Treasury Regulation 301.7701-4(d).

Notwithstanding anything to the contrary contained herein, including in the foregoing provisions of this Section 3.2, the unanimous approval of the SCC Litigation Trust Board shall be required in order for the SCC Litigation Trustee to sell, transfer, assign, compromise, settle, abandon, or dismiss the SCC Litigation Trust Claims (or any interests therein). If the SCC Litigation Trustee and the members of the SCC Litigation Trust Board cannot reach agreement regarding a proposed sale, transfer, assignment, compromise, settlement, abandonment, or dismissal of the SCC Litigation Trust Claims (or any interests therein), any one of them may file a motion with the Bankruptcy Court seeking approval of the proposed action and an order to compel the same.

3.3 Payment of SCC Litigation Trust Expenses.

(a) The SCC Litigation Trustee shall maintain the SCC Litigation Expense Fund and expend the assets of the SCC Litigation Expense Fund (i) as are reasonably necessary to meet contingent liabilities and to maintain the value of the assets of the SCC Litigation Trust during liquidation, (ii) to pay reasonable administrative expenses (including but not limited to, the costs and expenses of the SCC Litigation Trustee (including reasonable fees, costs, and expenses of professionals) and the members of the SCC Litigation Trust Board), any taxes imposed on the SCC Litigation Trust or fees and expenses in connection with, arising out of or related to the SCC Litigation Trust Claims or the performance by the SCC Litigation Trustee of his duties hereunder in accordance with this Declaration, and (iii) to satisfy other liabilities incurred or assumed by the SCC Litigation Trust (or to which the assets are otherwise subject) in accordance with the Plan or this Declaration.

(b) The SCC Litigation Trustee may retain from the SCC Litigation Trust Proceeds and add to the SCC Litigation Expense Fund, at any time and from time to time, such amounts as the SCC Litigation Trustee deems reasonable and appropriate to ensure that the SCC Litigation Expense Fund will be adequate to meet the expenses and liabilities described in Section 3.3(a).

(c) Notwithstanding any other provision of this Declaration to the contrary, the SCC Litigation Trustee shall not be required to take any action or enter into or maintain any claim, demand, action, or proceeding relating to the SCC Litigation Trust unless it shall have sufficient funds in the SCC Litigation Expense Fund for that purpose.

3.4 Books and Records.

(a) The SCC Litigation Trustee shall maintain in respect of the SCC Litigation Trust and the SCC Litigation Trust Beneficiaries, books and records relating to the assets and income of the SCC Litigation Trust and the payment of expenses of, and liabilities of claims against or assumed by, the SCC Litigation Trust in such detail and for such period of time as may be necessary to enable the SCC Litigation Trustee to make full and proper accounting in respect thereof in accordance with the provisions hereof and to comply with applicable provisions of law. Nothing in this Declaration requires the SCC Litigation Trustee to file any accounting or seek approval of any court with respect to the administration of the SCC Litigation Trust, or as a condition for any payment or distribution out of the assets of the SCC Litigation Trust.

(b) Upon distribution of all SCC Litigation Proceeds and all other Cash from the SCC Litigation Trust or the termination of the SCC Litigation Trust, the SCC Litigation Trustee shall retain the books, records, and files which shall have been delivered to or created by the SCC Litigation Trustee.

3.5 Compliance with Laws. Any and all distributions of assets of the SCC Litigation Trust and proceeds of borrowings, if any, shall be in compliance with applicable laws, including, without limitation, applicable federal and state securities laws.

3.6 Reliance by SCC Litigation Trustee. Except as otherwise provided herein:

(a) the SCC Litigation Trustee may rely, and shall be protected in acting upon, any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, or other paper or document believed by the SCC Litigation Trustee to be genuine and to have been signed or presented by the proper party or parties;

(b) persons dealing with the SCC Litigation Trustee shall look only to the assets of the SCC Litigation Trust to satisfy any liability incurred by the SCC Litigation Trustee to such Person in carrying out the terms of this Declaration, and neither the SCC Litigation Trustee nor any member of the SCC Litigation Trust Board shall have any personal obligation to satisfy any such liability; and

(c) the SCC Litigation Trustee shall have the right at any time to seek instructions concerning the administration of this Declaration from the Bankruptcy Court or, in the event that the Bankruptcy Cases are closed, any Delaware Court of Chancery.

3.7 Investment and Safekeeping of SCC Litigation Trust Assets. The SCC Litigation Trustee shall invest all assets transferred to the SCC Litigation Trustee (other than SCC Litigation Trust Claims), all SCC Litigation Trust Proceeds, the SCC Litigation Expense Fund and all income earned by the SCC Litigation Trust (pending periodic distributions in accordance with the provisions of the Plan) only in cash demand and time deposits, such as short-term certificates of deposit, in banks or other savings institutions, or other temporary, liquid investments, such as Treasury bills; *provided, however*, that (a) the scope of any such permissible investments shall be limited to include only those investments, or shall be expanded to include any additional investments, as the case may be, that a liquidating trust within the

meaning of Treasury Regulation Section 301.7701-4(d) may be permitted to hold, pursuant to the Treasury Regulations, or any modification in the guidelines of the IRS, whether set forth in IRS rulings, other IRS pronouncements or otherwise, (b) under no circumstances, shall the SCC Litigation Trustee segregate the assets of the SCC Litigation Trust on the basis of classification of the holders of SCC Litigation Trust Interests, other than in accordance with the provisions of the Plan, and (c) the SCC Litigation Trustee shall not "vary the investment" of the SCC Litigation Trust Beneficiaries, within the meaning of Treasury Regulation Section 301.7701-4(c).

3.8 Limitation of SCC Litigation Trustee's Authority. Notwithstanding anything herein to the contrary, the SCC Litigation Trustee shall not (i) be authorized to engage in any trade or business, (ii) take such actions inconsistent with the prompt and orderly liquidation of the assets of the SCC Litigation Trust as are required or contemplated by applicable law, the Plan, and this Declaration, (iii) be authorized to engage in any activities inconsistent with the treatment of the SCC Litigation Trust as a liquidating trust within the meaning of Treasury Regulation Section 301.7701-4(d) and in accordance with Rev. Proc. 94-45, 1994-2 C.B. 684, or (iv) take any action to cause the SCC Litigation Trust to be treated as a publicly traded partnership within the meaning of Section 7704 of the Internal Revenue Code, including, without limitation, any action to cause the SCC Litigation Trust Interests, or any of them, to be traded on an established securities market or to be readily tradeable on a secondary market or the substantial equivalent thereof (if and only to the extent such limitation described in this clause (iv) is required to qualify and maintain the qualification of the SCC Litigation Trust as a liquidating trust within the meaning of Treasury Regulation 301.7701-4(d)).

3.9 Responsibilities of the Delaware Trustee.

(a) The Delaware Trustee shall have no obligation or duty to manage the assets of the SCC Litigation Trust or to take any other act except as expressly required hereunder. The Delaware Trustee's duties shall be limited to the following:

i. serve as registered agent for service of process for the SCC Litigation Trust under Section 3804(b) of the Act;

ii. serve as the Delaware resident trustee under Section 3807(a) of the Act;

iii. maintain the registered office of the SCC Litigation Trust and forward to the SCC Litigation Trustee within a reasonable time any process served upon it; and

iv. perform all other requirements so that the SCC Litigation Trust qualifies as a Delaware statutory trust under the Act.

(b) The Delaware Trustee shall not have any duty or obligation with respect to the SCC Litigation Trust Claims or any other assets of the SCC Litigation Trust or the SCC Litigation Trust except as otherwise specifically provided in this Agreement, and the Delaware Trustee shall be a trustee of the SCC Litigation Trust for the sole and limited purpose of fulfilling the requirements of Section 3807 of the Act. No implied duties or obligations shall

be read into this Agreement against the Delaware Trustee. Notwithstanding the foregoing, the Delaware Trustee is authorized to take all actions which the SCC Litigation Trustee deems necessary, convenient, or incidental to effect the purposes of the SCC Litigation Trust, all as set forth in written instructions from the SCC Litigation Trustee in accordance with this Declaration. The right of the Delaware Trustee to perform any act enumerated herein shall not be construed as a duty.

3.10 Standard of Care; Exculpation. To the fullest extent permitted by law, neither the SCC Litigation Trustee nor the Delaware Trustee, nor any of their respective members, designees or professionals, nor any of their duly designated agents or representatives, shall be liable, responsible, or accountable in damages or otherwise for any loss, damage, or claim incurred by reason of any act or omission taken or omitted to be taken by the other Trustee or such Trustee's agents or representatives, nor shall the SCC Litigation Trustee or the Delaware Trustee be liable, responsible, or accountable in damages or otherwise for any loss, damage, or claim incurred by reason of any act or omission taken or omitted to be taken by either such Trustee in good faith other than acts or omissions resulting from each such Trustee's own bad faith, willful misconduct, gross negligence or knowing violation of law. Each of the SCC Litigation Trustee and the Delaware Trustee and each of their respective members may, in connection with the performance of their respective functions, and in each of their sole and absolute discretion, consult with their respective attorneys, accountants, financial advisors, and agents, and shall not be liable for any act taken, omitted to be taken, or suffered to be done in good faith in accordance with advice or opinions rendered by such Persons. Notwithstanding such authority, neither the SCC Litigation Trustee nor the Delaware Trustee nor any of their respective members shall be under any obligation to consult with their respective attorneys, accountants, financial advisors, or agents, and the good faith determination not to do so shall not result in the imposition of liability on either of the SCC Litigation Trustee or the Delaware Trustee or, as applicable, their respective members or designees, unless such determination is based on bad faith, willful misconduct, gross negligence, or knowing violation of law.

ARTICLE 4
SCC LITIGATION TRUST BOARD

4.1 SCC Litigation Trust Board. The SCC Litigation Trust Board shall be comprised of three Persons. The initial members of the SCC Litigation Trust Board shall be appointed as described in and in accordance with the Plan. Successor members of the SCC Litigation Trust Board shall be appointed as described in Section 4.7 below.

4.2 Authority of the SCC Litigation Trust Board. The SCC Litigation Trust Board shall have the authority and responsibility to oversee, review, and guide the activities and performance of the SCC Litigation Trustee and shall have the authority to remove the SCC Litigation Trustee in accordance with Section 2.3. The SCC Litigation Trustee shall consult with and provide information to the SCC Litigation Trust Board in accordance with and pursuant to the terms of this Declaration and the Plan. The SCC Litigation Trust Board shall have the authority to select and engage such Persons, and select and engage such professional advisors, including, without limitation, any professional previously retained by the Debtors in accordance with the terms of the Plan and this Declaration, as the SCC Litigation Trust Board deems necessary and desirable to assist the SCC Litigation Trust Board in fulfilling its obligations under

this Declaration and the Plan, and the SCC Litigation Trustee shall pay the reasonable fees of such Persons (including on an hourly, contingency, or modified contingency basis) and reimburse such Persons for their reasonable and documented out-of-pocket costs and expenses consistent with the terms of this Declaration. All of the SCC Litigation Trust Board's decisions with respect to the pursuit or settlement of the SCC Litigation Trust Claims shall be taken in good faith.

4.3 Meetings of the SCC Litigation Trust Board.

(a) Regular meetings of the SCC Litigation Trust Board are to be held with such frequency and at such place as the members of the SCC Litigation Trust Board may determine in their reasonable discretion, but in no event shall such meetings be held less frequently than quarterly. The SCC Litigation Trustee shall attend and participate in these regularly scheduled meetings. The SCC Litigation Trust Board shall establish by resolution the time or times and place or places for the holding of such meetings. Notice of any such regular meetings of the SCC Litigation Trust Board need not be given.

(b) Special meetings of the SCC Litigation Trust Board may be held whenever and wherever called by the SCC Litigation Trustee or any two members of the SCC Litigation Trust Board. The SCC Litigation Trustee shall attend and participate in any special meeting called by the SCC Litigation Trustee and any other special meeting as requested by at least one member of the SCC Litigation Trust Board.

4.4 Notice and Waiver of Notice for SCC Litigation Trustee and SCC Litigation Trust Board. Notice of the time and place (but not necessarily the purpose or all of the purposes) of any special meeting, or any change in time or place of a regular meeting, will be given to the SCC Litigation Trustee and the members of the SCC Litigation Trust Board in person or by telephone, or via mail, electronic mail, or facsimile transmission. Notice to the SCC Litigation Trustee and the members of the SCC Litigation Trust Board of any such special meeting or change in a regular meeting will be deemed given sufficiently in advance when (i) if given by electronic mail or facsimile transmission, the same is transmitted at least one business day prior to the convening of the meeting, or (ii) if personally delivered (including by overnight courier) or given by telephone, the same is handed, or the substance thereof is communicated over the telephone to the SCC Litigation Trustee and the members of the SCC Litigation Trust Board or to an adult member of his/her office staff or household, at least one business day prior to the convening of the meeting. Each of the SCC Litigation Trustee and any member of the SCC Litigation Trust Board may waive notice of any meeting and any adjournment thereof at any time before, during, or after it is held, as provided by law. Except as provided in the next sentence below, the waiver must be in writing, signed by the SCC Litigation Trustee or the applicable member or members of the SCC Litigation Trust Board entitled to the notice, and filed with the minutes or records of the SCC Litigation Trust. The attendance of the SCC Litigation Trustee or a member of the SCC Litigation Trust Board at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

4.5 Manner of Acting.

(a) A majority of the total number of members of the SCC Litigation Trust Board then in office shall constitute a quorum for the transaction of business at any meeting of the SCC Litigation Trust Board. The affirmative vote of a majority of the members of the SCC Litigation Trust Board present and entitled to vote at a meeting at which a quorum is present shall be the act of the SCC Litigation Trust Board, except as otherwise required by law or as provided in this Declaration.

(b) Each of the SCC Litigation Trustee and any or all of the members of the SCC Litigation Trust Board may participate in a regular or special meeting by, or conduct the meeting through the use of, conference telephone or similar communications equipment by means of which all persons participating in the meeting may hear each other, in which case any required notice of such meeting may generally describe the arrangements (rather than or in addition to the place) for the holding thereof. Each of the SCC Litigation Trustee and any member of the SCC Litigation Trust Board participating in a meeting by this means is deemed to be present in person at the meeting. Voting may, if approved by the majority of the members at a meeting, be conducted by electronic mail or individual communications by the SCC Litigation Trustee and each member of the SCC Litigation Trust Board.

(c) Any member of the SCC Litigation Trust Board who is present and entitled to vote at a meeting of the SCC Litigation Trust Board when action is taken is deemed to have assented to the action taken, subject to the requisite vote of the SCC Litigation Trust Board, unless: (i) such member of the SCC Litigation Trust Board objects at the beginning of the meeting (or promptly upon his/her arrival) to holding it or transacting business at the meeting; or (ii) his/her dissent or abstention from the action taken is entered in the minutes of the meeting; or (iii) he/she delivers written notice (including by electronic or facsimile transmission) of his/her dissent or abstention to the SCC Litigation Trust Board before its adjournment. The right of dissent or abstention is not available to any member of the SCC Litigation Trust Board who votes in favor of the action taken.

(d) Prior to the taking of a vote on any matter or issue or the taking of any action with respect to any matter or issue, each of the SCC Litigation Trustee and each member of the SCC Litigation Trust Board shall report to the SCC Litigation Trust Board any conflict of interest such member has or may have with respect to the matter or issue at hand and fully disclose the nature of such conflict or potential conflict (including, without limitation, disclosing any and all financial or other pecuniary interests that such member might have with respect to or in connection with such matter or issue, other than solely as, or as a representative of, a SCC Litigation Trust Beneficiary). A SCC Litigation Trust Board member who has or who may have a conflict of interest shall be deemed to be a "conflicted member" who shall not be entitled to vote or take part in any action with respect to such matter or issue (however such member shall be counted for purposes of determining the existence of a quorum); the vote or action with respect to such matter or issue shall be undertaken only by members of the SCC Litigation Trust Board who are not "conflicted members."

4.6 SCC Litigation Trust Board's Action Without a Meeting. Any action required or permitted to be taken by the SCC Litigation Trust Board at a meeting may be taken

without a meeting if the action is taken by unanimous written consent of the SCC Litigation Trust Board as evidenced by one or more written consents describing the action taken, signed by all members of the SCC Litigation Trust Board and recorded in the minutes or other transcript of proceedings of the SCC Litigation Trust Board.

4.7 Tenure, Removal, and Replacement of the Members of the SCC Litigation Trust Board. The authority of the members of the SCC Litigation Trust Board will be effective as of the Effective Date and will remain and continue in full force and effect until the SCC Litigation Trust is terminated in accordance with Article 9. The service of the members of the SCC Litigation Trust Board will be subject to the following:

(a) the members of the SCC Litigation Trust Board will serve until death or resignation pursuant to subsection (b) below, or removal pursuant to subsection (c) below.

(b) a member of the SCC Litigation Trust Board may resign at any time by providing a written notice of resignation to the remaining members of the SCC Litigation Trust Board. Such resignation will be effective upon the date received by the SCC Litigation Trust Board or such later date specified in the written notice.

(c) members of the SCC Litigation Trust Board may be removed as follows:

i. the member originally selected by Sterlite as the holder of Class A Litigation Trust Interests (the "SCC Class A Board Member") may be removed by the affirmative vote of the then-current Eligible Holders holding at least a majority of the Class A SCC Litigation Trust Interests;

ii. the member originally selected by Sterlite as the holder of the Class B SCC Litigation Trust Interests (the "SCC Class B Board Member") may be removed by the affirmative vote of the then-current Eligible Holders holding at least a majority of the Class B SCC Litigation Trust Interests;

iii. the member originally selected by the Asbestos Claimants' Committee and the FCR (the "SCC Asbestos Board Member") may be removed by the affirmative vote of the then-current Eligible Holders holding at least a majority of the Class C SCC Litigation Trust Interests; and

iv. the Plan Administrator may petition the Bankruptcy Court for removal, and the Bankruptcy Court may order such removal, of any member of the SCC Litigation Trust Board for cause shown.

(d) In the event of a vacancy on the SCC Litigation Trust Board (whether by removal, death, or resignation), new members may be appointed to fill such vacancy as follows:

i. if the vacancy was created by the removal, death, or resignation of the SCC Class A Board Member, then by the affirmative vote of the then-current Eligible Holders holding at least a majority of the Class A SCC Litigation Trust Interests;

ii. if the vacancy was created by the removal, death, or resignation of the SCC Class B Board Member, then by the affirmative vote of the then-current Eligible Holders holding at least a majority of the Class B SCC Litigation Trust Interests; or

iii. if the vacancy was created by the removal, death or resignation of the SCC Asbestos Board Member, then by the affirmative vote of the then-current Eligible Holders holding at least a majority of the Class C SCC Litigation Trust Interests.

(e) For purposes of this Declaration, "Eligible Holder" means each SCC Litigation Trust Beneficiary except any SCC Litigation Trust Beneficiary who is a party adverse to ASARCO in the SCC Litigation, or is an Affiliate of any party adverse to ASARCO in the SCC Litigation.

(f) If there are no Eligible Holders of SCC Litigation Trust Interests in a particular class to select as a member of the SCC Litigation Trust Board, the SCC Litigation Trust Board shall proceed without a member selected by that class.

(g) Only persons who are nominated in accordance with the procedures set forth in this SCC Litigation Trust Agreement shall be eligible to serve as a replacement SCC Class A Board Member, SCC Class B Board Member or SCC Asbestos Board Member, as the case may be, of the SCC Litigation Trust Board. Nominations of persons for election as a replacement member of the SCC Litigation Trust Board may be made by any Eligible Holder of SCC Litigation Trust Interests of the applicable class who (i) is an interest holder of record of such class both as of the record date established by the SCC Litigation Trustee for such purpose and at the time of giving of notice provided for in this Section 4.7(g), (ii) shall be entitled to vote for the election of a replacement member of the SCC Litigation Trust Board and (iii) complies with the notice procedures set forth in this Section 4.7(f). Such nominations shall be made pursuant to timely notice in writing to the SCC Litigation Trustee. To be timely, an interest holder's notice shall be delivered to or mailed and received by the SCC Litigation Trustee at the address set forth herein not later than the close of business on the calendar day prior to the date established by the SCC Litigation Trustee for such purpose. Such interest holder's notice shall set forth (A) as to the person whom the interest holder proposes to nominate for election as a replacement member of the SCC Litigation Trust Board detailed information relating to the qualifications of such person to serve as a member of the SCC Litigation Trust Board, including such person's written consent to being named as a nominee and to serving as a member of the SCC Litigation Trust Board if elected and being bound by the terms and conditions of this Declaration, and the number and class of SCC Litigation Trust Interests owned beneficially and/or of record by such individual or any Person affiliated with such individual; and (B) as to the SCC Litigation Trust Beneficiary giving the notice (i) the name and address, as they appear on the SCC Litigation Trust Registrar, of such SCC Litigation Trust Beneficiary and (ii) the number and class of SCC Litigation Trust Interests owned beneficially and/or of record by such by such SCC Litigation Trust Beneficiary. No person shall be eligible to serve as an SCC Class A Board Member, an SCC Class B Board Member or an SCC Asbestos

Board Member of the SCC Litigation Trust Board unless nominated in accordance with the procedures set forth in this Section 4.7(f).

(h) Following the receipt of nominations for a replacement SCC Class A Board Member, SCC Class B Board Member or SCC Asbestos Board Member of the SCC Litigation Trust Board in accordance with Section 4.7(f), the SCC Litigation Trustee shall mail a ballot to all SCC Litigation Trust Beneficiaries of the applicable class who are entitled to vote in the election of the replacement member of the SCC Litigation Trust Board. With respect to the election of a replacement member of the SCC Litigation Trust Board, each SCC Litigation Trust Beneficiary shall be entitled to one vote for each outstanding SCC Litigation Trust Interest of the applicable class held by such SCC Litigation Trust Beneficiary and such SCC Litigation Trust Beneficiary shall submit such vote in accordance with the procedures established from time to time by the SCC Litigation Trustee.

(i) Immediately upon the appointment of any successor member of the SCC Litigation Trust Board, all rights, powers, duties, authority, and privileges of the predecessor member of the SCC Litigation Trust Board hereunder will be vested in and undertaken by the successor member of the SCC Litigation Trust Board without any further act; and the successor member of the SCC Litigation Trust Board will not be liable personally for any act or omission of the predecessor member of the SCC Litigation Trust Board.

4.8 Compensation of the SCC Litigation Trust Board. Each member of the SCC Litigation Trust Board shall be paid the amount of $_____ per quarter, plus $_____ per meeting when such member is required to attend a SCC Litigation Trust Board meeting in person, as compensation for his or her services under this Agreement, and shall be reimbursed for all reasonable and documented expenses incurred by such member in connection with the performance of his or her services hereunder.

4.9 Standard of Care; Exculpation. To the fullest extent permitted by law, none of the SCC Litigation Trust Board, its members, designees or professionals, nor any of their duly designated agents or representatives, shall be liable, responsible, or accountable in damages or otherwise for any loss, damage, or claim incurred by reason of any act or omission taken or omitted to be taken by any other member, agent or representative of the SCC Litigation Trust Board, nor shall the SCC Litigation Trust Board or any of its members be liable, responsible, or accountable in damages or otherwise for any loss, damage, or claim incurred by reason of any act or omission taken or omitted to be taken by the SCC Litigation Trust Board in good faith, other than acts or omissions resulting from the SCC Litigation Trust Board's bad faith, willful misconduct, gross negligence, or knowing violation of law. The SCC Litigation Trust Board and each of its members may, in connection with the performance of their respective functions, and in each of their sole and absolute discretion, consult with its attorneys, accountants, financial advisors, and agents, and shall not be liable for any act taken, omitted to be taken, or suffered to be done in good faith in accordance with advice or opinions rendered by such Persons. Notwithstanding such authority, neither the SCC Litigation Trust Board nor any of its members shall be under any obligation to consult with their respective attorneys, accountants, financial advisors or agents, and its good faith determination not to do so shall not result in the imposition of liability on the SCC Litigation Trust Board or, as applicable, its members or designees, unless

such determination is based on bad faith, willful misconduct, gross negligence, or knowing violation of law.

ARTICLE 5
SCC LITIGATION TRUST INTERESTS

5.1 Issuance of SCC Litigation Trust Interests.

(a) The issuance of the Class A SCC Litigation Trust Interests, the Class B SCC Litigation Trust Interests, the Class C SCC Litigation Trust Interests, the Class D SCC Litigation Trust Interests and the Class E SCC Litigation Trust Interests shall be accomplished as set forth in the Plan, including, without limitation, Article VI of the Plan.

(b) In the event that the Plan Administrator, in accordance with the Plan, deposits in the Disputed Claims Reserve (i) the SCC Litigation Trust Interests that would have been distributed to the holders of Disputed Claims (other than Secured Claims to the extent Disputed Secured Claims Reserves are established with respect to such Claims) if such Disputed Claims had been Allowed Claims on the Effective Date and (ii) SCC Litigation Trust Interests on account of contingent obligations used in computing the allocation of SCC Litigation Trust Interests on account of Class 3 under the Plan, the SCC Litigation Trustee shall have the authority to cancel all or any portion of such interests on account of any portion of a Disputed Claim that is disallowed or any contingent obligation that is unrealized.

5.2 Interests Beneficial Only.

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

(b) The SCC Litigation Trust Beneficiaries have no rights with respect to, or interest in the Debtors (or any successor thereto).

(c) The SCC Litigation Trust Beneficiaries have no rights to direct the SCC Litigation Trustee, the Delaware Trustee, or the SCC Litigation Trust Board, except as set forth in Section 5.8 herein.

(d) (i) The SCC Litigation Trust Claims are solely assets of the SCC Litigation Trust; (ii) the SCC Litigation Trust Claims shall be conducted on behalf of the SCC Litigation Trust Beneficiaries solely in accordance with the instructions of the SCC Litigation Trustee pursuant to this Declaration; (iii) the SCC Litigation Trustee shall have the sole and exclusive right (subject to consultation with the SCC Litigation Trust Board as set forth herein), to take (or not take), actions relating to such SCC Litigation Trust Claims as contemplated by this Declaration and may, among other things, dismiss, settle, or cease prosecuting such SCC Litigation Trust Claims at any time without obtaining any cash or other recovery, or upon obtaining such cash or other recovery as the SCC Litigation Trustee may determine; (iv) the SCC Litigation Trustee has the sole and exclusive right (subject to consultation with the SCC Litigation Trust Board as set forth herein), to take or not take other actions contemplated by this

Declaration on behalf of the SCC Litigation Trust Beneficiaries relating to such SCC Litigation Trust Claims (including, without limitation, any decision with respect to the incurrence of expenses); and (v) any liability of the SCC Litigation Trustee, or any member of the SCC Litigation Trust Board, is limited to the extent set forth in this Declaration.

5.3 Evidence of Beneficial Interests.

(a) The SCC Litigation Trustee shall have full power, authority and discretion to determine whether ownership of any SCC Litigation Trust Interest shall be represented by physical certificates, by book entries in lieu of physical certificates, or in any other form or manner. Regardless of such determination, the record holders of the SCC Litigation Trust Interests shall be recorded and set forth in the SCC Litigation Trust Register maintained by the SCC Litigation Trust Registrar expressly for such purpose pursuant to Section 5.5. All references in this Declaration to SCC Litigation Trust Beneficiaries shall be read to mean holders of record as set forth in the official register maintained by the SCC Litigation Trust Registrar and shall not mean any beneficial owner not recorded on such official register. Unless expressly provided herein, the SCC Litigation Trustee may establish a record date, which the SCC Litigation Trustee deems practicable for determining the holders for a particular purpose.

(b) In the event certificates are to be issued to evidence ownership of any SCC Litigation Trust Interests, (i) the form and content of such certificates shall be determined by the SCC Litigation Trustee subject to approval by the SCC Litigation Trust Board, and (ii) the SCC Litigation Trustee shall cause to be placed on such certificates such legends as it deems to be necessary or appropriate under tax laws or regulations, securities laws or regulations or otherwise. Any SCC Litigation Trust Beneficiary to whom such a certificate is issued or transferred, by virtue of the acceptance thereof, shall assent to and be bound by the terms and conditions of this Declaration and the Plan.

5.4 Securities Law Matters.

(a) To the extent the SCC Litigation Trust Interests are deemed to be "securities," the issuance of SCC Litigation Trust Interests under the Plan are exempt, pursuant to Section 1145 of the Bankruptcy Code, from registration under the Securities Act of 1933, as amended, and any applicable state and local laws requiring registration of securities. If the SCC Litigation Trustee determines, with the advice of counsel, that the SCC Litigation Trust is required to comply with registration and reporting requirements of the Exchange Act, then the SCC Litigation Trustee shall take any and all actions deemed necessary or appropriate by the SCC Litigation Trustee to comply with such registration and reporting requirements, if any, and to file periodic reports with the Securities and Exchange Commission (the "SEC"). Notwithstanding the foregoing procedure, nothing in the Plan shall be deemed to preclude the SCC Litigation Trustee from amending this Declaration to make such changes as deemed necessary or appropriate by the SCC Litigation Trustee, with the advice of counsel, to ensure that the SCC Litigation Trust is not subject to registration or reporting requirements of the Exchange Act, the Trust Indenture Act, or the Investment Company Act.

(b) Exemptions may be sought from the SEC from all or some of the registration and reporting requirements that may be applicable to the SCC Litigation Trust

pursuant to the Exchange Act, the Trust Indenture Act, or the Investment Company Act, if it is determined that compliance with such requirements would be burdensome on the SCC Litigation Trust.

(c) The SCC Litigation Trust is organized as a liquidating entity in the process of liquidation, and therefore should not be considered, and the SCC Litigation Trust does not and will not hold itself out as, an "investment company" or any entity "controlled" by an "investment company," as such terms are defined in the Investment Company Act.

5.5 Transfer and Exchange.

(a) The SCC Litigation Trustee shall appoint a SCC Litigation Trust Registrar, which may be the SCC Litigation Trustee, for the purpose of registering and transferring the SCC Litigation Trust Interests as herein provided. The SCC Litigation Trust Registrar may be a duly qualified institution or the SCC Litigation Trustee itself. For its services hereunder, the SCC Litigation Trust Registrar, unless it is the SCC Litigation Trustee, shall be entitled to receive reasonable compensation from the SCC Litigation Trust as an expense of the SCC Litigation Trust.

(b) The SCC Litigation Trustee shall cause to be kept at the office of the SCC Litigation Trust Registrar, or at such other place or places as shall be designated by it from time to time, the SCC Litigation Trust Register. The SCC Litigation Trust Register shall contain the names, addresses for payment and notice, and class and number of SCC Litigation Trust Interests of each of the SCC Litigation Trust Beneficiaries and shall be maintained pursuant to such reasonable regulations as the SCC Litigation Trustee and the SCC Litigation Trust Registrar may prescribe.

(c) Pursuant to such reasonable regulations as the SCC Litigation Trustee and the SCC Litigation Trust Registrar may prescribe, and subject to the SCC Litigation Trustee's review and approval of any such proposed transaction in its sole and absolute discretion, the SCC Litigation Trustee may permit to be transferred, assigned, pledged, hypothecated, or registered on the SCC Litigation Trust Register any SCC Litigation Trust Interests issued pursuant to this Declaration. Subject to the review and approval of any such proposed transaction by the SCC Litigation Trustee and the other limitations set forth herein, any registered SCC Litigation Trust Beneficiary may transfer, assign, pledge, or hypothecate, in whole or in part, SCC Litigation Trust Interests upon presentation of a duly executed written instrument of transfer in the form approved by the SCC Litigation Trustee and the SCC Litigation Trust Registrar, which instrument must be executed by the transferor and the transferee and must clearly identify the SCC Litigation Trust Interests being transferred, assigned, pledged, or hypothecated, and such other documents as they may reasonably require. The transferor shall pay reasonable transfer charges established by the SCC Litigation Trustee or the SCC Litigation Trust Registrar for the purpose of reimbursing the SCC Litigation Trust and the SCC Litigation Trust Registrar for the expenses incident thereto, including any legal fees, taxes, or other governmental charges.

(d) No SCC Litigation Trust Beneficiary may transfer, assign, pledge, hypothecate, or otherwise dispose of any SCC Litigation Trust Interests unless in compliance

with the Securities Act and other state and federal securities laws. No transfer, assignment, pledge, hypothecation, or other disposition of a SCC Litigation Trust Interest may be effected until (i) the SCC Litigation Trustee has approved such proposed transaction in its sole and absolute discretion, and (ii) the SCC Litigation Trustee and the SCC Litigation Trust Board shall have received such legal or other information that they, in their sole discretion, deem necessary or appropriate to evidence such compliance.

(e) In the event that the SCC Litigation Trustee determines that the SCC Litigation Trust Interests shall be represented by physical certificates, subject to the foregoing conditions of this Section 5.5, whenever any certificate shall be presented for transfer or exchange, the SCC Litigation Trustee shall cause the SCC Litigation Trust Registrar to issue, authenticate, and deliver in exchange therefor, the certificate for the SCC Litigation Trust Interest(s) that the person(s) presenting such certificates shall be entitled to receive.

(f) In the event that the SCC Litigation Trustee determines that the SCC Litigation Trust Interests shall be represented by physical certificates, if a SCC Litigation Trust Beneficiary claims that his/her certificate (the "Original Certificate") has been mutilated, defaced, lost, stolen, or destroyed, the SCC Litigation Trustee shall issue, and the SCC Litigation Trust Registrar shall authenticate, a replacement certificate if such SCC Litigation Trust Beneficiary submits a notarized affidavit certifying that (i) he/she is the true, lawful, present, and sole owner of the Original Certificate, (ii) he/she has diligently searched all of his/her financial and other records and the Original Certificate is nowhere to be found, (iii) the Original Certificate and any rights or interests therein were not endorsed, and have not been pledged, sold, delivered, transferred, or assigned under any agreement, hypothecated or pledged for any loan, or disposed of in any manner by the SCC Litigation Trust Beneficiary or on his/her behalf, (iv) no other person or other entity has any right, title, claim, equity, or interest in, to, or respecting the Original Certificate, and (v) in the event of the recovery of the Original Certificate at any time after the issuance of a new certificate in exchange thereof, the SCC Litigation Trust Beneficiary will cause the recovered Original Certificate to be returned to the SCC Litigation Trust for cancellation. In addition, such SCC Litigation Trust Beneficiary will indemnify, and if required by the SCC Litigation Trustee or the SCC Litigation Trust Registrar, provide a bond or other security sufficient in the reasonable judgment of the SCC Litigation Trustee, the SCC Litigation Trust Registrar or any authenticating agent, from any loss which any of them may suffer if the Original Certificate is replaced, including a loss resulting from the assertion by any entity or person of the right to payment under the Original Certificate. Such SCC Litigation Trust Beneficiary shall pay reasonable charges established by the SCC Litigation Trustee and the SCC Litigation Trust Registrar for the purpose of reimbursing the SCC Litigation Trust and the SCC Litigation Trust Registrar for the expenses incident thereto, including any tax or other governmental charges. The SCC Litigation Trustee shall incur no liability to anyone by reason of anything done or omitted to be done by it in good faith under the provisions of this Section 5.5(f). All SCC Litigation Trust Interests shall be held and owned upon the express condition that the provisions of this Section 5.5(f) are exclusive in respect of the replacement or payment of mutilated, defaced, lost, stolen or destroyed certificates and shall, to the extent permitted by law, preclude any and all other rights or remedies respecting such replacement or the payment in respect thereto. Any duplicate certificate issued pursuant to this Section 5.5(f) shall constitute original interests in the SCC Litigation Trust. The SCC Litigation Trustee and the SCC Litigation Trust Registrar shall not treat the Original Certificate as outstanding.

5.6 Access to the SCC Litigation Trust Register by the SCC Litigation Trust Beneficiaries. SCC Litigation Trust Beneficiaries and their duly authorized representatives shall have the right, upon reasonable prior written notice to the SCC Litigation Trust Registrar and the SCC Litigation Trustee, and in accordance with the reasonable regulations prescribed by the SCC Litigation Trust Registrar and the SCC Litigation Trustee, to inspect and, at the sole expense of the SCC Litigation Trust Beneficiary seeking the same, make copies of the SCC Litigation Trust Register, in each case for a purpose reasonably related to such SCC Litigation Trust Beneficiary's interest in the SCC Litigation Trust.

5.7 Absolute Owners. The SCC Litigation Trustee may deem and treat the SCC Litigation Trust Beneficiary of record in the SCC Litigation Trust Register as the absolute owner of such SCC Litigation Trust Interests for the purpose of receiving distributions and payment thereon or on account thereof and for all other purposes whatsoever and the SCC Litigation Trustee shall not be charged with having received notice of any claim or demand to such SCC Litigation Trust Interests or the interest therein of any other Person.

5.8 Limitation on Suits by SCC Litigation Trust Beneficiaries. To the fullest extent permitted by law, no SCC Litigation Trust Beneficiary shall have any right by virtue of or by availing itself of any provision of this Declaration to institute any action or proceeding (other than a suit by such SCC Litigation Trust Beneficiary for nonpayment of amounts due and owing hereunder with respect to such SCC Litigation Trust Beneficiary's SCC Litigation Trust Interest) at law or in equity or in bankruptcy or otherwise upon or under or with respect to this Declaration, or for the appointment of any trustee, receiver, liquidator, custodian, or other similar official or for any other remedy hereunder, unless such SCC Litigation Trust Beneficiary previously shall have given to the SCC Litigation Trustee written notice of default, and unless such SCC Litigation Trust Beneficiary shall also have made written request upon the SCC Litigation Trustee to institute such action or proceeding in its own name as SCC Litigation Trustee hereunder and shall have offered to the SCC Litigation Trustee such reasonable indemnity as it may require against the costs, expenses and liabilities to be incurred therein or thereby and the SCC Litigation Trustee for 60 days after its receipt of such notice, request and offer of indemnity shall have failed to institute any such action or proceeding; it being understood and intended, and being expressly covenanted by every SCC Litigation Trust Beneficiary with every other SCC Litigation Trust Beneficiary and the SCC Litigation Trustee, that no one or more SCC Litigation Trust Beneficiaries shall have any right in any manner whatsoever by virtue or by availing itself or themselves of any provision of this Declaration to effect, disturb or prejudice the rights of any other such SCC Litigation Trust Beneficiary, or to obtain or seek to obtain priority over or preference to any other such SCC Litigation Trust Beneficiary or to enforce any right under this Declaration, except in the manner herein provided and for the ratable and common benefit of all SCC Litigation Trust Beneficiaries. For the protection and enforcement of the provisions of this Section, each and every SCC Litigation Trust Beneficiary and the SCC Litigation Trustee shall be entitled to such relief as can be given either at law or in equity.

5.9 Potential Auction. In accordance with the Plan, the SCC Litigation Trust Claims (and any interest therein), in whole or in part, may be auctioned and sold before or after Confirmation. Any auction or sale to be conducted prior to the Effective Date shall only be pursuant to appropriate Orders granting a motion or motions fled with the Bankruptcy Court

seeking its approval of the applicable auction procedures and related matters and approving the ultimate sale of the property that is the subject of the auction. If, after the Effective Date, the SCC Litigation Trustee decides to pursue an auction of all or part of the SCC Litigation Trust Claims, the SCC Litigation Trustee must invite the Parent to bid on the portion of the SCC Litigation Trust Claims being offered for sale; *provided, however*, that any such participation rights of the Parent shall in all circumstances be neither more favorable nor less favorable than the terms and conditions upon which parties other than the Parent are permitted to participate in any such auction and sale process.

ARTICLE 6
DISTRIBUTIONS

6.1 Use of Proceeds.

(a) All SCC Litigation Proceeds, any proceeds therefrom, and any other Cash of the SCC Litigation Trust (other than the SCC Litigation Trust Expense Fund) received by the SCC Litigation Trustee shall be applied as follows:

i. first, to (i) pay all costs and expenses of the SCC Litigation Trust to the extent not paid by or from the SCC Litigation Trust Expense Fund (including the costs and expenses of the SCC Litigation Trust, the SCC Litigation Trustee, the Delaware Trustee and the SCC Litigation Trust Board and the fees, costs and expenses of all professionals retained by the SCC Litigation Trustee, and any taxes imposed on the SCC Litigation Trust or in respect of the assets of the SCC Litigation Trust), (ii) satisfy other liabilities incurred or assumed by the SCC Litigation Trust (or to which the assets are otherwise subject) in accordance with the Plan or this Declaration, (iii) hold such amounts in reserve as the SCC Litigation Trustee deems reasonably necessary to meet future expenses, contingent liabilities and to maintain the value of the assets of the SCC Litigation Trust during liquidation (including the SCC Litigation Expense Fund) and (iv) pay the Plan Administrator such amounts as the Plan Administrator designates from time to time for the purpose of paying, or indemnifying Reorganized ASARCO for, any taxes incurred or expected to be incurred by Reorganized ASARCO in connection with the SCC Litigation Trust as a result of the allocation of tax items by the SCC Litigation Trustee or the allowance or disallowance of Disputed Claims;

ii. second, subject in all respects to the provisions of the Plan, including, without limitation, Article 4.3 thereof, to pay any remaining amounts to the SCC Litigation Trust Beneficiaries (including to the Plan Administrator for deposit into the Disputed Claims Reserve on account of the Claims of any Claimant that would be an SCC Litigation Trust Beneficiary absent such objection) pro rata based on their SCC Litigation Trust Interests. If the Plan Administrator holds proceeds of the SCC Litigation Trust in the Disputed Claims Reserve on account of a Disputed Claim that is finally determined adversely to such Claimant, in whole or in part, the Plan Administrator shall return to the SCC Litigation Trust the disallowed portion that the Plan Administrator received from the SCC Litigation Trust on account of such Claim and shall pay any Allowed portion to such Claimant in accordance with the Plan; and

iii. Notwithstanding the foregoing or anything herein to the contrary, pursuant to the Plan, the SCC Litigation Trustee is directed to distribute the distribution that Sterlite would be entitled to receive on account of the Class A SCC Litigation Trust Interests or the Class B SCC Litigation Trust Interests, (which shall be distributed to Sterlite on account of the Sterlite Class 3 SCC Trust Payment), shall first be paid on a pro rata basis to Class 3 Claimants that have not been Paid in Full as a result of the distributions on account of (A) the Total Class 3 and Class 4 Consideration and (B) the Sterlite Class 3 SCC Trust Payment. The SCC Litigation Trustee is hereby irrevocably authorized by Sterlite to distribute any and all proceeds on account of Class A SCC Litigation Trust Interests or Class B SCC Litigation Trust Interests to the full extent necessary for Class 3 Claimants to be Paid in Full in accordance with the foregoing sentence. If, for any reason, the Distributable Cash exceeds the amount necessary for Class 3 Claimants to be Paid in Full, the amount to be paid by Sterlite under the Plan shall be reduced by an amount sufficient to avoid Class 3 Claimants receiving more than required to be Paid in Full.

(b) Subject to clauses (i), (ii) and (iii) of Section 6.1(a), the SCC Litigation Trustee shall distribute in accordance with Section 6.1(a) at least annually its net income and all net proceeds from the liquidation of the assets of the SCC Litigation Trust (except to the extent any such failure to distribute is not inconsistent with the classification of the SCC Litigation Trust as a liquidating trust under Section 301.7701-4(d) of the Treasury Regulations).

(c) If, upon termination of the SCC Litigation Trust, the SCC Litigation Trust Expense Fund has funds remaining after the payment of all of the SCC Litigation Trust's expenses, such remaining funds shall be paid to the SCC Litigation Trust Beneficiaries holding Class A, Class B, Class C and Class E SCC Litigation Trust Interests (including the Plan Administrator on behalf of the Disputed Claims Reserve) pro rata based on their SCC Litigation Trust Interests.

(d) Notwithstanding the foregoing clauses of this Section 6.1, the SCC Litigation Trustee may withhold from amounts distributable to any Person any and all amounts, determined in the SCC Litigation Trustee's reasonable sole discretion, required by any law, regulation, rule, ruling, directive, or other governmental requirement to be withheld. Any amount so withheld from a distribution to a SCC Litigation Trust Beneficiary (or its designee) shall be treated as having been paid to, and received by, such SCC Litigation Trust Beneficiary for purposes of the Plan and the Plan Documents.

6.2 Manner of Payment of Distributable Proceeds.

(a) All distributions made by the SCC Litigation Trustee to holders of SCC Litigation Trust Interests shall be payable to the holders of SCC Litigation Trust Interests of record as of the 20th day prior to the date scheduled for the distribution, unless such day is not a Business Day, then such day shall be the following Business Day. The SCC Litigation Trustee shall promptly notify the SCC Litigation Trust Registrar in writing of any such dates and the SCC Litigation Trust Registrar shall promptly notify the SCC Litigation Trust Beneficiaries of the same.

(b) If the distribution shall be in Cash, the SCC Litigation Trustee shall distribute such Cash by wire, check, or such other method as the SCC Litigation Trustee deems appropriate under the circumstances.

(c) All distributions under this Declaration to any holder of SCC Litigation Trust Interests shall be made at the address or to the account (as applicable) of such holder as set forth in the SCC Litigation Trust Register or at such other address or in such other manner as such holder of SCC Litigation Trust Interests shall have specified for payment purposes in a written notice to the SCC Litigation Trustee and the SCC Litigation Trust Registrar at least 20 days prior to such distribution date. In the event that any distribution to any holder is returned as undeliverable, the SCC Litigation Trustee shall be entitled to rely on the most current information available from the Plan Administrator, as applicable, to determine the current address or account information of such holder, but no distribution to such holder shall be made unless and until the SCC Litigation Trustee has determined the then current address or account (as applicable) of such holder, at which time such distribution shall be made to such holder without interest; *provided, however*, that such undeliverable or unclaimed distributions shall be deemed unclaimed property at the expiration of one year from the date of distribution. The SCC Litigation Trustee shall reallocate the undeliverable and unclaimed distributions for the benefit of all other SCC Litigation Trust Beneficiaries.

(d) Notwithstanding anything herein to the contrary, the SCC Litigation Trustee shall not be required to make distributions or payments of fractions of dollars. Whenever any payment of a fraction of a dollar under the Plan or this Declaration would otherwise be called for, the actual payment shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars or more being rounded up.

ARTICLE 7
INDEMNIFICATION

7.1 Indemnification of SCC Litigation Trustee and the SCC Litigation Trust Board.

(a) To the fullest extent permitted by law, the SCC Litigation Trust, to the extent of its assets legally available for that purpose, shall indemnify and hold harmless each present and former SCC Litigation Trustee and each present and former member of the SCC Litigation Trust Board and each of their respective directors, members, shareholders, partners, officers, agents, employees, attorneys, and other professionals (collectively, the "Indemnified Persons") from and against any and all losses, costs, damages, reasonable and documented out-of-pocket expenses (including, without limitation, reasonable fees and expenses of attorneys and other advisors and any court costs incurred by any Indemnified Person) or liability arising out of or relating to the SCC Litigation Trust, the SCC Litigation Trust Interests, the assets of the SCC Litigation Trust, the SCC Litigation Trust Claims or any acts or omissions of the SCC Litigation Trust or any Indemnified Person in its capacity as a SCC Litigation Trustee, SCC Litigation Trust Board member or agent, employee, or representative thereof; *provided, however,* that such act or omission was taken in good faith, was reasonably believed by the applicable Indemnified Person to be within the scope of authority granted to such Person under this Declaration and did not constitute bad faith, gross negligence, willful misconduct, or knowing violation of law.

(b) To the extent reasonable, the SCC Litigation Trust may pay in advance or reimburse reasonable and documented out-of-pocket expenses (including advancing reasonable costs of defense) incurred by the Indemnified Person who is or is threatened to be named or made a defendant or a respondent in a proceeding concerning the business and affairs of the SCC Litigation Trust. To the extent that any such expenses are paid or reimbursed in advance of the final disposition of any such action, suit or proceeding, the Indemnified Person shall provide the SCC Litigation Trust with an undertaking by or on behalf of such Indemnified Person to repay such amount if it shall ultimately be determined that such Person is not entitled to be indemnified by the SCC Litigation Trust as authorized in this Article 7. Such expenses (including attorneys' fees) may be so paid upon such terms and conditions, if any, as the SCC Litigation Trustee deems appropriate.

(c) Any Indemnified Person may waive the benefits of indemnification under this Article 7, but only by an instrument in writing executed by such Indemnified Person.

(d) The SCC Litigation Trust shall have power to purchase and maintain insurance on behalf of any potentially Indemnified Person against any liability asserted against such Person and incurred by such Person in connection with such Person's obligations under this Declaration, whether or not the SCC Litigation Trust would have the power to indemnify such Person against such liability under the provisions of this Article 7.

(e) The rights to indemnification under this Article 7 are not exclusive of other rights which any Indemnified Person may otherwise have at law or in equity, including without limitation common law rights to indemnification or contribution. Nothing in this Article 7 will affect the rights or obligations of any Person (or the limitations on those rights or obligations) under this Declaration or any other agreement or instrument to which that Person is a party.

ARTICLE 8
REPORTS

8.1 Financial, Tax, and Other Information.

(a) At such times as may be required by the Exchange Act, if applicable, or otherwise as soon as practicable

i. after the end of each calendar year, and as soon as practicable upon termination of the SCC Litigation Trust, the SCC Litigation Trustee shall cause to be prepared, and shall submit to each SCC Litigation Trust Beneficiary a written report including: (a) audited financial statements of the SCC Litigation Trust at the end of the calendar year or period and the receipts and disbursements of the SCC Litigation Trustee for the period; (b) a description of any action taken by the SCC Litigation Trustee in the performance of the SCC Litigation Trustee's duties which materially affects the SCC Litigation Trust and of which notice has not previously been given to the SCC Litigation Trust Beneficiaries; and (c) a description of any material judicial or arbitral decision with respect to, or any agreement to settle, the SCC Litigation Trust Claims included in the assets of the SCC Litigation Trust.

ii. after the end of each calendar quarter, the SCC Litigation Trustee shall cause to be prepared, and shall submit to each SCC Litigation Trust Beneficiary a written report including: (a) unaudited financial statements of the SCC Litigation Trust at the end of the calendar quarter, and the receipts and disbursements of the SCC Litigation Trustee for the quarter; and (b) a description of any action taken by the SCC Litigation Trustee in the performance of the SCC Litigation Trustee's duties which materially affects the SCC Litigation Trust and of which notice has not previously been given to the SCC Litigation Trust Beneficiaries.

iii. promptly following the occurrence of a material event or change which effects either the SCC Litigation Trust or the rights of the SCC Litigation Trust Beneficiaries hereunder, the SCC Litigation Trustee shall cause to be prepared and shall submit additional reports to the SCC Litigation Trust Beneficiaries relating to such occurrences.

The information to be provided pursuant to this Section 8.1(a) shall satisfy any rights under the Delaware Statutory Trust Act, 12 Del. C. § 3801 et seq., or otherwise of the SCC Litigation Trust Beneficiaries to access to information regarding the business and financial condition of the SCC Litigation Trust.

(b) As soon as practicable after the end of each calendar year, and as soon as practicable upon the termination of the SCC Litigation Trust, the SCC Litigation Trustee shall cause to be prepared and shall submit to current and former Trust Tax Owners, as applicable, a statement setting forth, for federal income tax purposes, their allocable portions of items of income, gain, loss, deduction and credit of the SCC Litigation Trust for such calendar year (as determined pursuant to Section 1.4(d) hereof), and the fair market value of the assets deemed to have been transferred to such current or former Trust Tax Owner during such calendar year (as determined pursuant to Section 1.4(d) hereof).

(c) The SCC Litigation Trustee shall submit to Reorganized ASARCO, as soon as practicable after the Effective Date (but no later than January 20th of the year following the Effective Date), a statement setting forth, for federal income tax purposes, the total fair market value (as of the Effective Date) of each asset transferred to the SCC Litigation Trust (including, without limitation, the SCC Litigation Trust Claims), and the portion of such fair market value allocated to each Trust Tax Owner. The SCC Litigation Trustee shall submit to Reorganized ASARCO, as soon as practicable after the end of each calendar year, a statement setting forth the fair market value (as of the applicable deemed transfer dates) of the portion of the SCC Litigation Trust's assets that is treated for federal income tax purposes as having been transferred to Trust Tax Owners or other Persons by Reorganized ASARCO as a result of the allowance or disallowance of Disputed Claims during such year and the portion of such fair market value allocated to each Trust Tax Owner.

(d) The SCC Litigation Trustee shall be responsible for filing all federal, state, and local tax returns for the SCC Litigation Trust and paying any taxes imposed on the SCC Litigation Trust. The SCC Litigation Trustee shall comply with all withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority. Subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary

(including the issuance of applicable Treasury Regulations, the receipt by the SCC Litigation Trustee of a private letter ruling if the SCC Litigation Trustee so requests one, or the receipt of an adverse determination by the IRS upon audit if not contested by the SCC Litigation Trustee), the SCC Litigation Trustee shall file tax returns (including all federal returns, and to the extent permitted under state and local law, state and local returns) for the SCC Litigation Trust as a grantor trust of which the Trust Tax Owners are the deemed owners pursuant to Treasury Regulation Section 1.671-4(a) and any comparable provisions under applicable state and local law.

8.2 Other Required Reports. The SCC Litigation Trustee shall also file (or cause to be filed) any other statements, returns, or disclosures relating to the SCC Litigation Trust that are required by any governmental unit or regulatory agency.

8.3 Certain Non-Public Information. The SCC Litigation Trustee may deliver certain non-public information to one or more SCC Litigation Trust Beneficiaries and such delivery shall in no way entitle any other SCC Litigation Trust Beneficiary to receive such information. Notwithstanding anything in this Declaration to the contrary, the SCC Litigation Trustee may, in its sole discretion, withhold information from any SCC Litigation Trust Beneficiary if the SCC Litigation Trustee believes in good faith that the delivery of such information to such SCC Litigation Trust Beneficiary (i) is or would be prohibited by any agreement with a third party or (ii) is not in the best interest of the SCC Litigation Trust or in the purpose of maximizing the value of the assets of the SCC Litigation Trust or could damage or prejudice the SCC Litigation Trust, the assets of the SCC Litigation Trust (including the SCC Litigation Trust Claims and Privileges) or the business, operations, or purpose of the SCC Litigation Trust.

8.4 Electronic Reporting. Notwithstanding anything herein to the contrary, the SCC Litigation Trustee may post any report, notice, or other information required to be provided to the SCC Litigation Trust Beneficiaries on a web site maintained by the SCC Litigation Trustee in lieu of actual delivery of such report, notice, or other information to the SCC Litigation Trust Beneficiaries, subject to providing notice that such a procedure is being (or will be) implemented.

ARTICLE 9
TERM; TERMINATION OF THE SCC LITIGATION TRUST

9.1 Term; Termination of the SCC Litigation Trust.

(a) The SCC Litigation Trust shall terminate on the earlier of: (i) 30 days after the distribution of all of the assets of the SCC Litigation Trust in accordance with the terms of this Declaration and the Plan or (ii) the fifth anniversary of the Effective Date; *provided, however,* that, on or prior to a date less than six months (but not less than three months) prior to such termination, the Bankruptcy Court, upon motion by a party in interest, may extend the term of this SCC Litigation Trust for a finite period if, based on the facts and circumstances, the Bankruptcy Court finds that such extension is necessary to the liquidating purpose of the SCC Litigation Trust. The Bankruptcy Court may approve multiple extensions of the term of the SCC Litigation Trust; provided that (x) any such extension is so approved on or prior to a date less

than six months (but not less than three months) prior to termination of the immediately preceding extended term and (y) the SCC Litigation Trustee receives an opinion of counsel or a favorable ruling from the IRS that any further extension would not adversely affect the status of the SCC Litigation Trust as a grantor trust for federal income tax purposes.

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

9.2 Continuance of Trust for Winding Up. After the termination of the SCC Litigation Trust and for the purpose of liquidating and winding up the affairs of the SCC Litigation Trust, the SCC Litigation Trustee shall continue to act as such until its duties have been fully performed. Prior to the final distribution of all of the remaining assets of the SCC Litigation Trust and upon approval of the SCC Litigation Trust Board, the SCC Litigation Trustee shall be entitled to reserve from such assets any and all amounts required to provide for its own costs and expenses, in accordance with Section 6.2 herein, until such time as the winding up of the SCC Litigation Trust is completed. Upon termination of the SCC Litigation Trust, the SCC Litigation Trustee shall retain for a period of two years the books, records, SCC Litigation Trust Beneficiary lists, the SCC Litigation Trust Register, and certificates and other documents and files that have been delivered to or created by the SCC Litigation Trustee. At the SCC Litigation Trustee's discretion, all of such records and documents may, but need not, be destroyed at any time after two years from the completion and winding up of the affairs of the SCC Litigation Trust. Except as otherwise specifically provided herein, upon the termination of the SCC Litigation Trust, the SCC Litigation Trustee shall have no further duties or obligations hereunder.

ARTICLE 10
AMENDMENT AND WAIVER

10.1 Amendment and Waiver.

(a) The SCC Litigation Trustee, with the prior approval of the SCC Litigation Trust Board, may amend, supplement or waive any provision of, this Declaration, without notice to or the consent of any SCC Litigation Trust Beneficiary or the approval of the Bankruptcy Court: (i) to cure any ambiguity, omission, defect, or inconsistency in this Declaration, provided that such amendments, supplements, or waivers shall not materially adversely affect the distributions to be made under this Declaration to any of the SCC Litigation Trust Beneficiaries, or materially adversely affect the U.S. federal income tax status of the SCC Litigation Trust as a "liquidating trust" that is a grantor trust; (ii) to comply with any requirements in connection with the U.S. Federal income tax status of the SCC Litigation Trust as a "liquidating trust" that is a grantor trust; (iii) to comply with any requirements in connection with maintaining any exemptions from or exceptions to the registration or reporting requirements of the Exchange Act, the Trust Indenture Act, or the Investment Company Act as deemed necessary or appropriate from time to time by the SCC Litigation Trustee, including, without limitation, subject to the Asbestos Trust's rights under the Put Option (which rights may not be

infringed or otherwise affected by the Debtors or the SCC Litigation Trustee), to cause the SCC Litigation Trust Interests (other than those interests subject to the Put Option) to be non-transferable; (iv) to make the SCC Litigation Trust a reporting entity and, in such event, to comply with any requirements in connection with satisfying the registration or reporting requirements of the Exchange Act, the Trust Indenture Act, or the Investment Company Act as deemed necessary or appropriate from time to time by the SCC Litigation Trustee; (v) subject to the Asbestos Trust's rights under the Put Option (which rights may not be infringed or otherwise affected by the Debtors or the SCC Litigation Trustee), to cause the SCC Litigation Trust Interests (other than those interests subject to the Put Option) to be non-transferable to the extent the SCC Litigation Trustee determines such restraint on transferability to be in the best interests of the SCC Litigation Trust; and (vi) to evidence and provide for the acceptance of appointment hereunder by a successor trustee in accordance with the terms of this Declaration and the Plan.

(b) Except as provided in the foregoing subsection (a), any substantive provision of this Declaration may be amended or waived by the SCC Litigation Trustee, subject to the prior approval of the SCC Litigation Trust Board, with the approval of the Bankruptcy Court upon notice and an opportunity for a hearing; *provided, however*, that no change may be made to this Declaration that would materially adversely affect the distributions to be made under this Declaration to any of the SCC Litigation Trust Beneficiaries, or materially adversely affect the U.S. Federal income tax status of the SCC Litigation Trust as a "liquidating trust" that is a grantor trust. Notwithstanding this Section 10.1, any amendments to this Declaration shall not be inconsistent with the purpose and intention of the SCC Litigation Trust to liquidate in an expeditious but orderly manner the SCC Litigation Trust Claims in accordance with Treasury Regulation Section 301.7701-4(d).

ARTICLE 11
MISCELLANEOUS PROVISIONS

11.1 Intention of Parties to Establish the SCC Litigation Trust. This Declaration is intended to create a liquidating trust that is a grantor trust for federal income tax purposes and, to the extent provided by law, shall be governed and construed in all respects as such a trust and any ambiguity herein shall be construed consistent herewith and, if necessary, this Declaration may be amended in accordance with Section 10.1 to comply with such federal income tax laws, which amendments may apply retroactively.

11.2 Reimbursement of Trust SCC Litigation Costs. If the SCC Litigation Trustee, the SCC Litigation Trust Board, or the SCC Litigation Trust, as the case may be, is the prevailing party in a dispute regarding the provisions of this Declaration or the enforcement thereof, the SCC Litigation Trustee, the SCC Litigation Trust Board, or the SCC Litigation Trust, as the case may be, shall be entitled to collect any and all costs, reasonable and documented out-of-pocket expenses, and fees, including attorneys' fees, from the non-prevailing party incurred by the SCC Litigation Trustee, the SCC Litigation Trust Board, or the SCC Litigation Trust, as the case may be, in connection with such dispute or enforcement action.

11.3 Laws as to Construction. This Declaration shall be governed by and construed in accordance with the laws of the State of Delaware and U.S. bankruptcy laws, as

applicable, without regard to whether any conflicts of law would require the application of the law of another jurisdiction.

11.4 Jurisdiction. Without limiting any Person or entity's right to appeal any order of the Bankruptcy Court or to seek withdrawal of the reference with regard to any matter, and subject to the rights of the Delaware Trustee pursuant to Section 2.3(b) of this Declaration, (i) prior to the closure of the Bankruptcy Cases (a) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Declaration and to decide any claims or disputes which may arise or result from, or be connected with, this Declaration, any breach or default hereunder, or the transactions contemplated hereby, and (b) any and all actions related to the foregoing shall be filed and maintained only in the Bankruptcy Court, and (ii) following the closure of the Bankruptcy Cases, (x) the Delaware Courts of Chancery shall retain exclusive jurisdiction to enforce the terms of this Declaration and to decide any claims or disputes which may arise or result from, or be connected with, this Declaration, any breach or default hereunder, or the transactions contemplated hereby, and (y) any and all actions related to the foregoing shall be filed and maintained only in a Delaware Court of Chancery, and the parties, including the SCC Litigation Trust Beneficiaries, and Holders of Claims and Equity Interests, hereby consent to and submit to the jurisdiction and venue of the Bankruptcy Court and the Delaware Courts of Chancery, as applicable.

11.5 Severability. If any provision of this Declaration or the application thereof to any Person or circumstance shall be finally determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Declaration, or the application of such provision to Persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and such provision of this Declaration shall be valid and enforced to the fullest extent permitted by law.

11.6 Notices. All notices, requests, or other communications to the parties hereto shall be in writing and shall be sufficiently given only if (i) delivered in person; (ii) sent by electronic mail or facsimile communication (as evidenced by a confirmed fax transmission report); (iii) sent by registered or certified mail, return receipt requested; or (iv) sent by commercial delivery service or courier. Until a change of address is communicated, as provided below, all notices, requests, and other communications shall be sent to the parties at the following addresses or facsimile numbers:

If to the SCC Litigation Trustee, to:

With a copy to:

If to the SCC Litigation Trust Board, to:

With a copy to:

If the Delaware Trustee, to:

With a copy to:

If to Reorganized ASARCO, to:

With a copy to:

All notices shall be effective and shall be deemed delivered (i) if by personal delivery, delivery service or courier, on the date of delivery; (ii) if by electronic mail or facsimile communication, on the date of receipt or confirmed transmission of the communication; and (iii) if by mail, on the date of receipt. Any party from time to time may change its address, facsimile number, or other information for the purpose of notices to that party by giving notice specifying such change to the other party hereto.

11.7 Fiscal Year. The fiscal year of the SCC Litigation Trust will begin on the first day of January and end on the last day of December of each year.

11.8 Definitions. Each of the terms set forth below has the meaning set forth in the provision set forth opposite such term in the following table:

Term	**Provision**
Act	Section 1.5(a)
Bankruptcy Cases	Recitals
Bankruptcy Court	Recitals
Covered Person	Section 11.11
Declaration	Preamble
Delaware Trustee	Preamble
Eligible Holder	Section 4.7(e)
Information	Section 11.11
Indemnified Persons	Section 7.1(a)
Interim Trustee	Section 2.3(g)
Original Certificate	Section 5.5(f)
SCC Asbestos Board Member	Section 4.7(c)
SCC Class A Board Member	Section 4.7(c)
SCC Class B Board Member	Section 4.7(c)
SCC Litigation Trust	Preamble

Term	Provision
SCC Litigation Trustee	Preamble
SEC	Section 5.4(a)
Plan	Preamble
Reorganized ASARCO	Preamble
Treasury Regulations	Section 1.4(a)
Trust Tax Owners	Section 1.4(a)
Trustee	Section 2.3(a)

11.9 Headings. The section headings contained in this Declaration are solely for convenience of reference and shall not affect the meaning or interpretation of this Declaration or of any term or provision hereof.

11.10 Counterparts. This Declaration may be executed in any number of counterparts, each of which shall be deemed to be an original instrument, but all together shall constitute one agreement.

11.11 Confidentiality. The SCC Litigation Trustee, the Delaware Trustee and each successor trustee and each member of the SCC Litigation Trust Board and each successor member of the SCC Litigation Trust Board (each a "Covered Person") shall, during the period that they serve in such capacity under this Declaration and following either the termination of this Declaration or such individual's removal, incapacity, or resignation hereunder, hold strictly confidential and not use for personal gain any material, non-public information of or pertaining to any entity to which any of the assets of the SCC Litigation Trust relates or of which it has become aware in its capacity (the "Information"), except to the extent disclosure is required by applicable law, order, regulation, or legal process. In the event that any Covered Person is requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigation, demand, or similar legal process) to disclose any Information, such Covered Person shall notify the SCC Litigation Trust Board reasonably promptly (unless prohibited by law) so that the SCC Litigation Trust Board may seek an appropriate protective order or other appropriate remedy or, in its discretion, waive compliance with the terms of this Section (and if the SCC Litigation Trust Board seeks such an order, the relevant Covered Person will provide cooperation as the SCC Litigation Trust Board shall reasonably request). In the event that no such protective order or other remedy is obtained, or that the SCC Litigation Trust Board waives compliance with the terms of this Section and that any Covered Person is nonetheless legally compelled to disclose the Information, the Covered Person will furnish only that portion of the Information, which the Covered Person, advised by counsel, is legally required and will give the SCC Litigation Trust Board written notice (unless prohibited by law) of the Information to be disclosed as far in advance as practicable and exercise all reasonable efforts to obtain reliable assurance that confidential treatment will be accorded the Information.

11.12 Entire Agreement. This Declaration (including the Recitals), the Plan, and the Confirmation Order constitute the entire agreement by and among the parties hereto and there are no representations, warranties, covenants or obligations except as set forth herein or therein. This Declaration, the Plan and the Confirmation Order supersede all prior and contemporaneous agreements, understandings, negotiations, discussions, written or oral, of the parties hereto,

relating to any transaction contemplated hereunder. Except as otherwise specifically provided herein, in the Plan or in the Confirmation Order, nothing in this Declaration is intended or shall be construed to confer upon or to give any person other than the parties thereto and their respective heirs, administrators, executors, successors, or assigns any right to remedies under or by reason of this Declaration.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto have either executed and acknowledged this Declaration, or caused it to be executed and acknowledged on their behalf by their duly authorized officers all as of the date first above written.

ASARCO ADMINISTRATION COMPANY, LLC:

By: _____
Name:
Title:

SCC LITIGATION TRUSTEE:

_____
Joseph F. Lapinsky

DELAWARE TRUSTEE:

By: _____
Name:
Title:

AGREED AND ACKNOWLEDGED
as of the date first above written:

_____
Name:
Title: SCC Litigation Trust Board Member

_____
Name:
Title: SCC Litigation Trust Board Member

_____
Name:
Title: SCC Litigation Trust Board Member

Exhibit B

DECLARATION OF TRUST

FOR THE

ASARCO LIQUIDATION TRUST

BY AND AMONG

ASARCO ADMINISTRATION COMPANY, LLC

AND

THE TRUSTEES (AS NAMED HEREIN)

Dated as of _____, 2009

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DECLARATION OF TRUST

This Declaration of Trust (this "Declaration"), dated as of [_____] [__], 2009, by and among ASARCO Administration Company, LLC ("Reorganized ASARCO"), Joseph F. Lapinsky, as the liquidation trustee (the "Liquidation Trustee"), and [_____], as the Delaware trustee (the "Delaware Trustee"), is executed in order to establish a liquidating trust (the "Liquidation Trust") in connection with the Sixth Amended Joint Plan of Reorganization for the Debtors under Chapter 11 of the United States Bankruptcy Code, dated _____ ___, 2009 (as it may be amended, modified, or supplemented, the "Plan"). Capitalized terms used in this Declaration and not otherwise defined herein shall have the respective meanings ascribed to them in the Glossary of Defined Terms for the Debtors' Plan Documents.

W I T N E S S E T H

WHEREAS, the Debtors filed voluntary petitions pursuant to Chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division (the "Bankruptcy Court") commencing the jointly administered cases known as In re ASARCO LLC, *et al.*, Case No. 05-21207 (the "Bankruptcy Case");

WHEREAS, the Bankruptcy Court, through the Plan, has ordered the establishment and creation of the Liquidation Trust to (a) in an expeditious but orderly manner, prosecute, settle, or otherwise dispose of the Liquidation Trust Claims, as successor to and representative of the estates of the Debtors in accordance with Sections 1145(a)(1) and 1123(b)(3)(B) of the Bankruptcy Code, and (b) make timely distributions to the Liquidation Trust Beneficiaries;

WHEREAS, in fulfilling its purpose, the Liquidation Trust shall have no objective or authority to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the purpose of the Liquidation Trust;

WHEREAS, the Liquidation Trust is created for the benefit of the Liquidation Trust Beneficiaries; and

WHEREAS, the Liquidation Trust is created pursuant to, and to effectuate, the Plan.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein and in the Plan, the Debtors and the Trustees agree as follows:

ARTICLE 1
ESTABLISHMENT OF THE LIQUIDATION TRUST

1.1 Declaration of Trust.

(a) Pursuant to the Plan, the Debtors and the Liquidation Trustee hereby establish the Liquidation Trust, which shall be known as the "ASARCO Liquidation Trust" on behalf of the Liquidation Trust Beneficiaries and the Trustees hereby accept such

rights and properties assigned and transferred to them and the trust imposed upon them pursuant to this Declaration.

(b) The principal office of the Liquidation Trust shall be in care of the Liquidation Trustee at [_____], or at such other address as the Liquidation Trustee may designate.

1.2 Liquidation Trust Assets.

(a) In accordance with the Plan and this Declaration, as of the Effective Date (or, with respect to clause (v), from time to time thereafter), the Debtors, subject to the provisions of the Confirmation Order, hereby transfer, assign, and deliver to the Liquidation Trustee for the benefit of the Liquidation Trust Beneficiaries, and the Liquidation Trustee hereby accepts on behalf of the Liquidation Trust Beneficiaries, (i) all of the Debtors' respective rights, title, and interests in and to the Liquidation Trust Claims free and clear of any and all Liens, Claims, encumbrances, or interests of any kind in such property of any other Person or entity, other than Liens or encumbrances arising under the Bankruptcy Code or other applicable law; (ii) all of the Debtors' respective rights, title, and interest in the Debtors' Privileges associated with the Liquidation Trust Claims; (iii) the Liquidation Trust Expense Fund; and (iv) such other assets as deemed appropriate by Reorganized ASARCO in accordance with the Plan (collectively, the "Trust Assets"). Upon the transfer of the Trust Assets to the Liquidation Trust, the Debtors shall have no interest in or obligation with respect to such assets or, except as described in this Section 1.2, Section 1.3, or Section 1.4, the Liquidation Trust.

(b) The Liquidation Trustee shall collect all income earned with respect to, all Liquidation Trust Proceeds attributable to, and all payments made on account of, the Trust Assets, which shall thereupon be added to the Trust Assets and held as a part thereof (and which title shall be vested in the Liquidation Trustee).

(c) On or as promptly as practicable after the Effective Date, Reorganized ASARCO shall (i) deliver or cause to be delivered to the Liquidation Trustee any and all documents (or copies thereof) to the extent relating to the Trust Assets in the Debtors, or their employees, agents, advisors, attorneys, accountants, or any other professionals hired by the Debtors, possession, custody, or control and (ii) provide reasonable access to the Liquidation Trustee and its advisors to such employees of the Debtors, their agents, advisors, attorneys, accountants, or any other professionals hired by the Debtors with knowledge of matters relevant to the Trust Assets for the purpose of enabling the Liquidation Trustee to fulfill its obligations under this Declaration, including the prosecution of the Liquidation Trust Claims. Reorganized ASARCO shall, pursuant to and subject to the terms and conditions of the Plan, the Transition Services Agreement or the New Plan Sponsor PSA, as applicable, facilitate access to the Liquidation Trustee and its advisors to employees and books and records of the Plan Sponsor in connection with the obligations of the Liquidation Trustee under this Declaration, including the prosecution of the Liquidation Trust Claims. Requests for such access shall be made through Reorganized ASARCO or its representatives.

(d) At any time and from time to time on and after the Effective Date, the Trustees and Reorganized ASARCO agree (i) at the reasonable request of the Liquidation

Trustee to execute and/or deliver any instruments, documents, books, and records (including those maintained in electronic format and original documents as may be needed) and (ii) to take, or cause to be taken, all such further actions as the Liquidation Trustee may reasonably request, in each case, in order to evidence or effectuate the transfer of the Trust Assets to the Liquidation Trustee and to otherwise carry out the intent of the Plan.

1.3 Funding of the Liquidation Trust.

(a) In accordance with the Plan, Reorganized ASARCO shall, on the Effective Date, transfer to the Liquidation Trust the Liquidation Trust Expense Fund. Except pursuant to the terms of the Plan, none of the Debtors shall have any further obligation to provide any funding with respect to the Liquidation Trust. The Liquidation Trustee shall use the Liquidation Trust Expense Fund consistent with the purposes of the Liquidation Trust and subject to the terms and conditions of the Plan and this Liquidation Trust Agreement.

(b) All costs and expenses associated with the administration of the Liquidation Trust shall be the responsibility of and paid by the Liquidation Trust.

1.4 Tax Matters.

(a) Solely for tax purposes, the Liquidation Trust Beneficiaries and Reorganized ASARCO (to the extent of its retained interest in the Liquidation Trust for federal income tax purposes) (collectively, the "Trust Tax Owners") are treated as grantors and owners of the Liquidation Trust pursuant to Section 671 *et seq.* of the Internal Revenue Code and the Treasury Regulations promulgated thereunder (the "Treasury Regulations") and any similar provisions of state or local law. It is intended that the Liquidation Trust be classified as a liquidating trust under Section 301.7701-4(d) of the Treasury Regulations.

(b) For all federal, state, and local income tax purposes, all persons (including, without limitation, the Debtors, the Trustees, and the Trust Tax Owners) shall take the position, subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary, that the transfer of assets to the Liquidation Trust is a deemed transfer to the Trust Tax Owners (as of the Initial Distribution Date), followed by a deemed transfer by such Trust Tax Owners to the Liquidation Trust.

(c) The fair market value of the portion of the Trust Assets that is treated as having been transferred to each Trust Tax Owner pursuant to Section 1.4(b) hereof, and the fair market value of the portion of the Liquidation Trust assets that is treated for federal income tax purposes as having been transferred to any Trust Tax Owner or other distributee as a result of the allowance or disallowance of a Disputed Claim, shall be determined by the Liquidation Trustee, and all persons (including, without limitation, the Liquidation Trustee, the Trust Tax Owners and the transferors, for tax purposes, of any assets transferred to the Liquidation Trust) shall utilize the fair market value determined by the Liquidation Trustee for all federal income tax purposes.

(d) The Liquidation Trustee shall allocate any items of income, gain, loss, deduction, and credit of the Liquidation Trust for federal income tax purposes among current and/or former Trust Tax Owners, such allocation shall be binding on all current and

former Trust Tax Owners for all federal, state, and local income tax purposes and the current and former Trust Tax Owners shall be responsible (on a current basis) for the payment of any federal, state, and local income tax due on the income and gain so allocated to them.

1.5 Nature and Purpose of the Liquidation Trust.

(a) Purpose. Upon compliance with Section 3810 of the Delaware Statutory Trust Act, 12 Del. C., § 3801 *et seq.* (hereinafter the "Act"), the Liquidation Trust shall be organized and established as a statutory trust pursuant to which the Liquidation Trustee, subject to the terms and conditions contained herein and in the Plan, is to (i) hold the Trust Assets and dispose of the same in accordance with this Declaration and the Plan in accordance with Treasury Regulation Section 301.7701-4(d) and (ii) oversee and direct the expeditious but orderly liquidation of the Trust Assets. Accordingly, the primary purpose of the Liquidation Trust is to liquidate the Trust Assets with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Liquidation Trust.

(b) Relationship. This Declaration is intended to create a trust and a trust relationship and to be governed and construed in all respects as a trust. The Liquidation Trust is not intended to be, and shall not be deemed to be or treated as, a general partnership, limited partnership, joint venture, corporation, joint stock company or association, nor shall the Liquidation Trustee, the Liquidation Trust Board (or any of its members or ex officio members), or the Liquidation Trust Beneficiaries, or any of them, for any purpose be, or be deemed to be or treated in any way whatsoever to be, liable or responsible hereunder as partners or joint venturers. The relationship of the Liquidation Trust Beneficiaries to the Liquidation Trustee and the Liquidation Trust Board shall be solely that of beneficiaries of a trust and shall not be deemed a principal or agency relationship, and their rights shall be limited to those conferred upon them by this Declaration.

1.6 Incorporation of Plan. The Plan and the Confirmation Order are each hereby incorporated into this Declaration and made a part hereof by this reference; *provided, however*, to the extent that there is conflict between the provisions of this Declaration, the provisions of the Plan, and/or the Confirmation Order, each such document shall have controlling effect in the following rank order: (1) the Confirmation Order; (2) the Plan; and (3) this Declaration.

1.7 Appointment as Representative. Pursuant to Section 1123(b)(3) of the Bankruptcy Code, the Plan appointed the Liquidation Trustee as the duly appointed representative of the Debtors' Estates, and, as such, the Liquidation Trustee succeeds to all of the rights and powers of a trustee in bankruptcy with respect to the prosecution, sale, transfer, or other disposition, as applicable, of the Trust Assets for the ratable benefit of the Liquidation Trust Beneficiaries. To the extent that any Trust Assets cannot be transferred to the Liquidation Trust because of a restriction on transferability under applicable non-bankruptcy law that is not superseded or preempted by Section 1123 of the Bankruptcy Code or any other provision of the Bankruptcy Code, such Trust Assets shall be deemed to have been retained by Reorganized ASARCO, and the Liquidation Trustee shall be deemed to have been designated as a representative of the Estates pursuant to Section 1123 (b)(3)(B) of the Bankruptcy Code to

enforce, pursue, sale, transfer or otherwise dispose of, as applicable, such Trust Assets on behalf of the Estates.

ARTICLE 2
TRUSTEES

2.1 Delaware Trustee. In accordance with the Plan and subject to the Confirmation Order, [_____] of Delaware is hereby named, constituted, and appointed as Delaware Trustee effective as of the date hereof, to have all the rights, powers, and duties set forth herein and as otherwise provided by law. The Delaware Trustee is willing and does hereby accept the appointment to act and serve as Delaware Trustee of the Liquidation Trust.

2.2 Liquidation Trustee. In accordance with the Plan and subject to the Confirmation Order, the Plan Administrator is hereby named, constituted, and appointed as Liquidation Trustee effective as of the date hereof, to have all the rights, powers, and duties set forth herein and as otherwise provided by law. The Liquidation Trustee is willing, and does hereby accept the appointment, to act and serve as Liquidation Trustee of the Liquidation Trust.

2.3 Tenure, Removal, and Replacement of the Liquidation and Delaware Trustee.

(a) The Liquidation Trustee and the Delaware Trustee (each, a "Trustee" and, together, the "Trustees") will each serve until resignation and the appointment of a successor pursuant to subsection (b) below, removal pursuant to subsection (c) below, or death (if applicable).

(b) A Trustee may resign by giving not less than 90 days prior written notice to the Liquidation Trust Board. Such resignation will become effective on the later to occur of: (i) the day specified in such notice and (ii) the appointment of a successor trustee as provided herein and the acceptance by such successor trustee of such appointment. If a successor trustee is not appointed or does not accept its appointment within 90 days following delivery of notice of resignation, (x) in the case of the Liquidation Trustee, the Liquidation Trustee may file a motion with the Bankruptcy Court (at the expense of the Liquidation Trust), upon notice and hearing, for the appointment of a successor trustee, and (y) in the case of the Delaware Trustee, the Delaware Trustee may file a motion with the Delaware Court of Chancery (at the expense of the Liquidation Trust), upon notice and hearing, for the appointment of a successor trustee.

(c) A Trustee may be removed by order of the Bankruptcy Court on motion of any one of the members of the Liquidation Trust Board. Any motion to remove a Trustee shall be for cause shown.

(d) In the event of a vacancy in the position of a Trustee (whether by removal, resignation, or (if applicable) death), the vacancy will be filled by the appointment of a successor trustee by (i) majority vote and resolution of the Liquidation Trust Board, and the acceptance by the successor trustee in accordance with Section 2.3(e) or (ii) an order of the Bankruptcy Court after an opportunity for a hearing; *provided, however*, that only the Liquidation Trust Board shall have standing to seek such an order, except as provided in Section 2.3(b). If a successor trustee is appointed by resolution, as provided in clause (i) of the preceding

sentence, and such appointment is accepted by the successor trustee, the Liquidation Trust Board shall file notice of such appointment and acceptance with the Bankruptcy Court, which notice will include the name, address, and telephone number of the successor trustee; provided that the filing of such notice shall not be a condition precedent to the vesting in the successor Trustee of all the estates, properties, rights, powers, trusts, and duties of its predecessor.

(e) Any successor trustee appointed hereunder shall execute an instrument accepting such appointment and assuming all of the obligations of the predecessor Trustee hereunder and thereupon the successor trustee shall, without any further act, become vested with all the estates, properties, rights, powers, privileges, authorities, and duties of its predecessor in the Liquidation Trust hereunder with like effect as if originally named herein and the successor trustee will not be liable personally for any act or omission of the predecessor Trustee.

(f) Upon the appointment of a successor trustee, the predecessor Trustee (or the duly appointed legal representative of a deceased Trustee) shall, if applicable, when requested in writing by the successor trustee, execute and deliver an instrument or instruments conveying and transferring to such successor trustee upon the trust herein expressed, without recourse to the predecessor Trustee, all the estates, properties, rights, powers, and trusts of such predecessor Trustee, and shall duly assign, transfer, and deliver to such successor trustee all property and money held hereunder, and all other assets and documents relating to the Liquidation Trust, the Liquidation Trust Claims, or the Liquidation Trust Interests then in its possession and held hereunder.

(g) During any period in which there is a vacancy in the position of a Trustee, the Liquidation Trust Board may (to the extent permitted by the Act) appoint one of its members to serve as an interim Trustee, (the "Interim Trustee"). The Interim Trustee shall be subject to all the terms and conditions applicable to a Liquidation Trustee hereunder. Such Interim Trustee shall not be limited in any manner from exercising any rights or powers as a member of the Liquidation Trust Board merely by its appointment as Interim Trustee.

(h) The death, resignation, retirement, removal, bankruptcy, dissolution, liquidation, incompetence, or incapacity to perform the duties of a Trustee shall not operate to dissolve, terminate, or annul the Liquidation Trust.

2.4 Compensation of the Trustees.

(a) As compensation, the Liquidation Trustee shall be entitled to receive $_____ per annum (or such other amount as agreed to from time to time by the Liquidation Trustee and the Liquidation Trust Board), payable in advance in quarterly installments, for the performance of services provided under and pursuant to this Declaration, and shall be reimbursed for all reasonable and documented expenses incurred in connection with the performance of its services hereunder.

(b) The Delaware Trustee shall be entitled to receive $_____ per annum, payable on [_____], and shall be reimbursed for all reasonable and documented expenses incurred in connection with the performance of its services hereunder.

2.5 No Bond. The Trustees shall serve without bond.

2.6 Inquiries into Trustee's Authority. Except as otherwise set forth in the Liquidation Trust or in the Plan, no Person dealing with the Liquidation Trust shall be obligated to inquire into the authority of the Liquidation Trustee in connection with the prosecution, protection, conservation, sale, or other disposition, as applicable, of the Trust Assets.

ARTICLE 3
DUTIES AND LIMITATIONS OF TRUSTEES

3.1 Role of the Liquidation Trustee. In furtherance of and consistent with the purpose of the Liquidation Trust and the Plan, the Liquidation Trustee, subject to the terms and conditions contained herein and in the Plan, shall, in an expeditious but orderly manner, liquidate and convert to Cash the Trust Assets, engage in acts that would constitute ordinary performance of the obligations of a trustee under a liquidating trust, make timely distributions of such Cash and not unduly prolong the duration of the Liquidation Trust. The liquidation of the Liquidation Trust Claims included in the Trust Assets may be accomplished either through the prosecution, compromise and settlement, abandonment, dismissal, or other disposition of any or all claims, rights, or causes of action, or otherwise. In all circumstances, the Liquidation Trustee shall act in the best interests of maximizing the value of the Trust Assets for the Liquidation Trust Beneficiaries and in furtherance of the purpose of the Liquidation Trust and shall, where required pursuant to the terms of this Declaration, consult with and obtain the required approval of the Liquidation Trust Board.

3.2 Authority of Liquidation Trustee. Subject to any limitations contained herein (including, without limitation, Article 4 hereof) or in the Plan, the Liquidation Trustee shall have the full power, authority, and discretion to take any and all actions as are necessary or advisable to carry out its responsibilities hereunder and to effectuate the purposes of the Liquidation Trust, including, without limitation:

(a) full power, authority, and discretion to interpret, construe, and decide all questions and issues arising under any provision of this Declaration or of any agreement, notification, certificate, or document relating to or evidencing a Liquidation Trust Interest (including, without limitation, the power, authority, and discretion to determine whether any particular holder or beneficial owner of a Liquidation Trust Interest shall be entitled to exercise any right conferred hereunder or under any other relevant agreement, notification, certificate, document, or similar instrument), and the decisions of the Liquidation Trustee with respect to all such matters shall be final, conclusive, and binding on all parties who have an interest in the Liquidation Trust or any Liquidation Trust Interest;

(b) receiving (and accepting), managing, supervising, and protecting the Trust Assets on behalf of and for the benefit of the Liquidation Trust Beneficiaries;

(c) holding legal title to any and all rights of the Liquidation Trust Beneficiaries in or arising from the Trust Assets, and, in consultation with and subject to the approval of the Liquidation Trust Board, protecting and enforcing the rights to the Trust Assets vested in the Liquidation Trustee by this Declaration by any method deemed appropriate,

including, without limitation, by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium, or similar law and general principles of equity;

(d) in consultation with and subject to the approval of the Liquidation Trust Board, filing, initiating, prosecuting, and if necessary and appropriate, selling, compromising and settling, abandoning, or dismissing the Liquidation Trust Claims included in the Trust Assets; *provided, however*, that the Liquidation Trust Board may from time to time establish a certain dollar threshold (the "De Minimis Threshold") below which the Liquidation Trustee shall not be required to consult with or obtain the approval of the Liquidation Trust Board, to the extent that such matters are limited to a claim or cause of action against a person or entity where the amount demanded from such person or entity, in the aggregate, is less than such De Minimis Threshold;

(e) in consultation with and subject to the approval of the Liquidation Trust Board, commencing and/or pursuing any and all actions involving Trust Assets that could arise or be asserted at any time, unless otherwise waived or relinquished in the Plan;

(f) protecting and enforcing the rights to the Trust Assets vested in the Liquidation Trustee by any method deemed appropriate;

(g) making all necessary filings in accordance with any applicable law, statute, or regulation, and in consultation with counsel, seeking any advice or determination that may be necessary or appropriate under any such laws, statutes, or regulations;

(h) executing and filing one or more registration statements and prospectuses (including any amendments or supplements thereto) under the Securities Act (if applicable) relating to the Liquidation Trust Beneficial Interests and the preparation and filing of all periodic and other reports, forms, and other filings required under the Exchange Act and any other applicable federal or state securities laws;

(i) taking any action to cause the Liquidation Trust to not be deemed an Investment Company under the Investment Act or subject to the Trust Indenture Act;

(j) calculating and implementing all distributions to be made to the Liquidation Trust Beneficiaries;

(k) filing all required tax and information returns and paying taxes and all other obligations of the Liquidation Trust;

(l) requesting any appropriate tax determination with respect to the Liquidation Trust;

(m) paying all expenses and making all other payments relating to any Trust Assets;

(n) obtaining insurance coverage with respect to (i) the liabilities and obligations of the Trustees under this Declaration (in the form of an errors and omissions policy or otherwise), and (ii) real and personal property which may become Trust Assets, if any;

(o) in consultation with and subject to the approval of the Liquidation Trust Board, negotiating, receiving, or accepting the assignment or transfer of claims, rights, suits, judgments, causes of action, recoveries, and/or proceeds therefrom, from the holders thereof, to the extent that an assignment and/or transfer to the Liquidation Trust is deemed to be in the best interests of maximizing the value of the Trust Assets for the Liquidation Trust Beneficiaries;

(p) in consultation with and subject to the approval of the Liquidation Trust Board, determining the amount of consideration to be provided for the assignment or transfer of claims, rights, suits, judgments, causes of action, recoveries, and/or proceeds therefrom;

(q) in consultation with and subject to the approval of the Liquidation Trust Board, compromising, adjusting, arbitrating, suing on or defending, abandoning, or otherwise dealing with and settling claims in favor of or against the Liquidation Trust as the Liquidation Trustee shall deem advisable; *provided, however*, that the Liquidation Trustee shall not be required to consult with or obtain the approval of the Liquidation Trust Board to the extent such matters are limited to a claim or cause of action against a person or entity where the amount demanded from such person or entity, in the aggregate, is less than such De Minimis Threshold;

(r) determining and satisfying any and all liabilities created, incurred, or assumed by the Liquidation Trust;

(s) in consultation with and subject to the approval of the Liquidation Trust Board, retaining and paying such law firms, accounting firms, experts, advisors, consultants, investigators, appraisers, agents, employees, or other professionals and third parties as the Liquidation Trustee may deem necessary or appropriate to assist the Liquidation Trustee in carrying out the Liquidation Trustee's powers and duties under this Agreement. The Liquidation Trustee may commit the Liquidation Trust to and shall pay all persons or entities retained or employed by the Liquidation Trust reasonable compensation for services rendered and reimburse reasonable expenses incurred;

(t) investing any monies held as part of the Trust Assets in accordance with, and subject to the limitations of, the terms of Section 3.7 hereof;

(u) performing such other responsibilities as may be vested in the Liquidation Trustee pursuant to the Plan, this Declaration, orders of the Bankruptcy Court, or as may be necessary and proper to carry out the provisions of the Plan; and

(v) conducting the affairs of the Liquidation Trust and operating the Liquidation Trust so that the Liquidation Trust will not fail to be classified as a liquidating trust within the meaning of Treasury Regulation 301.7701-4(d).

3.3 Payment of Liquidation Trust Expenses.

(a) The Liquidation Trustee shall maintain the Liquidation Trust Expense Fund and expend the assets of the Liquidation Trust Expense Fund (i) as are reasonably necessary to meet contingent liabilities and to maintain the value of the Trust Assets during liquidation, (ii) to pay reasonable administrative expenses (including but not limited to, the costs and expenses of the Liquidation Trustee (including reasonable fees, costs, and expenses of professionals) and the members of the Liquidation Trust Board), any taxes imposed on the Liquidation Trust or fees and expenses in connection with, arising out of or related to the Trust Assets or the performance by the Liquidation Trustee of his duties hereunder in accordance with this Declaration, and (iii) to satisfy other liabilities incurred or assumed by the Liquidation Trust (or to which the assets are otherwise subject) in accordance with the Plan or this Declaration.

(b) The Liquidation Trustee may retain from the Liquidation Trust Proceeds and add to the Liquidation Trust Expense Fund, at any time and from time to time, such amounts as the Liquidation Trustee deems reasonable and appropriate to ensure that the Liquidation Trust Expense Fund will be adequate to meet the expenses and liabilities described in Section 3.3(a).

(c) Notwithstanding any other provision of this Declaration to the contrary, the Liquidation Trustee shall not be required to take any action or enter into or maintain any claim, demand, action, or proceeding relating to the Liquidation Trust unless it shall have sufficient funds in the Liquidation Trust Expense Fund for that purpose.

3.4 Books and Records.

(a) The Liquidation Trustee shall maintain in respect of the Liquidation Trust and the Liquidation Trust Beneficiaries, books and records relating to the Trust Assets and the income of the Liquidation Trust and the payment of expenses of, and liabilities of claims against or assumed by, the Liquidation Trust in such detail and for such period of time as may be necessary to enable the Liquidation Trustee to make full and proper accounting in respect thereof in accordance with the provisions hereof and to comply with applicable provisions of law. Nothing in this Declaration requires the Liquidation Trustee to file any accounting or seek approval of any court with respect to the administration of the Liquidation Trust, or as a condition for any payment or distribution out of the Trust Assets.

(b) Upon distribution of all Liquidation Trust Proceeds and all other Cash from the Liquidation Trust or the termination of the Liquidation Trust, the Liquidation Trustee shall retain the books, records, and files which shall have been delivered to or created by the Liquidation Trustee.

3.5 Compliance with Laws. Any and all distributions of Trust Assets and proceeds of borrowings, if any, shall be in compliance with applicable laws, including, without limitation, applicable federal and state securities laws.

3.6 Reliance by Liquidation Trustee. Except as otherwise provided herein:

(a) the Liquidation Trustee may rely, and shall be protected in acting upon, any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, or other paper or document believed by the Liquidation Trustee to be genuine and to have been signed or presented by the proper party or parties;

(b) persons dealing with the Liquidation Trustee shall look only to the Trust Assets to satisfy any liability incurred by the Liquidation Trustee to such Person in carrying out the terms of this Declaration, and neither the Liquidation Trustee nor any member of the Liquidation Trust Board shall have any personal obligation to satisfy any such liability; and

(c) the Liquidation Trustee shall have the right at any time to seek instructions concerning the administration of this Declaration from the Bankruptcy Court or, in the event that the Bankruptcy Cases are closed, any Delaware Court of Chancery.

3.7 Investment and Safekeeping of Liquidation Trust Assets. The Liquidation Trustee shall invest all Trust Assets (other than Liquidation Trust Claims), all Liquidation Trust Proceeds, the Liquidation Trust Expense Fund and all income earned by the Liquidation Trust (pending periodic distributions in accordance with the provisions of the Plan) only in cash, demand, and time deposits, such as short-term certificates of deposit, in banks or other savings institutions, or other temporary, liquid investments, such as Treasury bills; *provided, however*, that (a) the scope of any such permissible investments shall be limited to include only those investments, or shall be expanded to include any additional investments, as the case may be, that a liquidating trust within the meaning of Treasury Regulation Section 301.7701-4(d) may be permitted to hold, pursuant to the Treasury Regulations, or any modification in the guidelines of the IRS, whether set forth in IRS rulings, other IRS pronouncements or otherwise, (b) under no circumstances, shall the Liquidation Trustee segregate the Trust Assets on the basis of classification of the holders of Liquidation Trust Interests, other than in accordance with the provisions of the Plan, and (c) the Liquidation Trustee shall not "vary the investment" of the Liquidation Trust Beneficiaries, within the meaning of Treasury Regulation Section 301.7701-4(c).

3.8 Limitation of Liquidation Trustee's Authority. Notwithstanding anything herein to the contrary, the Liquidation Trustee shall not (i) be authorized to engage in any trade or business, (ii) take such actions inconsistent with the prompt and orderly liquidation of the Trust Assets as are required or contemplated by applicable law, the Plan and this Declaration, (iii) be authorized to engage in any activities inconsistent with the treatment of the Liquidation Trust as a liquidating trust within the meaning of Treasury Regulation Section 301.7701-4(d) and in accordance with Rev. Proc. 94-45, 1994-2 C.B. 684, or (iv) take any action to cause the Liquidation Trust to be treated as a publicly traded partnership within the meaning of Section 7704 of the Internal Revenue Code, including, without limitation, any action to cause the Liquidation Trust Interests, or any of them, to be traded on an established securities market or to be readily tradable on a secondary market or the substantial equivalent thereof (if and only to the extent such limitation described in this clause (iv) is required to qualify and maintain the qualification of the Liquidation Trust as a liquidating trust within the meaning of Treasury Regulation 301.7701-4(d)).

3.9 Responsibilities of the Delaware Trustee.

(a) The Delaware Trustee shall have no obligation or duty to manage the Trust Assets or to take any other act except as expressly required hereunder. The Delaware Trustee's duties shall be limited to the following:

i. serve as registered agent for service of process for the Liquidation Trust under Section 3804(b) of the Act;

ii. serve as the Delaware resident trustee under Section 3807(a) of the Act;

iii. maintain the registered office of the Liquidation Trust and forward to the Liquidation Trustee within a reasonable time any process served upon it; and

iv. perform all other requirements so that the Liquidation Trust qualifies as a Delaware statutory trust under the Act.

(b) The Delaware Trustee shall not have any duty or obligation with respect to the Trust Assets, including with respect to the Liquidation Trust Claims, or the Liquidation Trust except as otherwise specifically provided in this Agreement, and the Delaware Trustee shall be a trustee of the Liquidation Trust for the sole and limited purpose of fulfilling the requirements of Section 3807 of the Act. No implied duties or obligations shall be read into this Agreement against the Delaware Trustee. Notwithstanding the foregoing, the Delaware Trustee is authorized to take all actions which the Liquidation Trustee deems necessary, convenient or incidental to effect the purposes of the Liquidation Trust, all as set forth in written instructions from the Liquidation Trustee in accordance with this Declaration. The right of the Delaware Trustee to perform any act enumerated herein shall not be construed as a duty.

3.10 Standard of Care; Exculpation. To the fullest extent permitted by law, neither the Liquidation Trustee nor the Delaware Trustee, nor any of their respective members, designees, or professionals, nor any of their duly designated agents or representatives, shall be liable, responsible, or accountable in damages or otherwise for any loss, damage, or claim incurred by reason of any act or omission taken or omitted to be taken by the other Trustee or such Trustee's agents or representatives, nor shall the Liquidation Trustee or the Delaware Trustee be liable, responsible, or accountable in damages or otherwise for any loss, damage, or claim incurred by reason of any act or omission taken or omitted to be taken by either such Trustee in good faith other than acts or omissions resulting from each such Trustee's own bad faith, willful misconduct, gross negligence, or knowing violation of law. Each of the Liquidation Trustee and the Delaware Trustee and each of their respective members may, in connection with the performance of their respective functions, and in each of their sole and absolute discretion, consult with their respective attorneys, accountants, financial advisors, and agents, and shall not be liable for any act taken, omitted to be taken, or suffered to be done in good faith in accordance with advice or opinions rendered by such Persons. Notwithstanding such authority, neither the Liquidation Trustee nor the Delaware Trustee nor any of their respective members shall be under any obligation to consult with their respective attorneys, accountants, financial advisors, or agents, and the good faith determination not to do so shall not result in the imposition of liability

on either of the Liquidation Trustee or the Delaware Trustee or, as applicable, their respective members or designees, unless such determination is based on bad faith, willful misconduct, gross negligence, or knowing violation of law.

ARTICLE 4
LIQUIDATION TRUST BOARD

4.1 Liquidation Trust Board. A liquidation trust board (the "Liquidation Trust Board") shall be established and shall be comprised of three Persons. The initial members of the Liquidation Trust Board shall be appointed as described in and in accordance with the Plan. Successor members of the Liquidation Trust Board shall be appointed as described in Section 4.7 below.

4.2 Authority of the Liquidation Trust Board. The Liquidation Trust Board shall have the authority and responsibility to oversee, review, and guide the activities and performance of the Liquidation Trustee and shall have the authority to remove the Liquidation Trustee in accordance with Section 2.3. The Liquidation Trustee shall consult with and provide information to the Liquidation Trust Board in accordance with and pursuant to the terms of this Declaration and the Plan. The Liquidation Trust Board shall have the authority to select and engage such Persons, and select and engage such professional advisors, including, without limitation, any professional previously retained by the Debtors in accordance with the terms of the Plan and this Declaration, as the Liquidation Trust Board deems necessary and desirable to assist the Liquidation Trust Board in fulfilling its obligations under this Declaration and the Plan, and the Liquidation Trustee shall pay the reasonable fees of such Persons (including on an hourly, contingency, or modified contingency basis) and reimburse such Persons for their reasonable and documented out-of-pocket costs and expenses consistent with the terms of this Declaration.

4.3 Meetings of the Liquidation Trust Board.

(a) Regular meetings of the Liquidation Trust Board are to be held with such frequency and at such place as the members of the Liquidation Trust Board may determine in their reasonable discretion, but in no event shall such meetings be held less frequently than quarterly. The Liquidation Trustee shall attend and participate in these regularly scheduled meetings. The Liquidation Trust Board shall establish by resolution the time or times and place or places for the holding of such meetings. Notice of any such regular meetings of the Liquidation Trust Board need not be given.

(b) Special meetings of the Liquidation Trust Board may be held whenever and wherever called by the Liquidation Trustee or any two members of the Liquidation Trust Board. The Liquidation Trustee shall attend and participate in any special meeting called by the Liquidation Trustee and any other special meeting as requested by at least one member of the Liquidation Trust Board.

4.4 Notice and Waiver of Notice for Liquidation Trustee and Liquidation Trust Board. Notice of the time and place (but not necessarily the purpose or all of the purposes) of any special meeting, or any change in time or place of a regular meeting, will be given to the

Liquidation Trustee and the members of the Liquidation Trust Board in person or by telephone, or via mail, electronic mail, or facsimile transmission. Notice to the Liquidation Trustee and the members of the Liquidation Trust Board of any such special meeting or change in a regular meeting will be deemed given sufficiently in advance when (i) if given by electronic mail or facsimile transmission, the same is transmitted at least one business day prior to the convening of the meeting, or (ii) if personally delivered (including by overnight courier) or given by telephone, the same is handed, or the substance thereof is communicated over the telephone to the Liquidation Trustee and the members of the Liquidation Trust Board or to an adult member of his/her office staff or household, at least one Business Day prior to the convening of the meeting. Each of the Liquidation Trustee and any member of the Liquidation Trust Board may waive notice of any meeting and any adjournment thereof at any time before, during, or after it is held, as provided by law. Except as provided in the next sentence below, the waiver must be in writing, signed by the Liquidation Trustee or the applicable member or members of the Liquidation Trust Board entitled to the notice, and filed with the minutes or records of the Liquidation Trust. The attendance of the Liquidation Trustee or a member of the Liquidation Trust Board at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

4.5 Manner of Acting.

(a) A majority of the total number of members of the Liquidation Trust Board then in office shall constitute a quorum for the transaction of business at any meeting of the Liquidation Trust Board. The affirmative vote of a majority of the members of the Liquidation Trust Board present and entitled to vote at a meeting at which a quorum is present shall be the act of the Liquidation Trust Board except as otherwise required by law or as provided in this Declaration.

(b) Each of the Liquidation Trustee and any or all of the members of the Liquidation Trust Board may participate in a regular or special meeting by, or conduct the meeting through the use of, conference telephone or similar communications equipment by means of which all persons participating in the meeting may hear each other, in which case any required notice of such meeting may generally describe the arrangements (rather than or in addition to the place) for the holding thereof. Each of the Liquidation Trustee and any member of the Liquidation Trust Board participating in a meeting by this means is deemed to be present in person at the meeting. Voting may, if approved by the majority of the members at a meeting, be conducted by electronic mail or individual communications by the Liquidation Trustee and each member of the Liquidation Trust Board.

(c) Any member of the Liquidation Trust Board who is present and entitled to vote at a meeting of the Liquidation Trust Board when action is taken is deemed to have assented to the action taken, subject to the requisite vote of the Liquidation Trust Board, unless: (i) such member of the Liquidation Trust Board objects at the beginning of the meeting (or promptly upon his/her arrival) to holding such meeting or transacting business therein; or (ii) his/her dissent or abstention from the action taken is entered in the minutes of the meeting; or (iii) he/she delivers written notice (including by electronic or facsimile transmission) of his/her dissent or abstention to the Liquidation Trust Board before its adjournment. The right of dissent

or abstention is not available to any member of the Liquidation Trust Board who votes in favor of the action taken.

(d) Prior to the taking of a vote on any matter or issue or the taking of any action with respect to any matter or issue, each of the Liquidation Trustee and each member of the Liquidation Trust Board shall report to the Liquidation Trust Board any conflict of interest such member has or may have with respect to the matter or issue at hand and fully disclose the nature of such conflict or potential conflict (including, without limitation, disclosing any and all financial or other pecuniary interests that such member might have with respect to or in connection with such matter or issue, other than solely as, or as a representative of, a Liquidation Trust Beneficiary). A Liquidation Trust Board member who has or who may have a conflict of interest shall be deemed to be a "conflicted member" who shall not be entitled to vote or take part in any action with respect to such matter or issue (however such member shall be counted for purposes of determining the existence of a quorum); the vote or action with respect to such matter or issue shall be undertaken only by members of the Liquidation Trust Board who are not "conflicted members."

4.6 Liquidation Trust Board's Action Without a Meeting. Any action required or permitted to be taken by the Liquidation Trust Board at a meeting may be taken without a meeting if the action is taken by unanimous written consent of the Liquidation Trust Board as evidenced by one or more written consents describing the action taken, signed by all members of the Liquidation Trust Board and recorded in the minutes or other transcript of proceedings of the Liquidation Trust Board.

4.7 Tenure, Removal, and Replacement of the Members of the Liquidation Trust Board. The authority of the members of the Liquidation Trust Board will be effective as of the Effective Date and will remain and continue in full force and effect until the Liquidation Trust is terminated in accordance with Article 9. The service of the members of the Liquidation Trust Board will be subject to the following:

(a) The members of the Liquidation Trust Board will serve until death or resignation pursuant to subsection (b) below, or removal pursuant to subsection (c) below.

(b) A member of the Liquidation Trust Board may resign at any time by providing a written notice of resignation to the remaining members of the Liquidation Trust Board. Such resignation will be effective upon the date received by the Liquidation Trust Board or such later date specified in the written notice.

(c) Members of the Liquidation Trust Board may be removed as follows:

i. the member originally selected by Sterlite, as successor to Class A Liquidation Trust Beneficiaries (the "Class A Board Member"), may be removed by the affirmative vote of the then-current Liquidation Trust Beneficiaries holding at least a majority of the Class A Liquidation Trust Interests;

ii. the member originally selected by Sterlite, as successor to Class B Liquidation Trust Beneficiaries (the "Class B Board Member") may be removed by the

affirmative vote of the then-current Liquidation Trust Beneficiaries holding at least a majority of the Class B Liquidation Trust Interests;

iii. the member originally selected by the Asbestos Claimants' Committee and the FCR (the "Asbestos Board Member") may be removed by the affirmative vote of the then-current holders of a majority of the Class C Liquidation Trust Interests; and

iv. the Plan Administrator may petition the Bankruptcy Court for removal, and the Bankruptcy Court may order such removal, of any member of the Liquidation Trust Board for cause shown.

(d) In the event of a vacancy on the Liquidation Trust Board (whether by removal, death, or resignation), new members may be appointed to fill such vacancy as follows:

i. if the vacancy was created by the removal, death, or resignation of the Class A Board Member, then by an affirmative vote of the then-current Liquidation Trust Beneficiaries holding at least a majority of the Class A Liquidation Trust Interests;

ii. if the vacancy was created by the removal, death, or resignation of the Class B Board Member, then by an affirmative vote of the then-current Liquidation Trust Beneficiaries holding at least a majority of the Class B Liquidation Trust Interests;

iii. if the vacancy was created by the removal, death, or resignation of the Asbestos Board Member, then by an affirmative vote of the then-current Liquidation Trust Beneficiaries holding at least a majority of the Class C Liquidation Trust Interests;

provided, however, that, notwithstanding the foregoing, any holder of Class A Liquidation Trust Interests, Class B Liquidation Trust Interests, or Class C Liquidation Trust Interests that is a party adverse to ASARCO in any Liquidation Trust Claim, or is an Affiliate of any party adverse to ASARCO in any Liquidation Trust Claim, shall not be entitled to the selection rights set forth in this clause (d). If no holder of Liquidation Trust Interests in a particular class is eligible to select a member of the Liquidation Trust Board, the board shall proceed without a member selected by that class.

(e) Only persons who are nominated in accordance with the procedures set forth in this Liquidation Trust Agreement shall be eligible to serve as a replacement Class A Board Member, Class B Board Member, or the Asbestos Board Member, as the case may be, of the Liquidation Trust Board. Nominations of persons for election as a replacement member of the Liquidation Trust Board may be made by any holder of Liquidation Trust Interests of the applicable class who (i) is an interest holder of record of such class both as of the record date established by the Liquidation Trustee for such purpose and at the time of giving of notice provided for in this Section 4.7(e), (ii) shall be entitled to vote for the election of a replacement member of the Liquidation Trust Board, and (iii) complies with the notice procedures set forth in this Section 4.7(e). Such nominations shall be made pursuant to timely notice in writing to the Liquidation Trustee. To be timely, an interest holder's notice shall be delivered to or mailed and received by the Liquidation Trustee at the address set forth herein not later than the close of business on the calendar day prior to the date established by the

Liquidation Trustee for such purpose. Such interest holder's notice shall set forth (A) as to the person whom the interest holder proposes to nominate for election as a replacement member of the Liquidation Trust Board detailed information relating to the qualifications of such person to serve as a member of the Liquidation Trust Board, including such person's written consent to being named as a nominee and to serving as a member of the Liquidation Trust Board if elected and being bound by the terms and conditions of this Declaration, and the number and class of Liquidation Trust Interests owned beneficially and/or of record by such individual or any Person affiliated with such individual; and (B) as to the Liquidation Trust Beneficiary giving the notice (x) the name and address, as they appear on the Liquidation Trust Registrar, of such Liquidation Trust Beneficiary and (y) the number and class of Liquidation Trust Interests owned beneficially and/or of record by such Liquidation Trust Beneficiary. No person shall be eligible to serve as a Class A Board Member or Class B Board Member of the Liquidation Trust Board unless nominated in accordance with the procedures set forth in this Section 4.7(e).

(f) Following the receipt of nominations for a replacement Class A Board Member, Class B Board Member, or Asbestos Board Member of the Liquidation Trust Board in accordance with Section 4.7(e), the Liquidation Trustee shall mail a ballot to all Liquidation Trust Beneficiaries of the applicable class who are entitled to vote in the election of the replacement member of the Liquidation Trust Board. With respect to the election of a replacement member of the Liquidation Trust Board, each Liquidation Trust Beneficiary shall be entitled to one vote for each outstanding Liquidation Trust Interest of the applicable class held by such Liquidation Trust Beneficiary and such Liquidation Trust Beneficiary shall submit such vote in accordance with the procedures established from time to time by the Liquidation Trustee.

(g) Immediately upon the appointment of any successor member of the Liquidation Trust Board, all rights, powers, duties, authority, and privileges of the predecessor member of the Liquidation Trust Board hereunder will be vested in and undertaken by the successor member of the Liquidation Trust Board without any further act; and the successor member of the Liquidation Trust Board will not be liable personally for any act or omission of the predecessor member of the Liquidation Trust Board.

4.8 Compensation of the Liquidation Trust Board. Each member of the Liquidation Trust Board shall be paid the amount of $_____ per quarter, plus $_____ per meeting when such member is required to attend a Liquidation Trust Board meeting in person, as compensation for his or her services under this Agreement, and shall be reimbursed for all reasonable and documented expenses incurred by such member in connection with the performance of his or her services hereunder.

4.9 Standard of Care; Exculpation. To the fullest extent permitted by law, none of the Liquidation Trust Board, its members, designees, or professionals, nor any of their duly designated agents or representatives, shall be liable, responsible, or accountable in damages or otherwise for any loss, damage, or claim incurred by reason of any act or omission taken or omitted to be taken by any other member, agent, or representative of the Liquidation Trust Board, nor shall the Liquidation Trust Board or any of its members be liable, responsible, or accountable in damages or otherwise for any loss, damage, or claim incurred by reason of any act or omission taken or omitted to be taken by the Liquidation Trust Board in good faith, other than acts or omissions resulting from the Liquidation Trust Board's bad faith, willful misconduct,

gross negligence, or knowing violation of law. The Liquidation Trust Board and each of its members may, in connection with the performance of their respective functions, and in each of their sole and absolute discretion, consult with its attorneys, accountants, financial advisors, and agents, and shall not be liable for any act taken, omitted to be taken, or suffered to be done in good faith in accordance with advice or opinions rendered by such Persons. Notwithstanding such authority, neither the Liquidation Trust Board nor any of its members shall be under any obligation to consult with their respective attorneys, accountants, financial advisors, or agents, and its good faith determination not to do so shall not result in the imposition of liability on the Liquidation Trust Board or, as applicable, its members or designees, unless such determination is based on bad faith, willful misconduct, gross negligence, or knowing violation of law.

ARTICLE 5
LIQUIDATION TRUST INTERESTS AND BENEFICIARIES

5.1 Issuance of Liquidation Trust Interests. The issuance of the Class A Liquidation Trust Interests, the Class B Liquidation Trust Interests, and the Class C Liquidation Trust Interests shall be accomplished as set forth in the Plan, including, without limitation, Article VI of the Plan.

5.2 Interests Beneficial Only.

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

(b) The Liquidation Trust Beneficiaries have no rights with respect to, or interest in the Debtors (or any successor thereto).

(c) The Liquidation Trust Beneficiaries have no rights to direct the Liquidation Trustee, the Delaware Trustee, or the Liquidation Trust Board, except as set forth in Section 5.8 herein.

(d) (i) The Liquidation Trust Claims are solely Trust Assets; (ii) the Liquidation Trust Claims shall be conducted on behalf of the Liquidation Trust Beneficiaries solely in accordance with the instructions of the Liquidation Trustee pursuant to this Declaration; (iii) the Liquidation Trustee shall have the sole and exclusive right (subject to consultation with the Liquidation Trust Board as set forth herein), to take (or not take), actions relating to such Liquidation Trust Claims as contemplated by this Declaration and may, among other things, dismiss, settle, or cease prosecuting such Liquidation Trust Claims at any time without obtaining any cash or other recovery, or upon obtaining such cash or other recovery as the Liquidation Trustee may determine; (iv) the Liquidation Trustee has the sole and exclusive right (subject to consultation with the Liquidation Trust Board as set forth herein), to take or not take other actions contemplated by this Declaration on behalf of the Liquidation Trust Beneficiaries relating to such Liquidation Trust Claims (including, without limitation, any decision with respect to the incurrence of expenses); and (v) any liability of the Liquidation Trustee or any member of the Liquidation Trust Board, is limited to the extent set forth in this Declaration.

5.3 Evidence of Beneficial Interests.

(a) The Liquidation Trustee shall have full power, authority, and discretion to determine whether ownership of any Liquidation Trust Interest shall be represented by physical certificates, by book entries in lieu of physical certificates, or in any other form or manner. Regardless of such determination the record holders of the Liquidation Trust Interests shall be recorded and set forth in the Liquidation Trust Register maintained by the Liquidation Trust Registrar expressly for such purpose pursuant to Section 5.5. All references in this Declaration to Liquidation Trust Beneficiaries shall be read to mean holders of record as set forth in the official register maintained by the Liquidation Trust Registrar and shall not mean any beneficial owner not recorded on such official register. Unless expressly provided herein, the Liquidation Trustee may establish a record date, which the Liquidation Trustee deems practicable for determining the holders for a particular purpose.

(b) In the event certificates are to be issued to evidence ownership of any Liquidation Trust Interests, (i) the form and content of such certificates shall be determined by the Liquidation Trustee subject to approval by the Liquidation Trust Board, and (ii) the Liquidation Trustee shall cause to be placed on such certificates such legends as it deems to be necessary or appropriate under tax laws or regulations, securities laws or regulations or otherwise. Any Liquidation Trust Beneficiary to whom such a certificate is issued or transferred, by virtue of the acceptance thereof, shall assent to and be bound by the terms and conditions of this Declaration and the Plan.

5.4 Securities Law Matters.

(a) To the extent the Liquidation Trust Interests are deemed to be "securities," the issuance of Liquidation Trust Interests under the Plan are exempt, pursuant to Section 1145 of the Bankruptcy Code, from registration under the Securities Act of 1933, as amended, and any applicable state and local laws requiring registration of securities. If the Liquidation Trustee determines, with the advice of counsel, that the Liquidation Trust is required to comply with registration and reporting requirements of the Exchange Act, then the Liquidation Trustee shall take any and all actions deemed necessary or appropriate by the Liquidation Trustee to comply with such registration and reporting requirements, if any, and to file periodic reports with the Securities and Exchange Commission (the "SEC"), including Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, and Current Reports on Form 8-K. Notwithstanding the foregoing procedure, nothing in the Plan shall be deemed to preclude the Liquidation Trustee from amending this Declaration to make such changes as deemed necessary or appropriate by the Liquidation Trustee, with the advice of counsel, to ensure that the Liquidation Trust is not subject to registration or reporting requirements of the Exchange Act, the Trust Indenture Act, or the Investment Company Act.

(b) Exemptions may be sought from the SEC from all or some of the registration and reporting requirements that may be applicable to the Liquidation Trust pursuant to the Exchange Act, the Trust Indenture Act, or the Investment Company Act, if it is determined that compliance with such requirements would be burdensome on the Liquidation Trust.

(c) The Liquidation Trust is organized as a liquidating entity in the process of liquidation, and therefore should not be considered, and the Liquidation Trust does not and will not hold itself out as, an "investment company" or any entity "controlled" by an "investment company," as such terms are defined in the Investment Company Act.

5.5 Transfer and Exchange.

(a) The Liquidation Trustee shall appoint a Liquidation Trust Registrar, which may be the Liquidation Trustee, for the purpose of registering and transferring the Liquidation Trust Interests as herein provided. The Liquidation Trust Registrar may be a duly qualified institution or the Liquidation Trustee itself. For its services hereunder, the Liquidation Trust Registrar, unless it is the Liquidation Trustee, shall be entitled to receive reasonable compensation from the Liquidation Trust as an expense of the Liquidation Trust.

(b) The Liquidation Trustee shall cause to be kept at the office of the Liquidation Trust Registrar, or at such other place or places as shall be designated by it from time to time, the Liquidation Trust Register. The Liquidation Trust Register shall contain the names, addresses for payment and notice, and class and number of Liquidation Trust Interests of each of the Liquidation Trust Beneficiaries and shall be maintained pursuant to such reasonable regulations as the Liquidation Trustee and the Liquidation Trust Registrar may prescribe.

(c) Pursuant to such reasonable regulations as the Liquidation Trustee and the Liquidation Trust Registrar may prescribe, and subject to the Liquidation Trustee's review and approval of any such proposed transaction in its sole and absolute discretion, the Liquidation Trustee may permit to be transferred, assigned, pledged, hypothecated, or registered on the Liquidation Trust Register any Liquidation Trust Interests issued pursuant to this Declaration. Subject to the review and approval of any such proposed transaction by the Liquidation Trustee and the other limitations set forth herein, any registered Liquidation Trust Beneficiary may transfer, assign, pledge, or hypothecate, in whole or in part, Liquidation Trust Interests upon presentation of a duly executed written instrument of transfer in the form approved by the Liquidation Trustee and the Liquidation Trust Registrar, which instrument must be executed by the transferor and the transferee and must clearly identify the Liquidation Trust Interests being transferred, assigned, pledged, or hypothecated, and such other documents as they may reasonably require. The transferor shall pay reasonable transfer charges established by the Liquidation Trustee or the Liquidation Trust Registrar for the purpose of reimbursing the Liquidation Trust and the Liquidation Trust Registrar for the expenses incident thereto, including any legal fees, taxes, or other governmental charges.

(d) No Liquidation Trust Beneficiary may transfer, assign, pledge, hypothecate, or otherwise dispose of any Liquidation Trust Interests unless in compliance with the Securities Act and other state and federal securities laws. No transfer, assignment, pledge, hypothecation, or other disposition of a Liquidation Trust Interest may be effected until (i) the Liquidation Trustee has approved such action in its sole and absolute discretion, and (ii) the Liquidation Trustee and the Liquidation Trust Board shall have received such legal or other information that they, in their sole discretion, deem necessary or appropriate to evidence such compliance.

(e) In the event that the Liquidation Trustee determines that the Liquidation Trust Interests shall be represented by physical certificates, subject to the foregoing conditions of this Section 5.5, whenever any certificate shall be presented for transfer or exchange, the Liquidation Trustee shall cause the Liquidation Trust Registrar to issue, authenticate and deliver in exchange therefor, the certificate for the Liquidation Trust Interest(s) that the person(s) presenting such certificates shall be entitled to receive.

(f) In the event that the Liquidation Trustee determines that the Liquidation Trust Interests shall be represented by physical certificates, if a Liquidation Trust Beneficiary claims that his/her certificate (the "Original Certificate") has been mutilated, defaced, lost, stolen, or destroyed, the Liquidation Trustee shall issue, and the Liquidation Trust Registrar shall authenticate, a replacement certificate if such Liquidation Trust Beneficiary submits a notarized affidavit certifying that (i) he/she is the true, lawful, present and sole owner of the Original Certificate, (ii) he/she has diligently searched all of his/her financial and other records and the Original Certificate is nowhere to be found, (iii) the Original Certificate and any rights or interests therein were not endorsed, and have not been pledged, sold, delivered, transferred or assigned under any agreement, hypothecated or pledged for any loan, or disposed of in any manner by the Liquidation Trust Beneficiary or on his/her behalf, (iv) no other person or other entity has any right, title, claim, equity or interest in, to, or respecting the Original Certificate, and (v) in the event of the recovery of the Original Certificate at any time after the issuance of a new certificate in exchange thereof, the Liquidation Trust Beneficiary will cause the recovered Original Certificate to be returned to the Liquidation Trust for cancellation. In addition, such Liquidation Trust Beneficiary will indemnify, and if required by the Liquidation Trustee or the Liquidation Trust Registrar, provide a bond or other security sufficient in the reasonable judgment of the Liquidation Trustee, the Liquidation Trust Registrar or any authenticating agent, from any loss which any of them may suffer if the Original Certificate is replaced, including a loss resulting from the assertion by any entity or person of the right to payment under the Original Certificate. Such Liquidation Trust Beneficiary shall pay reasonable charges established by the Liquidation Trustee and the Liquidation Trust Registrar for the purpose of reimbursing the Liquidation Trust and the Liquidation Trust Registrar for the expenses incident thereto, including any tax or other governmental charges. The Liquidation Trustee shall incur no liability to anyone by reason of anything done or omitted to be done by it in good faith under the provisions of this Section 5.5(f). All Liquidation Trust Interests shall be held and owned upon the express condition that the provisions of this Section 5.5(f) are exclusive in respect of the replacement or payment of mutilated, defaced, lost, stolen, or destroyed certificates and shall, to the extent permitted by law, preclude any and all other rights or remedies respecting such replacement or the payment in respect thereto. Any duplicate certificate issued pursuant to this Section 5.5(f) shall constitute original interests in the Liquidation Trust. The Liquidation Trustee and the Liquidation Trust Registrar shall not treat the Original Certificate as outstanding.

5.6 Access to the Trust Register by the Liquidation Trust Beneficiaries. Liquidation Trust Beneficiaries and their duly authorized representatives shall have the right, upon reasonable prior written notice to the Liquidation Trust Registrar and the Liquidation Trustee, and in accordance with the reasonable regulations prescribed by the Liquidation Trust Registrar and the Liquidation Trustee, to inspect and, at the sole expense of the Liquidation Trust Beneficiary seeking the same, make copies of the Liquidation Trust Register, in each case for a

purpose reasonably related to such Liquidation Trust Beneficiary's interest in the Liquidation Trust.

5.7 Absolute Owners. The Liquidation Trustee may deem and treat the Liquidation Trust Beneficiary of record in the Liquidation Trust Register as the absolute owner of such Liquidation Trust Interests for the purpose of receiving distributions and payment thereon or on account thereof and for all other purposes whatsoever and the Liquidation Trustee shall not be charged with having received notice of any claim or demand to such Liquidation Trust Interests or the interest therein of any other Person.

5.8 Limitation on Suits by Liquidation Trust Beneficiaries. To the fullest extent permitted by law, no Liquidation Trust Beneficiary shall have any right by virtue of or by availing itself of any provision of this Declaration to institute any action or proceeding (other than a suit by such Liquidation Trust Beneficiary for nonpayment of amounts due and owing hereunder with respect to such Liquidation Trust Beneficiary's Liquidation Trust Interest) at law or in equity or in bankruptcy or otherwise upon or under or with respect to this Declaration, or for the appointment of any trustee, receiver, liquidator, custodian, or other similar official or for any other remedy hereunder, unless such Liquidation Trust Beneficiary previously shall have given to the Liquidation Trustee written notice of default, and unless such Liquidation Trust Beneficiary shall also have made written request upon the Liquidation Trustee to institute such action or proceeding in its own name as Liquidation Trustee hereunder and shall have offered to the Liquidation Trustee such reasonable indemnity as it may require against the costs, expenses, and liabilities to be incurred therein or thereby and the Liquidation Trustee for 60 days after its receipt of such notice, request and offer of indemnity shall have failed to institute any such action or proceeding; it being understood and intended, and being expressly covenanted by every Liquidation Trust Beneficiary with every other Liquidation Trust Beneficiary and the Liquidation Trustee, that no one or more Liquidation Trust Beneficiaries shall have any right in any manner whatsoever by virtue or by availing itself or themselves of any provision of this Declaration to effect, disturb or prejudice the rights of any other such Liquidation Trust Beneficiary, or to obtain or seek to obtain priority over or preference to any other such Liquidation Trust Beneficiary or to enforce any right under this Declaration, except in the manner herein provided and for the ratable and common benefit of all Liquidation Trust Beneficiaries. For the protection and enforcement of the provisions of this Section, each and every Liquidation Trust Beneficiary and the Liquidation Trustee shall be entitled to such relief as can be given either at law or in equity.

ARTICLE 6
DISTRIBUTIONS

6.1 Use of Proceeds.

(a) All Liquidation Trust Proceeds, any proceeds therefrom, and any other Cash of the Liquidation Trust (other than the Liquidation Trust Expense Fund) received by the Liquidation Trustee shall be applied as follows:

i. first, to (i) pay all costs and expenses of the Liquidation Trust to the extent not paid by or from the Liquidation Trust Expense Fund (including the costs and

expenses of the Liquidation Trust, the Liquidation Trustee, the Delaware Trustee and the Liquidation Trust Board and the fees, costs, and expenses of all professionals retained by the Liquidation Trustee, and any taxes imposed on the Liquidation Trust or in respect of the Trust Assets), (ii) satisfy other liabilities incurred or assumed by the Liquidation Trust (or to which the assets are otherwise subject) in accordance with the Plan or this Declaration, (iii) hold such amounts in reserve as the Liquidation Trustee deems reasonably necessary to meet future expenses, contingent liabilities and to maintain the value of the Trust Assets during liquidation (including the Liquidation Trust Expense Fund) and (iv) pay the Plan Administrator such amounts as the Plan Administrator designates from time to time for the purpose of paying, or indemnifying Reorganized ASARCO for, any taxes incurred or expected to be incurred by Reorganized ASARCO in connection with the Liquidation Trust as a result of the allocation of tax items by the Liquidation Trustee or the allowance or disallowance of Disputed Claims; and

ii. second, to pay any remaining amounts to the Liquidation Trust Beneficiaries (including to the Plan Administrator for deposit into the Disputed Claims Reserve on account of the Claims of any Claimant that would be a Liquidation Trust Beneficiary absent such objection) pro rata based on their Liquidation Trust Interests. If the Plan Administrator holds proceeds of the Liquidation Trust in the Disputed Claims Reserve on account of a Disputed Claim that is finally determined adversely to such Claimant, in whole or in part, the Plan Administrator shall return to the Liquidation Trust the disallowed portion that the Plan Administrator received from the Liquidation Trust on account of such Claim and shall pay any Allowed portion to such Claimant.

(b) Subject to clauses (i) and (ii) of Section 6.1(a), the Liquidation Trustee shall distribute in accordance with Section 6.1(a) at least annually its net income and all net proceeds from the liquidation of the Trust Assets (except to the extent any such failure to distribute is not inconsistent with the classification of the Liquidation Trust as a liquidating trust under Section 301.7701-4(d) of the Treasury Regulations).

(c) If, upon termination of the Liquidation Trust, the Liquidation Trust Expense Fund has funds remaining after the payment of all of the Liquidation Trust's expenses, such remaining funds shall be paid to the Liquidation Trust Beneficiaries pro rata based on their Liquidation Trust Interests.

(d) Notwithstanding the foregoing clauses of this Section 6.1, the Liquidation Trustee may withhold from amounts distributable to any Person any and all amounts, determined in the Liquidation Trustee's reasonable sole discretion, required by any law, regulation, rule, ruling, directive or other governmental requirement to be withheld. Any amount so withheld from a distribution to a Liquidation Trust Beneficiary (or its designee) shall be treated as having been paid to, and received by, such Liquidation Trust Beneficiary for purposes of the Plan and the Plan Documents.

6.2 Manner of Payment of Distributions.

(a) All distributions made by the Liquidation Trustee to holders of Liquidation Trust Interests shall be payable to the holders of Liquidation Trust Interests of record as of the 20th day prior to the date scheduled for the distribution, unless such day is not a

Business Day, then such day shall be the following Business Day. The Liquidation Trustee shall promptly notify the Liquidation Trust Registrar in writing of any such dates and the Liquidation Trust Registrar shall promptly notify the Liquidation Trust Beneficiaries of the same.

(b) If the distribution shall be in Cash, the Liquidation Trustee shall distribute such Cash by wire, check, or such other method as the Liquidation Trustee deems appropriate under the circumstances.

(c) All distributions under this Declaration to any holder of Liquidation Trust Interests shall be made at the address or to the account (as applicable) of such holder as set forth in the Liquidation Trust Register or at such other address or in such other manner as such holder of Liquidation Trust Interests shall have specified for payment purposes in a written notice to the Liquidation Trustee and the Liquidation Trust Registrar at least 20 days prior to such distribution date. In the event that any distribution to any holder is returned as undeliverable, the Liquidation Trustee shall be entitled to rely on the most current information available from the Plan Administrator, as applicable, to determine the current address or account information of such holder, but no distribution to such holder shall be made unless and until the Liquidation Trustee has determined the then current address or account (as applicable) of such holder, at which time such distribution shall be made to such holder without interest; *provided, however*, that such undeliverable or unclaimed distributions shall be deemed unclaimed property at the expiration of one year from the date of distribution. The Liquidation Trustee shall reallocate the undeliverable and unclaimed distributions for the benefit of all other Liquidation Trust Beneficiaries.

(d) Notwithstanding anything herein to the contrary, the Liquidation Trustee shall not be required to make distributions or payments of fractions of dollars. Whenever any payment of a fraction of a dollar under the Plan or this Declaration would otherwise be called for, the actual payment shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars or more being rounded up.

(e) Notwithstanding anything herein to the contrary, the Liquidation Trustee shall not be required to make any distribution or payment to any Liquidation Trust Beneficiary in an amount less than $100.00 per Liquidation Trust Interest or unless such distribution is the final distribution to such Liquidation Trust Beneficiary pursuant to the Plan and this Declaration. Any such distribution or payments not made in accordance with this Section 6.2(e) shall be retained by the Liquidation Trustee and shall be held in trust for the relevant Liquidation Trust Beneficiary until the date the next distribution or payment is scheduled to be made to such Liquidation Trust Beneficiary.

ARTICLE 7
INDEMNIFICATION

7.1 Indemnification of Liquidation Trustee and the Liquidation Trust Board.

(a) To the fullest extent permitted by law, the Liquidation Trust, to the extent of its assets legally available for that purpose, shall indemnify and hold harmless each present and former Liquidation Trustee and each present and former member of the Liquidation

Trust Board and each of their respective directors, members, shareholders, partners, officers, agents, employees, attorneys, and other professionals (collectively, the "Indemnified Persons") from and against any and all losses, costs, damages, reasonable and documented out-of-pocket expenses (including, without limitation, reasonable fees and expenses of attorneys and other advisors and any court costs incurred by any Indemnified Person), or liability arising out of or relating to the Liquidation Trust, the Liquidation Trust Interests, the Trust Assets, the Liquidation Trust Claims or any acts or omissions of the Liquidation Trust or any Indemnified Person in its capacity as a Trustee, Liquidation Trust Board member or agent, employee or representative thereof; *provided, however,* that such act or omission was taken in good faith, was reasonably believed by the applicable Indemnified Person to be within the scope of authority granted to such Person under this Declaration and did not constitute bad faith, gross negligence, willful misconduct, or knowing violation of law.

(b) To the extent reasonable, the Liquidation Trust may pay in advance or reimburse reasonable and documented out-of-pocket expenses (including advancing reasonable costs of defense) incurred by the Indemnified Person who is or is threatened to be named or made a defendant or a respondent in a proceeding concerning the business and affairs of the Liquidation Trust. To the extent that any such expenses are paid or reimbursed in advance of the final disposition of any such action, suit or proceeding, the Indemnified Person shall provide the Liquidation Trust with an undertaking by or on behalf of such Indemnified Person to repay such amount if it shall ultimately be determined that such Person is not entitled to be indemnified by the Liquidation Trust as authorized in this Article 7. Such expenses (including attorneys' fees) may be so paid upon such terms and conditions, if any, as the Liquidation Trustee deems appropriate.

(c) Any Indemnified Person may waive the benefits of indemnification under this Article 7, but only by an instrument in writing executed by such Indemnified Person.

(d) The Liquidation Trust shall have power to purchase and maintain insurance on behalf of any potentially Indemnified Person against any liability asserted against such Person and incurred by such Person in connection with such Person's obligations under this Declaration, whether or not the Liquidation Trust would have the power to indemnify such Person against such liability under the provisions of this Article 7.

(e) The rights to indemnification under this Article 7 are not exclusive of other rights which any Indemnified Person may otherwise have at law or in equity, including without limitation common law rights to indemnification or contribution. Nothing in this Article 7 will affect the rights or obligations of any Person (or the limitations on those rights or obligations) under this Declaration, or any other agreement or instrument to which that Person is a party.

ARTICLE 8
REPORTS

8.1 Financial, Tax, and Other Information.

(a) At such times as may be required by the Exchange Act, if applicable, or otherwise as soon as practicable:

i. after the end of each calendar year, and as soon as practicable upon termination of the Liquidation Trust, the Liquidation Trustee shall cause to be prepared, and shall submit to each Liquidation Trust Beneficiary a written report including: (a) audited financial statements of the Liquidation Trust at the end of the calendar year or period and the receipts and disbursements of the Liquidation Trustee for the period; (b) a description of any action taken by the Liquidation Trustee in the performance of the Liquidation Trustee's duties which materially affects the Liquidation Trust and of which notice has not previously been given to the Liquidation Trust Beneficiaries; and (c) a description of any material judicial or arbitral decision with respect to, or any agreement to settle, the Liquidation Trust Claims included in the Trust Assets.

ii. after the end of each calendar quarter, the Liquidation Trustee shall cause to be prepared, and shall submit to each Liquidation Trust Beneficiary a written report including: (a) unaudited financial statements of the Liquidation Trust at the end of the calendar quarter and the receipts and disbursements of the Liquidation Trustee for the quarter; and (b) a description of any action taken by the Liquidation Trustee in the performance of the Liquidation Trustee's duties which materially affects the Liquidation Trust and of which notice has not previously been given to the Liquidation Trust Beneficiaries.

iii. promptly following the occurrence of a material event or change which effects either the Liquidation Trust or the rights of the Liquidation Trust Beneficiaries hereunder, the Liquidation Trustee shall cause to be prepared and shall submit additional reports to the Liquidation Trust Beneficiaries relating to such occurrences.

The information to be provided pursuant to this Section 8.1(a) shall satisfy any rights under the Delaware Statutory Trust Act, 12 Del. C. § 3801 *et seq.*, or otherwise of the Liquidation Trust Beneficiaries to access to information regarding the business and financial condition of the Liquidation Trust.

(b) As soon as practicable after the end of each calendar year, and as soon as practicable upon the termination of the Liquidation Trust, the Liquidation Trustee shall cause to be prepared and shall submit to current and former Trust Tax Owners, as applicable, a statement setting forth, for federal income tax purposes, their allocable portions of items of income, gain, loss, deduction and credit of the Liquidation Trust for such calendar year (as determined pursuant to Section 1.4(d) hereof), and the fair market value of the assets deemed to have been transferred to such current or former Trust Tax Owner during such calendar year (as determined pursuant to Section 1.4(c) hereof).

(c) The Liquidation Trustee shall submit to Reorganized ASARCO, as soon as practicable after the Effective Date (but no later than January 20th of the year following

the Effective Date), a statement setting forth, for federal income tax purposes, the total fair market value (as of the Effective Date) of each asset transferred to the Liquidation Trust (including, without limitation, the Liquidation Trust Claims), and the portion of such fair market value allocated to each Trust Tax Owner. The Liquidation Trustee shall submit to Reorganized ASARCO, as soon as practicable after the end of each calendar year, a statement setting forth the fair market value (as of the applicable deemed transfer dates) of the portion of the Trust Assets that is treated for federal income tax purposes as having been transferred to Trust Tax Owners or other Persons by Reorganized ASARCO as a result of the allowance or disallowance of Disputed Claims during such year and the portion of such fair market value allocated to each Trust Tax Owner.

(d) The Liquidation Trustee shall be responsible for filing all federal, state, and local tax returns for the Liquidation Trust and paying any taxes imposed on the Liquidation Trust. The Liquidation Trustee shall comply with all withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority. Subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary (including the issuance of applicable Treasury Regulations, the receipt by the Liquidation Trustee of a private letter ruling if the Liquidation Trustee so requests one, or the receipt of an adverse determination by the IRS upon audit if not contested by the Liquidation Trustee), the Liquidation Trustee shall file tax returns (including all federal returns, and to the extent permitted under state and local law, state and local returns) for the Liquidation Trust as a grantor trust of which the Trust Tax Owners are the deemed owners pursuant to Treasury Regulation Section 1.671-4(a) and any comparable provisions under applicable state and local law.

8.2 Other Required Reports. The Liquidation Trustee shall also file (or cause to be filed) any other statements, returns, or disclosures relating to the Liquidation Trust that are required by any governmental unit or regulatory agency.

8.3 Certain Non-Public Information. The Liquidation Trustee may deliver certain non-public information to one or more Liquidation Trust Beneficiaries and such delivery shall in no way entitle any other Liquidation Trust Beneficiary to receive such information. Notwithstanding anything in this Declaration to the contrary, the Liquidation Trustee may, in its sole discretion, withhold information from any Liquidation Trust Beneficiary if the Liquidation Trustee believes in good faith the delivery of such information to such Liquidation Trust Beneficiary (i) is or would be prohibited by any agreement with a third party, or (ii) is not in the best interest of the Liquidation Trust or in the purpose of maximizing the value of the assets of the Liquidation Trust or could damage or prejudice the Liquidation Trust, the Trust Assets (including the Liquidation Trust Claims and Privileges) or the business, operations, or purpose of the Liquidation Trust.

8.4 Electronic Reporting. Notwithstanding anything herein to the contrary, the Liquidation Trustee may post any report, notice or other information required to be provided to the Liquidation Trust Beneficiaries on a web site maintained by the Liquidation Trustee in lieu of actual delivery of such report, notice or other information to the Liquidation Trust Beneficiaries, subject to providing notice that such a procedure is being (or will be) implemented.

ARTICLE 9
TERM; TERMINATION OF THE LIQUIDATION TRUST

9.1 Term; Termination of the Liquidation Trust.

(a) The Liquidation Trust shall terminate on the earlier of: (i) 30 days after the distribution of all of the Trust Assets in accordance with the terms of this Declaration and the Plan; or (ii) the fifth anniversary of the Effective Date; *provided, however,* that, on or prior to a date less than six months (but not less than three months) prior to such termination, the Bankruptcy Court, upon motion by a party in interest, may extend the term of this Liquidation Trust for a finite period if, based on the facts and circumstances, the Bankruptcy Court finds that such extension is necessary to the liquidating purpose of the Liquidation Trust. The Bankruptcy Court may approve multiple extensions of the term of the Liquidation Trust; provided that (x) any such extension is so approved on or prior to a date less than six months (but not less than three months) prior to termination of the immediately preceding extended term and (y) the Liquidation 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 Liquidation Trust as a grantor trust for federal income tax purposes.

(b) The Liquidation Trustee shall not unduly prolong the duration of the Liquidation Trust and shall at all times endeavor to resolve, settle, sale, transfer, or otherwise dispose of all of the Trust Assets and to effect the distribution of the Trust Assets to the holders of the Liquidation Trust Interests in accordance with the terms of the Plan as soon as practicable.

9.2 Continuance of Trust for Winding Up. After the termination of the Liquidation Trust and for the purpose of liquidating and winding up the affairs of the Liquidation Trust, the Liquidation Trustee shall continue to act as such until its duties have been fully performed. Prior to the final distribution of all of the remaining Trust Assets and upon approval of the Liquidation Trust Board, the Liquidation Trustee shall be entitled to reserve from such assets any and all amounts required to provide for its own costs and expenses, in accordance with Section 6.1 herein, until such time as the winding up of the Liquidation Trust is completed. Upon termination of the Liquidation Trust, the Liquidation Trustee shall retain for a period of two years the books, records, Liquidation Trust Beneficiary lists, the Trust Register, and certificates and other documents and files that have been delivered to or created by the Liquidation Trustee. At the Liquidation Trustee's discretion, all of such records and documents may, but need not, be destroyed at any time after two years from the completion and winding up of the affairs of the Liquidation Trust. Except as otherwise specifically provided herein, upon the termination of the Liquidation Trust, the Liquidation Trustee shall have no further duties or obligations hereunder.

ARTICLE 10
AMENDMENT AND WAIVER

10.1 Amendment and Waiver.

(a) The Liquidation Trustee, with the prior approval of the Liquidation Trust Board, may amend, supplement, or waive any provision of, this Declaration, without notice to or the consent of any Liquidation Trust Beneficiary or the approval of the Bankruptcy Court:

(i) to cure any ambiguity, omission, defect, or inconsistency in this Declaration provided that such amendments, supplements, or waivers shall not materially adversely affect the distributions to be made under this Declaration to any of the Liquidation Trust Beneficiaries, or materially adversely affect the U.S. federal income tax status of the Liquidation Trust as a "liquidating trust" that is a grantor trust; (ii) to comply with any requirements in connection with the U.S. Federal income tax status of the Liquidation Trust as a "liquidating trust" that is a grantor trust; (iii) to comply with any requirements in connection with maintaining any exemptions from or exceptions to the registration or reporting requirements of the Exchange Act, the Trust Indenture Act, or the Investment Company Act as deemed necessary or appropriate from time to time by the Liquidation Trustee including, without limitation, to cause the Liquidation Trust Interests to be non-transferable; (iv) to make the Liquidation Trust a reporting entity and, in such event, to comply with any requirements in connection with satisfying the registration or reporting requirements of the Exchange Act, the Trust Indenture Act, or the Investment Company Act as deemed necessary or appropriate from time to time by the Liquidation Trustee; (v) to cause the Liquidation Trust Interests to be non-transferable to the extent the Liquidation Trustee determines such restraint on transferability to be in the best interests of the Liquidation Trust; and (vi) to evidence and provide for the acceptance of appointment hereunder by a successor trustee in accordance with the terms of this Declaration and the Plan.

(b) Except as provided in the foregoing subsection (a), any substantive provision of this Declaration may be amended or waived by the Liquidation Trustee, subject to the prior approval of the Liquidation Trust Board, with the approval of the Bankruptcy Court upon notice and an opportunity for a hearing; *provided, however*, that no change may be made to this Declaration that would materially adversely affect the distributions to be made under this Declaration to any of the Liquidation Trust Beneficiaries, or materially adversely affect the U.S. Federal income tax status of the Liquidation Trust as a "liquidating trust" that is a grantor trust. Notwithstanding this Section 10.1, any amendments to this Declaration shall not be inconsistent with the purpose and intention of the Liquidation Trust to liquidate in an expeditious but orderly manner the Liquidation Trust Claims in accordance with Treasury Regulation Section 301.7701-4(d).

ARTICLE 11
MISCELLANEOUS PROVISIONS

11.1 Intention of Parties to Establish the Liquidation Trust. This Declaration is intended to create a liquidating trust that is a grantor trust for federal income tax purposes and, to the extent provided by law, shall be governed and construed in all respects as such a trust and any ambiguity herein shall be construed consistent herewith and, if necessary, this Declaration may be amended in accordance with Section 10.1 to comply with such federal income tax laws, which amendments may apply retroactively.

11.2 Reimbursement of Trust Litigation Costs. If the Liquidation Trustee, the Liquidation Trust Board, or the Liquidation Trust, as the case may be, is the prevailing party in a dispute regarding the provisions of this Declaration or the enforcement thereof, the Liquidation Trustee, the Liquidation Trust Board or the Liquidation Trust, as the case may be, shall be entitled to collect any and all costs, reasonable and documented out-of-pocket expenses, and fees, including attorneys' fees, from the non-prevailing party incurred by the Liquidation

Trustee, the Liquidation Trust Board or the Liquidation Trust, as the case may be, in connection with such dispute or enforcement action.

11.3 Laws as to Construction. This Declaration shall be governed by and construed in accordance with the laws of the State of Delaware and U.S. bankruptcy laws, as applicable, without regard to whether any conflicts of law would require the application of the law of another jurisdiction.

11.4 Jurisdiction. Without limiting any Person or entity's right to appeal any order of the Bankruptcy Court or to seek withdrawal of the reference with regard to any matter, and subject to the rights of the Delaware Trustee pursuant to Section 2.3(b) of this Declaration, (i) prior to the closure of the Bankruptcy Cases (a) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Declaration and to decide any claims or disputes which may arise or result from, or be connected with, this Declaration, any breach or default hereunder, or the transactions contemplated hereby, and (b) any and all actions related to the foregoing shall be filed and maintained only in the Bankruptcy Court, and (ii) following the closure of the Bankruptcy Cases (x) the Delaware Courts of Chancery shall retain exclusive jurisdiction to enforce the terms of this Declaration and to decide any claims or disputes which may arise or result from, or be connected with, this Declaration, any breach or default hereunder, or the transactions contemplated hereby, and (y) any and all actions related to the foregoing shall be filed and maintained only in a Delaware Court of Chancery, and the parties, including the Liquidation Trust Beneficiaries, and Holders of Claims and Equity Interests, hereby consent to and submit to the jurisdiction and venue of the Bankruptcy Court and the Delaware Courts of Chancery, as applicable.

11.5 Severability. If any provision of this Declaration or the application thereof to any Person or circumstance shall be finally determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Declaration, or the application of such provision to Persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and such provision of this Declaration shall be valid and enforced to the fullest extent permitted by law.

11.6 Notices. All notices, requests, or other communications to the parties hereto shall be in writing and shall be sufficiently given only if (i) delivered in person; (ii) sent by electronic mail or facsimile communication (as evidenced by a confirmed fax transmission report); (iii) sent by registered or certified mail, return receipt requested; or (iv) sent by commercial delivery service or courier. Until a change of address is communicated, as provided below, all notices, requests, and other communications shall be sent to the parties at the following addresses or facsimile numbers:

If to the Liquidation Trustee, to:

With a copy to:

If to the Liquidation Trust Board, to:

With a copy to:

If the Delaware Trustee, to:

With a copy to:

If to Reorganized ASARCO, to:

With a copy to:

All notices shall be effective and shall be deemed delivered (i) if by personal delivery, delivery service, or courier, on the date of delivery; (ii) if by electronic mail or facsimile communication, on the date of receipt or confirmed transmission of the communication; and (iii) if by mail, on the date of receipt. Any party from time to time may change its address, facsimile number, or other information for the purpose of notices to that party by giving notice specifying such change to the other party hereto.

11.7 Fiscal Year. The fiscal year of the Liquidation Trust will begin on the first day of January and end on the last day of December of each year.

11.8 Definitions. Each of the terms set forth below has the meaning set forth in the provision set forth opposite such term in the following table:

Term	**Provision**
Act	Section 1.5(a)
Asbestos Board Member	Section 4.7(c)(iii)
Bankruptcy Cases	Recitals
Bankruptcy Court	Recitals
Class A Board Member	Section 4.7(c)(i)
Class B Board Member	Section 4.7(c)(ii)
Covered Person	Section 11.11
Declaration	Preamble
Delaware Trustee	Preamble

Term	Provision
De Minimis Threshold	Section 3.2(d)
Indemnified Persons	Section 7.1(a)
Information	Section 11.11
Interim Trustee	Section 2.3(g)
Liquidation Trust	Preamble
Liquidation Trust Board	Section 4.1
Liquidation Trustee	Preamble
Original Certificates	Section 5.5(f)
Plan	Preamble
Reorganized ASARCO	Preamble
SEC	Section 5.4(a)
Selected Board Member	Section 4.7(c)(iii)
Treasury Regulations	Section 1.4(a)
Trust Assets	Section 1.2(a)
Trustee	Section 2.3(a)
Trust Tax Owners	Section 1.4(a)

11.9 Headings. The section headings contained in this Declaration are solely for convenience of reference and shall not affect the meaning or interpretation of this Declaration or of any term or provision hereof.

11.10 Counterparts. This Declaration may be executed in any number of counterparts, each of which shall be deemed to be an original instrument, but all together shall constitute one agreement.

11.11 Confidentiality. The Liquidation Trustee, the Delaware Trustee and each successor trustee and each member of the Liquidation Trust Board and each successor member of the Liquidation Trust Board (each a "Covered Person") shall, during the period that they serve in such capacity under this Declaration and following either the termination of this Declaration or such individual's removal, incapacity, or resignation hereunder, hold strictly confidential and not use for personal gain any material, non-public information of or pertaining to any entity to which any of the Trust Assets relates or of which it has become aware in its capacity (the "Information"), except to the extent disclosure is required by applicable law, order, regulation, or legal process. In the event that any Covered Person is requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigation, demand, or similar legal process) to disclose any Information, such Covered Person shall notify the Liquidation Trust Board reasonably promptly (unless prohibited by law) so that the Liquidation Trust Board may seek an appropriate protective order or other appropriate remedy or, in its discretion, waive compliance with the terms of this Section (and if the Liquidation Trust Board seeks such an order, the relevant Covered Person will provide cooperation as the Liquidation Trust Board shall reasonably request). In the event that no such protective order or other remedy is obtained, or that the Liquidation Trust Board waives compliance with the terms of this Section and that any Covered Person is nonetheless legally compelled to disclose the Information, the Covered Person will furnish only that portion of the Information, which the Covered Person, advised by counsel, is legally required and will give the Liquidation Trust Board written notice

(unless prohibited by law) of the Information to be disclosed as far in advance as practicable and exercise all reasonable efforts to obtain reliable assurance that confidential treatment will be accorded the Information.

11.12 Entire Agreement. This Declaration (including the Recitals), the Plan, and the Confirmation Order constitute the entire agreement by and among the parties hereto and there are no representations, warranties, covenants or obligations except as set forth herein or therein. This Declaration, the Plan and the Confirmation Order supersede all prior and contemporaneous agreements, understandings, negotiations, discussions, written or oral, of the parties hereto, relating to any transaction contemplated hereunder. Except as otherwise specifically provided herein, in the Plan or in the Confirmation Order, nothing in this Declaration is intended or shall be construed to confer upon or to give any person other than the parties thereto and their respective heirs, administrators, executors, successors, or assigns any right to remedies under or by reason of this Declaration.

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IN WITNESS WHEREOF, the parties hereto have either executed and acknowledged this Declaration, or caused it to be executed and acknowledged on their behalf by their duly authorized officers all as of the date first above written.

ASARCO ADMINISTRATION COMPANY, LLC:

By: _____
Name:
Title:

LIQUIDATION TRUSTEE:

_____
Joseph F. Lapinsky

DELAWARE TRUSTEE:

By: _____
Name:
Title:

AGREED AND ACKNOWLEDGED
as of the date first above written:

_____
Name:
Title: Liquidation Trust Board Member

_____
Name:
Title: Liquidation Trust Board Member

_____
Name:
Title: Liquidation Trust Board Member

Exhibit A

PLAN ADMINISTRATION AGREEMENT

This Plan Administration Agreement (this "Administration Agreement"), dated as of _____, 2009, by and between ASARCO LLC ("ASARCO") and its subsidiaries that are debtors under chapter 11 of the Bankruptcy Code (the "Subsidiary Debtors" and together with ASARCO, the "Debtors"), Sterlite (USA), Inc., a Delaware corporation ("Sterlite"), and Joseph F. Lapinsky as Plan Administrator, is executed in connection with the Sixth Amended Joint Plan of Reorganization for the Debtors Under chapter 11 of the United States Bankruptcy Code, As Modified (the "Plan"), filed by the Debtors in the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division (the "Bankruptcy Court") including any subsequent amendments, modifications or supplements filed by the Debtors. Except with respect to the terms defined herein, all capitalized terms contained herein shall have the meanings ascribed to them in the Uniform Glossary of Defined Terms for Plan Documents, which is Exhibit A to the Disclosure Statement.

WITNESSETH

WHEREAS, on their respective Petition Dates, the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court;

WHEREAS, on _____ ___, 2009, the Debtors filed the Plan;

WHEREAS, on _____ __, 2009, the Bankruptcy Court entered the Confirmation Order;

WHEREAS, on the Effective Date, (a) the current directors and officers of the Debtors shall be removed and (b) the Subsidiary Debtors (other than Covington Land Company ("Covington")) shall be merged with and into Reorganized ASARCO, with the surviving entity being Reorganized ASARCO;

WHEREAS, Reorganized ASARCO shall continue to exist after the Effective Date in accordance with the laws of the State of Delaware and pursuant to its applicable organizational documents;

WHEREAS, the Plan Administrator shall serve as the sole holder of membership interests in Reorganized ASARCO and as the presiding officer and sole director of Reorganized ASARCO until and unless the Plan Administrator, in the Plan Administrator's sole discretion, appoints other Persons to serve as officers or directors of Reorganized ASARCO;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein and in the Plan, the Debtors and the Plan Administrator agree as follows:

ARTICLE I

ACCEPTANCE OF POSITIONS, OBLIGATION TO PAY CLAIMS, FIDUCIARY OF THE ESTATE

Section 1.1 Acceptance. Joseph F. Lapinsky (a) accepts appointment as the Plan Administrator and the Plan Administrator, or the Plan Administrator's designee, accepts the duty of serving as the presiding officer and sole director of Reorganized ASARCO, and (b) agrees to observe and perform all duties and obligations imposed upon the Plan Administrator under this Administration Agreement, the Plan, all orders of the Bankruptcy Court (including the Confirmation Order), and applicable law.

Section 1.2 Distribution of Funds. The Plan Administrator, in the Plan Administrator's capacity as the Plan Administrator, agrees to make distributions or payments required or permitted to be made by the Plan Administrator under the Plan at the times and in the manner provided therein, unless otherwise ordered by the Bankruptcy Court.

Section 1.3 Fiduciary. The Plan Administrator shall be a fiduciary of each of the Debtors prior to the Effective Date and of Reorganized ASARCO after the Effective Date and shall perform the Plan Administrator's obligations in a manner consistent with the Plan, the Administration Agreement, the Confirmation Order, and other applicable orders.

Section 1.4 Plan Administration Committee.

(a) The initial members of the Plan Administration Committee shall consult with and advise the Plan Administrator regarding the operations and administration of Reorganized ASARCO and the performance of the Plan Administrator's obligations under this Administration Agreement, the Plan, the Confirmation Order, or other applicable orders. The Plan Administration Committee shall have the rights and powers set forth herein.

(b) The Plan Administration Committee shall consist of three members initially selected as follows: (i) one selected by the ASARCO Committee; (ii) one selected by the DOJ (in consultation with the states that have Allowed environmental Claims); and (iii) one selected by the Asbestos Claimants' Committee and the FCR, each of whom shall serve for an initial term of two years. Thereafter, the successor members of the Plan Administration Committee shall be appointed by the existing Plan Administration Committee. Members of the Plan Administration Committee may be nominated for and serve successive terms.

(c) In the event that a member of the Plan Administration Committee resigns prior to the expiration of such member's term, or is otherwise unable to serve out such member's term, the remaining members of the Plan Administration Committee shall select the successor to serve the remainder of such term.

(d) Unless otherwise specified herein, approval of a majority of the members of the Plan Administration Committee shall be required for the Plan Administration Committee to act, provided that the Plan Administration Committee may delegate responsibility for discrete issues or decisions to one or more of its members.

(e) In the event that a Plan Administration Committee shall not be formed or continue to exist under this Administration Agreement, all references herein to required approval or other action of such Plan Administration Committee shall be of no force or effect.

(f) In performance of their duties hereunder, members of the Plan Administration Committee shall be entitled to receive (i) reimbursement of reasonable expenses, (ii) indemnification as set forth in Section 4.6 hereof, and (iii) compensation as provided for in Section 4.4(b) hereof.

(g) The members of the Plan Administration Committee may serve on the board of directors or as an officer of Reorganized ASARCO at the sole discretion of the Plan Administrator.

Section 1.5 Rights of Plan Sponsor.

(a) Notwithstanding anything else contained herein, the Plan Administration Committee and the Plan Administrator shall undertake all actions hereunder in consultation with the Plan Sponsor and shall act in good faith at all times.

(b) The Plan Administration Committee and the Plan Administrator shall provide the Plan Sponsor any documents, projections, or other materials reasonably requested by the Plan Sponsor and shall make themselves available as reasonably requested by the Plan Sponsor.

(c) Consistent with the terms of the Plan and subject to the provisions of this Agreement, the Plan Administrator shall return within a reasonable period of time to the Plan Sponsor any funds not required, in the reasonable discretion of the Plan Administrator, to pay the amounts contemplated to be paid pursuant to the terms of the Plan or incident to the administration of the Plan.

(d) All of the Plan Sponsor's rights and obligations hereunder shall be enforceable upon motion or other application to the Bankruptcy Court.

Section 1.6 Obligations of Guarantor. All obligations of the Plan Sponsor hereunder shall be subject to the guaranty of the Guarantor to the same extent as the obligations under the New Plan Sponsor PSA.

ARTICLE II

OBLIGATIONS OF THE PLAN ADMINISTRATOR

Section 2.1 Conduct of Businesses of Reorganized ASARCO and Prosecution of Causes of Action and Claim Objections. The Plan Administrator shall exercise all power and authority necessary to conduct the business of Reorganized ASARCO and shall observe and perform all duties imposed upon the Plan Administrator under the Plan, the Confirmation Order, this Administration Agreement, other orders of the Bankruptcy Court, and applicable law.

Section 2.2 Establishment and Maintenance of Accounts, Reserves, and Escrows. Subject to the Plan Sponsor's rights under all relevant provisions of the Plan including, without limitation, Article 15.23 thereof, on the Effective Date or as soon thereafter as is reasonably practicable, if not previously established and funded by the Debtors on or before the Effective Date, the Plan Administrator, after consultation with and approval by the Plan Administration Committee, shall establish one or more of the following accounts and reserves:

(a) *General Account(s).* One or more general accounts (the "General Account(s)") (i) into which shall be deposited all funds not required or permitted to be deposited into any other account, subaccount, reserve, or escrow described in or contemplated by this Administration Agreement or the Plan and which are not otherwise required to be returned to the Plan Sponsor pursuant to the terms of the Plan, and (ii) from which may be made distributions to be made by the Plan Administrator, not otherwise payable out of any other account, subaccount, reserve or escrow, in accordance with the terms of the Plan or by order of the Bankruptcy Court. The Plan Administrator may establish such general accounts, subaccounts, reserves, or escrows as the Plan Administrator determines from time to time to be necessary to carry out the intent and purposes of this Administration Agreement.

(b) *Plan Administration Account.* An account designated as "Plan Administration Account," as described more fully in Section 2.3 below (the "Plan Administration Account").

(c) *Disputed Claims Reserve*. To the extent the Plan Administrator determines appropriate, an account designated as "Disputed Claims Reserve," as described more fully in Section 2.4 below (the "Disputed Claims Reserve").

(d) *Disputed Secured Claims Reserve*. An account or accounts designated as "Disputed Secured Claims Reserve," as described more fully in Section 2.4 below (the "Disputed Secured Claims Reserve").

(e) *Prepetition ASARCO Environmental Trust Escrow.* An account designated as "Prepetition ASARCO Environmental Trust Escrow" as described more fully in Section 2.5 below (the "Prepetition ASARCO Environmental Trust Escrow").

(f) *Undeliverable and Unclaimed Distribution Reserve*. An account designated as "Undeliverable and Unclaimed Distribution Reserve," as described more fully in Section 2.6 below (the "Undeliverable and Unclaimed Distribution Reserve").

(g) *Indemnification Escrow*. An account designated as "Indemnification Escrow," as described more fully in Section 2.7 below (the "Indemnification Escrow").

(h) *Unpaid Cure Claims Reserve*. An account designated as "Unpaid Cure Claims Reserve," as described more fully in Section 2.8 below (the "Unpaid Cure Claims Reserve").

(i) *Vested Causes of Action Escrow*. An account designated as "Vested Causes of Action Escrow," as described more fully in Section 2.9 below (the "Vested Causes of Action Escrow").

(j) *Liquidation Trust Reserve*. An account designated as "Liquidation Trust Reserve," as described more fully in Section 2.10 below (the "Liquidation Trust Reserve").

(k) *SCC Litigation Trust Reserve*. An account designated as "SCC Litigation Trust Reserve," as more fully described in Section 2.11 below (the "SCC Litigation Trust Reserve" and, together with the Disputed Claims Reserve, the Disputed Secured Claims Reserve, the Prepetition ASARCO Environmental Trust Escrow, the Undeliverable and Unclaimed Distribution Reserve, the Indemnification Escrow, the Unpaid Cure Claims Reserve, the Vested Causes of Action Escrow, and the Liquidation Trust Reserve, the "Miscellaneous Plan Administration Accounts").

Section 2.3 Plan Administration Account.

(a) On or prior to the Effective Date, the Plan Administrator shall establish the Plan Administration Account. On the Effective Date (or as soon thereafter as is reasonably practicable), the Plan Administration Account shall be funded by ASARCO, Reorganized ASARCO, or the Plan Administrator, as the case may be, with Cash in the amount of $8 million to be used to pay (i) the estimated costs and expenses of the Plan Administrator; (ii) the costs of plan administration; and (iii) Reorganized ASARCO's costs of operations (including, without limitation, taxes). The Plan Administrator, after consultation with and approval by the Plan Administration Committee, shall determine the amount of Cash required to adequately maintain the Plan Administration Account on and after such date and maintain a reserve of Cash in such amount. The Plan Administrator shall allocate the funds in the Plan Administration Account to subaccounts corresponding to the enumerated functions of the Plan Administrator. In the event that the Plan Administrator, after consultation with and approval of the Plan Administration Committee, determines that additional Cash is required to discharge the Plan Administrator's obligations hereunder, the Plan Sponsor, at the request of the Plan Administrator, shall be obligated to fund such additional amounts as are determined necessary.

(b) Until the Plan Administrator has discharged the Plan Administrator's obligations with respect to the purpose for which a particular subaccount or Miscellaneous Plan Administration Account was established, 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. Notwithstanding the foregoing, if at any time the Plan Administrator determines that the Plan Administration Account (or any subaccount thereof) or any Miscellaneous Plan Administration Account (i) contains Cash in excess of the amount required to adequately maintain such account, the Plan Administrator shall, after consultation with and approval by the Plan Administration Committee, transfer such excess funds, first, to any underfunded subaccount or Miscellaneous Plan Administration Account (but only to the extent of any underfunding), and then distribute such funds to the Plan Sponsor or (ii) does not contain Cash in an amount sufficient to adequately maintain any subaccount of the Plan Administration Account, then the Plan Administrator, after consultation with and approval by the Plan Administration Committee, shall transfer Cash from any General Account until the deficit in

such subaccount is eliminated. Notwithstanding the foregoing or anything herein to the contrary, in no event shall any funds held in the Prepetition ASARCO Environmental Trust Escrow or the Indemnification Escrow be transferred to any other subaccount or Miscellaneous Plan Administration Account prior to fulfillment of the obligations for which each such account is established.

Section 2.4 Disputed Claims Reserve.

(a) On or prior to the Effective Date, to the extent the Plan Administrator determines appropriate, the Plan Administrator may establish and maintain the Disputed Claims Reserve. Except as otherwise provided in the Plan, the Plan Administrator shall not be required to reserve Cash on account of any Disputed Claims. To the extent the Plan Administrator does not have adequate funds to pay in accordance with the Plan such Claims upon any such Claim becoming an Allowed Claim, the Plan Sponsor shall be required to pay to the Plan Administrator for distribution to the holder of such Claim the amount necessary for such Claim to be paid in accordance with the Plan. On the Effective Date (or as soon thereafter as is reasonably practicable), the Plan Administrator shall deposit in the Disputed Claims Reserve (i) the Liquidation Trust Interests and the SCC Litigation Trust Interests that would have been distributed to the holders of Disputed Claims (other than Secured Claims to the extent Disputed Secured Claims Reserves are established with respect to such Claims) if such Disputed Claims had been Allowed Claims on the Effective Date and (ii) SCC Litigation Trust Interests on account of contingent obligations used in computing the allocation of SCC Litigation Trust Interests on account of Class 3 under the Plan (the "Contingency Deposit"). This amount shall be determined based on the lesser of (i) the asserted amount of the Disputed Claims in the applicable Proofs of Claim; (ii) the amount, if any, estimated by the Bankruptcy Court pursuant to (1) section 502(c) of the Bankruptcy Code or (2) the Plan if, after the Effective Date, a motion is filed by the Plan Administrator to estimate such claims; or (iii) the amount otherwise agreed to by the Debtors (or the Plan Administrator, if after the Effective Date) and the holders of such Disputed Claims. The Plan Administrator may, from time to time, contribute to the Disputed Claims Reserve additional assets received from the Liquidation Trustee or the SCC Litigation Trustee in respect of Disputed Claims.

(b) In the case of objections to allegedly Secured Claims, any Lien asserted by the holder of such a Claim against the ASARCO Residual Assets 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 or transferred to Reorganized Covington or one of the Trusts shall attach to Cash held by the Plan Administrator in an amount equal to the lesser of (i) the amount of the allegedly Secured Claim; (ii) the amount, if any, estimated by the Bankruptcy Court pursuant to section 502(c) of the Bankruptcy Code; (iii) the fair market value of such assets, net of any Liens senior to the applicable Liens; or (iv) the amount otherwise agreed to by the Debtors and the holders of such allegedly Secured Claims, which Cash shall be held by the Plan Administrator in a Disputed Secured Claims Reserve, pending resolution of the objection to the allegedly Secured Claim.

(c) Subject to this Administration Agreement, if a Claim that remains a Disputed Claim as of the Effective Date is thereafter Allowed in whole or in part, (i) in the case

of a Disputed Secured Claim, the Plan Administrator shall (at such time as determined to be practicable by the Plan Administrator) distribute from a Disputed Secured Claims Reserve to the holder of such Claim the Cash that such holder would have received on account of such Claim if such Claim had been an Allowed Claim on the Effective Date to the extent thereafter Allowed and (ii) in the case of a Disputed Unsecured Claim, the Plan Sponsor shall pay to the Plan Administrator for distribution to the holder of such Claim the Cash that such holder would have received on account of such Claim if such Claim had been an Allowed Claim on the Effective Date to the extent thereafter Allowed.

(d) If a Disputed Claim is disallowed, in whole or in part, or if the Plan Administrator determines that a contingent obligation used in computing the allocation of SCC Litigation Trust Interests on account of Class 3 under the Plan will not be incurred, the Plan Administrator shall (at such time as determined to be practicable by the Plan Administrator) cancel the portion of the Liquidation Trust Interests, SCC Litigation Trust Interests or Contingency Deposit held in the Disputed Claims Reserve in respect of such disallowed Disputed Claim or contingent obligation, or portion thereof, in accordance with the terms and conditions of this Administration Agreement. When a contingency obligation is incurred and paid, the SCC Litigation Trust Interests held by the Plan Administrator on account of such contingency shall be issued to the Plan Sponsor.

(e) The Plan Administrator and Reorganized ASARCO will take the position that the Disputed Claims Reserve and the Disputed Secured Claims Reserves do not qualify as disputed ownership funds within the meaning of Treasury Regulations section 1.468B-9(b)(1). The Plan Administrator and Reorganized ASARCO will take the position for tax purposes that the Disputed Claims Reserve and any Disputed Secured Claims Reserves are grantor trusts owned by Reorganized ASARCO. The Plan Administrator and Reorganized ASARCO shall comply with all tax-reporting requirements accordingly, and shall cause taxes attributable to the earnings of the Disputed Claims Reserve or a Disputed Secured Claims Reserve (as well as any taxes directly imposed on the Disputed Claims Reserve or a Disputed Secured Claims Reserve) to be paid out of the assets of the Disputed Claims Reserve or the Disputed Secured Claims Reserve, respectively.

(f) Any Claim asserted by or on behalf of AMC or the Parent, whether Administrative Claims or Unsecured Claims, are disallowed under the Plan pursuant to section 502(d) of the Bankruptcy Code and no reserves shall be established on account of such Claims.

Section 2.5 Prepetition ASARCO Environmental Trust Escrow. On or before the Effective Date, (a) the Plan Administrator shall establish the Prepetition ASARCO Environmental Trust Escrow, and (b) Reorganized ASARCO shall hold back from distributions under the Plan the amount that the Prepetition ASARCO Environmental Trust would receive if AMC were to have made the required payment (i.e., $12.5 million plus accrued interest in accordance with the note) to fund the Prepetition ASARCO Environmental Trust Escrow to allow for the possibility that AMC may fail to make a required payment due under the note that funds the Prepetition ASARCO Environmental Trust. In the event that AMC fails to make the payment remaining due under such note, the Plan Administrator shall pay a corresponding amount to the Prepetition ASARCO Environmental Trust Escrow, and the Plan Administrator,

the trustee of the Prepetition ASARCO Environmental Trust, and the United States shall reasonably cooperate in determining the most efficient mechanism to recover the amount owed by AMC. Upon AMC's payment of the amount due under the note, the Plan Administrator may (at such time as determined to be practicable by the Plan Administrator) 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 (i.e., to the Plan Sponsor if all claims and other obligations payable under the Plan, including obligations incident to administration of the Plan, have been satisfied in full).

Section 2.6 Undeliverable and Unclaimed Distributions Reserve.

(a) 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 draw upon a check issued to such Claimant), no further distributions shall be made to such holder unless the Plan Administrator is timely notified in writing of such holder's then-current address, at which time all missed distributions shall be made to such holder without interest. Amounts in respect of any undeliverable or unclaimed distributions shall be returned to the Plan Administrator until such distributions are claimed. The Plan Administrator shall segregate and deposit into the Undeliverable and Unclaimed Distribution Reserve all undeliverable 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 Section 2.6(b) below. Nothing contained in the Plan or this Administration Agreement shall require Reorganized ASARCO or the Plan Administrator to attempt to locate any holder of an Allowed Claim.

(b) Any funds in the Undeliverable and Unclaimed Distribution Reserve that remain unclaimed (including by a Claimant's failure to draw upon a check issued to such Claimant) or otherwise are not deliverable to the Claimant entitled thereto for one year after the initial distribution is made or attempted shall be Forfeited Distributions and shall become vested in, and shall be transferred and delivered to, the Plan Administrator. In such event, such Claimant shall be deemed to have waived its rights to such payments or distributions under the Plan pursuant to section 1143 of the Bankruptcy Code, shall have no further Claim in respect of such distribution, and shall not participate in any further distributions under the Plan with respect to such Claim. The Plan Administrator shall (at such time as determined to be practicable by the Plan Administrator) allocate the Forfeited Distributions in accordance with the terms and conditions of this Administration Agreement (i.e., to the Plan Sponsor if all claims and other obligations payable under the Plan, including obligations incident to administration of the Plan, have been satisfied in full).

Section 2.7 Indemnification Escrow. On or before the Effective Date, the Plan Administrator shall establish an escrow account that shall be used to address the anticipated indemnification obligations of Reorganized ASARCO under Article 11.8(b) of the Plan. On the Effective Date (or as soon thereafter as is reasonably practicable), the Indemnification Escrow shall be funded in the amount of $20 million by ASARCO, Reorganized ASARCO, or the Plan Administrator, as the case may be. As soon as practicable after the sixth year anniversary of the

Effective Date or upon such later date as the Plan Administrator deems appropriate, the Plan Administrator shall allocate the remaining funds in the Indemnification Escrow to the Plan Sponsor.

Section 2.8 Intentionally Omitted.

Section 2.9 Vested Causes of Action Escrow. On or before the Effective Date, the Plan Administrator shall establish an escrow account for the Vested Causes of Action Proceeds, if any. Any proceeds from the prosecution, compromise, or settlement of the Vested Causes of Action after the Effective Date shall be placed in the Vested Causes of Action Escrow. The Plan Administrator shall (at such time as determined to be practicable by the Plan Administrator) allocate any funds in the Vested Causes of Action Escrow in accordance with the terms and conditions of this Administration Agreement.

Section 2.10 Liquidation Trust Reserve. On the Effective Date, (a) the Liquidation Trust shall be created and the Liquidation Trust Expense Fund shall be established; and (b) the Debtors' respective rights, title, and interests in the Liquidation Trust Claims and the Debtors' Privileges associated therewith shall be transferred to the Liquidation Trust.

Section 2.11 SCC Litigation Trust Reserve. On the Effective Date, (a) the SCC Litigation Trust shall be created and the SCC Litigation Trust Expense Fund shall be established; (b) the Debtors' respective rights, title, and interests in the SCC Litigation Trust Claims and the Debtors' Privileges associated therewith shall be transferred to the SCC Litigation Trust; and (c) ASARCO, Reorganized ASARCO, or the Plan Administrator, as the case may be, shall deposit Cash in the amount of $15 million in the SCC Litigation Trust Reserve. The Plan Administrator shall maintain the SCC Litigation Trust Reserve and shall from time to time, when requested to do so by the SCC Litigation Trustee, transfer funds from the SCC Litigation Trust Reserve to the SCC Litigation Trustee for the SCC Litigation Trust Expense Fund as the SCC Litigation Trustee deems reasonably necessary to the continued operations of the SCC Litigation Trust, up to an aggregate amount of $15 million. Upon a determination by the SCC Litigation Trustee that no additional funds will be needed from the SCC Litigation Trust Reserve, the Plan Administrator shall allocate the remaining funds in the SCC Litigation Trust Reserve in accordance with the terms and conditions of this Administration Agreement.

Section 2.12 Transactions with Related Persons. Notwithstanding any other provisions of this Administration Agreement, the Plan Administrator shall not knowingly, directly or indirectly, sell or otherwise transfer all or any part of any assets of Reorganized ASARCO to, or contract with, (a) any relative, employee, or agent (acting in their individual capacities) of the Plan Administrator or (b) any Person of which any employee or agent of the Plan Administrator is an affiliate by reason of being a trustee, director, officer, partner, or direct or indirect beneficial owner of five percent or more of the outstanding capital stock, shares, or other equity interest of such Persons unless, in each such case, after full disclosure of such interest or affiliation, such transaction is approved by the Plan Administration Committee after determination that the terms of such transaction are fair and reasonable and no less favorable than terms available for a comparable transaction with unrelated Persons.

Section 2.13 Use of Assets. All Cash or other property held or collected by the Plan Administrator shall be used solely for the purposes contemplated by the Plan, Confirmation Order (or another order of the Bankruptcy Court), or this Administration Agreement.

Section 2.14 Books and Records. In accordance with Article 15.22 of the Plan, on the Effective Date, the Plan Administrator shall take possession of the Retained Books and Records of the Debtors, and shall make all reasonable efforts to preserve such Retained Books and Records in the same order, format, and condition in which they exist on the Effective Date for 180 days after the Effective Date. After this 180-day period, the Plan Administrator, in consultation with the Trustees, may, in the Plan Administrator's discretion and without liability or recourse, dispose of any such Retained Books and Records which the Plan Administrator determines are appropriate for disposal. The Plan Administrator shall provide the Trustees with a reasonable opportunity to segregate and remove, at the expense of the applicable trust, such Retained Books and Records as they may select. Any requests by parties-in-interest for copies or originals of any of the Retained Books and Records must be made in writing to the Reorganized Debtors on or before 60 days after the Effective Date. All such parties-in-interest shall reasonably cooperate with the Reorganized Debtors in regards to such requests for copying or permanent retention of any such Retained Books and Records. Any requests by multiple parties-in-interest for originals of the same Retained Books and Records of the Debtors shall be resolved by the Plan Administrator and such parties-in-interest. In the event such parties are unable to resolve a dispute as to such Retained Books and Records, the Plan Administrator may elect to submit such dispute to the Bankruptcy Court. Procedures for retention and disposal of Asbestos Books are set forth in Article 7.13 of the Plan.

Section 2.15 Taxes.

(a) The Plan Administrator shall use all reasonable commercial efforts to assure that any tax returns and all other appropriate or necessary documents related to municipal, state, federal, or other tax law that are required by law to be filed after the Effective Date by Reorganized ASARCO, the Debtors (other than Covington), or any account or subaccount established pursuant to this Administration Agreement are timely prepared and filed.

(b) The Plan Administrator shall comply with all applicable withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authorities. Any amount so withheld from a distribution or payment to a Claimant or other payee shall be treated as having been paid to, and received by, such payee for purposes of the Plan and this Administration Agreement.

(c) Notwithstanding anything to the contrary in this Administration Agreement, any taxes attributable to the earnings of the Plan Administration Account, a General Account, a subaccount, or a Miscellaneous Plan Administration Account (as well as any taxes directly imposed on such account or subaccount) shall be paid out of the assets of such account or subaccount.

Section 2.16 Reports. The Plan Administrator shall be responsible for preparing, filing, and serving (if applicable) all reports required by the Plan, this Administration Agreement, or applicable law.

Section 2.17 Withholdings and Manner of Payments.

(a) Subject to all of the Plan Sponsor's rights and obligations under the Plan including, without limitation, Article 15.23, notwithstanding anything to the contrary in this Article II, prior to making any distribution pursuant to the terms of this Administration Agreement, the Plan Administrator, after consultation with and approval by the Plan Administration Committee, may retain such amounts from any such distribution (i) as are reasonably necessary to meet contingent liabilities, (ii) to pay reasonable estimated administrative expenses, or (iii) as the Plan Administrator may deem necessary to provide further funding to the Plan Administration Account of any of the Miscellaneous Plan Administration Accounts.

(b) If a distribution shall be in Cash, the Plan Administrator may distribute such Cash by wire, check, or such other method as the Plan Administrator deems appropriate under the circumstances.

Section 2.18 Final Distributions Upon Completion of Plan Administration. As soon as practicable after all of the Vested Causes of Action and Disputed Claims are resolved, the Plan Administrator shall (a) make a final distribution consisting of the sales proceeds and any other remaining Cash, in accordance with the terms and conditions of the Plan and the Confirmation Order, (b) close ASARCO's bankruptcy case, (c) resign as director and officer of Reorganized ASARCO, and obtain resignations from any other directors and officers of Reorganized ASARCO who may have been appointed to serve in such capacity by the Plan Administrator, and (d) and return any remaining funds to the Plan Sponsor.

ARTICLE III

AUTHORITY AND LIMITATIONS

Section 3.1 Powers of the Plan Administrator. The Plan Administrator shall have the following specific powers in addition to any powers conferred upon the Plan Administrator by the Plan Administration Committee, any other section or provision of this Administration Agreement, or by the Plan, the Confirmation Order, or another order of the Bankruptcy Court; *provided, however*, that the enumeration of the following powers shall not be considered in any way to limit or control the power of the Plan Administrator to act as specifically authorized by any other section or provision of this Administration Agreement, the Plan, the Confirmation Order, or any further order of the Bankruptcy Court; *provided further, however*, that the Plan Administrator, in the Plan Administrator's or the Plan Administrator's designee's capacity as the presiding officer and sole director of Reorganized ASARCO, shall have the power and authority to act for Reorganized ASARCO (without Bankruptcy Court approval, unless such approval is explicitly required herein or in the Plan) and shall exercise such powers and authority in the Plan Administrator's reasonable discretion:

(a) to exercise all power and authority that may be exercised, and take all proceedings and acts that may be taken, by any officer, director, or member of Reorganized ASARCO, including, without limitation, the amendment of the organizational documents of Reorganized ASARCO; *provided, however*, that the Plan Administrator shall not amend the

articles of formation of Reorganized ASARCO to change the fundamental purpose of such company without first obtaining the approval of the Plan Administration Committee or make amendments which would adversely affect the Plan Sponsor in any material manner without the Plan Sponsor's consent (not to be unreasonably withheld, conditioned, or delayed);

(b) after consultation with and approval by the Plan Administration Committee, to invest the Cash (including, without limitation, Cash in accounts, subaccounts, reserves, and escrows) in direct obligations of the United States of America or obligations of any agency or instrumentality thereof which are guaranteed by the full faith and credit of the United States of America, including funds consisting solely or predominantly of such securities;

(c) to calculate and, after consultation with and approval from the Plan Administration Committee, pay all distributions required or permitted to be made by the Plan Administrator under the Plan, this Administration Agreement, the Confirmation Order, and other orders of the Bankruptcy Court;

(d) after consultation with and approval by the Plan Administration Committee, and subject to Article II and Article III hereof, to establish, fund, and administer the Disputed Claims Reserve, Disputed Secured Claims Reserve, the Plan Administration Account, the Undeliverable and Unclaimed Distribution Reserve, the Indemnification Escrow, the Prepetition ASARCO Environmental Trust Escrow, the Vested Causes of Action Escrow, the Liquidation Trust Reserve, the SCC Litigation Trust Reserve, and the General Account(s), and such other reserves, accounts, subaccounts, and escrows as may be authorized by this Administration Agreement, the Plan, the Confirmation Order, or other order of the Bankruptcy Court;

(e) after consultation with and approval by the Plan Administration Committee, to employ, supervise, and compensate the professionals and other Persons retained to represent the interests and serve on behalf of Reorganized ASARCO;

(f) after consultation with and approval by the Plan Administration Committee, to make and file (or to cause to be made and filed) tax returns, forms, and reports that are required by law to be filed after the Effective Date by Reorganized ASARCO, the Debtors (other than Covington), or any account or subaccount established pursuant to this Administration Agreement;

(g) after consultation with and approval by the Plan Administration Committee, to file objections to Claims (other than Unsecured Asbestos Personal Injury Claims and Demands and Claims that have been Allowed by Final Order) and litigate to judgment, settle, or withdraw such objections to Disputed Claims;

(h) after consultation with and approval by the Plan Administration Committee, to seek estimation of contingent or unliquidated claims (other than Unsecured Asbestos Personal Injury Claims) under 11 U.S.C. § 502(c);

(i) after consultation with and approval by the Plan Administration Committee, to seek determination of tax liability under 11 U.S.C. § 505 or Section 6501(d) of the Internal Revenue Code;

(j) after consultation with and approval by the Plan Administration Committee, to evaluate, prosecute, settle, dismiss, abandon, release, or otherwise dispose of turnover actions under 11 U.S.C. §§ 542 and 543;

(k) after consultation with and approval by the Plan Administration Committee, to evaluate, prosecute, settle, dismiss, abandon, release, or otherwise dispose of any claims and causes of action owned by Reorganized ASARCO;

(l) after consultation with and approval by the Plan Administration Committee, to close one or more of the Reorganization Cases;

(m) after consultation with and approval by the Plan Administration Committee, to perform any and all acts necessary or appropriate for the conservation and protection of the assets of Reorganized ASARCO;

(n) after consultation with and approval by the Plan Administration Committee, to pursue the sale, liquidation, or recovery of any and all assets of Reorganized ASARCO;

(o) to exercise all powers and rights, and taking all actions, contemplated by or provided for in this Administration Agreement, subject to any applicable limitations set forth herein;

(p) to conduct the businesses of Reorganized ASARCO, subject to any applicable limitations set forth herein;

(q) after consultation with and approval by the Plan Administration Committee, to take any action necessary to prosecute, settle, or otherwise resolve the Vested Causes of Action and place the Vested Causes of Action Proceeds (if any) in the Vested Causes of Action Escrow; and

(r) to take any and all other actions necessary or appropriate to implement or consummate the Plan and the provisions of this Administration Agreement, subject to any applicable limitations set forth herein.

Section 3.2 Authority to Operate Business on Behalf of Reorganized ASARCO. The Plan Administrator shall have authority to operate the business of Reorganized ASARCO as contemplated by this Administration Agreement, the Plan, the Confirmation Order, or other order of the Bankruptcy Court. The Plan Administrator shall consult with, and obtain the approval of, the Plan Administration Committee as necessary or as required by the terms of this Administration Agreement. The Plan Administrator or the Plan Administrator's designee shall serve as presiding officer and sole director of Reorganized ASARCO (unless and until additional officers and directors are appointed) and is empowered to make all determinations with respect

to employment of any other directors, officers and employees of Reorganized ASARCO on and after the Effective Date.

Section 3.3 Authority to Pursue or Compromise Causes of Action on Behalf of Reorganized ASARCO. The Vested Causes of Action shall vest in Reorganized ASARCO, pursuant to Article 10.20 of the Plan. From and after the Effective Date the Plan Administrator shall be authorized to prosecute, compromise and settle, abandon, release, or dismiss for the benefit of Reorganized ASARCO the Vested Causes of Action (whether such suits are brought in Reorganized ASARCO's name or otherwise), without the need for approval by the Bankruptcy Court, and may, in the Plan Administrator's discretion, file a notice of discharge with a copy of the Confirmation Order in any lawsuits in which ASARCO or any other Debtor was named as a defendant prior to the Effective Date. Notwithstanding the foregoing, the Plan Administrator shall, prior to entering into any proposed settlement of a Vested Cause of Action for an amount in excess of $[**500,000**], procure the approval of the Plan Administration Committee.

Section 3.4 Authority to Object to Claims and to Settle Disputed Claims. From and after the Effective Date the Plan Administrator shall:

(a) be exclusively authorized to object to any Claims filed against any of the Debtors (other than Unsecured Asbestos Personal Injury Claims and Demands and Claims that have been Allowed by Final Order).

(b) to the extent the Plan Administrator objects to any Claims or to the extent an objection to any Claim is otherwise pending on the Effective Date, be empowered to and take all appropriate action with respect to resolution of the Disputed Claims consistent with the purpose of the Disputed Claims Reserve, including, without limitation, the prosecution, settlement, or other resolution of such Disputed Claims (in consultation with the Plan Sponsor and with the Plan Sponsor's consent, which shall not be unreasonably withheld, conditioned or delayed; provided, however, the Plan Sponsor shall be deemed to have authorized the Plan Administrator to litigate such claims to judgment, subject to the Plan Sponsor providing written notice to the Plan Administrator of its withdrawal of such consent). Notwithstanding the foregoing, the Plan Administrator shall, prior to entering into any proposed settlement of a Disputed Claim for an amount in excess of $[**500,000**], procure the approval of the Plan Administration Committee.

(c) file and serve a copy of each objection upon the holder of the Disputed Claim to which an objection is made as soon as practicable, but in no event later than (i) 90 days after the Confirmation Date, (ii) 90 days after a Proof of Claim is filed, or (iii) such other time as may be fixed or extended by the order of the Bankruptcy Court; *provided, however*, that Reorganized ASARCO, the Plan Administrator or the Plan Sponsor may seek to extend such period (or any extended period) for cause.

(d) be authorized to object to any motion seeking (i) payment of post-petition interest on such holder's claim at a rate other than the Plan Rate or (ii) reimbursement of attorneys' fees and other costs and expenses associated with such holder's Claim (or both).

Notwithstanding anything contained in this Administration Agreement to the contrary, the Plan Administrator may, but is not required to, submit a proposed action to a court of competent jurisdiction, including the Bankruptcy Court, for its approval, on notice to the Plan Administration Committee and any party affected by the proposed action, and may comply with any action approved by such court.

Section 3.5 Limitation of Plan Administrator's Authority. The Plan Administrator shall take such actions consistent with the resolution of Disputed Claims as are required by applicable law, and such actions permitted hereunder.

Section 3.6 Authority Regarding Certain Ongoing Response Actions. The Plan Administrator shall have the authority, and the obligation, to enter into agreements with third party contractors to conduct and complete the following ongoing response actions to the extent funded by the Prepetition ASARCO Environmental Trust or the Prepetition ASARCO Environmental Trust Escrow: the uncompleted portion of residential yard cleanups required under the El Paso Stipulation or included in the "Ongoing Obligation" portion of the East Helena Soils Settlement Agreement; *provided, however*, that any agreement entered into by the Plan Administrator and any third party with respect to such response actions shall not include any indemnification obligation by ASARCO, any other Debtor, Reorganized ASARCO, or the Plan Administrator. In the event that the Plan Administrator is unable to enter into an agreement with a third party contractor in respect of such response actions without providing indemnification to the third party, the Plan Administrator shall be excused from any and all obligations with respect to the performance of such response actions.

Section 3.7 Additional Powers. Except as otherwise set forth in this Administration Agreement or in the Plan, and subject to the retained jurisdiction of the Bankruptcy Court as provided for in the Plan, but without prior or further authorization, the Plan Administrator may control and exercise authority over the property or other assets in the accounts, subaccounts, reserves, and escrows and over the protection, conservation, and disposition thereof. No person dealing with the Plan Administrator shall be obligated to inquire into the authority of the Plan Administrator in connection with the protection, conservation, or disposition of any property or other assets in such accounts, subaccounts, reserves, or escrows.

Section 3.8 Compliance with Laws. Any and all distributions of Cash shall be made in compliance with applicable laws.

Section 3.9 Dissolution of Reorganized ASARCO. As soon as practicable after the Plan Administrator exhausts the assets of Reorganized ASARCO by making the final distributions of Cash under the Plan, the Plan Administrator, after consultation with and approval by the Plan Administration Committee, shall (a) effectuate the dissolution of Reorganized ASARCO in accordance with the laws of the State of Delaware, and (b) resign as sole member and as an officer and director of Reorganized ASARCO. The Plan Administrator shall act as the authorized signatory to execute on behalf of Reorganized ASARCO any and all documents necessary to accomplish such dissolution.

ARTICLE IV

THE PLAN ADMINISTRATOR

Section 4.1 Reliance by Plan Administrator. Except as otherwise provided in Sections 4.5 or 4.6 hereof:

(a) the Plan Administrator may rely, and shall be protected in acting upon, any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, or other paper or document believed by the Plan Administrator to be genuine and to have been signed or presented by the proper party or parties;

(b) the Plan Administrator may consult with any and all professionals to be selected by the Plan Administrator, and shall not be liable for any action taken or omitted to be taken by the Plan Administrator in accordance with the advice of such professionals; and

(c) Persons dealing with the Plan Administrator shall look only to the Cash or other property in the accounts, subaccounts, reserves, or escrows established hereunder to satisfy any liability incurred by the Plan Administrator to such Person in carrying out the terms of this Administration Agreement, and the Plan Administrator shall have no personal obligation to satisfy any such liability.

Section 4.2 Investment and Safekeeping of Assets. Investments of any moneys held by the Plan Administrator shall be administered in view of the manner in which individuals of ordinary prudence, discretion, and judgment would act in the management of their own affairs; *provided*, *however*, that the right and power of the Plan Administrator to invest the Cash, the proceeds thereof, or any income earned by any account, subaccount, reserve, or escrow shall be limited to the right and power to invest such Cash (pending periodic distributions in accordance with the terms of this Administration Agreement) in direct obligations of the United States of America or obligations of any agency or instrumentality thereof which are guaranteed by the full faith and credit of the United States of America, consistent with the purpose of such account, subaccount, reserve, or escrow. The Plan Administrator shall be under no liability or obligation for interest or producing income on any monies received hereunder and held for distribution or payment to the holders of Disputed Claims that become Allowed Claims, except as such interest shall actually be received by the Plan Administrator (net of applicable taxes actually paid with respect to such interest or income). Any interest or other income earned on the investments of the Cash in any given reserve, account, subaccount, or escrow established pursuant to this Administration Agreement, the Plan, or any order of the Bankruptcy Court (net of applicable taxes actually paid with respect to such interest or income) shall constitute a part of such reserve, account, subaccount, or escrow unless and until transferred or distributed pursuant to the terms of this Administration Agreement, the Plan, or any order of the Bankruptcy Court.

Section 4.3 Authorization to Expend Cash. The Plan Administrator may expend Cash (a) as reasonably necessary to meet liabilities and to maintain the value of the property in any account, subaccount, reserve, or escrow; (b) to pay all taxes and administrative expenses; (c) to fund the costs and expenses of the Plan Administrator; and (d) to satisfy all other liabilities

incurred or assumed by any account, subaccount, reserve, or escrow in accordance with this Administration Agreement or the Plan.

Section 4.4 Compensation.

(a) The Plan Administrator shall be entitled to receive (i) for a period of three years following the Effective Date, the compensation and reimbursement for expenses set forth in **Exhibit A** hereto and (ii) thereafter, as may be mutually agreed upon by the Plan Administrator and Plan Administration Committee.

(b) Each of the members of the Plan Administration Committee shall be paid **$[_____]** per annum for attendance at six meetings per calendar year and such other amounts as negotiated by the Plan Administrator and each member of the Plan Administration Committee for any additional meetings.

Section 4.5 Standard of Care; Exculpation. Neither the Plan Administrator (in the Plan Administrator's capacity as such and as officer and director of Reorganized ASARCO), the Plan Administration Committee members, nor any of the Plan Administrator's duly designated agents or representatives or professionals (the "Indemnified Parties") shall be liable for any act or omission taken or omitted to be taken by such Indemnified Party in good faith, other than acts or omissions resulting from such Indemnified Party's own bad faith, willful misconduct, gross negligence, or knowing violation of law. The Plan Administrator may, in connection with the performance of the Plan Administrator's functions, and in the Plan Administrator's sole and absolute discretion, consult and be entitled to rely on such documents and professionals as set forth in Section 4.1 above and shall not be liable for any act taken, omitted to be taken, or suffered to be done in accordance the Plan Administrator's reliance on such document or with the advice or opinions rendered by such Persons. Notwithstanding such authority, the Plan Administrator shall be under no obligation to consult with such professionals, and the Plan Administrator's good faith determination not to do so shall not result in the imposition of liability on the Plan Administrator, unless such determination is based on bad faith, willful misconduct, gross negligence, or knowing violation of law.

Section 4.6 Indemnification. To the fullest extent permitted by law, Reorganized ASARCO, to the extent of its assets legally available for that purpose, shall indemnify and hold harmless the Indemnified Parties from and against any and all losses, liabilities, costs, damages, and reasonable expenses they or their agents may incur in good faith and without gross negligence, recklessness, willful misconduct, breach of fiduciary duty, or knowing violation of law, in the exercise and performance of any of their powers and duties under this Administration Agreement.

Section 4.7 No Bond. The Plan Administrator shall serve without bond.

Section 4.8 Confidentiality. The Plan Administrator and each successor Plan Administrator and each member of the Plan Administration Committee and each successor member of the Plan Administration Committee (each a "Covered Person") shall, during the period that they serve in such capacity under this Administration Agreement and following either the termination of this Administration Agreement or such individual's removal, incapacity, or

resignation hereunder, hold strictly confidential and not use for personal gain any material, non-public information of or pertaining to any Debtor or to Reorganized ASARCO or of which such Covered Person has become aware in such Covered Person's capacity (the "Information"), except to the extent disclosure is required by applicable law, order, regulation, or legal process. In the event that any Covered Person is required (by oral questions, interrogatories, requests for information, or documents, subpoena, civil investigation, demand, or similar legal process) to disclose any Information, such Covered Person shall notify the Plan Administrator and the Plan Administration Committee reasonably promptly (unless prohibited by law) so that the Plan Administrator and the Plan Administration Committee may seek an appropriate protective order or other appropriate remedy or, in their discretion, waive compliance with the terms of this section (and if the Plan Administrator and the Plan Administration Committee seek such an order, the relevant Covered Person shall provide cooperation as the Plan Administrator and the Plan Administration Committee shall reasonably request). In the event that no such protective order or other remedy is obtained, or that the Plan Administrator and the Plan Administration Committee waive compliance with the terms of this section and that Covered Person is nonetheless legally compelled to disclose the Information, the Covered Person shall furnish only that portion of the Information which the Covered Person, advised by counsel, is legally required and shall give the Plan Administrator and the Plan Administration Committee written notice (unless prohibited by law) of the Information to be disclosed as far in advance as practicable and exercise all reasonable efforts to obtain reliable assurance that confidential treatment shall be accorded the Information.

Section 4.9 Insurance. The Plan Administrator, after consultation with and approval with and approval by the Plan Administration Committee, shall be authorized to obtain all insurance coverage that is reasonably necessary for the Plan Administrator, the Plan Administration Committee, Reorganized ASARCO, the officers and directors of Reorganized ASARCO, and the professionals of any of them, including, without limitation, coverage with respect to (a) any property that is or may in the future become the property of Reorganized ASARCO and (b) the liabilities, duties, or obligations of the Plan Administrator, the Plan Administration Committee, Reorganized ASARCO, any other directors and officers of Reorganized ASARCO, and their professionals (in the form of an errors-and-omissions policy or otherwise), the latter of which insurance coverage may remain in effect for a reasonable period after the conclusion of the Plan Administrator's service.

ARTICLE V

SUCCESSOR PLAN ADMINISTRATOR

Section 5.1 Removal. At any time upon the request of a majority of the members of the Plan Administration Committee for any reason or upon the request of any party in interest for cause, the Bankruptcy Court may remove the Plan Administrator. For purposes of this Section 5.1, "cause" shall mean (a) an act of fraud, embezzlement, or theft in connection with the Plan Administrator's duties or in the course of the Plan Administrator's employment in such capacity; (b) the intentional wrongful damage to the property of Reorganized ASARCO; (c) the intentional wrongful disclosure of confidential information of Reorganized ASARCO resulting in material harm to Reorganized ASARCO; (d) gross negligence, recklessness, breach of fiduciary duty, bad

faith, willful misconduct, or a knowing violation of law by the Plan Administrator in connection with the performance of the Plan Administrator's duties under this Administration Agreement; or (e) intentional and material breach by the Plan Administrator of the provisions of this Administration Agreement, the Plan, the Confirmation Order, or any other order of the Bankruptcy Court. Unless the Bankruptcy Court orders immediate removal, subject to Section 5.2 hereof, the Plan Administrator shall continue to serve until a successor Plan Administrator is appointed, and such appointment becomes effective, in accordance with Section 5.3 hereof.

Section 5.2 Resignation. The Plan Administrator may resign by giving not less than 90 days prior written notice thereof to the Plan Administration Committee. Such resignation shall become effective on the later to occur of (a) the day specified in such notice or (b) the appointment of a successor by the Plan Administration Committee and the acceptance by such successor of such appointment. If a successor Plan Administrator is not appointed or does not accept the Plan Administrator's appointment within 90 days following delivery of notice of resignation, the Plan Administrator may petition any court of competent jurisdiction, including the Bankruptcy Court, for the appointment of a successor Plan Administrator and officer and director of Reorganized ASARCO.

Section 5.3 Appointment of Successor Upon Removal, Resignation or Death. If the Plan Administrator is removed pursuant to Section 5.1, resigns pursuant to Section 5.2, or dies, the Plan Administration Committee may appoint a successor Plan Administrator. If a successor Plan Administrator is not appointed or does not accept the Plan Administrator's appointment pursuant to the preceding sentence of this Section 5.3 within 75 days following such action for removal, delivery of notice of resignation, or the death of the predecessor Plan Administrator, as the case may be, any member of the Plan Administration Committee may petition any court of competent jurisdiction, including the Bankruptcy Court, for the appointment of a successor Plan Administrator and officer and director of Reorganized ASARCO.

Section 5.4 Acceptance of Appointment by Successor Plan Administrator. Any successor Plan Administrator appointed hereunder shall execute and deliver to the Bankruptcy Court and the retiring Plan Administrator, if any, an instrument accepting such appointment hereunder. Thereupon, such successor Plan Administrator shall, without any further act, (a) become vested with all the estates, properties, rights, powers, trusts, and duties of the Plan Administrator's predecessor with like effect as if originally named herein and (b) become the sole holder of membership interests in, and an officer and director of, Reorganized ASARCO; *provided, however*, that if other Persons have been appointed to serve as directors or officers of Reorganized ASARCO, those appointments shall continue in effect until their expiration or removal according to the provisions of the governing documents of Reorganized ASARCO; *and provided further, however*, that no Plan Administrator shall be liable for the acts or omissions of any prior or later Plan Administrator.

Section 5.5 Continuity. Unless otherwise ordered by the Bankruptcy Court, the resignation or removal of the Plan Administrator shall not operate to terminate any agency or employment created by this Administration Agreement or invalidate any action therefore taken by the Plan Administrator. In the event of a resignation or removal of the Plan Administrator, such Plan Administrator shall (a) execute and deliver by the effective date of resignation or

removal such documents, instruments, and other writings as may be reasonably required to effect the termination of Plan Administrator's capacity under this Administration Agreement and (b) assist and cooperate in effecting the assumption of such Plan Administrator's obligations and functions by the successor Plan Administrator. If for any reason the Plan Administrator fails to execute the documents described in section (a) of the preceding sentence, the Bankruptcy Court may enter such orders as are necessary to effect termination of such Plan Administrator's capacity under this Administration Agreement.

ARTICLE VI

TERMINATION

Section 6.1 Termination. This Administration Agreement shall terminate upon the later of (a) 30 days after the exhaustion of the assets of Reorganized ASARCO or (b) the filing of a certificate of termination with the Bankruptcy Court, signed by the Plan Administrator, which certificate shall not be filed until all distributions required to be made pursuant to the Plan, this Administration Agreement, and any order of the Bankruptcy Court have been made.

Section 6.2 Other Obligations of the Plan Administrator Upon Termination. Prior to filing a certificate of termination, the Plan Administrator shall (a) provide for the retention and storage of any remaining books, records, and files that shall have been delivered to or created by the Plan Administrator until such time as all such books, records, and files are no longer required to be retained under applicable law, (b) file a certificate informing the Bankruptcy Court of the location at which such books, records, and files are being stored, and (c) provide books, records, and files to the Plan Sponsor if so requested. Except as otherwise specifically provided herein, after termination of this Administration Agreement pursuant to Section 6.1 above, the Plan Administrator shall have no further duties hereunder. Section 2.15(a) above shall survive the termination of this Administration Agreement.

ARTICLE VII

MISCELLANEOUS PROVISIONS

Section 7.1 Cooperation. The Debtors shall provide the Plan Administrator with copies of such of their books and records as the Plan Administrator shall reasonably require for the purpose of performing the Plan Administrator's duties and exercising the Plan Administrator's powers hereunder. The officers and directors of the Debtors shall cooperate with the Plan Sponsor and the Plan Administrator and shall provide information reasonably requested by the Plan Administrator.

Section 7.2 Amendment. This Administration Agreement may not be amended except by an instrument executed by (a) the Debtors, the Plan Sponsor, and the Plan Administrator on or before the Effective Date and (b) the Plan Sponsor and the Plan Administrator with the approval of the Plan Administration Committee following the Effective Date.

Section 7.3 Laws as to Construction. This Administration Agreement shall be governed and construed in accordance with the laws of the State of Texas, without giving effect to rules governing the conflict of laws.

Section 7.4 Severability. If any provision of this Administration Agreement or the application thereof to any Person or circumstance shall be finally determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Administration Agreement, or the application of such provision to Persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and such provision of this Administration Agreement shall be valid and enforced to the fullest extent permitted by law.

Section 7.5 Notices. Any notices, requests, or other communication to the parties hereto shall be in writing and shall be deemed to have been sufficiently given only if (a) delivered in person; (b) sent by facsimile, as evidenced by a confirmed fax transmission report; (c) sent by registered or certified mail, return receipt required; (d) sent by commercial delivery service or courier; or (e) sent by electronic mail. Until a change of address is communicated, as provided below, all notices, requests, and other communications shall be sent to the parties at the following addresses or facsimile numbers:

If to the Debtors:

[Name
Address
Facsimile
Attn:]

with copies to:

[Name
Address
Facsimile
Attn:]

If to Sterlite:

[Name
Address
Facsimile
Attn:]

with copies to:

[Name
Address
Facsimile
Attn:]

If to the Plan Administrator:

[Name
Address
Facsimile]
Attn:]

with copies to:

[Name
Address
Facsimile
Attn:]

If to the Plan Administration Committee:

[Name
Address
Facsimile]

[Name
Address
Facsimile]

[Name
Address
Facsimile]

Section 7.6 Headings. The section headings contained in this Administration Agreement are solely for convenience of reference and shall not affect the meaning or interpretation of this Administration Agreement or of any term or provision hereof.

Section 7.7 Relationship to the Plan.

(a) The principal purpose of this Administration Agreement is to aid in the implementation of the Plan and therefore this Administration Agreement incorporates the provisions of the Plan. To that end, the Plan Administrator shall have full power and authority to take any action consistent with the purpose and provisions of the Plan, and to seek any orders from the Bankruptcy Court in furtherance of implementation of the Plan and this Administration Agreement. To the extent that there is conflict between the provisions of this Administration Agreement, the provisions of the Plan, and/or the Confirmation Order, each such document shall have controlling effect in the following rank order: (1) the Confirmation Order; (2) the Plan; and (3) this Administration Agreement.

(b) Sterlite, as a party hereto and as the Plan Sponsor, shall (i) have all consultation and approval rights set forth in the Plan with respect to the subject matter hereof and

(ii) be obligated to pay all amounts set forth in the Plan, including, without limitation, the amounts set forth in Section 10.1(d) of the Plan.

Section 7.8 Certain Limitations Regarding Governmental Units. As provided in Article 11.11 of the Plan, the releases, discharges, satisfactions, exonerations, exculpations, and injunctions provided under the Plan and the Confirmation Order shall not apply to any liability to a Governmental Unit arising after the Effective Date; *provided, however*, that no Governmental Unit shall assert any Claim or other cause of action under Environmental Law against the entities administering the Plan for the benefit of the creditors, the assets or funds being held by the entities administering the Plan for the benefit of the creditors, or the Reorganized Debtors based on or arising from acts, omissions, or conduct of the Debtors prior to February 1, 2009 (including, without limitation, continuing releases related to acts, omissions, or conduct prior to February 1, 2009); *except provided further, however*, that nothing in the Plan or the Confirmation Order (a) precludes the enforcement of the Hayden Settlement Agreement, the Mission Mine Settlement Agreement, or the Arizona NRD Settlement Agreement as provided therein; (b) shall prevent the governments or Environmental Custodial Trusts from recovering under any confirmed plan on any Allowed Claim or payment due with respect to any site listed on **Exhibit 12** to the Plan or for any Allowed Claim for a permit fee or similar assessment or charge owed to the governments under Environmental Law; (c) releases, discharges, precludes, or enjoins the enforcement of any liability to a Governmental Unit under Environmental Law that any Entity is subject to as the current owner or current operator of property after the Effective Date; (d) releases, discharges, precludes, or enjoins any Allowed Claim or liability of a Debtor's Estate as the current owner or current operator of property between February 1, 2009 and the Effective Date; (e) for sites covered by an approved Environmental Custodial Trust Settlement Agreement, permits the governments or Environmental Custodial Trusts to recover more than permitted under the approved Environmental Custodial Trust Settlement Agreement, nor does it affect the covenants not to sue in the Environmental Custodial Trust Settlement Agreements or the reservation of rights; (f) releases, discharges, precludes, or enjoins any on-site liability of a Debtor's Estate as the owner, operator, or lessee of the Ray Mine, the Mission Mine, the Amarillo copper smelter, the Tucson office, or the Ventura Warehouse; (g) precludes enforcement by the United States or a state of any requirements under an Environmental Custodial Trust Agreement against an Environmental Custodial Trustee; or (h) releases, discharges, precludes, or enjoins the enforcement of any liability to a Governmental Unit under Environmental Law for criminal liability (except to the extent that such liabilities are dischargeable).

Section 7.9 Counterparts; Execution and Delivery by Facsimile. For the purposes of facilitating the execution of this Administration Agreement, as herein provided and for other purposes, this Administration Agreement may be executed simultaneously in counterparts, each of which counterpart shall be deemed to be an original, and all such counterparts shall constitute but one and the same instrument. Any original counterpart when executed and transmitted by electronic facsimile shall be deemed duly delivered to the other party upon confirmed receipt thereof by such other party.

Section 7.10 Retention of Jurisdiction. As provided in Article XV of the Plan, until the Reorganization Cases are closed, the Bankruptcy Court shall retain the fullest and most extensive

jurisdiction possible, including, without limitation, for the purposes of interpreting and implementing the provisions of this Administration Agreement.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto have either executed and acknowledged this Administration Agreement or caused it to be executed and acknowledged on their behalf by their duly authorized officers all as of the date first above written.

ASARCO LLC, *et al.*,
Debtors and Debtors in Possession

By: _____
Name:
Title:

STERLITE (USA), INC.

By: _____
Name:
Title:

STERLITE INDUSTRIES (INDIA) LTD

By: _____
Name:
Title:

PLAN ADMINISTRATOR

_____
Joseph F. Lapinsky

AGREED AND ACKNOWLEDGED
as of the date first above written:

_____
Name:
Title: Plan Administration Committee Member

_____
Name:
Title: Plan Administration Committee Member

_____
Name:
Title: Plan Administration Committee Member

Exhibit A

I. Fee.

(a) In consideration for the services of the Plan Administrator under this Administration Agreement, the Plan, the Confirmation Order, or other applicable order of the Bankruptcy Court, during the three year period beginning on the Effective Date, the Debtors shall pay to the Plan Administrator a fee (the "Fee") in the amount of **[$_____]** per month (pro rated for partial months).

(b) The Fee (which the Plan Administrator may cause to be withdrawn from the Plan Administration Account) shall be payable monthly in arrears on or before the fifth business day of each calendar month.

(c) Neither the Plan Administrator nor any of the Plan Administrator's personnel shall be entitled to any additional compensation of any nature for their services set forth under the Administration Agreement, the Plan, the Confirmation Order, or other applicable order of the Bankruptcy Court.

II. Expenses.

During the term of this Administration Agreement, the Plan Administrator shall be reimbursed for reasonable out-of-pocket expenses incurred by the Plan Administrator and any personnel in connection with performing the duties provided hereunder. The expenses for which the Plan Administrator is entitled to be reimbursed may include, without limitation, travel, lodging, duplicating, postage, computer research, messenger service and telephone service and the reasonable fees and expenses of the agents, financial advisors, attorneys, accountants, consultants, independent contractors, representatives, and other professionals retained by the Plan Administrator. The Plan Administrator shall provide an itemized monthly report with narrative description of such expenses to, and provide supporting documents as reasonably requested by the Debtors or the Plan Administration Committee. If the Debtors (prior to the Effective Date) or the Plan Administration Committee (on or after the Effective Date) reasonably objects to any portion of such requests for expense reimbursement within twenty days of the receipt of such monthly report because the incurrence of such expense was not reasonable, the Plan Administrator shall not be entitled to reimbursement for the portion of the expenses objected to until resolved with the Person objecting to such expenses. In the event the parties are unable to resolve a dispute as to an expense reimbursement, the Debtors or the Plan Administration Committee, as applicable, or the Plan Administrator may elect to submit any such dispute to the Bankruptcy Court.

AMENDMENT NO. 6 TO

SETTLEMENT AND PURCHASE AND SALE AGREEMENT

This Amendment No. 6 to Settlement and Purchase and Sale Agreement (this "**Amendment**") is made effective as of August 20, 2009, and amends that certain Settlement and Purchase and Sale Agreement, dated March 6, 2009, as amended on April 15, 2009, April 22, 2009, June 12, 2009, August 6, 2009 and August 10, 2009 (the "**PSA**"), by and among ASARCO LLC, a Delaware limited liability company; AR Silver Bell, Inc., a Delaware corporation; Copper Basin Railway, Inc., a Delaware corporation; ASARCO Santa Cruz, Inc., a Delaware corporation; Sterlite (USA), Inc., a Delaware corporation; and Sterlite Industries (India) LTD, an Indian limited liability company. Capitalized terms used herein, but not otherwise defined, shall have the respective meanings ascribed to such terms in the PSA.

WHEREAS, the parties desire to amend the PSA to increase the Deposit to an amount equal to funds in the aggregate of $225,000,000.00 by the addition of a Fourth L/C in the amount of $100,000,000.00; and

WHEREAS, the parties desire to amend the PSA to (i) amend the definition of the Sterlite Purchased SCC Trust Interests (to increase the percentage of such interests to be sold and purchased pursuant to this Agreement from approximately 36.5% to approximately 72.5% of such interests), (ii) to increase the amount of the Sterlite Purchased SCC Trust Interests Payment as herein set forth, and (iii) amend other terms and conditions as herein set forth;

NOW, THEREFORE, in consideration of the premises and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties agree as follows:

1. Section 1.1 of the PSA is hereby amended by the addition of the following new defined terms, and such terms shall be deemed added to Section 1.1 in the appropriate alphabetical order:

"***District Court***" means the United States District Court for the Southern District of Texas, Brownsville Division.

"***Fourth L/C***" shall have the meaning set forth in Section 4.2(c).

"***Plan Recommendation Date***" means the date on which the Bankruptcy Court issues proposed findings of fact and conclusions of law for the District Court's consideration that propose or recommend confirmation of the Plan (and do not propose or recommend confirmation of any other plan of reorganization).

2. The definition of following terms set forth in Section 1.1 of the PSA are hereby amended and restated in their entirety as follows:

"***Deemed Value***" means, in respect of (i) the Purchase Price and the Sterlite Purchased SCC Trust Interests Payment, or (ii) a Superior Proposal, the aggregate dollar

value to Sellers of all cash and non-cash (as applicable) consideration comprising (x) the Purchase Price and the Sterlite Purchased SCC Trust Interests Payment, or (y) Superior Proposal, as applicable, as determined by the Board of Directors of ASARCO after consultation with its financial and legal advisors, the Creditor Constituents and such other advisors as the Board of Directors of ASARCO chooses, in its sole discretion, to consult.

"Sterlite Purchased SCC Trust Interests" means the Class A SCC Litigation Trust Interests and the Class B SCC Litigation Trust Interests.

"Sterlite Purchased SCC Trust Interests Payment" means an amount equal to $722,060,000.00, (a) minus the product of (i) the Actual Class 3 Ratio multiplied by (ii) the amount by which the Distributable Cash exceeds $1.4 billion (if any), and (b) minus the product of (i) the Actual Class 3 Ratio multiplied by (ii) the amount of any proceeds payable to Class 3 and Class 4, if any, from the auction and sale of the interests in the SCC Litigation Trust contemplated by Article 6.2(a) of the Plan.

3. The introductory language of Section 4.2 of the PSA is hereby amended and restated in its entirety to read as follows:

"4.2 *Deposit*. Purchaser shall make available to ASARCO funds in the aggregate amount of $225,000,000.00 (the "***Deposit***") as follows:"

4. Section 4.2(c) of the PSA is hereby amended and restated in its entirety to read as follows:

"(c) As promptly as practicable following (but not later than 5:00 p.m., Dallas, Texas time, on the third Business Day following) the Disclosure Statement Approval Date, Purchaser will post a third letter of credit (the ***"Third L/C"***) in the form of Exhibit O-3 hereto issued in favor of ASARCO by a Qualified Bank in the amount of $25,000,000.00 and ASARCO shall have received such originally executed Third L/C enforceable against the issuer thereof. As promptly as practicable following (but not later than 5:00 p.m., Dallas, Texas time, on the third Business Day following) the Plan Recommendation Date, Purchaser will post a fourth letter of credit (the "***Fourth L/C***") in the form of Exhibit O-4 hereto issued in favor of ASARCO by a Qualified Bank in the amount of $100,000,000.00 and ASARCO shall have received such originally executed Fourth L/C enforceable against the issuer thereof. The First L/C, the Second L/C, the Third L/C and the Fourth L/C are collectively referred to herein as the "***Letters of Credit***."

5. Section 4.2(f) of the PSA is hereby amended and restated in its entirety to read as follows:

"(f) Immediately following the termination of this Agreement for any reason other than (i) a Purchaser Breach or (ii) by Purchaser pursuant to Section 13.1(j) upon the occurrence of a Manipulative Breach, Sellers shall (x) be entitled to receive from Purchaser and retain $50,000,000.00, (y) be entitled to draw upon any outstanding Letter of Credit at anytime thereafter to obtain such funds and the receipt

by Sellers of immediately available funds in an account designated by ASARCO in an amount equal to $50,000,000.00 pursuant to such draw (or any draws pursuant to Section 4.2(h)) shall satisfy Purchaser's payment obligation in clause (x) above), and (z) at such time as Purchaser's payment obligation in clause (x) above has been satisfied, Sellers shall: (A) to the extent the Second L/C, the Third L/C or the Fourth L/C has not been drawn upon (and related funds received) pursuant to Section 4.2(h), as promptly as practicable, and in any event within twenty-four hours, mark each page of the Second L/C, the Third L/C and the Fourth L/C, as applicable, "cancelled," send a copy of same by facsimile to the Purchaser and on the same day (if such day is a Business Day, otherwise on the next Business Day) return by prepaid overnight courier the original(s) to the issuer(s) thereof, and (B) as promptly as practicable, and in any event within one Business Day, return to Purchaser any cash drawn (and received) pursuant to Section 4.2(h) in excess of $50,000,000.00; *provided, that* if (and only if) a Release Condition occurs following the termination of this Agreement, ASARCO shall either (1) as promptly as practicable, and in any event within twenty-four hours, following the occurrence of such Release Condition, mark each page of the First L/C "cancelled," send a copy of same by facsimile to the Purchaser and return by prepaid overnight courier the original to the issuer thereof, or (2) if Sellers have already drawn on the First L/C, including pursuant to Section 4.2(h) (and received $50,000,000.00 in respect of such draw), Sellers shall, as promptly as practicable, and in any event within one Business Day, following the occurrence of such Release Condition, deliver the amount of $50,000,000.00 to Purchaser and such payment shall be made by wire transfer of immediately available funds to an account designated by Purchaser.

6. Section 4.2(g) of the PSA is hereby amended and restated in its entirety to read as follows:

"(g) As promptly as practicable, and in any event within twenty-four hours, following the termination of this Agreement by Purchaser pursuant to Section 13.1(j) due to a Manipulative Breach, ASARCO shall mark each page of the Letters of Credit "cancelled," send a copy of same by facsimile to the Purchaser and on the same day (if such day is a Business Day, otherwise on the next Business Day) return by prepaid overnight courier originals of the Letters of Credit to the issuer(s) thereof; and as promptly as practicable, and in any event within one Business Day, return to Purchaser any cash drawn (and received) pursuant to Section 4.2(h)."

7. The PSA is hereby amended to add the Form of Fourth L/C as Exhibit O-4 thereto and attached hereto as Exhibit A.

8. Section 13.1(n) of the PSA is hereby amended and restated in its entirety to read as follows:

"(n) By either Sellers or Purchaser if (i) the Bankruptcy Court or (ii) the District Court denies confirmation of the Plan (for clarification, in the event the Bankruptcy Court issues proposed findings of fact and conclusions of law for the District Court's consideration that propose or recommend confirmation of a plan of

reorganization other than the Plan, such shall be deemed to be a denial of confirmation of the Plan by the Bankruptcy Court. Notwithstanding anything to the contrary contained in this Agreement, any order or other formal action taken by the Bankruptcy Court or the District Court that recommends, approves or effects confirmation of a plan of reorganization other than the Plan shall be deemed to be a denial of confirmation of the Plan for all purposes under this Agreement; or"

9. Except as set forth herein, all other terms of the PSA shall remain unchanged and in full force and effect.

10. This Amendment shall be subject to all of the terms and provisions set forth in the PSA that apply to the PSA (and such terms and provisions shall apply to this Amendment) or to any amendments or modifications thereto, including, without limitation, Article XV thereof.

* * * * *

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their respective officers thereunto duly authorized, as of the date first written above.

SELLERS:

ASARCO LLC, a Delaware limited liability company

By: Joseph F. Lapinsky
Name: Joseph F. Lapinsky
Title: **Chief Executive Officer and President**

AR SILVER BELL, INC., a Delaware corporation

By: _____
Name:
Title:

COPPER BASIN RAILWAY, INC., a Delaware corporation

By: _____
Name:
Title:

ASARCO SANTA CRUZ, INC., a Delaware corporation

By: _____
Name:
Title:

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their respective officers thereunto duly authorized, as of the date first written above.

SELLERS:

ASARCO LLC, a Delaware limited liability company

By: _____
Name:
Title:

AR SILVER BELL, INC., a Delaware corporation

By: D. E. McAllister
Name: DOUGLAS E. McALLISTER
Title: PRESIDENT

COPPER BASIN RAILWAY, INC., a Delaware corporation

By: D. E. McAllister
Name: DOUGLAS E. McALLISTER
Title: VICE PRESIDENT

ASARCO SANTA CRUZ, INC., a Delaware corporation

By: D. E. McAllister
Name: DOUGLAS E. McALLISTER
Title: PRESIDENT

PURCHASER:

STERLITE (USA), INC.

By: _____
Name: C.V. KRISHNAN
Title: PRESIDENT

GUARANTOR:

STERLITE INDUSTRIES (INDIA) LTD.

By: _____
Name: C.V. KRISHNAN
Title: MANAGING DIRECTOR- POWER

AMENDMENT NO. 7 TO

SETTLEMENT AND PURCHASE AND SALE AGREEMENT

This Amendment No. 7 to Settlement and Purchase and Sale Agreement (this "**Amendment**") is made effective as of August 23, 2009, and amends that certain Settlement and Purchase and Sale Agreement, dated March 6, 2009, as amended on April 15, 2009, April 22, 2009, June 12, 2009, August 6, 2009, August 10, 2009 and August 20, 2009 (the "**PSA**"), by and among ASARCO LLC, a Delaware limited liability company; AR Silver Bell, Inc., a Delaware corporation; Copper Basin Railway, Inc., a Delaware corporation; ASARCO Santa Cruz, Inc., a Delaware corporation; Sterlite (USA), Inc., a Delaware corporation; and Sterlite Industries (India) LTD, an Indian limited liability company. Capitalized terms used herein, but not otherwise defined, shall have the respective meanings ascribed to such terms in the PSA.

WHEREAS, the parties desire to amend the PSA to (i) increase the Deposit to an amount equal to funds (or amounts available for immediate draw under letters of credit) in the aggregate of $625,000,000.00, (ii) delete the Purchaser Promissory Note in its entirety and, in lieu thereof, provide for a Class 4 Copper Note Payment in the amount of $88,660,000.00, (iii) amend the definition of the Sterlite Purchased SCC Trust Interests (to reflect an increase in the percentage of Sterlite Purchased SCC Trust Interests to be sold and purchased pursuant to this Agreement to approximately 73% of the aggregate interests reserved for Class 3 and Class 4 as determined by the Bankruptcy Court in accordance with the Plan), and (iv) amend other terms and conditions of the PSA as herein set forth;

NOW, THEREFORE, in consideration of the premises and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties agree as follows:

1. Section 1.1 of the PSA is hereby amended by the addition of the following new defined term, and such term shall be deemed added to Section 1.1 in the appropriate alphabetical order:

"***Bankruptcy-Related Assumed Liabilities***" shall have the meaning set forth in Section 3.3(h).

"***Class 4 Copper Note Payment***" means $88,660,000.00, in Cash (as defined in the Plan) (which includes the $83,300,000.00 present value originally attributable to the copper-linked promissory note that has now been monetized plus an additional amount).

"***Fifth L/C***" shall have the meaning set forth in Section 4.2(c).

"***Sterlite Class 3 SCC Trust Payment***" means an amount equal to $722,000,000.00 (or such higher or lower amount as is necessary for all Class 3 Claimants to be Paid in Full on the Effective Date of the Plan and to pay such other amounts that the Purchaser is obligated to pay under Article 10.1(d) of the Plan and Section 3.3(h) of this Agreement), minus the product of (i) the Preliminary Class 3 Ratio multiplied by (ii) the amount of any proceeds payable to Class 3 and Class 4, if any, from

any auction and sale of the Debtors' interests in the SCC Litigation Trust Claims or interests in the SCC Litigation Trust contemplated by Article 6.2(a) of the Plan. Any and all references in this Agreement to the term "Sterlite Purchased SCC Trust Interests Payment" shall be deemed to refer to the term "Sterlite Class 3 SCC Trust Payment" for all purposes.

"***Wind Down***" shall have the meaning set forth in Section 3.3(h).

"***Statement of Amounts to Be Paid on Effective Date***" shall have the meaning set forth in Section 3.7(a).

"***Sterlite Manipulative Breach***" shall have the meaning set forth in Section 4.2(e).

2. The definition of following terms set forth in Section 1.1 of the PSA are hereby amended and restated in their entirety to read as follows:

"***Ancillary Agreements***" means the Assignment and Assumption Agreement, the Bill of Sale, the Transition Services Agreement, the Patent Assignment, the Trademark Assignment, the Deeds, the Leasehold Deeds, the SCC Litigation Trust Joinder Agreement, the SCC Trust Interest Bill of Sale and the Assignment and Assumption of Ground Lease Agreement.

"Class 3 Monetization Payment" means $224,840,000.00.

"***Exchange Arrangements***" means those commercial arrangements between ASARCO and third parties whereby the parties agree to a pound for pound or ounce for ounce (as applicable) exchange of copper, silver or gold which may be an exchange of different forms of copper, silver or gold (*e.g.*, an exchange of copper in the form of rod for copper in the form of cathode).

"***Manipulative Breach***" means an intentional and willful material breach by ASARCO of its obligations under Sections 8.2(d) (but only as it relates to Purchased Assets other than Inventory), 8.7(a), (b) and (d) or 8.10(b) and (d) that gives rise to a termination right pursuant to Section 13.1(j) and such act or omission giving rise to such breach was performed with the intent to materially breach this Agreement and to prevent the Closing hereunder, as determined by the Bankruptcy Court, after notice and opportunity to be heard, which may be on an expedited basis.

3. The definition of the following terms set forth in Section 1.1 of the PSA are hereby deleted from the PSA in their entirety (including any and all references to such terms in the PSA).

"***Actual Class 3 Ratio***"
"***Actual Class 4 Ratio***"
"***Adjustment Amount***"
"***Agreed Working Capital***"
"***Closing Accounts Amount***"

"***Closing Accounts Statement***"
"***Final Arbiter***"
"***Included Payables***"
"***Included Receivables***"
"***Inventory Amount***"
"***Mortgages***"
"***Negotiation Period***"
"***Objection Notice***"
"***Objection Date***"
"***Preliminary Class 4 Ratio***"
"***Purchaser Promissory Note***"
"***Security Agreement***"

4. The following sections and subsections of the PSA (including any and all references thereto in the PSA) are hereby deleted in their entirety:

Section 4.3 *Purchase Price Adjustment.*
Section 4.4 *Dispute Resolution.*
Section 5.2(o)
Section 5.3(b)
Section 5.3(j)
Section 5.3(k)
Section 5.3(l)
Section 14.2

5. The following Exhibits to the PSA (including any and all references thereto in the PSA) are hereby deleted in their entirety:

Exhibit D	Form of Purchaser Promissory Note
Exhibit E	Closing Accounts Statement Principles and Illustration
Exhibit L	Form of Security Agreement
Exhibit N-1	Form of Mortgage (Texas)
Exhibit N-2	Form of Mortgage (Arizona)

6. Section 3.3 of the PSA is hereby amended to add paragraph (h) as follows:

"(h) notwithstanding anything to the contrary in this Agreement (including Section 3.4), any and all additional amounts as are necessary for all Allowed unclassified Claims and Allowed Claims in Classes 1, 2, and 3 to be Paid in Full on the Effective Date of the Plan in accordance with Article 10.1(d) of the Plan, (ii) all Claims in Classes 1, 2, or 3 that become Allowed Claims (including Disputed Claims but only to the extent and in such amount as such Claim ultimately becomes an Allowed Claim), and (iii) any and all reasonable expenses incurred by the Plan Administrator or Reorganized ASARCO to effectuate the Plan, including any compensation owed the Plan Administrator or other costs, expenses, or amounts owed under the Plan Administration Agreement and otherwise incurred to wind down ASARCO's operations and administer the Bankruptcy Cases (the "***Wind Down***") as

determined by the Plan Administrator in good faith and in consultation with Purchaser in accordance with the Plan Administration Agreement (collectively the "***Bankruptcy-Related Assumed Liabilities***"). Liabilities assumed pursuant to this Section 3.3(h) shall be paid by Purchaser in accordance with Section 3.7 of this Agreement, Article 10.1(d) of the Plan and the Plan Administration Agreement.

7. Section 3.5(d) of the PSA is hereby amended and restated in its entirety to read as follows:

"(d) At the Closing, ASARCO shall deliver to Purchaser a statement of any Unpaid Cure Claims Amount (and the Contract(s) corresponding thereto), including a calculation thereof. Purchaser shall have the right to treat such Unpaid Cure Claims Amount as a Disputed Claim to be administered by the Plan Administrator. Purchaser shall, within 10 days after presentment by the Plan Administrator of documentation reflecting the determination of such Unpaid Cure Claims Amount, pay to the Plan Administrator the Cash (as defined in the Plan) to be paid on account of such Unpaid Cure Claim."

8. Article III of the PSA is hereby amended to add Section 3.7 as follows:

3.7 *Bankruptcy-Related Assumed Liabilities.*

(a) At least ten Business Days prior to Closing (or such shorter period as Purchaser and ASARCO shall mutually agree upon), ASARCO shall deliver to Purchaser a statement of any additional Cash (as defined in the Plan) required for all Allowed unclassified Claims and Allowed Claims in Classes 1, 2, and 3 to be Paid in Full on the Effective Date of the Plan (the "***Statement of Amounts to Be Paid on Effective Date***"). The Statement of Amounts to Be Paid on Effective Date shall include provision for all Claims and expenses due and payable within a reasonable period of time after the Effective Date of the Plan, as determined by the Plan Administrator. The amount of such additional Cash (as defined in the Plan) required and set forth in the Statement of Amounts to be Paid on Effective Date shall be added to the Sterlite Class 3 SCC Trust Payment and paid by Purchaser to ASARCO at Closing and also shall be subject to Purchaser's rights under Article 15.23 of the Plan.

(b) At Closing, ASARCO shall deliver to Purchaser a statement of all Class 1, 2, or 3 Claims that are Disputed Claims. Purchaser shall, within 10 days after presentment by the Plan Administrator of documentation reflecting the allowance of such Disputed Claim and receipt by Purchaser from the Plan Administrator of the Liquidation Trust Interests distributable on account of such Claim as if such Claim had been an Allowed Claim on the Effective Date of the Plan, pay to the Plan Administrator the Cash (as defined in the Plan) that such holder would have received on account of such Claim if such Claim had been an Allowed Claim on the Effective Date of the Plan but only to the extent thereafter Allowed, and only to the extent Cash (as defined in the Plan) is not otherwise available therefor.

(c) After the Closing Date, Purchaser shall, within 10 days after presentment by the Plan Administrator of a claim for additional amounts to effectuate the Wind Down that are due and payable within 30 days from the date of such presentment, pay to the Plan Administrator the Cash (as defined in the Plan) requested by the Plan Administrator. At all times, and from time to time, prior to the completion of the Wind Down, Purchaser shall pay additional amounts of Cash (as defined in the Plan) to the Plan Administrator to maintain at least a minimum cash reserve of $1,000,000.00 on hand with the Plan Administrator. To the extent the Plan Administrator from time to time determines, in the exercise of his reasonable discretion, that Cash (as defined in the Plan) held by the Plan Administrator exceeds such $1,000,000.00 cash reserve and the amount reasonably necessary or appropriate to make all payments required under the Plan other than Disputed Claims not yet allowed, the Plan Administrator shall return such excess amounts to the Purchaser. At such time, and from time to time, as the Plan Administrator determines, in the exercise of his reasonable discretion, that Cash (as defined in the Plan) held by the Plan Administrator as a cash reserve exceeds the amount reasonably necessary or appropriate to make all payments required under the Plan other than Disputed Claims not yet allowed, the Plan Administrator shall return such excess amounts to the Purchaser.

9. Section 4.1 of the PSA is hereby amended and restated in its entirety to read as follows:

"4.1 *Purchase Price.* The total consideration to be paid by Purchaser to Sellers in consideration of the sale, conveyance, transfer, assignment and delivery of the Purchased Assets is (i) an amount equal to: (A) $1,100,000,000.00 (the "***Closing Payment***"), plus (B) the Class 3 Monetization Payment, plus (C) the Class 4 Copper Note Payment (collectively, the "***Purchase Price***"), and (ii) the assumption by Purchaser of the Assumed Liabilities."

10. The introductory language of Section 4.2 of the PSA is hereby amended and restated in its entirety to read as follows:

"4.2 *Deposit*. Purchaser shall make available to ASARCO funds in the aggregate amount of $625,000,000.00 (the "***Deposit***") as follows:"

11. Section 4.2(c) of the PSA is hereby amended and restated in its entirety to read as follows:

"(c) As promptly as practicable following (but not later than 5:00 p.m., Dallas, Texas time, on the third Business Day following) the Disclosure Statement Approval Date, Purchaser will post a third letter of credit (the ***"Third L/C"***) in the form of Exhibit O-3 hereto issued in favor of ASARCO by a Qualified Bank in the amount of $25,000,000.00 and ASARCO shall have received such originally executed Third L/C enforceable against the issuer thereof. As promptly as practicable following (but not later than 5:00 p.m., Dallas, Texas time, on the tenth Business Day following) the Plan Recommendation Date, Purchaser will post (i) a fourth letter of

credit (the "***Fourth L/C***") in the form of Exhibit O-4 hereto issued in favor of ASARCO by a Qualified Bank in the amount of $100,000,000.00 and ASARCO shall have received such originally executed Fourth L/C enforceable against the issuer thereof, and (ii) a fifth letter of credit (the "***Fifth L/C***") in the form of Exhibit O-5 hereto issued in favor of ASARCO by a Qualified Bank in the amount of $400,000,000.00 and ASARCO shall have received such originally executed Fifth L/C enforceable against the issuer thereof. The First L/C, the Second L/C, the Third L/C, the Fourth L/C and the Fifth L/C are collectively referred to herein as the "***Letters of Credit***."

12. Section 4.2(e) of the PSA is hereby amended and restated in its entirety to read as follows:

"(e) Immediately following the termination of this Agreement due to a material breach by Purchaser or Guarantor of any of their respective representations, warranties or covenants or other agreements hereunder (a "***Purchaser Breach***"), Sellers shall (i) be entitled to receive from Purchaser and retain the Deposit and (ii) be entitled to draw upon all Letters of Credit at anytime thereafter to obtain the Deposit and the receipt by Sellers of immediately available funds in an account designated by ASARCO in an amount equal to the Deposit pursuant to such draws (or any draw pursuant to Section 4.2(h)) shall satisfy Purchaser's payment obligation in clause (i); *provided*, that only $125,000,000.00 shall be paid to, retained by and may be drawn by Sellers if such termination occurs prior to the Plan Recommendation Date, and *provided further*, that Sellers shall only be entitled to draw on the Fifth L/C following a "Sterlite Manipulative Breach." As used in this Agreement, the term "***Sterlite Manipulative Breach***" means an intentional and willful material breach by either Purchaser or Guarantor of any of their respective representations, warranties or covenants or other agreements hereunder where (i) Sellers have terminated this Agreement under Section 13.1(k), (ii) all conditions to closing in Sections 11.1 and 11.2 that are within the reasonable control of Sellers have been satisfied in all material respects, (iii) Sellers have used all commercially reasonable efforts, at no expense to Sellers, to assist Purchaser and/or Guarantor, as applicable, to cure such breach, and (iv) Sellers are not in material breach of any of their representations, warranties or covenants in this Agreement such that Purchaser would have been permitted to terminate this Agreement under Section 13.1(j). Notwithstanding anything to the contrary in this Agreement, including Section 13.1(k) or Section 13.1(c), in order for Sellers to assert a Sterlite Manipulative Breach and draw under the Fifth L/C under this Section 4.2(e), Purchaser and Guarantor shall have been provided not less than 60 days to cure such breach. Sellers, Purchaser and Guarantor acknowledge and agree that, if necessary to provide for such a 60-day cure period, Sellers, Purchaser and Guarantor shall cooperate with one another in good faith to execute an appropriate amendment to this Agreement extending the Termination Date as necessary to accommodate such 60-day cure period."

13. Section 4.2(f) of the PSA is hereby amended and restated in its entirety to read as follows:

"(f) Immediately following the termination of this Agreement for any reason other than (i) a Purchaser Breach, (ii) Sterlite Manipulative Breach or (iii) by Purchaser pursuant to Section 13.1(j) upon the occurrence of a Manipulative Breach, Sellers shall (x) be entitled to receive from Purchaser and retain $50,000,000.00, (y) be entitled to draw upon any outstanding Letter of Credit at anytime thereafter to obtain such funds and the receipt by Sellers of immediately available funds in an account designated by ASARCO in an amount equal to $50,000,000.00 pursuant to such draw (or any draws pursuant to Section 4.2(h)) shall satisfy Purchaser's payment obligation in clause (x) above), and (z) at such time as Purchaser's payment obligation in clause (x) above has been satisfied, Sellers shall: (A) to the extent the Second L/C, the Third L/C, the Fourth L/C or the Fifth L/C has not been drawn upon (and related funds received) pursuant to Section 4.2(h), as promptly as practicable, and in any event within twenty-four hours, mark each page of the Second L/C, the Third L/C, the Fourth L/C and the Fifth L/C, as applicable, "cancelled," send a copy of same by facsimile to the Purchaser and on the same day (if such day is a Business Day, otherwise on the next Business Day) return by prepaid overnight courier the original(s) to the issuer(s) thereof, and (B) as promptly as practicable, and in any event within one Business Day, return to Purchaser any cash drawn (and received) pursuant to Section 4.2(h) in excess of $50,000,000.00; *provided, that* if (and only if) a Release Condition occurs following the termination of this Agreement, ASARCO shall either (1) as promptly as practicable, and in any event within twenty-four hours, following the occurrence of such Release Condition, mark each page of the First L/C "cancelled," send a copy of same by facsimile to the Purchaser and return by prepaid overnight courier the original to the issuer thereof, or (2) if Sellers have already drawn on the First L/C, including pursuant to Section 4.2(h) (and received $50,000,000.00 in respect of such draw), Sellers shall, as promptly as practicable, and in any event within one Business Day, following the occurrence of such Release Condition, deliver the amount of $50,000,000.00 to Purchaser and such payment shall be made by wire transfer of immediately available funds to an account designated by Purchaser."

14. Section 5.2(p) of the PSA is hereby amended and restated in its entirety to read as follows:

"(p) a receipt for each of the Closing Payment, the Class 3 Monetization Payment and the Class 4 Copper Note Payment."

15. Section 5.3 of the PSA is hereby amended to add paragraph (o) as follows:

"(o) the Class 4 Copper Note Payment by wire transfer of immediately available funds (to such account or accounts as Sellers shall have specified to Purchaser at least 24 hours prior to the Closing)."

16. Section 8.13(a) of the PSA is hereby amended and restated in its entirety to read as follows:

"(a) If, at any time on or after Closing, any Seller receives any asset or any proceeds in respect of any Purchased Asset, whether or not in payment of any sum due to Purchaser, or otherwise comes into possession of any Purchased Asset or product or proceed thereof, such Seller shall turn over such asset or proceed to Purchaser and pending such turn over, such Seller shall hold such asset or proceed in trust for Purchaser's benefit."

17. Section 16.4(b) of the PSA is hereby amended and restated in its entirety to read as follows:

"(b) Following receipt by ASARCO of the SCC Litigation Trust Interests in exchange for ASARCO's assignment of all of its right, title and interest in and to the Causes of Action to the SCC Litigation Trust, ASARCO will be the sole record and beneficial owner of the Sterlite Purchased SCC Trust Interests and will own and have good and valid title to the Sterlite Purchased SCC Trust Interests free and clear of all Liens (other than Permitted Liens). Subject to the confirmation of the Plan by a final order of the District Court which is not subject to any stay, ASARCO will have full legal right, power and authority to transfer the Sterlite Purchased SCC Trust Interests to Purchaser in accordance with Article XVI of this Agreement. Upon consummation of the transactions contemplated by Article XVI of this Agreement, at the Supplemental Closing Purchaser will acquire good and valid title to the Sterlite Purchased SCC Trust Interests, free and clear of any Lien (other than (i) Permitted Liens and (ii) obligations arising under the SCC Litigation Trust Agreement)."

18. The last sentence of Section 16.6 of the PSA is hereby amended and restated in its entirety to read as follows:

Notwithstanding anything to the contrary in this Agreement, Purchaser's obligation to purchase the Sterlite Purchased SCC Trust Interests at the Supplemental Closing shall not be subject to any contingency or any condition other than as set forth in this Article XVI, including, but not limited to, the occurrence of any event or development adversely affecting the Causes of Action.

19. The PSA is hereby amended to add the Form of Fifth L/C as Exhibit O-5 thereto and attached hereto as Exhibit A.

20. The PSA is hereby amended to add the list of Bankruptcy-Related Assumed Liabilities as Exhibit S thereto and attached hereto as Exhibit B.

21. Except as set forth herein, all other terms of the PSA shall remain unchanged and in full force and effect.

22. This Amendment shall be subject to all of the terms and provisions set forth in the PSA that apply to the PSA (and such terms and provisions shall apply to this Amendment) or to any amendments or modifications thereto, including, without limitation, Article XV thereof.

* * * * *

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their respective officers thereunto duly authorized, as of the date first written above.

SELLERS:

ASARCO LLC, a Delaware limited liability company

By: Joseph F. Lapinsky
Name: Joseph F. Lapinsky
Title: Chief Executive Officer and President

AR SILVER BELL, INC., a Delaware corporation

By: _____
Name:
Title:

COPPER BASIN RAILWAY, INC., a Delaware corporation

By: _____
Name:
Title:

ASARCO SANTA CRUZ, INC., a Delaware corporation

By: _____
Name:
Title:

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their respective officers thereunto duly authorized, as of the date first written above.

SELLERS:

ASARCO LLC, a Delaware limited liability company

By: _____
Name:
Title:

AR SILVER BELL, INC., a Delaware corporation

By: D. E. McAllister
Name: Douglas E. McAllister
Title: President

COPPER BASIN RAILWAY, INC., a Delaware corporation

By: D. E. McAllister
Name: Douglas E. McAllister
Title: Vice President

ASARCO SANTA CRUZ, INC., a Delaware corporation

By: D. E. McAllister
Name: Douglas E. McAllister
Title: President

PURCHASER:

STERLITE (USA), INC.

By: _____
Name: C.V. KRISHNAN
Title: PRESIDENT

GUARANTOR:

STERLITE INDUSTRIES (INDIA) LTD.

By: _____
Name: C.V. KRISHNAN
Title: MANAGING DIRECTOR - POWER