

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

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

FIRST AMENDED CHAPTER 11 PLAN FILED BY HARBINGER  
CAPITAL PARTNERS MASTER FUND I, LTD.

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**Exhibits to the Plan**

<b><u>Exhibit Designation</u></b>	<b><u>Exhibit Title</u></b>
Plan Exhibit 1	List of ASARCO Protected Non-Debtor Affiliates
Plan Exhibit 2	List of Executory Contracts and Unexpired Leases to be Assumed Under the Plan
Plan Exhibit 3	Form of Plan Administration Agreement
Plan Exhibit 4	Form of Liquidation Trust Agreement
Plan Exhibit 5	Form of SCC Litigation Trust Agreement
Plan Exhibit 6	Form of Asbestos Claims Liquidation Trust Agreement
Plan Exhibit 7	List of Asbestos Insurance Settlement Agreements
Plan Exhibit 8	List of Asbestos Insurance Policies
Plan Exhibit 9	Plan Sponsor PSA
Plan Exhibit 10	List of Designated Properties to be Transferred to Environmental Custodial Trusts and Schedule of Environmental Custodial Trust Funding
Plan Exhibit 11	Lists of Previously Settled Environmental Claims and Miscellaneous Federal and State Environmental Claims
Plan Exhibit 12	List of Sites Referred to in Section 11.11(a) of the Plan
Plan Exhibit 13	Form of Organizational Documents for the Reorganized Debtors
Plan Exhibit 14	Schedules of Litigation Claims
Plan Exhibit 15	Mission Mine Settlement Agreement
Plan Exhibit 16	List of Class 2 Secured Claims
Plan Exhibit 17	SPT Settlement Agreement

Harbinger Capital Partners Master Fund I, Ltd. (the “Harbinger Master Fund”) proposes the following joint plan of reorganization pursuant to section 1121(a) of the Bankruptcy Code.

## ARTICLE I

### DEFINITIONS, RULES OF INTERPRETATION, AND COMPUTATION OF TIME

1.1. Defined Terms. Capitalized terms used in this Plan have the meanings set forth in the Glossary, which is attached hereto as Annex 1. Capitalized terms used in this Plan which are not defined in the Glossary but which are defined in the Bankruptcy Code shall have the respective meaning specified in the Bankruptcy Code.

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

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

## ARTICLE II

### TREATMENT OF ADMINISTRATIVE CLAIMS, PRIORITY TAX CLAIMS AND UNKNOWN ASBESTOS CLAIMS

2.1. Administrative Claims. Each holder of an Allowed Administrative Claim (except any holder that agrees to other, lesser treatment) shall receive the Allowed Amount of such holder’s Administrative Claim, in Cash, in full satisfaction, settlement, release, extinguishment, and discharge of such Claim, on the Effective Date; provided, however, that (a) Allowed Administrative Claims representing (1) post-petition liabilities incurred in the ordinary course of business by a Debtor or (2) post-petition contractual liabilities arising under loans or advances to any Debtor, whether or not incurred in the ordinary course of business, shall be paid in accordance with the terms and conditions of the particular transactions relating to such liabilities and any agreements relating thereto; and (b) the Allowed Administrative Claims of Professional Persons shall be paid pursuant to order of the Bankruptcy Court; and further provided that all

Assumed Liabilities shall be paid by the Plan Sponsor. Chase shall receive the Allowed Amount of any Administrative Claim under the Credit Facility in Cash, on the Effective Date, in full satisfaction, settlement, release, extinguishment, and discharge of such Claim. The Asbestos Claims Liquidation Trust shall have an Allowed Administrative Claim for its administrative expenses in the amount of \$27.5 million. Any Administrative Claims of the United States or any individual state under civil Environmental Laws relating to the Designated Properties shall be addressed through the Environmental Custodial Trust Settlement Agreements, the Environmental Custodial Trust Funding, and the Environmental Custodial Trust Administration Funding to be paid by ASARCO to the Environmental Custodial Trusts.

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

2.3. Unknown Asbestos Claims. Subject to Article 11.3, Unknown Asbestos Claims shall be included in the treatment accorded Class 4 Unsecured Asbestos Personal Injury Claims, as set forth in Articles 4.1 and 4.2(d) of this Plan, and shall be determined, processed, liquidated, and paid pursuant to the terms and conditions of the Asbestos Claims Liquidation Trust Agreement.

### ARTICLE III

#### CLASSIFICATION OF CLAIMS AND INTERESTS

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

3.2. Classes of Claims and Interests. The following constitute the Classes of Claims against the Debtors and Interests addressed by this Plan.

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

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

(c) Class 3 — General Unsecured Claims. Class 3 consists of all General Unsecured Claims against the Debtors.

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



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

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

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

(h) Class 8 — Interests in ASARCO. Class 8 consists of all Interests in ASARCO.

(i) Class 9 — Interests in the Asbestos Subsidiary Debtors. Class 9 consists of all Interests in the Asbestos Subsidiary Debtors.

(j) Class 10 — Interests in the Other Subsidiary Debtors. Class 10 consists of all Interests in the Other Subsidiary Debtors.

#### ARTICLE IV

##### TREATMENT OF CLAIMS AND INTERESTS

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

4.1. Unclassified Claims. Each holder of an Allowed Administrative Claim, an Allowed Priority Tax Claim, or an Unknown Asbestos Claim shall receive the treatment set forth respectively for each such category in Article II of this Plan.

4.2. Classes of Claims and Interests.

(a) *Class 1— Priority Claims.*

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

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

(b) *Class 2 — Secured Claims.*

Each holder of an Allowed Secured Claim shall, at the election of the Proponent, either (1) receive the Allowed Amount of such holder's Secured Claim, together with post-petition interest to the extent and at the rate provided in section 506(b) of the Bankruptcy Code, in Cash, on the later of the Effective Date or the date or dates that such Secured Claim becomes

due in the ordinary course, in full satisfaction, settlement, release, extinguishment, and discharge of such Claim and any related Lien, or (2) be Reinstated on the Effective Date; provided, however, that any Allowed Secured Claim that is secured by a Lien on any Sold Assets shall receive the Allowed Amount of such holder's Claim with applicable post-petition interest on the applicable date(s) and shall not be Reinstated.

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

Each Secured Claim shall be deemed to be in a separate sub-Class of Class 2 for all purposes hereunder, and treated as a separate sub-Class for voting and solicitation purposes. Exhibit 16 attached hereto lists the Class 2 Secured Claims (as such list may be amended, supplemented, or modified up to and including the Confirmation Date).

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

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

Each holder of an Allowed General Unsecured Claim (except any holder that agrees to other, lesser treatment) shall receive such holder's Pro Rata share of the Plan Consideration based on the total aggregate amount of Allowed Claims in Classes 3 and 4 on or after the Effective Date, in full satisfaction, settlement, release, extinguishment, and discharge of such Claim.

Notwithstanding the foregoing, all distributions to holders of Allowed Bondholders' Claims shall be subject to, and the allocations made herein shall be reduced on a pro rata basis by, the Charging Lien to the extent of any unpaid Indenture Trustee Fee Claims that are not paid pursuant to Article 15.13 of this Plan.

With respect to (1) the Allowed General Unsecured Claims of Governmental Units covered by the (A) the Miscellaneous Federal and State Environmental Settlement Agreement, (B) the Residual Environmental Settlement Agreement, (C) the Arizona NRD Settlement Agreement, (D) the Hayden Past Cost Settlement Agreement, and (E) the Mission Mine Settlement Agreement; and (2) all Previously Settled Environmental Claims, the satisfaction, settlement, release, extinguishment, and discharge of such Claims is as provided in such agreements.

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

(d) *Class 4 — Unsecured Asbestos Personal Injury Claims.*

On the Effective Date, liability of all of the Debtors for all Unsecured Asbestos Personal Injury Claims and Unknown Asbestos Claims shall be assumed by, and, as set forth in Article 11.3, channeled to, the Asbestos Claims Liquidation Trust without further act or deed for the reasons stated herein, and shall be satisfied as set forth herein.

All Unsecured Asbestos Personal Injury Claims and Unknown Asbestos Claims shall be processed, liquidated, and paid by the Asbestos Claims Liquidation Trust, acting under the control and direction of the Asbestos Claims Liquidation Trustee, pursuant to the terms and provisions of the Asbestos Claims Liquidation Trust Agreement. The Asbestos Claims Liquidation Trust is described in Article VII below. The sole recourse of the holder of an (i) Unsecured Asbestos Personal Injury Claim or, (ii) in the first instance as set forth below in Article 11.3, Unknown Asbestos Claims, shall be to the Asbestos Claims Liquidation Trust, as operated by the Asbestos Claims Liquidation Trustees (including Reorganized ASARCO), and such holder shall have no rights whatsoever at any time (other than, in certain instances as set forth in Article 11.3, holders of Unknown Asbestos Claims) to assert such holder's Claim against any Debtor, Reorganized Debtor, or ASARCO Protected Party. Without limiting the foregoing, on the Effective Date, all Persons shall be permanently and forever stayed, restrained, and enjoined from taking any enjoined actions against any ASARCO Protected Party (or the property or interest in property of any ASARCO Protected Party) for the purpose of, directly or indirectly, collecting, recovering, or receiving payment of, on, or with respect to any Unsecured Asbestos Personal Injury Claim and/or Unknown Asbestos Claims.

The Asbestos Claims Liquidation Trust shall be funded with (a) 100 percent of the interests in Reorganized Covington; (b) the Class 4 Pro Rata Share of the Plan Consideration and (c) the Asbestos Claims Liquidation Trust Administrative Claim.

The Proponent reserves the right prior to the Confirmation Date to add such additional provisions in the Asbestos Claims Liquidation Trust or this Plan as may be advisable to preserve the Debtors' claims under any Asbestos Insurance Policy or under the Asbestos In-Place Insurance Coverage.

This Class is impaired. Holders of Unsecured Asbestos Personal Injury Claims in Class 4 are entitled to vote to accept or reject this Plan.

(e) *Class 5 — Convenience Claims.*

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

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

(f) *Class 6 — Late-Filed Claims.*

The holders of Late-Filed Claims shall receive interests in the Liquidation Trust and the SCC Litigation Trust to be applied in accordance with the Trust Interest Priorities.

This Class is impaired. Class 6 is deemed to have rejected this Plan and, accordingly, is not entitled to vote on this Plan.

(g) *Class 7 — Subordinated Claims.*

The holders of Subordinated Claims shall receive interests in the Liquidation Trust and the SCC Litigation Trust to be applied in accordance with the Trust Interest Priorities.

This Class is impaired. Class 7 is deemed to have rejected this Plan and, accordingly, is not entitled to vote on this Plan.

(h) *Class 8 — Interests in ASARCO.*

The holders of Interests in ASARCO shall receive the residual interests in the Asbestos Claims Liquidation Trust.

This Class is impaired. Class 8 is deemed to have rejected this Plan and, accordingly, is not entitled to vote on this Plan.

(i) *Class 9 — Interests in the Asbestos Subsidiary Debtors.*

The holders of Interests in the Asbestos Subsidiary Debtors shall not receive or retain any property under this Plan on account of such Interests.

This Class is impaired. Class 9 is deemed to have rejected this Plan and, accordingly, is not entitled to vote on this Plan.

(j) *Class 10 — Interests in the Other Subsidiary Debtors.*

The holders of Interests in the Other Subsidiary Debtors shall not receive or retain any property under this Plan on account of such Interests.

This Class is impaired. Class 10 is deemed to have rejected this Plan and, accordingly, is not entitled to vote on this Plan.

4.3. Subordinated Indemnification of ASARCO Protected Parties. In connection with the purchase by the Plan Sponsor of the Sold Assets, the Asbestos Claims Liquidation Trust shall indemnify and hold the ASARCO Protected Parties and their present, future and former partners, principals, directors, employees and agents harmless from any liability, damages (including without limitation, direct, incidental and consequential) fees, expenses and costs (including

defense costs) associated with (i) any claim arising from or relating to the Plan Sponsor's purchase of the Sold Assets pursuant to the Plan Sponsor PSA or (ii) any claim related to any Unsecured Asbestos Personal Injury Claim or Unknown Asbestos Claim, provided, however, that the obligations of the Asbestos Claims Liquidation Trust with respect to such indemnity shall be subordinate in all respects to the payment in full of all Class 4 Claims.

4.4. Intercompany Claims. Intercompany Claims shall be treated as follows:

(a) Derivative Asbestos Claims, which, if not settled, are to be estimated by the Bankruptcy Court prior to Confirmation, shall be treated as Class 4 Claims under this Plan;

(b) any Claims or causes of action asserted in any of the Litigation Claims shall be preserved and resolved by Reorganized ASARCO post-Confirmation, and the amount, if any, that the Bankruptcy Court determines constitutes property of the Estates of the Asbestos Subsidiary Debtors shall be turned over to the Asbestos Claims Liquidation Trust, net of any costs of recovery;

(c) any Allowed Claims asserted by the Asbestos Subsidiary Debtors against ASARCO (excluding Derivative Asbestos Claims and Administrative Expenses) shall be treated as Class 3 Claims under this Plan;

(d) ASARCO's Administrative Claims under the Secured Intercompany DIP Credit Facility shall be treated as follows: to the extent the distribution on account of such Class 1 Priority Claims fails to satisfy such Claims in full, ASARCO shall be permitted to withhold distributions on account of any Class 3 Claims of the Asbestos Subsidiary Debtors and apply such distributions to the indebtedness until all amounts owed ASARCO under the Secured Intercompany DIP Credit Facility are paid in full. If any amounts are still outstanding after such application, ASARCO shall be permitted to withhold distributions on account of any Class 4 Claims of the Asbestos Subsidiary Debtors and apply such distributions to the indebtedness until all amounts owed to ASARCO under the Secured Intercompany DIP Credit Facility are paid in full; and

(e) all other Intercompany Claims shall be released and extinguished pursuant to this Plan, and no distributions shall be made under this Plan with respect to such Claims. Holders of such Claims shall not be entitled to vote on this Plan.

## ARTICLE V

### VOTING RIGHTS

5.1. Each Impaired Class Entitled to Vote Separately. The holders of Claims in each impaired Class of Claims in Classes 2 (unless certain sub-Classes of the Class 2 Secured Claims are Reinstated, in which case they shall be unimpaired and not entitled to vote), 3, and 4 shall be entitled to vote separately to accept or reject this Plan. Any Class of Claims or Interests that does not have a holder of an Allowed Claim or Interest or a Claim or Interest temporarily Allowed by the Bankruptcy Court as of the date of the Confirmation Hearing shall be deemed eliminated from this Plan for purposes of voting to accept or reject this Plan and for purposes of

determining acceptance or rejection of this Plan pursuant to section 1129(a)(8) of the Bankruptcy Code.

5.2. Presumed Acceptance of Plan. Classes 1 and 5 are unimpaired. Any sub-Class of Class 2 Secured Claims that, at the election of the Proponent, is Reinstated, shall also be unimpaired. Pursuant to section 1126(f) of the Bankruptcy Code, the holders of Claims in such Classes and sub-Classes are conclusively presumed to have voted to accept this Plan.

5.3. Presumed Rejection of Plan. Classes 6 through 10 shall not receive or retain any property under this Plan on account of their Claims or Interests other than contingent interests in the Liquidation Trust and the SCC Litigation Trust subject to the Trust Interest Priorities. Pursuant to section 1126(g) of the Bankruptcy Code, the holders of Claims and Interests in such Classes are deemed to have rejected this Plan.

5.4. Cramdown. If all applicable requirements for Confirmation of this Plan are met as set forth in section 1129(a)(1) through (13) of the Bankruptcy Code except subsection (8) thereof, this Plan shall be treated as a request by the Debtors for Confirmation of this Plan in accordance with section 1129(b) of the Bankruptcy Code, notwithstanding the failure to satisfy the requirements of section 1129(a)(8), on the basis that this Plan is fair and equitable and does not discriminate unfairly with respect to each Class of Claims and Interests that is impaired under, and has not accepted, this Plan.

## ARTICLE VI

### THE LIQUIDATION TRUST AND THE SCC LITIGATION TRUST

#### 6.1. The Liquidation Trust.

##### (a) *Creation of the Liquidation Trust.*

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

##### (b) *Appointment of Trustees.*

The Plan Administrator shall serve as the Liquidation Trustee. Upon approval by the Bankruptcy Court in the Confirmation Order, the Liquidation Trustee shall be appointed. The Liquidation Trustee shall report to the Liquidation Trust Board.

The Liquidation Trustee shall have and perform all of the rights, powers, and duties set forth in the Liquidation Trust Agreement.

The Liquidation Trust Agreement provides for the appointment of a Delaware Trustee and has other appropriate provisions relating to a Delaware Trustee. ASARCO shall designate the Person who shall initially serve as Delaware Trustee of the Liquidation Trust.



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

(c) *Liquidation Trust Board.*

The Liquidation Trust Board shall consist of five members initially selected as follows: (1) one selected by the ASARCO Committee; (2) one selected by the DOJ (in consultation with the states that have Allowed environmental Claims); (3) one selected by the Asbestos Claimants' Committee; (4) one selected by the Plan Administrator; and (5) one selected by the other four members of the Liquidation Trust Board.

Successors to the members of the Liquidation Trust Board shall be selected as follows: (1) in the case of the member originally selected by the ASARCO Committee, by the then-current holders of a majority of the Class A Liquidation Trust Interests; (2) in the case of the member originally selected by the DOJ, by the then-current holders of a majority of the Class B Liquidation Trust Interests; (3) in the case of the member originally selected by the Asbestos Claimants' Committee, by the Asbestos Claims Liquidation Trustees; (4) in the case of the member originally selected by the Plan Administrator, by the Plan Administrator; and (5) in the case of the other member of the Liquidation Trust Board, by the then-current other members of the Liquidation Trust Board; provided, however, that any holder of Liquidation Trust Interests who 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 foregoing selection rights.

Notwithstanding this section (c), the Proponent may, prior to the Effective Date, amend the Liquidation Trust Agreement to do any of the following: increase or decrease the number of members of the Liquidation Trust Board, change the method by which such members are designated, or change the number of such members whose approval should be required for actions or omissions to be taken by the Liquidation Trustee in respect of the Liquidation Trust Claims.

(d) *Purpose of the Liquidation Trust.*

The Liquidation Trust shall be established as a statutory trust for the purpose of holding the assets of the Liquidation Trust and disposing of the same in accordance with this Plan and the Liquidation Trust Agreement and liquidating all assets of the Liquidation Trust for the benefit of the Liquidation Trust Beneficiaries (including through the pursuit of the Liquidation Trust Claims). The primary purpose of the Liquidation Trust is to liquidate its assets, and 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 liquidating purpose of the Liquidation Trust.

(e) *Transfer of the Liquidation Trust Claims to the Liquidation Trustee.*

On the Effective Date (or with respect to clause (4), from time to time thereafter), the Debtors shall transfer, assign, and deliver to the Liquidation Trustee for the benefit of the Liquidation Trust Beneficiaries (1) 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; (2) all of the Debtors' respective rights, title, and interest in the Debtors' Privileges associated with the Liquidation Trust Claims; (3) the Liquidation Trust Expense Fund; and (4) such other assets as deemed appropriate by Reorganized ASARCO in accordance with the Plan. As soon as practicable after the Effective Date, the Debtors shall transfer to the Liquidation Trustee for the benefit of the Liquidation Trust Beneficiaries all documents in the Debtors' possession, custody, or control in connection with the assets transferred to the Liquidation Trust. On and after the Effective Date, the Liquidation Trustee shall be a representative of the Estates under section 1123(b)(3) of the Bankruptcy Code with respect to the assets transferred to the Liquidation Trust, including the Liquidation Trust Claims and the Debtors' Privileges associated therewith. The Liquidation Trustee shall be granted the rights and powers of a debtor-in-possession under section 1107 of the Bankruptcy Code, including, without limitation, the duty to prosecute the Liquidation Trust Claims and distribute the proceeds of such claims, and such other rights and powers as set forth in the Liquidation Trust Agreement.

(f) *The Liquidation Trust.*

The Liquidation Trust Agreement, substantially in the form of Exhibit 4 to this Plan, contains provisions customary to trust agreements utilized in comparable circumstances. The Debtors, the Liquidation Trustee, the Liquidation Trust Beneficiaries, and the Delaware Trustee shall execute any document or other instrument as necessary to cause all of the Debtors' respective rights, title, and interests in and to the assets described in Article 6.1 (e) above to be transferred to the Liquidation Trust.

The Liquidation Trustee shall have full authority (subject, in certain instances, to approval of the Liquidation Trust Board) to take any steps necessary to administer both the Liquidation Trust Claims, including, without limitation, the duty and obligation to liquidate the Liquidation Trust Claims. Both Reorganized ASARCO and the Liquidation Trustee have the right to prosecute objections to any Proof of Claim filed by a defendant in any of the Liquidation Trust Claims, including, without limitation, any objections to Claims under sections 502 and 510 of the Bankruptcy Code.

All costs and expenses associated with the administration of the Liquidation Trust shall be the responsibility of and paid by the Liquidation Trust. Notwithstanding the foregoing, each of Reorganized ASARCO, the Plan Administrator, and the Plan Sponsor shall cooperate with the Liquidation Trustee in pursuing the Liquidation Trust Claims and shall provide reasonable access to their respective personnel and books and records relating to the Liquidation Trust Claims to representatives of the Liquidation Trust for the purpose of enabling the Liquidation Trustee to perform the Liquidation Trustee's tasks under the Liquidation Trust Agreement and this Plan; provided, however, that the Plan Sponsor's cooperation in that regard shall be subject to the terms and conditions of the Transition Services Agreement or the Plan Sponsor PSA, as applicable, and any requests to obtain access to the Plan Sponsor's personnel or books and records shall be made through Reorganized ASARCO or its representatives.



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

In the event that one or more of the Debtors obtains approval, pursuant to Bankruptcy Rule 9019, of a settlement prior to the Effective Date of a cause of action that would have been transferred to the Liquidation Trust on the Effective Date, the proceeds of the settlement shall be distributed to the Liquidation Trust Beneficiaries in the same manner as the Liquidation Trust Interests. In the event of such a settlement, the Debtors that are parties to the settlement shall hold the proceeds in escrow for distribution on the Effective Date.

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

(g) *Tax Matters.*

Solely for tax purposes, the Liquidation Trust Tax Owners shall be 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 and any similar provision of state or local law. For federal income tax purposes, the Proponent intends that all parties (including, without limitation, the Liquidation Trustee, the Liquidation Trust Tax Owners, and the transferors, for tax purposes, of any assets transferred to the Liquidation Trust) shall take the position, subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary, that the transfer of assets to the Liquidation Trust is a deemed transfer to the Liquidation Trust Tax Owners (as of the Initial Distribution Date), followed by a deemed transfer by such Liquidation Trust Tax Owners to the Liquidation Trust, and all income and gain of the Liquidation Trust which is earned after such deemed transfer shall be taxed to the Liquidation Trust Tax Owners on a current basis. In addition, the investment powers of the Liquidation Trustee shall be strictly limited, as provided in the Liquidation Trust Agreement.

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 each Liquidation Trust Tax Owner as described in the preceding paragraph, 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 Liquidation Trust Tax Owner as a result of the allowance or disallowance of a Disputed Claim, shall be determined by the Liquidation Trustee, and all parties (including, without limitation, the Liquidation Trustee, the Liquidation Trust Tax Owners, and the transferors, for tax purposes, of any assets transferred to the Liquidation Trust) shall utilize such fair market value determined by the Liquidation Trustee for all federal income tax purposes.

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, and all distributions made by the

Liquidation Trustee shall be subject to any such withholding and reporting requirements. 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 this Plan and the Plan Documents.

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

See Section 22 of the Disclosure Statement, "Certain Tax Consequences of Harbinger's Plan," for further information.

(h) *Liquidation Trust Interests.*

(1) Issuance of Liquidation Trust Interests.

On the Initial Distribution Date, Liquidation Trust Interests shall be issued to (i) the Asbestos Claims Liquidation Trust (for the benefit of Unsecured Asbestos Personal Injury Claimants and Unknown Asbestos Claims), (ii) the Non-Environmental Unsecured Claimants, and (iii) the Governmental Environmental Claimants, in each case, Pro Rata based on the respective Allowed Amounts of Claims held by each such Claimant as a percentage of all Allowed Amounts of Claims held by all Non- Environmental Unsecured Claimants and Governmental Environmental Claimants and, in the case of the issuance of Liquidation Trust Interests to the Asbestos Claims Liquidation Trust, based on the Class 4 Claims Estimate.

On the Initial Distribution Date, residual Liquidation Trust Interests shall also be issued to the holders of claims in Class 6 and Class 7 on a Pro Rata basis for distributions to be made in accordance with the Trust Priorities.

Liquidation Trust Interests will be divided into four classes: Class A Liquidation Trust Interests, Class B Liquidation Trust Interests, Class C Liquidation Trust Interests and Class D Liquidation Trust Interests. All Liquidation Trust Interests issued to Non-Environmental Unsecured Claimants shall be designated "Class A Liquidation Trust Interests," all Liquidation Trust Interests issued to Governmental Environmental Claimants shall be designated "Class B Liquidation Trust Interests," all Liquidation Trust Interests issued to the Asbestos Claims Liquidation Trust for the benefit of Unsecured Asbestos Personal Injury Claimants shall be designated "Class C Liquidation Trust Interests" and all residual Liquidation Trust Interests issued to holders of claims in Class 6 and 7 shall be designated "Class D Liquidation Trust Interests." The designation of Liquidation Trust Interests as Class A, Class B, Class C and Class D is solely for purposes of appointing members of the Liquidation Trust Board as described above. Distributions of Liquidation Trust Proceeds or other property of the Liquidation Trust shall be made to holders of Liquidation Trust Interests on a pro rata basis, as more fully described below. To the extent that the holder of a Liquidation Trust Interest has received distributions from the Liquidation Trust in an amount equal to the full amount of such holder's

Claim (including postpetition interest), such holder's Liquidation Trust Interest shall be cancelled.

Promptly following notice from the Plan Administrator that the Disputed Claim of a Non- Environmental Unsecured Claimant or Governmental Environmental Claimant has become an Allowed Claim, such Claimant shall be issued Liquidation Trust Interests in such amount that upon issuance the ratio of the number of such Liquidation Trust Interests so issued to the total number of Liquidation Trust Interests, including such Liquidation Trust Interests, is equal to the ratio of such Claimant's Allowed Amount with respect to such Disputed Claim to all Allowed Amounts of Claims held by all Class A, Class B and Class C Liquidation Trust Beneficiaries (immediately prior to their receipt of their Liquidation Trust Interests), including such Claimant, with respect to which such Liquidation Trust Beneficiaries received Liquidation Trust Interests. For purposes of the calculation contained in the preceding sentence, if a Liquidation Trust Beneficiary has transferred his Liquidation Trust Interests to a third party, the Allowed Claim held by the initial holder of such interests shall be used (and if less than all of such Liquidation Trust Beneficiary's Liquidation Trust Interests have been so transferred, the portion of the Allowed Claim corresponding to the portion of Liquidation Trust Interests so transferred shall be used). To the extent that the Allowed Claims in Class 4 and Unknown Asbestos Claims actually allowed against the Asbestos Claims Liquidation Trust exceed the Class 4 Claims Estimate, additional Class C Liquidation Trust Interests shall be issued to the Asbestos Claims Liquidation Trust such that the Asbestos Claims Liquidation Trust will have received a pro rata share based on the actual amounts of such Allowed Claims. In addition, to the extent that the Allowed Claims in Class 4 and Unknown Asbestos Claims allowed under the Asbestos Claims Liquidation Trust Agreement exceed the Class 4 Claims Estimate after the Liquidation Trust has begun making cash distributions on account of such interests, those Allowed Claims in excess of the Class 4 Claims Estimate shall be entitled to receive additional distributions from the Liquidation Trust (to be paid through the Asbestos Claims Liquidation Trust) until the holder of such claim receives payment on account of such claim proportionate in value to that received by all other Allowed Claim holders of Liquidation Trust Interests. For the avoidance of doubt, it is the intent of the Proponent that the holders of Claims in Class 4 and the holders of Unknown Asbestos Claims should receive a distribution on account of such claims that is generally proportionate to that received by the holders of Class 3 Claims.

Promptly filing notice from the Plan Administrator that the Disputed Claim of a Class 6 or Class 7 Claimant becomes an Allowed Claim, such Claimant shall be issued residual Liquidation Trust Interests in accordance with the principles set forth in the preceding paragraph.

The Liquidation Trust Beneficiaries may convey, assign, sell, or otherwise transfer a Liquidation Trust Interest subject to the limitations contained in the Liquidation Trust Agreement; provided, that the Debtors (prior to the Effective Date) or the Liquidation Trustee (after the Effective Date) may at any time cause the Liquidation Trust Interests to be non-transferable to achieve desired treatment under tax or securities laws.

(2) Interests Beneficial Only.

The ownership of a Liquidation Trust Interest shall not entitle any Liquidation Trust Beneficiary to (A) any title in or to the assets of the Liquidation Trust as such (which title

shall be vested in the Liquidation Trustee) or to any right to call for a partition or division of the assets of the Liquidation Trust or to require an accounting; or (B) any voting rights with respect to the administration of the Liquidation Trust (other than the right to appoint members of the Liquidation Trust Board) or the actions of the Liquidation Trustee in connection therewith.

(3) Maintenance of Register.

The Liquidation Trustee shall appoint a Liquidation Trust Registrar, which may be the Liquidation Trustee, for the purpose of recording ownership of the Liquidation Trust Interests. 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. The Liquidation Trust Registrar, if other than the Liquidation Trustee, may be such other institution acceptable to the Liquidation Trustee and shall be entitled to receive reasonable compensation from the Liquidation Trust as an expense of the Liquidation Trust. The Indenture Trustees shall be the holders of the Class A Liquidation Trust Interests with respect to the Bonds for which they serve as Indenture Trustee, and as such shall be listed in the Liquidation Trust Register as the Liquidation Trust Beneficiaries on account of the Bondholders' Claims.

(4) Evidence of Liquidation Trust Interests.

Ownership of a Liquidation Trust Interest shall not be evidenced by any certificate, security, or receipt or in any form or manner, other than by book entry in the Liquidation Trust Register.

(5) Securities Laws Matters.

To the extent the Liquidation Trust Interests are deemed to be "securities," the issuance of Liquidation Trust Interests under this 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 SEC. Notwithstanding the foregoing procedure, nothing in this Plan shall be deemed to preclude the Liquidation Trustee from amending the Liquidation Trust Agreement 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 Proponent anticipates that the Liquidation Trust may, under certain circumstances, be required to register under the Exchange Act, and accordingly be required to file with the SEC and send to the Liquidation Trust Beneficiaries certain periodic reports and other information pursuant to the Exchange Act, including Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, and Current Reports on Form 8-K. The cost of the

preparation, filing, and delivery of any such reports would be an expense of the Liquidation Trust.

Exemptions may be sought from the SEC from all or some of the reporting requirements that may be applicable to the Liquidation Trust pursuant to the Exchange Act, if it is determined that compliance with such requirements would be burdensome on the Liquidation Trust. The Proponent has not yet made any determinations regarding whether any such exemptions will be sought, and the SEC has not yet made any determinations regarding such matters. There is no assurance that any such exemptions, if deemed necessary and applied for, will be granted.

The Liquidation Trust Interests may be freely transferred by most recipients following initial issuance, subject to certain limitations set forth in the Liquidation Trust Agreement, unless the holder is an “underwriter” with respect to such Liquidation Trust Interests, as that term is defined in section 1145(b) of the Bankruptcy Code. Section 1145(b) of the Bankruptcy Code defines “underwriter” for purposes of the Securities Act as one who (A) purchases a claim or interest with a view to distribution of any security to be received in exchange for the claim, (B) offers to sell securities issued under a plan for the holders of such securities, (C) offers to buy securities issued under a plan from persons receiving such securities, if the offer to buy is made with a view to distribution of such securities, or (D) is a controlling person of the issuer of the securities. Entities who believe they may be “underwriters” under the definition contained in section 1145 of the Bankruptcy Code summarized above are advised to consult their own counsel with respect to the availability of the resale exemption provided by section 1145.

(i) Distributions of Proceeds and Other Property.

The Liquidation Trustee shall apply all Liquidation Trust Proceeds, any proceeds therefrom, and any other Cash of the Liquidation Trust (other than the Liquidation Trust Expense Fund) in the following order:

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

(2) second, to pay the Plan Administrator such percentage of all remaining amounts as the Plan Administrator designates from time to time to be

delivered for the purposes of satisfying the Disputed Claims Reserve;

(3) third, to pay the Liquidation Trust Beneficiaries pro rata based on their Liquidation Trust Interest holdings in accordance with the Trust Interest Priorities and as set forth herein. Such proceeds shall first be paid to holders of Allowed Amounts of Claims in Class 3 and Class 4, on a Pro Rata basis until such claims are paid in full. Proceeds paid on account of Allowed Amounts of Class 4 Claims shall be paid to the Asbestos Claims Liquidation Trust and thereafter distributed in accordance with the Asbestos Claims Liquidation Trust Documents. After all Class 3 Disputed Claims are resolved and if all holders of Class A, Class B and Class C Liquidation Trust Interests have received the full amount of their Allowed Claims, then the Liquidation Trustee shall pay such remaining proceeds in accordance with the Trust Interest Priorities as follows: (a) first to the holders of Allowed Class 6 Claims, on a Pro Rata basis, until such claims are paid in full, (b) second on account of post-petition interest on any Allowed Amounts of Class 3, Class 4 (such Class 4 amounts being distributed to the Asbestos Claims Liquidation Trust) and Class 6 Claims, (c) third on account of Class 7 Claims, on a pro rata basis, until such claims are paid in full and (iv) on account of post-petition interest on any Allowed Amounts of Class 7 Claims; and

(4) fourth, if (a) after all Class 6 and Class 7 Disputed Claims are resolved and (b) all amounts set forth above have been paid in full, then all such remaining proceeds shall be paid to the Asbestos Claims Liquidation Trust to be used in accordance with the Asbestos Claims Liquidation Trust Documents.

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 Asbestos Claims Liquidation Trust to be used in accordance with the Asbestos Claims Liquidation Trust Documents.

(j) *Termination of the Liquidation Trust.*

The Liquidation Trust shall terminate on the earlier of: (1) 30 days after the distribution of all of the assets of the Liquidation Trust in accordance with the terms of the Liquidation Trust Agreement and this Plan; or (2) the fifth (5<sup>th</sup>) anniversary of the Effective Date; provided, however, that, on or prior to a date less than six months (but not less than three months) prior to such termination, the Bankruptcy Court, upon motion by a party in interest, may extend the term of the 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.

The Liquidation Trustee shall not unduly prolong the duration of the Liquidation Trust and shall at all times endeavor to resolve, settle, or otherwise dispose of all of the



Liquidation Trust Claims and to effect the distribution of the assets of the Liquidation Trust to the holders of the Liquidation Trust Interests in accordance with the terms of this Plan as soon as practicable.

## 6.2. The SCC Litigation Trust.

### (a) *Creation of the SCC Litigation Trust.*

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

Notwithstanding the foregoing, the Debtors reserve the right, subject to the consent of the Proponent, to seek to auction interests in the SCC Litigation Trust Claims in anticipation of Confirmation. If the Debtors determine that pursuit of such an auction is in the best interest of their Estates, and have obtained the required consent of the Proponent, they will file an appropriate motion with the Bankruptcy Court to approve the auction procedures. If, as a result of any such auction, the Debtors' interests in the SCC Litigation Trust Claims are to be transferred in their entirety, the auction proceeds shall be distributed as Plan Consideration and the SCC Litigation Trust will not be created (and no SCC Litigation Trust Interests will be distributed under this Plan). If the Debtors decide, as a result of the auction and subject to the consent of the Proponent, to transfer only a portion of their interests in the SCC Litigation Trust Claims, the SCC Litigation Trust will be created and the remaining SCC Litigation Trust Interests shall be issued in accordance herewith. If the Debtors decide, subject to the consent of the Proponent, that no interests in the SCC Litigation Trust shall be sold at the auction or otherwise, then the SCC Litigation Trust will not be created and the SCC Litigation Trust Claims will be contributed to the Liquidation Trust.

### (b) *Appointment of Trustees.*

The Plan Administrator shall serve as the SCC Litigation Trustee. Upon approval by the Bankruptcy Court in the Confirmation Order, the SCC Litigation Trustee shall be appointed. The SCC Litigation Trustee shall report to the SCC Litigation Trust Board.

The SCC Litigation Trustee shall have and perform all of the rights, powers, and duties set forth in the SCC Litigation Trust Agreement.

The SCC Litigation Trust Agreement provides for the appointment of a Delaware Trustee and has other appropriate provisions relating to a Delaware Trustee. ASARCO shall designate the Person who will initially serve as Delaware Trustee of the SCC Litigation Trust.

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

(c) *SCC Litigation Trust Board.*

The SCC Litigation Trust Board shall consist of the same five members as the Liquidation Trust Board.

Successors to the members of the SCC Litigation Trust Board shall be selected as follows: (1) in the case of the member originally selected by the ASARCO Committee, by the then-current holders of a majority of the Class A SCC Litigation Trust Interests; (2) in the case of the member originally selected by the DOJ, by the then-current holders of a majority of the Class B SCC Litigation Trust Interests; (3) in the case of the member originally selected by the Asbestos Claimants' Committee, by the Asbestos Claims Liquidation Trustees; (4) in the case of the member originally selected by the Plan Administrator, by the Plan Administrator; and (5) in the case of the other member of the SCC Litigation Trust Board, by the then-current other members of the SCC Litigation Trust Board; provided, however, that any holder of Class A SCC Litigation Trust Interests, Class B SCC Litigation Trust Interests, or Class C SCC Litigation Trust Interests 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, shall not be entitled to the foregoing selection rights.

Notwithstanding this section (c), the Proponent may, prior to the Effective Date, amend the SCC Litigation Trust Agreement to do any of the following: increase or decrease the number of members of the SCC Litigation Trust Board, change the method by which such members are designated, or change the number of such members whose approval should be required for actions or omissions to be taken by the SCC Litigation Trustee in respect of the SCC Litigation Trust Claims.

(d) *Purpose of the SCC Litigation Trust.*

The SCC Litigation Trust shall be established as a statutory trust for the purpose of pursuing the SCC Litigation Trust Claims, liquidating all assets of the SCC Litigation Trust for the benefit of the SCC Litigation Trust Beneficiaries, receiving all SCC Litigation Trust Claim recoveries, and distributing the resulting SCC Litigation Trust Proceeds and other Cash of the SCC Litigation Trust to the SCC Litigation Trust Beneficiaries after payment of all expenses of the SCC Litigation Trust. The primary purpose of the SCC Litigation Trust is to liquidate its assets, and the SCC Litigation Trust shall have no objective or authority to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the SCC Litigation Trust.

(e) *Transfer of SCC Litigation Trust Claims to the SCC Litigation Trustee.*

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



Fund. As soon as practicable after the Effective Date, the Debtors shall transfer to the SCC Litigation Trustee for the benefit of the SCC Litigation Trust Beneficiaries all documents (or copies thereof) in the Debtors' possession, custody, or control in connection with the SCC Litigation Trust Claims. On and after the Effective Date, the SCC Litigation Trustee shall be a representative of the Estates under section 1123(b)(3) of the Bankruptcy Code with respect to the SCC Litigation Trust Claims and the Debtors' Privileges associated therewith. The SCC Litigation Trustee shall be granted the rights and powers of a debtor-in-possession under section 1107 of the Bankruptcy Code, including, without limitation, the duty to prosecute the SCC Litigation Trust Claims and distribute the proceeds of such claims, and such other rights and powers as set forth in the SCC Litigation Trust Agreement.

(f) *The SCC Litigation Trust.*

The SCC Litigation Trust Agreement, substantially in the form of Exhibit 5 to this Plan, contains provisions customary to trust agreements utilized in comparable circumstances. The Debtors, the SCC Litigation Trustee, the SCC Litigation Trust Beneficiaries, and the Delaware Trustee shall execute any document or other instrument as necessary to cause all of the Debtors' respective rights, title, and interests in and to the SCC Litigation Trust Claims to be transferred to the SCC Litigation Trust.

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

All costs and expenses associated with the administration of the SCC Litigation Trust shall be the responsibility of and paid by the SCC Litigation Trust. Notwithstanding the foregoing, each of Reorganized ASARCO, the Plan Administrator, and the Plan Sponsor shall cooperate with the SCC Litigation Trustee in pursuing the SCC Litigation Trust Claims and shall provide reasonable access to their respective personnel and books and records relating to the SCC Litigation Trust Claims to representatives of the SCC Litigation Trust for the purpose of enabling the SCC Litigation Trustee to perform the SCC Litigation Trustee's tasks under the SCC Litigation Trust Agreement and this Plan; provided, however, that the Plan Sponsor's cooperation in that regard shall be subject to the terms and conditions of the Transition Services Agreement or the Plan Sponsor PSA, as applicable, and any requests to obtain access to the Plan Sponsor's personnel or books and records shall be made through Reorganized ASARCO or its representatives.

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

In the event that ASARCO obtains approval, pursuant to Bankruptcy Rule 9019, of a settlement of any of the SCC Litigation Trust Claims prior to the Effective Date, the

proceeds of the settlement shall be distributed to the SCC Litigation Trust Beneficiaries in the same manner as the SCC Litigation Trust Interests. In the event of such a settlement ASARCO shall hold the proceeds in escrow for distribution on the Effective Date.

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

(g) *Tax Matters.*

Solely for tax purposes, the SCC Litigation Trust Tax Owners shall be 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 and any similar provision of state or local law. For federal income tax purposes, the Proponent intends that all parties (including, without limitation, the SCC Litigation Trustee, the SCC Litigation Trust Tax Owners, and the transferors, for tax purposes, of any assets transferred to the SCC Litigation Trust) shall take the position, subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary, that the transfer of assets to the SCC Litigation Trust is a deemed transfer to the SCC Litigation Trust Tax Owners (as of the Initial Distribution Date), followed by a deemed transfer by such SCC Litigation Trust Tax Owners to the SCC Litigation Trust, and all income and gain of the SCC Litigation Trust which is earned after such deemed transfer shall be taxed to the SCC Litigation Trust Tax Owners on a current basis. In addition, the investment powers of the SCC Litigation Trustee shall be strictly limited, as provided in the SCC Litigation Trust Agreement.

The fair market value of the portion of the SCC Litigation Trust assets that is treated for federal income tax purposes as having been transferred to each SCC Litigation Trust Tax Owner as described in the preceding paragraph, and the fair market value of the portion of the SCC Litigation Trust assets that is treated for federal income tax purposes as having been transferred to any SCC Litigation Trust Tax Owner as a result the allowance or disallowance of a Disputed Claim, shall be determined by the SCC Litigation Trustee, and all parties (including, without limitation, the SCC Litigation Trustee, the SCC Litigation Trust Tax Owners, and the transferors, for tax purposes, of any assets transferred to the SCC Litigation Trust) shall utilize such fair market value determined by the SCC Litigation Trustee for all federal income tax purposes.

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

Any items of income, deduction, credit, or loss of the SCC Litigation Trust shall be allocated by the SCC Litigation Trustee for federal income tax purposes among current or former SCC Litigation Trust Tax Owners, such allocation shall be binding on all parties for all

federal, state, local, and foreign income tax purposes, and such current or former SCC Litigation Trust Tax Owners shall be responsible for the payment of any federal, state, local, and foreign income tax due on the income and gain so allocated to them.

See Section 22 of the Disclosure Statement, "Certain Tax Consequences of Harbinger's Plan," for further information.

(h) *SCC Litigation Trust Interests.*

(1) Issuance of SCC Litigation Trust Interests.

On the Initial Distribution Date, SCC Litigation Trust Interests shall be issued to (i) the SCC Purchasers, (ii) the Asbestos Claims Liquidation Trust (for the benefit of Unsecured Asbestos Personal Injury Claimants and Unknown Asbestos Claimants), (iii) the Non-Environmental Unsecured Claimants, (iv) the Governmental Environmental Claimants and (v) holders of claims in Class 6 and Class 7 as follows:

An amount of SCC Litigation Trust Interests equal to the SCC Purchaser Percentage shall be issued to the SCC Purchasers pro rata based on their respective SCC Litigation Purchase Price paid for such interests. All SCC Litigation Trust Interests issued to SCC Purchasers shall be designated "Class D SCC Litigation Trust Interests."

On the Initial Distribution Date, SCC Litigation Trust Interests shall also be issued to (i) the Asbestos Claims Liquidation Trust (for the benefit of Unsecured Asbestos Personal Injury Claimants and Unknown Asbestos Claimants), (ii) the Non-Environmental Unsecured Claimants and (iii) the Governmental Environmental Claimants, in each case, pro rata based on the respective Allowed Amounts of Claims held by each such Claimant as a percentage of all Allowed Amounts of Claims held by all Non-Environmental Unsecured Claimants and Governmental Environmental Claimants and, in the case of the issuance of SCC Litigation Trust Interests to the Asbestos Claims Liquidation Trust, based on the Class 4 Claims Estimate.

On the Initial Distribution Date, residual SCC Litigation Trust Interests shall also be issued to the holders of claims in Class 6 and Class 7 for distributions to be made in accordance with the Trust Interest Priorities.

All SCC Litigation Trust Interests issued to Non-Environmental Unsecured Claimants shall be designated "Class A SCC Litigation Trust Interests," all SCC Litigation Trust Interests issued to the Governmental Environmental Claimants shall be designated "Class B SCC Litigation Trust Interests," all SCC Litigation Trust Interests issued to the Asbestos Claims Liquidation Trust shall be designated "Class C SCC Litigation Trust Interests," and all residual Liquidation Trust Interests issued to holders of claims in Class 6 and 7 shall be designated "Class E SCC Litigation Trust Interests." The designation of Litigation Trust Interests as Class A, Class B, Class C, Class D and Class E is solely for purposes of appointing members of the SCC Litigation Trust Board as described above.

Promptly following notice from the Plan Administrator that the Disputed Claim of a Non-Environmental Unsecured Claimant or Governmental Environmental Claimant has become an Allowed Claim, such Claimant shall be issued SCC Litigation Trust Interests in such

amount that upon issuance the ratio of the number of such SCC Litigation Trust Interests so issued to the total number of SCC Litigation Trust Interests, including such SCC Litigation Trust Interests, is equal to the ratio of such Claimant's Allowed Amount with respect to such Disputed Claim to all Allowed Amounts of Claims held by all Class A, Class B and Class C SCC Litigation Trust Beneficiaries (immediately prior to their receipt of their SCC Litigation Trust Interests), including such Claimant, with respect to which such SCC Litigation Trust Beneficiaries received SCC Litigation Trust Interests. For purposes of the calculation contained in the preceding sentence, if a SCC Litigation Trust Beneficiary has transferred his SCC Litigation Trust Interests to a third party, the Allowed Claim held by the initial holder of such interests shall be used (and if less than all of such SCC Litigation Trust Beneficiary's SCC Litigation Trust Interests have been so transferred, the portion of the Allowed Claim corresponding to the portion of SCC Litigation Trust Interests so transferred shall be used). The additional issuance of Class A, Class B, or Class E SCC Litigation Trust Interests shall not affect or change in any way the SCC Purchaser Percentage. To the extent that the Allowed Claims in Class 4 and Unknown Asbestos Claims actually allowed against the Asbestos Claims Liquidation Trust exceed the Class 4 Claims Estimate, additional Class C SCC Litigation Trust Interests shall be issued to the Asbestos Claims Liquidation Trust such that the Asbestos Claims Liquidation Trust will have received a pro rata share based on the actual amounts of such Allowed Claims. In addition, to the extent that the Allowed Claims in Class 4 and Unknown Asbestos Claims allowed under the Asbestos Claims Liquidation Trust Agreement exceed the Class 4 Claims Estimate after the SCC Litigation Trust has begun making cash distributions on account of such interests, those Allowed Claims in excess of the Class 4 Claims Estimate shall be entitled to receive additional distributions from the SCC Litigation Trust (to be paid through the Asbestos Claims Liquidation Trust) until the holder of such claim receives payment on account of such claim proportionate in value to that received by all other Allowed Claim holders of Class A and Class B SCC Litigation Trust Interests. For the avoidance of doubt, it is the intent of the Proponent that the holders of Claims in Class 4 and the holders of Unknown Asbestos Claims should receive a distribution on account of such claims that is generally proportionate to that received by the holders of Class 3 Claims.

Promptly filing notice from the Plan Administrator that the Disputed Claim of a Class 6 or Class 7 Claimant becomes an Allowed Claim, such Claimant shall be issued residual SCC Litigation Trust Interests in accordance with the principles set forth in the preceding paragraph.

To the extent that the holder of an SCC Litigation Trust Interest has received distributions from the SCC Litigation Trust in an amount equal to the full amount of such holder's Claim (including postpetition interest), such holder's SCC Litigation Trust Interest shall be cancelled.

The SCC Litigation Trust Beneficiaries may convey, assign, sell, or otherwise transfer an SCC Litigation Trust Interest subject to the limitations contained in the SCC Litigation Trust Agreement; provided, that the Debtors (prior to the Effective Date) or the SCC Litigation Trustee (after the Effective Date) may at any time cause the SCC Litigation Trust Interests to be non-transferable to achieve desired treatment under tax or securities laws.

(2) Interests Beneficial Only.

The ownership of an SCC Litigation Trust Interest shall not entitle any SCC Litigation Trust Beneficiary to (A) 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; or (B) any voting rights with respect to the administration of the SCC Litigation Trust (other than the right to appoint members of the SCC Litigation Trust Board) or the actions of the SCC Litigation Trustee in connection therewith.

(3) Maintenance of Register.

The SCC Litigation Trustee shall appoint an SCC Litigation Trust Registrar, which may be the SCC Litigation Trustee, for the purpose of recording ownership of the SCC Litigation Trust Interests. The SCC Litigation Trust Register shall contain the names, addresses for payment and notice, and class and number of SCC Litigation Trust Interests of each of the SCC Litigation Trust Beneficiaries. The SCC Litigation Trust Registrar, if other than the SCC Litigation Trustee, may be such other institution acceptable to the SCC Litigation Trustee and shall be entitled to receive reasonable compensation from the SCC Litigation Trust as an expense of the SCC Litigation Trust. The Indenture Trustees shall be the holders of the Class A SCC Litigation Trust Interests with respect to the Bonds for which they serve as Indenture Trustee, and as such shall be listed in the SCC Litigation Trust Register as the SCC Litigation Trust Beneficiaries on account of the Bondholders' Claims.

(4) Evidence of SCC Litigation Trust Interests.

Ownership of an SCC Litigation Trust Interest shall not be evidenced by any certificate, security, or receipt or in any form or manner, other than by book entry in the SCC Litigation Trust Register.

(5) Securities Laws Matters.

To the extent the SCC Litigation Trust Interests are deemed to be "securities," the issuance of SCC Litigation Trust Interests under this 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 SEC. Notwithstanding the foregoing procedure, nothing in this Plan shall be deemed to preclude the SCC Litigation Trustee from amending the SCC Litigation Trust Agreement 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 Proponent anticipates that the SCC Litigation Trust may, under certain circumstances, be required to register under the Exchange Act, and accordingly be required to



file with the SEC and send to the SCC Litigation Trust Beneficiaries certain periodic reports and other information pursuant to the Exchange Act, including Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, and Current Reports on Form 8-K. The cost of the preparation, filing, and delivery of any such reports would be an expense of the SCC Litigation Trust.

Exemptions may be sought from the SEC from all or some of the reporting requirements that may be applicable to the SCC Litigation Trust pursuant to the Exchange Act if it is determined that compliance with such requirements would be burdensome on the SCC Litigation Trust. The Proponent has not yet made any determinations regarding whether any such exemptions will be sought, and the SEC has not yet made any determinations regarding such matters. There is no assurance that any such exemptions, if deemed necessary and applied for, will be granted.

The SCC Litigation Trust Interests may be freely transferred by most recipients following initial issuance, subject to certain limitations set forth in the SCC Litigation Trust Agreement, unless the holder is an “underwriter” with respect to such SCC Litigation Trust Interests, as that term is defined in section 1145(b) of the Bankruptcy Code. Section 1145(b) of the Bankruptcy Code defines “underwriter” for purposes of the Securities Act as one who (A) purchases a claim or interest with a view to distribution of any security to be received in exchange for the claim, (B) offers to sell securities issued under a plan for the holders of such securities, (C) offers to buy securities issued under a plan from persons receiving such securities, if the offer to buy is made with a view to distribution of such securities, or (D) is a controlling person of the issuer of the securities. Entities who believe they may be “underwriters” under the definition contained in section 1145 of the Bankruptcy Code summarized above are advised to consult their own counsel with respect to the availability of the resale exemption provided by section 1145.

(i) *Distributions of SCC Litigation Proceeds and Other Property.*

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

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

(2) second, to distribute to the SCC Litigation Trust Beneficiaries holding Class D SCC Litigation Trust Interests pro rata based on their respective Class D SCC Litigation Trust Interest holdings such percentage of the remaining amount equal to the SCC Purchaser Percentage;

(3) third, to pay the Plan Administrator such percentage of all remaining amounts as the Plan Administrator designates from time to time to be delivered to the Disputed Claims Reserve for the purpose of satisfying Disputed Claims;

(4) fourth, to pay the SCC Litigation Trust Beneficiaries pro rata based on their SCC Litigation Trust Interest holdings in accordance with the Trust Interest Priorities and as set forth herein. Such proceeds shall first be paid to holders of Allowed Amounts of Claims in Class 3 and Class 4, on a Pro Rata basis until such claims are paid in full. Proceeds paid on account of Allowed Amounts of Class 4 Claims shall be paid to the Asbestos Claims Liquidation Trust and thereafter distributed in accordance with the Asbestos Claims Liquidation Trust Documents. After all Class 3 Disputed Claims are resolved and if all holders of Class A, Class B, Class C and Class D SCC Litigation Trust Interests have received the full amount of their Allowed Claims, then the SCC Litigation Trustee shall pay such remaining proceeds in accordance with the Trust Interest Priorities as follows: (a) first to the holders of Allowed Class 6 Claims, on a Pro Rata basis, until such claims are paid in full, (b) second on account of post-petition interest on any Allowed Amounts of Class 3, Class 4 (such Class 4 amounts being distributed to the Asbestos Claims Liquidation Trust) and Class 6 Claims, (c) third on account of Class 7 Claims, on a pro rata basis, until such claims are paid in full and (iv) on account of post-petition interest on any Allowed Amounts of Class 7 Claims; and

(5) fifth, if (a) after all Class 6 and Class 7 Disputed Claims are resolved and (b) all amounts set forth above have been paid in full, then all such remaining proceeds shall be paid to the Asbestos Claims Liquidation Trust to be used in accordance with the Asbestos Claims Liquidation Trust Documents.

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 Asbestos Claims Liquidation Trust to be used in accordance with the Asbestos Claims Liquidation Trust Documents.

(j) *Termination of the SCC Litigation Trust.*

The SCC Litigation Trust shall terminate on the earlier of: (1) 30 days after the distribution of all of the assets of the SCC Litigation Trust in accordance with the terms of the SCC Litigation Trust Agreement and this Plan; or (2) the fifth (5<sup>th</sup>) anniversary of the Effective Date; provided, however, that, on or prior to a date less than six months (but not less than three months) prior to such termination, the Bankruptcy Court, upon motion by a party in interest, may extend the term of the SCC Litigation Trust for a finite period if, based on the facts and circumstances, the Bankruptcy Court finds that such extension is necessary to the liquidating purpose of the SCC Litigation Trust. The Bankruptcy Court may approve multiple extensions of the term of the SCC Litigation Trust; provided that (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.

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

## ARTICLE VII

### THE ASBESTOS Claims Liquidation TRUST

7.1. Creation of the Asbestos Claims Liquidation Trust. On the Effective Date or such earlier date as the Plan Proponent deems appropriate, the Asbestos Claims Liquidation Trust shall be created as provided in the Asbestos Claims Liquidation Trust Agreement.

7.2. Appointment of Asbestos Claims Liquidation Trustees.

(a) Upon approval by the Bankruptcy Court in the Confirmation Order, the Asbestos Claims Liquidation Trustees shall be appointed.

(b) The Proponent (if prior to the Effective Date) or the Asbestos Claims Liquidation Trustees (if after the Effective Date) shall designate the Person who shall initially serve as the Delaware Trustee for the Asbestos Claims Liquidation Trust.

(c) The Asbestos Claims Liquidation Trustees shall each have and perform all of the rights, powers, and duties set forth in the Asbestos Claims Liquidation Trust Agreement.

7.3. The FCR. On and after the Effective Date, Judge Robert C. Pate shall serve as the FCR and shall have and exercise the functions, rights, duties, powers, and privileges provided in the Asbestos Claims Liquidation Trust Documents.

7.4. Asbestos Claims Liquidation Trust Board. The initial members of the Asbestos Claims Liquidation Trust Board shall consist of five members initially selected as follows: (1) one selected by the Asbestos Claimants' Committee, (ii) one selected by the FCR, (iii) two selected by the Parent and (iv) one selected by the Plan Sponsor. They shall consult with and advise the Asbestos Claims Liquidation Trustees regarding the administration of the Asbestos Claims Liquidation Trust and the liquidation and resolution of Unsecured Asbestos Personal Injury Claims and Unknown Asbestos Claims in accordance with the provisions of this Plan and the Asbestos Claims Liquidation Trust Documents.

7.5. Purpose of the Asbestos Claims Liquidation Trust. The purposes of the Asbestos Claims Liquidation Trust shall be to among other things, permit the Asbestos Claims Liquidation Trustee to (a) contest, defend, liquidate, resolve, settle, pay, and/or satisfy all Asbestos Claims in



accordance with the provisions of the Plan, the Asbestos Claims Liquidation Trust Agreement, and the Confirmation Order; (b) enforce its rights under the Plan, including (without limitation) its rights as a beneficiary of the Liquidation Trust and the SCC Litigation Trust; (c) receive, preserve, hold, manage, invest and reinvest, and maximize the Asbestos Claims Liquidation Trust Assets for the benefit of Asbestos Claims Liquidation Trust Beneficiaries; (d) take other actions deemed by the Asbestos Claims Liquidation Trustees to be in the best interests of the Asbestos Liquidation Trust Beneficiaries; and (e) ensure that claims are paid in an amount that is no more than is legally justified, protecting the interests of all of the Asbestos Liquidation Trust Beneficiaries, including those of the Parent, the residual beneficiary of the Asbestos Claims Liquidation Trust. For the avoidance of doubt, the Asbestos Claims Liquidation Trust shall be constituted, maintained, and administered, and its assets disposed of, in a manner that is intended to ensure that claims against the Asbestos Claims Liquidation Trust are appropriately contested, defended, settled and resolved in accordance with and based upon the legal merits of such claims.

7.6. Transfers, Assignments, and Payments to the Asbestos Claims Liquidation Trust. On the Effective Date, the Debtors shall transfer, assign, and pay, without limitation, to the Asbestos Claims Liquidation Trust for the benefit of the Asbestos Claims Liquidation Trust Beneficiaries all of the Debtors' rights, title, and interest in: (a) the Asbestos Claims Liquidation Trust Assets, as provided in Article 10.6 herein; (b) the Asbestos Personal Injury Claims and Unknown Asbestos Claims; and (c) the Debtors' Privileges associated with the Asbestos Personal Injury Claims and Unknown Asbestos Claims except to the extent that Reorganized ASARCO, the Plan Administrator, and the Plan Sponsor shall concurrently retain all Privileges in connection with Asbestos Books that remain in their possession and Reorganized ASARCO shall concurrently retain all Privileges in connection with its pursuit of the Asbestos Insurance Recoveries.

7.7. Asbestos Claims Liquidation Trust Agreement. The Asbestos Claims Liquidation Trust Agreement, substantially in the form of Exhibit 6 to this Plan, contains provisions customary to documents utilized in comparable circumstances.

7.8. Intentionally Omitted.

7.9. Assumption of Liabilities by the Asbestos Claims Liquidation Trust. Upon the occurrence of the Effective Date, in exchange for funding in accordance with Article 10.6 of this Plan, the Asbestos Claims Liquidation Trust shall be deemed, without need for further action, to have assumed responsibility and liability for all Unsecured Asbestos Personal Injury Claims and Unknown Asbestos Claims and the Asbestos Claims Liquidation Trustees shall be responsible for ensuring that the Asbestos Claims Liquidation Trust is administered in accordance with the Asbestos Claims Liquidation Trust Agreement.

7.10. Intentionally Omitted.

7.11. Tax Treatment of the Asbestos Claims Liquidation Trust. The Asbestos Claims Liquidation Trust shall be treated as a "qualified settlement fund" within the meaning of Treasury Regulation section 1.468B-1, the Asbestos Claims Liquidation Trustees shall be the "administrators" of the Asbestos Claims Liquidation Trust pursuant to Treasury Regulation

section 1.468B-2(k)(3), and no provision herein or in the Asbestos Claims Liquidation Trust Agreement shall be construed or implemented in a manner that would cause the Asbestos Claims Liquidation Trust to fail to qualify as a “qualified settlement fund.” No election shall be made to treat the Asbestos Claims Liquidation Trust as a grantor trust for U.S. federal income tax purposes. Accordingly, the Asbestos Claims Liquidation Trust shall be treated as a taxable entity for federal income tax purposes. The Asbestos Claims Liquidation Trustees shall cause all taxes imposed on the Asbestos Claims Liquidation Trust to be paid using assets of the Asbestos Claims Liquidation Trust and shall comply with all tax reporting and withholding requirements imposed under applicable tax laws. Any amount so withheld from a distribution or payment by the Asbestos Claims Liquidation Trust to a Claimant or other payee shall be treated as having been paid to, and received by, such payee for purposes of this Plan and the Plan Documents.

7.12. Asbestos Claims Liquidation Trust Expenses. The Asbestos Claims Liquidation Trust shall pay all Asbestos Claims Liquidation Trust Expenses (including applicable taxes) from the assets of the Asbestos Claims Liquidation Trust. Except for the Asbestos Claims Liquidation Trust’s Allowed Administrative Claim provided for in Article 2.1 above, neither the Debtors nor the Reorganized Debtors shall have any obligation to pay or reimburse any Asbestos Claims Liquidation Trust Expenses.

7.13. Asbestos Books.

(a) *Inspection and Copying of Asbestos Books.*

Subject to the conditions set forth herein, the Asbestos Claims Liquidation Trust, through its duly authorized representatives, shall have the right, upon reasonable prior written notice to Reorganized ASARCO, to inspect and, at the sole expense of the Asbestos Claims Liquidation Trust, make copies of the Asbestos Books during business hours on any Business Day and as often as may reasonably be desired; provided that, if so requested, the Asbestos Claims Liquidation Trust shall enter into a confidentiality agreement satisfactory in form and substance to Reorganized ASARCO.

(b) *Costs and Expenses.*

All costs and expenses associated with the storage of and access to the Asbestos Books shall be the responsibility of, and paid by, the Plan Administrator for any Asbestos Books that remain in Reorganized ASARCO’s possession or that are transferred to the Plan Sponsor.

(c) *Access to Asbestos Books and Personnel.*

Reorganized ASARCO, the Plan Administrator, and the Plan Sponsor shall cooperate with the Asbestos Claims Liquidation Trust in providing access to the Asbestos Books in their current condition and shall also provide reasonable access to necessary or appropriate personnel and the Asbestos Books as contemplated herein; provided that the Plan Sponsor’s cooperation in that regard shall be subject to the terms and conditions of the Transition Services Agreement or the Plan Sponsor PSA, as applicable, and any requests made to the Plan Sponsor regarding access to the Asbestos Books or access to the Plan Sponsor’s personnel shall be made through Reorganized ASARCO or its representatives. Subject to the conditions set forth herein, the Asbestos Claims Liquidation Trust, through its duly authorized representatives, shall also

have the right, upon reasonable prior written notice, to conduct reasonable interviews of employees and other representatives of Reorganized ASARCO concerning matters reasonably related to the Asbestos Books.

(d) *Disposition of Asbestos Books.*

Reorganized ASARCO shall provide the Asbestos Claims Liquidation Trust with advance notice of any proposed disposition of any of the Asbestos Books and a reasonable opportunity for the Asbestos Claims Liquidation Trust to segregate and remove, at the expense of the Asbestos Claims Liquidation Trust, such Asbestos Books as the Asbestos Claims Liquidation Trust may select.

(e) *Privileged Documents or Communications.*

If the Asbestos Claims Liquidation Trust obtains from Reorganized ASARCO or its representatives any documents or communications (whether electronic, written, or oral) to which any Privilege attaches, the Asbestos Claims Liquidation Trust shall be deemed the Privilege holder for purposes of fulfilling the Asbestos Claims Liquidation Trust obligations and preserving the Privilege, shall be required to take all reasonable steps to maintain any such Privilege and may not waive any such Privilege without the consent of Reorganized ASARCO, which consent shall not be unreasonably withheld. Any disputes between the Asbestos Claims Liquidation Trust and Reorganized ASARCO or the Plan Administrator regarding the production of any documents or communications or the waiver of any Privileges shall be decided by the Bankruptcy Court. Production of materials to the Asbestos Claims Liquidation Trust does not constitute a waiver or an impairment of any Privilege held by Reorganized ASARCO, Reorganized Covington, or any of the Debtors. In the event that any third party challenges any such Privilege, Reorganized ASARCO or the Asbestos Claims Liquidation Trustees may seek protection from a court of competent jurisdiction. References in this Article 7.13 to Reorganized ASARCO shall also include its successors in interest.

7.14. Cooperation with Respect to Insurance Matters. The Plan Sponsor and the Asbestos Claims Liquidation Trust shall cooperate with Reorganized ASARCO and use commercially reasonable efforts to take or cause to be taken all appropriate actions and to do or cause to be done all things necessary or appropriate to effectuate the meaningful retention by Reorganized ASARCO of the proceeds of any Asbestos Insurance Policy, Asbestos Insurance Recovery or Recoveries, Asbestos Insurance Action, or Asbestos In-Place Insurance Coverage; provided, however, that the Plan Sponsor's cooperation in that regard shall be subject to the terms and conditions of the Transition Services Agreement or the Plan Sponsor PSA, as applicable, and any requests made to the Plan Sponsor under this Article 7.14 shall be made through Reorganized ASARCO or its representatives. The Asbestos Claims Liquidation Trust shall (a) provide Reorganized ASARCO with all information regarding insurance matters reasonably requested, including, without limitation, (1) information regarding the status of the resolution of Unsecured Asbestos Personal Injury Claims and Unknown Asbestos Claims and (2) information necessary or helpful in connection with its efforts to obtain recoveries from an Asbestos Insurance Company including, without limitation, recoveries of extracontractual damages and (b) execute reasonably requested documentation to facilitate Reorganized ASARCO's pursuit of claims or other action necessary for Reorganized ASARCO to realize

recoveries from an Asbestos Insurance Company, including, without limitation, recoveries of extracontractual damages. Reorganized ASARCO shall be obligated to compensate the Asbestos Claims Liquidation Trust for all costs and expenses reasonably incurred in connection with providing assistance to Reorganized ASARCO under this Article 7.14, including, without limitation, out-of-pocket costs and expenses, consultant fees, and attorneys' fees.

7.15. Termination of the Asbestos Claims Liquidation Trust. The Asbestos Claims Liquidation Trust shall terminate automatically on the date that is 90 days after the first to occur of the following events:

(a) The later to occur of (A) the fifty-first (51<sup>st</sup>) anniversary of the Effective Date and (B) the date on which the Asbestos Claims Liquidation Trustee determines to terminate the Asbestos Claims Liquidation Trust because (1) they deem it unlikely that new asbestos claims will be filed against the Asbestos Claims Liquidation Trust; (2) all Unsecured Asbestos Personal Injury Claims and Unknown Asbestos Claims duly filed with the Asbestos

(b) Claims Liquidation Trust have been liquidated and paid to the extent provided in the Asbestos Claims Liquidation Trust Agreement or have been disallowed by a Final Order, to the extent possible based upon the funds available through this Plan; and (3) 12 consecutive months have elapsed during which no new asbestos claim has been filed with the Asbestos Claims Liquidation Trust; or

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

*Provided, however,* that in no circumstances shall the Asbestos Claims Liquidation Trust dissolve prior to the dissolution of the Liquidation Trust and/or the SCC Litigation Trust.

7.16. Termination of the Asbestos Claims Liquidation Trustees and the Delaware Trustee. The duties, responsibilities, rights, and obligations of the Asbestos Claims Liquidation Trustees and the Delaware Trustee for the Asbestos Claims Liquidation Trust shall terminate in accordance with the terms of the Asbestos Claims Liquidation Trust Agreement.

## ARTICLE VIII

### TREATMENT OF EXECUTORY AND POST-PETITION CONTRACTS AND UNEXPIRED LEASES

8.1. Assumption or Rejection of Unexpired Leases and Executory Contracts. On the Effective Date, except as otherwise provided in this Plan, any unexpired lease or executory contract that has not been previously assumed or rejected by a Debtor pursuant to an order of the Bankruptcy Court shall be deemed rejected by such Debtor under sections 365(a) and 1123 of the Bankruptcy Code, other than those executory contracts and unexpired leases that are (a) listed in **Exhibit 2** hereto (as such list may be amended, supplemented, or modified by the

Debtors on or before the Confirmation Date) or (b) subject to a motion to assume that is pending on the Effective Date. Entry of the Confirmation Order shall constitute approval of (a) such rejections, and (b)(1) the assumption by ASARCO and assignment to the Plan Sponsor of the executory contracts and unexpired leases listed in Exhibit 2-A hereto; (2) the assumption by ASARCO and assignment to an Environmental Custodial Trust of the executory contracts and unexpired leases listed in Exhibit 2-B hereto; and (3) the assumption by the applicable Debtor and vesting in Reorganized ASARCO or Reorganized Covington of the executory contracts and unexpired leases listed in Exhibit 2-C hereto (as each such list may be amended, supplemented, or modified by the Debtors on or before the Confirmation Date), pursuant to sections 365(a) and 1123 of the Bankruptcy Code. Any motions to assume executory contracts and unexpired leases pending on the Effective Date shall be subject to approval by the Bankruptcy Court on or after the Effective Date by a Final Order.

8.2. Approval of Assumption or Rejection of Executory Contracts and Unexpired Leases. Entry of the Confirmation Order shall, subject to and upon the occurrence of the Effective Date, constitute (a) the approval, pursuant to sections 365(a), 365(f), and 1123 of the Bankruptcy Code, of the assumption by one of the Debtors and assignment to the Plan Sponsor or an Environmental Custodial Trust, or vesting in Reorganized ASARCO or Reorganized Covington (as specified in Exhibit 2) of the executory contracts and unexpired leases assumed, or assumed and assigned, pursuant to Article 8.1 of this Plan; (b) the extension of time, pursuant to section 365(d)(4) of the Bankruptcy Code, within which the Debtors may assume, assume and assign, or reject the unexpired leases specified in Article 8.1 of this Plan through the date of entry of an order approving the assumption, assumption and assignment, or rejection of such unexpired leases; and (c) the approval, pursuant to sections 365(a) and 1123 of the Bankruptcy Code, of the rejection of the executory contracts and unexpired leases rejected pursuant to Article 8.1 of this Plan.

8.3. Inclusiveness. Unless otherwise specified in Exhibit 2 hereto, each executory contract and unexpired lease listed or to be listed in Exhibit 2 shall include all modifications, amendments, or supplements thereto, or restatements thereof, without regard to whether such agreement, instrument, or other document is listed in Exhibit 2.

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

8.5. Rejection Damages Bar Date. If the rejection by a Debtor, pursuant to Article 8.1 of this Plan, of an executory contract or unexpired lease results in a Claim, then such Claim shall be forever barred and discharged and shall not be enforceable against any Debtor, Reorganized Debtor, or their respective properties, unless a Proof of Claim is filed and served upon Reorganized ASARCO and the Plan Administrator within 30 days after the later of the Effective Date or the date of entry of an order approving such rejection. To the extent any such Claim is Allowed by the Bankruptcy Court by Final Order, such Claim shall be treated for all purposes under this Plan as a Class 3 General Unsecured Claim, and the holder thereof shall receive distributions as a holder of an Allowed General Unsecured Claim, pursuant to this Plan.



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

(a) To the extent that such Claims constitute monetary defaults, the Cure Amount Claims shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by the Debtors: (1) by payment of the Cure Amount Claim on the Effective Date or (2) on such other terms as are agreed to by the Debtors and the non-debtor parties to the executory contract or unexpired lease. In the event of a dispute regarding (A) the amount of any Cure Amount Claim; (B) the ability of the Plan Sponsor or an Environmental Custodial Trust to provide “adequate assurance of future performance” (within the meaning of section 365 of the Bankruptcy Code) under the contract or lease to be assumed and assigned; or (C) any other matter pertaining to assumption or assumption and assignment of such contract or lease, the payment of any Cure Amount Claim required by section 365(b)(1) of the Bankruptcy Code shall be made following the entry of a Final Order resolving the dispute and approving the assumption or the assumption and assignment (except as otherwise provided in Article 8.6(b) of this Plan).

(b) Pursuant to section 3.5(d) of the Plan Sponsor PSA, at the Closing, ASARCO shall deliver to the Plan Sponsor a statement of any Unpaid Cure Claims Amount and the Contract(s) corresponding thereto, including a calculation thereof. The Plan Sponsor shall be permitted (but not required), within 30 days after receipt of such statement, to pay any Unpaid Cure Claims Amount, and within 10 days after any such payment, the Plan Sponsor shall provide a written notice to ASARCO of such payment and the Contract(s) corresponding thereto. To the extent the Plan Sponsor pays any Unpaid Cure Claims Amount pursuant to section 3.5(d) of the Plan Sponsor PSA, Reorganized ASARCO shall, within 10 days of receipt of notice from the Plan Sponsor delivered in accordance with section 3.5(d) thereof, reimburse the Plan Sponsor in the amount of such payment; provided that the Confirmation Order shall provide that, as between the Sellers and the counterparty of the underlying Contract, (1) neither the payment nor the reimbursement of a disputed Unpaid Cure Claims Amount shall constitute a waiver, admission, or estoppel in respect of any claims or defenses that ASARCO or Reorganized ASARCO may have related to such Unpaid Cure Claims Amount or the underlying Contract and (2) the right of ASARCO or Reorganized ASARCO to object, assert any counterclaim, or exercise any setoff or other rights in connection with such Unpaid Cure Claims Amount or the underlying Contract shall be preserved regardless of any such payment or reimbursement; provided, however, that failure of the Confirmation Order to so provide shall not relieve the Sellers of their payment obligations as set forth in section 3.5(d) of the Plan Sponsor PSA.

8.7. Contracts and Leases Previously Assumed or Entered into After the Petition Date.

(a) Unless otherwise provided in Article 8.7(b) and (c), 8.8, or 8.9 of this Plan, each Contract that is a “Pre-Petition Contract” (as such term is defined in section 3.1(e)(A) of the Plan Sponsor PSA) or is entered into by ASARCO after the Petition Date as described in section 3.1(e)(B) of the Plan Sponsor PSA shall be assigned to, and such Debtor’s obligations thereunder assumed by, the Plan Sponsor in accordance with the Plan Sponsor PSA; *provided, however*, that any such Contract entered into after the date of the Plan Sponsor PSA other than in the Ordinary Course of Business shall be assigned

to, and such Debtor's obligations thereunder assumed by, the Plan Sponsor only with the Plan Sponsor's written consent.

(b) Each contract or lease entered into by any Debtor after the Petition Date that is identified in **Exhibit 2-D** to this Plan (as such list may be amended, supplemented, or modified on or before the Confirmation Date) shall be assigned to, and such Debtor's obligations thereunder assumed by, one or more Environmental Custodial Trusts, as specified in **Exhibit 2-D** hereto.

(c) Each contract or lease entered into by any Debtor after the Petition Date that is identified in **Exhibit 2-E** to this Plan (as such list may be amended, supplemented, or modified on or before the Confirmation Date) shall vest in, and such Debtor's obligations thereunder assumed by, Reorganized ASARCO or Reorganized Covington, as specified in **Exhibit 2-E** hereto.

8.8. Employee Benefits Plans, Retiree Benefits, and Other Benefits.

(a) ASARCO shall satisfy its contribution obligations under ERISA to the Hourly and Salaried Plans during the pendency of the Reorganization Cases and through the Closing Date. ASARCO is the sponsor of the Hourly and Salaried Plans, each of which is covered by Title IV of ERISA.

In the event that either the Hourly Plan or the Salaried Plan or both terminate during the pendency of the Reorganization Cases, or prior to the Closing Date, certain Claims will arise, including joint and several liabilities of the Debtors to the PBGC that may be entitled to priority under various sections of the Bankruptcy Code to the extent provided under applicable law.

(b) Effective as of the Closing Date, the Plan Sponsor shall adopt and become the "contributing sponsor" of the Hourly and Salaried Plans for purposes of ERISA, and the Plan Sponsor, and each and every member of its "controlled group," as defined in section 4001(a)(14) of ERISA, shall be responsible for satisfying the legal obligations to the Hourly and Salaried Plans subsequent to the Closing Date, including the obligation to fund the Hourly and Salaried Plans pursuant to applicable law.

In the event that Hourly Plan or the Salaried Plan or both terminate subsequent to the assumption of the Hourly and Salaried Plans by the Plan Sponsor, the joint and several liability of the Plan Sponsor, and of each and every member of its "controlled group" (as defined above) to PBGC, if any, will not be affected by any provision of this Plan or by Confirmation of this Plan.

(c) As of the Closing Date, the Plan Sponsor shall adopt and become the sponsor and employer for purposes of each and every Employee Benefit Plan set forth in section 9.3 of the Disclosure Schedule, including the Hourly and Salaried Plans, and shall be substituted for ASARCO or its Subsidiaries that had theretofore been the sponsor of any such Employee Benefit Plan. Effective as of the Closing, the Plan Sponsor shall be responsible for all benefits and liabilities with respect to such Employee Benefit Plans, as

such Employee Benefit Plans may be amended or modified from time to time by written agreement between the Plan Sponsor and the Unions after the Closing Date.

(d) With respect to each Transferred Employee (as such term is defined in the Plan Sponsor PSA) including any beneficiary or the dependent thereof, the Plan Sponsor shall assume all of ASARCO's 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.

(e) Effective as of the Closing Date, the Plan Sponsor shall be responsible for providing coverage under COBRA to any Employee (as such term is defined in section 9.1(a) of the Plan Sponsor PSA), his or her spouse, or dependent person as to whom a "qualifying event" as defined in section 4890B of the Internal Revenue Code has occurred (1) prior to the Closing Date in the case of a "qualifying event" other than a termination of employment and (2) in the case of a termination of employment "qualifying event" on or prior to the Closing Date. The Plan Sponsor shall also be responsible for providing COBRA coverage to any Employee, his or her spouse, or dependent person as to whom a "qualifying event" occurs on or after the Closing Date including for a "qualifying event" that is a termination of employment on the Closing Date.

(f) The Plan Sponsor shall assume and be responsible for all of ASARCO's obligations under the Coal Act, including the obligations (1) to provide retiree health benefits to eligible beneficiaries and their dependents pursuant to section 9711 of the Coal Act, 26 U.S.C. § 9711; (2) to pay the annual prefunding premium and the monthly per beneficiary premium required pursuant to section 9712(d)(1)(A) and (B) of the Coal Act, 26 U.S.C. § 9712(d)(1)(A) and (B); and (3) to provide security to the UMW 1992 Benefit Plan pursuant to section 9712(d)(1)(C) of the Coal Act, 26 U.S.C. § 9712(d)(1)(C); *provided, however*, that the Plan Sponsor shall not be responsible for the Debtors' prepetition premium obligations arising under the Coal Act, nor for a Claim for withdrawal liability arising under the United Mineworkers 1974 Pension Plan, which obligations shall be classified and treated as Class 3 General Unsecured Claims.

8.9. Bonds and Assurances. Pursuant to section 8.9 of the Plan Sponsor PSA, prior to Closing, the Plan Sponsor shall (a) cause ASARCO to be fully, unconditionally, and irrevocably released and discharged from the Bonds and Assurances (as such term is defined in the Plan Sponsor PSA) including, without limitation, SPT Bond Nos. 394729 and 403998, and (b) 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. The surety, performance, payment, and other bonds listed in section 3.2(j) of the Disclosure Schedule shall be retained by ASARCO and shall revert in Reorganized ASARCO on the Effective Date.



## ARTICLE IX

### CONDITIONS TO CONFIRMATION AND EFFECTIVENESS

9.1. Conditions to Confirmation. The following are conditions precedent to Confirmation that must be satisfied or waived by the Plan Sponsor in accordance with Article 9.2:

(a) The Bankruptcy Court shall have approved the Disclosure Statement.

(b) As of the Confirmation Date, all the representations and warranties of the Debtors contained in the Sterlite 2009 PSA are true and correct, and that the Sellers shall have performed all obligations required by the Sterlite 2009 PSA; *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, or failure by the Sellers to perform such obligations, would not reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect as that term is defined in the Sterlite 2009 PSA.

(c) No Seller Material Adverse Effect shall have occurred since April 30, 2008, and shall be continuing.

(d) The Debtors' liability on account of the Assumed Environmental Liabilities (as that term is defined in the Plan Sponsor PSA) has not materially increased since April 30, 2008

(e) There has been no material deterioration in the physical condition of the Sold Assets since April 30, 2008.

(f) The Debtors shall have given the Plan Sponsor and its consultants complete and unfettered access to inspect the Sold Assets and the Plan Sponsor has determined, in its sole discretion, that the physical condition of the Sold Assets has not materially deteriorated since April 2008.

(g) The Plan Sponsor is satisfied in its reasonable judgment that the Confirmation Working Capital is not less than 90% of the Agreed Working Capital.

9.2. Waiver of Conditions Precedent to Confirmation. The Plan Sponsor may waive any of the conditions to Confirmation set forth in Article 9.1 at any time, without any notice to parties-in-interest and without any further notice to or action, order or approval of the Bankruptcy Court and without any formal action other than proceeding to confirm the Plan.

9.3. Conditions to Effectiveness. Notwithstanding any other provision of this Plan or any order entered in connection with the Reorganization Cases, the Effective Date of this Plan shall not occur prior to August 1, 2009 and shall not occur until and unless each of the following conditions to effectiveness have been satisfied or waived pursuant to this Article 9.3 of this Plan:

(a) *Confirmation Findings and Conclusions.*

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

(1) On the Effective Date, the Asbestos Claims Liquidation Trust shall assume the liabilities of the Debtors with respect to the Unsecured Asbestos Personal Injury Claims and Unknown Asbestos Claims and shall receive all transfers and assignments as set forth herein;

(2) This Plan complies with all applicable sections of the Bankruptcy Code, and the Plan Proponent and the Debtors have complied with all applicable sections of the Bankruptcy Code;

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

(4) The sale of the Sold Assets to the Plan Sponsor pursuant to this Plan is approved pursuant to sections 363, 1123, and 1129 of the Bankruptcy Code, and the Plan Sponsor has (A) provided reasonably equivalent value and (B) acted in good faith for the purposes of section 363(m) of the Bankruptcy Code; and

(5) Approval of the settlements and compromises set forth in Article 10.3 and 10.26 hereof is appropriate under Bankruptcy Rule 9019 and applicable law governing approval of such settlements and compromises, and shall be ordered as part of the Confirmation Order.

(b) *Confirmation Order.*

The Confirmation Order entered by the Bankruptcy Court (1) provides that the Plan Sponsor has no liability on account of any existing claims against the Debtors, including, without limitation, on account of any theories of successor liability, (2) is acceptable to the Debtors, (3) to the extent the Confirmation Order relates to the Plan Sponsor PSA, the Plan Sponsor (and the Guarantors), or the transactions contemplated by the Plan Sponsor PSA, is reasonably satisfactory to the Proponent, (4) provides for the payment of the reasonable fees and expenses of the Harbinger Master Fund and Citigroup Global Markets, Inc. incurred in the development, preparation, prosecution and confirmation of the Plan, and (5) provides that if, notwithstanding confirmation of the Plan, all conditions precedent to the obligations of all parties in the Plan Sponsor PSA have been satisfied and the Plan Sponsor PSA fails to close the transactions contemplated by the Plan Sponsor PSA after the Confirmation Order has been entered (where the Plan Sponsor's failure to close shall not be the result of any material breach of any covenant or obligation under the Plan Sponsor PSA required to be performed by the Sellers or the inaccuracy of any representation or warranty of the Sellers made under the Plan Sponsor PSA), the Plan Sponsor shall not be liable for any damages in excess of the liquidated damages provided for in the Plan Sponsor PSA and under no circumstances shall the claims of the Bondholders be disallowed or subject to less favorable treatment in this Plan or any other or future plan on account of such breach. In addition, the Confirmation Order shall conform with

the requirements of such an order in the Plan Sponsor PSA, including, without limitation the requirements of the Plan Confirmation Order (as defined in the Plan Sponsor PSA).

(c) *No Stay.*

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

(d) *Plan Documents.*

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

(e) *Funding of the Trusts.*

The Trusts have been funded as provided in Articles 10.5 to 10.7 of this Plan.

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

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

(g) *Closing of the Sale of Sold Assets to Plan Sponsor.*

The sale of the Sold Assets to the Plan Sponsor on the Closing Date has been consummated.

(h) *Approval of Environmental Settlements.*

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

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

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

(j) *The Class 4 Claims Estimate.*

Neither the Parent nor any Creditor Constituent has requested an estimation of ASARCO's liability on account of Unsecured Asbestos Personal Injury Claims and Unknown Asbestos Claims in accordance with Section 10.3 of this Plan or, if such a request has been made, the Bankruptcy Court has entered an order estimating such liability.

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

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

(l) *HSR Act Approval.*

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

9.4. Waiver of Conditions to Effectiveness. The Proponent, in its sole discretion, may waive any condition to effectiveness in Article 9.3 of this Plan by filing a notice of such waiver with the clerk of the Bankruptcy Court and by serving a copy of such notice on the Plan Sponsor, the Debtors, the U.S. Trustee, the Committees, the FCR, and the DOJ; *provided, however*, that:

(a) the DOJ and any affected state must consent to any waiver of any of the conditions to effectiveness set forth in Article 9.3(d), (h), (i), and (k);

(b) the Asbestos Claimants' Committee and the FCR must consent to any waiver of any of the conditions to effectiveness set forth in Article 9.3(e); and

(c) the Plan Sponsor must consent to any waiver of any of the conditions to effectiveness set forth in Article 9.3(b), (c), (d), (g) and (l);

and *provided further* that in each instance described in clauses (a), (b), and (c) of this Article 9.4, such consent shall not be unreasonably withheld, delayed, or conditioned.

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

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

## ARTICLE X

### IMPLEMENTATION OF THIS PLAN

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

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

(b) Pursuant to section 4.1 of the Plan Sponsor PSA, the total consideration paid by the Plan Sponsor to the Sellers in consideration of the sale, conveyance, transfer, assignment, and delivery of the Sold Assets is an amount equal to: (A) \$500 million and (B) the assumption by the Plan Sponsor of the Assumed Liabilities.

(c) Pursuant to section 3.5(d) of the Plan Sponsor PSA, the Plan Sponsor is entitled to reimbursement from ASARCO of any Unpaid Cure Claims Amount paid by the Plan Sponsor in accordance with such section 3.5(d). On the Effective Date (or as soon thereafter as is reasonably practicable), ASARCO, Reorganized ASARCO, or the Plan Administrator, as the case may be, shall place Cash in the amount of \$5 million in the Unpaid Cure Claims Reserve to be used to make payment in respect of any Unpaid Cure Claims Amount for which ASARCO may be required to reimburse the Plan Sponsor pursuant to section 3.5(d) thereof. Such funds shall be held in the Unpaid Cure Claims Reserve until notice is provided by the Plan Sponsor pursuant to section 3.5(d) of the Plan Sponsor PSA (or the period in which any such notice is required to be provided has expired), whichever occurs later, and shall be applied in accordance with section 3.5(d) thereof, if and as applicable.

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

(a) Upon approval by the Bankruptcy Court in the Confirmation Order, the Plan Administrator, as chosen by the Plan Sponsor, shall be appointed. The Plan Administrator shall have and perform all of the duties, responsibilities, rights, and obligations set forth in the Plan Administration Agreement, which shall include, without limitation, 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.

The Plan Administrator shall serve without bond, may employ or contract with other Persons to assist in the performance of the Plan Administrator's duties, which shall be set forth in the Plan Administration Agreement, and shall procure appropriate directors-and-officers liability insurance and other insurance coverage appropriate to the business in which Reorganized ASARCO is to be engaged. The Plan Administrator shall receive, without further Bankruptcy Court approval, reasonable compensation for such services and reimbursement of reasonable out-of-pocket expenses incurred in connection with such services.

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

(c) On the Effective Date (or as soon thereafter as is reasonably practicable), ASARCO, Reorganized ASARCO, or the Plan Administrator, as the case may be, shall (1) fund the Plan Administration Account with Cash to be used to pay the Plan Administrator's estimated compensation and expenses and all other anticipated costs of administration of this Plan and initial operations of Reorganized ASARCO (including, without limitation, taxes); and (2) fund the Miscellaneous Plan Administration Accounts. The Plan Administrator may also establish such general accounts, subaccounts, reserves, or escrows as the Plan Administrator deems necessary and appropriate. In accordance with the Plan Administration Agreement, the Plan Administrator shall invest the Cash held in accounts, reserves, and escrows on behalf of Reorganized ASARCO 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 predominately of such securities.

(d) The Plan Administrator shall prosecute, settle, or otherwise resolve the Vested Causes of Action, and shall place the Vested Causes of Action Proceeds (if any) in the Vested Causes of Action Escrow.

(e) The Plan Administrator shall allocate the funds in the Plan Administration Account to subaccounts corresponding to the enumerated functions of the Plan Administrator. 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. In addition, any taxes attributable to the earnings of the Plan Administration 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.

(f) To the extent there are any excess funds in the Plan Administration Account (or any subaccount thereof) or any Miscellaneous Plan Administration Account, the Plan Administrator shall, after consultation with and approval by the Plan Administration Committee, first transfer such excess funds to any underfunded subaccount or Miscellaneous Plan Administration Account (but only to the extent of any



underfunding) and then distribute such funds to the Liquidation Trust for distribution in accordance with the terms and conditions of the Liquidation Trust Agreement.

(g) The Plan Administrator shall have the power to seek injunctive or other necessary or appropriate relief from the Bankruptcy Court to ensure that the funds in the Plan Administration Reserve are used only for the purposes specifically directed in this Plan and the Plan Administration Agreement.

(h) On and after the Effective Date, the Plan Administrator shall be a representative of the Estates under section 1123(b)(3) of the Bankruptcy Code with respect to the Vested Causes of Action and the Debtors' Privileges associated therewith. The Plan Administrator shall be granted the rights and powers of a debtor in possession under section 1107 of the Bankruptcy Code, including, without limitation, the duty to prosecute the Vested Causes of Action and distribute the proceeds of such claims and such other rights and powers as set forth in the Plan Administration Agreement.

10.3. Resolution of Present and Future Asbestos Claims. This Plan contemplates that the amount of the liability of ASARCO on account of Unsecured Asbestos Personal Injury Claims and Unknown Asbestos Claims shall be estimated at \$500,000,000.00. However, within two (2) business days after entry of the Confirmation Order, any Creditor Constituent or the Parent may request that the Bankruptcy Court conduct an evidentiary hearing to establish an alternative to the \$500,000,000.00 estimate.

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

10.5. Creation and Funding of the Liquidation Trust and the SCC Litigation Trust.

(a) On the Effective Date, (1) the Liquidation Trust shall be created and the Liquidation Trust Expense Fund shall be established; (2) 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; and (3) ASARCO, Reorganized ASARCO, or the Plan Administrator, as the case may be, shall deposit Cash in the amount of \$10 million in the Liquidation Trust Reserve. The Plan Administrator shall maintain the Liquidation Trust Reserve and shall from time to time, when requested to do so by the Liquidation Trustee, transfer funds from the Liquidation Trust Reserve to the Liquidation Trustee for the Liquidation Trust Expense Fund as the Liquidation Trustee deems reasonably necessary to the continued operations of the Liquidation Trust, up to an aggregate amount of \$10 million. Upon a determination by the Liquidation Trustee that no additional funds will be needed from the Liquidation Trust Reserve, the Plan Administrator shall allocate the remaining funds in the Liquidation Trust Reserve in accordance with the terms and conditions of the Plan Administration Agreement.

(b) On the Effective Date, (1) the SCC Litigation Trust shall be created and the SCC Litigation Trust Expense Fund shall be established; (2) 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 (3) 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 the Plan Administration Agreement.

10.6. Asbestos Claims Liquidation Trust Creation and Funding. On or before the Effective Date, the Asbestos Claims Liquidation Trust shall be created. On the Effective Date, the Debtors shall transfer to the Asbestos Claims Liquidation Trust (i) all of the interests in Reorganized Covington and (ii) the Class 4 Pro Rata Share of the Plan Consideration and (iii) Cash in an amount ordered by the Bankruptcy Court for payment of the Administrative Expenses of the Asbestos Claims Liquidation Trust.

10.7. Environmental Custodial Trusts Creation and Funding. On or before the Effective Date, the Environmental Custodial Trusts shall be created, and the Custodial Trust Administrative Accounts shall be funded pursuant to the applicable Environmental Custodial Trust Agreements, and by the Effective Date, the Debtors' respective rights, title, and interests in the Designated Properties, together with the appropriate Environmental Custodial Trust Funding and Environmental Custodial Administration Trust Funding for such properties, shall be transferred to the applicable Environmental Custodial Trusts, which shall take title pursuant to the applicable Environmental Custodial Trust Agreements.

10.8. Prepetition ASARCO Environmental Trust.

(a) The Prepetition ASARCO Environmental Trust shall remain in existence, and shall be unaffected by the Reorganization Cases or any related settlements. The Plan Administrator or Reorganized ASARCO shall succeed to ASARCO's administrative role, and shall, as provided in Article 10.2(a) above, act as Performing Entity (as defined in the trust agreement) from time to time, but shall assume no affirmative liabilities or obligations associated with that role. However, the various environmental settlement agreements were based on the assumption that certain environmental response actions for the settled sites would be reimbursed from the Prepetition ASARCO Environmental Trust.

(b) The funds remaining in the Prepetition ASARCO Environmental Trust are separate from and without prejudice to the distributions to be made to holders of environmental Claims under this Plan.

(c) To allow for the possibility that AMC fails to make a required payment due under the note that funds the Prepetition ASARCO Environmental Trust,

Reorganized ASARCO shall hold back from distributions under this 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), and place such amount in the Prepetition ASARCO Environmental Trust Escrow. In the event that AMC fails to make the payment remaining due under the note, the Plan Administrator shall pay a corresponding amount to the Prepetition ASARCO Environmental Trust from 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 release a corresponding amount from the Prepetition ASARCO Environmental Trust Escrow and distribute such funds in accordance with the terms and conditions of this Plan and the Confirmation Order.

10.9. Operations Between the Confirmation Date and the Effective Date. Except as set forth herein with respect to the appointment of the Plan Administrator, during the period from the Confirmation Date through and until the Effective Date, the Debtors shall continue to operate as debtors in possession, subject to the oversight of the Bankruptcy Court as provided in the Bankruptcy Code, the Bankruptcy Rules, and all orders of the Bankruptcy Court that are then in full force and effect.

10.10. Cancellation of Existing Interests. Unless otherwise agreed to by the Proponent, and except to the extent otherwise provided herein, on the Effective Date, immediately after distributions hereunder have been made to or for the benefit of holders of Claims, all instruments, certificates, and other documents evidencing the Interests in the Debtors shall be cancelled and the obligations of the Debtors or the Reorganized Debtors in any way related thereto (except any obligations provided for under this Plan) shall be discharged.

10.11. Substantive Consolidation of ASARCO and the Other Subsidiary Debtors (Other than Covington) and Alternatives Thereto, and Merger of the Asbestos Subsidiary Debtors into Covington.

(a) On the Effective Date, the Estates of the Other Subsidiary Debtors (other than Covington) shall be substantively consolidated with and into ASARCO, with the surviving entity being ASARCO. As a result of the substantive consolidation of these Estates, (1) all Intercompany Claims of ASARCO and the Other Subsidiary Debtors (other than between ASARCO and Covington) not otherwise resolved or disposed of pursuant to this Plan are eliminated; (2) all assets and liabilities, including any obligations or guarantees of the Other Subsidiary Debtors (other than Covington) become the assets and liabilities of ASARCO; and (3) each Proof of Claim filed against any of the Other Subsidiary Debtors (other than Covington) is deemed filed against and an obligation of ASARCO.

(b) Alternatively, the Proponent reserves the right to consolidate the Other Subsidiary Debtors (other than Covington) into ASARCO on the Effective Date, pursuant to section 1123(a)(5)(C) of the Bankruptcy Code. Holders of Claims in impaired Classes

shall vote on a Debtor-by-Debtor basis so that their votes may be counted in this fashion should the Debtors elect voluntary consolidation rather than substantive consolidation.

(c) On the Effective Date, the Estates of the Asbestos Subsidiary Debtors shall be consolidated into Covington pursuant to section 1123(a)(5)(C) of the Bankruptcy Code, with Reorganized Covington as the surviving entity.

(d) As another alternative, the Proponent reserves the right to proceed with this Plan as to only ASARCO and any one or more of the Subsidiary Debtors that ASARCO designates. Thereafter, the Subsidiary Debtors not included in this Plan with ASARCO would either file a proposed plan under chapter 11 of the Bankruptcy Code or convert their cases to liquidation cases under chapter 7 of the Bankruptcy Code.

(e) If Proponent elects to proceed to Confirmation without the Asbestos Subsidiary Debtors, Proponent may modify this Plan, which modification may include provisions such that:

- if necessary or appropriate, the Asbestos Subsidiary Debtors may not be merged into Covington;
- if necessary or appropriate, all or a part of ASARCO's interest in the Asbestos In-Place Insurance Coverage, any Asbestos Insurance Policy, any Asbestos Insurance Recovery or Recoveries, or any Asbestos Insurance Settlement Agreement may be assigned by ASARCO to the Asbestos Subsidiary Debtors;
- if necessary or appropriate, one or more Asbestos Insurance Companies may be excluded from the definition of ASARCO Protected Parties;
- if necessary or appropriate, one or more of the Asbestos Insurance Actions may be retained by the Asbestos Subsidiary Debtors;
- if necessary or appropriate, the Intercompany Claims between any Asbestos Subsidiary Debtor and ASARCO (including any Administrative Claim of ASARCO against any Asbestos Subsidiary Debtor) may be determined by the Court, and if it is determined that a net amount is owed by ASARCO to the Asbestos Subsidiary Debtors, such Claims would be paid as Class 4 Claims under this Plan.

Proponent shall provide appropriate notice of any such modification as required by the Court.

10.12. Issuance of Interests in Reorganized ASARCO. On or after the Effective Date, Reorganized ASARCO shall issue interests in Reorganized ASARCO for distribution in accordance with the terms of this Plan, which shall represent all of the equity interests in Reorganized ASARCO as of the Effective Date. They shall be held by the Plan Administrator. The issuance of interests in Reorganized ASARCO under this Plan shall be authorized under section 1145 of the Bankruptcy Code as of the Effective Date without further act or action by any Person, except as may be required by Reorganized ASARCO's organizational documents or

applicable law, regulation, order, or rule; and all documents evidencing such issuance shall be executed and delivered as provided for in this Plan.

10.13. Issuance of Interests in Reorganized Covington. On or after the Effective Date, Reorganized Covington shall issue interests in Reorganized Covington for distribution in accordance with the terms of this Plan, which shall represent all of the equity interests in Reorganized Covington as of the Effective Date. The Asbestos Claims Liquidation Trust shall own 100 percent of the interests in Reorganized Covington and shall be entitled to receive periodic dividends and other distributions from Reorganized Covington. The issuance of interests in Reorganized Covington pursuant to distributions under this Plan shall be authorized under section 1145 of the Bankruptcy Code as of the Effective Date without further act or action by any Person, except as may be required by Reorganized Covington's organizational documents or applicable law, regulation, order, or rule; and all documents evidencing such issuance shall be executed and delivered as provided for in this Plan.

10.14. Charter Documents of the Reorganized Debtors. The charter documents of each of the Reorganized Debtors shall be amended, as of the Effective Date, to prohibit the issuance of nonvoting equity securities. Exhibit 13 attached hereto contains forms of the amended charter documents.

10.15. Management of the Reorganized Debtors. On the Effective Date, (a) the current directors and officers of ASARCO and the Subsidiary Debtors shall be removed (without the necessity of further action) and shall have no further obligations; (b) to the fullest extent permitted by applicable law, the rights, powers, and duties of the directors and officers of Reorganized ASARCO shall vest in the Plan Administrator, and the Plan Administrator or the Plan Administrator's designee shall be the presiding officer and the sole director of Reorganized ASARCO (unless and until additional officers and directors are appointed pursuant to the Plan Administration Agreement); and (c) the Asbestos Claims Liquidation Trustees shall appoint the persons to serve as officers and directors of Reorganized Covington.

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

10.17. Continued Corporate Existence and Business Operations of the Reorganized Debtors. Except as otherwise provided in this Article X, the Reorganized Debtors shall continue their existences as separate entities after the Effective Date for the purposes of operating their businesses and satisfying their obligations under this Plan, in accordance with applicable law and pursuant to their applicable organizational documents. The Plan Administrator shall, in accordance with the Plan Administration Agreement, operate the business of Reorganized ASARCO, and the officers and directors of Reorganized Covington shall, in accordance with the charter documents of Reorganized Covington, operate the business of Reorganized Covington. On or after the Effective Date, the Plan Administrator and the officers and directors of Reorganized Covington, as applicable, may take such action as permitted by applicable law and each of the Reorganized Debtors' organizational documents, as they may determine is reasonable and appropriate, including to cause (a) each Reorganized Debtor's legal name to be changed; (b) the closure of the Reorganized Debtors' bankruptcy cases (upon consultation with the



Liquidation Trustee, the SCC Litigation Trustee, and the Asbestos Claims Liquidation Trustees); or (c) the Reorganized Debtors to be engaged in such businesses or activities as are appropriate to their respective corporate purposes.

10.18. Plan Sponsor's Assumption of Certain Environmental Liabilities. Pursuant to section 3.3(e) of the Plan Sponsor PSA, and except as provided in section 3.4(f), (g), (h) and (i) thereof, from and after the Closing, the Plan Sponsor shall assume, pay, perform, and discharge when due the Assumed Environmental Liabilities (as such term is defined in the Plan Sponsor PSA).

10.19. Revesting of Assets. On the Effective Date, all of the Debtors' rights, title, and interests in and to the Sold Assets shall vest in the Plan Sponsor, 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, without limitation, any right of setoff, recoupment, netting, or deduction). Except as otherwise expressly provided in the Plan or the Plan Documents, on the Effective Date, the ASARCO Residual Assets, including, without limitation, the Plan Sales Proceeds, the Distributable Cash, the Asbestos Insurance Policies, the Asbestos Insurance Recoveries, the Asbestos In-Place Insurance Coverage, the Asbestos Insurance Actions, and the Vested Causes of Action, shall vest in Reorganized ASARCO, which may operate free of any restrictions imposed by the Bankruptcy Code or by the Bankruptcy Court. The rights, title, and interests of the Asbestos Subsidiary Debtors in the Asbestos Insurance Policies, the Asbestos Insurance Recoveries, the Asbestos In-Place Insurance Coverage, and the Asbestos Insurance Actions shall vest in Reorganized ASARCO, and the Asbestos Subsidiary Debtors shall have no remaining interests therein.

10.20. Vesting and Enforcement of Causes of Action.

(a) The Vested Causes of Action (as listed in **Exhibit 14-A**), including, without limitation, the Debtors' respective rights, title, and interests in and to the Asbestos Insurance Actions, shall vest in Reorganized ASARCO. The Plan Administrator (after consultation with and approval by the Plan Administration Committee) shall be authorized to prosecute, compromise and settle, abandon, release, or dismiss the Vested Causes of Action, without need for approval by the Bankruptcy Court. After the Effective Date, the Plan Administrator 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.

(b) The Debtors' respective rights, title, and interests in and to the Liquidation Trust Claims (as listed in **Exhibit 14-B**) shall vest in the Liquidation Trustee. The Liquidation Trust may prosecute, compromise and settle, abandon, release, or dismiss the Liquidation Trust Claims, without need for approval by the Bankruptcy Court.

(c) The Debtors' respective rights, title, and interests in and to the SCC Litigation Trust Claims (as listed in **Exhibit 14-C**) shall vest in the SCC Litigation Trustee. The SCC Litigation Trust may prosecute, compromise and settle, abandon,



release, or dismiss the SCC Litigation Trust Claims, without need for approval by the Bankruptcy Court.

(d) The Asbestos Subsidiary Debtors' respective rights, title, and interests in and to the causes of action listed in **Exhibit 14-D** shall vest in Reorganized Covington. Reorganized Covington may prosecute, compromise and settle, abandon, release, or dismiss such causes of action, without need for approval by the Bankruptcy Court.

10.21. Dismissal of Certain Litigation.

(a) Adversary Proceeding No. 05-02030 filed by the Asbestos Subsidiary Debtors against Anne M. Aaberg, et al., and Adversary Proceeding No. 06-02056, filed by ASARCO, et al., against Anne M. Aaberg, *et al.*, both pending in the Bankruptcy Court, shall be dismissed on the Effective Date.

(b) The Trade Creditor Preference Claims (as listed in **Exhibit 14-E**) shall be waived and dismissed with prejudice 20 days after the Claim Objection Deadline; *provided, however*, that if a defendant to a Trade Creditor Preference Claim has filed a Proof of Claim and that Proof of Claim is the subject of a pending objection as of the Claim Objection Deadline, such Trade Creditor Preference Claim shall not be dismissed and shall vest in Reorganized ASARCO.

10.22. Further Authorizations. The Proponent, the Plan Sponsor, the Debtors, the Reorganized Debtors, the Plan Administrator, or the Trustees may seek such orders, judgments, injunctions, and rulings that any one or more of them deem necessary to further carry out the intentions and purposes of, and give full effect to the provisions of, this Plan.

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

10.24. Corporate Action. All matters provided for under this Plan involving the corporate structure of a Debtor or a Reorganized Debtor, or any corporate action to be taken by or required of, such Debtor or Reorganized Debtor shall be deemed to have occurred and be effective as provided herein and shall be authorized and approved in all respects without any requirement for further action by the holders of interests in, or directors of, any of such entities.

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

10.26. Intentionally Omitted.

10.27. Approval of Mission Mine Settlement Agreement. Confirmation of this Plan shall cause the Mission Mine Settlement Agreement (which is attached as **Exhibit 15** to this Plan, and which has been approved by the Bankruptcy Court pursuant to a motion filed under Bankruptcy Rule 9019) to be binding upon all landowners and allottees who own interests in the lands affected by the Mission Mine Settlement Agreement, as evidenced by entry of the Confirmation Order.

## ARTICLE XI

### INJUNCTIONS, RELEASES, AND DISCHARGE

11.1. Discharge and Release. Except as otherwise expressly provided in this Plan, the rights afforded in this Plan and the treatment of all Claims and Interests shall be in exchange for and in complete satisfaction, discharge, and release of all Claims and Interests of any nature whatsoever, against the Debtors or their respective Estates, assets, properties, or interests in property. Except as otherwise provided herein, on the Effective Date, all Claims against and Interests in the Debtors shall be satisfied, discharged, and released in full.

11.2. Discharge Injunction. Except as otherwise expressly provided in this Plan, the discharge and release set forth in Article 11.1 shall operate as an injunction permanently prohibiting and enjoining the commencement or continuation of any action or the employment of process with respect to, or any act to collect, recover from, or offset (a) any Claim discharged and released in Article 11.1, and (b) any cause of action, whether known or unknown, based on the same subject matter as any Claim discharged and released in Article 11.1.

#### 11.3. Channeling Order – Unknown Asbestos Claims.

##### (a) *Injunction and Channeling Order.*

Pursuant to Article 7 of the Plan, all Persons who have held, hold or may hold Unknown Asbestos Claims are made beneficiaries of the Asbestos Claims Liquidation Trust and, so long as there are assets in or available to the Asbestos Claims Liquidation Trust, are enjoined on and after the Confirmation Date from commencing or continuing in any manner any action or other proceeding of any kind with respect to such Unknown Asbestos Claims against the Debtors, the Plan Sponsor, or any other ASARCO Protected Party.

##### (b) *Limitations on Injunction and Channeling Order Regarding Unknown Asbestos Claims.*

Nothing contained in Section 11.3(a) of this Plan shall preclude an Unknown Asbestos Claimant from pursuing its rights, if any, under applicable non-bankruptcy law against any Person who may be liable to such Unknown Asbestos Claimant, if assets available to the Asbestos Claims Liquidation Trust have been exhausted.

#### 11.4. Intentionally Omitted.

11.5. Reservations. Notwithstanding anything to the contrary above or in this Plan, nothing in this Plan shall enjoin, alter, diminish, or impair:

A. the rights of Entities to the treatment accorded them under Articles II and IV of this Plan, as applicable, including the rights of Entities with Unsecured Asbestos Personal Injury Claims to assert Unsecured Asbestos Personal Injury Claims against the Asbestos Claims Liquidation Trust in accordance with the Asbestos Liquidation Trust Agreement;

B. the rights of Entities to assert any Claim, debt, obligation, or liability for payment of Asbestos Claims Liquidation Trust Expenses against the Asbestos Claims Liquidation Trust;

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

D. the right of Reorganized ASARCO with regard to any Asbestos Insurance Company that is not a Settling Asbestos Insurance Company;

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

11.6. Limitation of Injunctions. Notwithstanding any other provision of this Plan to the contrary, the releases set forth in Article 11.1 and the Injunctions set forth in Article 11.2, and 11.3 respectively, shall not serve to satisfy, discharge, release, or enjoin Claims by any Entity against the Asbestos Claims Liquidation Trust for payment of (a) Unsecured Asbestos Personal Injury Claims in accordance with the Asbestos Claims Liquidation Trust Agreement or (b) Asbestos Claims Liquidation Trust Expenses, and such releases and Injunctions shall not enjoin Reorganized ASARCO from enforcing any Asbestos Insurance Policy or any Asbestos Insurance Settlement Agreement.

11.7. Exoneration and Reliance. To the fullest extent allowable by law, no ASARCO Protected Party or the USW shall be liable (other than for criminal liability, willful misconduct, gross negligence, bad faith, or *ultra vires* acts) to any holder of a Claim or Interest or any other Entity with respect to any action, omission, forbearance from action, decision, or exercise of discretion taken at any time through the Effective Date in connection with (a) the management or operation of any of the Debtors or the discharge of their duties under the Bankruptcy Code; (b) the solicitation, negotiation, or implementation of any of the transactions provided for, or contemplated in, this Plan or the other Plan Documents, including, without limitation, the marketing of the Plan Assets, the Plan Sponsor selection process, the selection of the Plan Sponsor, and the sale of the Plan Assets to the Plan Sponsor; (c) any action taken in connection with either the enforcement of the rights of any Debtor against any Entities or the defense of Claims asserted against any such Debtor with regard to the Reorganization Cases; (d) any action taken in the negotiation, formulation, preparation, development, proposal, solicitation, disclosure, Confirmation, or implementation of this Plan, other Plan Documents, or related

agreements, instruments, or other documents; (e) the administration of this Plan or the assets and property to be distributed pursuant to this Plan; or (f) the administration of any of the Estates. Each ASARCO Protected Party and the USW shall be deemed to have participated in each of the Reorganization Cases in good faith and in compliance with all applicable provisions of the Bankruptcy Code. Nothing in this Article 11.5 shall prevent the enforcement of the terms of this Plan.

11.8. Fee Shifting. If any holder of a Claim or Interest or if any Entity other than a Governmental Unit brings an action, suit, or proceeding against any ASARCO Protected Party (or any property or interest in property of any ASARCO Protected Party) by reason of any action or inaction described in Article 11.7 hereof or in any other way arising from or related to any of the Reorganization Cases, the Debtors, or the Trusts (other than as expressly provided in this Plan or the Asbestos Claims Liquidation Trust Agreement), and does not prevail in any such action, suit, or proceeding, such holder of a Claim or Interest, or other Entity shall be liable for and must pay the reasonable attorneys' fees and costs of such ASARCO Protected Party, and as a condition to going forward with such action, suit, or proceeding, such holder of a Claim or Interest, or other Entity shall, at the outset, provide appropriate proof and assurances of his, her, or its capacity to pay the ASARCO Protected Party's reasonable attorneys' fees and costs in the event the holder or other Entity fails to prevail. In order for a holder of a Claim or Interest, or other Entity to be considered a prevailing party, such party must be awarded an enforceable judgment on the merits that constitutes a material alteration of the legal relationship between such party and an ASARCO Protected Party, and does not include a judgment that awards nominal damages. This Article 11.8 does not impose any obligation on any ASARCO Protected Party to pay, or provide appropriate proof and financial assurance of his, her, or its capacity to pay, reasonable attorneys' fees and costs in the event that the holder of a Claim or Interest or other Entity prevails in an action, suit, or proceeding that is filed against such ASARCO Protected Party.

11.9. Additional Releases. To the fullest extent allowable by law, on, and as of, the Effective Date and for good and valuable consideration, the receipt and sufficiency of which are acknowledged, each ASARCO Protected Party that is not a Debtor (acting in any capacity whatsoever) shall be forever released and discharged from any and all Claims obligations, actions, suits, rights, debts, accounts, causes of action, remedies, avoidance actions, agreements, promises, damages, judgments, demands, defenses, or claims in respect of equitable subordination, and liabilities through the Effective Date, (including all Claims based on or arising out of facts or circumstances that existed as of or prior to Confirmation of this Plan in any of the Reorganization Cases, including, without limitation, Claims based on breach of contract, negligence, or strict liability, and further including, without limitation, any derivative claims asserted on behalf of any of the Debtors or claims based on third party beneficiary status, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity, or otherwise, that any of the Debtors, their respective Estates, or any of the Reorganized Debtors would have been legally entitled to assert in their own right, whether individually or collectively) which any of the Debtors, their respective Estates, or any of the Reorganized Debtors may have against any of them in any way related to any of the Reorganization Cases or any of the Debtors (or their respective predecessors or Affiliates); provided, however, that nothing in this Article 11.9 shall impair or otherwise affect the rights of Reorganized ASARCO to prosecute any Asbestos Insurance Action, to pursue any Asbestos Insurance Recovery, or to assert any claim,

debt, obligation, cause of action, or liability for payment against an Asbestos Insurance Company based on or arising from an Asbestos Insurance Policy. No ASARCO Protected Party shall be responsible for any obligations of any of the Debtors except those expressly assumed by those parties in this Plan (and only to the extent so assumed). The releases provided for in this Article 11.9 shall not extend to any claims by any Governmental Unit with respect to criminal liability, willful misconduct, gross negligence, bad faith, or ultra vires acts.

11.10. Exculpation Injunction and Indemnities.

(a) *Exculpation Injunction.*

Except as provided in Section 11.3, all Entities are permanently enjoined from initiating a suit against any ASARCO Protected Party, the USW, their respective successors or assigns, or their respective assets, properties, or interests in property regarding any Claims or any other right to legal or equitable relief (regardless of whether such right can be reduced to a right to payment or whether or not the facts of or legal bases therefore were known or existed prior to the Effective Date) that are released under Article 11.7, 11.9, or 11.11 hereof; provided, however, that this injunction shall not apply to Claims based solely upon willful misconduct, gross negligence, or bad faith, or any criminal liability, or liability for ultra vires acts. Any such action by a non-Governmental Unit shall be brought in the Bankruptcy Court within 90 days after the Effective Date. Nothing in this Article 11.10 shall prevent the enforcement of the terms of this Plan.

(b) *Indemnities.*

Reorganized ASARCO shall defend, hold harmless, and indemnify to the fullest extent permitted by applicable law each of the Protected Officers and Directors and other appropriate parties as designated by ASARCO in its sole discretion not less than 10 days prior to the commencement of the Confirmation Hearing with respect to any Claim, Unknown Asbestos Claim, or liability arising from any action, failure or omission to act, or other matter related to any of the Debtors or any of the Reorganization Cases through and including the Effective Date. If and whenever any indemnified party is, or is threatened to be made, a party to any action, suit, arbitration, investigation, or other proceeding that might give rise to a right of indemnification under this Article 11.10, Reorganized ASARCO shall, to the fullest extent permitted by applicable law, reimburse that indemnified party all expenses (including attorneys' fees) reasonably incurred by or on behalf of that indemnified party in connection therewith within 60 days after Reorganized ASARCO receives a statement or statements from that indemnified party requesting reimbursement from time to time, whether prior to or after final disposition of such action, suit, arbitration, investigation, or other proceeding. In furtherance of these obligations, on the Effective Date, the Plan Administrator shall establish an escrow account to address any of Reorganized ASARCO's indemnification obligations under this Article 11.10. 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. Prior to the Effective Date, ASARCO shall purchase an errors-and-omissions insurance policy for the benefit of each of the indemnified parties in an amount equal to the errors-and-



omissions coverage currently maintained by the Debtors. The term of the policy shall be six years following the Effective Date. In addition, prior to the Effective Date, ASARCO shall exercise the six-year run-off option available under its existing directors-and-officers liability insurance. Each of the Protected Officers and Directors shall be entitled to retain independent counsel in connection with any Claim or liability asserted against him in connection with his service in the Reorganization Cases and to assist him with any issues arising in connection with the termination of his services as officer or director of any Debtor. The fees and expenses of such counsel shall be paid out of the Indemnification Escrow.

As soon as practicable after the sixth year anniversary of the Effective Date or upon such later date as the Plan Administrator deems it appropriate, the Plan Administrator shall distribute any funds remaining in the Indemnification Escrow to the Liquidation Trust for distribution in accordance with the terms and conditions of the Liquidation Trust Agreement.

11.11. Consensual Releases by Holders of Claims and Interests. *To the fullest extent allowable by law, on the Effective Date, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, holders of Claims and Interests voting to accept this Plan shall be deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged each ASARCO Protected Party that is not a Debtor from any and all Claims Interests, obligations, rights, suits, damages, causes of action, remedies, and liabilities whatsoever relating to the Debtors, the Debtors' property, events giving rise to the Reorganization Cases, the Reorganization Cases, or the Plan, including, without limitation, Claims based on breach of contract, negligence, or strict liability, and including, without limitation, any derivative claims asserted on behalf of any Debtor, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity, or otherwise, that such holder of a Claim or Interest would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, (1) any of the Debtors, (2) any of the Reorganization Cases, (3) the subject matter of, or the transactions or events giving rise to, any Claim or Interest, (4) the business or contractual arrangements between any Debtor and any ASARCO Protected Party, (5) the restructuring of Claims and Interests prior to or in any of the Reorganization Cases, (6) the negotiation, formulation, or preparation of this Plan, the Plan Documents or related agreements, instruments, or other documents, or (7) any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date; provided that the above described release shall apply to all holders of Claims and Interests irrespective of how such parties vote (or whether such parties vote) in connection with the Plan, to the extent that such release relates to any of the above described conduct by any ASARCO Protected Party that has been the subject of a release by the Debtors which has been approved by the Bankruptcy Court. Notwithstanding the foregoing, this release shall not apply to Claims or liabilities arising out of or relating to any action or omission of an ASARCO Protected Party that constitutes a failure to act in good faith, or where such action or omission constitutes willful misconduct or gross negligence; provided, however, that nothing in this Article 11.11 shall impair or otherwise affect the right of Reorganized ASARCO to prosecute any Asbestos Insurance Action, to pursue any Asbestos Insurance Recovery, or to assert any claim, debt, obligation, cause of action, or liability for*



*payment against an Asbestos Insurance Company based on or arising from an Asbestos Insurance Policy.*

11.12. Release of Fraudulent Transfer Claims Against Settling Asbestos Insurance Companies. Except as otherwise provided in this Article 11.12, all fraudulent transfer claims against any Settling Asbestos Insurance Company arising under sections 544(b), 548, or 550 of the Bankruptcy Code or otherwise with respect to the Claims, rights, or interests released under the Asbestos Insurance Settlement Agreement shall be released, and Reorganized ASARCO shall have no authority to bring any fraudulent transfer actions arising under any applicable state or other non-bankruptcy law against any Settling Asbestos Insurance Company with respect to the Claims, rights, and interests released under the Asbestos Insurance Settlement Agreement. This Article 11.12 does not apply to any of the existing Avoidance Actions against certain Asbestos Insurance Companies that entered into prepetition settlement agreements, as listed on Exhibit 14-A hereto.

11.13. Limitations Regarding Governmental Units and the U.S. Trustee.

(a) The releases, discharges, satisfactions, exonerations, exculpations, and injunctions provided under this 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 this Plan for the benefit of the creditors, the assets or funds being held by the entities administering this 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 this 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 in Exhibit 12 to this 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).

(b) Notwithstanding anything to the contrary, nothing in this Article XI shall apply to the rights of the U.S. Trustee to fulfill his obligations under the Bankruptcy Code and title 28 of the United States Code or the obligations of the Debtors or the Reorganized Debtors to the U.S. Trustee.

11.14. Limitation Regarding Flow Through Bonds. In accordance with the SPT Settlement Agreement, and except as otherwise provided in Article 8.9 above in regards to SPT Bond Nos. 394729 and 403998, ASARCO's obligations under and relating to the Flow Through Bonds and the SPT Indemnity Agreement as it relates to the Flow Through Bonds shall not be discharged by Confirmation of this Plan or upon ASARCO's emergence from the Reorganization Cases.

11.15. Discharge, Injunctions, and Releases Integral to this Plan. The discharge, Injunctions, and releases set forth in this Article XI are integral parts of this Plan.

## ARTICLE XII

### MATTERS INCIDENT TO PLAN CONFIRMATION

#### 12.1. Term of Certain Injunctions and Automatic Stay.

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

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

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

12.3. No Successor Liability.

(a) Except as otherwise expressly provided in this Plan, including this Article 12.3, with regard to claims existing as of the Confirmation Date, no ASARCO Protected Party shall be deemed a successor or successor in interest to the Debtors or to any Entity for which the Debtors may be held legally responsible, by reason of any theory of law or equity, and no ASARCO Protected Party shall be responsible for any successor or transferee liability of any kind or character except to the extent that Reorganized ASARCO is the successor or successor in interest to ASARCO solely with regard to the Asbestos Insurance Policies, the Asbestos Insurance Settlement Agreements, the Asbestos In-Place Coverage, the Asbestos Insurance Actions, or the Asbestos Insurance Recoveries.

(b) Except as otherwise expressly provided in this Plan, no ASARCO Protected Party shall have any obligations to perform, pay, indemnify creditors for, or otherwise have any responsibilities for any liabilities or obligations of any of the Debtors or the Reorganized Debtors, whether arising before, on, or after the Confirmation Date.

12.4. Asbestos Insurance Actions and Preservation of Insurance Claims and Defenses. Subject to the remaining terms of this Article 12.4 and the terms of the Confirmation Order, Asbestos Insurance Actions and Asbestos Insurance Recoveries shall be preserved pursuant to this provision for pursuit by Reorganized ASARCO for the benefit of holders of Claims in Class 3. On or after the Effective Date, the Plan Administrator on behalf of Reorganized ASARCO shall be entitled, in the Plan Administrator's sole and complete discretion, to pursue, compromise, or settle any and all Asbestos Insurance Actions and Asbestos Insurance Recoveries. All proceeds from the Asbestos Insurance Actions shall be paid into the Vested Causes of Action Escrow.

12.5. Insurance Neutrality.

(a) Confirmation of this Plan shall not be binding upon, and shall not have any *res judicata* or collateral estoppel effect on or against, any Asbestos Insurance Company that is subject to insurance neutrality under the Insurance Neutrality Order regarding its insurance coverage obligations in any pending or subsequent insurance coverage litigation, arbitration, ADR-type proceeding, or other dispute concerning the existence or scope of its rights or obligations regarding asbestos-related liabilities, if any, and shall not have any impact, effect, or consequence in any such other context.

(b) Neither ASARCO, the Asbestos Subsidiary Debtors, the Committees, the FCR, an Asbestos Insurance Company, nor the Asbestos Trust may argue or assert, in any court proceeding, arbitration, ADR-type proceeding, or other dispute involving an Asbestos Insurance Company that is subject to insurance neutrality under the Insurance Neutrality Order and concerning issues related to insurance coverage, that any findings or conclusions concerning 11 U.S.C. § 524(g) or constituting any estimation of asbestos-related liabilities contained in or referenced in any decision, order, finding, conclusion, or judgment of the Bankruptcy Court relating to Confirmation of this Plan: (1) constitutes a "judgment," "adjudication," "final order," "settlement," or "finding of liability" related

to, based on, or relying on the principles enunciated in *UNR Indus., Inc. v. Continental Cas. Co.*, 942 F.2d 1101 (7th Cir. 1991) and *Fuller-Austin Insulation Co. v. Fireman's Fund Ins. Co.*, No. BC 116835, 2002 WL 398672 (Cal. Super. Ct. Feb. 26, 2002) and 2002 WL 31005090 (Cal. Super. Ct. Aug. 6, 2002); and (2) is binding upon such an Asbestos Insurance Company for any purpose concerning insurance coverage under any policies issued to the Debtors. Nothing herein shall limit the ability of ASARCO, the Asbestos Subsidiary Debtors, the Committees, the FCR, an Asbestos Insurance Company, or the Asbestos Trust to offer this Plan, any of the Plan Documents, the Confirmation Order, or any part of the confirmation process (including, without limitation, any evidentiary hearings or any findings or conclusions therein) in any court, including any court resolving any insurance coverage litigation, as evidence that the Debtors, Reorganized ASARCO, or the Asbestos Trust are so bound.

(c) Nothing in this Plan shall operate to expand the rights of ASARCO, any of the Asbestos Subsidiary Debtors, the Committees, the FCR, an Asbestos Insurance Company, or the Asbestos Claims Liquidation Trust, or diminish any of their respective duties and obligations as to those rights, duties, and obligations that exist under any policies issued by an Asbestos Insurance Company that is subject to insurance neutrality under the Insurance Neutrality Order as of the Petition Date except as set out in Article 12.5(e) below. Moreover, nothing in the Confirmation process shall in any way operate to, or have the effect of, impairing, prejudicing, or expanding such Asbestos Insurance Company's legal, equitable, or contractual rights in any respect, or of increasing, accelerating, creating, or triggering such Asbestos Insurance Company's insurance coverage obligations, if any, in comparison to what those respective rights or obligations would have been if this Plan had not been confirmed except as set out in Article 12.5(e) below; and all of such Asbestos Insurance Company's rights are expressly reserved and preserved. Such Asbestos Insurance Company's rights shall be determined pursuant to its insurance policies with the Debtors, and under applicable law. Such Asbestos Insurance Company's rights to conduct discovery, either written or oral, in any future proceeding in any insurance coverage litigation relating to any of the Debtors' asbestos-related liabilities for or such Asbestos Insurance Company's obligations to indemnify the Debtors on account of any or all of such asbestos-related liabilities, if any, shall not be affected, restricted, expanded, altered, or modified by anything in or part of this Plan or the Confirmation process. An Asbestos Insurance Company shall have no such discovery rights in any of the Reorganization Cases; provided, however, that such Asbestos Insurance Company shall have rights to conduct discovery in the Reorganization Cases on any issue that does not relate to an Asbestos Insurance Company's alleged obligations, if any, to indemnify the Debtors on account of any asbestos-related liabilities. Without limiting the foregoing, except as set out in Article 12.5(e) below, no proceedings undertaken pursuant to or otherwise as part of the Confirmation process (including, without limitation, any evidentiary hearings or any findings or conclusions constituting or relating to the determination of any Alter Ego Theories, contained in or referenced in any decision, order, finding, conclusion, or judgment of the Bankruptcy Court) shall constitute a trial or hearing on the merits, or an adjudication, final order, settlement, or finding of liability binding on such Asbestos Insurance Company for any purpose concerning insurance coverage for asbestos-related liability, or be used as evidence or offered into evidence in any proceeding to prove that such Asbestos Insurance Company

participated in or consented to the procedures undertaken pursuant to this Plan. Any ruling by the Bankruptcy Court on any issue upon which such Asbestos Insurance Company does not involve itself and the Confirmation Order shall not be binding on such Asbestos Insurance Company in any insurance coverage litigation. While the court and the finder of fact in any insurance coverage litigation may be advised of any of the proceedings and Confirmation Order in the Bankruptcy Court and while ASARCO, the Asbestos Subsidiary Debtors, the Committees, the FCR, an Asbestos Insurance Company, or the Asbestos Claims Liquidation Trust may offer this Plan, any of the Plan Documents, any of the Confirmation proceedings, or the Confirmation Order as evidence of the reasonableness of a settlement between or among the Debtors, the Committees, and the FCR, the court and the finder of fact in any insurance coverage litigation shall be informed or instructed that such proceedings and the Confirmation Order in the Bankruptcy Court are not binding on such Asbestos Insurance Company and that it is up to the court or the finder of fact in any insurance coverage litigation to make its own independent determination as to the reasonableness of that settlement as to such Asbestos Insurance Company.

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

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



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

## ARTICLE XIII

### PROVISIONS GOVERNING DISTRIBUTIONS

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

#### 13.2. Delivery of Distributions.

##### (a) *In General.*

Except as otherwise expressly provided in this Plan, distributions to holders of Allowed Claims shall be made at the address of the holder of such Claim as indicated in the claims register, which shall be maintained by the Claims Agent prior to the Effective Date. After the Effective Date, the Plan Administrator shall be responsible for maintaining the claims register. Claimants must provide the Plan Administrator with written notice of any change of address or any transfer of, or sale of any participation in, any Allowed Claim at least 30 days prior to any distribution by the Plan Administrator in order for the notice to be effective as to that distribution; *provided, however*, that with respect to Bondholders' Claims, further distributions on account of such Claims by the Indenture Trustees to the record holders of the Bondholders' Claims shall be accomplished in accordance with a duly executed letter of transmittal. No such additional distributions will be made until the receipt by the Plan Administrator of a completed letter of transmittal with all required signatures and documents. Pending receipt of such letter of transmittal, any such distributions shall be held in reserve by the Plan Administrator. For avoidance of doubt, any and all distributions to holders of Asbestos Personal Injury Claims and Unknown Asbestos Claims shall be made by the Asbestos Claims Liquidation Trust.



(b) *Method of Payment.*

Payments may be made at the election of Reorganized ASARCO or the Plan Administrator by check, wire transfer, or the customary method used for payment by any of the Debtors prior to the Petition Date.

(c) *Distributions on Account of Bondholders' Claims.*

All distributions on account of Allowed Bondholders' Claims shall be made: (1) to the respective Indenture Trustee for the particular issue of Bonds, as the case may be, or (2) with the prior written consent of the Indenture Trustee, through the facilities of DTC (if applicable) or, in the case of Liquidation Trust Interests and SCC Litigation Trust Interests, in accordance with the instructions contained in a duly executed letter of transmittal. No Liquidation Trust Interests or SCC Litigation Trust Interests shall be issued without the receipt by the applicable Trust Registrar of a completed letter of transmittal with all required signatures and documents. Pending receipt of such letter of transmittal, any such distributions shall be held in reserve by the Plan Administrator.

If a distribution is made to the Indenture Trustee, such Indenture Trustee shall administer the distribution in accordance with this Plan and the Indenture and, subject to the requirements of Article 15.14 of this Plan, shall be compensated for all of its services and disbursements related to distributions pursuant to this Plan (and for the related fees and expenses of any counsel or professional engaged by the Indenture Trustee with respect to administering or implementing such distributions), by the Debtors, Reorganized ASARCO, or the Plan Administrator, as appropriate, in the ordinary course upon the presentation of invoices by such Indenture Trustee. Subject to the procedures set forth in Article 15.14 of this Plan, the compensation of the Indenture Trustees for services relating to distributions under this Plan shall be made without the need for filing any application or request with, or approval by, the Bankruptcy Court.

An Indenture Trustee shall not be required to give any bond, surety, or other security for the performance of its duties with respect to the administration and implementation of distributions.

Any and all distributions on account of Allowed Bondholders' Claims shall be subject to the right of the respective Indenture Trustee to exercise its Charging Lien for any unpaid Indenture Trustee Fee Claim, any fees and expenses of an Indenture Trustee incurred in making distributions pursuant to this Plan, and any fees and expenses of an Indenture Trustee incurred in responding to any objection by the Debtors to an Indenture Trustee Fee Claim.

The exercise of an Indenture Trustee's Charging Lien against a distribution to recover payment of any unpaid Indenture Trustee Fee Claim shall not subject the Indenture Trustee to the jurisdiction of the Bankruptcy Court with respect to either the exercise of the Charging Lien or the fees and costs recovered thereby.

Notwithstanding any of the foregoing, nothing herein shall be deemed to impair, waive, or extinguish any rights of the Indenture Trustees under their respective Indentures with respect to the Charging Lien.

(d) *Distributions to the United States.*

The United States shall be paid by wire transfer in accordance with wiring instructions provided by the DOJ.

13.3. Intentionally Omitted.

13.4. Unclaimed Property.

(a) *Distributions by the Asbestos Claims Liquidation Trust.*

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

(b) *Distributions by the Plan Administrator.*

(1) If the distribution to any holder of an Allowed Claim (other than the holder of an Unsecured Asbestos Personal Injury Claim or Demand) is returned to Reorganized ASARCO or the Plan Administrator as undeliverable or is otherwise unclaimed (including by a Claimant's failure to 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 the 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 Article 13.4(b)(2) below. Nothing contained in this Plan shall require Reorganized ASARCO or the Plan Administrator to attempt to locate any holder of an Allowed Claim.

(2) Any funds in the Undeliverable and Unclaimed Distribution Reserve that remain unclaimed (including by a Claimant's failure to 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 this Plan pursuant to section 1143 of the Bankruptcy Code, shall have no further Claim in respect of such distribution, and shall not participate in any further distributions under this Plan with respect to such Claim. The Plan Administrator shall (at such time as determined to be practicable by the Plan Administrator) distribute the Forfeited Distributions to the Liquidation Trust for distribution in accordance with the terms and conditions of the Liquidation Trust Agreement.

13.5. Compliance with Tax Requirements. The Debtors, Reorganized ASARCO, the Plan Administrator, the Indenture Trustees, and the Trusts shall comply with all applicable withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authorities, and all distributions hereunder or under any Plan Document shall be subject to such withholding and reporting requirements, if any. 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 this Plan and the Plan Documents. Notwithstanding any other provision of this Plan, each Person receiving a distribution pursuant to this Plan, or any other Plan Document, shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any Governmental Unit, including income and other tax obligations, on account of that distribution.

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

13.7. No Distribution Pending Allowance. If a Claim or any portion of a Claim is disputed, no payment or distribution shall be made on account of the disputed portion of such Claim (or the entire Claim, if the entire Claim is disputed), unless such Disputed Claim becomes an Allowed Claim.

13.8. Disputed Claims Reserve.

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

(b) On the Effective Date (or as soon thereafter as is reasonably practicable), ASARCO, Reorganized ASARCO, or the Plan Administrator, as the case may be, shall deposit in the Disputed Claims Reserve the Cash 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 as of the Effective Date. The amount to be deposited shall be determined based on the lesser of (1) the asserted amount of the Disputed Claims in the applicable Proofs of Claim; (2) the amount, if any, estimated by the Bankruptcy Court pursuant to section 502(c) of the Bankruptcy Code; or (3) the amount otherwise agreed to by the Debtors and the holders of such Disputed Claims. The Plan Administrator shall, 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.

(c) 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 Liens asserted by the holder of an allegedly Secured Claim against assets that are 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 (1) the amount of the allegedly Secured Claim; (2) the amount, if any, estimated by the Bankruptcy Court pursuant to section 502(c) of the Bankruptcy Code; (3) the fair market value of such assets, net of any Liens senior to the applicable Liens; or (4) 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.

(d) If a Claim that remains a Disputed Claim as of the Effective Date is thereafter Allowed in whole or in part, the Plan Administrator shall (at such time as determined to be practicable by the Plan Administrator) distribute from the Disputed Claims Reserve or 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.

(e) If a Disputed Claim is disallowed, in whole or in part, the Plan Administrator shall (at such time as determined to be practicable by the Plan Administrator) distribute the Cash reserved in respect of such disallowed Disputed Claim to the Liquidation Trust for distribution in accordance with the terms and conditions of the Liquidation Trust Agreement.

(f) 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.

### 13.9. Surrender of Bondholder Certificates; Lost Certificates.

(a) Each holder of a Certificate shall surrender such Certificate to the Indenture Trustee or the Plan Administrator, as the case may be, and such Certificate shall be cancelled solely with respect to the Debtors and such cancellation shall not alter the obligations or rights of any non-Debtor parties as between or among such persons pursuant to such instruments. No distribution of property hereunder shall be made to such holder unless and until such Certificate is received by the Indenture Trustee or the Plan Administrator, as the case may be, or the unavailability of such Certificate is established to the reasonable satisfaction of such Indenture Trustee or the Plan Administrator. Any holder who fails to surrender or cause the surrender of such Certificate, or fails to execute and deliver an affidavit of loss and indemnity reasonable

satisfactory to the Indenture Trustee or the Plan Administrator, as the case may be, prior to the second anniversary of the Effective Date shall be deemed to have forfeited all rights and Claims in respect of such Certificate and shall not participate in any distribution under this Plan, and all property in respect of such forfeited distribution shall be subject to distribution to all other holders of Claims under such Indenture who have duly surrendered or caused the surrender of their Certificates or reasonably established the unavailability thereof.

(b) Any holder of an Allowed Bondholders' Claim with respect to which the underlying Certificate has been lost, stolen, mutilated, or destroyed must, in lieu of surrendering such Certificate, deliver to the Indenture Trustee or the Plan Administrator, as the case may be: (1) evidence satisfactory to the Indenture Trustee or the Plan Administrator, as the case may be, of the loss, theft, mutilation, or destruction; and (2) such security or indemnity as may be required by the Indenture Trustee or the Plan Administrator, as the case may be, to hold it and the Debtors harmless from any damages, liabilities, or costs incurred in treating such individual as a holder of such Certificate. Upon compliance with this Article 13.9 by a holder of an Allowed Bondholders' Claim, such holder will, for all purposes under this Plan, be deemed to have surrendered the applicable Certificate.

(c) Any holder of a Certificate that fails to surrender or is deemed not to have surrendered the applicable Certificate within the time prescribed in Article 13.9(a) hereof shall be deemed to have had its right to distributions pursuant to this Plan on account thereof discharged, and shall be forever barred from asserting any such Claim against the Debtors, the Reorganized Debtors, the Plan Administrator, the Liquidation Trustee, the SCC Litigation Trustee, the Indenture Trustees, or any of the foregoing's respective property.

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

**13.10. Cancellation of Instruments.** Unless otherwise provided for herein, on the Effective Date, all promissory notes, instruments, indentures, bonds, agreements, or other documents evidencing, giving rise to, or governing any Claim against the Debtors (including the Indentures and the Bonds) shall be deemed cancelled and shall represent only the right, if any, to participate in the distributions contemplated by this Plan. Notwithstanding the foregoing and anything else contained in this Plan, the Indentures shall continue in effect solely for the purposes of (a) allowing distributions to be made under this Plan pursuant to the Indentures and the Indenture Trustees to perform such other necessary functions with respect thereto and to have the benefit of all the protections and other provisions of the applicable Indentures in doing so; (b) permitting an Indenture Trustee to maintain or assert any right or Charging Lien it may have with respect to distributions pursuant to the terms of this Plan for Indenture Trustee Fee Claims; (c)

permitting the Indenture Trustees to assert any right to indemnification, contribution, or other Claim any one of them may have under the applicable Indentures, subject to any and all defenses the Debtors may have under this Plan and applicable law to any such asserted right or Claims; and (d) permitting each Indenture Trustee to exercise its rights and obligations relating to the interests of the holders of Bondholders' Claims and its relationship with the holders of Bondholders' Claims pursuant to the applicable Indenture, including all rights it may have to appear and be heard in these Reorganization Cases and any appeals.

#### ARTICLE XIV

##### PROCEDURES FOR TREATING DISPUTED CLAIMS

14.1. Objections to Claims. After the Effective Date, the Plan Administrator (on behalf of Reorganized ASARCO) shall have the right to file objections to Claims (other than objections to Unsecured Asbestos Personal Injury Claims, Unknown Asbestos Claims and objections to Claims that have been Allowed) and litigate to judgment, settle, or withdraw such objections to Disputed Claims. Without limiting the preceding, the Plan Administrator (on behalf of Reorganized ASARCO) shall have the right to litigate any Disputed Claim either in the Bankruptcy Court or in any court of competent jurisdiction. After the Effective Date, only the Asbestos Claims Liquidation Trust shall have the authority to file objections to Unsecured Asbestos Personal Injury Claims and Unknown Asbestos Claims and litigate to judgment, settle, or withdraw such objections. Unsecured Asbestos Personal Injury Claims and Unknown Asbestos Claims, whether or not a Proof of Claim is filed, shall be satisfied exclusively in accordance with this Plan and the Asbestos Claims Liquidation Trust Agreement. For the avoidance of doubt, no objection to Unsecured Asbestos Personal Injury Claims or Unknown Asbestos Claims shall be filed in the Bankruptcy Court. Except as provided herein as to objections to Unsecured Asbestos Personal Injury Claims filed after the Effective Date, nothing in this Article 14.1 shall prejudice any party in interest's right or standing to file objections to Claims.

The Debtors' outstanding objections to the Indenture Trustees' proofs of claim (as amended) shall be litigated, if not settled, on a schedule to be agreed upon by the Debtors and the Indenture Trustees, and the Indenture Trustees rights to seek allowance and payment of the amounts set forth in such proofs of claim (as amended) are expressly preserved by this Plan.

14.2. Objection Deadline. Within the later of (a) 90 days after the Effective Date or (b) 90 days after a Proof of Claim is filed, objections to Claims (other than Unsecured Asbestos Personal Injury Claims and Unknown Asbestos Claims, which shall be Allowed or disallowed as provided in the Asbestos Claims Liquidation Agreement) shall be filed with the Bankruptcy Court; provided, however, that Reorganized ASARCO or the Plan Administrator may seek to extend such period (or any extended period) for cause.

14.3. Disallowance of Improperly Filed Claims. Any Administrative Claim or other Claim (except for Unsecured Asbestos Personal Injury Claims and Unknown Asbestos Claims) for which the filing of a motion for allowance is required shall be disallowed if such filing is not timely and properly made, subject to the right of the Claimant to seek permission under applicable law to file a late Claim.



## ARTICLE XV

### MISCELLANEOUS

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

15.2. Jurisdiction over the Asbestos Claims Liquidation Trust and the Environmental Custodial Trusts. The Asbestos Claims Liquidation Trust and the Environmental Custodial Trusts (including each of the Environmental Custodial Trust Accounts) shall be subject to the continuing jurisdiction of the Bankruptcy Court sufficient to satisfy the requirements of Treasury Regulation section 1.468B-1.

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

- (a) modify this Plan after entry of the Confirmation Order, pursuant to the provisions of this Plan, the Bankruptcy Code, and the Bankruptcy Rules;
- (b) correct any defect, cure any omission, reconcile any inconsistency, or make any other necessary changes or modifications in or to this Plan, the Plan Documents, or the Confirmation Order as may be necessary to carry out the purposes and intent of this Plan;
- (c) hear and determine any cause of action, and enter and implement such orders as may be necessary or appropriate, to execute, interpret, implement, consummate, or enforce this Plan, the Plan Documents, and the transactions contemplated thereunder;
- (d) hear and determine disputes arising in connection with the execution, interpretation, implementation, Consummation, or enforcement of this Plan, including, without limitation, the Plan Documents, and to enforce, including by specific performance, the provisions of this Plan and the Plan Documents;

(e) hear and determine disputes arising under settlement agreements previously approved by the Bankruptcy Court, including, without limitation, the Environmental Custodial Trust Settlement Agreements, the Miscellaneous Federal and State Environmental Settlement Agreement, and the Residual Environmental Settlement Agreement;

(f) hear and determine disputes arising in connection with the execution, interpretation, implementation, consummation, or enforcement of the Plan Sponsor PSA, settlement agreements, asset purchase agreements, or other agreements entered into by the Debtors during the Reorganization Cases, or to enforce, including by specific performance, the provisions of such agreements;

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

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

(i) enter such orders or judgments, including, without limitation, injunctions as necessary to enforce the title, rights, and powers of any of the Debtors, the Reorganized Debtors, the Plan Sponsor, the Plan Administrator, or the Trusts;

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

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

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

(m) hear and determine any timely objections to or motions or applications concerning Claims or the allowance, classification, priority, compromise, setoff, estimation, or payment of any Claim, including, without limitation, any request to subordinate any Claim or Administrative Claim, to the fullest extent permitted by the provisions of section 157 of title 28 of the United States Code;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15.4. Post-Effective Date Status of the Committees and the FCR. The Committees and the position of the FCR shall continue in existence until the Effective Date, with the Debtors to pay the reasonable fees and expenses of the Committees and the FCR and their counsel and advisors through that date in accordance with the fee and expense procedures promulgated during the Reorganization Cases; *provided, however*, that notwithstanding the foregoing, the Committees and the FCR shall continue in existence after the Effective Date for the duration of any appeal of the Confirmation Order or any other order in which the Committees and the FCR have an interest, and *provided further*, the Committees and the FCR shall have standing to participate in proceedings brought by their respective professionals or, if applicable, members for allowance of fees and reimbursement of expenses for services rendered during the pendency of the Reorganization Cases and for services rendered to the Committees or the FCR during the pendency of any appeal of the Confirmation Order or any other order in which the Committees and the FCR have an interest. On and after the Effective Date, the position of FCR shall continue pursuant to orders issued by the Bankruptcy Court during the Reorganization Cases, provided that the FCR thereafter shall have and exercise the rights, duties, and responsibilities set forth in the Asbestos Claims Liquidation Trust Documents. Except as provided above, the Committees shall be dissolved on the Effective Date, and the members, attorneys, accountants, and other professionals thereof shall be released and discharged of and from all further authority, duties, responsibilities, liabilities, and obligations related to, or arising from, the Reorganization Cases.

15.5. Modification of Plan. The Proponent may alter, amend, or modify this Plan under section 1127(a) of the Bankruptcy Code at any time prior to the Confirmation Date and expressly reserves its rights to amend this Plan and any Plan Documents as necessary in order to comply with the requirements of the Bankruptcy Code, including, without limitation, section 1129(a) and (b) of the Bankruptcy Code. After the Confirmation Date, the Proponent may, under section 1127(b) of the Bankruptcy Code, seek Bankruptcy Court approval to remedy any defects or omissions or reconcile any inconsistencies in this Plan or the Confirmation Order in such manner as may be necessary to carry out the purposes and intent of this Plan, so long as the proposed alteration, amendment, or modification does not adversely affect the treatment of Claims or Interests under this Plan and would not reasonably be expected to have a material adverse effect on the Plan Sponsor, the Guarantors, or on the ability to consummate the transactions contemplated by the Plan Sponsor PSA.

15.6. Revocation, Withdrawal, or Non-Consummation. The Proponent reserves the right to revoke, amend, or withdraw this Plan prior to the Confirmation Hearing and to file subsequent plans of reorganization. If the Proponent revokes or withdraws this Plan, or if Confirmation or Consummation does not occur, then (a) this Plan shall be null and void in all respects; (b) any settlement or compromise embodied in this Plan, assumption or rejection of executory contracts or unexpired leases under this Plan, and any document or agreement executed pursuant to this Plan, shall be deemed null and void; and (c) nothing contained in this Plan shall (i) constitute a waiver or release of any Claims by or against, or Interests in, such

Debtors or any other Person, (ii) prejudice in any manner the rights of such Debtors or any other Person, or (iii) constitute an admission of any sort by the Debtors or any other Person.

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

15.8. Rules Governing Conflicts Between Documents. In the event of a conflict between the terms or provisions of this Plan and the Plan Documents, the terms of this Plan shall control over the Plan Documents. In the event of a conflict between the terms of this Plan or the Plan Documents, on the one hand, and the terms of the Confirmation Order, on the other hand, the terms of the Confirmation Order shall control. In the event of a conflict between the information contained in the Disclosure Statement and this Plan or any other Plan Document, this Plan or other Plan Document (as the case may be) shall control.

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

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

15.11. Bar Date for Compensation and Reimbursement Claims. All applications for final allowances of compensation or reimbursement of expenses under section 330 of the Bankruptcy Code or applications for allowance of Administrative Claims arising under subsections (b)(2) through (b)(6) of section 503(b) of the Bankruptcy Code must be filed on or before 90 days after the Effective Date, unless otherwise ordered by the Bankruptcy Court; except that any application under section 503(b)(3)(D) of the Bankruptcy Code or any application for a fee enhancement or success fee under the Bankruptcy Code must be filed on or before 60 days after the Effective Date, unless otherwise ordered by the Bankruptcy Court. Objections to applications of such Professionals Persons or other Entities for compensation or reimbursement of costs and expenses or for substantial contribution Claims must be filed within 20 days after the applicable application for compensation or reimbursement was served.

15.12. Subsequent Administrative Claims Bar Date. Claimants, other than Professional Persons, holding Administrative Claims against a Debtor that arise after the Initial Administrative Claims Bar Date and remain unpaid on the Effective Date, must file a request for payment of such Subsequent Administrative Claim on or before 45 days after the Effective Date, unless otherwise ordered by the Bankruptcy Court. Any holder of a Subsequent Administrative Claim that is required to file a request for payment of such Claim and that does not file such request prior to the Subsequent Administrative Claims Bar Date shall be forever barred from asserting such Subsequent Administrative Claim against the Debtors, the Reorganized Debtors,

and their respective properties, and such Subsequent Administrative Claim shall be deemed discharged as of the Effective Date. Objections to Subsequent Administrative Claims must be filed with the Bankruptcy Court within 20 days after the applicable Subsequent Administrative Claim was served, unless such objection deadline is extended by the Bankruptcy Court. Any Subsequent Administrative Claims of the United States or any individual state under civil Environmental Laws relating to the Designated Properties shall be addressed through the Environmental Custodial Trust Settlement Agreements, the Environmental Custodial Trust Funding, and the Environmental Custodial Trust Administration Funding to be paid by ASARCO to the Environmental Custodial Trusts.

#### 15.13. Indenture Trustee Fee Claims.

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

(b) Subject to the payment of the non-disputed portion of the Indenture Trustee Fee Claims and the establishment of the reserve with respect to any disputed portion of the Indenture Trustee Fee Claims, and the payment of all other fees and expenses (including fees and expenses of counsel and other professionals) incurred by the Indenture Trustees in administering distributions to the Bondholders or responding to any objection by the Debtors to an Indenture Trustee Fee Claim, to the extent payment of the foregoing fees and expenses is permitted by the Indentures, all Charging Liens of the Indenture Trustees in any distributions shall be forever released and discharged. Once the Indenture Trustees have completed performance of all of their duties set forth in this Plan or in connection with any distributions to be made under this Plan, if any, the Indenture Trustees, and their successors and assigns, shall be relieved of all obligations as Indenture Trustees effective as of the Effective Date.

15.14. Governing Law. Except to the extent that federal law (including, without limitation, the Bankruptcy Code and the Bankruptcy Rules) is applicable or this Plan provides otherwise, the rights and obligations arising under this Plan shall be governed by, and construed



and enforced in accordance with, the laws of the State of Texas without giving effect to its conflicts of law principles.

15.15. Consent to Jurisdiction. The Debtors, Reorganized ASARCO, the Plan Administrator, the Trustees, the Trusts, the Asbestos Claims Liquidation Trust Board, and the FCR consent to the jurisdiction of the Bankruptcy Court, or any successor thereto, for all proceedings relating to the enforcement of this Plan and the Plan Documents, and the Confirmation Order.

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

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

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

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

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

**The Debtors**

Jack L. Kinzie  
Baker Botts L.L.P. 2001 Ross Avenue Dallas,  
TX 75201-2980  
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Email: jackkinzie@bakerbotts.com

Shelby A. Jordan  
Jordan, Hyden, Womble, Culbreth & Holzer, P.C.  
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**Counsel for the Asbestos Subsidiary Committee and the Asbestos Claimants' Committee**

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Steven A. Felsenthal  
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Dallas, TX 75201-2689  
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**The FCR**

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

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Oppenheimer, Blend, Harrison & Tate, Inc.

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San Antonio, TX 78205  
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**The DOJ**

David L. Dain  
Alan S. Tenenbaum  
United States Department of Justice  
Environmental Enforcement Section  
Regular Mailing Address:  
Ben Franklin Station P.O.  
Box 7611  
Washington, DC 20044  
Overnight Mailing Address:  
601 D Street NW  
Washington, DC 20004  
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(202) 514-0097 (Mr. Tenenbaum)  
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15.21. Retention and Disposal of Retained Books and Records (Other than Asbestos Books). The Reorganized Debtors shall make all reasonable efforts to preserve the 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 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 Retained Books and Records. Procedures regarding Asbestos Books are set forth in Article 7.13 above.

Dated: May 21, 2009

Respectfully submitted,

HARBINGER CAPITAL PARTNERS  
MASTER FUND I, LTD.

By: \_\_\_\_\_

Name:

Title:

## ANNEX 1

### Uniform Glossary of Defined Terms for Plan Documents

Unless the context otherwise requires or a Plan Document otherwise provides, the following terms, when used in initially capitalized form in the Plan, Disclosure Statement, related exhibits, and Plan Documents, shall have the following meanings. Such meanings shall be equally applicable to both the singular and plural forms of such terms. Any term used in capitalized form that is not defined herein but that is defined in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to such term by the Bankruptcy Code or the Bankruptcy Rules (with the Bankruptcy Code controlling in the event of a conflict or ambiguity). If the Glossary adopts the meaning assigned to a term in the Plan Sponsor PSA, the Plan Sponsor PSA's definition of that term shall control in the event of a conflict between that definition and the definition set forth in this Glossary for informational purposes. The rules of construction set forth herein and in section 102 of the Bankruptcy Code shall apply. All references to the "Plan" shall be construed, where applicable, to include references to the Plan and all its exhibits, appendices, schedules, and annexes (and any amendments made in accordance with their terms or applicable law).

### GLOSSARY OF TERMS

1. "2005 Subsidiary Debtors" means the Subsidiary Debtors (other than the Asbestos Subsidiary Debtors) that filed bankruptcy cases in 2005, including, without limitation, ASARCO Consulting, Inc.; Encycle, Inc.; ALC, Inc.; American Smelting and Refining Company; AR Mexican Explorations Inc.; Asarco Master, Inc.; Asarco Oil and Gas Company, Inc.; Bridgeview Management Company, Inc.; Covington Land Company; and Government Gulch Mining Company, Limited.

2. "2006 Subsidiary Debtors" means the Subsidiary Debtors that filed bankruptcy cases in 2006, including, without limitation, Southern Peru Holdings, LLC; AR Sacaton, LLC; and ASARCO Exploration Company, Inc.

3. "2008 Subsidiary Debtors" means the Subsidiary Debtors that filed bankruptcy cases in 2008, including, without limitation, Green Hill Cleveland Mining Company; Alta Mining and Development Company; Blackhawk Mining and Development Company, Limited; Peru Mining Exploration and Development Company; Tulipan Company, Inc.; and Wyoming Mining and Milling Company.

4. "ADEQ" means the Arizona Department of Environmental Quality.

5. "Administrative Claim" means any Claim for the payment of an Administrative Expense.

6. "Administrative Expense" means (a) any cost or expense of administration of the Reorganization Cases incurred before the Effective Date and allowable under section 503(b) of the Bankruptcy Code and entitled to priority under section 507(a)(1) of the Bankruptcy Code including, without limitation, (i) any actual and necessary postpetition cost or expense of preserving the Estates or operating the businesses of the Debtors, (ii) any payment required to

cure a default on an assumed executory contract or unexpired lease, (iii) any postpetition cost, indebtedness, or contractual obligation duly and validly incurred or assumed by a Debtor in the ordinary course of its business, and (iv) compensation or reimbursement of expenses of professionals to the extent allowed by the Bankruptcy Court under sections 330(a) or 331 of the Bankruptcy Code; (b) any fee or charge assessed against the Estates under 28 U.S.C. § 1930; and (c) the Pre-524(g) Indemnity (as defined in the Asbestos Insurance Settlement Agreement), which shall constitute an Allowed Administrative Claim in accordance with the terms and conditions of such agreement.

7. “Affiliate” (and, with a correlative meaning, “affiliated”) shall have the meaning assigned to such term in the Plan Sponsor PSA, which for reference purposes only means, with respect to any Person (as such term is defined in the Plan Sponsor PSA), (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).

8. “Agreed Working Capital” shall have the meaning assigned to such term in the Plan Sponsor PSA.

9. “AIG” means American International Group, Inc.

10. “Allowed” means a Claim that is not a Disputed Claim and, with respect to any other Claim (other than an Unsecured Asbestos Personal Injury Claim) or Interest, (a) any Claim or Interest, proof of which was timely filed with the Bankruptcy Court or the Claims Agent, or, by order of the Bankruptcy Court, was not required to be filed, (b) any Claim or Interest that has been, or hereafter is, listed in the Schedules as liquidated in amount and not disputed or contingent, provided that any discrepancy between the Claim as listed in the Schedules and a Proof of Claim filed in connection with such Claim shall be resolved pursuant to the procedures set forth in Article XIV of the Plan, and, in (a) and (b) above, as to which (i) during the period prior to the deadline for filing objections to Proofs of Claim as set forth in Article 14.2 of the Plan, the Claim or Interest has been allowed by a Final Order or in a settlement approved by the Confirmation Order (but only to the extent so allowed), or (ii) after the deadline for filing objections to Proofs of Claim, either no objection to the allowance thereof was filed prior to the Claims objection deadline or the Claim or Interest has been allowed by a Final Order or in a settlement approved by the Confirmation Order (but only to the extent so allowed). “Allowed” means, with respect to any Demand or Unsecured Asbestos Personal Injury Claim, any Demand or Unsecured Asbestos Personal Injury Claim that is liquidated and allowed pursuant to the Asbestos Claims Liquidation Trust Agreement. “Allowed” also includes (a) all Claims allowed by the Bankruptcy Court by approval of: (i) the Miscellaneous Federal and State Environmental Settlement Agreement, (ii) the Residual Environmental Settlement Agreement, (iii) the Arizona NRD Settlement Agreement, (iv) the Hayden Past Cost Settlement Agreement, (v) the Mission Mine Settlement Agreement and (vii) the Environmental Custodial Trust Settlement Agreements; and (b) all Previously Settled Environmental Claims.



11. “Allowed Amount” of any Claim means the amount at which that Claim is Allowed (excluding any post-petition interest).

12. “Alter Ego Theories” means theories asserting that a Debtor should be held liable for the Claims against one or more other Debtors on the ground that it was their alter ego, including, without limitation, denuding-the-corporation, single-businessenterprise, corporate trust funds, breach of fiduciary duty or conspiracy, theories that a Debtor was the mere instrumentality, agent, or alter ego of another Debtor, or that the corporate veil should be pierced, or that as a result of domination and control over any of the Debtors, directly or indirectly, another Debtor should be liable for Asbestos Personal Injury Claims or any other Claims that have origins in acts or omissions of any of the other Debtors, or any other theories of direct or indirect liability for the conduct of, Claims against or on, any of the other Debtors to the extent that such alleged liability arises by reason of any of the other circumstances enumerated in section 524(g)(4)(A)(ii) of the Bankruptcy Code.

13. “AMC” means Americas Mining Corporation, a Delaware corporation.

14. “AMC Consolidated Group” means the affiliated group of corporations having AMC as the common parent and including ASARCO NJ Subgroup and the ASARCO LLC Subgroup.

15. “Ancillary Agreements” shall have the meaning assigned to such term in the Plan Sponsor PSA, which for reference purposes only 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, and the Assignment and Assumption of Ground Lease Agreement (as each such term is defined in the Plan Sponsor PSA).

16. “Applicable Law” shall have the meaning assigned to such term in the Plan Sponsor PSA, which for reference purposes only means, with respect to any Person (as such term is defined in the Plan Sponsor PSA), any Law applicable to such Person or its business, properties, or assets.

17. “AR Sacaton” means AR Sacaton, LLC, a Delaware limited liability company.

18. “Arizona NRD Settlement Agreement” means the Settlement Agreement Regarding Natural Resource Damage Claims for Mineral Creek, the Gila River, and the San Pedro River, Arizona, by and among the United States, the State of Arizona, and ASARCO, which resolves all Claims against ASARCO related to natural resource damages for the sites addressed therein, referenced in the motion for approval thereof filed on March 30, 2009 [Docket No. 10657] and approved by order entered on April 23, 2009 [Docket No. 10949].

19. “ARSB” means AR Silver Bell, Inc., a Delaware corporation.

20. “ASARCO” means ASARCO LLC, a Delaware limited liability company.

21. “ASARCO Committee” means the Official Committee of Unsecured Creditors appointed by the U.S. Trustee in ASARCO’s bankruptcy case pursuant to section 1102 of the Bankruptcy Code.

22. “ASARCO LLC Subgroup” means ASARCO LLC and its subsidiaries.

23. “ASARCO Master” means ASARCO Master, Inc. (f/k/a Asarco (Delaware), Inc.), a Delaware corporation and one of the Debtors herein. A number of entities were merged into ASARCO Master prior to the Petition Date, including, without limitation, AR Montana Corporation; Asarco Arizona, Inc.; Asarco Exploration Holdings Company, Inc.; Asarco Aginskoe, Inc.; Asarco de Mexico (Delaware) Inc.; Asarco Mexicana (Delaware) Inc.; Asarco Peruvian Exploration Company; GH Holdings Inc.; GHH, LLC; Northern Peru Mining Corporation; NPMC, Incorporated; Domestic Realty Company, Inc.; Midland Coal Company Incorporated; Biotrace Laboratories, Incorporated; Federated Metals Corporation; and LSLC Corp.

24. “ASARCO NJ” means the former ASARCO Incorporated, a New Jersey corporation, a predecessor of ASARCO LLC.

25. “ASARCO NJ Consolidated Group” means the affiliated group of corporations consisting of ASARCO NJ and its subsidiaries for years before 1999.

26. “ASARCO NJ Subgroup” means ASARCO NJ and its subsidiaries.

27. “ASARCO Protected Non-Debtor Affiliate” means an entity listed in **Exhibit 1** to the Plan as such list may be amended or supplemented from time to time.

28. “ASARCO Protected Parties” (each one, an “ASARCO Protected Party”) means (a) the Debtors and their predecessors; (b) the Reorganized Debtors; (c) the ASARCO Protected Non-Debtor Affiliates and their predecessors; (d) the Plan Sponsor and the Harbinger Master Fund (and any of their respective Affiliates); (e) Citigroup Global Markets, Inc. (and any of its respective affiliates); (f) the Settling Asbestos Insurance Companies; (g) the Trusts (except to the extent that the Asbestos Claims Liquidation Trust Agreement expressly permits litigation against the Asbestos Claims Liquidation Trust); (h) the Trustees; (i) the Asbestos Claims Liquidation Trust Board; (j) the FCR; (k) the Committees, including their members in their member capacities; (l) the Plan Administrator; (m) the Examiner; (n) employee benefit plan “fiduciaries” (within the meaning of section 3(21) of ERISA) who are directors or employees of a Debtor; (o) the Indenture Trustees; and (p) the present and former directors, officers, agents, attorneys, accountants, consultants, financial advisors, investment bankers, professionals, experts, and employees of any of the foregoing, in their respective capacities as such, including, without limitation, the Protected Officers and Directors; *provided, however*, that the term “ASARCO Protected Party” does not include (x) the non-Debtor named defendants in the Derivative D&O Litigation, the Burns Litigation, or the SCC Litigation or (y) Grupo Mexico and its Affiliates other than ASARCO and ASARCO’s direct and indirect subsidiaries.

29. “ASARCO Residual Assets” means all assets of ASARCO and the Other Subsidiary Debtors (including, without limitation, the Property of the Estate of such debtors) other than the Sold Assets, the Asbestos Claims Liquidation Trust Assets, the Liquidation Trust

Assets, the SCC Litigation Trust Assets, the Environmental Custodial Trust Assets, and the Covington Residual Assets.

30. “Asbestos/AMC/Parent Agreement in Principle” means the Agreement in Principle Regarding Summary Terms of Chapter 11 Plan for ASARCO LLC and Subsidiaries among the Asbestos Subsidiary Committee, the FCR, AMC, and the Parent.

31. “Asbestos Books” means all of the books and records of each of the Debtors and Reorganized ASARCO, wherever located, to the extent that such books and records directly relate to (a) Asbestos Claims Liquidation Trust Assets; or (b) any Unsecured Asbestos Personal Injury Claims, including all historical information relating to (i) Asbestos Personal Injury Claims, (ii) the settlement of any such Claims, or (iii) relevant sales of asbestos or asbestos-containing products.

32. “Asbestos Claimants’ Committee” means the Official Committee of Asbestos Claimants appointed by the U.S. Trustee in the Reorganization Cases pursuant to section 1102 of the Bankruptcy Code and the August 26, 2008 order entered by the Bankruptcy Court.

33. “Asbestos Claims Liquidation Trust” means the tax-qualified settlement trust to be established pursuant to the Asbestos Claims Liquidation Trust Agreement.

34. “Asbestos Claims Liquidation Trust Administrative Claim” shall mean a \$27.5 million administrative expense claim in favor of the Administrative Claims Liquidation Trust for its administrative expenses.

35. “Asbestos Claims Liquidation Trust Agreement” means the Asbestos Claims Liquidation Trust Agreement, effective as of the Effective Date, substantially in a form to be provided prior to Confirmation as Exhibit 6 to the Plan, as it may be modified from time to time in accordance with the terms thereof.

36. “Asbestos Claims Liquidation Trust Assets” means (a) 100 percent of the interests in Reorganized Covington; (b) the Class 4 Pro Rata Share of the Plan Consideration; and (c) the Asbestos Claims Liquidation Trust Administrative Claim.

37. “Asbestos Claims Liquidation Trust Beneficiaries” means the holders of (i) Unsecured Asbestos Personal Injury Claims; (ii) Unknown Asbestos Claims; and (iii) the Parent as a residual beneficiary.

38. “Asbestos Claims Liquidation Trust Board” means the group of five Persons selected in accordance with the provisions of the Asbestos Claims Liquidation Trust Agreement.

39. “Asbestos Claims Liquidation Trust Bylaws” means the Asbestos Claims Liquidation Trust Bylaws, effective as of the Effective Date, as such bylaws may be modified from time to time in accordance with the terms of the Asbestos Claims Liquidation Trust Agreement.

40. “Asbestos Claims Liquidation Trust Documents” means the Asbestos Claims Liquidation Trust Agreement and the other agreements, instruments, and documents governing

the establishment, administration, and operation of the Asbestos Claims Liquidation Trust, as they may be amended or modified from time to time in accordance with the Plan or the terms of such documents.

41. “Asbestos Claims Liquidation Trust Expenses” means any costs or expenses of, or imposed upon, assumed by, or in respect of, the Asbestos Claims Liquidation Trust in connection with the liquidation and resolution of Unsecured Asbestos Personal Injury Claims and Unknown Asbestos Claims in accordance with the provisions of the Plan and the Asbestos Claims Liquidation Trust Documents, not including the payments to holders of such Claims.

42. “Asbestos Claims Liquidation Trustees” means Reorganized ASARCO and such additional Persons as may be appointed as trustees of the Asbestos Claims Liquidation Trust under the Asbestos Claims Liquidation Trust Agreement and any successor thereto chosen in accordance with the Asbestos Claims Liquidation Trust Agreement.

43. “Asbestos In-Place Insurance Coverage” means any insurance coverage, not reduced to Cash proceeds, that is or may be available as of the Effective Date to address asbestos- related Claims, remedies, and liabilities, including Asbestos Claims Liquidation Trust Expenses, under any Asbestos Insurance Policy as a result of or in accordance with an Asbestos Insurance Settlement Agreement or a prepetition settlement agreement with an Asbestos Insurance Company.

44. “Asbestos Insurance Action” means (a) any Avoidance Action against any Asbestos Insurance Company; (b) any claim, cause of action, or right of a Debtor or a Reorganized Debtor against any Asbestos Insurance Company concerning insurance coverage for asbestos-related Claims, remedies, and liabilities or enforcement of prepetition settlement agreements or extracontractual or statutory remedies and relief, including, without limitation, litigation, arbitration, mediation, and informal negotiations, whether past, pending, or not yet initiated; and (c) any claim, cause of action, or right of a Debtor or a Reorganized Debtor to pursue insurance recovery through available administrative or other means from any Asbestos Insurance Company that is insolvent, or has been liquidated, or is otherwise subject to statutory or legal protections against litigation.

45. “Asbestos Insurance Company” means any insurance company, reinsurance company, syndicate, insurance broker, syndicate insurance broker, guaranty association, or any other Entity with demonstrated or potential liability to a Debtor or a Reorganized Debtor for coverage under an Asbestos Insurance Policy arising from or related to asbestos- related Claims, remedies, or liabilities, including, without limitation, any such Entity that entered into a prepetition settlement agreement with a Debtor that is currently the subject of an Avoidance Action.

46. “Asbestos Insurance Policy” means any insurance policy that provides or may provide coverage for claims arising from or related to asbestos-related Claims, remedies, or liabilities, whether products or premises, and that are or may become available to provide such coverage as a result of the resolution of any Avoidance Actions against any Asbestos Insurance Company, including those policies listed in **Exhibit 8** to the Plan, as such exhibit may be amended or supplemented from time to time.

47. “Asbestos Insurance Recovery or Recoveries” means (a) the right to pursue and receive the benefits and proceeds of Asbestos In-Place Insurance Coverage, including, without limitation, the benefits and proceeds from certain Asbestos Insurance Policies that are subject to prepetition settlement agreements regarding Asbestos Premises Liability Claims; (b) the right to pursue and receive the benefits and proceeds of any Asbestos Insurance Policy or Asbestos Insurance Settlement Agreement; (c) the right to pursue and receive recovery from or as a result of any Asbestos Insurance Action, including, without limitation, consequential, contractual, extracontractual, and statutory damages, or other proceeds, distributions, awards, or benefits; and (d) the right to pursue and receive any other recovery from an Asbestos Insurance Company, in its capacity as such.

48. “Asbestos Insurance Settlement Agreement” means any post-petition settlement agreement, set forth in Exhibit 7 to the Plan, with a Settling Asbestos Insurance Company as such exhibit may be amended or supplemented from time to time as permitted under the Plan.

49. “Asbestos Personal Injury Claim(s)” means any unpaid Claim, remedy or liability, including all related claims, debts, obligations or liabilities, whenever and wherever arising or asserted, whether arising or accruing before or after the Petition Date, whether under a direct or indirect theory of liability, whether domestic or foreign, whether now existing or hereafter arising, whether or not such Claim, remedy, or liability is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, bonded, secured, or unsecured, whether or not the facts or legal bases therefore are known or unknown, whether or not known, unknown, or knowable before Confirmation of the Plan or the close of the Reorganization Cases, whether based on premises or products liability, alleging, arising out of, or in any way relating to physical, emotional, economic, or any other damage or injury for which any Debtor is alleged to be liable, whether direct or indirect and whether alleged or asserted against ASARCO or any other Debtor directly or on account of any Alter Ego Theory, arising out of or in any way relating to asbestos or any products or materials containing asbestos. Asbestos Personal Injury Claims include all such Claims, remedies, and liabilities whether in tort, contract, warranty, restitution, conspiracy, contribution, indemnity, guarantee, subrogation, joint and several liability, reimbursement, or any other theory of law, equity, admiralty, or otherwise, whether seeking compensatory, special, economic and non-economic, punitive, exemplary, administrative, proximate, or any other costs or damages; or whether seeking any legal, equitable, or other relief of any kind whatsoever, whether under common law or by statute, including any Claim by an employee that is not otherwise barred by applicable law such as workers’ compensation laws.

50. “Asbestos Personal Injury Claimant” means the holder of an Asbestos Personal Injury Claim.

51. “Asbestos Premises Liability Claim(s)” means any and all Unsecured Asbestos Personal Injury Claims against ASARCO that are identified as premises claims under the terms and conditions of the Asbestos Insurance Policies, specifically including, without limitation, such policies that are subject to prepetition settlement agreements for premises claims.

52. “Asbestos Subsidiary Cases” means the bankruptcy cases of the Asbestos Subsidiary Debtors.

53. “Asbestos Subsidiary Committee” means the Official Committee of Unsecured Creditors appointed by the U.S. Trustee in the Asbestos Subsidiary Cases, pursuant to section 1102 of the Bankruptcy Code.

54. “Asbestos Subsidiary Debtors” means the Subsidiary Debtors that filed bankruptcy cases on April 11, 2005, including, without limitation, Lac d’Amiante du Quebec Ltee; Lake Asbestos of Quebec, Ltd.; LAQ Canada, Ltd.; CAPCO Pipe Company, Inc.; and Cement Asbestos Products Company.

55. “Assumed Liabilities” shall have the meaning assigned to such term in the Plan Sponsor PSA, which for reference purposes only means those Liabilities described in section 3.3(a) through (g) of the Plan Sponsor PSA that the Plan Sponsor shall assume, pay, perform, and discharge when due.

56. “Augusta Defendants” means Augusta Resource (Arizona) Corporation and Augusta Resource Corporation.

57. “Available Plan Funds” means the funds remaining from the Available Plan Sales Proceeds and the Distributable Cash after the Plan Administrator has fully funded the Plan Administration Reserve, the Environmental Custodial Trust Administration Funding, the Environmental Custodial Trust Funding, the Liquidation Trust Expense Fund, and the SCC Litigation Trust Expense Fund.

58. “Available Plan Sales Proceeds” means the Plan Sales Proceeds and any interest earned thereon.

59. “Avoidance Action” means causes of action arising under chapter 5 of the Bankruptcy Code, or under related state or federal statutes and common law, including, without limitation, fraudulent transfer and fraudulent conveyance laws, whether or not litigation has commenced to prosecute such causes of actions.

60. “Ballot” means the form or forms distributed to holders of impaired Claims on which is to be indicated the acceptance or rejection of the Plan.

61. “Balloting Agent” means AlixPartners, LLP.

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

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

64. “Bankruptcy Rules” means the Federal Rules of Bankruptcy Procedure and the local rules of the Bankruptcy Court, as in effect on the Petition Date, together with all amendments and modifications thereto subsequently made applicable to the Reorganization Cases.



65. “Bar Date” means the date(s) by which all Entities asserting certain Claims against the Debtors must have filed a Proof of Claim or be forever barred from asserting such Claims against the Debtors or their Estates, as established by any order(s) of the Bankruptcy Court or the Plan.

66. “Bar Date Order” means the order(s) entered by the Bankruptcy Court authorizing the respective Bar Date(s), including the Confirmation Order.

67. “Barclays Capital” means Barclays Capital Inc.

68. “Bid Procedures Order” means the interim order approving the Plan Sponsor procedures, entered by the Bankruptcy Court on March 25, 2008.

69. “Bid Protections Order” means the Final Order Granting Motion of ASARCO LLC for an Order Approving (1) Bid Procedures in Connection with Selecting a Chapter 11 Plan Sponsor and Exit Transaction under a Chapter 11 Plan and (2) Bid Protections to Sterlite (USA), Inc. in Connection Therewith, entered by the Bankruptcy Court on July 1, 2008.

70. “Bondholder” means an Entity that holds one or more of the Bonds or the Indentures, other than any Indenture Trustee Fee Claim.

71. “Bondholders’ Claim” means any Claim arising under one or more of the Bonds.

72. “Bonds” means ASARCO’s unsecured long-term bond debt, consisting of the following:

Bond	Maturity	Face Value
CSFB JP Morgan Sec Debentures at 7.875%	April 2013	\$100.00m
Nueces River Env Bond (IRB) Series 1998 A 5.60%	April 2018	\$22.20m
CSFB Corporate Debentures at 8.50%	May 2025	\$150.00m
Gila County — Installment Bond 5.55%	January 2027	\$71.90m
Lewis & Clark County Env Bond (IRB) 5.60%	January 2027	\$33.16m
Nueces River Env Bond (IRB) 5.60%	January 2027	\$27.74m
Lewis & Clark County Env Bond (IRB) 5.85%	October 2033	\$34.80m

73. “Burns Litigation” means the claims and causes of action of the Debtors in the action pending in the Supreme Court of the State of New York, County of New York, styled *Phillip Nelson Burns, et al., v. Grupo Mexico, S.A. de C. V., et al.*, Index No. 0114728/2004 against various defendants, including Grupo Mexico, but not including the Debtors’ claims and

causes of action that have been removed and transferred to the District Court and are now pending as Civil Action Nos. 07-00018 and 07-00203 as part of the SCC Litigation.

74. “Business” shall have the meaning assigned to such term in the Plan Sponsor PSA, which for reference purposes only means the business of mining, smelting, and refining of copper and other metals as conducted by the Sellers on the date of the Plan Sponsor PSA.

75. “Business Day” means any day other than a Saturday, Sunday, or legal holiday (as such term is defined in Bankruptcy Rule 9006(a)).

76. “CAPCO” means CAPCO Pipe Company, Inc., and Cement Asbestos Products Company.

77. “Cash” means cash, cash equivalents, and other readily marketable securities or instruments, including, without limitation, direct obligations of the United States and certificates of deposit issued by federally insured banks.

78. “CBA” means such collective bargaining agreement as may be negotiated in good faith between the Plan Sponsor and the USW on behalf of itself and the other labor organizations representing the bargaining unit employees of ASARCO.

79. “CBRI” means Copper Basin Railway, Inc., a Delaware corporation.

80. “CDA Trust” means the trust created pursuant to the Residual Environmental Settlement Agreement for the Coeur d’Alene, Idaho site and properties owned by the Debtors in Shoshone County and Kootenai County, Idaho.

81. “CERCLA” means the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. § 9601, *et seq.*

82. “Certificate” means an instrument evidencing an Allowed Bondholders’ Claim.

83. “Charging Lien” means any lien that an Indenture Trustee is entitled to exercise under the terms of its Indenture against, or any other priority in payment to which such Indenture Trustee is entitled under the terms of its Indenture with respect to, any distribution to be made under such Indenture or on account of any debts of the Debtors owed to holders of obligations under such Indenture.

84. “Chase” means JPMorgan Chase Bank, N.A., the issuer of the Credit Facility described in Section 2.15(b) of the Disclosure Statement.

85. “Claim” shall have the meaning assigned to such term by section 101(5) of the Bankruptcy Code.

86. “Claim Objection Deadline” shall have the meaning assigned to such term in Article 14.2(a) of the Plan.

87. “Claimant” means the holder of a Claim.

88. “Claims Agent” means AlixPartners, LLP.
89. “Class” means a category of Claims or Interests as defined in Article III of the Plan.
90. “Class 4 Claims Estimate” shall mean \$500,000,000.00 or such other amount representing the total amount of Unsecured Asbestos Personal Injury Claims and Unknown Asbestos Claims, as estimated by the Bankruptcy Court following an evidentiary hearing after the Confirmation Date upon the request of any Creditor Constituent or the Parent within two (2) business days after entry of the Confirmation Order.
91. “Class 4 Pro Rata Share” means the ratio of (i) the Class 4 Claims Estimate to (ii) the total aggregate amount of Allowed Claims in Classes 3 plus the Class 4 Claims Estimate.
92. “Class A Liquidation Trust Interests” means the Liquidation Trust Interests issued to holders of Class 3 General Unsecured Claims other than Governmental Authorities with environmental claims.
93. “Class A SCC Litigation Trust Beneficiaries” means the holders of Class A SCC Litigation Trust Interests.
94. “Class A SCC Litigation Trust Interests” means the SCC Litigation Trust Interests issued to holders of Class 3 General Unsecured Claims other than Governmental Authorities with environmental claims.
95. “Class B Liquidation Trust Interests” means the Liquidation Trust Interests issued to holders of Class 3 General Unsecured Claims that are Governmental Authorities with environmental Claims.
96. “Class B SCC Litigation Trust Beneficiaries” means the holders of Class B SCC Litigation Trust Interests.
97. “Class B SCC Litigation Trust Interests” means the SCC Litigation Trust Interests issued to holders of Class 3 General Unsecured Claims that are Governmental Authorities with environmental Claims.
98. “Class C Liquidation Trust Interests” means the Liquidation Trust Interests issued to holders of Class 4 Unsecured Asbestos Person Injury Claims.
99. “Class C SCC Litigation Trust Interests” means the SCC Litigation Trust Interests issued to holders of Class 4 Unsecured Asbestos Person Injury Claims.
100. “Class D SCC Litigation Trust Interests” means the SCC Litigation Trust Interests issued to the SCC Purchasers.
101. “Closing” shall have the meaning assigned to such term in the Plan Sponsor PSA, which for reference purposes only means the closing of the sale and purchase of the Sold Assets and the assumption of the Assumed Liabilities pursuant to the Plan Sponsor PSA.

102. “Closing Date” shall have the meaning assigned to such term in the Plan Sponsor PSA, which for reference purposes only means the date on which the Closing occurs.

103. “Coal Act” means the Coal Industry Retiree Health Benefit Act of 1992, as amended.

104. “COBRA” means the Consolidated Omnibus Budget Reconciliation Act.

105. “COD Income” means cancellation of indebtedness income.

106. “Committees” means the ASARCO Committee, the Asbestos Subsidiary Committee, and the Asbestos Claimants’ Committee.

107. “Confidentiality Agreement” means the confidentiality agreement dated July 6, 2007, between the Guarantors and ASARCO.

108. “Confirmation,” “Confirmation of the Plan,” or “Confirmation of this Plan” means the approval of the Plan by the Bankruptcy Court at the Confirmation Hearing.

109. “Confirmation Date” means the date on which the Confirmation Order is entered on the docket of the Bankruptcy Court.

110. “Confirmation Hearing” means the hearing(s) that will be held before the Bankruptcy Court, in which the Debtors will seek Confirmation of the Plan.

111. “Confirmation Order” means the order of the Bankruptcy Court confirming the Plan pursuant to section 1129 and other applicable sections of the Bankruptcy Code.

112. “Confirmation Working Capital” means an amount equal to (x) the Included Receivables (as defined in the Plan Sponsor PSA) plus the Inventory Amount (as defined in the Plan Sponsor PSA) minus (y) the Included Payables (as defined in the Plan Sponsor PSA), in each case, calculated as of the Confirmation Date.

113. “Consummation” means the occurrence of the Effective Date.

114. “Contract” shall have the meaning assigned to such term in the Plan Sponsor PSA, which for reference purposes only means any written contract, indenture, note, bond, loan, instrument, lease, commitment, or other agreement.

115. “Convenience Claim” means any Allowed Unsecured Claim, excluding Bondholders’ Claims, otherwise entitled to treatment under Class 3 of the Plan, which is \$1,000 or less when aggregated with the other Unsecured Claims of such holder, or, in the alternative, is reduced by election of such holder on such holder’s Ballot, together with all other Unsecured Claims of such holder, to an aggregate Unsecured Claim of \$1,000.

116. “Corporate Governance Stipulation” means the Stipulation and Order Regarding Corporate Governance, entered by the Bankruptcy Court on December 15, 2005.

117. “Covington” means Covington Land Company, a Delaware corporation.
118. “Covington Residual Assets” means assets of Covington and the Asbestos Subsidiary Debtors including, without limitation, the Property of the Estate of such debtors.
119. “Credit Facility” means the \$5 million senior secured twelve month credit facility issued by Chase, as discussed in Section 2.15(b) of the Disclosure Statement.
120. “Creditor Constituents” shall mean the ASARCO Committee, the Asbestos Subsidiary Committee, the FCR, the DOJ, the United Steel Workers Union, and the States of Washington, Montana, Missouri, Arizona ,and Texas.
121. “Cure Amount Claim” means the amount due to the non-Debtor contracting party based upon a Debtor’s defaults under an executory contract or unexpired lease at the time such contract or lease is assumed pursuant to section 365 of the Bankruptcy Code.
122. “Custodial Trust Administrative Accounts” means the trust accounts established pursuant to the various Environmental Custodial Trust Agreements into which Environmental Custodial Trust Administration Funding shall be deposited.
123. “Custodial Trust Environmental Cost Accounts” means the trust accounts established pursuant to the various Environmental Custodial Trust Agreements into which the Environmental Custodial Trust Funding shall be deposited.
124. “Debtor” means one of the Debtors.
125. “Debtors” means ASARCO and any debtor in the Reorganization Cases which is a direct or indirect subsidiary of ASARCO other than the Asbestos Subsidiary Debtors.
126. “Delaware Trustee” means the Entity appointed under the Asbestos Claims Liquidation Trust Agreement, the Liquidation Trust Agreement, and the SCC Litigation Trust Agreement to fulfill the requirement of section 3807 of the Delaware Statutory Trust Act, 12 DEL. CODE ANN. § 3807.
127. “Derivative Asbestos Claims” means Asbestos Personal Injury Claims against the Asbestos Subsidiary Debtors for which ASARCO is alleged to be liable under any of the various Alter Ego Theories.
128. “Derivative D&O Litigation” means the claims and causes of action of the Debtors asserted derivatively by the ASARCO Committee in Adversary No. 07-02077, pending in the Bankruptcy Court.
129. “Designated Properties” means each parcel of real property generally identified on **Exhibit 10** to the Plan under the heading Designated Properties.
130. “DIP Agent” means The CIT Group/Business Credit, Inc., the Entity that provided the DIP Facility to ASARCO.

131. “DIP Facility” means the debtor-in-possession credit facility provided by the DIP Agent to ASARCO.

132. “Discharge Injunction” means the permanent injunction set forth in Article 11.2 of the Plan.

133. “Disclosure Order” means the order entered by the Bankruptcy Court on \_\_\_\_\_, \_\_\_\_\_, approving the Disclosure Statement, a copy of which is attached to the Disclosure Statement as **Exhibit C**.

134. “Disclosure Schedule” shall have the meaning assigned to the term “Seller Disclosure Schedule” in the Plan Sponsor PSA, which for reference purposes only means the disclosure schedule delivered to the Plan Sponsor pursuant to the Plan Sponsor PSA.

135. “Disclosure Statement” means the Joint Disclosure Statement in Support of the Respective Plans of Reorganization Proposed by (1) the Debtors; (2) ASARCO Incorporated and Americas Mining Corporation; and (3) Harbinger Capital Partners Master Fund I. Ltd., as such Disclosure Statement may be further amended, supplemented, or modified from time to time.

136. “Disputed Claim” means a Claim (other than an Asbestos Personal Injury Claim) that is not an Allowed Claim, including a Claim that is, in whole or in part: (a) listed on the Schedules as, or proof of which is filed as, unliquidated, disputed, or contingent; (b) as to which a Proof of Claim designating such Claim as liquidated in amount and not contingent was not timely and properly filed; (c) as to which a Debtor, Reorganized ASARCO, the Plan Administrator, the Asbestos Claims Liquidation Trustees, or other party in interest has filed a timely objection or request for estimation in accordance with the Bankruptcy Code and Bankruptcy Rules; or (d) is otherwise disputed by a Debtor, Reorganized ASARCO, the Plan Administrator, the Asbestos Claims Liquidation Trustees, or other party in interest in accordance with applicable law, which objection, request for estimation, or dispute has not been withdrawn or determined by a Final Order.

137. “Disputed Claims Reserve” means a reserve for any distributions to be set aside by the Plan Administrator pursuant to Article 13.8 of the Plan on account of Disputed Claims.

138. “Disputed Secured Claims Reserve” means the escrow account(s) established by the Plan Administrator pursuant to Article 13.8 of the Plan on account of allegedly Secured Claims that are Disputed Claims.

139. “Distributable Cash” means unrestricted Cash on hand with the Debtors on the Effective Date, plus interest earned thereon, if any.

140. “Distribution Record Date” means the close of business on the Confirmation Date.

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



142. “DOJ” means the United States Department of Justice, Environment & Natural Resources Division.

143. “DTC” means the Depository Trust Company.

144. “East Helena Soils Settlement Agreement” means the Settlement Agreement Regarding Response Costs at the East Helena Superfund Site referenced in the motion for approval thereof filed on September 19, 2008 [Docket No. 9231] and approved by order entered on February 6, 2009 [Docket No. 10392].

145. “Effective Date” means, and shall occur on, the first Business Day upon which all of the conditions to occurrence of the Effective Date contained in Article 9.1 of the Plan have been satisfied, or waived pursuant to Article 9.2 of the Plan, provided however that the Effective Date shall not occur prior to August 1, 2009.

146. “El Paso Paving SEP Claim” means the City of El Paso’s claim related to the paving supplemental environmental project.

147. “El Paso Stipulation” means the Stipulation Relating to Proofs of Claim for El Paso County Metals Survey Site and Dona Ana Metal Site and Modification of Case Management Order referenced in the motion for approval thereof filed on September 12, 2007 [Docket No. 5775], and approved by the Bankruptcy Court by orders entered on October 5, 2007 [Docket No. 6019] and on December 4, 2007 [Docket No. 6434].

148. “ELT/ES” means ELT Houston, LLC and EnergySolutions, LLC.

149. “Employee Benefit Plan” shall have the meaning assigned to the term “Seller Employee Benefit Plan” in the Plan Sponsor PSA, which for reference purposes only 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 the Sellers or with respect to which any of the Sellers or their Affiliates have any obligation or liability.

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

151. “Environmental 9019 Motion” means the Debtors’ Motion under Bankruptcy Rule 9019 for Order Approving Settlement of Environmental Claims, filed on March 12, 2009 [Docket No. 10534].

152. “Environmental Agencies” means Governmental Units whose responsibilities include enforcement and oversight of Environmental Law.

153. “Environmental Custodial Trust(s)” means the custodial trusts to be established pursuant to the various Environmental Custodial Trust Agreements.

154. “Environmental Custodial Trust Accounts” means the Custodial Trust Environmental Cost Accounts and the Custodial Trust Administrative Accounts.

155. “Environmental Custodial Trust Administration Funding” means the Cash that ASARCO shall allocate and disburse to the various Environmental Custodial Trusts for administration of the Designated Properties, as set forth in **Exhibit F** to the Disclosure Statement.

156. “Environmental Custodial Trust Agreements” means the agreements governing the operation of the Environmental Custodial Trusts, as well as any other ancillary agreements or related documents.

157. “Environmental Custodial Trust Assets” means the Designated Properties and related contracts, fixtures, and personalty to be transferred to the Environmental Custodial Trusts in accordance with the Environmental Custodial Trust Settlement Agreements, the Environmental Custodial Trust Administration Funding, and the Environmental Custodial Trust Funding.

158. “Environmental Custodial Trust Documents” means the Environmental Custodial Trust Agreements and the other agreements, instruments, and documents governing the establishment, administration, and operation of the Environmental Custodial Trusts, as they may be amended or modified from time to time in accordance with the terms of such documents.

159. “Environmental Custodial Trust Funding” means Cash in the total aggregate amount of approximately \$266.5 million that ASARCO shall allocate and disburse to the various Environmental Custodial Trusts for remediation and restoration of, and other environmental costs related to, the Designated Properties, as further described in the Environmental Custodial Trust Settlement Agreements.

160. “Environmental Custodial Trust Settlement Agreements” means the settlement agreements with EPA or other Environmental Agencies relating to the Designated Properties.

161. “Environmental Custodial Trustees” means the Entities appointed as Environmental Custodial Trustees under the various Environmental Custodial Trust Agreements and any successors thereto chosen in accordance with such Environmental Custodial Trust Agreements.

162. “Environmental Law” shall have the meaning assigned to such term in the Plan Sponsor PSA, which for reference purposes only 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, CERCLA; RCRA; 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.

163. “EPA” means the United States Environmental Protection Agency.

164. “ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

165. “Estate” means a Debtor’s bankruptcy estate created pursuant to section 541 of the Bankruptcy Code on its Petition Date.

166. “Examiner” means Michael Denis Warner in his capacity as examiner of the Debtors.

167. “Exchange Act” means the Securities Exchange Act of 1934, as amended, together with the rules and regulations promulgated thereunder.

168. “Excluded Assets” shall have the meaning assigned to such term in the Plan Sponsor PSA, which for reference purposes only means the properties, assets, and rights of any Seller described in section 3.2 of the Plan Sponsor PSA that are expressly excluded from the transactions contemplated by the Plan Sponsor PSA and are not included in the Sold Assets.

169. “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 Unknown Asbestos Claims against any of the Debtors but have not presently done so, and who shall continue to serve after the Effective Date on behalf of holders of Unknown Asbestos Claims in order to exercise the rights, duties, and responsibilities set forth in the Asbestos Claims Liquidation Trust Documents.

170. “Federal Rules” means the Federal Rules of Civil Procedure, as in effect on the Petition Date, together with all amendments and modifications thereto subsequently made applicable to the Reorganization Cases.

171. “FFIC” means Fireman’s Fund Insurance Company.

172. “Final Order” means an order of a court: (a) as to which the time to appeal, petition for writ of certiorari, or otherwise seek appellate review or to move for reargument, rehearing, or reconsideration has expired and as to which no appeal, petition for writ of certiorari, or other appellate review, or proceedings for reargument, rehearing, or reconsideration shall then be pending; (b) as to which any right to appeal, petition for certiorari, or move for reargument, rehearing, or reconsideration shall have been waived in writing by the party with such right; or (c) in the event that an appeal, writ of certiorari, or other appellate review or reargument, rehearing, or reconsideration thereof has been sought, which shall have been affirmed by the highest court to which such order was appealed, from which writ of certiorari or other appellate review or reargument, rehearing, or reconsideration was sought, and as to which the time to take any further appeal, to petition for writ of certiorari, to otherwise seek appellate

review, and to move for reargument, rehearing, or reconsideration shall have expired; *provided, however*, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure or under section 1144 of the Bankruptcy Code, or any analogous rule under the Bankruptcy Rules, may be filed with respect to such order shall not cause such order not to be a Final Order.

173. “Flow Through Bonds” means the surety bonds numbered 403998, 394729, 133771, 142706, and 403855 issued by Seaboard on behalf of ASARCO, as principal, to bond ASARCO’s obligations to various Entities.

174. “Forfeited Distributions” means funds in the Undeliverable and Unclaimed Distribution Reserve that remain unclaimed or otherwise undeliverable to the Claimant entitled thereto.

175. “General Unsecured Claim” means an Unsecured Claim that is not an Unsecured Asbestos Personal Injury Claim, a Convenience Claim, a Late-Filed Claim, or a Subordinated Claim.

176. “Glencore” means Glencore Ltd. and its partners.

177. “Glencore Acquisition Co.” means the newly created acquisition entity that Glencore proposed to create to acquire ASARCO’s operating assets under the revised Non-Binding Indicative Offer Termsheet for ASARCO’s Operating Assets.

178. “Glossary” means this Uniform Glossary of Defined Terms for Plan Documents, as such Glossary may be further amended, supplemented, or modified from time to time.

179. “Governmental Authority” shall have the meaning assigned to such term in the Plan Sponsor PSA, which for reference purposes only 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.

180. “Governmental Environmental Claimants” means the Governmental Authorities that hold (a) environmental Claims relating to the sites listed in **Exhibit 12** to the Plan or (b) the Residual Environmental Claims.

181. “Governmental Unit” shall have the meaning assigned to such term by section 101(27) of the Bankruptcy Code.

182. “Grupo Mexico” means Grupo Mexico S.A.B. de C.V., ASARCO’s ultimate parent company.

183. “Guarantors” means the signatories to the Guaranty/Commitment Letter Agreement, as defined in the Plan Sponsor PSA.

184. “Harbinger Master Fund” means Harbinger Capital Partners Master Fund I, Ltd.

185. “Hayden Past Cost Settlement Agreement” means the Settlement Agreement Regarding the ASARCO Hayden Plant Site by and among the EPA and ASARCO, which resolves the United States’ Claims for past response costs incurred at the Hayden smelter and associated facilities on or before May 27, 2008.

186. “Hayden Settlement Agreement” shall have the meaning assigned to such term in the Plan Sponsor PSA, which for reference purposes only 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 EPA, the ADEQ, and ASARCO.

187. “Hazardous Materials” shall have the meaning assigned to such term in the Plan Sponsor PSA, which for reference purposes only 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.

188. “Hourly Plan” means the Retirement Income Plan for Hourly-Rated Employees of ASARCO LLC.

189. “Hourly and Salaried Plans” means the Hourly Plan and the Salaried Plan.

190. “HSR Act” shall have the meaning assigned to such term in the Plan Sponsor PSA, which for reference purposes only means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder.

191. “Indemnification Escrow” means the escrow account in the amount of \$20 million to address Reorganized ASARCO’s anticipated indemnification obligations, pursuant to Article 11.8(b) of the Plan.

192. “Indenture Trustee Fee Claim” means, individually and collectively, any claim against the Debtors for any compensation, disbursements, fees, expenses, and indemnification pursuant to an Indenture, including any claim under such Indenture for the reasonable fees and expenses of an Indenture Trustee, its counsel, and any other professionals of the Indenture Trustee payable thereunder, any unpaid prepetition fees and costs of the Indenture Trustee (including its counsel and other professionals) payable thereunder, and any claim for unpaid fees and expenses of any predecessor Indenture Trustee payable thereunder.

193. “Indenture Trustees” means Wilmington Trust Company, Deutsche Bank Trust Company Americas, and Wells Fargo Bank, National Association, each in their respective capacity as a trustee under the Indentures.

194. “Indentures” means, collectively, the (a) Indenture, dated as of October 1, 1994, as supplemented by the First Supplemental Indenture, dated as of February 16, 2005, by and between ASARCO LLC, successor to ASARCO Incorporated, as issuer, JPMorgan Chase Bank (formerly known as Chemical Bank), as Indenture Trustee, pursuant to which ASARCO LLC issued its 8.5% Corporate Debentures Due 2025; (b) Indenture dated as of October 1, 1998 between Lewis and Clark County, Montana and Deutsche Bank Trust Company Americas (formerly known as Bankers Trust Company) pursuant to which Lewis and Clark County, Montana issued the Lewis and Clark County, Montana Environmental Facilities Revenue Bonds (ASARCO Incorporated Project) Series 1998 due 2033; (c) Indenture dated as of January 1, 1998 between Lewis and Clark County, Montana and Deutsche Bank Trust Company Americas (formerly known as Bankers Trust Company) pursuant to which Lewis and Clark County, Montana issued the Lewis and Clark County, Montana Environmental Revenue Refunding Bonds (ASARCO Incorporated Project) Series 1998 due 2027; (d) Indenture dated as of October 1, 1998 between Nueces River Authority and Deutsche Bank Trust Company Americas (formerly known as Bankers Trust Company) pursuant to which Nueces River Authority issued the Nueces River Authority Environmental Revenue Refunding Bonds (ASARCO Incorporated Project) Series 1998A due 2018; (e) Indenture dated as of January 1, 1998 between Nueces River Authority and Deutsche Bank Trust Company Americas (formerly known as Bankers Trust Company) pursuant to which Nueces River Authority issued the Nueces River Authority Environmental Revenue Refunding Bonds (ASARCO Incorporated Project) Series 1998 due 2027; (f) Indenture dated as of January 1, 1998 between The Industrial Development Authority of the County of Gila, Arizona and Deutsche Bank Trust Company Americas (formerly known as Bankers Trust Company) pursuant to which The Industrial Development Authority of the County of Gila, Arizona issued The Industrial Development Authority of the County of Gila, Arizona Environmental Revenue Refunding Bonds (ASARCO Incorporated Project) Series 1998 due 2027; and (g) Indenture dated as of February 1, 1993 by and between ASARCO LLC, successor to ASARCO Incorporated, as Issuer and Bankers Trust Company, as Trustee, pursuant to which ASARCO LLC issued its 7%% Debentures due 2013.

195. “Initial Administrative Claims Bar Date” means September 19, 2008, the date established by the Bankruptcy Court for filing Administrative Claims that arise after the Petition Date but prior to the Initial Administrative Claims Bar Date.

196. “Initial Distribution Date” means the date on which ASARCO makes the Initial Distributions under the Plan, which shall be the Effective Date.

197. “Initial Distributions” means the distributions to be made by Reorganized ASARCO, including those to holders of Allowed Claims and to the Trusts, on the Initial Distribution Date.

198. “Injunctions” means the Discharge Injunction and any other injunctions to be issued under this Plan.

199. “Insurance Neutrality Order” means the Bankruptcy Court’s May 29, 2008 Order Extending Scope of Insurance Neutrality Addendum Attached to Order Approving Compromise and Settlement Regarding Resolution of Derivative Asbestos Claims.



200. “Intercompany Claims” means any Claims held by one Debtor, CBRI, or Silver Bell against another Debtor, CBRI, or Silver Bell.

201. “Interest” means the rights of the holders of the equity securities of a Debtor and the rights of any Entity to purchase or demand the issuance of any equity security of such Debtor, including (a) redemption, conversion, exchange, voting, participation, and dividend rights, (b) liquidation preferences, and (c) stock options and warrants.

202. “Interior” means the United States Department of the Interior.

203. “Internal Revenue Code” means the Internal Revenue Code of 1986, as amended.

204. “Inventory” shall have the meaning assigned to such term in the Plan Sponsor PSA, which for reference purposes only 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 (as such term is defined in Exhibit E to the Plan Sponsor PSA).

205. “Investment Company Act” means the Investment Company Act of 1940, as amended, together with the rules and regulations promulgated thereunder.

206. “IRS” means the Internal Revenue Service.

207. “LAQ” means Lac d’Amiante du Quebec Ltee., Lake Asbestos of Quebec, Ltd., and LAQ Canada, Ltd.

208. “Late-Filed Claims” means those Class 6 Unsecured Claims (a) evidenced by Proofs of Claim filed after the applicable Bar Date but on or prior to the Voting Record Date and (b) that have not been determined as of the Confirmation Date to satisfy the excusable neglect standard. “Late-Filed Claims” does not include (a) Unsecured Asbestos Personal Injury Claims that are filed after the applicable Bar Date, which shall be dealt with exclusively pursuant to the Asbestos Claims Liquidation Trust Agreement and (b) the Allowed Claim for the Terrible Mine Site under the Miscellaneous Federal and State Environmental Settlement Agreement.

209. “Law” shall have the meaning assigned to such term in the Plan Sponsor PSA, which for reference purposes only 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.

210. “Leasehold Property” shall have the meaning assigned to such term in the Plan Sponsor PSA, which for reference purposes only means all leases, subleases, licenses, or other agreements relating to the occupancy of real property identified in section 3.1(e)(i) of the Disclosure Schedule, to the extent of tenant’s right, title and interest thereunder, together with all of tenant’s and 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 the Sellers and used or held for use in the

Business, including, but not limited to permits, certificates, leases and licenses related to water rights and mineral rights and interests.

211. “Legal Proceeding” shall have the meaning assigned to such term in the Plan Sponsor PSA, which for reference purposes only 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.

212. “Lehman Brothers” means Lehman Brothers Inc.

213. “Liabilities” shall have the meaning assigned to such term in the Plan Sponsor PSA, which for reference purposes only means any and all debts, losses, liabilities, claims (including claims as defined in the Bankruptcy Code), damages, 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 under the Plan Sponsor PSA).

214. “LIBOR” means London interbank offered rate of interest.

215. “Lien” shall have the meaning assigned to such term in the Plan Sponsor PSA, which for reference purposes only means any lien, pledge, mortgage, deed of trust, security interest, attachment, levy, or other encumbrance affecting title.

216. “Liquidation Analysis” means the liquidation analysis attached as **Exhibit E** to the Disclosure Statement.

217. “Liquidation Trust” means that certain liquidation trust to be formed on the Effective Date pursuant to the Liquidation Trust Agreement.

218. “Liquidation Trust Agreement” means the form of trust agreement, effective as of the Effective Date, substantially in the form attached as **Exhibit 4** to the Plan, as it may be modified from time to time in accordance with the terms thereof or Article 6.1 of the Plan.

219. “Liquidation Trust Beneficiaries” means the holders of Liquidation Trust Interests.

220. “Liquidation Trust Board” means the group of five Persons selected in accordance with the provisions of the Liquidation Trust Agreement.

221. “Liquidation Trust Claims” means the Litigation Claims that are transferred to the Liquidation Trust pursuant to the Plan as listed on **Exhibit 14-B** to the Plan and shall include the Sterlite Litigation.

222. “Liquidation Trust Expense Fund” means the Cash in the amount of \$5 million to be transferred to the Liquidation Trustee by the Debtors on the Effective Date, together with all additions thereto in accordance with the Liquidation Trust Agreement, in order to fund the operations of the Liquidation Trust.

223. “Liquidation Trust Interests” means the beneficial interests in the Liquidation Trust to be distributed in accordance with the Plan (and, pending resolution of Disputed Claims, the Disputed Claims Reserve).

224. “Liquidation Trust Proceeds” means all proceeds recovered by the Liquidation Trustee from the assets of the Liquidation Trust, including, without limitation, all proceeds from the prosecution, compromise, and settlement of the Liquidation Trust Claims, all of which shall be assets of the Liquidation Trust and held as a part thereof.

225. “Liquidation Trust Register” means the register maintained by the Liquidation Trustee with the names, addresses, and number of Liquidation Trust Interests of the Liquidation Trust Beneficiaries.

226. “Liquidation Trust Registrar” means the Entity appointed by the Liquidation Trustee for the purpose of recording ownership of the Liquidation Trust Interests.

227. “Liquidation Trust Reserve” means the reserve established and administered by the Plan Administrator to provide additional funding as needed from time to time to the Liquidation Trust Expense Fund.

228. “Liquidation Trust Tax Owners” means the Liquidation Trust Beneficiaries and Reorganized ASARCO (to the extent of its retained interest in the Liquidation Trust for federal income tax purposes).

229. “Liquidation Trustee” means the Person appointed as trustee of the Liquidation Trust under the Liquidation Trust Agreement and any successor thereto chosen in accordance with such agreement.

230. “Litigation Claims” means any of the Debtors’ causes of action, including, without limitation, the Burns Litigation, the Derivative D&O Litigation, the MRI Litigation, the SCC Litigation, the Sterlite Litigation, and any other Avoidance Actions.

231. “LLC Agreement” means the Amended and Restated Limited Liability Company Agreement of ASARCO LLC, approved by the Bankruptcy Court on December 15, 2005, as may be subsequently amended, modified, or supplemented.

232. “Madera Property” means the real property owned by ASARCO in Madera Canyon, Santa Cruz County, Arizona, which shall vest in Reorganized Covington pursuant to the Plan.

233. “Master Ballot” means the Ballot prepared for submission by an attorney on behalf of Unsecured Asbestos Personal Injury Claimants, or by a Nominee on behalf of Bondholders.

234. “MDEQ” means the State of Montana *ex rel.* the Montana Department of Environmental Quality.

235. “Miscellaneous Federal and State Environmental Claims” means those Claims filed by a federal or state government in the Reorganization Cases and addressed by the Miscellaneous Federal and State Environmental Settlement Agreement.

236. “Miscellaneous Federal and State Environmental Settlement Agreement” means the settlement agreement between ASARCO and holders of Miscellaneous Federal and State Environmental Claims.

237. “Miscellaneous Plan Administration Accounts” means the Disputed Claims Reserve, the Unpaid Cure Claims Reserve, the Disputed Secured Claims Reserve, the Prepetition ASARCO Environmental Trust Escrow, the Indemnification Escrow, the Undeliverable and Unclaimed Distribution Reserve, the Vested Causes of Action Escrow, the Liquidation Trust Reserve, and the SCC Litigation Trust Reserve.

238. “Mission Mine Leases” means the two mining leases and 21 business leases between ASARCO’s predecessor in interest and the Secretary of the Interior, relating to the Mission Mine.

239. “Mission Mine Settlement Agreement” means the settlement agreement among ASARCO, the Nation, the San Xavier District, the San Xavier Allottees Association, and the United States, as amended, attached to the Plan as **Exhibit 15**.

240. “Mission Mine Unexpired Agreements” means the agreements that ASARCO assumed in the Mission Mine Settlement Agreement and which are to be assigned to the Plan Sponsor pursuant to the Plan.

241. “Missouri Guaranty Corporation” means the Missouri Private Sector Individual Self- Insurers Guaranty Corporation.

242. “Mitsui” means Mitsui & Co. (U.S.A.), Inc., a New York corporation.

243. “Montana DLI” means the Montana Department of Labor and Industry’s Division of Employee Relations.

244. “Montana Guaranty Fund” means the Montana Self-Insurers Guaranty Fund.

245. “MRI” means Montana Resources, Inc.

246. “MRI Litigation” means the claims and causes of action of the Debtors asserted in Adversary No. 07-02024, pending in the Bankruptcy Court.

247. “MR Partnership” means Montana Resources general partnership, a Montana-based, mining-operations partnership in which ASARCO and MRI were partners.

248. “Nation” means the Tohono O’ odham Nation.

249. “Nominee” means any broker, dealer, commercial bank, trust company, savings and loan, financial institution, or other party in whose names the Bonds are registered or held of record on behalf of the holder of the beneficial interest therein.

250. “Non-Debtor Sellers” means ARSB, CBRI, and Santa Cruz.

251. “Non-Environmental Unsecured Claimants” means all holders of Claims in Class 3 other than Governmental Environmental Claimants.

252. “Non-Target Properties” shall have the meaning assigned to such term in the Plan Sponsor PSA, which for reference purposes only means all real property that is not (a) a Real Property or (b) a Silver Bell Property.

253. “Order” shall have the meaning assigned to such term in the Plan Sponsor PSA, which for reference purposes only 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.

254. “Ordinary Course of Business” shall have the meaning assigned to such term in the Plan Sponsor PSA, which for reference purposes only means the ordinary conduct of business of the Sellers, taken as a whole, relating to the Business, either (a) consistent with past practice during the pendency of and, as applicable, taking into account the Bankruptcy Cases (as such term is defined in the Plan Sponsor PSA), or (b) consistent with reasonably prudent management of the Business (as determined by the board of directors in its business judgment) in response to economic and industry conditions.

255. “Original Plan Sponsor PSA” means the Purchase and Sale Agreement dated as of May 30, 2008, among ASARCO, ARSB, CBRI, Santa Cruz, the Plan Sponsor, and the Guarantors.

256. “Other Subsidiary Debtors” means the Subsidiary Debtors other than the Asbestos Subsidiary Debtors.

257. “Parent” means ASARCO Incorporated, a Delaware corporation.

258. “PBGC” means the Pension Benefit Guaranty Corporation.

259. “Pension Plan” means each Employee Benefit Plan that is an “employee pension benefit plan” within the meaning of section 3(2) of ERISA and is a “defined benefit plan” as defined in section 3(35) of ERISA.

260. “Permitted Liens” shall have the meaning assigned to such term in the Plan Sponsor PSA, which for reference purposes only means (a) all Liens set forth in section 1.1A of the Disclosure Schedule; (b) 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 therefore or such amount has been deposited with the appropriate Governmental Authority or other

adjudicating Person (as such term is defined in the Plan Sponsor PSA); (c) mechanic's, materialman's, warehouseman's, carrier's, and similar liens arising subsequent to the filing of the Bankruptcy Cases (as defined in the Plan Sponsor PSA) for labor, materials, or supplies, as would not reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect; (d) purchase money security interests arising in the Ordinary Course of Business; (e) any Lien arising out of a Tolling Arrangement or Exchange Arrangement (as such term is defined in Exhibit E to the Plan Sponsor PSA), to the extent not arising out of a breach of such Tolling Arrangement or Exchange Arrangement; (f) rights of landlords in respect of any Leasehold Property where the applicable lease is not in default; (g) any Lien that, pursuant to section 363(f) of the Bankruptcy Code, will be released upon entry of the Confirmation Order; and (h) such other Liens as would not reasonably be expected to have, individually or in the aggregate (taken together with any other Permitted Liens), a Seller Material Adverse Effect, as such Liens relate solely to the Purchased Assets; provided that the aggregate amount of all indebtedness with respect to Permitted Liens shall not exceed \$5 million.

261. "Person" means any person, individual, partnership, corporation, limited liability company, joint venture company, association, or other entity or being of whatever kind, whether or not operating or existing for profit, including, without limitation, any "person" as such term is defined in section 101(41) of the Bankruptcy Code, but excluding any Governmental Unit.

262. "Petition Date" means, as to each Debtor, the date on which the Debtor's bankruptcy case was commenced by the filing of a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

263. "Plan" means the Chapter 11 Plan Filed by Harbinger Capital Partners Master Fund I, Ltd. and all exhibits attached thereto or referenced therein, as the same may be amended, modified, or supplemented.

264. "Plan Administration Account" means the bank account(s) that the Plan Administrator shall establish, other than any general accounts established by the Plan Administrator and the Miscellaneous Plan Administration Accounts.

265. "Plan Administration Agreement" means the form of agreement with the Plan Administrator, effective as of the Effective Date, substantially in the form attached as **Exhibit 3** to the Plan, as it may be modified from time to time in accordance with the terms thereof.

266. "Plan Administration Committee" means the three-member committee appointed pursuant to the Plan Administration Agreement to consult with and advise the Plan Administrator.

267. "Plan Administration Reserve" means the funds placed in the Plan Administration Account (and any subaccounts), the Miscellaneous Plan Administration Accounts, and any general accounts established by the Plan Administrator.

268. "Plan Administrator" means the Entity that shall (a) make distributions under the Plan to Claimants (other than the Unsecured Asbestos Personal Injury Claimants) after the Initial Distribution Date; (b) prosecute, settle, or otherwise resolve (1) any objections to such Claimants' Claims and (2) the Vested Causes of Action; (c) serve as Reorganized ASARCO's



sole officer and director; (d) operate the business of Reorganized ASARCO; and (e) perform the other duties assigned to such Entity by the Plan, the Plan Administration Agreement, or the Confirmation Order.

269. “Plan Consideration” means (a) the Available Plan Funds remaining after Allowed Administrative Claims, Priority Tax Claims, and Claims in Classes 1, 2, and 5 have been paid pursuant to the Plan; (b) the Liquidation Trust Interests; and (c) the SCC Litigation Trust Interests.

270. “Plan Documents” means the Plan, the Disclosure Statement, and all documents, attachments, and exhibits attached to the Plan or the Disclosure Statement that aid in effectuating the Plan, including, without limitation, the Asbestos Claims Liquidation Trust Documents, as the same may be amended, modified, or supplemented, in accordance with their terms.

271. “Plan Sales Proceeds” means the \$500 million (or more) to be paid by the Plan Sponsor in connection with its purchase of the Sold Assets.

272. “Plan Sponsor” means HarbingerMineCo, LLC , or any other sponsor of a plan of reorganization substantially similar hereto providing for the sale of substantially all of ASARCO’s assets to an alternative plan sponsor who (i) has made a bid with a cash purchase price in excess of \$500,000,000.00, (ii) has deposited the full amount of the purchase price into escrow as assurance of performance, and (iii) has negotiated a collective bargaining agreement that is acceptable to the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial, and Service Workers International Union.

273. “Plan Sponsor PSA” means the Purchase and Sale Agreement between the Debtors and Harbinger MineCo, LLC, and the amendments thereto, attached to the Plan as **Exhibit 9**.

274. “ASARCO Protected Parties Subordinated Indemnity Claims” means claims of the ASARCO Protected Parties against the Asbestos Claims Liquidation Trust, pursuant to Section 4.3 of the Plan, that are subordinate in right of payment to all Allowed Claims in Class 4 and, for avoidance of doubt, shall not be entitled to any distribution from the Asbestos Claims Liquidation Trust until all Allowed Claims in Class 4 have received payment in full.

275. “Prepetition ASARCO Environmental Trust” means the trust created pursuant to the Consent Decree entered in *United States v. ASARCO Inc., et al.*, Civil Action No. 022079, filed in the United States District Court for the District of Arizona.

276. “Prepetition ASARCO Environmental Trust Escrow” means the escrow account established pursuant to Article 10.8(c) of the Plan.

277. “Previously Settled Environmental Claims” means those Claims filed by a federal or state government, an Indian tribe, or a PRP in the Reorganization Cases that are listed on a site-by-site basis in **Exhibit 11-A** to the Plan.

278. “Previously Settled Environmental Sites” means the sites relating to the Previously Settled Environmental Claims.

279. “Priority Claim” means any Claim (other than an Administrative Claim or a Priority Tax Claim) to the extent such Claim is entitled to a priority in payment under section 507(a) of the Bankruptcy Code.

280. “Priority Tax Claim” means any Claim to the extent that such Claim is entitled to a priority in payment under section 507(a)(8) of the Bankruptcy Code.

281. “Privileges” means any attorney-client privilege, work-product privilege, or other privilege or immunity attaching to any documents or communications (whether electronic, written, or oral).

282. “Professional Persons” means Persons retained or to be compensated under sections 327, 328, 330, 503(b), or 1102 of the Bankruptcy Code.

283. “Proof of Claim” means any proof of claim filed with the Bankruptcy Court or the Claims Agent with respect to a Debtor pursuant to section 501 of the Bankruptcy Code and Bankruptcy Rules 3001 or 3002.

284. “Pro Rata” means the ratio of the amount of a particular Claim to the aggregate amount of Claims in that Claim’s Class.

285. “Property of the Estate” means all property in which any of the Debtors holds a legal or equitable interest, including all property described in section 541 of the Bankruptcy Code.

286. “Proponent” means the Harbinger Master Fund.

287. “Protected Officers and Directors” means Edward R. Caine, H. Malcolm Lovett, Jr., Carlos Ruiz Sacristan, Joseph F. Lapinsky, Donald B. Mills, Douglas E. McAllister, John B. George, Gary A. Miller, Manuel E. Ramos Rada, Thomas L. Aldrich, John D. Low, Jr., Oscar Gonzalez Barron, Russell A. Smith, William Perrell, Joseph Hitter, and any officers and directors appointed to replace one or more of them (or such replacement officer or director) prior to the Effective Date; *provided, however*, that the term “Protected Officers and Directors” does not include the named defendants in the Derivative D&O Litigation, the Burns Litigation, or the SCC Litigation.

288. “PRP” means a non-governmental Entity that has asserted a Claim against a Debtor for one or more environmental clean-up sites, including any non-governmental Entity that is co-liable with one or more of the Debtors for such a claim.

289. “Purchase Price” shall have the meaning assigned to such term in the Plan Sponsor PSA, which for reference purposes only means an amount equal to \$500 million.

290. “Purchased Real Property” shall have the meaning assigned to such term in the Plan Sponsor PSA, which for reference purposes only means the real property identified in section 3.1(c) of the Disclosure Schedule, 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.

291. “RCRA” means the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901, *et seq.*

292. “Real Property” shall have the meaning assigned to such term in the Plan Sponsor PSA, which for reference purposes only means, collectively, the Leasehold Property and the Purchased Real Property.

293. “Reference Order” means the District Court’s General Order 2005-6, whereby, with certain exceptions, bankruptcy cases and proceedings arising under the Bankruptcy Code or arising in or related to a bankruptcy case are automatically referred to the bankruptcy judges of the Southern District of Texas.

294. “Reinstated” or “Reinstatement” means a Claim or an Interest unimpaired within the meaning of section 1124 of the Bankruptcy Code.

295. “Release” shall have the meaning assigned to such term in the Plan Sponsor PSA, which for reference purposes only 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.

296. “Remedial Action” shall have the meaning assigned to such term in the Plan Sponsor PSA, which for reference purposes only 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.

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

298. “Reorganized ASARCO” means ASARCO, on or after the Effective Date, which shall be known as ASARCO Administration Company, LLC.

299. “Reorganized Covington” means Covington, on or after the Effective Date, which shall be known as The Covington Company, LLC.

300. “Reorganized Debtors” means Reorganized ASARCO and Reorganized Covington.

301. “Residual Environmental Claims” means those Claims of the United States and the States of Washington and Nebraska asserting civil liabilities addressed by the Residual Environmental Settlement Agreement.

302. “Residual Environmental Settlement Agreement” means the settlement agreement between ASARCO and holders of Residual Environmental Claims.

303. “Residual Environmental Settlement Sites” means the state and federal sites relating to the Residual Environmental Claims.

304. “Retained Books and Records” shall have the meaning assigned to such term in the Plan Sponsor PSA, which for reference purposes only means (a) any Books and Records (as such term is defined in the Plan Sponsor PSA) to the extent relating to any Excluded Assets or Retained Liabilities; (b) any Books and Records to the extent related or pertaining to asbestos or asbestos-containing materials or products or to asbestos personal injury claims or demands against the Sellers, including claims which have been litigated, settled, or otherwise dealt with by the 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 Plan Sponsor PSA, the Plan Sponsor PSA, or any of the Ancillary Agreements or otherwise and information and analyses relating to such communications.

305. “Retained Liabilities” shall have the meaning assigned to such term in the Plan Sponsor PSA, which for reference purposes only means any Liabilities of the Sellers, other than those that are expressly assumed by the Plan Sponsor under the Plan Sponsor PSA as Assumed Liabilities, including, without limitation, those Liabilities of the Sellers set forth in section 3.4(a) through (i) of the Plan Sponsor PSA.

306. “Rosemont Ranch Defendants” means Rosemont Ranch, LLC; TWW Investments, LLC; DAS Holdings, LLC; Habibi, LLC; West Santa Rita Land, LLC; and Lazy Y I Ranch, LLC.

307. “Salaried Plan” means the Retirement Benefit Plan for Salaried Employees of ASARCO LLC.

308. “Santa Cruz” means ASARCO Santa Cruz, Inc., a Delaware corporation.

309. “SCC” means Southern Copper Corporation (f/k/a Southern Peru Copper Company).

310. “SCC Final Judgment” means the final judgment entered in the SCC Litigation on April 15, 2009.

311. “SCC Litigation” means the claims and causes of action of the Debtors asserted in Civil Action Nos. 07-00018 and 07-00203, both pending in the District Court.

312. “SCC Litigation Proceeds” means the proceeds from the prosecution, compromise, and settlement of the SCC Litigation Trust Claims, which shall be an asset of the SCC Litigation Trust and held as part thereof.

313. “SCC Litigation Purchase Price” means the dollar value (as determined by ASARCO) of the consideration paid by an SCC Purchaser for Class C SCC Litigation Trust Interests.

314. “SCC Litigation Trust” means that certain litigation trust to be formed on the Effective Date pursuant to the SCC Litigation Trust Agreement.

315. “SCC Litigation Trust Agreement” means the form of trust agreement, effective as of the Effective Date, substantially in the form attached as **Exhibit 5** to the Plan, as it may be modified from time to time in accordance with the terms thereof or Article 6.2 of the Plan.

316. “SCC Litigation Trust Beneficiaries” means the holders of SCC Litigation Trust Interests.

317. “SCC Litigation Trust Board” means the group of five Persons selected in accordance with the provisions of the SCC Litigation Trust Agreement.

318. “SCC Litigation Trust Claims” means the Litigation Claims that are transferred to the SCC Litigation Trust pursuant to the Plan as listed on **Exhibit 14-C** to the Plan.

319. “SCC Litigation Trust Expense Fund” means the Cash in the amount of \$5 million to be transferred to the SCC Litigation Trustee by the Debtors on the Effective Date, together with all additions thereto in accordance with the SCC Litigation Trust Agreement, in order to fund the operations of the SCC Litigation Trust.

320. “SCC Litigation Trust Interests” means the beneficial interests in the SCC Litigation Trust to be distributed in accordance with the Plan (and, pending resolution of Disputed Claims, the Disputed Claims Reserve).

321. “SCC Litigation Trust Register” means the register maintained by the SCC Litigation Trustee with the names, addresses, and number of SCC Litigation Trust Interests of the SCC Litigation Trust Beneficiaries.

322. “SCC Litigation Trust Registrar” means the Entity appointed by the SCC Litigation Trustee for the purpose of recording ownership of the SCC Litigation Trust Interests.

323. “SCC Litigation Trust Tax Owners” means 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).

324. “SCC Litigation Trust Reserve” means the reserve established and administered by the Plan Administrator to provide additional funding as needed from time to time to the SCC Litigation Trust Expense Fund.

325. “SCC Litigation Trustee” means the Person appointed as trustee of the SCC Litigation Trust under the SCC Litigation Trust Agreement and any successor thereto chosen in accordance with such agreement.

326. “SCC Purchaser Percentage” means the aggregate percentage of SCC Litigation Trust Interests sold to the SCC Purchasers at the auction.

327. “SCC Purchasers” means the purchasers of SCC Litigation Trust Interests pursuant to the auction of such interests which may be held by the Debtors in the sole discretion of the Plan Sponsor.

328. “SCC Stock” means all of the stock in any form (including any stock splits or other reformulations) that is traceable to the 54.2 percent of SCC shares owned by ASARCO or SPHC on March 30, 2003.

329. “SCF” means the Arizona State Compensation Fund.

330. “Schedules” means the schedules, statements, and lists filed by the Debtors with the Bankruptcy Court pursuant to Bankruptcy Rule 1007, as may be amended or supplemented from time to time.

331. “Seaboard” means Seaboard Surety Company.

332. “SEC” means the Securities and Exchange Commission.

333. “Secured Asbestos Personal Injury Claim” means an Asbestos Personal Injury Claim that is secured by a valid, perfected, and enforceable Lien against proceeds of an Asbestos Insurance Policy.

334. “Secured Claim” means any Claim that is (a) secured in whole or part, as of the Petition Date, by a Lien against property of a Debtor that is valid, perfected, and enforceable under applicable law and is not subject to avoidance under the Bankruptcy Code or applicable nonbankruptcy law or (b) subject to setoff under section 553 of the Bankruptcy Code; *provided, however*, with respect to both (a) and (b) above, a Claim is a Secured Claim only to the extent of the value, net of any Lien senior to the applicable Lien, of the Estate’s interest in the assets or property securing any such Claim or the amount subject to setoff, as the case may be.

335. “Secured Intercompany DIP Credit Facility” means the secured debtor-in-possession term loan credit facility of up to \$10 million from ASARCO to the Asbestos Subsidiary Debtors.

336. “Seller Material Adverse Effect” shall have the meaning assigned to such term in the Plan Sponsor PSA, which for reference purposes only means (a) a material adverse effect on the financial condition of the Business (to the extent related to the Sold Assets and Assumed Liabilities) or the condition of the Sold 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 the Sellers’ ability to consummate the transactions contemplated by the Plan Sponsor PSA, excluding, in each case, any such effect, change, circumstance, or event attributable to or resulting from (i) the announcement, pendency, or consummation of the Plan Sponsor PSA, the sale of the Sold Assets, or any other action by the Sellers or their Affiliates required or expressly contemplated by the Plan Sponsor PSA, (ii) the conversion or dismissal of any Bankruptcy Case (as such term is defined in the Plan Sponsor PSA) or the filing of additional petitions under chapter 11 of the Bankruptcy Code by or involving any of the 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 the 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 the Plan Sponsor PSA or with the prior written consent of the Plan Sponsor, (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 the Plan Sponsor PSA, the Ancillary Agreements, or the transactions contemplated thereby; *provided, however*, that in the case of clauses (iv), (v) and (vi), such changes do not affect the Sellers in a materially disproportionate manner compared to other businesses conducting a business substantially similar to the Business of the 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 the Plan Sponsor with respect to such condition or matter from insurance policies.

337. “Sellers” means ASARCO and the Non-Debtor Sellers, each of which is, individually, a “Seller.”

338. “Settling Asbestos Insurance Company” means any Asbestos Insurance Company that has entered into an Asbestos Insurance Settlement Agreement approved by the Bankruptcy Court as of the Effective Date. The Asbestos Insurance Settlement Agreements are listed on **Exhibit 7** to the Plan, as amended or supplemented.

339. “Silver Bell” means Silver Bell Mining, L.L.C., a Delaware limited liability company.

340. “Silver Bell Interests” shall have the meaning assigned to such term in the Plan Sponsor PSA, which for reference purposes only means the limited liability company interests of Silver Bell owned by any Seller.

341. “Silver Bell LLC Agreement” means that certain membership interest agreement, dated February 5, 1996, among Ginrei, Inc., MSB Copper Corp., and ARSB, as amended.

342. “Silver Bell Property” shall have the meaning assigned to such term in the Plan Sponsor PSA, which for reference purposes only means all real property owned or leased by Silver Bell.

343. “Sold Assets” means the “Purchased Assets” as defined in the Plan Sponsor PSA and identified in section 3.1 thereof, and are substantially all of the tangible and intangible operating assets of ASARCO and the Non-Debtor Sellers.

344. “SPHC” means Southern Peru Holdings, LLC.

345. “SPT” means Seaboard and St. Paul Fire.

346. “SPT Indemnity Agreement” means the General Agreement of Indemnity dated October 19, 1993, which was executed by ASARCO and delivered to Seaboard and St. Paul Fire.

347. “SPT Settlement Agreement” means the settlement agreement between ASARCO, Seaboard Surety Company, and St. Paul Travelers and Marine Insurance Company.

348. “St. Paul Fire” means St. Paul Fire and Marine Insurance Company.

349. “Sterlite 2009 PSA” means that certain Settlement and Purchase and Sale Agreement, dated as of March 6, 2009, by and among the Debtors and Sterlite, as purchaser, and Sterlite Industries (India) Ltd., as guarantor, as filed with the Bankruptcy Court on May 11, 2009 as Exhibit M to the Disclosure Statement.

350. “Sterlite Litigation” shall mean all causes of action against Sterlite and its affiliates related to Sterlite’s breach of the Original Plan Sponsor PSA.

351. “Subordinated Claims” means those Class 7 Unsecured Claims that are subordinated to all other Unsecured Claims, pursuant to an order or by agreement of the Claimant.

352. “Subsequent Administrative Claims” means any Administrative Claims that arise after the Initial Administrative Claims Bar Date.

353. “Subsequent Administrative Claims Bar Date” means the date established in Article 15.13 of the Plan for the filing of Subsequent Administrative Claims.

354. “Subsidiary” shall have the meaning assigned to such term in the Plan Sponsor PSA, which for reference purposes only means, with respect to any Person (as such term is defined in the Plan Sponsor PSA), any corporation, limited liability company, joint venture, or partnership of which such Person (a) beneficially owns, either directly or indirectly, more than 50 percent 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.

355. “Subsidiary Debtors” means ASARCO’s subsidiaries with pending chapter 11 bankruptcy cases, including, without limitation, Lac d’Amiante du Quebec Ltee; Lake Asbestos of Quebec, Ltd.; LAQ Canada, Ltd.; CAPCO Pipe Company, Inc.; Cement Asbestos Products Company; Encycle, Inc.; ASARCO Consulting, Inc.; ASARCO Master, Inc.; ASARCO Oil and Gas Company, Inc.; Bridgeview Management Company, Inc.; ALC, Inc.; American Smelting and Refining Company; AR Mexican Explorations, Inc.; Government Gulch Mining Company, Limited; Covington Land Company; Southern Peru Holdings, LLC; AR Sacaton, LLC; ASARCO Exploration Company, Inc.; Green Hill Cleveland Mining Company; Alta Mining and Development Company; Blackhawk Mining and Development Company, Limited; Peru Mining Exploration and Development Company; Tulipan Company, Inc.; and Wyoming Mining and Milling Company.

356. “Superfund” means the Hazardous Substance Superfund established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507.

357. “Tax Refund” means the tax refund that ASARCO contends (in Adversary Proceeding No. 07-02011 pending before the Bankruptcy Court) is owed to its Estate as a result of the overpayment of federal income taxes.

358. “TCEQ” means the Texas Commission on Environmental Quality.

359. “Third Amended Disclosure Statement” means the Disclosure Statement in Support of the Debtors’ Third Amended Joint Plan of Reorganization under Chapter 11 of the United States Bankruptcy Code, filed on March 16, 2009.

360. “Tolling Arrangements” shall have the meaning assigned to such term in the Plan Sponsor PSA, which for reference purposes only 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.

361. “Toxic Tort Claims” means the toxic tort, personal injury, environmental property damage, and related breach-of-settlement Claims asserted against the Debtors, including, without limitation, those resulting from the Debtors’ operations of a site in Tar Creek, Oklahoma, the Ray Mine and Hayden Smelter in Ray Complex, Arizona, and the El Paso smelter located in El Paso, Texas. The Toxic Tort Claims do not include any Claims by Governmental Units or Asbestos Personal Injury Claims.

362. “Trade Creditor Preference Claim” means the Litigation Claims listed in **Exhibit 14-E** of the Plan.

363. “Transition Services Agreement” shall have the meaning assigned to such term in the Plan Sponsor PSA, which for reference purposes only means the Transition Services Agreement, dated as of the Closing Date, between the Plan Sponsor and ASARCO, to be negotiated in accordance with section 8.14 of the Plan Sponsor PSA, which will include, among other things, the services and terms described in Exhibit K to the Plan Sponsor PSA.

364. “Trust Documents” means the Asbestos Claims Liquidation Trust Documents, the Liquidation Trust Agreement, the SCC Trust Agreement, and the Environmental Custodial Trust Documents.

365. “Trust Indenture Act” means the Trust Indenture Act of 1939, as amended, together with all the rules and regulations promulgated thereunder.

366. “Trust Interest Priorities” means the priority of payment of all Classes of Claims that are receiving interests in the Liquidation Trust and the SCC Litigation Trust. The priority of payments on account of such interests shall be as follows:

- (a) First, on account of the Allowed Amounts of Claims in Class 3 and Class 4, on a Pro Rata basis, until such claims are paid in full;

(b) Second, on account of Allowed Amounts of any Class 6 Claims, on a Pro Rata basis, until such claims are paid in full;

(c) Third, on account of post-petition interest on any Allowed Amounts of any Class 3 Claims, Class 4 Claims or Class 6 Claims calculated at the higher of the non-default contract rate and the federal judgment rate in accordance with section 1961 of title 28 of the United States Code or at such rate as the Bankruptcy Court determines as to any particular Claim or any group of Claims, on a Pro Rata basis, until such claims are paid in full;

(d) Fourth, on account of Class 7 Claims, on a Pro Rata basis, until such claims are paid in full; and

(e) Fifth, on account of post-petition interest on any Allowed Amounts of any Class 7 Claims calculated at the higher of the non-default contract rate and the federal judgment rate in accordance with section 1961 of title 28 of the United States Code or at such rate as the Bankruptcy Court determines as to any particular Claim or any group of Claims, on a Pro Rata basis, until such claims are paid in full.

367. “Trustees” means the Persons appointed pursuant to the Plan for the purpose of acting as initial trustees of the Asbestos Claims Liquidation Trust, the Liquidation Trust, the SCC Litigation Trust, and the Environmental Custodial Trusts.

368. “Trusts” means the Asbestos Claims Liquidation Trust, the Liquidation Trust, the SCC Litigation Trust, and the Environmental Custodial Trusts.

369. “Undeliverable and Unclaimed Distribution Reserve” means the escrow account established pursuant to Article 13.4(b) of the Plan.

370. “Unions” means the labor organizations representing the current employees of ASARCO.

371. “Unknown Asbestos Claimant” means a holder of an Unknown Asbestos Claim.

372. “Unknown Asbestos Claims” means a demand for payment, present or future, that (a) was not a Claim during the proceedings before the Bankruptcy Court leading to Confirmation of the Plan in the Reorganization Cases; (b) arises out of the same or similar conduct or events that gave rise to (i) an Asbestos Personal Injury Claim or (ii) an Asbestos Premises Liability Claim; and (c) pursuant to the Plan is to be paid by the Asbestos Claims Liquidation Trust from the Asbestos Trust Assets.

373. “Unpaid Cure Claims Amount” shall have the meaning assigned to such term in the Plan Sponsor PSA, which for reference purposes only means, with respect to any Assumption-Pending Pre-Petition Contract (as such term is defined in section 3.5(a) of the Plan Sponsor PSA), the aggregate amount of any Cure Claims (as such term is defined in the Plan Sponsor PSA) 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.

374. “Unpaid Cure Claims Reserve” means the reserve for any Unpaid Cure Claim Amount which ASARCO may be required to reimburse the Plan Sponsor, in accordance with section 3.5(d) of the Plan Sponsor PSA.

375. “Unsecured Asbestos Personal Injury Claim” means any Asbestos Personal Injury Claim that is an Unsecured Claim.

376. “Unsecured Asbestos Personal Injury Claimant” means the holder of an Unsecured Asbestos Personal Injury Claim.

377. “Unsecured Claim” means any Claim that is not an Administrative Claim, a Secured Claim, a Priority Claim, or a Priority Tax Claim, including, without limitation, (a) any claim arising from the rejection of an executory contract or unexpired lease under section 365 of the Bankruptcy Code and (b) any portion of a Claim to the extent the value of the holder’s interest in the Estate’s interest in the property securing such Claim is less than the amount of the Claim or, to the extent that the amount of the Claim subject to setoff is less than the amount of the Claim, as determined pursuant to section 506(a) of the Bankruptcy Code.

378. “USDA” means the United States Department of Agriculture.

379. “U.S. Trustee” means the United States Trustee for the Southern District of Texas.

380. “USW” means the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC.

381. “Ventura Warehouse” means ASARCO’s warehouse located at 25 E. Ventura in Tucson, Arizona.

382. “Vested Causes of Action” means the Litigation Claims that shall vest in Reorganized ASARCO, as listed on **Exhibit 14-A** to the Plan.

383. “Vested Causes of Action Escrow” means the escrow account established by the Plan Administrator in which the Vested Causes of Action Proceeds shall be placed.

384. “Vested Causes of Action Proceeds” means the proceeds from the prosecution, compromise, and settlement of the Vested Causes of Action.

385. “Voting Record Date” means \_\_\_\_\_, the record date established by the Bankruptcy Court for purposes of deciding which Claimants are entitled to vote on the Plan.

386. “WHM Copper Mountain” means WHM Copper Mountain Investments, LLC.

387. “Winterthur Swiss” means Winterthur Swiss Insurance Company.

PLAN EXHIBIT 1

LIST OF ASARCO PROTECTED NON-DEBTOR AFFILIATES

AR Silver Bell, Inc.

ASARCO de Mexico, S.A. de C.V.

ASARCO Exploration Chile, S.A.

ASARCO Exploration Company of Canada Ltd.

ASARCO Exploration Sucursal em Portugal

ASARCO, Incorporated y Cia., S.R.C.

ASARCO Santa Cruz, Inc.

Compania Hydrometrics de Mexico, S.A. de C.V.

Copper Basin Railway, Inc.

Federated Genco Limited

Geominerals Insurance Company, Ltd. Registration No. 6894

Geominerals, Ltd.

Liard River Mining Company Ltd. (N.P.L.)

Minera San Bernardo, S.A. de C.V.

Santa Cruz Joint Venture pursuant to the Santa Cruz Joint Venture Agreement, dated as of July 1, 1977, between Freeport Copper Company and ASARCO Santa Cruz, Inc., 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.

Silver Bell Mining, LLC

Ventura Joint Venture pursuant to the Agreement among Noranda Exploration, Inc., Four Metals Mining Company and ASARCO Incorporated, dated July 6, 1978.



**PLAN EXHIBIT 2**

**LIST OF EXECUTORY CONTRACTS AND  
UNEXPIRED LEASES TO BE ASSUMED UNDER THE PLAN**

## PLAN EXHIBIT 2-A

PREPETITION CONTRACTS AND LEASES TO BE ASSUMED BY ASARCO  
AND ASSIGNED TO THE PLAN SPONSOR

[AS MAY BE SUPPLEMENTED OR AMENDED PRIOR TO CONFIRMATION]

COUNTER-PARTY NAME	CONTRACT / LEASE DESCRIPTION	EFFECTIVE DATE	EXPIRATION DATE	CURE
Aetna Life Insurance Company	Retirement Benefit Plan for Salaried Employees	4/22/1987	N/A	\$0
Air Liquide America Corporation	Modification and partial termination of Oxygen Supply agreement.	2/15/2002	12/31/2009	\$22,154
American Express Business Finance/CB Document Solutions	Copiers and fax machines	8/3/2004	8/2009	\$0
Arizona State Land Dept.	Lease # 01-98514	2/15/2000	2/14/2010	\$0
Arizona State Land Dept.	Lease # 03-01054; water well site	3/25/2002	3/24/2008	\$0
Arizona State Land Dept.	Lease No. 03-00578; commercial lease	9/15/2004	9/15/2014	\$0
Arizona State Land Dept.	Material Lease, No. 11-98925-00	1/1/1991	12/31/2010	\$0
Arrieta, Enrique	Ranch lease; lessee fenced 5/2000	1/19/1987	Year to year	\$0
AT&T Voice/Data	Nationwide Voice and Data	5/1/2005	Since 5/2008 month to month	\$43,820
AVAYA PBX Leasing	Equipment Maintenance Service Agreement	6/1/1991	Until terminated	\$0
AVAYA PBX Leasing	Lease of financial software and hardware for phone system	7/28/1999	24-mo renewal commenced April 2007	Assumed, Docket No. 4710
Bertrand, C.E.	Grazing lease; parts of secs. 64, 65, 69 etc.; 2,800 acres	1/1/2005	Annual renewal	\$0
Bloomberg, LP	Information services license agreement	03/1992	Automatic two year renewal	\$0
CalMat Co.	Real Property Lease of Nogales Highway Location to facilitate mining agreement between ASARCO and CalMat (ASARCO - Landlord)	4/22/1996	Three five-year renewal options to expire 2021	\$0
CalMat Co. (formerly Cemex Construction)	Mining Agreement (Profit a Prendre); royalties for sand and gravel operation	4/22/1996	Three five-year renewal options to expire 2021	\$0
Central Arizona Water Conservation District	Subcontract under which Asarco's (Ray Mine) water needs will be supplied by the contractor (CAWCD) in exchange for non-project water	11/17/1993	12/31/2043; terminable with 3 years notice	\$298,459.00 [Plus reasonable attorneys' fees and cost]
Chevron	Natural Gas Contract	4/1/2003; amended 4/1/2007	3/31/2009; continues for 3 mo. periods	\$0

ChevronTexaco Natural Gas, a Division of Chevron USA, Inc.	Base contract for sale and purchase of natural gas	4/1/2003	--	\$0
ChevronTexaco Natural Gas, a Division of Chevron USA, Inc.	Purchase by Asarco of full natural gas requirements of Amarillo Plant up to 6,000 MMBtus/day maximum	4/1/2005	3/31/2007; renewed	\$0
Cingular (AT&T) Wireless	Mobile Voice and Data	11/21/2005	At term; month to month	\$186.00
Cingular Wireless (Tenant)	Rental of Tower Space for Cingular Wireless Equipment (ASARCO - landlord)	4/1/2005	Automatic 5-year renewal; max 25	\$0
Cingular Wireless PCS, LLC (now d/b/a AT&T)	Option to lease 400 square feet of land for cellular tower (ASARCO - landlord)	3/14/2005	3/14/2010	\$0
Clarke Equipment Company (d/b/a BobCat Company)	Lease Agreement; sec. 6, 7 and 12, T17S, R12E; approximately 640 acres (ASARCO - landlord)	3/18/2005, amended 8/1/08	2010; two 5-year renewals	\$0
Copper Basin Railway, Inc.	Rail transportation agreement	6/1/1986	--	\$0
Copper Basin Railway, Inc.	Lease of certain railroad equipment	3/1/1993	--	\$0
CopperNet Systems, Inc.	Crozier Peak site for telecommunications tower	7/1/2002	6/30/2012	\$0
Cox, Thomas	Grazing lease	6/1/2005	Annual renewal	\$0
CRA Rogers Casey, Inc.	Investment advisers for salaried and hourly pension plans	4/1/2004	No termination date	\$0
Cruz, Juan	Rental agreement; trespass lot; North San Pedro near Lot 1, Blk. 27, Hayden	1/6/1961	Month to month	\$0
Dalton, Richard L. and Wanda F.	Grazing lease; part of NE 1/4 of sec. 34; 19.7 acres	10/18/1983 & addendum 6/1/1987	Annual renewal	\$0
Danka Office Imaging Co.	Lease and Service Agreement; office copier and service	4/13/2004	--	\$0
De La Ossa, Onofre and Maureen	Grazing lease; parts of sec. 7, 18, 19, 20, 29, 30, 31, 119, T16S, R14E; 800 acres	1/1/2005	12/31/2005; annual	\$0
Dolphin Software, Inc.	Web-based Material Safety Data Sheets (MSDS)	4/1/2003	4/2008; annual	\$1,457.46
Dunn, Bill and Becky, assigned to Kemp and Judy Morris	Lease for grazing, farming, and for residence of lessee; Dunn sold farm to Morris in 2004	8/10/1996	6/1/2006; renewed	\$0
Eagle West LLC	10' easement and 20'x20' tower site	5/1/1986	Year to year	\$0
El Paso Natural Gas Company	Natural Gas - Transportation Service Agreement (conversion from firm sales agreement), as amended under court-approved settlement agreement	8/19/1991	Automatic annual renewal beginning 12/31/2001	Assumed, Docket No. 8940
El Paso Natural Gas	Hayden metering station R/W 51032	8/7/2002	6/30/2027	\$0 - See above
El Paso Natural Gas	Winkelman metering station R/W 50262	8/7/2002	6/30/2027	\$0 - See above
El Paso Natural Gas Company	Lease Agreement and Grant of Right of Way; Hayden metering station; 3.06-acres	8/20/2002	--	\$0 - See above

Felix, Noel S., Francesca Felix; and Francesco Trinidad Felix	Livestock containment; lease mistakenly has obligation to cultivate 200 acres	7/1/1994	Annual renewal	\$0
Figuerroa, Emilio C. and Beatrice C.	Grazing Lease Agreement; certain acreage lying within T12S, R9E in Pima County, AZ	1/1/1989	--	\$0
Garcia, Ralph O. and Frances L.	Land for livestock containment; no commercial raising of livestock; Mr. Garcia passed away years ago.	11/1/1984	Annual renewal	\$0
Garcia, Raymond J. and Ysabel D.L.	Use not specified; says fence for livestock	3/1/1968	Month to month	\$0
Gila River Indian Community San Carlos Irrigation and Drainage District	Statement of Water Exchange Contract, by and between Gila River Indian Community San Carlos Irrigation and Drainage District and ASARCO Inc.	11/10/1993; assignment effective 1991	--	\$21,438.00
Gila River Indian Community, c/o Cox and Cox	# 5723 - Water Exchange Contract; water agreement for Hayden and Ray	1/1/1977 assignment effective 1993	As long as CAP water available.	\$0
Haverfield, Vern and Dorothy	Grazing lease	6/1/1990	Annual renewal	\$0
Hunt, George F. and Shirley A.	Lease; land for single family residence; several parcels; sec. 1 & 12, T4S, R13E; 46.55-acres	10/18/1983	Annual renewal	\$0
Intellitracks	Web-based car tracking software	2/1/2003	12/31/2003, year-to-year	\$0
Isley, Mike	Single unit dwelling; T4S, R13E, Sec 1, Parcel 5 located in SW1/4 of SE1/4 of SW1/4	12/1/2001	Annual renewal	\$0
Kalamazoo Materials, Inc.	Lease; Pima County, AZ; 4.4 acres	3/1/1999	--	\$0
Kearny Golf Club, Inc.	Lease of golf course	3/1/1996	10-year renewals; month to month	\$0
Kerlock, Joseph J.	Livestock lease	1/1/1992	Annual renewal	\$0
Kile, Vernon E. and Arlene	Grazing lease; T12S, R8E, sec. 5, lots 4-7, 14-20, SW1/4, W1/2, SE1/4	12/1/1993	--	\$0
Kleinchmidt, Inc.	EDI and Fax Services; negotiations for commercial sales and shipments	1/1/1995	12/31/2008; renews until terminated	\$2,079
Komatsu Financial Limited Partnership (Road Machinery)	Equipment lease # 52339-000 for one Komatsu mining truck, serial # A30099	8/12/2004	8/12/2009	\$0
Komatsu Financial Limited Partnership (Road Machinery)	Equipment Lease Agreement No. 52339-001; heavy Equipment for mining truck, serial # A30119	8/12/2004	8/12/2009	\$0
Leung, Larry, Fidelity Trust No. 60,141	Land lease; strip of land in sec. 35	8/11/2004	8/10/2029	\$0
Marquez, Felix	Trespass lot	1/30/1986	Monthly	\$0
Martinez, Edward O.	Livestock containment sec. 24	4/1/1983	Annual renewal	\$0
McFarland/Hullinger	Lease for silica plant site; this contract is now under Smithco	9/1/1992	Annual renewal	\$0
Mellon Bank, N.A.	Master Pension Trust	7/1/1993	Terminated with 60 days notice	\$2,982

Milliman	Professional Service Agreement	4/1/2005	Until terminated	\$7,708
Mincom Inc.	Licensing Agreement; software purchase licensing agreement and support services agreement - MIMS	12/15/2000	Indefinite	\$137,995
Mission - Members of Tohono O'odham Nation and Papago Indian Agency	<p>(A) The following agreements as set forth in the Mission Mine Settlement Agreement approved by the Bankruptcy Court:</p> <ul style="list-style-type: none"> <li>i) Settlement Agreement--Arizona District Court Case No. CIV. 70-83 TUC, dated November 3, 1971;</li> <li>ii) Tract II mining lease # 454-3-60 Mining/minerals production and mine waste disposal site;</li> <li>iii) Lease # H54-16-72 Water well sites, 3 wells, 1 active;</li> <li>iv) Lease # 454-6-59 mine waste dump and mill tailing disposal area SE 1/4 of Sec. 21 and NW 1/4 of NE 1/4;</li> <li>v) Lease # 454-7-59 Mine waste dumps and mill tailing disposal area E 1/2 of SW 1/4 of Sec. 21;</li> <li>vi) Lease # 454-8-59 Mine waste dumps and mill tailing disposal area W 1/2 of SW 1/4, Sec. 21;</li> <li>vii) Lease # 454-9-59 mine waste dumps and mill tailing disposal area N 1/2 of NW 1/4, Sec. 28;</li> <li>viii) Lease # 454-10-59 mine waste dumps and mill tailing disposal area S 1/2 of NW 1/4, Sec. 28;</li> <li>xi) Lease # 454-11-59 mine waste dumps and mill tailing disposal area N 1/2 of SW 1/4, Sec. 28;</li> <li>x) Lease # 454-12-59 mine waste dumps and mill tailing disposal area N 1/2 of NW 1/4, Sec. 28;</li> <li>xi) Lease # 454-13-59 mine waste dumps and mill tailing disposal area NE 1/4 of Sec. 20 and NW 1/4 of Sec. 21;</li> <li>xii) Lease # 454-14-59 mine waste dumps and mill tailing disposal area E 1/2 of NW 1/4, Sec. 20;</li> <li>xiii) Lease # 454-15-59 mine waste dumps and mill tailing disposal area N 1/2 of Ne 1/4, and NE 1/4 of NW 1/4, Sec. 29;</li> <li>xiv) Lease # 454-16-59 mine waste dumps and mill tailing disposal area W 1/2 of SW 1/4, Sec. 20;</li> <li>xv) Lease # 454-17-59 mine waste dumps and mill tailing disposal area E 1/2 of SW 1/4, Sec. 20;</li> <li>xvi) Lease # 454-18-59 mine waste dumps and mill tailing disposal area SE 1/4 Sec. 20;</li> <li>xvii) Lease # 454-19-59 mine waste dumps and mill tailing disposal area SE 1/4 and S 1/2 of NE 1/4 and NE 1/4 of NE 1/4, Sec. 28;</li> <li>xviii) Lease # 454-20-59 mine waste dumps and mill tailing disposal area SE 1/4 of NW 1/4, E 1/2 of SW 1/4 and SW 1/4 of Sec. 29;</li> <li>xix) Lease # 454-21-59 mine waste dumps and mill tailing disposal area S 1/2 of NE 1/4 Sec. 29;</li> <li>xx) Lease # 454-22-5 mine waste dumps and mill tailing disposal area W 1/2 of NW 1/4, Sec. 29;</li> <li>xxi) Lease # 454-23-59 mine waste dumps and mill tailing disposal area W 1/2 of SW 1/4, Sec. 29;</li> <li>xxii) Lease # 454-24-59 mine waste dumps and mill tailing disposal area E 1/2 of NW 1/4, Sec. 21;</li> <li>xxiii) Lease # 454-25-59 mine waste dumps and mill tailing disposal area W 1/2 of NW 1/4, Sec. 21;</li> <li>xxiv) Lease # 454-26-59 mine waste dumps and mill tailing disposal area W 1/2 of NW 1/4, Sec. 20;</li> <li>xxv) The 1997 Intergovernmental Agreement with the Arizona Department of Environmental Quality;</li> </ul>			\$0

	(B) In addition, the following set of agreements also shall be assumed as part of the Mission Mine Settlement: i) Lease of Allotted Land dated February 15, 2000, by and between certain allottees of Allotment SX-162, who are enrolled members of the Tohono O'Odham Nation, and ASARCO Incorporated (predecessor in interest to ASARCO LLC); ii) Lease of Allotted Land dated February 15, 2000, by and between certain allottees of Allotment SX-165, who are enrolled members of the Tohono O'Odham Nation, and ASARCO Incorporated (predecessor in interest to ASARCO LLC); iii) Lease of Allotted Land dated February 15, 2000, by and between certain allottees of Allotment SX-208, who are enrolled members of the Tohono O'Odham Nation, and ASARCO Incorporated (predecessor in interest to ASARCO LLC); and iv) Agreement for Non-Exercise of Certain Rights under Well Site Lease dated March 9, 2000, by and between the Tohono O'Odham Nation, Tohono O'Odham Gaming Authority, and ASARCO Incorporated (predecessor in interest to ASARCO LLC).			
North American Administrators, Inc.	Process all Claims Presented by Eligible Employees for Payment of Benefits	8/1/2005	12/31/2008	\$0
Page Land & Cattle LLS and Battle Axe Ranch LLC	Grazing lease; Copper Butte (Stephen M. Brophy)	3/1/1999	Renewed	\$0
PC Helps Support, Inc.	Computer Support Pre-Purchase and Fee Agreement; call-in computer help	5/13/2005	Renewed quarterly	\$0
Phoenix Portland Cement Co.	Real Property Lease; Portions of Sec. 12 and 13, R15E of the Gila and Salt River Base and Meridian, AZ to permit dumping of slag	5/29/1914	6/26/2014	NO CURE SET
Pinal County	Sec 23, T5S, R15E, 0.836 acres in Kelvin equipment yard; Sec 1 & 12, T4S, R13E, .836-acres	5/29/1981	--	\$0
Pinal County Bd. of Supervisors Florence, AZ	Kelvin equipment yard	7/1/1981	Year to year	\$0
Pinal County Highway Dept.	Kelvin refuse transfer station; sec 1, T4S, R13E, 1.03-acres	4/1/1984	Year to year	\$0
Pitney Bowes Credit Corp.	Postage equipment rental agreement	8/2/2004	5/2/2009	\$103.65
Prudential Financial Derivatives, LLC	Futures Account Agreement and COMEX copper futures contracts	--	--	Assumed, Docket No. 1372
Pulte Homes	Billboard rental sites located near Pima Mine Road east of I-19 and Pima Mine Road west of I-19 near Sahuarita, Arizona	8/18/2004	Month to month	\$0
Quesada, Secundo A. and Rudolfo	Land lease; livestock containment and ag use	4/1/1983	Year to year	\$0
Qwest Corporation	Telecommunications Service Agreement - voice and data services	4/10/2003	Reached term, currently month to month	\$29,729.30
Rivera, Eva Rose and Manuel J. Kerlock, Joseph	Livestock containment	4/1/1983	Year to year	\$0



Road Machinery Company	930E Repair and Maintenance Plan Agreement; Mission Complex	6/27/2005	Extended indefinitely	Assumed, Docket No. 1135
Road Machinery Company	In-Plant Store Agreement; ASARCO Ray Mine	3/19/2004	Automatic renewal	\$0
Salt River Project Agricultural Improvement and Power District	Agreement for Electric Service to various Substations, Account Nos. 56-00-00021-1 to 00025-1, as amended	6/1/1995		Assumed, Docket No. 2200
Salt River Project Agricultural Improvement and Power District	Deed of Trust, Assignment of Rents and Proceeds and Security Agreement, Pima County Recorder, Docket 11737, Page 3763	2/13/2002		Assumed, Docket No. 2200
Salt River Project Agricultural Improvement and Power District	Deed of Trust, Assignment of Rents and Proceeds and Security Agreement, Pima County Recorder, Docket 11792, Page 2165	4/30/2002		Assumed, Docket No. 2200
Salt River-Pima Maricopa Indian Community	Lime quarry site lease and slag dump; 12.25 acres	6/26/1915	6/25/2014	\$0
Silver Bell Mining L.L.L.	Land Water Rights and Facilities Lease; sec. 28, T12S, R10E, sec. 29, T12S, R10E	2/5/1996	--	\$0
Silver Bell Mining L.L.L.	Ground Lease; land under buildings and other structures located in sec. 11, T12S, R8E	2/5/1996	--	\$0
Sims, Socorro	SW1/4, sec 9, T5S, R15E Gila and Salt River Base and Meridian	1/6/1975	--	\$0
Smith, Paul and Judy dba Paul Smith Farms	Lease, farm; Crescent Ranch (assigned to Bill Stambaugh)	1/1/2003	1/1/2013	\$0
Smith, Paul and Judy dba Paul Smith Farms, PZ Ranch	Lease, farm; Crescent Ranch (assigned to Bill Stambaugh)	8/1/95; amended 10/25/99	10/25/2009	\$0
Smithco Enterprises, Inc.	Agreement for the delivery of siliceous flux	12/15/2004	12/31/2009	Assumed, Docket No. 418
Smithco Enterprises, Inc.	Land lease by smelter; one acre; can only use to produce silica flux from Bobbitt claims	3/1/1999	3/1/2009	\$0
Southwest Public Service Company	Lay Down Yard of 11 acres leased at Amarillo site	12/1/2005	11/30/2005	\$0
Southwestern Public Service	Sale by SPS of electric energy to Asarco at Amarillo, TX copper refinery; contract #6201-0410	3/25/2002	Automatic annual renewal beginning 02/2004	\$379,121.81
Stambaugh, William M. and Gloria Mae	Lease for farming, ranching, and animal husbandry; Stambaugh has permission to sublease to Romero	2/1/1999	1/31/2009	\$0
Stephens, Charles and Bethel E.	Lease for grazing and 10 acres for trailer park	2/1/1984	Annual renewal	\$0
Talley, Eugene N. and Thelma	Lease for single family residence	1/1/1986	Annual renewal	\$0
Toshiba	Master pricing agreement for copier leases	6/22/2005	Automatic renewal	\$4,031.43
Town of Winkelman	Recreation area and cattle compound	1/1/1992	Annual renewal	\$0
US Bureau of Land Mgmt.	Ray Land Exchange Agreement	10/21/1976	N/A	\$0
USRS	Agreement for Relocation Services	6/6/2001	Until terminated	\$0

USW and other Unions	CBA; as amended by 06/23/2008 letter agreement with the Plan Sponsor <sup>1</sup>	[01/2007]	2013	NO CURE SET
Vanguard Fiduciary Trust Company	Master Trust Amendment; contract for 401k savings plan for all employees	2/17/2005	N/A	\$0
Westar Transmission Company	Gas Service Agreement	8/1/1999	Terminated with 30 days notice	\$0
Williams, Glen I. and Patricial A.	Lease of residential property	6/15/1983	Annual renewal	\$0
Wooden, John J.	Grazing Lease Agreement; certain property located in Pima County, AZ	11/22/1993	--	\$0
Xstrata (formerly Noranda Exploration Inc. and Four Metals Mining Company)	Lease Agreement - JV agreement that requires annual spend for ASARCO LLC to earn an ownership in the property	76/1978	Unknown	To be Assumed by Separate Motion

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<sup>1</sup> To the extent that the CBA as amended might be deemed to be a prepetition executory contract, it is hereby listed for assumption and assignment to the Plan Sponsor.

**PLAN EXHIBIT 2-B****PREPETITION CONTRACTS AND LEASES TO BE ASSUMED BY APPLICABLE DEBTOR  
AND ASSIGNED TO AN ENVIRONMENTAL CUSTODIAL TRUST<sup>2</sup>****[AS MAY BE SUPPLEMENTED OR AMENDED PRIOR TO CONFIRMATION]****Montana Custodial Trust**

<b>SITE</b>	<b>CONTRACT WITH</b>	<b>CONTRACT/LEASE DESCRIPTION</b>	<b>EFFECTIVE DATE</b>	<b>EXPIRATION DATE</b>
East Helena, MT	American Chemet	Lease - Vacant Land	11/1/02	Current - automatic renewal
East Helena, MT	Ash Grove Cement Co.	Purchase Agreement - Slag sales	11/01/02	Perpetuity
East Helena, MT	Chip Foster	Lease - Hay	--	--
East Helena, MT	Commercial Energy of Montana	Purchase Agreement - Natural gas	4/10/03	Automatic extension
East Helena, MT	Gary Dobler	Lease - Wheat	2/20/03	Current
East Helena, MT	Harold Therriault	Lease - Real Property	Annual	--
East Helena, MT	Harry Culbertson	Lease - Grazing	--	Current
East Helena, MT	Liquid Air Industrial	Lease	--	--
East Helena, MT	Lloyd Johnson	Lease - Housing	--	Current
East Helena, MT	Matt Downing	Lease - Housing	--	--
East Helena, MT	Montana Rail Link, Inc.	Lease - Culvert inlet	Original 9/1/1997; extension 9/1/2008	8/31/2009
East Helena, MT	Montana Rail Link, Inc.	Permit - Irrigation pipeline	Original 4/1/1997; extension 4/1/2008	3/31/2009
East Helena, MT	Montana Rail Link, Inc.	Lease - Road crossings	Original 11/1/2000; extension 11/1/2008	10/31/2009
East Helena, MT	Otto Johnson	Lease - Grazing	5/10/02	Current
East Helena, MT	Ray McGowan	Lease	--	--
East Helena, MT	Steve Lindbergh	Lease	--	--

<sup>2</sup> The trustee assigned to a particular Environmental Custodial Trust may not agree to the assignment of one or more of the leases or contracts listed herein.

**Texas Custodial Trust**

<b>SITE</b>	<b>CONTRACT WITH</b>	<b>CONTRACT/LEASE DESCRIPTION</b>	<b>EFFECTIVE DATE</b>	<b>EXPIRATION DATE</b>
El Paso Smelter, TX	Crown Castle GT Co., LLC (dba New Cingular Wireless PCS, LLC)	Lease - Cell Towers	1/1/95	12/31/2019
El Paso Smelter, TX	El Paso Electric	Tariff electric	--	--
El Paso Smelter, TX	Eller Media Company.	Lease - Billboards	1/1/00	1/1/2010

**Other Custodial Trust**

<b>SITE</b>	<b>CONTRACT WITH</b>	<b>CONTRACT/LEASE DESCRIPTION</b>	<b>EFFECTIVE DATE</b>	<b>EXPIRATION DATE</b>
Deming, NM	James F. Carroll	Lease - Corral	9/1/75	--
Magdalena, NM	Rael, Ricky Lee and Louella B.	Lease - Grazing	3/1/04	2/28/2005, automatically extended for 9 one-year periods unless terminated
Murray, UT	Utah Transit Authority	Lease	8/20/98	Perpetuity
Sand Springs, OK	Wal-Mart Real Estate Business Trust	Agreement	12/23/99	--
Taylor Springs, IL	Brad Green	Farm Agreement and Lease	3/14/1995	--
Taylor Springs, IL	Wayne Moroney	Lease - woodland	3/01/04	Current
Trench/Salero, AZ	Camp, Dresser & McKee	Professional Services Agreement	9/1/03	--
Trench/Salero, AZ	Hale, Norman C. and Ruth J.	Lease - Grazing	3/30/66	--
Van Buren, AR	Van Buren Pipe Corp. and Capco Pipe Company, Inc.	Addendum to Lease	7/28/97; addendum 3/27/00	--
Whiting, IN	Arcadis - Gerghty & Miller	FMC-Whiting, IN Remedial Design	4/7/92	Open

**Coeur d'Alene Basin, Idaho Trust**

<b>SITE</b>	<b>CONTRACT WITH</b>	<b>CONTRACT/LEASE DESCRIPTION</b>	<b>EFFECTIVE DATE</b>	<b>EXPIRATION DATE</b>
Kootenai County, ID	Whiteman Lumber Company, Inc. and The Seattle-First National Bank of Spokane, Washington, as trustee	Lease	1/24/89	--

**PLAN EXHIBIT 2-C****PREPETITION CONTRACTS AND LEASES TO VEST  
IN REORGANIZED ASARCO OR REORGANIZED COVINGTON****[AS MAY BE SUPPLEMENTED OR AMENDED PRIOR TO CONFIRMATION]**

<b>COUNTER PARTY NAME</b>	<b>CONTRACT/ LEASE DESCRIPTION</b>	<b>CONTRACT EFFECTIVE DATE</b>	<b>DEBTOR PARTY TO CONTRACT/LEASE</b>	<b>CONTRACT/LEASE ASSIGNEE</b>
Apache Corporation	Royalty Lease	N/A	ASARCO Oil and Gas Company, Inc.	Reorganized ASARCO
American Warehousing Express Inc.	Tenant Lease	08/30/1999	Bridgeview Management Company, Inc.	Reorganized ASARCO
American Warehousing Express Inc.	Tenant Lease	12/01/1999; amended 06/13/2000	Bridgeview Management Company, Inc.	Reorganized ASARCO
American Warehousing Express Inc.	Tenant Lease	05/15/2005	Bridgeview Management Company, Inc.	Reorganized ASARCO
Arizona Public Service	Electricity Service Agreement	N/A	AR Sacaton, LLC	Reorganized ASARCO
Burlington Resources	Royalty Lease	N/A	ASARCO Oil and Gas Company, Inc.	Reorganized ASARCO
Byerson Office Systems Inc.	Tenant Lease	12/01/2002	Bridgeview Management Company Inc.	Reorganized ASARCO
CBJ-France S.A.R.L.	Royalty Agreement	2/18/02	ASARCO LLC	Reorganized ASARCO
City & County of Denver Board of Water Commissioners	Water Augmentation- replacement of well depletion water related to environmental remedy	10/27/2004	ASARCO LLC	Reorganized ASARCO
Coeur Silver Valley, Inc.	Office Lease	09/26/2001	ASARCO LLC	Reorganized ASARCO
Dynaflow Engineering, Inc.	Tenant Lease	04/01/2005	Bridgeview Management Company Inc.	Reorganized ASARCO
Eleckra Mines Limited (f/k/a Faulkner Resources Pty Ltd.)	Purchase/Sale Agreement	N/A	ASARCO Exploration Company, Inc.	Reorganized ASARCO
General Foundries, Inc.	Tenant Lease	01/25/2005; most recent	Bridgeview Management Company Inc.	Reorganized ASARCO

		addendum 02/01/2008		
Gerard Warehouse, Inc.	Real Property Lease	06/22/1999; most recent addendum 07/02/2008	Bridgeview Management Company Inc.	Reorganized ASARCO
Integrated Industries Corporation	Lease Agreement	03/31/2003; most recent extension 08/31/2008	Bridgeview Management Company Inc.	Reorganized ASARCO
K-T Marine Inc.	Tenant Lease	08/01/1993; most recent addendum 11/01/2007	Bridgeview Management Company Inc.	Reorganized ASARCO
K-T Marine, Inc.	Lease Agreement	03/01/2005	Bridgeview Management Company Inc.	Reorganized ASARCO
K-T Marine, Inc.	Lease Agreement	08/01/1993; most recent addendum 09/01/2007	Bridgeview Management Company Inc.	Reorganized ASARCO
Lansky, Mr. and Mrs. Richard J.	Real Property Lease- Madera Canyon	7/6/2000	ASARCO LLC	Reorganized Covington Land
Leede Operation Company, LLC	Royalty Lease	N/A	ASARCO Oil and Gas Company, Inc.	Reorganized ASARCO
Major Security, Inc.	Agreement	10/09/1997	Bridgeview Management Company Inc.	Reorganized ASARCO
Marine Spill Response Corporation	Tenant Lease	09/10/1997	Bridgeview Management Company Inc.	Reorganized ASARCO
Miles Overall Maintenance, Inc. ("M.O.M.I.")	Tenant Lease	11/01/1996	Bridgeview Management Company, Inc.	Reorganized ASARCO
Montana Resources, Inc.	Joint Venture Agreement	N/A	ASARCO Master, Inc.	Reorganized ASARCO
Omnipoint Facilities Network 2, LLC, successor in interest to Omnipoint Communications Inc.	Lease Agreement	03/01/1997; renewed 03/01/2007	Bridgeview Management Company, Inc.	Reorganized ASARCO
QWest	Telecommunications Contract	N/A	AR Sacaton, LLC	Reorganized ASARCO
Randive of New Jersey, Inc.	Lease Agreement	01/13/1997; most recent addendum 03/31/2008	Bridgeview Management Company Inc.	Reorganized ASARCO



Resolution Copper Company	Net Smelter Returns Royalty Deed	06/02/2004	ASARCO LLC	Reorganized ASARCO
Samson Resources	Royalty Lease	N/A	ASARCO Oil and Gas Company, Inc.	Reorganized ASARCO
Syndicated Metals Pty Ltd.	Royalty Agreement	06/16/2006	ASARCO Exploration Company, Inc.	Reorganized ASARCO
Toshiba America Information Systems, Inc.	Equipment Lease (Originally entered into with ASARCO Midland Coal)	02/01/2001	ASARCO LLC	Reorganized ASARCO
Town of Ruston	Lease Agreement	09/01/2004; amended 1/18/05; extended through 9/01/2009	ASARCO LLC	Reorganized ASARCO
Viking Marine Products	Tenant Lease	05/27/2005	Bridgeview Management Company Inc.	Reorganized ASARCO
Whiting Oil and Gas Corporation (formerly with Howard Energy Co.)	Royalty Lease	N/A	ASARCO Oil and Gas Company, Inc.	Reorganized ASARCO
Yamarna Goldfields Limited, Faulkner Resources Pty Ltd.	Royalty Agreement	12/22/2005	ASARCO Exploration Company, Inc.	Reorganized ASARCO

**PLAN EXHIBIT 2-D****POSTPETITION CONTRACTS AND LEASES TO BE ASSIGNED TO  
AN ENVIRONMENTAL CUSTODIAL TRUST<sup>3</sup>****[AS MAY BE SUPPLEMENTED OR AMENDED PRIOR TO CONFIRMATION]****Montana Custodial Trust**

<b>SITE</b>	<b>CONTRACT WITH</b>	<b>CONTRACT/LEASE DESCRIPTION</b>	<b>EFFECTIVE DATE</b>	<b>EXPIRATION DATE</b>
East Helena, MT	American Chemet	Building Lease	8/01/07	Current; automatic renewal
East Helena, MT	Ashley Miller	Lease - Housing	4/2/08	Current
East Helena, MT	Bill Casey	Lease - Housing	9/12/07	Month to month
East Helena, MT	Blaine Cox	Lease - Housing	4/3/08	Month to month
East Helena, MT	Brett Jones	Lease - Housing	4/2/08	Month to month
East Helena, MT	Industrial Automation Consulting	PLC programming and maintenance	12/10/07	12/31/2008
East Helena, MT	Mitch Hill	Lease - Housing	9/12/07	Month to month
East Helena, MT	Rick Lamping	Lease - Housing	9/25/07	Month to month
East Helena, MT	Sean Stenlund	Lease - Housing	9/25/07	Month to month
East Helena, MT	Seth Delanoy	Lease - Housing	10/4/07	Month to month
East Helena, MT	Terry Swensen	Lease - Housing	9/27/07	Month to month
East Helena, MT	William J. Foster	Lease - Wheat and Hay	4/1/07	Current
Mike Horse, MT	CDM Contractors, Inc.	Cost plus construction or repairs contract	3/24/08	12/31/2010
Mike Horse, MT	Randall Contracting	Water Treatment System O&M	4/1/06	12/31/2008

<sup>3</sup> The trustee assigned to a particular Environmental Custodial Trust may not agree to the assignment of one or more of the leases or contracts listed herein.

**Texas Custodial Trust**

<b>SITE</b>	<b>CONTRACT WITH</b>	<b>CONTRACT/LEASE DESCRIPTION</b>	<b>EFFECTIVE DATE</b>	<b>EXPIRATION DATE</b>
El Paso Smelter, TX	Clear Channel Outdoor, Inc.	Lease - Billboards	11/21/06	11/21/2021
El Paso Smelter, TX	Settlement Agreement Regarding the El Paso County Metals Survey Site	Settlement - Past costs	12/4/07	--
El Paso Smelter, TX	Stipulation Relating to Proofs of Claim for El Paso County Metals Survey Site and Dona Ana Metal Site	Stipulation - Future costs	10/5/07	--

**Other Custodial Trust**

<b>SITE</b>	<b>CONTRACT WITH</b>	<b>CONTRACT/LEASE DESCRIPTION</b>	<b>EFFECTIVE DATE</b>	<b>EXPIRATION DATE</b>
Sacaton, AZ	AR Sacaton	Administrative and Storage Services	11/01/2006	current
Sacton, AZ	True Stone America f/k/a Enviro-Crete Products, Inc., E-Crete Products and Kincross Gold Corporation and AR Sacaton LLC	Lease	2008	2014
Taylor Springs, IL	CTT Corporation	Lease	10/01/05	10/01/08
Taylor Springs, IL	Gerry Spinner	Lease	12/01/07	12/01/08

**PLAN EXHIBIT 2-E****POSTPETITION CONTRACTS AND LEASES TO VEST IN  
REORGANIZED ASARCO OR REORGANIZED COVINGTON****[AS MAY BE SUPPLEMENTED OR AMENDED PRIOR TO CONFIRMATION]**

<b>COUNTER-PARTY NAME</b>	<b>CONTRACT/ LEASE DESCRIPTION</b>	<b>CONTRACT EFFECTIVE DATE</b>	<b>DEBTOR ASSUMING CONTRACT/LEASE</b>	<b>CONTRACT/LEASE ASSIGNEE</b>
Allsafe Ladder and Scaffolding, Inc.	Lease	08/23/2006; most recent addendum 05/01/2008	Bridgeview Management Company Inc.	Reorganized ASARCO
American Warehousing Express, Inc.	Tenant Lease	12/01/2006	Bridgeview Management Company Inc.	Reorganized ASARCO
American Warehousing Express, Inc.	Tenant Lease	10/01/2008	Bridgeview Management Company Inc.	Reorganized ASARCO
Don McCord	Lease	03/01/2007	ASARCO	Reorganized ASARCO
Fisher Sand & Gravel Co.	Mining Agreement	02/27/2008	AR Sacaton	Reorganized ASARCO
General Foundries, Inc.	Tenant Lease	01/20/2006; most recent addendum 02/01/2008	Bridgeview Management Company Inc.	Reorganized ASARCO
Hartshorne Carbon Company	Coal Rights Agreement in Sebastian County, AR	10/31/2005	ASARCO	Reorganized ASARCO
Myers Construction	Aerated Concrete Block Contract	--	AR Sacaton	Reorganized ASARCO
Pacific Office	Lease	04/01/2007	ASARCO	Reorganized ASARCO
Quality First Contracting, Inc.	Lease Agreement	11/01/2006; amended 11/01/2007	Bridgeview Management Company Inc.	Reorganized ASARCO
Rondal McVey	Lease	03/01/2007	ASARCO	Reorganized ASARCO

PLAN EXHIBIT 3

FORM OF PLAN ADMINISTRATION AGREEMENT

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 (excluding the Asbestos Subsidiary Debtors) (the “Subsidiary Debtors” and together with ASARCO, the “Debtors”) and [\_\_\_\_\_] as Plan Administrator, is executed in connection with the First Amended Chapter 11 Plan Filed By Harbinger Capital Partners Master Fund I, Ltd. (“Harbinger”), dated June \_\_, 2009 (as it may be amended, modified, or supplemented, and together with all exhibits thereto, the “Plan”), filed in the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division (the “Bankruptcy Court”). 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-3 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 June \_\_, 2009, Harbinger 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:



I.

ACCEPTANCE OF POSITIONS, OBLIGATION TO  
PAY CLAIMS, FIDUCIARY OF THE ESTATE

A. Acceptance. [\_\_\_\_\_] (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.

B. 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.

C. 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.

D. Plan Administration Committee. [\_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_] shall serve as the initial members of the Plan Administration Committee and 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 initially shall consist of the three members identified above, who each 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. 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. 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. The Plan Administration Committee shall have the rights and powers set forth herein. 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. In performance of their duties hereunder, members of the Plan Administration Committee shall be entitled to receive (a) reimbursement of reasonable expenses, (b) indemnification as set forth in Section 4.6 hereof, and (c) compensation as provided for in Section 4.4(b) hereof. 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.

II.

OBLIGATIONS OF THE PLAN ADMINISTRATOR

A. 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.

B. Establishment and Maintenance of Accounts, Reserves and Escrows. On the Effective Date or as soon as 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:

1. *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 (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.

2. *Plan Administration Account.* An account designated as "Plan Administration Account," as described more fully in Section 2.3 below (the "Plan Administration Account").

3. *Disputed Claims Reserve.* An account designated as "Disputed Claims Reserve," as described more fully in Section 2.4 below (the "Disputed Claims Reserve").

4. *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").

5. *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").

6. *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").

7. *Indemnification Escrow.* An account designated as "Indemnification Escrow," as described more fully in Section 2.7 below (the "Indemnification Escrow").

8. *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”).

9. *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”).

10. *Liquidation Trust Reserve.* An account designated as “Liquidation Trust Reserve,” as described more fully in Section 2.10 below (the “Liquidation Trust Reserve”).

11. *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”).

C. Plan Administration Account.

1. 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 that amount of Cash as determined by the Plan Administrator, after consultation and approval by the Plan Administration Committee, to be necessary to pay (a) the estimated costs and expenses of the Plan Administrator, (b) the costs of plan administration, and (c) 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.

2. 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 Liquidation Trust for distribution in accordance with the terms and conditions of the Liquidation Trust 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.

D. Disputed Claims Reserve.

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

2. 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.

3. 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, the Plan Administrator shall (at such time as determined to be practicable by the Plan Administrator) make the distributions required to be made by the provisions of the Plan from the Disputed Claims Reserve or a Disputed Secured Claims Reserve in respect of the Allowed Portion of such Claim.

4. If a Disputed Claim is disallowed, in whole or in part, the Plan Administrator shall (at such time as determined to be practicable by the Plan Administrator) allocate the Cash reserved in respect of such disallowed Disputed Claim in accordance with the terms and conditions of this Administration Agreement.

5. 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.

E. Prepetition ASARCO Environmental Trust Escrow. On or before the Effective Date, (i) the Plan Administrator shall establish the Prepetition ASARCO Environmental Trust Escrow and (ii) 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.

F. Undeliverable and Unclaimed Distributions Reserve.

1. If the distribution to any holder of an Allowed Claim (other than the holder of an Unsecured Asbestos Personal Injury Claim or Demand) is returned to Reorganized ASARCO or the Plan Administrator as undeliverable or is otherwise unclaimed (including by a Claimant's failure to 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.



2. 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.

G. Indemnification Escrow. On or before the Effective Date, the Plan Administrator shall establish an escrow account which account 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 in accordance with the terms and conditions of this Administration Agreement.

H. Unpaid Cure Claims Reserve. Pursuant to section 3.5(d) of the New Plan Sponsor PSA, the Plan Sponsor is entitled to reimbursement from ASARCO of any Unpaid Cure Claims Amount paid by the Plan Sponsor in accordance with such section 3.5(d). On or prior to the Effective Date, the Plan Administrator shall establish the Unpaid Cure Claims Reserve. On the Effective Date (or as soon thereafter as is reasonably practicable), ASARCO, Reorganized ASARCO, or the Plan Administrator, as the case may be, shall place Cash in the amount of \$5 million in the Unpaid Cure Claims Reserve to be used to make payment in respect of any Unpaid Cure Claims Amount for which ASARCO may be required to reimburse the Plan Sponsor pursuant to section 3.5(d) thereof. Such funds shall be held in the Unpaid Cure Claims Reserve until notice is provided by the Plan Sponsor pursuant to section 3.5(d) of the New Plan Sponsor PSA (or the period in which any such notice is required to be provided has expired), whichever occurs later, and shall be applied in accordance with section 3.5(d) thereof, if and as applicable.

I. 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.

J. Liquidation Trust Reserve. On or prior to the Effective Date, the Plan Administrator shall establish the Liquidation Trust Reserve. On the Effective Date (or as soon thereafter as is reasonably practicable), ASARCO, Reorganized ASARCO, or the Plan Administrator, as the case may be, shall deposit in the Liquidation Trust Reserve Cash in the



amount of \$10 million. The Plan Administrator shall maintain the Liquidation Trust Reserve and shall from time to time, when requested to do so by the Liquidation Trustee, transfer funds from the Liquidation Trust Reserve to the Liquidation Trustee for the Liquidation Trust Expense Fund as the Liquidation Trustee deems reasonably necessary to the continued operations of the Liquidation Trust, up to an aggregate amount of \$10 million. Upon a determination by the Liquidation Trustee that no additional funds will be needed from the Liquidation Trust Reserve, the Plan Administrator shall allocate the remaining funds in the Liquidation Trust Reserve in accordance with the terms and conditions of this Administration Agreement.

K. SCC Litigation Trust Reserve. On or prior to the Effective Date, the Plan Administrator shall establish the SCC Litigation Trust Reserve. On the Effective Date (or as soon thereafter as is reasonably practicable), ASARCO, Reorganized ASARCO, or the Plan Administrator, as the case may be, shall deposit in the SCC Litigation Trust Reserve Cash in the amount of \$15 million. 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 Liquidation Trust Reserve to the Liquidation 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.

L. 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 owners 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.

M. 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.

N. Books and Records. In accordance with Article 15.21 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.

O. Taxes.

1. 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.

2. 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.

3. 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.

P. 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.

Q. Withholdings and Manner of Payments.

1. 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.

2. 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.

R. 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, and (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.

### III.

#### AUTHORITY AND LIMITATIONS

A. 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:

1. 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;

2. 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;

3. 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;

4. 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 Unpaid Cure Claims Reserve, 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;

5. 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 of and serve on behalf of Reorganized ASARCO;

6. 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;

7. after consultation with and approval by the Plan Administrator 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);

8. after consultation with and approval by the Plan Administration Committee, to seek estimation of contingent or unliquidated claims under 11 U.S.C. § 502(c);

9. 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;

10. 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;

11. 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;

12. after consultation with and approval by the Plan Administration Committee, to close one or more of the Reorganization Cases;

13. 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;

14. 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;

15. 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;

16. to conduct the businesses of Reorganized ASARCO, subject to any applicable limitations set forth herein;

17. 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;

18. 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.

B. 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.

C. Authority to Pursue or Compromise Causes of Action on Behalf of Reorganized ASARCO. The Vested Causes of Action including, without limitation, the Debtors' respective rights, title and interests in and to the Asbestos Insurance Actions, 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 \$[500,000.00], procure the approval of the Plan Administration Committee.

D. Authority to Object to Claims and to Settle Disputed Claims. From and after the Effective Date the Plan Administrator shall:

1. be 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);

2. be empowered to and, in the Plan Administrator's sole discretion may, 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. Notwithstanding the foregoing, the Plan Administrator shall, prior to entering into any proposed settlement of a Disputed Claim for an amount in excess of \$[500,000.00], procure the approval of the Plan Administration Committee.

3. The Plan Administrator shall 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 (a) 90 days after the Confirmation Date, (b) 90 days after a Proof of Claim is filed or (c) such other time as may be fixed or extended by the order of the Bankruptcy Court; *provided, however*, that the Plan Administrator may seek to extend such period (or any extended period) for cause.

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.

E. 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.

F. 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.



G. 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.

H. Compliance with Laws. Any and all distributions of Cash shall be made in compliance with applicable laws.

I. 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.

#### IV.

#### THE PLAN ADMINISTRATOR

A. Reliance by Plan Administrator. Except as otherwise provided in Sections 4.5 or 4.6 hereof:

1. 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;

2. 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

3. 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.

B. 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 moneys 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.

C. 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.

D. Compensation.

1. 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.

2. 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.

E. 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.

F. 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, 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.

G. No Bond. The Plan Administrator shall serve without bond.

H. 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.

I. 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.

## V.

### SUCCESSOR PLAN ADMINISTRATOR

A. 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.

B. 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 and (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 for the appointment of a successor Plan Administrator and officer and director of Reorganized ASARCO.

C. Appointment of Successor Upon Removal, Resignation or Death. If the Plan Administrator is removed pursuant to Section 5.1 or 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 for the appointment of a successor Plan Administrator and officer and director of Reorganized ASARCO.

D. 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.

E. 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 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.

## VI.

### TERMINATION

A. Termination. This Administration Agreement shall terminate upon the later of (a) 30 days after the exhaustion of the assets of Reorganized ASARCO and (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.

B. 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, and (b) file a certificate informing the Bankruptcy Court of the location at which such books, records, and files are being stored. 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.

VII.

MISCELLANEOUS PROVISIONS

A. 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 Administrator and shall provide information reasonably requested by the Plan Administrator.

B. Amendment. This Administration Agreement may not be amended except by an instrument executed by (a) the Debtors and the Plan Administrator on or before the Effective Date and (b) the Plan Administrator with the approval of the Plan Administration Committee following the Effective Date.

C. 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.

D. 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.

E. 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; or (d) 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 Debtors:

[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]

F. 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.

G. Relationship to the Plan. 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.

H. Certain Limitations Regarding Governmental Units. As provided in Article 11.13 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).

I. 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.

J. 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:

**PLAN ADMINISTRATOR**

By: \_\_\_\_\_  
Name:  
Title:

**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.

(1) 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).

(2) 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.

(3) 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, 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.

PLAN EXHIBIT 4

FORM OF LIQUIDATION TRUST AGREEMENT

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”), [\_\_\_\_], 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 First Amended Chapter 11 Plan Filed By Harbinger Capital Partners Master Fund I, Ltd., dated June \_\_, 2009 (as it may be amended, modified, or supplemented, and together with all exhibits thereto, the “Plan”). Capitalized terms used in this Declaration and not otherwise defined herein shall have the respective meanings ascribed to them in the Uniform Glossary of Defined Terms for 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;

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;

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 (iv), 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 to the extent relating to the Trust Assets in the Debtors, or their employees, agents, advisors, attorneys, accounts 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 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, in the case of the Privileges included in the Trust Assets, the Liquidation Trust Board) 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, (i) transfer to the Liquidation Trust the Liquidation Trust Expense Fund and (ii) from time to time thereafter deliver additions to the Liquidation Trust 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 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 the Liquidation Trustee and the Trust Tax Owners) 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.

(e) Notwithstanding the above or anything else herein to the contrary, after the Class A Liquidation Trust Interests and Class B Liquidation Trust Interests have been cancelled in accordance with and pursuant to Section 6.1(h)(1) of the Plan, the remaining cash and other property of the Liquidation Trust (until the ownership of such remaining assets is resolved) shall be treated for tax purposes either as held in a disputed ownership fund, within the meaning of Treasury Regulation 1.468B-9, or as assets deemed owned by Reorganized ASARCO, as determined by the Plan Administrator.

#### 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, the 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.

(c) A Trustee may be removed by order of the Bankruptcy Court on motion of a majority 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, payable in advance in quarterly installments, for the performance of services provided under and pursuant to this Declaration.

(b) The Delaware Trustee shall be entitled to receive \$\_\_\_\_ per annum, payable on [\_\_\_\_\_].

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 power and authority 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) receiving (and accepting), managing, supervising, and protecting the Trust Assets on behalf of and for the benefit of the Liquidation Trust Beneficiaries;

(b) 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;

(c) 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;

(d) 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;

(e) protecting and enforcing the rights to the Trust Assets vested in the Liquidation Trustee by any method deemed appropriate;

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

(g) 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;

(h) 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;

(i) calculating and implementing all distributions to be made to the Liquidation Trust Beneficiaries;

(j) filing all required tax and information returns and paying taxes and all other obligations of the Liquidation Trust;

(k) requesting any appropriate tax determination with respect to the Liquidation Trust;

(l) paying all expenses and making all other payments relating to any Trust Assets;

(m) 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 Trust Assets, if any;

(n) 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;

(o) 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;

(p) 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;

(q) determining and satisfying any and all liabilities created, incurred or assumed by the Liquidation Trust;

(r) 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;

(s) investing any moneys held as part of the Trust Assets in accordance with, and subject to the limitations of, the terms of Section 3.7 hereof;

(t) 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

(u) 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; and

(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.



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.

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.

(c) The Delaware Trustee is hereby specifically authorized to execute and file a certificate of trust with the Secretary of State of the State of Delaware at any time on or after the Effective Date.

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 initially be comprised of five 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 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 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 the ASARCO Committee (the “Committee 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 the DOJ (the “DOJ 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 selected by the Asbestos Claimants’ Committee (the “Asbestos Board Member”) may be removed by the affirmative vote of the Asbestos Claims Liquidation Trustees;

iv. the member selected by the Plan Administrator (the “Plan Administrator Board Member”) may be removed by the Plan Administrator; and

v. the member originally selected by the Committee Board Member, the DOJ Board Member, the Asbestos Board Member and the Plan Administrator Board Member (the “Selected Board Member”), may be removed by the unanimous agreement

of the then-current DOJ Board Member, Committee Board Member, Asbestos Board Member and Plan Administrator Board Member; and

vi. 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 Committee 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 DOJ 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 the affirmative vote of the Asbestos Claims Liquidation Trustees;

iv. if the vacancy was created by the removal, death or resignation of the Plan Administrator Board Member, then by the Plan Administrator; and

v. if the vacancy was created by the removal, death or resignation of the Selected Board Member, then by the unanimous agreement of the then-current DOJ Board Member, Committee Board Member, Asbestos Board Member and Plan Administrator Board Member.

Provided, however, that, notwithstanding the foregoing, any holder of Class A Liquidation Trust Interests or Class B 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).

(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 DOJ Board Member or Committee 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 (i) the name and address, as they appear on the Liquidation Trust Registrar, of such Liquidation Trust Beneficiary and (ii) 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 DOJ Board Member or Committee 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 DOJ Board Member or Committee 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, the Class C Liquidation Trust Interests and Class D 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. Ownership of a Liquidation Trust Interest shall not be evidenced by any certificate, security, or receipt or in any form or manner. 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.

#### 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, including regulations designed to prevent the Liquidation Trust from being treated as a publicly traded partnership within the meaning of Section 7704 of the Internal Revenue Code, the Liquidation Trustee shall permit to be transferred, assigned, pledged, hypothecated or registered on the Liquidation Trust Register any Liquidation Trust Interests issued pursuant to this Declaration. 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 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.

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 whatever 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;

ii. Second, to pay the Plan Administrator such percentage of all remaining amounts as the Plan Administrator designates from time to time for the purpose of satisfying Disputed Claims, to be held in the Disputed Claims Reserve with such funds to be distributed by the Plan Administrator in accordance with the Plan and the Plan Administration Agreement;

iii. Third, to the Liquidation Trust Beneficiaries pro rata based on their Liquidation Trust Interest holdings in accordance with the Trust Interest Priorities and as set forth herein. Such proceeds shall first be paid to holders of Allowed Amounts of Claims in Class 3 and Class 4, on a Pro Rata basis until such claims are paid in full. Proceeds paid on account of Allowed Amounts of Class 4 Claims shall be paid to the Asbestos Claims Liquidation Trust and thereafter distributed in accordance with the Asbestos Claims Liquidation Trust Documents. After all Class 3 Disputed Claims are resolved and if all holders of Class A, Class B and Class C Liquidation Trust Interests have received the full amount of their Allowed Claims, then the Liquidation Trustee shall pay such remaining proceeds in accordance with the Trust Interest Priorities as follows: (a) first to the holders of Allowed Class 6 Claims, on a Pro Rata basis, until such claims are paid in full, (b) second on account of post-petition interest on any Allowed Amounts of Class 3, Class 4 (such Class 4 amounts being distributed to the Asbestos Claims Liquidation Trust) and Class 6 Claims, (c) third on account of Class 7 Claims, on a pro rata basis, until such claims are paid in full and (iv) on account of post-petition interest on any Allowed Amounts of Class 7 Claims; and

iv. Fourth, if (a) after all Class 6 and Class 7 Disputed Claims are resolved and (b) all amounts set forth above have been paid in full, then all such remaining proceeds shall be paid to the Asbestos Claims Liquidation Trust to be used in accordance with the Asbestos Claims Liquidation Trust Documents.

(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 Asbestos Claims Liquidation Trust to be used in accordance with the Asbestos Claims Liquidation Trust Documents.



(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 \$25.00 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 Liquidation 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 Act 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 (except as otherwise provided in Section 1.4(e) hereof).

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, (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 (5<sup>th</sup>) 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 adversely affect the distributions to be made under this Declaration to any of the Liquidation Trust Beneficiaries, or 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; (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; and (v) 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) 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 adversely affect the distributions to be made under this Declaration to any of the Liquidation Trust Beneficiaries, or 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, (i) 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 (ii) any and all actions related to the foregoing shall be filed and maintained only in the Bankruptcy Court, 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.

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:

<b>Term</b>	<b>Provision</b>
Act	Section 1.5(a)
Asbestos Member	Section 4.7(c)(iii)
Bankruptcy Court	Recitals
Committee Board Member	Section 4.7(c)(i)
Covered Person	Section 11.11
Declaration	Preamble
Delaware Trustee	Preamble
De Minimis Threshold	Section 3.2(c)
DOJ Board Member	Section 4.7(c)(ii)
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

<b>Term</b>	<b>Provision</b>
Liquidation Trustee	Preamble
Plan	Preamble
Plan Administrator Member	Section 4.7(c)(iv)
Reorganized ASARCO	Preamble
SEC	Section 5.4(a)
Selected Board Member	Section 4.7(c)(v)
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:

By: \_\_\_\_\_  
Name:  
Title:

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

PLAN EXHIBIT 5

FORM OF SCC LITIGATION TRUST AGREEMENT



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”), 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 First Amended Chapter 11 Plan Filed By Harbinger Capital Partners Master Fund I, Ltd. dated June \_\_, 2009 (as it may be amended, modified, or supplemented, and together with all exhibits thereto, the “Plan”). Capitalized terms used in this Declaration and not otherwise defined herein shall have the respective meanings ascribed to them in the Uniform Glossary of Defined Terms for Plan Documents; all other capitalized terms used herein are defined in Section 11.8 hereof.

## WITNESSETH

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

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, accounts 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 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 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, in the case of the Privileges, the SCC Litigation Trust Board) 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 the SCC Litigation Trustee and the Trust Tax Owners) 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.

(e) Notwithstanding the above or anything else herein to the contrary, after the Class A SCC Litigation Trust Interests and Class B SCC Litigation Trust Interests have been cancelled in accordance with and pursuant to Section 6.2(h)(1) of the Plan, the remaining cash and other property of the SCC Litigation Trust (until the ownership of such remaining assets is resolved) shall be treated for tax purposes either as held in a disputed ownership fund, within the meaning of Treasury Regulation 1.468B-9, or as assets deemed owned by Reorganized ASARCO, as determined by the Plan Administrator.

#### 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, the 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.

(c) A Trustee may be removed by order of the Bankruptcy Court on motion of a majority of the members of the SCC Litigation Trust Board. Any motion to remove a Trustee shall be for cause shown.

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

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

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

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

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

2.4. Compensation of the Trustees.

(a) As compensation, the SCC Litigation Trustee shall be entitled to receive \$\_\_\_\_\_ per annum, payable in advance in quarterly installments, for the performance of services provided under and pursuant to this Declaration.

(b) The Delaware Trustee shall be entitled to receive \$\_\_\_\_\_ per annum, payable on [\_\_\_\_\_].

2.5. No Bond. 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.

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 power and authority 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) 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;

(b) 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;

(c) 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;

(d) 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;

(e) 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;

(f) 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;

(g) 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;

(h) 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;

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

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

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

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

(m) 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;

(n) 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;

(o) 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;

(p) 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;

(q) determining and satisfying any and all liabilities created, incurred or assumed by the SCC Litigation Trust;

(r) 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 Agreement. 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;

(s) 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;

(t) 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

(u) 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).

### 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; and

(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.

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 tradable on a secondary market or the substantial equivalent thereof.

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.

(c) The Delaware Trustee is hereby specifically authorized to execute and file a certificate of trust with the Secretary of State of the State of Delaware at any time on or after the Effective Date.

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 initially be comprised of five 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.

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 (iii) 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 the ASARCO Committee (the “SCC Committee Board Member”) may be removed by the affirmative vote of the then-current Eligible Holders holding at least a majority of the Class A SCC Litigation Trust Interests;

ii. the member originally selected by the DOJ (the “SCC DOJ 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 selected by the Asbestos Claimants' Committee (the "SCC Asbestos Board Member") may be removed by the affirmative vote of the Asbestos Claims Liquidation Trustees;

iv. the member selected by the Plan Administrator (the "SCC Plan Administrator Board Member") may be removed by the Plan Administrator; and

v. the member originally selected by the SCC Committee Board Member, the SCC DOJ Board Member, the SCC Asbestos Board Member and the SCC Plan Administrator Board Member (the "SCC Selected Board Member"), may be removed by the unanimous agreement of the then-current SCC DOJ Board Member, SCC Committee Board Member, SCC Asbestos Board Member and SCC Plan Administrator Board Member; and

vi. 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 Committee 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 DOJ 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;

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 Asbestos Claims Liquidation Trustees;

iv. if the vacancy was created by the removal, death or resignation of the SCC Plan Administrator Board Member, then by the Plan Administrator; and

v. if the vacancy was created by the removal, death or resignation of the SCC Selected Board Member, then by the unanimous agreement of the then-current SCC DOJ Board Member, SCC Committee Board Member, SCC Asbestos Board Member and SCC Plan Administrator Board Member.

(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) 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 Committee Board Member or SCC DOJ 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 Committee Board Member or an SCC DOJ Board Member of the SCC Litigation Trust Board unless nominated in accordance with the procedures set forth in this Section 4.7(f).

(g) Following the receipt of nominations for a replacement SCC Committee Board Member or SCC DOJ 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.

(h) Immediately upon the appointment of any successor member of the SCC Litigation Trust Board, all rights, powers, duties, authority, and privileges of the predecessor member of the SCC Litigation Trust Board hereunder will be vested in and undertaken by the successor member of the SCC Litigation Trust Board without any further act; and the successor member of the SCC Litigation Trust Board will not be liable personally for any act or omission of the predecessor member of the SCC Litigation Trust Board.

4.8. Compensation of the SCC Litigation Trust Board. Each member of the SCC Litigation Trust Board shall be paid the amount of \$\_\_\_\_\_ per quarter, plus per meeting when such member is required to attend a SCC Litigation Trust Board meeting in

person, as compensation for his or her services under this Agreement, and shall be reimbursed for all reasonable and documented expenses incurred by such member in connection with the performance of his or her services hereunder.

4.9. Standard of Care; Exculpation. To the fullest extent permitted by law, none of the SCC Litigation Trust Board, its members, designees or professionals, nor any of their duly designated agents or representatives, shall be liable, responsible, or accountable in damages or otherwise for any loss, damage, or claim incurred by reason of any act or omission taken or omitted to be taken by any other member, agent or representative of the SCC Litigation Trust Board, nor shall the SCC Litigation Trust Board or any of its members be liable, responsible, or accountable in damages or otherwise for any loss, damage, or claim incurred by reason of any act or omission taken or omitted to be taken by the SCC Litigation Trust Board in good faith, other than acts or omissions resulting from the SCC Litigation Trust Board's bad faith, willful misconduct, gross negligence, or knowing violation of law. The SCC Litigation Trust Board and each of its members may, in connection with the performance of their respective functions, and in each of their sole and absolute discretion, consult with its attorneys, accountants, financial advisors, and agents, and shall not be liable for any act taken, omitted to be taken, or suffered to be done in good faith in accordance with advice or opinions rendered by such Persons. Notwithstanding such authority, neither the SCC Litigation Trust Board nor any of its members shall be under any obligation to consult with their respective attorneys, accountants, financial advisors or agents, and its good faith determination not to do so shall not result in the imposition of liability on the SCC Litigation Trust Board or, as applicable, its members or designees, unless such determination is based on bad faith, willful misconduct, gross negligence, or knowing violation of law.

## **ARTICLE 5**

### **SCC LITIGATION TRUST INTERESTS**

5.1. Issuance of SCC Litigation Trust Interests. The issuance of 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 Class E SCC Litigation 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 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. Ownership of a SCC Litigation Trust Interest shall not be evidenced by any certificate, security, or receipt or in any form or manner. 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.

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, including regulations designed to prevent the SCC Litigation Trust from being treated as a publicly traded partnership within the meaning of Section 7704 of the Internal Revenue Code, the SCC Litigation Trustee shall 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. 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 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.

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 whatever by virtue or by availing itself or themselves of any provision of this Declaration to effect, disturb or prejudice the rights of any other such SCC Litigation Trust Beneficiary, or to obtain or seek to obtain priority over or preference to any other such SCC Litigation Trust Beneficiary or to enforce any right under this Declaration, except in the manner herein provided and for the ratable and common benefit of all SCC Litigation Trust Beneficiaries. For the protection and enforcement of the provisions of this Section, each and every SCC Litigation Trust Beneficiary and the SCC Litigation Trustee shall be entitled to such relief as can be given either at law or in equity.



## **ARTICLE 6 DISTRIBUTIONS**

### **6.1. Use of Proceeds.**

(a) All SCC Litigation Proceeds, any proceeds therefrom, and any other Cash of the SCC Litigation Trust (other than the SCC Litigation Trust Expense Fund) received by the SCC Litigation Trustee shall be applied as follows:

i. First, to (i) pay all costs and expenses of the SCC Litigation Trust to the extent not paid by or from the SCC Litigation Trust Expense Fund (including the costs and expenses of the SCC Litigation Trust, the SCC Litigation Trustee, the Delaware Trustee and the SCC Litigation Trust Board and the fees, costs and expenses of all professionals retained by the SCC Litigation Trustee, and any taxes imposed on the SCC Litigation Trust or in respect of the assets of the SCC Litigation Trust), (ii) satisfy other liabilities incurred or assumed by the SCC Litigation Trust (or to which the assets are otherwise subject) in accordance with the 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, to distribute to the SCC Litigation Trust Beneficiaries holding Class D SCC Litigation Trust Interests pro rata based on their respective Class D SCC Litigation Trust Interest holdings such percentage of the remaining amount equal to the SCC Purchaser Percentage;

iii. Third, to pay the Plan Administrator such percentage of all remaining amounts as the Plan Administrator designates from time to time to be delivered to the Disputed Claims Reserve for the purpose of satisfying Disputed Claims, with such funds to be distributed by the Plan Administrator in accordance with the Plan and the Plan Administration Agreement;

iv. Fourth, to pay the SCC Litigation Trust Beneficiaries pro rata based on their SCC Litigation Trust Interest holdings in accordance with the Trust Interest Priorities and as set forth herein. Such proceeds shall first be paid to holders of Allowed Amounts of Claims in Class 3 and Class 4, on a Pro Rata basis until such claims are paid in full. Proceeds paid on account of Allowed Amounts of Class 4 Claims shall be paid to the Asbestos Claims Liquidation Trust and thereafter distributed in accordance with the Asbestos Claims Liquidation Trust Documents. After all Class 3 Disputed Claims are resolved and if all holders of Class A, Class B, Class C and Class D SCC Litigation Trust Interests have received the full amount of their Allowed Claims, then the SCC Litigation Trustee shall pay such remaining proceeds in accordance with the Trust Interest Priorities as follows: (a) first to the holders of Allowed Class 6 Claims, on a Pro Rata basis, until such claims are paid in full, (b) second on

account of post-petition interest on any Allowed Amounts of Class 3, Class 4 (such Class 4 amounts being distributed to the Asbestos Claims Liquidation Trust) and Class 6 Claims, (c) third on account of Class 7 Claims, on a pro rata basis, until such claims are paid in full and (iv) on account of post-petition interest on any Allowed Amounts of Class 7 Claims; and

v. Fifth, if (a) after all Class 6 and Class 7 Disputed Claims are resolved and (b) all amounts set forth above have been paid in full, then all such remaining proceeds shall be paid to the Asbestos Claims Liquidation Trust to be used in accordance with the Asbestos Claims Liquidation Trust Documents.

(b) Subject to clauses (i) and (ii) of Section 6.1(a), the SCC Litigation Trustee shall distribute in accordance with Section 6.1(a) at least annually its net income and all net proceeds from the liquidation of the assets of the SCC Litigation Trust (except to the extent any such failure to distribute is not inconsistent with the classification of the SCC Litigation Trust as a liquidating trust under Section 301.7701-4(d) of the Treasury Regulations).

(c) If, upon termination of the SCC Litigation Trust, the SCC Litigation Trust Expense Fund has funds remaining after the payment of all of the SCC Litigation Trust's expenses, such remaining funds shall be paid to the Asbestos Claims Liquidation Trust to be used in accordance with the Asbestos Claims Liquidation Trust Documents.

(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), which 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 Act 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 (except as otherwise provided in Section 1.4(e) hereof).

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 the delivery of such information to such SCC Litigation Trust Beneficiary (i) is or would be prohibited by any agreement with a third party, (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 (5<sup>th</sup>) 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 adversely affect the distributions to be made under this Declaration to any of the SCC Litigation Trust Beneficiaries, or 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; (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; and (v) 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) 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 adversely affect the distributions to be made under this Declaration to any of the SCC Litigation Trust Beneficiaries, or 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, (i) 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 (ii) any and all actions related to the foregoing shall be filed and maintained only in the Bankruptcy Court, 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.

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:

<b>Term</b>	<b>Provision</b>
Act	Section 1.5(a)
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)
SCC Asbestos Board Member	Section 4.7(c)(iii)
SCC Committee Board Member	Section 4.7(c)(i)
SCC DOJ Board Member	Section 4.7(c)(ii)
SCC Litigation Trust	Preamble
SCC Litigation Trustee	Preamble
SCC Plan Administrator Board Member	Section 4.7(c)(iv)
SCC Selected Board Member	Section 4.7(c)(v)
SEC	Section 5.4(a)
Plan	Preamble
Reorganized ASARCO	Preamble
Treasury Regulation	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:

By: \_\_\_\_\_  
Name:  
Title:

DELAWARE TRUSTEE:

By: \_\_\_\_\_  
Name:  
Title:

**AGREED AND ACKNOWLEDGED**  
**as of the date first above written:**

\_\_\_\_\_  
Name:  
Title: SCC Litigation Trust Board Member

\_\_\_\_\_  
Name:  
Title: SCC Litigation Trust Board Member

\_\_\_\_\_  
Name:  
Title: SCC Litigation Trust Board Member



PLAN EXHIBIT 6

FORM OF ASBESTOS CLAIMS LIQUIDATION TRUST AGREEMENT

DECLARATION OF TRUST  
FOR THE  
ASARCO ASBESTOS CLAIMS LIQUIDATION TRUST  
BY AND AMONG  
ASARCO ADMINISTRATION COMPANY, LLC  
AND  
THE TRUSTEES (AS NAMED HEREIN)

Dated as of \_\_\_\_\_, 2009

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**Draft of June 24, 2009**

DRAFT PROPOSED BY HARBINGER

**DECLARATION OF TRUST**

This Declaration of Trust (this "Declaration"), dated as of [\_\_\_\_\_] [\_\_\_\_], 2009, by and among ASARCO Administration Company, LLC ("Reorganized ASARCO"), as settlor (the "Settlor"), and [\_\_\_\_\_] (the "Plan Administrator" or the "Asbestos Claims Liquidation Trustee," as the context requires) and [\_\_\_\_\_] (the "Delaware Trustee"), as trustees (each, a "Trustee" and together, the "Trustees"), is executed in order to establish a trust (the "Asbestos Claims Liquidation Trust") in connection with the First Amended Chapter 11 Plan Filed By Harbinger Capital Partners Master Fund I, Ltd. dated June \_\_, 2009 (as it may be amended, modified, or supplemented, and together with all exhibits thereto, the "Plan"). Capitalized terms used in this Declaration and not otherwise defined herein shall have the respective meanings ascribed to them in the Uniform Glossary of Defined Terms for Plan Documents; all other capitalized terms used herein are defined in Section 11.8 hereof.

**WITNESSETH**

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

WHEREAS, the Bankruptcy Court, through the Plan, has ordered the establishment and creation of the Asbestos Claims Liquidation Trust in order to (a) in an expeditious and orderly manner, liquidate, defend, resolve, settle, or otherwise dispose of the Unsecured Asbestos Personal Injury Claims and Unknown Asbestos Claims (together, the "Asbestos Claims") consistent with, and based upon, the legal merits of such 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 Asbestos Claims Liquidation Trust Beneficiaries in accordance with the provisions hereof;

WHEREAS, the Asbestos Claims Liquidation Trust is created for the benefit of the Asbestos Claims Liquidation Trust Beneficiaries;

WHEREAS, the Asbestos Claims 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 Settlor and the Trustees agree as follows:

**ARTICLE 1**  
**ESTABLISHMENT OF THE ASBESTOS CLAIMS LIQUIDATION TRUST**

1.1 Declaration of Trust.

(a) Pursuant to the Plan, on behalf of the Asbestos Claims Liquidation Trust Beneficiaries, the Settlor and the Trustees hereby establish a trust to be known as the

Asbestos Claims Liquidation Trust, 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 Asbestos Claims Liquidation Trust shall be in care of the Asbestos Claims Liquidation Trustee at [\_\_\_\_\_], or at such other address as the Asbestos Claims Liquidation Trustee may designate.

1.2 Funding of the Asbestos Claims Liquidation Trust.

(a) In accordance with the Plan and this Declaration, as of the Effective Date, the Settlor, subject to the provisions of the Confirmation Order, hereby transfers, assigns, and delivers to the Trustees for the benefit of the Asbestos Claims Liquidation Trust Beneficiaries, and the Trustees hereby accept on behalf of the Asbestos Claims Liquidation Trust Beneficiaries, all of the Settlor's rights, title, and interests in and to:

- i. the Asbestos Claims Liquidation Trust Assets;
- ii. the Asbestos Claims (and the Trustees assume responsibility and liability therefor); and
- iii. the Debtors' Privileges associated with the Asbestos Claims (except to the extent that Reorganized ASARCO, the Plan Administrator, and the Plan Sponsor shall concurrently retain all Privileges in connection with Asbestos Books that remain in their possession and Reorganized ASARCO shall concurrently retain all Privileges in connection with its pursuit of the Asbestos Insurance Recoveries).

Except as otherwise provided herein, the foregoing transfers shall be made 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. Upon the transfer of such property to the Asbestos Claims Liquidation Trust, Reorganized ASARCO shall have no interest in or obligation with respect to (x) such property, or (y) except as described in this Section 1.2, Section 1.3 or Section 1.4, the Asbestos Claims Liquidation Trust.

(b) Except pursuant to the terms of the Plan, Reorganized ASARCO shall have no further obligation to transfer any additional property or to provide any funding with respect to the Asbestos Claims Liquidation Trust.

(c) All costs and expenses associated with the administration of the Asbestos Claims Liquidation Trust shall be the responsibility of and paid by the Asbestos Claims Liquidation Trustee out of the assets of the Asbestos Claims Liquidation Trust.

(d) The Asbestos Claims Liquidation Trustee shall collect all income earned with respect to, and all payments made on account of, the assets of the Asbestos Claims Liquidation Trust (including, without limitation, any payments due from the trustee of the Liquidating Trust and the trustee of the SCC Litigation Trust), all of which shall thereupon be added to the assets of the Asbestos Claims Liquidation Trust and held as a part thereof (and which title shall be vested in the Trustees).



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

(f) At any time and from time to time on and after the Effective Date, the Trustees and the Settlor agree (i) at the reasonable request of the Asbestos Claims 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 Asbestos Claims Liquidation Trustee may reasonably request, in each case, in order to evidence or effectuate the transfer of the Asbestos Claims and the Privileges to the Trustees (and, in the case of the Privileges, the Asbestos Claims Liquidation Trust Board), and to otherwise carry out the intent of the Plan.

1.3 Tax Matters. The Asbestos Claims Liquidation Trust shall be treated as a “qualified settlement fund” within the meaning of Section 1.468B-1 of the Treasury Regulations promulgated under Internal Revenue Code (the “Treasury Regulations”), the Asbestos Claims Liquidation Trustee shall be the “administrators” of the Asbestos Claims Liquidation Trust pursuant to Treasury Regulation Section 1.468B-2(k)(3), and no provision herein shall be construed or implemented in a manner that would cause the Asbestos Claims Liquidation Trust to fail to qualify as a “qualified settlement fund”. No election shall be made and the Trustees shall take no action to treat, or that otherwise would cause the Asbestos Claims Liquidation Trust to be treated, as a grantor trust for U.S. federal income tax purposes within the meaning of Sections 671 through 679 of the Code. Accordingly, the Settlor and the Trustee agree that the Asbestos Claims Liquidation Trust shall be treated as a taxable entity for federal income tax purposes. The Asbestos Claims Liquidation Trustee shall cause all taxes imposed on the Asbestos Claims Liquidation Trust to be paid out of assets of the Asbestos Claims Liquidation Trust and shall comply with all tax reporting and withholding requirements imposed under applicable tax laws. Any amount withheld from a distribution or payment by the Asbestos Claims Liquidation Trust to a Claimant or other payee shall be treated as having been paid to, and received by, such payee for purposes of this Plan and the Plan Documents.

#### 1.4 Nature and Purpose of the Asbestos Claims Liquidation Trust.

(a) Purpose. Upon compliance with Section 3810 of the Delaware Statutory Trust Act, 12 Del. C., § 3801 et seq. (the “Act”), the Asbestos Claims Liquidation Trust shall be organized and established as a statutory trust, pursuant to which the Asbestos Claims Liquidation Trustee, subject to the terms and conditions contained herein and in the Plan, shall (i) hold and dispose of the assets of the Asbestos Claims Liquidation Trust in accordance with this Declaration and the Plan and (ii) oversee and direct the expeditious and orderly liquidation of the assets of the Asbestos Claims Liquidation Trust, consistent with, and based upon, the merits of the Asbestos Claims. Accordingly, the primary purpose of the Asbestos Claims Liquidation Trust is to liquidate the Asbestos Claims with no objective to continue or engage in the conduct of a trade or business.

(b) Relationship. This Declaration is intended to create a trust and a trust relationship, and such trust shall be governed and construed in all respects as a trust. The Asbestos Claims 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, and the Asbestos Claims Liquidation Trustee, the Asbestos Claims Liquidation Trust Board (or any of its members or ex officio members), or the Asbestos Claims Liquidation Trust Beneficiaries, or any of them, for any purpose shall not be, and shall not 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 Asbestos Claims Liquidation Trust Beneficiaries to the Trustees and the Asbestos Claims 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.

1.5 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, that*, 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.

1.6 Appointment as Representative. Pursuant to Section 1123(b)(3) of the Bankruptcy Code, the Plan appointed the Trustees as the duly appointed representative of the Debtors’ Estates, and, as such, the Trustees succeed to all of the rights and powers of a trustee in bankruptcy with respect to defense, resolution, settlement, sale, transfer, or other disposition, as applicable, of the Asbestos Claims for the benefit of the Asbestos Claims Liquidation Trust Beneficiaries. To the extent that any Asbestos Claims cannot be transferred to the Asbestos Claims Liquidation Trust as a result 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 Asbestos Claims shall be deemed to have been retained by the Settlor, and the Trustees shall be deemed to have been designated as a representative of the Debtors’ Estates pursuant to Section 1123 (b)(3)(B) of the Bankruptcy Code to defend, resolve, settle, sell, transfer or otherwise dispose of, as applicable, such Asbestos Claims on behalf of the Debtors’ Estates.

## ARTICLE 2 TRUSTEES

2.1 Delaware Trustee. In accordance with the Plan and subject to the Confirmation Order, [ ] of Wilmington, 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 applicable law. The Delaware Trustee is willing and does hereby accept the appointment to act and serve as Delaware Trustee of the Asbestos Claims Liquidation Trust and agrees to discharge its duties and obligations in accordance with the provisions hereof.

2.2 Asbestos Claims Liquidation Trustee. In accordance with the Plan and subject to the Confirmation Order, the Plan Administrator is hereby named, constituted, and appointed as Asbestos Claims 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 Asbestos Claims Liquidation Trustee is willing, and does hereby accept the appointment, to act and serve as Asbestos Claims Liquidation Trustee of the Asbestos Claims Liquidation Trust and agrees to discharge its duties and obligations in accordance with the provisions hereof.

2.3 Tenure, Removal, and Replacement of the Asbestos Claims Liquidation and Delaware Trustee.

(a) Each Trustee 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 Asbestos Claims Liquidation Trust Board and the other Trustee. Such resignation shall 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 thereof by such successor trustee. If a successor trustee is not appointed or does not accept its appointment within 90 days following delivery of notice of resignation, the Trustee may file a motion with the Bankruptcy Court (at the expense of the Asbestos Claims 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 a majority of the members of the Asbestos Claims 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), such vacancy shall be filled by the appointment of a successor trustee by (i) majority vote and resolution of the Asbestos Claims Liquidation Trust Board, and the acceptance by the successor trustee in accordance with Section 2.3(e) hereof or (ii) an order of the Bankruptcy Court after an opportunity for a hearing; *provided, however*, that only the Asbestos Claims 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 Asbestos Claims Liquidation Trust Board shall file notice of such appointment and acceptance with the Bankruptcy Court, with a copy to [\_\_\_\_], which notice shall include the name, address, and telephone number of the successor trustee; provided, however, 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 the successor trustee thereupon shall, without any further act, become vested with all the estates, properties, rights, powers, privileges, authorities, duties and obligations of its predecessor in the Asbestos Claims Liquidation Trust with like effect as if originally named herein, and the successor trustee shall not be liable, individually or as Trustee, 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 necessary or desirable, 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 Asbestos Claims Liquidation Trust or the Asbestos Claims then in its possession and held hereunder.

(g) During any period in which there is a vacancy in the position of a Trustee, the Asbestos Claims 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 hereunder to an Asbestos Claims Liquidation Trustee or Delaware Trustee, as the case may be. Such Interim Trustee shall not be limited in any manner from exercising any rights or powers as a member of the Asbestos Claims Liquidation Trust Board (if it is in fact a member thereof) merely by reason of its appointment as Interim Trustee, or vice versa.

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

#### 2.4 Compensation of the Trustees.

(a) As compensation, the Asbestos Claims Liquidation Trustee shall be entitled to receive \$\_\_\_\_\_ per annum, payable in advance in quarterly installments, for the performance of services provided under and pursuant to this Declaration.

(b) The Delaware Trustee shall be entitled to receive \$\_\_\_\_\_ per annum, payable on [\_\_\_\_\_].

#### 2.5 No Bond. Trustees shall serve without bond.

2.6 Inquiries into Trustee's Authority. Except as otherwise set forth in the Asbestos Claims Liquidation Trust or in the Plan, no Person dealing with the Trustees shall be obligated to inquire into the authority of the Trustees in connection with the defense, resolution, settlement, protection, conservation, sale, resolution or other disposition, as applicable, of the Asbestos Claims, or any other matter relating to the administration of the Asbestos Claims Liquidation Trust.

### **ARTICLE 3 DUTIES AND LIMITATIONS OF TRUSTEES**

3.1 Role of the Asbestos Claims Liquidation Trustee. In furtherance of and consistent with the purposes of the Asbestos Claims Liquidation Trust and the Plan, the Asbestos Claims Liquidation Trustee, subject to the terms and conditions contained herein and in the Plan, shall, in an expeditious and orderly manner, (a) contest, defend, liquidate, resolve, settle, pay, and/or satisfy all Asbestos Claims in accordance with the provisions of the Plan, this Declaration, and the Confirmation Order; (b) enforce its rights under the Plan, including (without limitation) its rights as a beneficiary of the Liquidation Trust and the SCC Litigation Trust; (c) receive, preserve, hold, manage, invest and reinvest, and maximize the Asbestos Claims Liquidation Trust Assets for the benefit of Asbestos Claims Liquidation Trust Beneficiaries; (d) take other actions deemed by the Asbestos Claims Liquidation Trustee to be in the best interests of the Asbestos Liquidation Trust Beneficiaries; and (e) ensure that claims are paid in an amount that is no more than is legally justified, protecting the interests of all of the Asbestos Liquidation Trust Beneficiaries, including those of the Parent, the residual beneficiary of the Asbestos Claims Liquidation Trust. For the avoidance of doubt, the Asbestos Claims Liquidation Trust shall be constituted, maintained, and administered, and its assets disposed of, in a manner intended to ensure that claims against the Asbestos Claims Liquidation Trust are appropriately contested, defended, settled and resolved in accordance with and based upon the legal merits of such claims. Subject to the foregoing, in all circumstances, the Asbestos Claims Liquidation Trustee shall act solely with the objective of maximizing the value of the assets of the Asbestos Claims Liquidation Trust for the benefit of the Asbestos Claims Liquidation Trust Beneficiaries and in furtherance of the purpose of the Asbestos Claims Liquidation Trust. The Asbestos Claims Liquidation Trustee shall, where required pursuant to the terms of this Declaration, consult with or obtain the approval of the Asbestos Claims Liquidation Trust Board.

3.2 Power and Authority of Asbestos Claims Liquidation Trustee. Subject to any limitations contained herein (including, without limitation, Article 4 hereof) or in the Plan, the Asbestos Claims Liquidation Trustee shall have all of the power and authority under applicable law to take any and all actions as are necessary or advisable to carry out its duties, obligations and responsibilities hereunder, and to effectuate the purposes of the Asbestos Claims Liquidation Trust, including, without limitation:

(a) receiving, accepting, holding, managing, supervising, investing and reinvesting, and preserving and protecting the assets of the Asbestos Claims Liquidation Trust on behalf of and for the benefit of the Asbestos Claims Liquidation Trust Beneficiaries;

(b) in consultation with and subject to the approval of the Asbestos Claims Liquidation Trust Board, defending, contesting and, as and if necessary and appropriate, compromising, resolving, settling, satisfying or paying the Asbestos Claims;

(c) in consultation with and subject to the approval of the Asbestos Claims Liquidation Trust Board, creating a procedure by which to classify or categorize the Asbestos Claims, and to defending, contesting, compromising, resolving, settling, satisfying or paying the Asbestos Claims according to such procedure;

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

(e) distributing to some or all of the Asbestos Claims Liquidation Trust Beneficiaries (as deemed appropriate by the Asbestos Claims Liquidation Trustee) information regarding the Asbestos Claims and, in connection therewith, executing confidentiality agreements with such Asbestos Claims Liquidation Trust Beneficiaries satisfactory to the Asbestos Claims Liquidation Trustee;

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

(g) 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 beneficial interests in the Asbestos Claims Liquidation Trust 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;

(h) taking any action to cause the Asbestos Claims Liquidation Trust to not be deemed an Investment Company under the Investment Act or subject to the Trust Indenture Act;

(i) calculating and implementing of all distributions and payments to be made to the Asbestos Claims Liquidation Trust Beneficiaries;

(j) filing of all required tax and information returns and paying all taxes, interests and penalties (if any), and all other obligations of the Asbestos Claims Liquidation Trust;

(k) requesting any court or tax authority to render an appropriate determination with respect to any tax (or interest and penalties) that may be payable by the Asbestos Claims Liquidation Trust;

(l) paying all expenses of administering the Asbestos Claims Liquidation Trust, and making all other payments relating to any assets thereof;



(m) obtaining and maintaining insurance coverage with respect to (i) the liabilities and obligations of the Trustees and the members of the Asbestos Claims Liquidation Trust Board under this Declaration (in the form of an errors and omissions policy or otherwise), and (ii) real and personal property that may become assets of the Asbestos Claims Liquidation Trust, if any;

(n) in consultation with and subject to the approval of the Asbestos Claims Liquidation Trust Board, negotiating, receiving, and 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 Asbestos Claims Liquidation Trust is deemed to be in the best interests of maximizing the value of the assets of the Asbestos Claims Liquidation Trust for the benefit of the Asbestos Claims Liquidation Trust Beneficiaries;

(o) in consultation with and subject to the approval of the Asbestos Claims Liquidation Trust Board, determining the amount of consideration to be provided in exchange for the assignment or transfer of claims, rights, suits, judgments, causes of action, recoveries and/or proceeds therefrom;

(p) in consultation with and subject to the approval of the Asbestos Claims Liquidation Trust Board, compromising, adjusting, arbitrating, suing on or defending, abandoning, or otherwise dealing with, resolving and settling claims in favor of or against the Asbestos Claims Liquidation Trust as the Asbestos Claims Liquidation Trustee shall deem advisable in a manner consistent with the purposes of the Asbestos Claims Liquidation Trust;

(q) determining and satisfying any and all liabilities created, incurred or assumed by the Asbestos Claims Liquidation Trust;

(r) in consultation with and subject to the approval of the Asbestos Claims Liquidation Trust Board, retaining and paying such law firms, accounting firms, experts, advisors, consultants, investigators, appraisers, agents, employees, custodians, bankers or other professionals and third parties as the Asbestos Claims Liquidation Trustee may deem necessary or appropriate to assist the Asbestos Claims Liquidation Trustee in executing the Asbestos Claims Liquidation Trustee's powers and duties under this Declaration consistent with the purposes of the Asbestos Claims Liquidation Trust. The Asbestos Claims Liquidation Trustee may commit the Asbestos Claims Liquidation Trust to and shall pay all persons or entities retained or employed by the Asbestos Claims Liquidation Trust reasonable compensation for services rendered and reimbursement of reasonable expenses incurred;

(s) investing and reinvesting any moneys held as part of the assets of the Asbestos Claims Liquidation Trust in accordance with, and subject to the limitations of, the terms of Section 3.7 and 3.8 hereof; and

(t) discharging such other responsibilities, duties and obligations as may be vested in or otherwise assumed by the Asbestos Claims Liquidation Trustee pursuant to the Plan, this Declaration, orders of the Bankruptcy Court, or as may otherwise be necessary or advisable to carry out the provisions of the Plan.

3.3 Payment of Asbestos Claims Liquidation Trust Expenses.

(a) The Asbestos Claims Liquidation Trustee shall expend the assets of the Asbestos Claims Liquidation Trust (i) to pay reasonable and necessary expenses of the administration of the Asbestos Claims Liquidation Trust (including, but not limited to, the compensation and expenses of the Trustees and of the members of the Asbestos Claims Liquidation Trust Board), any taxes, interest and penalties imposed on the Asbestos Claims Liquidation Trust, fees and expenses in connection with, arising out of or related to the Asbestos Claims or the performance by the Trustees of their responsibilities, duties and obligations hereunder in accordance with the provisions of this Declaration, (ii) as is reasonably necessary to meet contingent liabilities and to maintain the value of the assets of the Asbestos Claims Liquidation Trust during liquidation, and (iii) to satisfy other liabilities incurred or assumed by the Asbestos Claims Liquidation Trust (or to which the assets are otherwise subject) in accordance with the Plan or this Declaration.

(b) The Asbestos Claims Liquidation Trustee shall have the power to create reasonable reserves to satisfy contingent, unliquidated or unknown claims and expenses.

(c) Notwithstanding any other provision of this Declaration to the contrary, the Asbestos Claims Liquidation Trustee shall not be required to take any action or enter into or maintain any claim, demand, action or proceeding relating to the Asbestos Claims Liquidation Trust unless it shall have sufficient funds in the Asbestos Claims Liquidation Trust for that purpose.

3.4 Books and Records.

(a) The Asbestos Claims Liquidation Trustee shall maintain full and complete books and records relating to the assets, liabilities, income and expenses of the Asbestos Claims Liquidation Trust, as well as a record of all Asbestos Claims and the disposition thereof, in such detail and for such period of time as may be necessary to enable the Asbestos Claims Liquidation Trustee to make full and proper accounting of the administration of the Asbestos Claims Liquidation Trust in accordance with the provisions hereof and to comply with applicable law; provided, however, that nothing in this Declaration shall require the Asbestos Claims Liquidation Trustee to file any account or seek to approval of any court with respect to the administration of the Asbestos Claims Liquidation Trust, or as a condition for any payment or distribution out of the assets of the Asbestos Claims Liquidation Trust.

(b) Upon and after the termination of the Asbestos Claims Liquidation Trust, subject to the provisions of Section 9.2 hereof, the Asbestos Claims Liquidation Trustee shall retain all books, records, and files and other documents that shall have been delivered to or created by the Asbestos Claims Liquidation Trustee in connection with the administration of the Asbestos Claims Liquidation Trust.

3.5 Compliance with Applicable Laws. Any and all distributions of assets (including, without limitation, the payment and satisfaction of Asbestos Claims) and payment of administrative expenses of the Asbestos Claims Liquidation Trust and proceeds of borrowings, if

any, shall be in compliance with applicable law, including, without limitation, applicable federal and state securities laws.

3.6 Reliance by Asbestos Claims Liquidation Trustee. Except as otherwise provided herein:

(a) the Asbestos Claims 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 Asbestos Claims Liquidation Trustee to be genuine and to have been signed or presented by the proper court, governmental agency or other party or parties; and

(b) all Persons dealing with the Asbestos Claims Liquidation Trustee shall look only to the assets of the Asbestos Claims Liquidation Trust to satisfy any liability to such Person incurred by the Asbestos Claims Liquidation Trustee in the administration of the Asbestos Claims Liquidation Trust in accordance with the provisions of this Declaration, and neither the Asbestos Claims Liquidation Trustee nor any member of the Asbestos Claims Liquidation Trust Board shall have any personal obligation to satisfy any such liability.

3.7 Investment and Safekeeping of Asbestos Claims Liquidation Trust Assets.  
The Asbestos Claims Liquidation Trustee shall invest and reinvest all assets transferred to the Asbestos Claims Liquidation Trustee and all income earned by the assets of the Asbestos Claims Liquidation Trust 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.

3.8 Limitation of Asbestos Claims Liquidation Trustee's Authority.  
Notwithstanding anything herein to the contrary, the Asbestos Claims Liquidation Trustee shall not (i) be authorized to engage in any trade or business, or (ii) take such actions inconsistent with the expeditious and orderly liquidation of the assets of the Asbestos Claims Liquidation Trust (consistent with and based upon the merits of the Asbestos Claims) as are required or contemplated by applicable law, the Plan and this Declaration.

3.9 Responsibilities of the Delaware Trustee.

(a) The Delaware Trustee shall have no obligation or duty to manage the assets of the Asbestos Claims Liquidation Trust, participate in the defense, resolution, settlement, payment or other disposition of the Asbestos Claims, or to take any other action, except as expressly required hereunder. The Delaware Trustee's duties shall be limited to the following:

i. service as registered agent for service of process for the Asbestos Claims Liquidation Trust under Section 3804(b) of the Act;

ii. service as the Delaware resident trustee under Section 3807(a) of the Act;

iii. maintenance of the registered office of the Asbestos Claims Liquidation Trust and forward to the Asbestos Claims Liquidation Trustee within a reasonable time any process served upon it; and

iv. performance of all other requirements so that the Asbestos Claims Liquidation Trust qualifies as a Delaware statutory trust under the Act.

(b) The Delaware Trustee shall not have any responsibility, duty or obligation with respect to the Asbestos Claims or any other assets of the Asbestos Claims Liquidation Trust, or to the administration of the Asbestos Claims Liquidation Trust, except as otherwise expressly provided in this Declaration. The Delaware Trustee shall be a trustee of the Asbestos Claims Liquidation Trust for the sole and limited purpose of fulfilling the requirements of Section 3807 of the Act. No implied responsibilities, duties or obligations shall be read into this Declaration with regard to the Delaware Trustee. Notwithstanding the foregoing, the Delaware Trustee shall be authorized to take all actions that the Asbestos Claims Liquidation Trustee deems necessary, advisable or incidental to effectuate the purposes of the Asbestos Claims Liquidation Trust, all as set forth in written instructions from the Asbestos Claims 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.

(c) The Delaware Trustee is hereby expressly authorized to execute and file a certificate of trust with the Secretary of State of the State of Delaware at any time on or after the Effective Date.

3.10 Standard of Care; Exculpation. To the fullest extent permitted by applicable law, neither the Asbestos Claims Liquidation Trustee nor the Delaware Trustee, nor any of their respective members, officers, directors, and professional advisors, 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. In addition, neither the Asbestos Claims Liquidation Trustee nor the Delaware Trustee 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 in good faith by either such Trustee, other than acts or omissions resulting from bad faith, willful misconduct, gross negligence or knowing violation of applicable law. Each of the Asbestos Claims Liquidation Trustee and the Delaware Trustee and each of their respective members, officers and directors 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 done in good faith in accordance with advice or based upon the opinion rendered by such Persons. Notwithstanding such authority, neither the Asbestos Claims Liquidation Trustee nor the Delaware Trustee nor any of their respective members, officers and directors shall be under any obligation to consult with 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 Asbestos Claims Liquidation Trustee or the Delaware Trustee or, as applicable, their respective members, officers, directors or designees, unless such determination is based on bad faith, willful misconduct, gross negligence, or knowing violation of applicable law.

## **ARTICLE 4**

### **ASBESTOS CLAIMS LIQUIDATION TRUST BOARD**

4.1 Asbestos Claims Liquidation Trust Board. The Asbestos Claims Liquidation Trust Board initially shall be composed of five Persons. The initial members of the Asbestos Claims Liquidation Trust Board shall be appointed as described in and in accordance with the Plan. Successor members of the Asbestos Claims Liquidation Trust Board shall be appointed as described in Section 4.7 hereof.

4.2 Authority of the Asbestos Claims Liquidation Trust Board. The Asbestos Claims Liquidation Trust Board shall have the authority and responsibility to oversee, review, and guide the activities and performance of the Asbestos Claims Liquidation Trustee hereunder, and shall have the authority to remove any Trustee in accordance with Section 2.3 hereof. The Asbestos Claims Liquidation Trustee shall consult with and provide information to the Asbestos Claims Liquidation Trust Board in accordance with and pursuant to the terms of this Declaration and the Plan. The Asbestos Claims 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 advisor previously retained by the Debtors in accordance with the terms of the Plan and this Declaration, as the Asbestos Claims Liquidation Trust Board deems necessary or desirable to assist the Asbestos Claims Liquidation Trust Board in fulfilling its obligations under this Declaration and the Plan. The Asbestos Claims Liquidation Trustee shall pay, out of the assets of the Asbestos Claims Liquidation Trust, the reasonable fees of such Persons (including on an hourly, contingency, or modified contingency basis), and shall reimburse such Persons for their reasonable and documented out-of-pocket costs and expenses incurred in connection therewith and consistent with the terms of this Declaration.

4.3 Meetings of the Asbestos Claims Liquidation Trust Board.

(a) Regular meetings of the Asbestos Claims Liquidation Trust Board shall be held at such times and at such place as the members of the Asbestos Claims Liquidation Trust Board may determine in their discretion, but in no event shall such meetings be held less frequently than quarterly. The Asbestos Claims Liquidation Trustee shall attend and participate in all regularly scheduled meetings of the Asbestos Claims Liquidation Trust Board, but shall not have the right to vote. The Asbestos Claims Liquidation Trust Board shall establish by resolution the time or times and place or places of such meetings. Notice of regular meetings of the Asbestos Claims Liquidation Trust Board need not be given.

(b) Special meetings of the Asbestos Claims Liquidation Trust Board may be held whenever and wherever called by the Asbestos Claims Liquidation Trustee or any two members of the Asbestos Claims Liquidation Trust Board. The Asbestos Claims Liquidation Trustee shall attend and participate in any special meeting called by the Asbestos Claims Liquidation Trustee and any other special meeting as requested by at least one member of the Asbestos Claims Liquidation Trust Board.

4.4 Notice and Waiver of Notice for Asbestos Claims Liquidation Trustee and Asbestos Claims Liquidation Trust Board. Notice of the time, place and purpose(s) of any special meeting, or any change in time or place of a regular meeting, will be given to the

Asbestos Claims Liquidation Trustee and the members of the Asbestos Claims Liquidation Trust Board in person or by telephone, or via mail, electronic mail, or facsimile transmission. Notice to the Asbestos Claims Liquidation Trustee and the members of the Asbestos Claims Liquidation Trust Board of any such special meeting or change in a regular meeting shall be deemed sufficiently in advance (i) if given by electronic mail or facsimile transmission, notice is transmitted at least five (5) business days prior to the convening of the meeting, or (iii) if personally delivered (including by overnight courier) or given by telephone, notice is handed, or the substance thereof is communicated by telephone to the Asbestos Claims Liquidation Trustee and the members of the Asbestos Claims Liquidation Trust Board, or to an adult member of his/her office staff or household, at least five (5) business days prior to the convening of the meeting. The Asbestos Claims Liquidation Trustee and any member of the Asbestos Claims Liquidation Trust Board may waive notice of any meeting and any adjournment thereof at any time before, during, or after such meeting is held, as provided by applicable law. Except as provided in the following sentence, any such waiver shall be in writing, signed by the Asbestos Claims Liquidation Trustee or the applicable member or members of the Asbestos Claims Liquidation Trust Board entitled to the notice, and filed with the minutes or records of the Asbestos Claims Liquidation Trust. The attendance of the Asbestos Claims Liquidation Trustee or a member of the Asbestos Claims 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 on the ground that such meeting is not lawfully called or convened.

#### 4.5 Manner of Acting.

(a) A majority of the total number of members of the Asbestos Claims Liquidation Trust Board then in office shall constitute a quorum for the transaction of business at any meeting of the Asbestos Claims Liquidation Trust Board. The affirmative vote of a majority of the members of the Asbestos Claims Liquidation Trust Board present and entitled to vote at a meeting at which a quorum is present shall be the act of the Asbestos Claims Liquidation Trust Board, except as otherwise required by applicable law or as provided in this Declaration.

(b) The Asbestos Claims Liquidation Trustee and any or all of the members of the Asbestos Claims 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 communications arrangements (rather than or in addition to the place, as the case may be) for the holding thereof. Each of the Asbestos Claims Liquidation Trustee and any member of the Asbestos Claims Liquidation Trust Board participating in a meeting by such means shall be 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 Asbestos Claims Liquidation Trustee and each member of the Asbestos Claims Liquidation Trust Board.

(c) Any member of the Asbestos Claims Liquidation Trust Board who is present and entitled to vote at a meeting of the Asbestos Claims Liquidation Trust Board when action is taken is deemed to have assented to the action taken, subject to the requisite vote of the



Asbestos Claims Liquidation Trust Board, unless: (i) such member of the Asbestos Claims Liquidation Trust Board objects at the beginning of the meeting (or promptly upon his/her arrival) to holding it or transacting business thereat; or (ii) his/her oral 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 Asbestos Claims Liquidation Trust Board before its adjournment, and such written notice shall be attached to the minutes of such meeting. The right of dissent or abstention is not available to any member of the Asbestos Claims 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, the Asbestos Claims Liquidation Trustee and each member of the Asbestos Claims Liquidation Trust Board shall report to the Asbestos Claims 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, disclosure of any and all financial or other pecuniary interests that such member might have with respect to or in connection with such matter or issue under or as to which a vote may be taken. An Asbestos Claims Liquidation Trust Board member who has or who may have a conflict of interest, other than solely as, or as a representative of, an Asbestos Claims Liquidation Trust Beneficiary, 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 Asbestos Claims Liquidation Trust Board who are not “conflicted members.”

4.6 Action by Asbestos Claims Liquidation Trust Board Without a Meeting. Any action required or permitted to be taken by the Asbestos Claims Liquidation Trust Board at a meeting may be taken without a meeting if the action is taken by unanimous written consent of the Asbestos Claims Liquidation Trust Board as evidenced by one or more written consents describing the action taken, signed by all members of the Asbestos Claims Liquidation Trust Board and recorded in the minutes or other transcript of proceedings of the Asbestos Claims Liquidation Trust Board.

4.7 Tenure, Removal, and Replacement of the Members of the Asbestos Claims Liquidation Trust Board. The authority of the members of the Asbestos Claims Liquidation Trust Board shall be effective as of the Effective Date and shall remain and continue in full force and effect until the Asbestos Claims Liquidation Trust is terminated in accordance with Article 9 of this Declaration. The service of the members of the Asbestos Claims Liquidation Trust Board shall be subject to the following:

(a) The members of the Asbestos Claims Liquidation Trust Board shall serve until death or resignation pursuant to subsection (b) below, or removal pursuant to subsection (c) below.

(b) A member of the Asbestos Claims Liquidation Trust Board may resign at any time upon a written notice of resignation to all other members of the Asbestos Claims Liquidation Trust Board. Such resignation shall be effective upon the date received by

the Asbestos Claims Liquidation Trust Board or such later date as may be specified in such written notice.

(c) Members of the Asbestos Claims Liquidation Trust Board may be removed as follows:

i. the member selected by the Asbestos Claimants' Committee (the "Asbestos Claimants' Board Member") may be removed by the unanimous vote of the other members of the Asbestos Claims Liquidation Trust Board;

ii. the members selected by the Parent (the "Parent Board Members") may be removed by the Parent;

iii. the member originally selected by the Plan Sponsor (the "Plan Sponsor Board Member"), may be removed by the Plan Sponsor;

iv. the member originally selected by the FCR (the "FCR Board Member"), may be removed by the FCR; and

v. the Plan Administrator may petition the Bankruptcy Court for removal, and the Bankruptcy Court may order such removal, of any member of the Asbestos Claims Liquidation Trust Board for cause shown.

(d) In the event of a vacancy on the Asbestos Claims 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 death or resignation of the Asbestos Claimants' Board Member, then such vacancy shall be filled by the appointment of a new member whom the Asbestos Claimants' Board Member may have previously designated in writing as its successor, or if no such member has been designated, such vacancy may be filled by a majority vote of the remaining members of the Asbestos Claims Liquidation Trust Board, or if a majority of the remaining members of the Asbestos Claims Liquidation Trust Board cannot agree on a new member, then the vacancy may be filled by the Bankruptcy Court;

ii. if the vacancy was created by the removal of the Asbestos Claimants' Board Member, then such vacancy may be filled by a majority vote of the remaining members of the Asbestos Claims Liquidation Trust Board, or if a majority of the remaining members of the Asbestos Claims Liquidation Trust Board cannot agree on a new member, then the vacancy may be filled by the Bankruptcy Court;

iii. if the vacancy was created by the removal, death or resignation of an Parent Board Member, then the Parent may appoint a new member to fill such vacancy;

iv. if the vacancy was created by the removal, death or resignation of the Plan Sponsor Board Member, then the Plan Sponsor may appoint a new member to fill such vacancy; and

v. if the vacancy was created by the removal, death or resignation of the FCR Board Member, then the FCR may appoint a new member to fill such vacancy. For the avoidance of doubt, the FCR may appoint the FCR as the FCR Board Member.

Notwithstanding the foregoing, subject to Section 4.5(a) hereof, the Asbestos Claims Liquidation Trust Board may act despite a vacancy thereon if such vacancy has not been filled within [\_\_\_\_\_] days of such vacancy.

(e) Immediately upon the appointment of any successor member of the Asbestos Claims Liquidation Trust Board, all rights, powers, responsibilities, duties, obligations, authority, and privileges of the predecessor member of the Asbestos Claims Liquidation Trust Board hereunder shall be vested in and discharged by the successor member of the Asbestos Claims Liquidation Trust Board without any further act; and the successor member of the Asbestos Claims Liquidation Trust Board shall not be liable personally for any act or omission of the predecessor member of the Asbestos Claims Liquidation Trust Board.

4.8 Compensation of the Asbestos Claims Liquidation Trust Board. Each member of the Asbestos Claims Liquidation Trust Board shall be paid the amount of \$\_\_\_\_\_ per quarter, plus \$\_\_\_\_\_ per meeting when such member attends an Asbestos Claims Liquidation Trust Board meeting in person, as compensation for his or her services under this Declaration, 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. By his acceptance of appointment as a member of the Asbestos Claims Liquidation Trust Board, such member shall be deemed to waive any and all additional compensation to which he or she may have been entitled under applicable law.

4.9 Standard of Care; Exculpation. To the fullest extent permitted by law, none of the Asbestos Claims Liquidation Trust Board, its members, designees, professionals, advisors, or 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 Asbestos Claims Liquidation Trust Board. The Asbestos Claims Liquidation Trust Board and its members shall not 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 Asbestos Claims Liquidation Trust Board in good faith, other than acts or omissions resulting from the Asbestos Claims Liquidation Trust Board's bad faith, willful misconduct, gross negligence, or knowing violation of law. The Asbestos Claims Liquidation Trust Board and each of its members may, in connection with the performance of its respective duties, and each in its 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, in good faith in accordance with advice or opinions rendered by such Persons. Notwithstanding such authority, neither the Asbestos Claims 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 the good faith determination not to do so shall not result in the imposition of liability on the Asbestos Claims Liquidation Trust Board or, as applicable, its members or designees, unless such determination was based on bad faith, willful misconduct, gross negligence, or knowing violation of law.

**ARTICLE 5**  
**BENEFICIAL INTERESTS IN THE ASBESTOS CLAIMS LIQUIDATION TRUST**

5.1 Interests Beneficial Only. (a) No Asbestos Claims Liquidation Trust Beneficiary shall be entitled to any legal title in or to the assets of the Asbestos Claims Liquidation Trust (which title shall be vested solely in the Asbestos Claims Liquidation Trustee), or to any right to call for a partition or division of the assets of the Asbestos Claims Liquidation Trust or to compel an accounting, whether judicial or non-judicial.

(b) The Asbestos Claims Liquidation Trust Beneficiaries shall have no rights with respect to, or interest in, the Debtors (or any successor thereto) or in any of the Debtor's assets.

(c) The Asbestos Claims Liquidation Trust Beneficiaries shall have no rights to direct the Asbestos Claims Liquidation Trustee, the Delaware Trustee, or the Asbestos Claims Liquidation Trust Board in connection with the administration of the Asbestos Claims Liquidation Trust, except as provided in Section 5.4 hereof.

(d) (i) The Asbestos Claims shall be contested, defended, resolved, compromised, settled, satisfied and paid on behalf of the Asbestos Claims Liquidation Trust Beneficiaries solely by the Asbestos Claims Liquidation Trustee, in consultation with the Asbestos Claims Liquidation Trust Board, pursuant to this Declaration; (ii) the Asbestos Claims Liquidation Trustee shall have the sole and exclusive right (in consultation with the Asbestos Claims Liquidation Trust Board), to take (or not take), actions relating to such Asbestos Claims as contemplated by this Declaration and may, among other things, contest, defend, resolve, compromise, settle, satisfy, pay, or cease defending such Asbestos Claims at any time as the Asbestos Claims Liquidation Trustee may determine, in its sole discretion, consistent with and based upon the merits of such Asbestos Claims; and (iii) the Asbestos Claims Liquidation Trustee shall have the sole and exclusive right (in consultation with the Asbestos Claims Liquidation Trust Board), to take or not take other actions contemplated by this Declaration on behalf of the Asbestos Claims Liquidation Trust Beneficiaries in connection with such Asbestos Claims (including, without limitation, any decision with respect to the incurrence of expenses).

5.2 Evidence of Beneficial Interests. Beneficial interests in the Asbestos Claims Liquidation Trust shall not be evidenced by any certificate, security, receipt or other instrument in any form or manner whatsoever.

5.3 Securities Law Matters.

(a) To the extent beneficial interests in the Asbestos Claims Liquidation Trust are deemed to be "securities," the creation of such beneficial interests under the Plan are intended to be 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 Asbestos Claims Liquidation Trustee determines, with the advice of counsel, that the Asbestos Claims Liquidation Trust is required to comply with registration and reporting requirements of the Exchange Act, then the Asbestos Claims Liquidation Trustee shall take any and all actions deemed necessary or appropriate by the

Asbestos Claims 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”). Notwithstanding the foregoing, nothing in the Plan shall be deemed to preclude the Asbestos Claims Liquidation Trustee from amending this Declaration to make such changes as deemed necessary or appropriate by the Asbestos Claims Liquidation Trustee, with the advice of counsel, to ensure that, to the extent possible, the Asbestos Claims Liquidation Trust is not subject to registration or reporting requirements of the Exchange Act, the Trust Indenture Act, or the Investment Company Act.

(b) The Asbestos Claims Liquidation Trustee may, in its sole discretion, seek an exemption from the SEC from all or some of the registration and reporting requirements that may be applicable to the Asbestos Claims 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 impose an undue burden on the Asbestos Claims Liquidation Trust and thus not be in the best interests of the Asbestos Claims Liquidation Trust Beneficiaries.

(c) The Asbestos Claims Liquidation Trust is organized as a liquidating entity in the process of liquidation, and therefore should not be considered, and the Asbestos Claims Liquidation Trust does not and shall 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.

**5.4 Limitation on Suits by Asbestos Claims Liquidation Trust Beneficiaries.**  
To the fullest extent permitted by applicable law, no Asbestos Claims 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 Asbestos Claims Liquidation Trust Beneficiary for nonpayment of amounts due and owing hereunder with respect to such Asbestos Claims Liquidation Trust Beneficiary’s beneficial interest in the Asbestos Claims Liquidation Trust) 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 Asbestos Claims Liquidation Trust Beneficiary previously shall have given to the Asbestos Claims Liquidation Trustee written notice of default, and unless such Asbestos Claims Liquidation Trust Beneficiary also shall have made written request upon the Asbestos Claims Liquidation Trustee to institute such action or proceeding in its own name as Asbestos Claims Liquidation Trustee hereunder and shall have offered to the Asbestos Claims Liquidation Trustee such reasonable indemnity as it may require against the costs, expenses and liabilities to be incurred therein or thereby and the Asbestos Claims 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 Asbestos Claims Liquidation Trust Beneficiary with every other Asbestos Claims Liquidation Trust Beneficiary and the Asbestos Claims Liquidation Trustee, that no one or more Asbestos Claims Liquidation Trust Beneficiaries shall have any right in any manner whatever 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 Asbestos Claims Liquidation Trust Beneficiary, or to obtain or seek to obtain priority over or preference to any other such Asbestos Claims 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 Asbestos Claims Liquidation Trust Beneficiaries. For the protection and enforcement of the provisions of this Section, each and every Asbestos Claims Liquidation Trust Beneficiary and the Asbestos Claims Liquidation Trustee shall be entitled to such relief as can be given either at law or in equity.

## ARTICLE 6 FINAL DISTRIBUTION TO PARENT

6.1 Use of Proceeds. (a) If, upon expiration of the term of the Asbestos Claims Liquidation Trust, there are funds or other property held by the Asbestos Claims Liquidation Trust, such funds or other property shall be disposed of as follows:

i. First, such funds shall be applied or used to (i) pay all costs and expenses of the Asbestos Claims Liquidation Trust to (including any compensation due and owing, and the costs and expenses of the Asbestos Claims Liquidation Trust, the Asbestos Claims Liquidation Trustee, the Delaware Trustee, and the Asbestos Claims Liquidation Trust Board, and the fees, costs and expenses of all professional advisors retained by the Asbestos Claims Liquidation Trustee and the Asbestos Claims Liquidation Trust Board, and any taxes imposed on the Asbestos Claims Liquidation Trust or in respect of the assets or income of the Asbestos Claims Liquidation Trust), (ii) satisfy other liabilities incurred or assumed by the Asbestos Claims Liquidation Trust (or to which the assets or income of the Asbestos Claims Liquidation Trust are otherwise subject) in accordance with the Plan or this Declaration or applicable law, and (iii) hold such amounts in reserve as the Asbestos Claims Liquidation Trustee deems reasonable to create, as the Asbestos Claims Liquidation Trustee deems necessary or advisable, a reasonable reserve to meet future expenses, contingent liabilities, and to maintain the value of the assets of the Asbestos Claims Liquidation Trust during the administration of the Asbestos Claims Liquidation Trust and the liquidation thereof, and (iv); and

ii. Second, any remaining funds shall be paid to the Parent.

(b) Notwithstanding the foregoing provisions of this Section 6.1, the Asbestos Claims Liquidation Trustee may withhold from amounts distributable to any Person any and all amounts, determined by the Asbestos Claims Liquidation Trustee in its reasonable sole discretion, required to be withheld by any law, regulation, rule, ruling, directive or other governmental requirement. Any amount so withheld from a distribution to a Person (or its designee) shall be treated as having been paid to, and received by, such Person for all purposes of the Plan and the Plan Documents.

### 6.2 Manner of Payment of Proceeds Distributable to the Parent.

(a) All distributions made by the Asbestos Claims Liquidation Trustee to the Parent shall, to the extent possible, be made in Cash, and the Asbestos Claims Liquidation Trustee shall distribute such Cash by wire, check, or such other property in kind by such other method as the Asbestos Claims Liquidation Trustee deems appropriate under the circumstances, and in the discretion of the Asbestos Claims Liquidation Trustee, may be conditioned upon the delivery of an appropriate receipt to the Asbestos Claims Liquidation Trustee.



(b) All distributions under this Declaration to the Parent shall be made at the address or to the account (as applicable) of the Parent as set forth in this Declaration or at such other address or in such other manner as the Parent shall have specified for payment purposes in a written notice to the Asbestos Claims Liquidation Trustee at least twenty (20) days prior to such distribution date. In the event that any distribution to the Parent is returned as undeliverable, the Asbestos Claims 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 the Parent, but no distribution to the Parent shall be made unless and until the Asbestos Claims Liquidation Trustee has determined the then current address or account (as applicable) of the Parent, at which time such distribution shall be made to the Parent 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 Asbestos Claims Liquidation Trustee shall reallocate the undeliverable and unclaimed distributions for the benefit of all other Asbestos Claims Liquidation Trust Beneficiaries.

(c) Notwithstanding anything herein to the contrary, the Asbestos Claims 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.

## ARTICLE 7 INDEMNIFICATION

### 7.1 Indemnification of Trustees and Asbestos Claims Liquidation Trust Board.

(a) To the fullest extent permitted by applicable law, the Asbestos Claims Liquidation Trust, to the extent of its assets legally available for that purpose, shall indemnify and hold harmless each current and former Asbestos Claims Liquidation Trustee, Delaware Trustee, and each current and former member of the Asbestos Claims Liquidation Trust Board, and each of their respective directors, members, shareholders, partners, officers, agents, employees, attorneys and other professional advisors (collectively, the “Indemnified Persons”) from and against any and all losses, liabilities, costs, damages, reasonable and documented out-of-pocket expenses (including, without limitation, reasonable fees and expenses of attorneys and other professional advisors and any court costs incurred by any Indemnified Person) arising out of or relating to the Asbestos Claims Liquidation Trust, the assets of the Asbestos Claims Liquidation Trust, the Asbestos Claims, or any acts or omissions of the Asbestos Claims Liquidation Trustee, Delaware Trustee or any Indemnified Person in its capacity as an Asbestos Claims Liquidation Trustee, Asbestos Claims Liquidation Trust Board member, 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 Asbestos Claims Liquidation Trust may pay in advance or reimburse reasonable and documented out-of-pocket expenses (including advancing reasonable costs of legal defense) incurred (or to be incurred) by the Indemnified

Person who is or is threatened to be named or made a defendant or a respondent in any proceeding concerning the administration of the Asbestos Claims 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 Asbestos Claims 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 Asbestos Claims Liquidation Trust as provided in this Article 7. Such expenses (including reasonable attorneys' fees and associated documented reasonable out-of-pocket expenses) may be so paid upon such terms and conditions, if any, as the Asbestos Claims Liquidation Trustee deems appropriate under the circumstances.

(c) Any Indemnified Person may waive the benefits of indemnification under this Article 7, but only by an instrument in writing executed and duly acknowledged by such Indemnified Person.

(d) The Asbestos Claims Liquidation Trustee shall have power to purchase and maintain insurance on behalf of any potentially Indemnified Person against any liability that may be asserted against and incurred by such Person in connection with such Person's responsibilities, duties, and obligations under this Declaration, whether or not the Asbestos Claims Liquidation Trustee would have the power to indemnify such Person against such liability as provided by this Article 7.

(e) The right to indemnification under this Article 7 shall not be exclusive of other rights that any Indemnified Person otherwise may have at law or in equity, including without limitation common law rights to indemnification or contribution. Nothing in this Article 7 shall 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.

7.2 Subordinated Indemnification of ASARCO Protected Parties. To the fullest extent permitted by law, the Asbestos Claims Liquidation Trust shall indemnify and hold the ASARCO Protected Parties and their present, future and former partners, principals, directors, employees and agents harmless from any liability, damages (including without limitation, direct, incidental and consequential) fees, expenses and costs (including defense costs) associated with (a) any claim arising from or relating to the Plan Sponsor's purchase of the Sold Assets pursuant to the Plan Sponsor PSA or (b) any claim related to any Asbestos Claim, provided, however, that the obligations of the Asbestos Claims Liquidation Trust with respect to such indemnity shall be subordinate in all respects to the payment in full of all Class 4 Claims.

## **ARTICLE 8 REPORTS**

### 8.1 Financial, Tax and Other Information.

(a) At such time or 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 Asbestos Claims Liquidation Trust, the Asbestos Claims Liquidation Trustee shall cause to be prepared, and shall submit to the Parent and each member of the Asbestos Claims Liquidation Trust Board, a written report including: (a) audited financial statements of the Asbestos Claims Liquidation Trust at the end of the calendar year or period and the receipts and disbursements of the Asbestos Claims Liquidation Trustee for the period; (b) a description of any action taken by the Asbestos Claims Liquidation Trustee in the performance of the Asbestos Claims Liquidation Trustee's duties which materially affects the Asbestos Claims Liquidation Trust and of which notice has not previously been given to the Parent and each member of the Asbestos Claims Liquidation Trust Board; and (c) a description of the disposition of any Asbestos Claim during the reporting period and any material judicial or arbitral decision with respect to, or any agreement to settle, the Asbestos Claims included in the assets of the Asbestos Claims Liquidation Trust.

ii. After the end of each calendar quarter, the Asbestos Claims Liquidation Trustee shall cause to be prepared, and shall submit to the Parent and each member of the Asbestos Claims Liquidation Trust Board a written report including: (a) unaudited financial statements of the Asbestos Claims Liquidation Trust at the end of the calendar quarter and the receipts and disbursements of the Asbestos Claims Liquidation Trustee for the quarter; and (b) a description of any action taken by the Asbestos Claims Liquidation Trustee in the performance of the Asbestos Claims Liquidation Trustee's duties which materially affects the Asbestos Claims Liquidation Trust and of which notice has not otherwise been given to the Parent and each member of the Asbestos Claims Liquidation Trust Board.

iii. Promptly following the occurrence of a material event or change which effects either the Asbestos Claims Liquidation Trust or the rights of the Asbestos Claims Liquidation Trust Beneficiaries hereunder, the Asbestos Claims Liquidation Trustee shall cause to be prepared and shall submit additional reports to the Parent and each member of the Asbestos Claims Liquidation Trust Board relating to such occurrences.

The information to be provided pursuant to this Section 8.1(a) shall satisfy the rights, if any, under the Delaware Act or otherwise of the Asbestos Claims Liquidation Trust Beneficiaries to access to information regarding the business and financial condition of the Asbestos Claims Liquidation Trust.

(b) The Asbestos Claims Liquidation Trustee shall be responsible for filing all federal, state, and local tax returns for the Asbestos Claims Liquidation Trust and paying any taxes imposed on the Asbestos Claims Liquidation Trust. The Asbestos Claims 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 Asbestos Claims Liquidation Trustee of a private letter ruling if the Asbestos Claims Liquidation Trustee so requests one, or the receipt of an adverse determination by the IRS upon audit if not contested by the Asbestos Claims Liquidation Trustee), the Asbestos Claims 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 Asbestos Claims Liquidation Trust as a taxable entity.

8.2 Other Required Reports. The Asbestos Claims Liquidation Trustee shall also file (or cause to be filed) any other statements, returns, notices, disclosures, or other forms and documents relating to the Asbestos Claims Liquidation Trust that are required by any governmental unit or regulatory agency.

8.3 Certain Non-Public Information. The Asbestos Claims Liquidation Trustee may deliver certain non-public information to one or more Asbestos Claims Liquidation Trust Beneficiaries and the delivery of such information shall not entitle any other Asbestos Claims Liquidation Trust Beneficiary to receive such information. Notwithstanding anything in this Declaration to the contrary, the Asbestos Claims Liquidation Trustee may, in its sole discretion, withhold information from any Asbestos Claims Liquidation Trust Beneficiary if the Asbestos Claims Liquidation Trustee believes in good faith the delivery of such information to such Asbestos Claims Liquidation Trust Beneficiary (i) is or would be prohibited by any agreement with a third party, (ii) is not in the best interest of the Asbestos Claims Liquidation Trust or would be inconsistent with the purpose of maximizing the value of the assets of the Asbestos Claims Liquidation Trust or, (iii) could damage or prejudice the Asbestos Claims Liquidation Trust, the assets of the Asbestos Claims Liquidation Trust (including the Asbestos Claims and Privileges), or the administration of the Asbestos Claims Liquidation Trust.

8.4 Electronic Reporting. Notwithstanding anything herein to the contrary, the Asbestos Claims Liquidation Trustee may post or file reports, notices or other information required to be provided to the Asbestos Claims Liquidation Trust Beneficiaries, if any, on a web site maintained by the Asbestos Claims Liquidation Trustee in lieu of actual delivery of such report, notice or other information to the Asbestos Claims Liquidation Trust Beneficiaries, subject to providing notice that such a procedure is being (or will be) implemented and with due regard to privacy issues.

## **ARTICLE 9**

### **TERM; TERMINATION OF THE ASBESTOS CLAIMS LIQUIDATION TRUST**

#### 9.1 Term; Termination of the Asbestos Claims Liquidation Trust.

(a) The Asbestos Claims Liquidation Trust shall terminate automatically on the date that is 90 days after the first to occur of the following events:

i. the later to occur of (A) the fifty-first (51<sup>st</sup>) anniversary of the Effective Date and (B) the date on which the Asbestos Claims Liquidation Trustee determines to terminate the Asbestos Claims Liquidation Trust because (1) it is unlikely that new asbestos claims will be filed against the Asbestos Claims Liquidation Trust; (2) all Asbestos Claims duly filed with the Asbestos Claims Liquidation Trust have been liquidated, settled, paid or otherwise disposed of in accordance with the provisions of this Declaration, or have been disallowed by a Final Order, to the extent possible based upon the funds available through the Plan; and (3) twelve (12) consecutive months have elapsed during which no new asbestos claim has been filed with the Asbestos Claims Liquidation Trustee; or

ii. to the extent that any rule against perpetuities shall be deemed applicable to the Asbestos Claims Liquidation Trust, the date on which 21 years less 91

days after the death of the last survivor of all of the descendants of the late Joseph P. Kennedy, Sr., father of the late President John F. Kennedy, living on the date hereof.

*Provided, however,* that in no circumstances shall the Asbestos Claims Liquidation Trust dissolve prior to the dissolution of the Liquidation Trust and/or the SCC Litigation Trust.

(b) The Asbestos Claims Liquidation Trustee shall not unduly prolong the administration and duration of the Asbestos Claims Liquidation Trust and shall at all times endeavor to resolve, compromise, settle, or otherwise dispose of all of the Asbestos Claims consistent with the legal merits thereof, and to effect the distribution of the assets of the Asbestos Claims Liquidation Trust to the Asbestos Claims Liquidation Trust Beneficiaries in accordance with the terms of the Plan and this Declaration as soon as practicable.

9.2 Continuance of Trust for Purposes of Winding Up. After the termination of the Asbestos Claims Liquidation Trust and for the purpose of liquidating and winding up the affairs of the Asbestos Claims Liquidation Trust, the Asbestos Claims Liquidation Trustee shall continue to serve in such capacity until its duties have been fully performed and the Asbestos Claims Liquidation Trust has been fully administered. Prior to the final distribution of all of the remaining assets of the Asbestos Claims Liquidation Trust and upon approval of the Asbestos Claims Liquidation Trust Board, the Asbestos Claims 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 hereof, until such time as the winding up of the Asbestos Claims Liquidation Trust is finally completed. Upon termination of the Asbestos Claims Liquidation Trust, the Asbestos Claims Liquidation Trustee shall retain for a period of six (6) years the books, records, Asbestos Claims Liquidation Trust Beneficiary lists, and certificates and other documents and files that have been delivered to or created by the Asbestos Claims Liquidation Trustee. At the Asbestos Claims Liquidation Trustee's discretion, all of such records and documents may, but need not, be destroyed at any time after six (6) years from the completion and winding up of the affairs of the Asbestos Claims Liquidation Trust. Except as otherwise specifically provided herein, upon the termination of the Asbestos Claims Liquidation Trust, the Trustees shall have no further responsibilities, duties or obligations hereunder or to any Asbestos Claims Liquidation Trust Beneficiary.

## **ARTICLE 10 AMENDMENT AND WAIVER**

### 10.1 Amendment and Waiver.

(a) The Asbestos Claims Liquidation Trustee, with the prior approval of the Asbestos Claims Liquidation Trust Board, may amend, supplement, or waive any provision of this Declaration, without notice to or the consent of any Asbestos Claims Liquidation Trust Beneficiary or the approval of the Bankruptcy Court: in order to (i) cure any ambiguity, omission, defect, or inconsistency in this Declaration (including, without limitation, to comply with applicable state or federal law), provided that such amendments, supplements or waivers shall not adversely affect the distributions to be made under this Declaration to any of the Asbestos Claims Liquidation Trust Beneficiaries, or adversely affect the U.S. federal income tax status of the Asbestos Claims Liquidation Trust as a non-grantor trust; (ii) comply with any

requirement in connection with the U.S. Federal income tax status of the Asbestos Claims Liquidation Trust as a non-grantor trust; (iii) comply with any requirement 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 Asbestos Claims Liquidation Trustee; (iv) make the Asbestos Claims 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 Asbestos Claims Liquidation Trustee; and (v) 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) Any substantive provision of this Declaration may be amended or waived by the Asbestos Claims Liquidation Trustee, subject to the prior approval of the Asbestos Claims 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 adversely affect the distributions to be made under this Declaration to any of the Asbestos Claims Liquidation Trust Beneficiaries, or adversely affect the U.S. Federal income tax status of the Asbestos Claims Liquidation Trust as a non-grantor trust.

## **ARTICLE 11**

### **MISCELLANEOUS PROVISIONS**

11.1 Intention of Parties to Establish the Asbestos Claims Liquidation Trust. This Declaration is intended to create a non-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 Asbestos Claims Liquidation Costs. If the Asbestos Claims Liquidation Trustee, the Asbestos Claims Liquidation Trust Board, or the Asbestos Claims Liquidation Trust, as the case may be, is the prevailing party in a dispute regarding the provisions of this Declaration or the proper administration or enforcement thereof, the Asbestos Claims Liquidation Trustee, the Asbestos Claims Liquidation Trust Board or the Asbestos Claims 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 Asbestos Claims Liquidation Trustee, the Asbestos Claims Liquidation Trust Board or the Asbestos Claims 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, (i) 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 (ii) any and all actions related to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the parties, including the Asbestos Claims Liquidation Trust Beneficiaries, and Holders of Claims and Interests, hereby consent to and submit to the jurisdiction and venue of the Bankruptcy Court.

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 Reorganized ASARCO, to:

With a copy to:

If to the Asbestos Claims Liquidation Trustee, to:

With a copy to:

If the Delaware Trustee, to:

With a copy to:

If to the Asbestos Claims Liquidation Trust Board, to:

With a copy to:

If to the Parent, 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 certified mail return receipt requested, 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 Asbestos Claims 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:

<b>Term</b>	<b>Provision</b>
Act	Section 1.4(a)
Asbestos Claimants' Board Member	Section 4.7(c)(i)
Asbestos Claims	Recitals
Asbestos Claims Liquidation Trust	Preamble
Asbestos Claims Liquidation Trustee	Preamble
Bankruptcy Court	Recitals
Covered Person	Section 11.11
Declaration	Preamble
Delaware Trustee	Preamble
FCR Board Member	Section 4.7(c)(iii)
Indemnified Persons	Section 7.1(a)
Information	Section 11.11
Interim Trustee	Section 2.3(g)
Parent Board Members	Section 4.7(c)(ii)
Plan	Preamble
Plan Sponsor Board Member	Section 4.7(c)(ii)
Reorganized ASARCO	Preamble

SEC	Section 5.3(a)
Settlor	Preamble
Treasury Regulation	Section 1.3(a)
Trustee	Preamble

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 Asbestos Claims Liquidation Trustee, the Delaware Trustee and each successor trustee and each member of the Asbestos Claims Liquidation Trust Board and each successor member of the Asbestos Claims 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, the Asbestos Claim Liquidation Trust, 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 Asbestos Claims Liquidation 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 Asbestos Claims Liquidation Trust Board reasonably promptly (unless prohibited by law) so that the Asbestos Claims Liquidation Trust Board may seek an appropriate injunction or protective order or other appropriate remedy or, in its discretion, waive compliance with the terms of this Section (and if the Asbestos Claims Liquidation Trust Board seeks such an order, the relevant Covered Person will provide cooperation as the Asbestos Claims Liquidation Trust Board shall reasonably request). In the event that no such injunction, protective order or other remedy is obtained, or that the Asbestos Claims 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 Asbestos Claims 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, understandings, 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.

**Settlor**

ASARCO ADMINISTRATION COMPANY, LLC

By: \_\_\_\_\_  
Name:  
Title:

**Trustees**

ASBESTOS CLAIMS LIQUIDATION TRUSTEE:      DELAWARE TRUSTEE:

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

PLAN EXHIBIT 7

LIST OF ASBESTOS INSURANCE  
SETTLEMENT AGREEMENTS

1. Settlement Agreement and Release with Certain Participating London Market Companies dated July 13, 2006 and approved by order entered on September 14, 2006 (Docket No. 3019). The Participating London Market Companies that are part of this settlement are:
  - a. Compagnie D'Assurances Maritimes Aeriennes et Terrestres
  - b. CNA Reinsurance of London Limited
  - c. Assicurazioni Generali Spa (UK Branch)
  - d. Heddington Insurance Company (UK) Limited
  - e. Companhia de Seguros Imperio S.A.
  - f. Allianz International Insurance Company Limited
  - g. Storebrand Insurance Company (UK) Limited
  - h. Taisho Marine & Fire Insurance Company (UK) Limited
  - i. The Tokio Marine & Fire Insurance Company (UK) Limited
  - j. Royale Belge SA
  - k. St. Katherine Insurance Company PLC
  - l. Turegum Insurance Company Limited
  - m. Unionamerica Insurance Company Limited
  - n. Yasuda Fire & Marine Insurance Company (UK) Limited
2. Supplemental Agreement between ASARCO and Sovereign Marine & General Insurance Company Limited (Subject to Scheme of Arrangement) Regarding the Resolution of Various Liability Claims dated September 23, 2006 and approved by order entered on March 23, 2007 (Docket No. 4242).
3. **[Settlement Agreement and Release between ASARCO and Aviva Canada Incorporated effective March 12, 2009 and pending Bankruptcy Court approval pursuant to a motion filed on April 1, 2009 (Docket No. 10673).]**



PLAN EXHIBIT 8

LIST OF ASBESTOS INSURANCE POLICIES

1. Insurance policies at issue in the Nueces County action, ASARCO, LLC., *et al.* v. Fireman's Fund Ins. Co. *et al.*, Cause No. 02680-D (105th Judicial District Court, Nueces County, Texas):
  - 6/1/77-3/15/78 Lloyd's Policy 614/NC 3988
  - 3/15/78-3/15/79 Lloyd's Policy 614/NC 5380
  - 3/15/79-3/15/80 Lloyd's Policy 614/NC 6721
  - 3/15/79-3/15/80 Lloyd's Policy 614/NC 6722
  - 3/15/79-3/15/80 Lloyd's Policy 614/NC 6723
  - 3/15/80-3/15/81 Lloyd's Policy 614/NC 8712
  - 3/15/80-3/15/81 Lloyd's Policy 614/NC 8713
  - 3/15/80-3/15/81 Lloyd's Policy 614/NC 8714
  - 3/15/81-3/15/82 Lloyd's Policy 614/NTA 382
  - 3/15/81-3/15/82 Lloyd's Policy 614/NTA 383
  - 3/15/82-3/15/83 Lloyd's Policy 614/NTA 826
  - 3/15/82-3/15/83 Lloyd's Policy 614/NTA 827
  - 3/15/83-3/15/84 Lloyd's Policy 614/NTB 249
  - 3/15/83-3/15/84 Lloyd's Policy 614/NTB 250
  - 3/15/82-3/15/83 Fireman's Fund Policy XLX 148 16 98
  - 3/15/83-3/15/84 Fireman's Fund Policy XLX 153 47 73
  - 3/15/83-3/15/84 Fireman's Fund Policy XLX 153 47 74
2. Insurance policies at issue in the fraudulent conveyance actions that have been filed by the Debtors against American Home Assurance Company, Equitas Limited, *et al.*, Lexington Insurance Company, Century Indemnity Company, *et al.*, and Mt. McKinley Insurance Company, *et al.* Confidentiality provisions in the prepetition settlement agreements that are the subject of these fraudulent conveyance actions prevent the Debtors from disclosing publicly the insurance policies to which the agreements apply.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**PLAN EXHIBIT 9**

**Intentionally Omitted**

**PLAN EXHIBIT 10**

**LIST OF DESIGNATED PROPERTIES TO BE TRANSFERRED TO  
ENVIRONMENTAL CUSTODIAL TRUSTS AND SCHEDULE  
OF ENVIRONMENTAL CUSTODIAL TRUST FUNDING**

CUSTODIAL TRUST PROPERTIES & FUNDING <sup>1</sup>			
Designated Site	Remedial Cost	Administrative Cost	Total
<b>Montana Custodial Trust</b>			
East Helena, MT	\$ 100,000,000		
East Helena, MT (NRD)	\$ 5,000,000		
Black Pine, MT	\$ 17,500,000		
Mike Horse, MT	\$ 10,000,000		
Iron Mountain, MT	\$ 1,900,000		
<i>Trust Subtotal</i>	<i>\$ 134,400,000</i>	<i>\$ 8,900,000</i>	<i>\$ 143,300,000</i>
<b>Texas Custodial Trust<sup>2</sup></b>			
El Paso Smelter, TX	\$ 43,800,000		
Amarillo, TX	\$ 80,000		
<i>Trust Subtotal</i>	<i>\$ 43,880,000</i>	<i>\$ 8,200,000</i>	<i>\$ 52,080,000</i>
<b>Other Custodial Trust</b>			
Sacaton, AZ	\$ 20,000,000		
Globe, CO	\$ 16,000,000		
Alton, IL	\$ 7,000,000		
Taylor Springs, IL	\$ 4,200,000		
Silverton, CO	\$ 4,000,000		
Trench/Salero, AZ	\$ 2,825,000		
Murray Smelter, UT (future costs)	\$ 2,430,000		
Magdalena, NM	\$ 1,340,000		
Whiting, IN	\$ 1,200,000		
Columbus/Blue Tee, OH	\$ 420,000		
Beckemeyer, IL	\$ 200,000		
McFarland, WA	\$ 200,000		
Ragland, AL	\$ 200,000		
Van Buren, AR	\$ 200,000		
Murray Smelter, UT (past costs)	\$ 167,486		
Sand Springs, OK <sup>3</sup>	\$ 130,000		
Deming, NM	\$ 120,493		
Gold Hill/Belshazzar, UT	\$ 100,000		
<i>Trust Subtotal</i>	<i>\$ 60,732,979</i>	<i>\$ 10,400,000</i>	<i>\$ 71,132,979</i>
<b>Total Costs</b>	<b>\$ 239,012,979</b>	<b>\$ 27,500,000</b>	<b>\$ 266,512,979</b>

<sup>1</sup> East Helena NRD (\$5,000,000), Murray Smelter, UT (\$167,486), and Sand Springs, OK past costs (\$10,000) are Miscellaneous Federal and State Sites, but are included in the Custodial Trust Site Settlement Agreements.

<sup>2</sup> Pursuant to the terms of the Environmental Custodial Trust Settlement Agreement for the Designated Properties in Texas, the Environmental Custodial Trust Funding and the Environmental Custodial Trust Administration Funding to be paid by ASARCO to the Environmental Custodial Trust for such properties will be combined in a single account and, in accordance with the terms of the Environmental Custodial Trust Agreement governing such Environmental Custodial Trust, may be used by the custodial trustee of such trust either for remediation and restoration of, and other environmental costs related to the Designated Properties located in Texas or for administration of such properties.

<sup>3</sup> Includes \$10,000 in past costs.

**PLAN EXHIBIT 11**

**LISTS OF PREVIOUSLY SETTLED ENVIRONMENTAL CLAIMS AND  
MISCELLANEOUS FEDERAL AND STATE ENVIRONMENTAL CLAIMS**



### Previously Settled Environmental Claims

Site	Claimant	Allowed Claim	Cash	Total
Cal Gulch/Black Cloud, CO	Subtotal	\$ 25,300,000	\$ 10,000,000	\$ 35,300,000
	United States	\$ 10,823,000		\$ 10,823,000
	Colorado	\$ 3,467,000		\$ 3,467,000
	Resurrection	\$ 6,000,000	\$ 10,000,000	\$ 16,000,000
El Paso County Metal Survey, TX	Subtotal	\$ 13,700,000	\$ -	\$ 13,700,000
	United States	\$ 12,807,780		\$ 12,807,780
	Texas	\$ 892,220		\$ 892,220
Golinsky, CA	Subtotal	\$ 4,050,000	\$ -	\$ 4,050,000
	United States	\$ 4,050,000		\$ 4,050,000
Taylor Springs, IL	Subtotal	\$ 1,662,541	\$ -	\$ 1,662,541
	United States	\$ 1,662,541		\$ 1,662,541
	Illinois			
Azurite, WA	Subtotal	\$ 5,000,000	\$ -	\$ 5,000,000
	United States	\$ 5,000,000		\$ 5,000,000
Iron Mountain, MT	Subtotal	\$ 2,200,000	\$ -	\$ 2,200,000
	United States	\$ 500,000		\$ 500,000
	Montana	\$ 1,700,000		\$ 1,700,000
Upper Blackfoot/Mike Horse, MT - Unowned Portion	Subtotal	\$ 20,000,000	\$ 8,500,000	\$ 28,500,000
	United States	\$ 2,234,426	\$ 2,500,000	\$ 4,734,426
	Montana	\$ 19,765,574	\$ 6,000,000	\$ 25,765,574
	James R. Boehlert			
Silver Bow Creek/Butte, MT	Subtotal	\$ 18,779,255	\$ -	\$ 18,779,255
	United States	\$ 18,779,255		\$ 18,779,255
	Montana			
	MRI	\$ 18,779,255		\$ 18,779,255
B&L Woodwaste, WA	Subtotal	\$ 20,000,000	\$ -	\$ 20,000,000
	Washington	\$ 5,000,000		\$ 5,000,000
	Wingco Pacific	\$ 20,000,000		\$ 20,000,000
	Continental Pacific			
	Wasteco/Winters			
Tacoma Smelter Plume, WA - Past Costs/NRD & PRP	Subtotal	\$ 15,300,000	\$ -	\$ 15,300,000
	Washington	\$ 14,000,000		\$ 14,000,000
	NSM	\$ 1,300,000		\$ 1,300,000
Everett Smelter, WA	Subtotal	\$ 38,012,500	\$ -	\$ 38,012,500
	Washington	\$ 38,000,000		\$ 38,000,000
	ENR	\$ 12,500		\$ 12,500
Southeast MO	Subtotal	\$ 79,513,163	\$ -	\$ 79,513,163
	United States	\$ 2,500,000		\$ 2,500,000
	Missouri	\$ 50,000		\$ 50,000
	Occ. Prop.	\$ 76,963,163		\$ 76,963,163

### Previously Settled Environmental Claims

Site	Claimant	Allowed Claim	Cash	Total
Encycle, TX	Subtotal	\$ 10,520,498	\$ -	\$ 10,520,498
	United States			
	Encycle, Inc.	\$ 10,000,000		\$ 10,000,000
	Encycle, Wash.	\$ 520,498		\$ 520,498
Bunker Hill/CDA (Box), ID - Unowned Portion	Subtotal	\$ 16,800,000	\$ -	\$ 16,800,000
	United States	\$ 6,800,000		\$ 6,800,000
	United States	\$ 10,000,000		\$ 10,000,000
	Idaho			
Selby Smelter, CA	Subtotal	\$ 33,888,541	\$ -	\$ 33,888,541
	Idaho, DHEC	\$ 33,888,541		\$ 33,888,541
	State Lands	\$ 258,895		\$ 258,895
	US Land, Inc.	\$ 258,895		\$ 258,895
Tri-State	Subtotal	\$ 170,458,000	\$ -	\$ 170,458,000
	United States	\$ 144,000,000		\$ 144,000,000
	Idaho	\$ 7,500,000		\$ 7,500,000
	Utah	\$ 250,000		\$ 250,000
	Montana	\$ 250,000		\$ 250,000
	Idaho	\$ 13,500,000		\$ 13,500,000
	Idaho	\$ 258,000		\$ 258,000
Nueces Bay, TX	Subtotal	\$ 10,000,000	\$ -	\$ 10,000,000
	United States	\$ 10,000,000		\$ 10,000,000
	Encycle, Texas, Inc.			
Barker Hughesville (Block P), MT	Subtotal	\$ 9,000,000	\$ -	\$ 9,000,000
	United States	\$ 1,000,000		\$ 1,000,000
	Montana	\$ 7,100,000		\$ 7,100,000
	Idaho	\$ 900,000		\$ 900,000
East Helena, MT - US/MT Costs - Unowned Portion	Subtotal	\$ 13,209,783	\$ -	\$ 13,209,783
	United States	\$ 13,000,000		\$ 13,000,000
	Idaho	\$ 209,783		\$ 209,783
CDA, ID - Hecla	Subtotal	\$ 3,333,550	\$ -	\$ 3,333,550
	Hecla	\$ 3,333,550		\$ 3,333,550
Triumph Mine, ID <sup>1</sup>	Subtotal	\$ 1,675,000	\$ -	\$ 1,675,000
	Idaho	\$ 1,675,000		\$ 1,675,000
New Mexico	Subtotal	\$ 1,200,000	\$ -	\$ 1,200,000
	Idaho	\$ 1,200,000		\$ 1,200,000
<b>TOTAL AMOUNTS</b>		<b>\$ 513,602,831</b>	<b>\$ 18,500,000</b>	<b>\$ 532,102,831</b>

<sup>1</sup> The Triumph Settlement is an agreement in principle.



### Miscellaneous Federal and State Environmental Claims

Site	Claimant	Settlement
Tacoma Federal, WA	United States	\$ 27,000,000
USIBWC, TX	United States	\$ 19,000,000
Jack Waite Mine, ID	United States	\$ 11,300,000
Monte Cristo, WA	United States/Washington	\$ 11,000,000
Lower Silver Creek/Richardson Flats, UT	United States	\$ 7,400,000
Circle Smelting, IL	United States	\$ 6,052,390
Van Stone, WA	Washington	\$ 3,000,000
Kusa, OK	Oklahoma	\$ 1,780,000
Vasquez Blvd. / I-70, CO	United States	\$ 1,500,000
Terrible Mine, CO	United States	\$ 1,400,000
South Plainfield, NJ	New Jersey	\$ 1,000,000
Helvetia, AZ	Arizona	\$ 880,000
Stephenson Bennett Mine, NM	United States	\$ 550,000
Combination, MT	United States	\$ 542,000
Flux Mine, AZ	United States	\$ 487,000
Bonanza, CO	Colorado	\$ 400,000
Golden King, WA	Washington	\$ 400,000
Cholett, WA	Washington	\$ 300,000
Coy Mine, TN	United States	\$ 200,000
Black Pine, MT (unowned)	United States/Montana	\$ 190,000
Henryetta, OK	Oklahoma	\$ 109,000
Summitville, CO	Colorado	\$ 86,000
Colorado Permits & Fees	Colorado	\$ 2,800
Northport Smelter, WA	Washington	\$ -
Anderson Calhoun, WA	Washington	\$ -
Azurite, WA	Washington	\$ -
Troy Mine, MT	Montana	\$ -
<b>TOTAL AMOUNT</b>		<b>\$ 94,579,190</b>

<sup>1</sup>East Helena NRD (\$5,000,000), Murray Smelter, UT (\$167,486), and Sand Springs, OK past costs (\$10,000) are Miscellaneous Federal and State Sites, but are included in the Custodial Trust Site Settlement Agreements.

## PLAN EXHIBIT 12

## LIST OF SITES REFERRED TO IN SECTION 11.13(a) OF THE PLAN

<b>CUSTODIAL TRUST SITES<sup>1</sup></b>
<b><i>Montana Custodial Trust</i></b>
East Helena MT (including NRD)
Black Pine, MT
Mike Horse, MT
Iron Mountain, MT
<b><i>Texas Custodial Trust</i></b>
El Paso Smelter, MT
Amarillo, TX
<b><i>Other Custodial Trust</i></b>
Sacaton, AZ
Globe, CO
Alton, IL
Taylor Springs, IL
Silverton, CO
Trench/Salero, AZ
Murray Smelter, UT (past and future costs)
Magdalena, NM
Whiting, IN
Columbus/Blue Tee, OH
Beckemeyer, IL
McFarland, WA
Ragland, AL
Van Buren, AR
Deming, NM
Sand Springs, OK (including past costs)
Gold Hill/Belshazzar, UT

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<sup>1</sup> East Helena NRD, Murray Smelter, UT, and Sand Springs, OK past costs are Miscellaneous Federal and State Sites, but are included in the Custodial Trust Site Settlement Agreements.

<b>PREVIOUSLY SETTLED ENVIRONMENTAL CLAIMS</b>	
<i>Site</i>	
Cal Gulch/Black Cloud, CO	
El Paso County Metal Survey, TX	
Golinsky, CA	
Taylor Springs, IL	
Azurite, WA	
Iron Mountain, MT	
Upper Blackfoot/Mike Horse, MT	
Silver Bow Creek/Butte, MT	
B&L Woodwaste, WA	
Tacoma Smelter Plume, WA - Past Costs/NRD & PRP	
Everett Smelter, WA	
Southeast MO	
Encycle, TX	
Bunker Hill/CDA (Box), ID - Unowned Portion	
Selby Smelter, CA	
Tri-State	
Nueces Bay, TX	
Barker Hughesville (Block P), MT	
East Helena, MT - US/MT Costs - Unowned Portion	
CDA, ID – Hecla	
Triumph Mine, ID	
New Mexico	

MISCELLANEOUS STATE & FEDERAL SITES	
<i>Site</i>	
Tacoma Federal, WA	
USIBWC, TX	
Jack Waite Mine, ID	
Monte Cristo, WA	
Lower Silver Creek/Richardson Flats, UT	
Circle Smelting, IL	
Van Stone, WA	
Kusa, OK	
Vasquez Blvd. / 1-70, CO	
Terrible Mine, CO	
South Plainfield, NJ	
Helvetia, AZ	
Stephenson Bennett Mine, NM	
Combination, MT	
Flux Mine, AZ	
Bonanza, CO	
Golden King, WA	
Cholett, WA	
Coy Mine, TN	
Black Pine, MT (unowned)	
Henryetta, OK	
Summitville, CO	
Colorado Permits & Fees	
Northport Smelter, WA	
Anderson Calhoun, WA	
Azurite, WA	
Troy Mine, MT	



OTHER SITES	
<i>Site</i>	
Perth Amboy, NJ:	past costs of remediation on the owned site and NRD on owned sites. The parties are also negotiating the potential resolution of the claim for future remediation of the owned site.
Arizona NRD:	Agreement in principle, subject to the 9019 process, allowance of general unsecured claim of \$4,000,000 and the transfer of certain real property
Hayden (Past Costs):	the parties are negotiating the allowance of a general unsecured claim
Kelly Mine,	WA
Blue Ledge,	CA
Coeur d'Alene,	ID
Tacoma,	WA
Omaha Lead Site,	NB

PLAN EXHIBIT 13  
FORM OF ORGANIZATIONAL DOCUMENTS  
FOR THE REORGANIZED DEBTORS

**AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT**

**OF**

**ASARCO ADMINISTRATION COMPANY LLC**

This AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT (this "Agreement") of ASARCO ADMINISTRATION COMPANY LLC (the "Company") is executed to be effective as of \_\_\_\_\_, 200\_ by its sole member, [Plan Administrator], a [Delaware] \_\_\_\_\_ (the "Sole Member").

I. Name. The name of the limited liability company governed hereby is ASARCO Administration Company LLC.

II. Formation; Amendment and Restatement. The Certificate of Formation of the Company was filed under the name of ASARCO LLC with the Secretary of State of the State of Delaware on February 14, 2005, which certificate was amended effective as of March 31, 2005. Upon formation of the Company, the original member executed a Limited Liability Company Agreement dated as of February 4, 2005, which agreement was amended and restated effective as of December 15, 2005 (the "Original Agreement"). The Sole Member hereby amends and restates in its entirety the Original Agreement of the Company.

III. Business of the Company. The purpose and business of the Company shall be the conduct of any business or activity that may be conducted by a limited liability company organized pursuant to the Delaware Limited Liability Company Act, as amended from time to time (the "Act").

IV. Location of Principal Place of Business. The principal place of business of the Company shall be located, and the Company's business shall be conducted from, such place or places as the Sole Member may from time to time deem advisable.

V. Registered Office and Registered Agent. The Company's registered office shall be at the office of its registered agent at [1209 Orange Street, Wilmington, New Castle County, Delaware 19801], and the name of its registered agent at such address shall be [The Corporation Trust Company]

VI. Member. The name and place of business of the Sole Member is as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

VII. Term. The term of the Company commenced on the date of filing of the Certificate of Formation of the Company in accordance with the Act and shall continue until such time as the Company's existence has been terminated as provided for herein or in the Act.

VIII. Management.

A. The powers of the Company shall be exercised by or under the authority of, and the business and affairs of the Company shall be managed by, the Sole Member. The Sole Member may exercise all such powers of the Company and do all such lawful acts and things as are directed or required to be exercised or done by the Sole Member by the Act, the Certificate of Formation of the Company or this Agreement.

B. Without limiting the generality of Section 8(a) of this Agreement, the Sole Member shall have the power and authority, acting in accordance with this Agreement, to cause the Company to do and perform all acts as may be necessary or appropriate to the conduct of the Company's business.

C. The Sole Member may appoint one or more managers and/or officers of the Company, who shall hold the respective offices specified by the Sole Member for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Sole Member; and each officer of the Company shall hold office until his successor is chosen and qualified or until such officer's earlier resignation or removal. Any officer may be removed at any time, with or without cause, by the Sole Member or a manager, if any.

IX. Liability of Sole Member, Managers and Officers. Except as otherwise provided in the Act, the Sole Member and any manager or any officer shall have no liability under this Agreement or under the Act except as provided herein or as required by the Act. Except as required by the Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise (including, without limitation, those arising as member, owner or shareholder of another company, partnership or entity), shall be solely the debts, obligations and liabilities of the Company, and the Sole Member, any manager or any officer shall not be obligated personally for any such debt, obligation or liability of the Company solely by reason of being the Sole Member, acting as a manager or serving as an officer of the Company.

X. Indemnification. Subject to the limitations and conditions set forth herein, to the fullest extent that would be permitted by the General Corporation Law of the State of Delaware (the "DGCL") as the same exists or may hereafter be amended (but in the case of any such amendment, only to the extent that such amendment provides broader indemnification rights than were provided by the DGCL prior to such amendment) if the Company were a corporation organized under the DGCL and the Sole Member or any manager were a director of such a corporation and any officer were an officer of such a corporation, any person (an "Indemnatee") and Indemnatee's spouse, heirs, executors and personal and legal representatives shall be entitled to indemnification from the Company from and against any and all expenses, liabilities and losses (including, without limitation, investigation expenses, expert witnesses' and attorneys' fees and expenses, judgments, travel expenses, penalties, fines, amounts paid or to be paid in settlement, any interest, assessments, or other charges imposed thereon and any federal, state, local or foreign taxes imposed as a result of actual or deemed receipt of any payment hereunder) actually incurred by the Indemnatee (net of any related insurance proceeds or other amounts received by the Indemnatee or paid by or on behalf of an Indemnitor on the Indemnatee's behalf in compensation of such expenses, liabilities or losses) in connection with

any actual or threatened action, suit or proceeding, whether civil, criminal, administrative or investigative or in arbitration, to which the Indemnitee is a party or participant or is threatened to be made a party or participant, as a plaintiff, defendant, respondent, witness or otherwise, based upon, arising from, in any way relating to or by reason of the fact that the Indemnitee: (A) is, was, shall be or shall have been a member (including the Sole Member), manager or officer of the Indemnitor; or (B) is or was serving, shall serve, or shall have served at the request of the Indemnitor as a director, manager, officer, partner, trustee, fiduciary, employee or agent of another foreign or domestic corporation or non-profit corporation, cooperative, partnership, limited liability company, joint venture, trust, employee benefit plan, or other incorporated or unincorporated enterprise. The rights provided to any person by this section shall be enforceable against the Company directly by such person who shall be presumed to have relied upon it in serving or continuing to serve in any capacity set forth above. No amendment of this section shall impair the rights of any person arising at any time with respect to events occurring prior to such amendment. Notwithstanding any other provision of this Section 10, and in addition to the other limitations on indemnification under the DGCL incorporated herein as aforesaid, no person shall be entitled to indemnification under this Section 10 against judgments, penalties, fines, settlements and expenses to the extent they result from actions or omissions involving gross negligence or willful misconduct on the part of such person.

XI. Books and Records. Proper and complete records and books of account shall be kept by the Company in which shall be entered fully and accurately all transactions and other matters relative to the Company's business as are usually entered into records and books of account maintained by persons or entities engaged in businesses of a like character. The Company's books and records shall be kept in a manner determined by the Sole Member in [its] sole discretion to be most beneficial for the Company.

XII. Capital of the Company.

A. The Sole Member may, but shall not be required to, make contributions to the capital of the Company in cash or property ("Capital Contributions").

B. The books and records of the Company shall include true and full information regarding the amount of cash and cash equivalents and a description and statement of the value of any other property contributed by the Sole Member to the Company.

C. No interest shall be paid by the Company on Capital Contributions.

D. Any loan by the Sole Member to the Company shall not be considered Capital Contributions.

E. Nothing in this Agreement shall prevent the Sole Member from making secured or unsecured loans to the Company by agreement with the Company.

F. The Sole Member shall not have any obligation to provide funds to the Company, whether by Capital Contributions, loans, return of monies received pursuant to the terms of this Agreement or otherwise.

XIII. Tax Election. The Sole Member shall determine the accounting methods and conventions under the tax laws of any and all applicable jurisdictions as to the treatment of income, gain, loss, deduction, and credit of the Company or any other method or procedure related to the preparation of such tax returns. The Sole Member may cause the Company to make or refrain from making any and all elections permitted by such tax laws, and the Sole Member shall not be liable for any consequences to any previously admitted or subsequently admitted members resulting from their making or failing to make any such elections in good faith.

XIV. Tax Matters Partner. The Sole Member shall be the tax matters partner within the meaning of Section 6231(a)(7) of the Internal Revenue Code of 1986, as amended. All expenses incurred by the tax matters partner in connection with [his] duties as tax matters partner shall be expenses of the Company.

XV. Interests. There shall be only one class of membership interests in the Company, and the Company shall in no event issue nonvoting membership interests.

XVI. Assignments. The Sole Member may assign all or part of its interest in the Company. The assignment of all if its interest shall entitle the assignee to be or become, and to exercise the powers of, a member of the Company or the Sole Member under this Agreement.

XVII. Dissolution of the Company.

A. The Company shall be dissolved, and its affairs wound up, upon the earliest to occur of:

1. the date on which the Sole Member consents to its dissolution;
2. the date on which the sale or disposition by the Company of substantially all of its assets is consummated; or
3. the date when any other event occurs that causes the dissolution of a limited liability company under the Act.

B. In the event of the dissolution of the Company for any reason, the Sole Member shall wind up the affairs of the Company and liquidate the Company's assets. The Sole Member shall have full right and unlimited discretion to determine the time, manner and terms of any sale or sales of Company assets pursuant to such liquidation, giving due regard to the activity and condition of the relevant market and general financial and economic conditions.

C. The Sole Member shall have all of the rights and powers with respect to the assets and liabilities of the Company in connection with the winding up of the affairs of the Company as the Sole Member would have with respect to the assets and liabilities of the Company prior to the dissolution of the Company.

XVIII. Fiscal Year. The fiscal year of the Company shall be determined by the Sole Member.



XIX. Severability. If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid, illegal, or unenforceable to any extent, the remainder of this Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

XX. Headings. The headings of the provisions of this Agreement are inserted for convenience of reference and are not intended to describe, interpret, define, or limit the scope or intent of this Agreement or any provision hereof.

XXI. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original of this Agreement.

XXII. Entire Agreement. This Agreement constitutes the entire agreement with respect to the subject matter hereof.

XXIII. Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Delaware.

XXIV. Amendments. This Agreement may not be modified, altered, supplemented or amended except pursuant to a written agreement executed and delivered by the Sole Member.

*[Signature Page Follows]*

The undersigned, being the Sole Member of the Company, hereby certifies that the foregoing Agreement is the Limited Liability Company Agreement of the Company, that such Agreement has been duly adopted and is binding on the Company and the Sole Member, and that such Sole Member agrees to be bound by the terms of the foregoing Agreement.

EXECUTED to be effective as of the date first above written.

SOLE MEMBER:

By:  
Name:  
Title:

**LIMITED LIABILITY COMPANY AGREEMENT**

**OF**

**THE COVINGTON COMPANY, LLC**

This LIMITED LIABILITY COMPANY AGREEMENT (this “Agreement”) of The Covington Company, LLC (the “Company”) is executed to be effective as of \_\_\_\_\_, 2009 by its sole member, [\_\_\_\_\_] a [Delaware] \_\_\_\_\_ (the “Sole Member”).

I. Name. The name of the limited liability company governed hereby is The Covington Company, LLC.

II. Formation; Amendment and Restatement. The Certificate of Formation of the Company was filed under the name of The Covington Company, LLC with the Secretary of State of the State of Delaware on \_\_\_\_\_, 2009.

III. Business of the Company. The purpose and business of the Company shall be the conduct of any business or activity that may be conducted by a limited liability company organized pursuant to the Delaware Limited Liability Company Act, as amended from time to time (the “Act”).

IV. Location of Principal Place of Business. The principal place of business of the Company shall be located, and the Company’s business shall be conducted from, such place or places as the Sole Member may from time to time deem advisable.

V. Registered Office and Registered Agent. The Company’s registered office shall be at the office of its registered agent at [1209 Orange Street, Wilmington, New Castle County, Delaware 19801], and the name of its registered agent at such address shall be [The Corporation Trust Company].

VI. Member. The name and place of business of the Sole Member is as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

VII. Term. The term of the Company commenced on the date of filing of the Certificate of Formation of the Company in accordance with the Act and shall continue until such time as the Company’s existence has been terminated as provided for herein or in the Act.

VIII. Management.

A. The powers of the Company shall be exercised by or under the authority of, and the business and affairs of the Company shall be managed by, the Sole Member. The Sole Member may exercise all such powers of the Company and do all such lawful acts and

things as are directed or required to be exercised or done by the Sole Member by the Act, the Certificate of Formation of the Company or this Agreement.

B. Without limiting the generality of Section 8(a) of this Agreement, the Sole Member shall have the power and authority, acting in accordance with this Agreement, to cause the Company to do and perform all acts as may be necessary or appropriate to the conduct of the Company's business.

C. The Sole Member may appoint one or more managers and/or officers of the Company, who shall hold the respective offices specified by the Sole Member for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Sole Member; and each officer of the Company shall hold office until his successor is chosen and qualified or until such officer's earlier resignation or removal. Any officer may be removed at any time, with or without cause, by the Sole Member or a manager, if any.

IX. Liability of Sole Member, Managers and Officers. Except as otherwise provided in the Act, the Sole Member and any manager or any officer shall have no liability under this Agreement or under the Act except as provided herein or as required by the Act. Except as required by the Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise (including, without limitation, those arising as member, owner or shareholder of another company, partnership or entity), shall be solely the debts, obligations and liabilities of the Company, and the Sole Member, any manager or any officer shall not be obligated personally for any such debt, obligation or liability of the Company solely by reason of being the Sole Member, acting as a manager or serving as an officer of the Company.

X. Indemnification. Subject to the limitations and conditions set forth herein, to the fullest extent that would be permitted by the General Corporation Law of the State of Delaware (the "DGCL") as the same exists or may hereafter be amended (but in the case of any such amendment, only to the extent that such amendment provides broader indemnification rights than were provided by the DGCL prior to such amendment) if the Company were a corporation organized under the DGCL and the Sole Member or any manager were a director of such a corporation and any officer were an officer of such a corporation, any person (an "Indemnitee") and Indemnitee's spouse, heirs, executors and personal and legal representatives shall be entitled to indemnification from the Company from and against any and all expenses, liabilities and losses (including, without limitation, investigation expenses, expert witnesses' and attorneys' fees and expenses, judgments, travel expenses, penalties, fines, amounts paid or to be paid in settlement, any interest, assessments, or other charges imposed thereon and any federal, state, local or foreign taxes imposed as a result of actual or deemed receipt of any payment hereunder) actually incurred by the Indemnitee (net of any related insurance proceeds or other amounts received by the Indemnitee or paid by or on behalf of an Indemnitor on the Indemnitee's behalf in compensation of such expenses, liabilities or losses) in connection with any actual or threatened action, suit or proceeding, whether civil, criminal, administrative or investigative or in arbitration, to which the Indemnitee is a party or participant or is threatened to be made a party or participant, as a plaintiff, defendant, respondent, witness or otherwise, based upon, arising from, in any way relating to or by reason of the fact that the Indemnitee: (A) is, was, shall be or shall have been a member (including the Sole Member), manager or officer of

the Indemnitor; or (B) is or was serving, shall serve, or shall have served at the request of the Indemnitor as a director, manager, officer, partner, trustee, fiduciary, employee or agent of another foreign or domestic corporation or non-profit corporation, cooperative, partnership, limited liability company, joint venture, trust, employee benefit plan, or other incorporated or unincorporated enterprise. The rights provided to any person by this section shall be enforceable against the Company directly by such person who shall be presumed to have relied upon it in serving or continuing to serve in any capacity set forth above. No amendment of this section shall impair the rights of any person arising at any time with respect to events occurring prior to such amendment. Notwithstanding any other provision of this Section 10, and in addition to the other limitations on indemnification under the DGCL incorporated herein as aforesaid, no person shall be entitled to indemnification under this Section 10 against judgments, penalties, fines, settlements and expenses to the extent they result from actions or omissions involving gross negligence or willful misconduct on the part of such person.

XI. Books and Records. Proper and complete records and books of account shall be kept by the Company in which shall be entered fully and accurately all transactions and other matters relative to the Company's business as are usually entered into records and books of account maintained by persons or entities engaged in businesses of a like character. The Company's books and records shall be kept in a manner determined by the Sole Member in its sole discretion to be most beneficial for the Company.

XII. Capital of the Company.

A. The Sole Member may, but shall not be required to, make contributions to the capital of the Company in cash or property ("Capital Contributions").

B. The books and records of the Company shall include true and full information regarding the amount of cash and cash equivalents and a description and statement of the value of any other property contributed by the Sole Member to the Company.

C. No interest shall be paid by the Company on Capital Contributions.

D. Any loan by the Sole Member to the Company shall not be considered Capital Contributions.

E. Nothing in this Agreement shall prevent the Sole Member from making secured or unsecured loans to the Company by agreement with the Company.

F. The Sole Member shall not have any obligation to provide funds to the Company, whether by Capital Contributions, loans, return of monies received pursuant to the terms of this Agreement or otherwise.

XIII. Tax Election. The Sole Member shall determine the accounting methods and conventions under the tax laws of any and all applicable jurisdictions as to the treatment of income, gain, loss, deduction, and credit of the Company or any other method or procedure related to the preparation of such tax returns. The Sole Member may cause the Company to make or refrain from making any and all elections permitted by such tax laws, and the Sole Member shall not be liable for any consequences to any previously admitted or subsequently

admitted members resulting from their making or failing to make any such elections in good faith.

XIV. Tax Matters Partner. The Sole Member shall be the tax matters partner within the meaning of Section 6231(a)(7) of the Internal Revenue Code of 1986, as amended. All expenses incurred by the tax matters partner in connection with [his] duties as tax matters partner shall be expenses of the Company.

XV. Interests. There shall be only one class of membership interests in the Company, and the Company shall in no event issue nonvoting membership interests.

XVI. Assignments. The Sole Member may assign all or part of its interest in the Company. The assignment of all if its interest shall entitle the assignee to be or become, and to exercise the powers of, a member of the Company or the Sole Member under this Agreement.

XVII. Dissolution of the Company.

A. The Company shall be dissolved, and its affairs wound up, upon the earliest to occur of:

1. the date on which the Sole Member consents to its dissolution;
2. the date on which the sale or disposition by the Company of substantially all of its assets is consummated; or
3. the date when any other event occurs that causes the dissolution of a limited liability company under the Act.

B. In the event of the dissolution of the Company for any reason, the Sole Member shall wind up the affairs of the Company and liquidate the Company's assets. The Sole Member shall have full right and unlimited discretion to determine the time, manner and terms of any sale or sales of Company assets pursuant to such liquidation, giving due regard to the activity and condition of the relevant market and general financial and economic conditions.

C. The Sole Member shall have all of the rights and powers with respect to the assets and liabilities of the Company in connection with the winding up of the affairs of the Company as the Sole Member would have with respect to the assets and liabilities of the Company prior to the dissolution of the Company.

XVIII. Fiscal Year. The fiscal year of the Company shall be determined by the Sole Member.

XIX. Severability. If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid, illegal, or unenforceable to any extent, the remainder of this Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.



XX. Headings. The headings of the provisions of this Agreement are inserted for convenience of reference and are not intended to describe, interpret, define, or limit the scope or intent of this Agreement or any provision hereof

XXI. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original of this Agreement.

XXII. Entire Agreement. This Agreement constitutes the entire agreement with respect to the subject matter hereof.

XXIII. Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Delaware.

XXIV. Amendments. This Agreement may not be modified, altered, supplemented or amended except pursuant to a written agreement executed and delivered by the Sole Member.

*[Signature Page Follows]*

The undersigned, being the Sole Member of the Company, hereby certifies that the foregoing Agreement is the Limited Liability Company Agreement of the Company, that such Agreement has been duly adopted and is binding on the Company and the Sole Member, and that such Sole Member agrees to be bound by the terms of the foregoing Agreement.

EXECUTED to be effective as of the date first above written.

SOLE MEMBER:

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

PLAN EXHIBIT 14

SCHEDULES OF LITIGATION CLAIMS

## PLAN EXHIBIT 14-A

### LITIGATION TO VEST IN REORGANIZED ASARCO

All of the Litigation Claims, other than (a) those which are transferred to the Liquidation Trust or the SCC Litigation Trust; (b) those which vest in Reorganized Covington; and (c) the Trade Creditor Preference Claims, shall vest in Reorganized ASARCO, including, without limitation, the following:

1. Lien Avoidance Lawsuit - Adv. No. 07-02076, pending in the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division, ASARCO LLC, *et al.* v. Joe Bob Beasley, The Industrial Development Authority of the County of Gila, Arizona, National Indemnity Company, Duane E. Pierce, Ruben Sandoval, Sara Rogers, Alyssa Rogers, Chelsea Rogers, Liborio M. Silva, Southwest Mobile, Inc., Terry L. Swenson, Trafigura AG, UMW Combined Benefit Fund, United States of America on behalf of the U.S. Environmental Protection Agency, Dept. of Agriculture, Dept. of the Interior and the International Boundary and Water Commission;
2. Tax Refund Lawsuit - Adv. No. 07-02011, pending in the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division, ASARCO LLC, *et al.* v. Americas Mining Corporation *et al.*;
3. Nueces County Coverage Action - No. 01-02680-D, pending in the 105th District Court of Nueces County, Texas, ASARCO, Inc., Lac d'Amiante du Quebec Ltée and Capco Pipe Co., Inc. v. Allianz International Insurance Company, Ltd., *et al.*;
4. Lawsuits to Avoid Constructively Fraudulent Transfers Against Insurance Companies
  - a. Adv. No. 07-02025, pending in the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division, Lac d'Amiante Du Quebec Ltée, *et al.* v. Allstate Insurance Company, *et al.*;
  - b. Adv. No. 07-02065, pending in the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division, ASARCO LLC v. American Home Assurance Company;
  - c. Adv. No. 07-02066, pending in the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division, ASARCO LLC v. Equitas Limited, Equitas Reinsurance Limited, Equitas Holdings Limited, Equitas Management Services Limited, Equitas Policyholders Trustee Limited, And Certain Underwriters At Lloyd's, London, including Syndicate 035, Syndicate 056, Syndicate 090, Syndicate 099, Syndicate 109, Syndicate 126, Syndicate 175, Syndicate 183, Syndicate 190, Syndicate 205, Syndicate 210, Syndicate 219, Syndicate 224, Syndicate 231, Syndicate 235, Syndicate 243, Syndicate 250, Syndicate 263, Syndicate 278, Syndicate 279, Syndicate 346, Syndicate 365, Syndicate 383, Syndicate 408, Syndicate 417, Syndicate 471, Syndicate 494, Syndicate 518, Syndicate 553, Syndicate 602, Syndicate 604, Syndicate 618, Syndicate 620, Syndicate 650, Syndicate 653, Syndicate 661, Syndicate 673, Syndicate 694, Syndicate 701, Syndicate 722, Syndicate 727, Syndicate 729,

Syndicate 751, Syndicate 772, Syndicate 799, Syndicate 918, Syndicate 935, Syndicate 948, Syndicate 987, and Syndicate 989;

d. Adv. No. 07-02067, pending in the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division, ASARCO LLC v. Lexington Insurance Company;

e. Adv. No. 07-02068, pending in the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division, ASARCO LLC v. Century Indemnity Company (as successor to CIGNA Specialty Company, formerly California Union Insurance Company) and a member company of the ACE INA Group;

f. Adv. No. 07-02069, pending in the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division, ASARCO LLC v. Mt. McKinley Insurance Company, (formerly known as Gibraltar Casualty Company) and Everest Reinsurance Company (formerly known as Prudential Reinsurance Company);

5. Avoidance Actions Tolling Agreements.

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

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

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

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

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

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

6. Other Adversary Proceedings.

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

b. Adv. No. 07-02053, pending in the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division, ASARCO LLC, *et al.* v. Amarillo Lawn Care Sierra Liquidity Fund, Apache Corp., Arthur Anderson, LLP, Darrell Barrett, Brandenburg Industrial Serv. Co., Esco Corp., Helen Faith, Federal Insurance Company, Garry Moore, Hovson Inc., Heritage Minerals, Inc., Joe Friend, Jr., John P. Holland, MD, P.C., David H.

Latimer, Joanne Latimer, Lee Wayne Lewis, Eduardo Lopez, Gloria Lopez, Lopez, Gloria for children of Eduardo C. Lopez and/or Daniel A. Lopez, Olegario Lopez, Vincenta Lopez, Old Republic Insurance Company, Ron and Linda Deen;

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

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

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

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

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

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

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

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



**PLAN EXHIBIT 14-B**

**LITIGATION TO VEST IN THE LIQUIDATION TRUST**

1. Burns Litigation:

a. No. 07-00203, pending in the United States District Court for the Southern District of Texas, Brownsville Division, ASARCO LLC and Southern Peru Holdings LLC v. Grupo Mexico, S.A. de C.V.;

b. the claims and causes of action of the Debtors in Index No. 0114728/2004, pending in the Supreme Court of the State of New York, County of New York, Phillip Nelson Burns, *et al.* v. Grupo Mexico, S.A. de C.V.;

2. MRI Litigation – Adv. No. 07-02024, pending in the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division, ASARCO, LLC *et al.* v. Montana Resources Inc.;

3. Sacaton Lawsuit – Adv. No. 07-02071, pending in the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division, ASARCO LLC and AR Sacaton, LLC v. Americas Mining Corporation, Tri-Point Development, LLC, CMR/Casa Grande, LLC, Vanguard Properties, Inc., First American Title Insurance Company, LLC;

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

5. Lawsuits Against Affiliates to Recover Preferences and Inter-Company Debt:

a. Adv. No. 07-02062, pending in the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division, ASARCO LLC v. Servicios de Apoyo Administrativo, S.A. de C.V., approximately \$443,642;

b. Adv. No. 07-02063, pending in the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division, ASARCO LLC v. Mexicana de Cobre, S.A. de C.V., approximately \$1.8 million;

c. Adv. No. 07-02064, pending in the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division, ASARCO LLC v. Minera Mexico Internacional, Inc., approximately \$9.5 million;

d. Adv. No. 07-02072, pending in the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division, ASARCO LLC v. Grupo Mexico, S.A. de C.V., approximately \$6 million;

e. Adv. No. 07-02073, pending in the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division, ASARCO LLC v. Minera Mexico S.A. de C.V., approximately \$3 million;

f. Adv. No. 07-02075, pending in the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division, ASARCO LLC v. Americas Mining Corporation and ASARCO Inc., approximately \$17.6 million. **[NOTE: One of multiple claims in this lawsuit against AMC seeks to avoid the transfers of the Tax Refund (See Tax Refund Lawsuit cited in Plan Exhibit 14-A above) and certain net operating losses (NOLs) to AMC. This lawsuit also involves matters relating to a tax sharing agreement, which matters are at issue in determining the allowance, priority and amount of AMC Claim No. 18571, as amended. At the discretion of ASARCO LLC prior to the Effective Date, or the Plan Administrator after the Effective Date, such claims in this lawsuit relating to tax-related matters and the allowance, priority and amount of AMC Claim No. 18571, as amended, shall be severed from this lawsuit and retained by Reorganized ASARCO under Article X of the Plan.];** and

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

7. Sterlite Litigation. Any and all causes of action belonging to the Debtors and/or their estates against Sterlite and its affiliates arising out of or otherwise related to Sterlite's breach of the Original Plan Sponsor PSA.

**PLAN EXHIBIT 14-C**

**LITIGATION TO VEST IN THE SCC LITIGATION TRUST**

1. SCC Litigation – No. 07-00018, pending in the United States District Court for the Southern District of Texas, Brownsville Division, ASARCO LLC and Southern Peru Holdings, LLC v. Americas Mining Corporation (original complaint assigned Adv. No. 07-02009 in the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division prior to withdraw of reference to District Court). Final Judgment by District Court entered April 15, 2009.

**PLAN EXHIBIT 14-D**

**LITIGATION TO VEST IN REORGANIZED COVINGTON**

Canadian Lawsuits

1. No. 500-05-015073-925, pending in the Superior Court, Province of Québec, District of Montreal, Dominion of Canada, Lac d'Amiante du Québec Ltée v. 2858-0702 Quebec, Inc. and Lac d'Amiante du Canada, Ltée;
2. No. 500-05-027806-965, pending in the Superior Court, Province of Québec, District of Montreal, Dominion of Canada, Lac d'Amiante du Québec Ltée v. 2858-0702 Quebec, Inc. and Lac d'Amiante du Canada, Ltée;
3. No. 500-05-011714-944, pending in the Superior Court, Province of Québec, District of Montreal, Dominion of Canada, Lac d'Amiante du Québec Ltée v. LAB Chrysotile, Inc. and 2858-0702 Quebec, Inc.;

**PLAN EXHIBIT 14-E**

**TRADE CREDITOR PREFERENCE CLAIMS**

3M

3M Industrial Chemicals Product Division

ABF Freight System, Inc.

Absolute Transport, L.L.C.

ACE Pipe Cleaning, Inc.

ACT Environmental, Inc.

ADP, Inc.

Advanced Lining Solutions, Inc.

Advanced Systems Group

Aetna Insulated Wire

Air Liquide Industrial U.S. L.P.

Aker Kvaerner Industrial Constructors

Alkemin, S. De R.L. De C.V.

Altasteel Ltd.

Amalgamet Canada, a Division of Premetalco, Inc.

American Fire & Security Systems, Inc.

American Magotteaux Corp.

Ameron International Water Transmission Group

Aon Re México Intermediario De Reaseguro, S.A De C.V.

Applied Industrial Technologies

The Ashton Company, Inc.

Atlantic Metals & Alloys, Inc.

Auto & Truck Parts, dba Truck & Trailer Parts

BC Wire Rope & Rigging

BJ Cecil Trucking, Inc.

Border States Electric Supply

Brenntag Pacific, Inc.

Brenntag Southwest, Inc.

Brown and Brown Chevrolet, Inc.

Bucyrus International, Inc.

Burgess Manufacturing of Oklahoma, Inc.

Canyon Compressor Co.

Cerro Wire & Cable Co., Inc.

Charles S. Lewis Pumps & Co., Inc.

Chas. S. Lewis & Co., Inc.

Chemical Lime Company

Chevron Natural Gas Services, Inc.

Chevron Phillips Chemical Company, L.L.C.

Chevron U.S.A. Products Company

Chevron U.S.A. Inc.

Cimetta Engineering & Construction Co., Inc.

Clean Harbors Environmental Services, Inc.

Cobre Valley Motors

Columbia Steel Casting Co., Inc.  
Copperstate Companies  
Copper State Bolt & Nut Co.  
Creative Engineers, Inc.  
Cutting Edge Supply  
Cytec Industries Inc.  
Diane Eicher  
Doe Run Peru  
Dorr-Oliver Eimco U.S.A. Inc.  
Ducon Technologies Inc.  
Durham Communications  
El Paso Electric Co.  
Empire Southwest, L.L.C.  
    a/k/a Empire Machinery  
Enron Metals & Commodity Corp.  
Entact and Associates, L.L.C.  
Erin Electrical Enterprises  
Esco Corporation  
Express Way STS  
FLSmith Minerals Inc., f/k/a FFE Minerals U.S.A. Inc.  
Flodraulic Group, Inc.  
Geib Refining Corp.  
Geotemps, Inc.  
Granberry Supply Corp dba Hose Power U.S.A.  
Hagemeyer North America, Inc.  
Harbison-Walker Refractories Company  
Heflin Steel Company, a Division of Esco Corp.  
Hertz Equipment Rental Company  
Hory Material Corporation  
Hunt Transportation, Inc.  
Industrial Mining Supply Company  
Industrial Radiator Service Co.  
Industrial Tool & Supply, a Division of General & Supply  
ISCO Industries, L.L.C.  
J. B. Hunt Transport, Inc.  
J.T. Thorpe & Son, Inc.  
Jefco Refractories  
Jensen Drilling Company  
Kaman Industrial Technologies  
Keller Equipment Company, Inc.  
Krebs International  
Laron Incorporated (Tucson)  
Laron Incorporated (Kingman)  
Leco Corporation  
Lubrication Equipment & Supply Co.  
Magotteaux, Inc.



Marco Crane & Rigging Company  
Maxim Crane Works  
MCP Metal Specialties Incorporated  
ME Global Inc.  
    a/k/a ME Electric Metal  
Metro Mechanical Inc.  
Michelin North America Inc.  
Miles Overall Maintenance Inc.  
Miller Sales & Engineering ANM Equipment  
National Railroad Constructors, Inc.  
Nitron Chemical Corporation  
Office of Trust Funds Management  
Oneok Westex Transmission Inc.  
Petron Corporation  
Phoenix Fuels Companies  
Pioneer Equipment Inc.  
Purcell Western States Tire  
Quadna, an ESOP Company  
R Wales & Son L.L.C.  
R.J. Ruff & Company  
Ram-Mac Products, Inc.  
Ray, Valdez, McChristian & Jeans, P.C.  
REB Industrial Maintenance L.L.C., f/k/a JBS Industrial  
Recon Refractory & Construction  
Redburn Tire Company  
Schwab Sales, Inc.  
Serck Service Inc.  
Sidnode Corporation  
Smithway Motor Xpress, Inc.  
Smorgon Steel Grinding Systems-America L.L.C.  
Sonoran Process Equipment Co.  
Southwest Energy L.L.C.  
Southwest Field Service, Inc.  
Structural Preservation Systems  
Sturgeon Electric Company, Inc.  
Sun Life Assurance Company Of Canada  
Sun Valley Manufacturing  
Sunwest Supply Inc.  
Superior Essex Communications L.P.  
Superior Steel Supply  
Swift Transportation Corporation  
Swiss Metal Group Inc.  
T.A. Caid and Sons Incorporated  
T.A. Caid Industries, Inc.  
TB Contractors, Inc.  
The Fairchild Company

The Stebbins Engineering & Manufacturing Company  
Thomas Janitorial Service, Inc.  
Tower Performance Inc.  
Townley Engineering and Manufacturing Company, Inc.  
Umicore Marketing Services U.S.A. Inc.  
Wa Ho Truck Brokerage  
Water & Energy Systems Technology, Inc.  
Weir Slurry Group, Inc.  
Weir Slurry Group, Inc. d/b/a Rubber Engineering,  
a/k/a Weir Minerals North America Rubber Engineering  
Willis of Arizona, Inc.  
XCel Energy  
XMS Industrial  
Zephyr Environmental Corporation

PLAN EXHIBIT 15

MISSION MINE SETTLEMENT AGREEMENT

Exhibit 15-A Original Mission Mine Settlement Agreement

Exhibit 15-B Amendment to Mission Mine Settlement Agreement

**EXHIBIT 15-A**

## **Settlement Agreement**

### **Mission Mine Leases**

This Settlement Agreement ("Agreement") is entered into by the following parties (each a "Party," and together "the Parties"): (i) the Tohono O'odham Nation, which is a federally recognized Indian tribe ("the Nation"); (ii) the San Xavier District, which is a political subdivision of the Nation ("the District"); (iii) the San Xavier Allottees Association ("the Allottees Association"); (iv) the United States of America, on behalf of the Department of the Interior, including the Bureau of Land Management, Bureau of Indian Affairs, and Minerals Management Service ("the United States"), in its capacity as trustee of the interests of the Landowners defined below; and (v) ASARCO LLC, a Delaware limited liability company ("ASARCO"), which is currently a debtor in possession under chapter 11 of title 11 of the United States Code ("the Bankruptcy Code").

### **Recitals**

A. In 1959, the United States entered into or approved certain leases with ASARCO Incorporated, predecessor in interest to ASARCO LLC, on behalf of owners of interests in trust allotments, currently held by the Nation and several individuals, within the leaseholds ("the Landowners"). The agreements consisted of two mining leases under the Allotted Lands Mining Act of 1909 (25 U.S.C. § 396) and twenty-one business leases under the Indian Long Term Leasing Act of 1955 (25 U.S.C. § 415). The first mining lease, designated number 454-2-60, authorized ASARCO to prospect for and mine minerals other than oil and gas and to conduct related operations on a parcel of land known as Tract I on the San Xavier Reservation ("the Tract I Mining Lease"). The second mining lease, designated number 454-3-60, authorized ASARCO to prospect for and mine minerals other than oil and gas and to conduct related operations on a parcel of land known as Tract II on the San Xavier Reservation ("the Tract II Mining Lease"). The twenty-one business leases, designated numbers 454-6-59 through 454-26-59, authorized ASARCO to deposit overburden alluvium, waste rock and tailings generated from ASARCO's mining and related operations on or adjacent to the San Xavier Reservation on a parcel of land known as Tract III on the San Xavier Reservation ("the Tract III Business Leases").

B. The Tract I Mining Lease, Tract II Mining Lease, and Tract III Business Leases (collectively "the Leases") provide in part that, in exchange for the privilege of conducting its operations on Tracts I, II and III, ASARCO must make certain rental and royalty payments to the United States for the use and benefit of the Landowners and comply with certain provisions in the Leases and federal regulations governing the condition of the premises that might arise as a result of the operations. The regulations, in particular, include specifications for the reclamation of the premises during the operations and after the cessation of the operations. Since the early nineteen-seventies, if

not earlier, the Parties have not been able to agree on the nature and extent of some of ASARCO's rights and obligations under the Leases and regulations, including, but not limited to, ASARCO's reclamation obligations.

C. On November 3, 1971, the Nation (formerly known as the Papago Tribe), individual members of the Nation, the Bureau of Indian Affairs, and ASARCO Incorporated entered into an agreement settling a lawsuit, filed in 1970 in the United States District Court for the District of Arizona, that had alleged ASARCO Incorporated was in violation of the Tract I Mining Lease and Tract II Mining Lease ("the 1971 Settlement Agreement"). As a function of the 1971 Settlement Agreement, ASARCO must make certain production royalty payments that are greater than those specified in the Tract I Mining Lease and Tract II Mining Lease and, under certain circumstances, must make minimum royalty payments in addition to the minimum royalty payments specified in the Tract I Mining Lease and Tract II Mining Lease, to the United States for the use and benefit of the Landowners.

D. On January 5, 2005, the United States issued an order formally canceling the Tract I Mining Lease, which order included a demand that ASARCO perform reclamation on Tract I, on the grounds that ASARCO failed to comply with the payment and regulatory obligations imposed by the Tract I Mining Lease and 1971 Settlement Agreement. ASARCO has not operated on Tract I since October of 2001.

E. On August 9, 2005 ("the Petition Date"), ASARCO LLC filed a voluntary chapter 11 petition for relief under the Bankruptcy Code ("the Bankruptcy Case") in the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division ("the Bankruptcy Court"). During the pendency of the Bankruptcy Case, ASARCO has continued to operate on Tracts II and III pursuant to the Tract II Mining Lease, the 1971 Settlement Agreement and Tract III Business Leases.

F. On July 28, 2006, the United States on behalf of the Department of the Interior and the Landowners filed a proof of claim in the Bankruptcy Case, alleging ASARCO is liable for delinquent rental and royalty payment and reclamation obligations and certain damages arising from ASARCO's mining and related operations on Tracts I, II and III ("Claim No. 10744").

G. On July 28, 2006, the District filed a proof of claim in the Bankruptcy Case, alleging ASARCO is liable for delinquent rental and royalty payment and reclamation obligations and certain damages arising from ASARCO's mining and related operations on Tracts I, II and III ("Claim No. 10506"). On July 31, 2006, the District filed a duplicative claim which was assigned Claim No. 10845.

H. On July 28, 2006, the Allottees Association filed a proof of claim in the Bankruptcy Case, alleging ASARCO is liable for delinquent rental and royalty payment



and reclamation obligations and certain damages arising from ASARCO's mining and related operations on Tracts I, II and III ("Claim No. 10507"). On July 31, 2006, the Allottees Association filed a duplicative claim which was assigned Claim No. 10846.

I. Pursuant to timely motions filed by ASARCO under the Bankruptcy Code, the Bankruptcy Court has extended until May 9, 2008 the date by which ASARCO must assume or reject lease agreements in effect when ASARCO filed its chapter 11 petition. ASARCO requested the additional time in order to decide whether to assume or reject those lease agreements and to investigate and analyze the cost of reclamation if those agreements were assumed.

J. The Parties have filed with the Bankruptcy Court certain pleadings and motions seeking estimation and litigated resolution of Claim No. 10744, Claim No. 10506, Claim No. 10845, Claim No. 10507 and Claim No. 10846 (collectively "the Proofs of Claim").

K. The Parties prefer to avoid litigation regarding the payment and reclamation obligations due under the Leases and federal regulations and arising out of the Proofs of Claim and, instead, achieve a settlement of the Proofs of Claim that is acceptable to all the Parties, the Bankruptcy Court and ASARCO's creditors. The Parties believe that this Agreement economically and practicably resolves the disputed issues in a manner that is in the best interests of ASARCO and its creditors and the Landowners.

#### Terms of Agreement

1. The foregoing recitals shall be construed as terms of this Agreement and the Parties agree to those terms.

2. The Parties agree legal authority for this Agreement is found, in part, in the Bankruptcy Code; the federal statutes governing the management of Indian affairs and agreements with Indian tribes and Indians, including 25 U.S.C § 2; and the federal statutes and regulations governing the conduct and settlement of litigation by the United States, including 28 U.S.C. §§ 516 and 519 and 28 C.F.R. § 61.4.

3. The signatories to this Agreement warrant they are fully authorized to sign on behalf of the Parties and so legally bind all the Parties to the Agreement. Resolutions by ASARCO, the Allottees Association, and the relevant councils of the Nation and the District authorizing the execution of the Agreement on behalf of those Parties have, where necessary, been secured and are attached hereto as Exhibit A. The Parties agree that any recitals or other statements in those resolutions shall have no bearing on any future interpretation of the meaning of the Agreement, except concerning the authority of the signatories to sign on behalf of the Parties and legally bind them to the Agreement.

4. Notwithstanding the signing of the Agreement by and for all the Parties, the Agreement shall become fully effective (hereinafter, "the Effective Date") only after all of the following events have occurred: (a) the Bankruptcy Court approves the Agreement; (b) the Bankruptcy Court approves ASARCO's assumption of the Tract II Mining Lease, Tract III Business Leases, Business Lease No. H-54-16-72 ("the Well Site Lease"), the 1971 Settlement Agreement, and the 1997 Intergovernmental Agreement with the Arizona Department of Environmental Quality (collectively, "the Unexpired Agreements"); (c) the portion of the notice requirements in Exhibit B, attached hereto, that relates to court approval of this Agreement is fully satisfied; (d) the Bankruptcy Court approves the settlement agreement with St. Paul Travelers Insurance Company and its affiliates and subsidiaries ("St. Paul"), attached hereto as Exhibit C; (e) the Legislative Council of the Nation has passed a resolution authorizing the Nation to execute this Agreement and to waive sovereign immunity as described in Paragraph 11, which resolution may be part of the resolution of the council of the Nation described in Paragraph 3; and (f) the Bankruptcy Court's approvals of this Agreement, the agreement with St. Paul, and ASARCO's assumption of the Unexpired Agreements are entered and have not been stayed pending appeal within ten (10) days after entry. ASARCO may elect (but is not obligated) to waive the condition contained in subparagraph (e) of this paragraph. If ASARCO waives the condition contained in subparagraph (e), then the Effective Date will occur without the condition contained in subparagraph (e) being met.

5. In exchange for ASARCO's covenants and promises to perform its obligations under this Agreement, the parties other than ASARCO ("the Non-ASARCO Parties") are obligated as follows:

a. As of the Effective Date, the Non-ASARCO Parties hereby release and covenant not to sue ASARCO from and for: (i) any and all pre-petition claims (as defined in the Bankruptcy Code and current Fifth Circuit precedent) related to ASARCO's mining and related operations and physical disturbance resulting from those operations at the Mission Mine Complex (which is composed of the Tract I Mining Lease, the Tract II Mining Lease, the Tract III Business Leases, the Well Site Lease, fee lands owned by ASARCO, and lands rented by ASARCO from the State of Arizona) including, but not limited to, the claims asserted in the Proofs of Claim; (ii) any and all claims arising post-petition through the Effective Date related to the Tract I Mining Lease; and (iii) all mining plan and reclamation obligations that might, under the law or contracts, burden ASARCO as a result of ASARCO's past, present and future operations and physical disturbance resulting from those operations within the Footprint; *save and except* that:

(1) This paragraph does not affect the Non-ASARCO Parties' rights to assert claims in order to enforce the obligations imposed on ASARCO under Paragraph 6 and the other terms of this Agreement;

(2) The Non-ASARCO Parties reserve the right to assert post-petition groundwater contamination claims, if any. The Non-ASARCO Parties also reserve the right to argue that groundwater contamination claims, if any, are not pre-petition claims under subparagraph 5.a.(i) and hence are not released under subparagraph 5.a.(i). ASARCO reserves the right to argue that groundwater contamination claims, if any, are pre-petition claims under subparagraph 5.a.(i) and hence are released under subparagraph 5.a.(i). The Parties agree that subparagraphs 5.a.(ii) and 5.a.(iii) do not apply to post-petition groundwater contamination claims, if any;

(3) The foregoing releases do not apply to criminal matters, tax matters, or claims sounding in fraud;

(4) Nothing in this paragraph shall be deemed to be in derogation of the ASARCO Settlement Agreement, executed on June 12, 2006, and effective on December 14, 2007, pursuant to the Statement of Findings: Southern Arizona Water Rights Settlement Amendments Act of 2004, 72 Fed. Reg. 71,145 (2007);

(5) This paragraph does not apply to agencies of the federal government other than the Department of the Interior, and it does not affect the United States' (including on behalf of the Department of the Interior in any capacity) right to assert common law or other claims not released on behalf of the Department of the Interior in its capacity as trustee of the interests of the Landowners under subparagraph 5.a.(i), (ii) and (iii) above. The Parties agree that cost recovery claims or natural resource damage claims under section 107 of the Comprehensive Environmental Response Compensation and Liability Act are not released under subparagraph 5.a.(i), (ii) and (iii) above. Nothing in the preceding sentence shall be deemed to be a waiver by ASARCO of its right to defend against any such claims under any theory (including the theory that the claims are barred or discharged under the Bankruptcy Code).

b. Upon the payment of the funds referenced in subparagraph 6.g. into the Account, the United States shall release St. Paul and ASARCO from any and all obligations under the following numbered St. Paul bonds: 420669, 420670, 420668, 143432, 297126, 297127 and 396702 (hereinafter the "St. Paul Bonds"). The Parties acknowledge and agree that there are no legal obligees of these bonds other than the Bureau of Indian Affairs of the Department of the Interior, which is bound by the terms of this Agreement. Upon the deposit of the funds into the Account, as described in subparagraph 6.g., the Department of the Interior (on behalf of the Bureau of Indian Affairs), as appropriate, shall execute a release substantially in the form attached hereto as Exhibit D releasing the St. Paul Bonds without need for further court order.

c. Within forty (40) days after the Effective Date, the Bureau of Land Management shall cancel all notices of deficiency and related notices concerning mine plans of operation and corresponding reclamation plans for Tracts I, II and III that

ASARCO submitted to the Bureau of Land Management prior to the execution of this Agreement.

6. In exchange for the Non-ASARCO Parties' releases, covenants and promises to perform their obligations under this Agreement, ASARCO is obligated as follows:

a. As of the Effective Date, ASARCO hereby releases and covenants not to sue the Non-ASARCO Parties from and for any and all claims related to ASARCO's mining and related operations and physical disturbance resulting from those operations on Tracts II and III through the Petition Date and on Tract I through the Effective Date; *save and except* that:

(1) This paragraph does not affect ASARCO's right to assert claims in order to enforce the obligations imposed on the Non-ASARCO Parties under Paragraph 5 and the other terms of this Agreement; and

(2) The foregoing releases do not apply to tax matters, claims sounding in fraud, or to agencies of the federal government other than the Department of the Interior.

b. Upon finalization of the Agreement, and with the permission of the representatives of the Non-ASARCO Parties, ASARCO shall file with the Bankruptcy Court a motion to assume the Unexpired Agreements and motions to approve this Agreement and the settlement agreement with St. Paul. ASARCO shall make good faith efforts to secure the Bankruptcy Court's approval of the motions. The motion to assume the Unexpired Agreements shall provide that, once the assumption is approved and that order is either final or not stayed pending appeal, the order shall be binding on any owner or purchaser of, or any successor to the interest of ASARCO in, the entire Mission Mine (consisting of the Tract II Mining Lease, the Tract III Business Leases, the Well Site Lease, fee lands owned by ASARCO, and lands rented by ASARCO from the State of Arizona) regardless of whether the purchase or succession is made pursuant to a confirmed plan of reorganization.

c. Simultaneously with the release of the St. Paul Bonds, as described in subparagraph 5.b., ASARCO shall obtain a performance bond or equivalent financial assurance to secure ASARCO's rental and royalty obligations on those leases in an amount of \$820,000.

d. On the Effective Date of the Agreement, the claim of the United States for prepetition royalties that the Non-ASARCO parties allege are due under the Tract I Mining Lease and 1971 Settlement Agreement shall be allowed as a general unsecured claim in the amount of \$225,000, for the use and benefit of the Landowners.

No other pre-petition claims of the Non-ASARCO Parties other than those listed in subparagraphs 6.d. and 6.e. will be allowed.

e. Within ten (10) days after the Effective Date, ASARCO shall pay the United States, for the use and benefit of the Landowners, \$172,755.53 in cash as a cure payment for prepetition royalties and penalties that the Non-ASARCO parties allege are due under the Tract II Mining Lease and 1971 Settlement Agreement. The Non-ASARCO Parties stipulate that, once the above sum is paid (except for any subsequent audits that might need to be performed in the ordinary course of business during the post-petition period with respect to royalty calculations), as of the Effective Date, there are no other defaults under the Tract II Mining Lease, Tract III Business Leases or 1971 Settlement Agreement that are not being cured to allow assumption of those leases and the 1971 Settlement Agreement pursuant to this Agreement.

f. Within ten (10) days after the Effective Date, ASARCO will dismiss its objection to claims and motion to estimate the claims of the Non-ASARCO Parties and will dismiss with prejudice Adversary No. 06-2078-C. Within ten (10) days after the Effective Date, ASARCO will dismiss the Office of Trust Funds Management, U.S. Department of the Interior, as a defendant with prejudice in Adversary No. 07-2059-C.

g. Within ten (10) days after the Effective Date, ASARCO shall deposit \$33 million into an escrow account ("Account") which shall be managed in accordance with the requirements contained in Exhibit E, attached hereto, for the purpose of funding the implementation of the mine reclamation component of the agreed mining and reclamation plan ("MARP") which is attached hereto as Exhibit F. If the deposit does not occur until after January 31, 2008 as a result of good faith delays, ASARCO shall increase the amount of the deposit above \$33 million to account for inflation by \$2,600 per day for each day starting on and including February 1, 2008 until the date of the deposit. Upon the deposit of funds into the Account, ASARCO shall commence the work necessary to implement the mine reclamation component of the MARP as soon as possible. ASARCO shall perform this work in accordance with the terms of the MARP and the budgets approved by the Panel described in Exhibit E.

h. As ASARCO performs the work necessary to implement the mine reclamation component of the MARP, it will be reimbursed from the Account for its actual and necessary expenses in performing said work, in accordance with the procedure described in Exhibit E. The obligation to perform the reclamation work necessary to implement the MARP shall continue until the MARP is fully implemented or the Account is exhausted, whichever occurs first. In the event that the Account is exhausted before all of the reclamation work is completed, then ASARCO shall be relieved of any obligation to complete the reclamation component of the MARP.



i. Within thirty (30) days after the Effective Date, ASARCO shall send a notice to the Bureau of Land Management formally withdrawing all mine plans of operation and corresponding reclamation plans for Tracts I, II and III that ASARCO submitted to the Bureau prior to the execution of this Agreement.

j. Within sixty (60) days after the Effective Date, ASARCO shall make a submission to the Arizona Department of Environmental Quality ("ADEQ") under A.A.C. § R18-9-106 (2007) to determine the scope of the aquifer protection permit ("APP") application required under the 1997 Intergovernmental Agreement ("IGA") with the ADEQ. Subject to the ADEQ's determination, ASARCO shall within ninety (90) days after the ADEQ's determination submit to the ADEQ an administratively complete application for an APP in accordance with, and which shall be treated in accordance with, the IGA. As part of the APP application, ASARCO shall submit all data from groundwater sampling locations on or adjacent to the San Xavier Reservation collected by or on behalf of ASARCO as of the date of the application, including, but not limited to, the test results from Turner Laboratories, Inc. of the six samples taken on October 25, 2007. The IGA provides that the ADEQ will forward copies of ASARCO's APP submittals to the Nation, the District, the Bureau of Land Management and the Bureau of Indian Affairs, but ASARCO shall provide any such submittals directly to a Non-ASARCO Party upon reasonable request. Until closure of the Mission Mine Complex, ASARCO shall submit to the District all data collected after the submission of the APP application from groundwater sampling locations on or adjacent to the San Xavier Reservation by or on behalf of ASARCO.

k. Upon the Effective Date of the Agreement, ASARCO shall implement the stormwater control construction and maintenance measures specified in the Order of the United States Environmental Protection Agency dated June 20, 2002, the corresponding National Pollution Discharge Elimination System permit in effect as of February 22, 2008, the Stormwater Pollution Prevention Plan ("SWPPP") dated August 2, 2002, and the SWPPP Addendum dated June 14, 2003, all of which are attached hereto as Exhibit G (collectively "the Stormwater Documents"). ASARCO shall, at its sole cost and expense, complete the construction measures specified in the Stormwater Documents within one (1) year after the Effective Date of the Agreement. ASARCO shall maintain the constructed stormwater controls as long as ASARCO is mining or performing reclamation on any part of the Mission Mine Complex, whether or not said mining or reclamation is occurring on ASARCO-owned land or land of the Landowners. ASARCO's maintenance of the stormwater controls shall be subject to the oversight of the Quality Assurance Inspector described in Exhibit E. The Quality Assurance Inspector periodically shall inspect the stormwater controls and shall monitor how they function after significant rainfalls. ASARCO shall perform any construction or repair necessary to correct any deficiencies in the operation of the stormwater controls documented by the Quality Assurance Inspector, including any necessary corrective measures on the waste piles for proper operation of the stormwater controls. Nothing in this Agreement affects



ASARCO's procedural due process rights and substantive rights under the Clean Water Act, including, but not limited to, ASARCO's right to challenge in a federal administrative or judicial proceeding the applicability of Sections 402 and 404 of the Clean Water Act to ASARCO's operations and physical disturbance resulting from those operations on Tracts I, II and III; *provided, however*, that any such challenge shall not diminish ASARCO's contractual obligation under this Agreement to implement the stormwater control construction and maintenance measures specifically described in this subparagraph.

7. The Parties agree that, as to and specifically concerning ASARCO's past, present and future mining and related operations and physical disturbance resulting from those operations within the operational "Footprint" on Tracts I, II and III, defined and depicted in Exhibit H attached hereto, the Parties' performance of their obligations under Paragraphs 5 and 6 shall: (i) satisfy current federal mining and reclamation regulations; (ii) satisfy current mining and reclamation obligations imposed by the Leases; and (iii) satisfy the United States' trust obligation to the Landowners with respect to reclamation required to be performed within the Lease boundaries.

a. In satisfying its trust obligation to the Landowners, the United States' involvement in the implementation of the Agreement does not extend to granting approvals or making decisions and shall be limited to monitoring and providing recommendations to the Landowners and ASARCO concerning matters associated with the performance of the work described in the MARP and the management and disbursement of monies from the Account. This paragraph does not limit the United States' ability to enforce the Agreement in accordance with Paragraph 11.

b. As to and specifically concerning future mining and related operations conducted by ASARCO and physical disturbance resulting from those operations outside the operational "Footprint" on Tracts II and III, nothing in this Agreement shall prevent the application of federal mining and reclamation obligations, and the National Environmental Policy Act and Endangered Species Act and implementing regulations; *provided, however*, that ASARCO continues to reserve its rights to challenge the applicability of the statutes and regulations.

c. Nothing in this Agreement shall affect ASARCO's rental and royalty payment obligations or any other obligations not specifically addressed or released under this Agreement with respect to the Tract II Mining Lease, the Tract III Business Leases, and the 1971 Settlement Agreement, including but not limited to ASARCO's obligation to maintain accurate monthly statements of its mining operations, submit monthly production and royalty reports to the Bureau of Land Management and the Bureau of Indian Affairs, conduct at its own expense annual audits of its operations, and allow the Minerals Management Service to review its accounting pursuant to federal regulations. Nothing in this paragraph or other provisions of this Agreement shall operate to relieve

ASARCO of its obligations under the 1971 Settlement Agreement. ASARCO agrees that it is fully bound by the 1971 Settlement Agreement, and (absent a contrary future agreement by the Parties) shall continue to satisfy all of its obligations under the 1971 Settlement Agreement.

8. The Parties understand and intend that because ASARCO needs to perform work on Tract I in order to implement the MARP and perform other obligations under this Agreement, ASARCO shall do so to the extent necessary, pursuant to the Access Agreement executed by certain of the Parties on April 13, 2007 and corresponding Tribal Council Resolution numbers 07-192 and 07-562, attached hereto as Exhibit I. The Parties also understand and intend that, if, following the expiration of the Tract II Mining Lease or a Tract III Business Lease, ASARCO needs to perform work on that tract in order to implement the MARP or perform other obligations under this Agreement, then the Parties shall work together to accord ASARCO the necessary access to that tract, under an access agreement in substance identical to that provided in Exhibit I. If access to other land or water not owned or controlled by either Party or both Parties is necessary to implement the MARP or perform other obligations under this Agreement, then the Parties shall work together to grant or secure such access.

9. The Parties understand and agree that, if a Non-ASARCO Party, a Landowner, or a member of the Nation, District or Allottees Association tampers with or otherwise engages in unlawful conduct that delays progress on ASARCO's implementation of the mine reclamation component of the MARP (hereinafter "the Injury"), then the cost of remedying the Injury shall be payable from the Account as if it is a cost of implementing the mine reclamation component of the MARP.

10. The Parties' execution of this Agreement shall not constitute an admission of liability and shall not bind the Parties except to the extent necessary to implement and give full faith and credit to the Agreement.

11. The Parties agree that, once the Agreement becomes effective: (a) any Party may file suit against any other Party in the Bankruptcy Court to interpret this Agreement and to enforce the Agreement (which includes a suit to enforce the terms of Exhibit E); (b) if and only if the Bankruptcy Court declines jurisdiction or is determined to lack jurisdiction, then such lawsuits may be brought by and against any and all Parties in the Federal District Court for the Southern District of Texas, Corpus Christi Division or the Federal District Court for the District of Arizona. The Nation and District by their execution of this Agreement hereby provide a waiver of sovereign immunity limited solely to actions to enforce or interpret this Agreement in the Bankruptcy Court or Federal District Court for the District of Arizona, and limited solely to declaratory and injunctive relief and not including money damages, attorney fees, court costs or any other costs, damages or remedy of any other kind. No Party shall argue or assert independently that the Nation's sovereign immunity is waived beyond such express waiver. This waiver

shall terminate at the time that all performance obligations of the Parties under this Agreement are satisfied. The United States agrees that it shall not assert failure to exhaust administrative or tribal judicial remedies as a defense against a lawsuit brought by ASARCO under this paragraph, unless specifically required by an Act of Congress or federal regulations. The United States reserves the right to assert sovereign immunity as a defense against a lawsuit under this paragraph in any forum. ASARCO reserves the right to oppose assertions of sovereign immunity by the United States and to argue that there are no applicable administrative remedies that must be exhausted before bringing a lawsuit to enforce the Agreement.

12. The Parties are aware of canons of interpretation where ambiguities in contracts are resolved by courts in favor of a party based upon status such as that of an Indian Tribe or of a drafter. Such canons notwithstanding, counsel for the Parties have negotiated, read and approved the language of this Agreement, and agree the language shall be construed in its entirety according to its fair meaning and not strictly or necessarily for or against any of the Parties, who have worked together in preparing the final version of this Agreement.

13. This Agreement shall bind and inure to the benefit of the Parties' successors and assigns. The Agreement shall be binding upon any purchaser of the Mission Mine (consisting of the Tract II Mining Lease, the Tract III Business Leases, the Well Site Lease, fee lands owned by ASARCO, and lands rented by ASARCO from the State of Arizona). ASARCO will provide in its plan of reorganization that this Agreement is part of that plan of reorganization and it will be a condition precedent to confirmation of any such plan that this Agreement is assumed by any purchaser under that plan of reorganization. The Non-ASARCO Parties hereby consent to the assumption and assignment of this Agreement, and all agreements (including the Unexpired Agreements) related to any such purchase, and will execute any and all consents or assignments necessary to effectuate such assumption and assignment.

14. If, subsequent to the Effective Date, any material part of the Agreement is determined by a court of competent jurisdiction to be unlawful and unenforceable and the Parties cannot agree on an amendment of the Agreement to address the court's determination, then, at any Party's election, the Agreement shall be rescinded; the residual dollar value of the Account shall be disbursed to ASARCO in accordance with the below distribution scheme; and the Parties' rights and obligations concerning Tracts I, II and III shall, if necessary, be resolved in the courts described in Paragraph 11. If rescission occurs as described above, the Non-ASARCO parties will return to ASARCO all funds deposited in the Account, plus any securities purchased by the manager of the Account in accordance with Exhibit E, plus accrued interest *less* (i) any amounts expended in implementing the mine reclamation component of the MARP and (ii) the face amount (\$11,654,896) of the St. Paul Bonds. Upon return of these funds to ASARCO, the manager of the Account will deliver the balance of the Account to the

Department of the Interior and it will hold the cash transferred to it in replacement of the St. Paul Bonds. ASARCO has the right at any time to substitute equivalent replacement collateral or to provide other equivalent financial assurance in place of the St. Paul Bonds, at which time the United States will refund to ASARCO an amount equal to the face amount of the St. Paul Bonds.

15. Provided they all agree to do so, the Parties may, from time to time, amend this Agreement, including without limitation provisions relating to the MARP and Account to satisfy the purposes of the Agreement and plan of reorganization, and provided the amendment does not frustrate the purposes of the Agreement and plan of reorganization. Under such an amendment, all provisions of the Agreement not affected by the amendment shall continue to have force and effect as if an amendment had not occurred.


16. This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof and there are no agreements, understandings, representations or warranties between the Parties, written or oral, with respect to the subject matter hereof other than those set forth or referred to herein.

17. This Agreement may be executed in counterparts, by either an original signature or signature transmitted by facsimile transmission or other similar process and each copy so executed shall be deemed to be an original and all copies so executed shall constitute one and the same agreement.

18. Exhibits A-I, attached hereto, are incorporated fully as part of this Agreement.

AGREED TO BY THE PARTIES, AS FOLLOWS:

UNITED STATES OF AMERICA

 3-14-08  
Signature Date

John T. Stanglewicz Senior Trial Counsel  
Name Title

TOHONO O'ODHAM NATION

[Signature] 03/10/2008  
Signature Date

Ned Norris, Jr. Chairman  
Name Title

SAN XAVIER DISTRICT

[Signature] 3/13/08  
Signature Date

Arstin Nuñez Chairman  
Name Title

SAN XAVIER ALLOTTEES ASSOCIATION

Philbert Bailey March 14, 2008  
Signature Date

Philbert Bailey Chairman  
Name Title

ASARCO LLC

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Name Title

\_\_\_\_\_  
Name Title

**TOHONO O'ODHAM NATION**

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Name Title

**SAN XAVIER DISTRICT**

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Name Title

**SAN XAVIER ALLOTTEES ASSOCIATION**

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Name Title

**ASARCO LLC**

Th L Aldrich 3/12/08  
Signature Date

Thomas L. Aldrich VP Env. Affairs  
Name Title

D E McAllister 3/12/08  
Signature Date

Douglas E. McAllister, Executive Vice President  
Name Title



The exhibits to the Mission Mine Settlement Agreement are voluminous, and are not attached. Please contact Rory Fontenla at 214.953.6648; [rory.fontenla@bakerbotts.com](mailto:rory.fontenla@bakerbotts.com) or Mary Gregory at 713.229.1138; [mary.gregory@bakerbotts.com](mailto:mary.gregory@bakerbotts.com) to request copies of these documents.

**EXHIBIT 15-B**

**AMENDMENT TO SETTLEMENT AGREEMENT  
MISSION MINE LEASES**

WHEREAS, on or about March 14, 2008, the Tohono O'Odham Nation (the "Nation"), the San Xavier District (the "District"), the San Xavier Allottees Association (the "Allottees Association"), the United States of America, on behalf of the Department of the Interior, in its capacity as trustee on behalf of certain owners of interests in trust allotments (the "United States") and ASARCO LLC ("ASARCO") (collectively, the "Parties") executed that certain Settlement Agreement—Mission Mine Leases (the "Settlement Agreement").

WHEREAS, on April 9, 2008, the United States Bankruptcy Court for the Southern District of Texas approved the terms of the Settlement Agreement and the Parties implemented the Settlement Agreement.

WHEREAS, it has become necessary to amend the Settlement Agreement to reflect further agreements among the Parties.

IT IS, THEREFORE, AGREED that:

1. All terms of the Settlement Agreement shall remain the same and are incorporated herein by reference, except as specifically modified by this Agreement.
2. Exhibit E of the Settlement Agreement is replaced with the attached Exhibit E.
3. Exhibit H of the Settlement Agreement is replaced with the attached Exhibit H.
4. Exhibit F of the Settlement Agreement remains the same except that a) Figures 12a, 12b and 12c of the MARP are replaced with the attached Figures 12a, 12b and 12c; and b) Figure 15 of the MARP is replaced with the attached Figure 15.

SIGNED this 1st day of July, 2008.

**UNITED STATES OF AMERICA**

Beth E. Cook      7/1/08  
Signature                      Date

Beth E. Cook      Trial Attorney  
Name                      Title

**TORONTO O'DONHAM NATION**

Signature

Date

**Ned Norris, Jr.**

**Chairman**

Name

Title

**SAN XAVIER DISTRICT**

Signature

Date

Name

Title

**SAN XAVIER ALLOTTEES ASSOCIATION**

Signature

Date

Name

Title

**ASARCO LLC**

Signature

Date

Name

Title

TOHONO O'ODHAM NATION

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Name Title

SAN XAVIER DISTRICT

AA 7/1/08  
Signature Date

ASTW NUNEZ, Chairman  
Name Title

SAN XAVIER ALLOTTEES ASSOCIATION

Philbert Bailey July 2, 2008  
Signature Date

Philbert Bailey President  
Name Title

ASARCO LLC

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Name Title

**TOHONO O'ODHAM NATION**

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Name Title

**SAN XAVIER DISTRICT**

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Name Title

**SAN XAVIER ALLOTTEES ASSOCIATION**

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Name Title

**ASARCO LLC**

D. E. McAllister July 1, 2008  
Signature Date

D. E. McAllister, Exec. V.P.  
Name Title



The exhibits to the Mission Mine Settlement Agreement and the amendment thereto are voluminous, and are not attached. Copies of the exhibits are available at the Debtors' restructuring website at [www.asarcoreorg.com](http://www.asarcoreorg.com).

PLAN EXHIBIT 16

LIST OF CLASS 2 SECURED CLAIMS

## PLAN EXHIBIT 16-A

## SECURED TAX CLAIMS

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

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

## PLAN EXHIBIT 16-B

## LIST OF OTHER CLASS 2 SECURED CLAIMS

<u>Creditor</u>	<u>File Number or Proof of Claim Number</u>	<u>Original File Date</u>	<u>Date Debt Incurred</u>	<u>Collateral</u>	<u>Asserted Secured Amount</u>
Air Liquide Industrial US LP	22821126, 20082920608200, 90405107	02/14/2005 8/27/2008 02/06/2009	n/a	Leased equipment	None Listed
Arthur Anderson LLP	3511	12/13/2005	02/25/2003	Equitable lien on tax recovery	Subject to abated avoidance action, No. 07-02053
Co. Dept. of Public Health	10408	07/25/2006	Blank	\$8.6mm trust fund on deposit with Wells Fargo	Unliquidated
Co. Division of Minerals	10405	07/25/2006	Blank	Deed of trust recorded in favor of the Mined Land Reclamation Board on August 15, 2002 and \$2,233,400.00 is secured by a reclamation bond	\$4,114,000.00
H&E Equipment Services L.L.C.	200513751712	07/07/2005	n/a	Leased equipment, repairs, replacements, additions thereto and proceeds thereof	None Listed
Hovson, Inc. & Heritage Minerals, Inc. <sup>1</sup>	17772	01/05/2007	06/22/1995	Proceeds of Letter of Credit	\$1,061,773.54 Subject to abated avoidance action, No. 07-02053
Komatsu Financial Limited Partnership	22545145, 10413	08/31/2004 07/27/2006	08/12/2004	One Komatsu 930E-1 Mining Truck	Paid Current
Minera Mexico International, Inc.	50742883, 200513591058, 11067	03/08/2005 04/01/2005 08/01/2006	12/15/2003	Copper, silver and gold of Creditor held in bailment by Debtor	\$4,621,190.00 Subject to abated avoidance action, No. 07-02064

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

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

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

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

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

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



**PLAN EXHIBIT 17**  
**SPT SETTLEMENT AGREEMENT**

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

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

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**SETTLEMENT AGREEMENT AND MUTUAL RELEASE**

This Settlement Agreement ("Agreement") is entered into by and among Seaboard Surety Company ("Seaboard"), St. Paul Fire & Marine Insurance Company ("SPFM" and, together with Seaboard, "SPT"), and the above-captioned debtors (the "Debtors") (SPT and the Debtors each shall be referred to herein individually as a "Party" and collectively as the "Parties").

**RECITALS**

A. On August 9, 2005 (the "Petition Date"), ASARCO LLC, a Delaware limited liability company and one of the above-captioned debtors ("ASARCO") filed a petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of Texas (the "Bankruptcy Court"). Pursuant to an order of the Bankruptcy Court dated August 12, 2005, ASARCO's chapter 11 case has been procedurally consolidated for administrative purposes with the chapter 11 cases of certain of its subsidiaries who had also filed chapter 11 petitions for relief.

B. Prior to the Petition Date, SPT, as surety, issued certain surety bonds on behalf of ASARCO, as principal, including, without limitation, surety bonds numbered 420669,

420670, 420668, 143432, 297126, 297127 and 396702 (the "Mission Bonds") in favor of the United States of America or the United States Department of Interior, Bureau of Indian Affairs. The Mission Bonds bonded certain of ASARCO's obligations relating to its mining operations on land owned by the San Xavier Reservation (the "Mission Mine"). The aggregate penal sum<sup>1</sup> of the Mission Bonds is \$11,654,896.

C. In addition to the Mission Bonds, Seaboard also issued surety bonds numbered 403998, 394729, 133771, 142706 and 403855 (the "Flow Through Bonds") on behalf of ASARCO, as principal, in order to bond ASARCO's obligations to various other entities. The aggregate penal sum amount of the Flow Through Bonds is \$12,357,861.

D. Seaboard also issued surety bond #386149 (the "Deming Bond") on behalf of ASARCO, as principal, in favor of the Mining and Minerals Division of the Energy, Minerals and Natural Resources Department of the State of New Mexico, to bond ASARCO's reclamation obligations at the Deming Mill Mine, Luna County, New Mexico. The total penal sum of the Deming Bond is \$850,000.

E. On April 10, 2001, Seaboard, as surety, issued surety bond number 408788 (the "TCEQ Bond") on behalf of ASARCO, as principal, in favor of the Texas Commission on Environmental Quality (successor to the Texas Natural Resource Conservation Commission) (the "TCEQ") to bond ASARCO's obligations to comply with permit requirements relating to three injection wells identified by ASARCO as W.D.W. 129, W.D.W. 273, and W.D.W. 324. The original penal sum amount of the TCEQ Bond was \$501,163.

F. On or about May 9, 2005, Seaboard sent a Cancellation Notice to the TCEQ

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<sup>1</sup> The "penal sum" of a surety bond represents the maximum amount that the surety could be liable to

(Cont'd on following page)

regarding the TCEQ Bond. The Cancellation Notice provided that cancellation of the TCEQ Bond would be effective on September 8, 2005 (the "Cancellation Date").

G. By letter dated August 23, 2005, the TCEQ made a demand against Seaboard under the TCEQ Bond for the full penal sum amount (the "August Demand Letter").

H. On December 12, 2005, Seaboard paid the TCEQ \$501,163 -- the full penal sum of the TCEQ Bond. These funds were then placed into a trust fund pursuant to Texas statute section 37.161 and 37.201. 30 Tex. Admin. Code §§ 37.161 and 37.201.

I. On January 12, 1999, SPFM, as surety, issued bond number 400KA1234 (the "ORIC Bond") and together with the Mission Bonds, the Flow Through Bonds and the TCEQ Bond (but excluding the Deming Bond), the "Bonds") on behalf of ASARCO, as principal, in favor of Old Republic Insurance Company ("ORIC"). The penal sum of the ORIC Bond is \$6,000,000.

J. ORIC issued certain workers' compensation and employers' liability insurance policies to ASARCO for the periods beginning February 1, 1990 through March 15, 2003 (the "Policies"). The ORIC Bond secures, up to the penal sum amount, ASARCO's obligations to pay a deductible of \$500,000 to \$2,000,000 (depending on the policy year) with respect to each incident covered under these Policies.

K. ASARCO's Policy obligations were also supported in part by a letter of credit posted by ASARCO in favor of ORIC in the amount of \$289,415.00 (the "LC"). On November 1, 2002, ORIC drew the entire amount of the LC and deposited the proceeds into an interest

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(Cont'd from preceding page)

the obligee on the surety bond.

bearing letter of credit account.

L. Lastly, ASARCO's Policy obligations were supported by funds held by ORIC in the amount of \$769,700, which were paid to ORIC by ASARCO as additional security for the amounts that would be due to ORIC (the "Imprest Funds").

M. On or about November 23, 2005, ASARCO notified ORIC that ASARCO would no longer pay its obligations under the Policies and related agreements. Thereafter, ORIC made an informal demand on SPT, pursuant to the terms of the ORIC Bond, requesting that SPT pay ORIC the full penal sum amount of the ORIC Bond of \$6,000,000.

N. On August 23, 2006, SPT and ORIC entered into a settlement agreement (the "ORIC Settlement") and, in connection therewith, SPT paid ORIC \$2,770,392.54 as an initial payment under the ORIC Bond.

O. In connection with the issuance of the Bonds and the Deming Bond, ASARCO executed and delivered to SPT a General Agreement of Indemnity dated October 19, 1993 (the "Indemnity Agreement"), pursuant to which ASARCO is required to pay all premiums and indemnify SPT and hold SPT harmless against "all liability, losses, costs, damages, attorneys' fees, disbursements and expenses of every nature which the Surety may sustain or incur by reason of having executed or procured the execution of any such Bonds..." The Indemnity Agreement is a valid and binding obligation of ASARCO which shall continue in full force and effect subject to Paragraph 6 below.

P. On July 28, 2006, SPT filed the proof of claim numbered 10546 (the "Proof of Claim") in the above-captioned bankruptcy cases (the "Bankruptcy Cases") asserting claims of indemnification and subrogation against ASARCO in connection with SPT's liabilities under the Bonds and the Deming Bond.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained in this Agreement, the receipt and adequacy of which are hereby mutually acknowledged, and intending to be legally bound hereby, the Parties hereby agree as follows:

1. The foregoing recitals are incorporated herein as if fully set forth in the text of this Agreement.

2. Effective Date. This Agreement shall not be effective until the date (the "Effective Date") on which both of the following events have occurred: (a) the Bankruptcy Court approves this Agreement pursuant to a Final Order; and (b) the Bankruptcy Court approves pursuant to a Final Order a settlement agreement (the "Mission Mine Agreement") by and among the Tohono O'odham Nation, the San Xavier District, the San Xavier Allottees Associates, the United States of America, on behalf of the Department of the Interior, including the Bureau of Land Management, Bureau of Indian Affairs ("BIA"), and Minerals Management Service, in its capacity as trusts of the interests of certain landowners (the "United States") and the Debtors which requires the United States (on behalf of the BIA) to, *inter alia*, release the Mission Bonds in exchange for the Payment (defined below) and certain payments to be made by ASARCO under the Mission Mine Agreement. For purposes of this paragraph, a "Final Order" means an order of the Bankruptcy Court which has not been reversed, stayed, modified or amended and as to which (a) any appeal taken, or petition for certiorari or motion for rehearing or reconsideration that has been filed, has been finally determined or dismissed in a manner that does not affect the terms of this Agreement or (b) the time to appeal, seek certiorari or move for reconsideration or rehearing has expired and no appeal, petition for certiorari or motion for reconsideration or rehearing has been timely filed.

3. Mission Bonds. Within five (5) business days after the Effective Date, SPT

shall pay ASARCO \$1,300,000 (the "Payment"). ASARCO hereby acknowledges and agrees that the Payment is attributable solely to, and in satisfaction of, ASARCO's reclamation obligations covered by the Mission Bonds.

4. TCEQ Bond. SPT is hereby granted, without any further order of the Bankruptcy Court or any further action required of or by SPT, an allowed administrative expense claim against ASARCO in the amount of \$501,163 with respect to SPT's payment on the TCEQ Bond.

5. ORIC Bond. Upon the Effective Date, (i) the automatic stay shall be lifted without further court order and to the extent applicable to permit ORIC to apply the Imprest Funds against its claims against ASARCO, and (ii) SPT shall be granted an allowed general unsecured claim (the "Allowed Unsecured Claim") in the amount of \$2,310,392.54 against ASARCO, which reflects (x) SPT's initial ORIC Bond payment less the Imprest Funds plus (y) past due premiums owed by ASARCO related to the ORIC Bond. Upon the Effective Date, the Proof of Claim shall automatically, and without any further order of the Bankruptcy Court or any further action required of or by SPT, be deemed allowed in the amount of \$2,310,392.54.

6. Flow Through Bonds. Upon the United States' release of the Mission Bonds in accordance with the terms of the Mission Mine Agreement, ASARCO and SPT agree that each entity's respective rights and obligations under and relating to the Flow Through Bonds and any other bonds that may subsequently be issued and covered by the Indemnity Agreement, including, without limitation, each entity's respective rights and obligations under the Indemnity Agreement (which includes, without limitation, indemnification of liability, losses, costs, damages, attorneys' fees, disbursements and expenses of every nature) as it relates solely to the Flow Through Bonds and any other bonds that may subsequently be issued and covered by the



Indemnity Agreement, shall remain valid and enforceable during the Bankruptcy Cases and following confirmation of any plan of reorganization and ASARCO's emergence from the Bankruptcy Cases.

7. ASARCO shall ensure that any plan of reorganization it either proposes or consents to contains a provision stating that ASARCO's obligations under and relating to the Flow Through Bonds and the Indemnity Agreement as it relates to the Flow Through Bonds are not discharged upon confirmation of any plan of reorganization or upon ASARCO's emergence from the Bankruptcy Cases.

8. SPT will not terminate the Flow Through Bonds or seek to collateralize the Flow Through Bonds unless (a) there is a default on the underlying obligations secured by the Flow Through Bonds, (b) ASARCO is no longer the principal obligor under the Flow Through Bonds (as a result of a sale or otherwise), (c) there is a claim made on the Flow Through Bonds by the proper obligee, (d) ASARCO fails the financial test described in paragraph 10 below, (e) ASARCO fails to timely pay SPT premiums relating to the Flow Through Bonds as such premiums come due or (f) ASARCO and SPT agree to such termination or collateralization of the Flow Through Bonds. Notwithstanding the foregoing, if the underlying obligations secured by the Flow Through Bonds are satisfied in full, then SPT may terminate the Flow Through Bonds.

9. Reporting Requirements. ASARCO shall furnish: (a) within one hundred twenty (120) days after the end of each fiscal year, its audited consolidated balance sheet, related profit and loss, consolidated statement of shareholders' equity, and a statement of cash flows (collectively, "Financial Statements") as of the end of such fiscal year, setting forth in each case the figures for the previous fiscal year, all reported by independent public accountants of

recognized national standing (without a "going concern" or like qualification or exception and without any qualification or exception as to the scope of such audit); and (b) within forty-five (45) days after the end of each of the fiscal four quarters of each fiscal year, its unaudited Financial Statements as of the end of such quarter and then elapsed portion of the fiscal year, setting forth in each case the figures for the corresponding period or periods of the previous fiscal year. With each of the Financial Statements required pursuant to (a) and (b) above, the Chief Financial Officer of ASARCO shall execute and provide a certificate (the "Officer's Certificate") certifying: (1) that the Financial Statements present fairly in all material respects the financial condition and results of operations of ASARCO and its subsidiaries on a consolidated basis in accordance with Generally Accepted Accounting Principles (GAAP) consistently applied; (2) whether ASARCO is in compliance with or in default of the covenant provided by Paragraph 10 below; and (3) the calculation used to determine compliance.

10. In the event that (1) ASARCO fails to deliver the Financial Statements and the Officer's Certificate within forty-five (45) days after the end of any fiscal quarter; and/or (2) ASARCO's Net Working Capital Ratio (as described below) is less than five (5), ASARCO shall be obligated to immediately (i) provide collateral to SPT in the full penal sum amount of the Flow Through Bonds or (ii) find replacement security and effectuate a release of the Flow Through Bonds; provided, that, if ASARCO fails to comply with its obligations under (i) or (ii) herein, then SPT shall have the right to terminate the Flow Through Bonds in accordance with the terms thereof. Net Working Capital is calculated by the following formula: the Current Liabilities of ASARCO will be subtracted from the Current Assets of ASARCO (excluding prepaid expenses), and the resulting number will then be divided by \$12,357,861 (the combined penal sum of the Flow Through Bonds). Current Assets and Liabilities of ASARCO will be

taken from ASARCO's most recent Consolidated Balance Sheet and the Net Working Capital Ratio will be recalculated quarterly.

11. Deming Bond. Nothing in this Agreement shall have any impact on the Deming Bond or either of the Parties' rights, claims, obligations or defenses related to the Deming Mine Bond or arising thereunder (including the Indemnity Agreement as it relates to the Deming Mine Bond).

12. Seaboard may file a new proof of claim (the "Deming Mine Proof of Claim") solely with respect to the Deming Mine Bond within 20 days after approval of this Agreement by the Bankruptcy Court, and such proof of claim shall be deemed to be timely filed. Other than an objection based on the Deming Mine Proof of Claim being untimely, all of ASARCO's rights to object to the Deming Mine Proof of Claim are fully reserved.

13. Except as otherwise provided herein, nothing herein shall constitute a waiver of any defenses Seaboard may have to making payment on any of the Bonds or Deming Bond.

14. Releases. Except with respect to the obligations set forth herein, upon the Effective Date, the Debtors and each of their respective representatives, directors, officers, partners, affiliates, successors and assigns, in their capacity as such, shall be deemed to have settled and released SPT and its representatives, directors, officers, partners, affiliates, successors and assigns, in their capacity as such, with respect to any and all claims, lawsuits, causes of action, and/or obligations arising out of or relating to in any way to the Bonds. Except with respect to the obligations set forth herein, upon the Effective Date, SPT and its representatives, directors, officers, partners, affiliates, successors and assigns, in their capacity as such, shall be deemed to have settled and released the Debtors and each of their respective representatives, directors, officers, partners, affiliates, successors and assigns, in their capacity as

such, with respect to any and all claims, lawsuits, causes of action, and/or obligations arising out of or relating to in any way to the Bonds.

15. No Prejudice to Parties. If this Agreement does not become effective pursuant to paragraph 2 hereof, (a) this Agreement shall be deemed null and void; (b) none of the Parties to the Agreement shall be deemed to have waived any rights, claims and/or defenses that it may have had that existed before the execution of the Agreement; (c) the Parties shall be restored to their respective positions immediately before execution of the Agreement; and (d) neither this Agreement nor any exhibit, document, or instrument delivered hereunder, nor any statement, transaction, or proceeding in connection with the negotiation, execution, or implementation of the Agreement, shall be (i) with prejudice to any person or party herein, (ii) deemed to be or construed as an admission by any of the Parties herein of any act, matter, proposition, or merit or lack of merit of any claim or defense, or (iii) referred to or used in any manner or for any purpose in any subsequent proceeding in this action, or in any other action in any court or in any other proceeding.

16. Evidentiary Limitations. This Agreement is being entered as part of a global settlement. The promises and covenants set forth herein are made for purposes of compromise only and do not constitute an admission of liability by any Party for the amounts asserted and/or the theories of recovery available to the Lenders. As such, this Agreement is subject to all of the limitations of Federal Rule of Evidence 408 and shall not be admissible as evidence in any hearing with respect to any dispute between the Parties.

17. Jurisdiction Over Disputes. All disputes arising among the Parties under the Agreement, or any document entered pursuant hereto, shall, prior to the issuance of a final decree from the Bankruptcy Court closing the Bankruptcy Cases, be resolved by the United States

disputes.

IN WITNESS WHEREOF, the Parties have signed this Agreement in multiple counterparts.

ASARCO LLC

By: Thomas L. Adreot  
[Name] Thomas L. Adreot

Its: VP Env. Affairs  
[Title]

By: Douglas E. McAllister  
[Name] Douglas E. McAllister

Its: Executive Vice President  
[Title]

3/12/08

SEABOARD SURETY COMPANY and ST.  
PAUL TRAVELERS AND MARINE  
INSURANCE COMPANY

By: \_\_\_\_\_  
Robert Scanlon

Its: \_\_\_\_\_

Date: \_\_\_\_\_

Bankruptcy Court for the Southern District of Texas which has exclusive jurisdiction over such disputes.

IN WITNESS WHEREOF, the Parties have signed this Agreement in multiple counterparts.

ASARCO LLC

By: \_\_\_\_\_  
[Name]

Its: \_\_\_\_\_  
[Title]

By: \_\_\_\_\_  
[Name]

Its: \_\_\_\_\_  
[Title]

SEABOARD SURETY COMPANY and ST.  
PAUL TRAVELERS AND MARINE  
INSURANCE COMPANY

By: Robert Scanlon  
Robert Scanlon

Its: Senior Claim Counsel

Date: 3/6/08

