

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

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

**FIRST~~SECOND~~ AMENDED JOINT PLAN OF REORGANIZATION FOR THE
DEBTORS UNDER CHAPTER 11 OF THE UNITED STATES BANKRUPTCY CODE**

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INJUNCTIONS

This plan of reorganization provides, in certain circumstances, for the issuance of a channeling injunction regarding asbestos claims and demands asserted against the ASARCO Protected Parties, *see* Article 12.3(a), and the issuance of an injunction in favor of Settling Asbestos Insurance Companies, *see* Article 12.3(b).

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EXHIBITS TO THE PLAN

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

ASARCO LLC and the Subsidiary Debtors, as the debtors and debtors in possession, respectfully propose the following joint plan of reorganization pursuant to section 1121(a) of the Bankruptcy Code.

ARTICLE I

DEFINITIONS, RULES OF INTERPRETATION, AND COMPUTATION OF TIME

1.1 Defined Terms. Capitalized terms used in this Plan have the meanings set forth in the Glossary, which is Exhibit A to the Disclosure Statement. 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) will apply.

ARTICLE II

TREATMENT OF ADMINISTRATIVE CLAIMS, PRIORITY TAX CLAIMS AND DEMANDS

2.1 Administrative Claims. Each holder of an Allowed Administrative Claim (except any holder that agrees to 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 Administrative Claim of ASARCO against the Asbestos Subsidiary Debtors under the Secured Intercompany DIP Credit Facility shall be credited against ASARCO's \$750 million contribution to the Asbestos Trust. 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 pursuant to this Plan. The Settling Asbestos Insurance Companies shall each have an Allowed Administrative Claim for the Pre-524(g) Indemnity (as such term is defined in the Asbestos Insurance Settlement Agreement), in accordance with the terms and conditions of the Asbestos Insurance Settlement Agreement.

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

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

ARTICLE III

CLASSIFICATION OF CLAIMS AND INTERESTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE IV

TREATMENT OF CLAIMS AND INTERESTS

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

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

4.2 Classes of Claims and Interests.

(a) *Class 1 – Priority Claims.*

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

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

(b) *Class 2 – Secured Claims.*

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

Except as otherwise provided herein, any Asbestos Personal Injury Claimant with a Lien against any property of the Debtors other than proceeds of an Asbestos Insurance Policy shall retain the Lien securing such Claim, subject to the Debtors' election in this Article 4.2(b). Secured Asbestos Personal Injury Claims, which are secured by Liens against proceeds of an Asbestos Insurance Policy, shall be included in the treatment accorded Class 5 Unsecured Asbestos Personal Injury Claims, as set forth in ~~Articles 4.1 and~~ Article 4.2(e) of this Plan, and shall be determined, processed, liquidated, and paid pursuant to the terms and conditions of the Asbestos TDP and the Asbestos Trust Agreement; *provided, however*, that the Asbestos Trust may assert any rights (including avoidance rights), defenses (including affirmative defenses) and objections that the Debtors have against such Claims, which rights, defenses, and objections are transferred to the Asbestos Trust pursuant to the Plan.

Each Secured Claim shall be ~~classified as~~ 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 Debtors shall make their election prior to the Confirmation Hearing. The Debtors shall solicit the votes of the holders each sub-Class of Secured Claims. If the Debtors elect to Reinstate a particular Secured Claim, that sub-Class shall be unimpaired, and that sub-Class's vote shall not be counted. If the Debtors elect 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 – Trade and General Unsecured Claims.*

Each holder of an Allowed Trade and General Unsecured Claim (except any holder that agrees to other, lesser treatment) (1) shall, on the Effective Date, be paid the Allowed Amount of such holder's Claim, in Cash ~~(or, in the event that Available Plan Funds are not sufficient to permit the Allowed Amount of all Claims in Classes 3, 4, 6, 7, and 8 to be paid in their entirety on the Effective Date, such holders shall receive payments of a pro rata portion of the Class 3, 4, 6, 7, and 8 Principal Payment on and after the Effective Date out of Available Plan Funds and the Class 3, 4, 6, 7, and 8 Litigation Proceeds up to the Allowed Amount of such Claims),~~ and (2) shall, on or after the Effective Date, be paid the Pro Rata Post-Petition Interest Payment out of (A) Available Plan Funds (if any) after the Class 5 and Class 9 Primary Payment is paid in its entirety and (B) the Class 3, 4, 6, 7, and 8 Litigation Proceeds (if any), until the Pro Rata Post-Petition Interest Payment is fully paid, in full satisfaction, settlement, release, extinguishment, and discharge of such Claim.

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

(d) *Class 4 – Bondholders' Claims.*

Each holder of an Allowed Bondholders' Claim, ~~at the option of the Debtors,~~ **(except any holder that agrees to other, lesser treatment)** (1) shall, on the Effective Date, be paid the Allowed Amount of such holder's Claim, in Cash ~~(or, in the event that Available Plan Funds are not sufficient to permit the Allowed Amount of all Claims in Classes 3, 4, 6, 7, and 8 to be paid in their entirety on the Effective Date, such holders shall receive payments of a pro rata portion of the Class 3, 4, 6, 7, and 8 Principal Payment on and after the Effective Date out of Available Plan Funds and the Class 3, 4, 6, 7, and 8 Litigation Proceeds up to the Allowed Amount of such Claims),~~ and **and (2)** shall, on or after the Effective Date, be paid the Pro Rata Post-Petition Interest Payment out of (A) Available Plan Funds (if any) after the Class 5 and Class 9 Primary Payment is paid in its entirety and (B) the Class 3, 4, 6, 7, and 8 Litigation Proceeds (if any), until the Pro Rata Post-Petition Interest Payment is fully paid, in full satisfaction, settlement, release, extinguishment, and discharge of such Claim.

In addition, on account of the Allowed Bondholders' Claims, the Indenture Trustees shall be entitled to receive, on the Effective Date, Cash in an amount equal to the Indenture Trustee Fee Claims. If, on or before November 17, 2008, 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, Reorganized ASARCO, or the Plan Administrator, 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, Reorganized Debtors, or Plan Administrator, 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, Reorganized Debtors, and Plan Administrator reserve the right to object to any such amounts on any applicable grounds.

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 its counsel and other professionals) incurred by the Indenture Trustees in administering distributions to the holders of the Bonds 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 the Plan or in connection with any distributions to be made under the 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.

This Class is impaired. Holders of Bondholders' Claims in Class 4 are entitled to vote to accept or reject this Plan.

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

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

All Unsecured Asbestos Personal Injury Claims and Demands shall be processed, liquidated, and paid pursuant to the terms and provisions of the Asbestos TDP and the Asbestos Trust Agreement. The Asbestos Trust is described in Article VIII below. The sole recourse of the holder of an Unsecured Asbestos Personal Injury Claim or Demand shall be the Asbestos Trust and the Asbestos TDP, and such holder shall have no rights whatsoever at any time to assert such holder's Claim or Demand against any Debtor, Reorganized Debtor, or ASARCO Protected Party. Without limiting the foregoing, on the Effective Date, all Persons shall be permanently and forever stayed, restrained, and enjoined from taking any enjoined actions against any ASARCO Protected Party (or the property or interest in property of any ASARCO Protected Party)

for the purpose of, directly or indirectly, collecting, recovering, or receiving payment of, on, or with respect to any Unsecured Asbestos Personal Injury Claim or Demand.

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

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

The Asbestos Trust shall create an Asbestos Premises Liability Claims Fund for payment of Asbestos Premises Liability Claims and Demands. The Asbestos Premises Liability Claims Fund shall be funded with, directly or indirectly: (a) proceeds from certain Asbestos Insurance Policies that are subject to prepetition settlement agreements regarding Asbestos Premises Liability Claims and Demands, and the rights thereunder shall be transferred to the Asbestos Trust as of the Effective Date in accordance with Article 8.6 below; (b) additional proceeds, if any, from the Asbestos Insurance Recoveries that are applicable to Asbestos Premises Liability Claims and Demands; and (c) if necessary, an amount determined on an annual basis by the Asbestos Trustees pursuant to the Asbestos Trust Agreement to satisfy all Asbestos Premises Liability Claims and Demands, if any, that are not subject to adequate coverage under the prepetition settlement agreements referenced herein. Any such amount shall be funded from the Asbestos Trust Assets (including any dividends or other distributions from Reorganized Covington) that are set aside by the Asbestos Trustees for the Asbestos Personal Injury Claims Fund, as described in Article 4.2(e)(2) below. Class 5A Claims and Demands shall be processed, liquidated, and paid pursuant to the terms and provisions of the Asbestos TDP and the Asbestos Trust Agreement.

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

The Asbestos Trust shall create an Asbestos Personal Injury Claims Fund for payment of all Unsecured Asbestos Personal Injury Claims and Demands other than Asbestos Premises Liability Claims and Demands. The Asbestos Personal Injury Claims Fund shall be funded with (a) the Asbestos Trust's share of the Class 5 and Class 9 Primary Payment; (b) the Asbestos Trust's share of the Class 5 and Class 9 Supplemental Distribution (if any); (c) directly or indirectly, the Asbestos Insurance Recoveries other than those specified in Article 4.2(e)(1) above; (d) the Asbestos Trust's share of the Litigation Trust Interests, and the right to the Asbestos Trust's Priority Litigation Proceeds (if any); and (e) 100 percent of the interests in Reorganized Covington. Class 5B Claims and Demands shall be processed, liquidated, and paid pursuant to the terms and provisions of the Asbestos TDP and the Asbestos Trust Agreement.

(f) *Class 6 – Toxic Tort Claims.*

On the Effective Date, each holder of an Allowed Toxic Tort Claim (except any holder that agrees to other, lesser treatment) (1) shall, on the Effective Date, be paid the Allowed Amount of such holder's Claim, in Cash ~~(or, in the event that Available Plan Funds are not sufficient to permit the Allowed Amount of all Claims in~~

~~Classes 3, 4, 6, 7, and 8 to be paid in their entirety on the Effective Date, such holders shall receive payments of a pro rata portion of the Class 3, 4, 6, 7, and 8 Principal Payment on and after the Effective Date out of Available Plan Funds and the Class 3, 4, 6, 7, and 8 Litigation Proceeds up to the Allowed Amount of such Claims),² and (2) shall, on or after the Effective Date, be paid the Pro Rata Post-Petition Interest Payment out of (A) Available Plan Funds (if any) after the Class 5 and Class 9 Primary Payment is paid in its entirety and (B) the Class 3, 4, 6, 7, and 8 Litigation Proceeds (if any), until the Pro Rata Post-Petition Interest Payment is fully paid, in full satisfaction, settlement, release, extinguishment, and discharge of such Claim.~~

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

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

Each holder of an Allowed Previously Settled Environmental Claim (except any holder that agrees to other, lesser treatment) (1) shall, on the Effective Date, be paid the Allowed Amount of such holder's Claim, in Cash ~~(or, in the event that Available Plan Funds are not sufficient to permit the Allowed Amount of all Claims in Classes 3, 4, 6, 7, and 8 to be paid in their entirety on the Effective Date, such holders shall receive payments of a pro rata portion of the Class 3, 4, 6, 7, and 8 Principal Payment on and after the Effective Date out of Available Plan Funds and the Class 3, 4, 6, 7, and 8 Litigation Proceeds up to the Allowed Amount of such Claims),² and (2) shall, on or after the Effective Date, be paid the Pro Rata Post-Petition Interest Payment out of (A) Available Plan Funds (if any) after the Class 5 and Class 9 Primary Payment is paid in its entirety and (B) the Class 3, 4, 6, 7, and 8 Litigation Proceeds (if any), until the Pro Rata Post-Petition Interest Payment is fully paid. Such payments shall be in full satisfaction, settlement, release, extinguishment, and discharge of such Claim against the Debtors as provided in the settlement agreement relating to such Claim.~~

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

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

Each holder of an Allowed Miscellaneous Federal and State Environmental Claim (except any holder that agrees to other, lesser treatment) (1) shall, on the Effective Date, be paid the Allowed Amount of such holder's Claim, in Cash ~~(or, in the event that Available Plan Funds are not sufficient to permit the Allowed Amount of all Claims in Classes 3, 4, 6, 7, and 8 to be paid in their entirety on the Effective Date, such holders shall receive payments of a pro rata portion of the Class 3, 4, 6, 7, and 8 Principal Payment on and after the Effective Date out of Available Plan Funds and the Class 3, 4, 6, 7, and 8 Litigation Proceeds up to the Allowed Amount of such Claims),² and (2) shall, on or after the Effective Date, be paid the Pro Rata Post-Petition Interest Payment out of (A) Available Plan Funds (if any) after the Class 5 and Class 9 Primary Payment is paid in its entirety and (B) the Class 3, 4, 6, 7, and 8 Litigation Proceeds (if any), until the Pro Rata Post-Petition Interest Payment is fully paid. Such payments shall~~

be in full satisfaction, settlement, release, extinguishment, and discharge of such Claim against the Debtors as provided in the Miscellaneous Federal and State Environmental Settlement Agreement(s) relating to such Claim, attached hereto as **Exhibit 12-B** and incorporated herein.

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

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

Each holder of an Allowed Residual Environmental Claim (or with respect to the Coeur d’Alene Basin site in Idaho, the United States and the Environmental Custodial Trust for that site for which the United States is the legal beneficiary, as provided in the Residual Environmental Settlement Agreement) shall receive (a¹) such holder’s share of the Class 5 and Class 9 Primary Payment; (b²) such holder’s share of the Class 5 and Class 9 Supplemental Distribution (if any); and (c³) such holder’s share of the Litigation Trust Interests, subject to the Asbestos Trust’s Priority Litigation Proceeds (if any), in full satisfaction, settlement, release, extinguishment, and discharge of such Claim against the Debtors as provided in the Residual Environmental Settlement Agreement relating to such Claims, attached hereto as **Exhibit 12-C** and incorporated herein. The respective shares for each Allowed Residual Environmental Claim are set forth in the Residual Environmental Settlement Agreement.

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

(j) *Class 10 – Late-Filed Claims.*

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

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

(k) *Class 11 – Subordinated Claims.*

To the extent of any Available Plan Funds remaining after the Class 10 Late-Filed Claims are Paid in Full, each holder of an Allowed Subordinated Claim (except any holder that agrees to other, lesser treatment) shall be Paid in Full or receive a pro rata distribution of any such Available Plan Funds, in full satisfaction, settlement, release, extinguishment, and discharge of such Claim. If the remaining Available Plan Funds are not sufficient to permit all such Claims to be Paid in Full, each such holder shall receive a pro rata distribution on the Allowed Amount of such holder's Claim. If Available Plan Funds remain after such payment, each holder shall receive a pro rata distribution of Post-Petition Interest. Such distribution shall be made within 60 days after the Plan Administrator determines that funds are available to make a distribution.

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

(l) *Class 12 – Interests in ASARCO.*

The Interests in ASARCO shall be cancelled, ~~and~~. **If the holder of such Interests votes to accept the Plan and elects to enter into the Plan Settlement, the holder shall receive the Settlement Benefits under the Plan Settlement in full satisfaction, settlement, release, extinguishment, and discharge of their Interests in ASARCO. If the holder of such Interests either (1) votes to accept the Plan but declines to enter into the Plan Settlement or (2) votes to reject the Plan, the holder shall receive any Available Plan Funds after the Class 11 Subordinated Claims have been Paid in Full.**

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

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

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

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

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

4.3 **Intercompany Claims.** Intercompany Claims (other than (a) Derivative Asbestos Claims, which are resolved pursuant to the Asbestos Settlement Agreement, (b) any Claims or causes of action asserted in any of the Litigation Claims, and (c) the Secured Intercompany DIP Credit Facility) 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 (Classes 2 through 12, unless certain sub-Classes of the Class 2 Secured Claims are Reinstated, in which case they shall be unimpaired) shall be entitled to vote separately to accept or reject this Plan. ~~If no holders of Claims or Interests eligible to vote in a particular Class vote to accept or reject this Plan, this Plan shall be deemed accepted by the holders of such Claims or Interests in such Class. Moreover, any~~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. Class 1 is not impaired. Any sub-Class of Class 2 Secured Claims that, at the election of the Debtors, is ~~reinstated~~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 13 and 14 shall not receive or retain any property under this Plan on account of their Interests. Pursuant to section 1126(g) of the Bankruptcy Code, the holders of Interests in such Classes are conclusively presumed to have voted to reject this Plan.

5.4 Cramdown. If all applicable requirements for Confirmation of 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 LITIGATION TRUST

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

6.2 Appointment of Litigation Trustees.

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

(b) ASARCO (if prior to the Effective Date) or the Asbestos Trustees (if after the Effective Date) shall designate the Person who shall initially serve as Delaware Trustee of the Litigation Trust.

(c) The Litigation Trustees and the Delaware Trustee shall each have and perform all of the rights, powers, and duties set forth in the Litigation Trust Agreement.

(d) If the holders of Allowed Claims in Classes 3, 4, 6, 7, and 8 are not Paid in Full on the Effective Date, the ASARCO Committee may, at its option and expense, appoint one Consulting Representative to consult with the Litigation Trustees at such times and on such matters as the Consulting Representative shall reasonably request. The Consulting Representative's position shall terminate when Classes 3, 4, 6, 7, and 8 are Paid in Full. For the avoidance of doubt, the Consulting Representative shall not be a Litigation Trustee and shall have none of the authority, rights, duties, or obligations of the Litigation Trustees.

6.3 Purpose of the Litigation Trust. The Litigation Trust shall be established as a statutory trust for the ~~primary~~ purpose of pursuing the Litigation Trust Claims, liquidating all assets of the Litigation Trust for the benefit of the Litigation Trust Beneficiaries, ~~with~~ receiving all Litigation Trust Claim recoveries, and distributing the resulting Litigation Proceeds and other Cash of the Litigation Trust to the Litigation Trust Beneficiaries after payment of all expenses of the Litigation Trust. The primary purpose of the Litigation Trust is to liquidate its assets, and the Litigation Trust shall have no objective or authority to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Litigation Trust. Accordingly, the Litigation Trustees shall, in an expeditious but orderly manner, prosecute, settle, or otherwise dispose of ~~the~~ Litigation Trust Claims, make timely distributions in accordance with the terms of the Litigation Trust Agreement, and not unduly prolong the Litigation Trust's duration.

6.4 Transfer of Litigation Trust Claims to the Litigation Trustees. On the Effective Date, the Debtors shall transfer to the Litigation Trustees for the benefit of the Litigation Trust Beneficiaries (a) all of the Debtors' respective rights, title, and interests in the Litigation Trust Claims free and clear of any and all Liens, Claims, encumbrances, or interests of any kind in such property of any other Person or Entity, other than Liens or encumbrances arising under the Bankruptcy Code or other applicable law, (b) all of the Debtors' respective rights, title, and interest in the Debtors' Privileges associated with the Litigation Trust Claims, (c) the Litigation Expense Fund in an amount sufficient to fund the operations of the Litigation Trust, and (d) all documents in the Debtors' possession, custody, or control in connection with the Litigation Trust Claims.

6.5 The Litigation Trust.

(a) The Litigation Trust Agreement, substantially in the form of Exhibit 4 to this Plan, contains provisions customary to trust agreements utilized in comparable circumstances, including, without limitation, provisions to ensure the continued existence of the Litigation Trust as a grantor trust and the Litigation Trust Beneficiaries (and any other Claimants that may be entitled to receive distributions from the Litigation Trust) as the grantors and owners

thereof for federal income tax purposes. The Debtors, the Litigation Trustees, the Litigation Trust Beneficiaries (and any other Claimants that may be entitled to receive distributions from the Litigation Trust), and the Delaware Trustee shall execute any document or other instruments as necessary to cause all of the Debtors' respective rights, title and interests in and to the Litigation Trust Claims to be transferred to the Litigation Trust.

(b) The Litigation Trustees shall have full authority to take any steps necessary to administer the Litigation Trust Claims, including, without limitation, the duty and obligation to liquidate the Litigation Trust Claims. Without limitation, the Litigation Trustees may object pursuant to section 502(d) of the Bankruptcy Code to any Proof of Claim filed by a defendant in any of the Litigation Trust Claims. Both the Reorganized Debtors and the Litigation Trustees have the right to prosecute objections to any Proof of Claim filed by a defendant in any of the Litigation Trust Claims.

(c) All costs and expenses associated with the administration of the Litigation Trust shall be the responsibility of and paid by the Litigation Trust. Notwithstanding the foregoing, Reorganized ASARCO, the Plan Administrator, and the Plan Sponsor shall cooperate with the Litigation Trustees in pursuing the Litigation Trust Claims and shall provide reasonable access to personnel and books and records of Reorganized ASARCO, the Plan Administrator, and the Plan Sponsor relating to the Litigation Trust Claims to representatives of the Litigation Trust to enable the Litigation Trustees to perform the Litigation Trustees' tasks under the Litigation Trust Agreement and this Plan; 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 to obtain access to the Plan Sponsor's personnel or books and records shall be made through Reorganized ASARCO or its representatives.

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

(e) For federal income tax purposes, the Litigation Trust Beneficiaries (and any other Claimants that may be entitled to receive distributions from the Litigation Trust) shall be treated as grantors and owners of the Litigation Trust, and it is intended that the Litigation Trust be classified as a liquidating trust under section 301.7701-4(d) of the Treasury Regulations and that such trust is owned by the Litigation Trust Beneficiaries (and any other Claimants that may be entitled to receive distributions from the Litigation Trust). Accordingly, for federal income tax purposes, the Debtors intend that all parties (including ~~the Debtors, Reorganized ASARCO, AMC and its Affiliates,~~ the Litigation Trustees, ~~the Litigation Trust Beneficiaries, and any other Claimants that may be entitled to receive distributions from~~ the transferors, for tax purposes, of any assets transferred to the Litigation Trust) shall take the position, subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary, that the transfer of assets to the Litigation Trust is a deemed transfer to the Litigation Trust Beneficiaries (and any other Claimants that may be entitled to receive distributions from

the Litigation Trust), followed by a deemed transfer by the Litigation Trust Beneficiaries (and any other Claimants that may be entitled to receive distributions from the Litigation Trust) to the Litigation Trust, and all income and gain of the Litigation Trust which is earned after such deemed transfer shall be taxed to the Litigation Trust Beneficiaries (and any other Claimants that may be entitled to receive distributions from the Litigation Trust) on a current basis. In addition, the investment powers of the Litigation Trustees shall be limited to those powers that are consistent with the treatment of the Litigation Trust as a liquidating trust.

(f) The fair market value of the portion of the Litigation Trust assets that is treated for federal income tax purposes as having been transferred to each Litigation Trust Beneficiary (and any other Claimants that may be entitled to receive distributions from the Litigation Trust) as described in the preceding paragraph shall be determined by the Litigation Trustees, and all parties (including ~~the Debtors, Reorganized ASARCO,~~ without limitation, the Litigation Trustees, ~~AMC and its Affiliates,~~ the Litigation Trust Beneficiaries, and any other Claimants that may be entitled to receive distributions from the Litigation Trust, and the transferors, for tax purposes, of any assets transferred to the Litigation Trust) shall utilize such fair market value determined by the Litigation Trustees for all federal income tax purposes.

(g) The Litigation Trustees shall be responsible for filing all federal, state, and local tax returns for the Litigation Trust. The Litigation Trustees shall comply with all withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority, and all distributions made by the Litigation Trustees shall be subject to any such withholding and reporting requirements. Any amount so withheld from a distribution to a Claimant or other distributee of the Litigation Trust shall be treated as having been paid to, and received by, such distributee for purposes of this Plan and the Plan Documents.

(h) Any items of income, deduction, credit, or loss of the Litigation Trust shall be allocated by the Litigation Trustees for federal income tax purposes among the Litigation Trust Beneficiaries (and any other Claimants that may be entitled to receive distributions from the Litigation Trust), such allocation shall be binding on all parties for all federal, state, and local income tax purposes, and the Litigation Trust Beneficiaries (and any other Claimants that may be entitled to receive distributions from the Litigation Trust) shall be responsible for the payment of any federal, state, and local income tax due on the income and gain so allocated to them.

(i) In the event that one or more of the Debtors obtains approval, pursuant to Bankruptcy Rule 9019, of a settlement prior to the Effective Date of a cause of action that would have been transferred to the Litigation Trust on the Effective Date, the proceeds of the settlement shall be distributed to the Litigation Trust Beneficiaries in the same manner as the Litigation Trust Interests (*i.e.*, 50 percent to the Asbestos Trust and 50 percent to holders of Allowed Class 9 Residual Environmental Claims, subject to payment of the Class 3, 4, 6, 7, and 8 Litigation Proceeds and the Asbestos Trust's Priority Litigation Proceeds in accordance with Article 6.7 below). In the event of such a settlement, the Debtors that are parties to the settlement shall hold the proceeds in escrow for distribution on the Effective Date.

6.6 Litigation Trust Interests.

(a) *Distributions of Litigation Trust Interests.*

On the Initial Distribution Date, the Litigation Trustees shall distribute 50 Litigation Trust Interests to the Asbestos Trust, ~~—~~ **and shall distribute the remaining 50 Litigation Trust Interests pro rata** to the United States, ~~— Litigation Trust Interests to the State of Washington, and — Litigation Trust Interests to the Environmental Custodial Trust established pursuant to this Plan for the Coeur d'Alene Basin, Idaho site.~~

(b) *Interests Beneficial Only.*

The ownership of a Litigation Trust Interest shall not entitle any Litigation Trust Beneficiary to (1) any title in or to the assets of the Litigation Trust as such (which title shall be vested in the Litigation Trustees) or to any right to call for a partition or division of the assets of the Litigation Trust or to require an accounting; or (2) any voting rights with respect to the administration of the Litigation Trust and the actions of the Litigation Trustees in connection therewith.

(c) *Maintenance of Register.*

The Litigation Trustees shall at all times maintain a Trust Register of the names, addresses, and number of Litigation Trust Interests of the Litigation Trust Beneficiaries.

(d) *Evidence of Litigation Trust Interests.*

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

6.7 Distributions of Litigation Proceeds and Other Property. The Litigation Trustees shall apply all Litigation Proceeds, any proceeds therefrom, and any other Cash of the Litigation Trust in the following order: first, to pay all costs and expenses of the Litigation Trust to the extent not paid by or from the Litigation Expense Fund, including, without limitation, compensation payable to the Litigation Trustees; second, to make ~~payment (if any)~~ **payments to Classes 5 and 9 until the Class 5 and Class 9 Primary Payment has been fully paid; third, to make payments** to holders of Class 3, 4, 6, 7, and 8 Claims until ~~such Claimants are Paid in Full~~ **the Pro Rata Post-Petition Interest Payment has been fully paid** (from either Available Plan Funds or Litigation Proceeds); ~~third~~ **fourth**, to pay \$100 million to the Asbestos Trust; and finally, to pay any remaining amounts ratably to the holders of Litigation Trust Interests; ~~provided, however, that if the Litigation Expense Fund has funds remaining after the payment of all of the Litigation Trust's expenses, such remaining funds shall be paid to holders of Claims and Interests in the same manner provided in Article 11.2(f) below.~~

6.8 Subrogation Rights of the Litigation Trust.

(a) ~~— The Litigation Trust shall be subrogated to the rights of any Class 3, 4, 6, 7, and 8 Claimants to the extent of any Class 3, 4, 6, 7, and 8 Litigation Proceeds paid to such Claimants.~~

(b) — ~~If Litigation Proceeds are used to pay a portion of the Class 3, 4, 6, 7, and 8 Principal Payment, the Litigation Trust shall be entitled to Available Plan Funds, to the extent of any such payment of the Class 3, 4, 6, 7, and 8 Litigation Proceeds, after the Class 3, 4, 6, 7, and 8 Principal Payment is paid in its entirety, but prior to any distribution to Classes 5 and 9 of the Class 5 and Class 9 Primary Payment.~~

(c) — **The Litigation Trust shall be subrogated to the rights of any Class 3, 4, 6, 7, and 8 Claimants to the extent of any Class 3, 4, 6, 7, and 8 Litigation Proceeds paid to such Claimants.** If Litigation Proceeds are used to pay a portion of the Pro Rata Post-Petition Interest Payment, the Litigation Trust shall be entitled to Available Plan Funds, to the extent of any such payment of the Class 3, 4, 6, 7, and 8 Litigation Proceeds, after the Pro Rata Post-Petition Interest Payment is paid in its entirety, but prior to any distribution to Classes 5 and 9 on the Class 5 and Class 9 Supplemental Distribution.

6.9 Termination of the Litigation Trust.

(a) The Litigation Trust shall terminate on the earlier of: (1) 30 days after the distribution of all of the assets of the Litigation Trust in accordance with the terms of the Litigation Trust Agreement and this Plan; and (2) the fifth anniversary of the Effective Date; *provided, however*, that, on or prior to a date not less than three months (nor more than six months) prior to such termination, the Bankruptcy Court, upon motion by a party in interest, may extend the term of the Litigation Trust for a finite period if, based on the facts and circumstances, such extension is necessary to facilitate or complete the liquidation of the assets of the Litigation Trust. The Bankruptcy Court may approve multiple extensions of the term of the Litigation Trust, provided that (i) any such extension is so approved on or prior to a date not less than three months (nor more than six months) prior to termination of the immediately preceding extended term, and (ii) the Litigation Trustees receive an opinion of counsel or a favorable ruling from the IRS that any further extension would not adversely affect the status of the Litigation Trust as a grantor trust for federal income tax purposes.

(b) The Litigation Trustees shall not unduly prolong the duration of the Litigation Trust and shall at all times endeavor to resolve, settle, or otherwise dispose of all of the Litigation Trust Claims and to effect the distribution of the assets of the Litigation Trust to the holders of the Litigation Trust Interests in accordance with the terms hereof and terminate the Litigation Trust as soon as practicable.

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

ARTICLE VII

THE ENVIRONMENTAL CUSTODIAL TRUSTS

7.1 Creation of Environmental Custodial Trusts. On the Effective Date, separate Environmental Custodial Trusts shall be created as provided in the Environmental Custodial Trust Agreements.

7.2 Appointment of Environmental Custodial Trustees.

(a) Upon approval by the Bankruptcy Court in the Confirmation Order, the Environmental Custodial Trustees shall be appointed.

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

7.3 Purpose of the Environmental Custodial Trusts. The purpose of each of the Environmental Custodial Trusts shall be as set forth in the applicable Environmental Custodial Trust Settlement Agreement and Environmental Custodial Trust Agreement, but shall include: (a) owning the applicable Designated Properties in the trust's particular state or states and carrying out administrative and property management functions relating to such properties; (b) conducting or funding future environmental actions related to those Designated Properties; (c) implementing the terms of any applicable Environmental Custodial Trust Settlement Agreements; and (d) selling, transferring, or otherwise disposing of the applicable Designated Properties.

7.4 Transfer of Environmental Custodial Trust Assets to the Environmental Custodial Trusts.

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

(b) All or any part of the Environmental Custodial Trust Assets placed into an Environmental Custodial Trust may be sold, transferred, or otherwise disposed of by such trust with the approval of the United States and the state in which the property is located, if such state is a beneficiary under the applicable Environmental Custodial Trust, and the proceeds shall be used as provided in the applicable Environmental Custodial Trust Settlement Agreement;

provided, however, that no such approval shall be required for the sale of the Globe, Colorado property under the sales contract transferred to the applicable Environmental Custodial Trust, pursuant to the terms of such contract, other than as required under such contract.

7.5 The Environmental Custodial Trusts.

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

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

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

7.7 Environmental Custodial Trust Settlement Agreements.

(a) The Environmental Custodial Trust Settlement Agreements ~~are attached to this Plan as Exhibit 12-A-1 to Exhibit 12-A-3 and~~ **relating to the Designated Properties** are subject to a public comment period under applicable Environmental Laws. If the Debtors reach additional settlement agreement(s) with the EPA and other applicable Environmental Agencies with respect to treatment under this Plan of additional Designated Properties or any part thereof, the Debtors shall file such settlement agreement(s) with the Bankruptcy Court and seek approval thereof at the Confirmation Hearing.

(b) The Environmental Custodial Trust Settlement Agreements shall be submitted for public comments under federal Environmental Law and, where applicable, state Environmental Law of the state in which the applicable Designated Property is located.

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

7.9 Tax Treatment of the Environmental Custodial Trusts. The Environmental Custodial Trusts shall each seek to be treated as a "qualified settlement fund" as that term is defined in Treasury Regulation section 1.468B-1, and the Environmental Custodial Trustees shall be the "administrators" of their respective Environmental Custodial Trusts pursuant to Treasury Regulation section 1.468B-2(k)(3). No election shall be made to treat the Environmental Custodial Trusts as grantor trusts. The Environmental Custodial Trusts shall be

treated as separate taxable entities. The Environmental Custodial Trustees shall cause all taxes imposed on the earnings of their respective Environmental Custodial Trusts to be paid out of such earnings and shall comply with all tax reporting and withholding requirements imposed on the Environmental Custodial Trusts under applicable tax laws. Any amounts so withheld from payments made by the Environmental Custodial Trusts to a payee shall be treated as having been paid to, and received by, such payee for purposes of this Plan and the Plan Documents.

7.10 Termination of the Environmental Custodial Trusts; Reallocation of Funding. Upon an Environmental Custodial Trust's completion of all final actions and disbursement of all final costs with respect to a Designated Property, any funds held by that trust in a custodial trust account for that Designated Property shall be transferred as provided in the applicable Environmental Custodial Trust Agreement: (a) first, in accordance with instructions provided by the DOJ and the state in which such Designated Property was located, to the custodial trust account established under such Environmental Custodial Trust for other Designated Properties in that state with remaining actions to be performed and a need for additional trust funding; (b) second, in accordance with instructions provided by the DOJ after consultation with the applicable states, to one or more custodial trust accounts established under such Environmental Custodial Trust or another Environmental Custodial Trust for Designated Properties in other states with remaining actions to be performed and a need for additional trust funding; and (c) third, to the Superfund. In addition, the DOJ and the state in which a Designated Property is located may agree in writing at any time after one year from the Effective Date that based on new information about the estimated cost of cleanup or administration or the assumption of liability by a buyer or other party for a Designated Property, the funding in a Custodial Trust Environmental Cost Account or a Custodial Trust Administrative Account is more than is conservatively projected to be needed. Upon such agreement, the DOJ after consultation with the states may direct the transfer of any such excess funding to one or more of the other Environmental Custodial Trust Accounts established under the Environmental Custodial Trusts with a need for additional trust funding.

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

ARTICLE VIII

THE ASBESTOS TRUST

8.1 Creation of the Asbestos Trust. On the Effective Date or such earlier date as the Debtors deem appropriate, the Asbestos Trust shall be created as provided in the Asbestos Trust Agreement.

8.2 Appointment of Asbestos Trustees.

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

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

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

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

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

8.5 Purpose of the Asbestos Trust. The purposes of the Asbestos Trust shall be, among other things, to (a) liquidate, resolve, pay, and satisfy all Unsecured Asbestos Personal Injury Claims and Demands in accordance with this Plan, the Asbestos Trust Agreement, Asbestos TDP, and the Confirmation Order, (b) receive, preserve, hold, manage, and maximize the Asbestos Trust Assets for use in paying and satisfying Allowed Unsecured Asbestos Personal Injury Claims and Demands in accordance with the terms of the Asbestos Trust Agreement, and (c) take other actions deemed by the Asbestos Trustees to be in the best interest of the holders of the Unsecured Asbestos Personal Injury Claims and Demands, who are the sole beneficiaries of the Asbestos Trust.

8.6 Transfers and Assignments to the Asbestos Trust. On the Effective Date, the Debtors shall transfer and assign, without limitation, to the Asbestos Trust for the benefit of the Asbestos Trust Beneficiaries (a) the Asbestos Trust Assets, as provided in Article 11.6 herein; (b) all of their rights, title, and interests in the Asbestos Personal Injury Claims and Demands and other recoveries, including, without limitation, any extracontractual claims for bad faith, late payments, reimbursement of Asbestos Trust Expenses or otherwise; (c) all of the Debtors' rights, title and interest in the Debtors' Privileges associated with the Asbestos Personal Injury Claims and Demands and other recoveries; (d) all of the Debtors' rights, title, and interest in pursuing and receiving any and all insurance proceeds for Asbestos Personal Injury Claims and Demands from the Asbestos Insurance Policies; and (e) all of their rights, title, and interests in the Asbestos Insurance Recoveries.

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

8.8 Control of the Asbestos Insurance Actions and Asbestos Insurance Recoveries.

The right to control the Asbestos Insurance Actions and all Asbestos Insurance Recoveries, including negotiations relating thereto and settlements thereof, shall be vested in the Asbestos Trust on and after the Effective Date. Notwithstanding the foregoing, Reorganized ASARCO, the Plan Administrator, and the Plan Sponsor shall cooperate with the Asbestos Trustees in pursuing the Asbestos Insurance Actions, and shall provide reasonable access to personnel and books and records of Reorganized ASARCO and the Plan Sponsor relating to the Asbestos Insurance Actions to representatives of the Asbestos Trust to enable the Asbestos Trustees to perform the Asbestos Trustees' tasks under the Asbestos Trust Agreement and this Plan, as is discussed below in Article 8.13 in regards to Reorganized ASARCO; 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 to obtain access to the Plan Sponsor's personnel or books and records shall be made through Reorganized ASARCO or its representatives.

8.9 Assumption of Liabilities by the Asbestos Trust. Upon occurrence of the Effective Date, in exchange for funding in accordance with Article 11.6 of this Plan, the Asbestos Trust shall be deemed without need for further action to have assumed responsibility and liability for all Unsecured Asbestos Personal Injury Claims and Demands.

8.10 Indemnification by the Asbestos Trust.

(a) The Asbestos Trust shall indemnify, defend (and, where applicable, pay the defense costs for), and hold harmless each of the ASARCO Protected Parties from any and all liabilities associated with an Asbestos Personal Injury Claim or Demand that a third party seeks to impose upon any of the ASARCO Protected Parties, or that are imposed upon any of the ASARCO Protected Parties.

(b) In the event that the Asbestos Trust makes a payment to any of the ASARCO Protected Parties hereunder, and such ASARCO Protected Party subsequently diminishes the liability on account of which such payment was made, either directly or through a third-party recovery, the applicable ASARCO Protected Party shall promptly repay the Asbestos Trust the amount by which the payment made by the Asbestos Trust exceeds the actual cost of the associated indemnified liability.

8.11 Tax Treatment of the Asbestos Trust. The Asbestos Trust shall seek to be treated as a "qualified settlement fund" within the meaning of Treasury Regulations section 1.468B-1, and the Asbestos Trustees shall be the "administrator" of the Asbestos Trust pursuant to Treasury Regulation section 1.468B-2(k)(3). No election shall be made to treat the Asbestos Trust as a grantor trust for U.S. federal income tax purposes. Accordingly, the Asbestos Trust shall be treated as a taxable entity for federal income tax purposes. The Asbestos Trustees shall cause all taxes imposed on the Asbestos Trust to be paid using assets of the Asbestos Trust and shall comply with all tax reporting and withholding requirements imposed on the Asbestos Trust under applicable tax laws. Any amount so withheld from a distribution or payment by the Asbestos Trust 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 the Plan Documents.

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

8.13 Asbestos Books.

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

Subject to the conditions set forth herein, the Asbestos Trust, through its duly authorized representatives, shall have the right, upon reasonable prior written notice to Reorganized ASARCO: (1) to have Reorganized ASARCO transfer into the Asbestos Trust's possession all or part of the Asbestos Books in their current condition upon request of the Asbestos Trust and on the condition that the Asbestos Trust shall pay all costs and expenses of the transfer, or (2) to inspect and, at the sole expense of the Asbestos 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 Trust shall have entered 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, (1) the Plan Administrator for any Asbestos Books that remain in Reorganized ASARCO's possession; and (2) the Asbestos Trust for any Asbestos Books that are transferred into the Asbestos Trust's possession. All costs and expenses of access to any Asbestos Books that are transferred to the Plan Sponsor shall be paid by the Plan Administrator.

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

Reorganized ASARCO, the Plan Administrator, and the Plan Sponsor shall cooperate with the Asbestos Trust in transferring or providing access to the Asbestos Books in their current condition, and shall also provide reasonable access to necessary or appropriate personnel and the Asbestos Books as contemplated herein; 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 the transfer or 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 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 Trust with advance notice of any proposed disposition of any of the Asbestos Books and a reasonable opportunity for the Asbestos

Trust to segregate and remove, at the expense of the Asbestos Trust, such Asbestos Books as the Asbestos Trust may select.

(e) *Privileged Documents or Communications.*

If the Asbestos Trust obtains from Reorganized ASARCO or its representatives any documents or communications (whether electronic, written, or oral) to which any attorney-client, work-product privilege, or other privilege or immunity attaches, the Asbestos Trust shall be deemed ~~an agent of the~~ privilege holder for purposes of **fulfilling the Asbestos 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.** Production of materials to the Asbestos Trust does not constitute a waiver or an impairment of any privilege held by Reorganized ASARCO, Reorganized Covington, or any of the Debtors. In the event that any third party challenges any such privilege, Reorganized ASARCO or the Asbestos Trustees may seek protection from a court of competent jurisdiction. References in this Article 8.13 to Reorganized ASARCO shall also include its successors in interest.

8.14 Cooperation with Respect to Insurance Matters. Reorganized ASARCO and the Plan Sponsor shall cooperate with the Asbestos Trust and use commercially reasonable efforts to take or cause to be taken all appropriate actions and to do or cause to be done all things necessary or appropriate to effectuate all transfers and assignments identified herein to the Asbestos Trust; *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 under this Article 8.14 shall be made through Reorganized ASARCO or its representatives. Reorganized ASARCO shall, without limitation, (a) provide the Asbestos Trust with copies of insurance policies and settlement agreements included within or relating to the Unsecured Asbestos Personal Injury Claims and Demands; (b) provide the Asbestos Trust with information necessary or helpful to the Asbestos Trust in connection with its efforts to obtain insurance coverage for the Asbestos Personal Injury Claims and Demands as well as other recoveries from an Asbestos Insurance Company, in its capacity as such, including, without limitation, recoveries of extracontractual damages; (c) execute assignments or allow the Asbestos Trust to pursue claims in its own name (subject to appropriate disclosure of the fact that the Asbestos Trust is doing so and the reasons why it is doing so), including by means of arbitration, alternative dispute resolution proceedings, or litigation, to the extent necessary or helpful to the efforts of the Asbestos Trust to obtain insurance coverage for the Unsecured Asbestos Personal Injury Claims and Demands as well as other recoveries from an Asbestos Insurance Company, in its capacity as such,, including, without limitation, recoveries of extracontractual damages; and (d) pursue and recover insurance coverage for the Unsecured Asbestos Personal Injury Claims and Demands as well as other recoveries from an Asbestos Insurance Company, in its capacity as such,, including, without limitation, recoveries of extracontractual damages, in its own name or right to the extent that any or all of the transfers and assignments identified herein are not able to be fully effectuated, with any and all recoveries therefrom to be turned over to the Asbestos Trust. The Asbestos Trust shall be obligated to compensate Reorganized ASARCO for all costs and expenses reasonably incurred in connection with providing assistance to the Asbestos Trust under this Article 8.14,

including, without limitation, out-of-pocket costs and expenses, consultant fees, and attorneys' fees.

8.15 Termination of the Asbestos Trust. The Asbestos Trust shall automatically dissolve on the date 90 days after the first to occur of the following events:

(a) the date on which the Asbestos Trustees decide to dissolve the Asbestos Trust because (1) they deem it unlikely that new asbestos claims will be filed against the Asbestos Trust; (2) all Unsecured Asbestos Personal Injury Claims duly filed with the Asbestos Trust have been liquidated and paid to the extent provided in the Asbestos Trust Agreement and the Asbestos TDP or have been disallowed by a Final Order, to the extent possible based upon the funds available through the Plan; and (3) 12 consecutive months have elapsed during which no new asbestos claim has been filed with the Asbestos Trust; or

(b) if the Asbestos Trustees have procured and have in place irrevocable insurance policies and have established claims handling agreements and other necessary arrangements with suitable third parties adequate to discharge all expected remaining obligations and expenses of the Asbestos Trust in a manner consistent with the Asbestos Trust Agreement and the Asbestos TDP, the date on which the Bankruptcy Court enters an order approving the insurance and other arrangements and the order of the Bankruptcy Court becomes a Final Order; or

(c) to the extent that any rule against perpetuities shall be deemed applicable to the Asbestos 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.

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

ARTICLE IX

TREATMENT OF EXECUTORY AND POST-PETITION CONTRACTS AND UNEXPIRED LEASES

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

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 or 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.

9.2 **Approval of Assumption or Rejection of Executory Contracts and Unexpired Leases.** Entry of the Confirmation Order shall, subject to and upon the occurrence of the Effective Date, constitute (a) the approval, pursuant to sections 365(a), 365(f), and 1123 of the Bankruptcy Code, of the assumption by one of the Debtors and assignment to the Plan Sponsor 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 9.1 of this Plan; (b) the extension of time, pursuant to section 365(d)(4) of the Bankruptcy Code, within which the Debtors may assume, assume and assign, or reject the unexpired leases specified in Article 9.1 of this Plan through the date of entry of an order approving the assumption, assumption and assignment, or rejection of such unexpired leases; and (c) the approval, pursuant to sections 365(a) and 1123 of the Bankruptcy Code, of the rejection of the executory contracts and unexpired leases rejected pursuant to Article 9.1 of this Plan.

9.3 **Inclusiveness.** Unless otherwise specified 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**.

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

9.5 **Rejection Damages Bar Date.** If the rejection by a Debtor, pursuant to Article 9.1 of 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 after the later of the Effective Date or the date of entry of an order approving such rejection. To the extent any such Claim is Allowed by the Bankruptcy Court by Final Order, such Claim shall become, and shall be treated for all purposes under this Plan as, a Class 3 Trade and General Unsecured Claim, and the holder thereof shall receive distributions as a holder of an Allowed Trade and General Unsecured Claim, pursuant to this Plan.

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

(a) To the extent that such Claims constitute monetary defaults, the Cure Amount Claims shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by the Debtors: (1) by payment of the Cure Amount Claim on the Effective Date or (2) on such other

terms as are agreed to by the Debtors and the non-debtor parties to the executory contract or unexpired lease. In the event of a dispute regarding (A) the amount of any Cure Amount Claim; (B) the ability of the Plan Sponsor 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 9.6(b) of this Plan).

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

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

(a) ~~Each contract or lease~~ **Unless otherwise provided in Article 9.7(b) and (c) of this Plan, each contract or lease that is an “Assumed Pre-Petition Contract” (as such term is defined in section 2.1(e)(A)(i) of the Plan Sponsor PSA) or is** entered into by any Seller after the Petition Date ~~that is~~ as described in section 2.1(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 or lease entered into other than in the Ordinary Course of Business with the Plan Sponsor’s written consent shall also be assigned to, and such Debtor’s obligations thereunder assumed by, the Plan Sponsor.

(b) Each contract or lease entered into by any Debtor after the Petition Date that is identified in **Exhibit 2-D** to this Plan shall be assigned to, and such Debtor’s obligations

thereunder assumed by, one or more an 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 shall vest in, and such Debtor's obligations thereunder assumed by, Reorganized ASARCO or Reorganized Covington, as specified in **Exhibit 2-E** hereto.

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

(a) ~~ASARCO sponsors the Pension Plans, which are covered by Title IV of ERISA. ASARCO shall satisfy its contribution obligations under ERISA to the Pension~~**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 ~~one~~**either the Hourly Plan or the Salaried Plan** or both ~~of the Pension Plans~~ 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," ~~as defined in section 4001(a)(13) of ERISA, of the Pension~~**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 ~~Pension~~**Hourly and Salaried** Plans subsequent to the Closing Date, including, ~~without limitation,~~ the obligation to fund the ~~Pension~~**Hourly and Salaried** Plans pursuant to applicable law.

In the event that ~~one~~**Hourly Plan or the Salaried Plan** or both ~~of the Pension Plans~~ terminate subsequent to the assumption of the ~~Pension~~**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 the Plan or by confirmation of the Plan.

(c) ~~Effective as~~**As** of the Closing Date, the Plan Sponsor shall adopt and become the sponsor and employer for purposes of each and every Employee Benefit Plan set forth in section 8.3 of the Disclosure Schedule, including the ~~Pension Plans as set forth in Article 9.9(b) above~~**Hourly and Salaried Plans,** and shall be substituted for ASARCO or any of 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), all of ASARCO's liabilities and obligations arising under any Employee Benefit Plans and workers' compensation benefits, even if such liability or obligation relates to Claims incurred (whether or not reported or paid) prior to the Closing Date, shall be deemed to be, and shall be treated as though they are, executory contracts that are deemed assumed and assigned to the Plan Sponsor under this Plan pursuant to sections 365(a), 365(f), and 1123 of the Bankruptcy Code.

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

(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 UMWA 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 Trade and General Unsecured Claims.

(g) The Plan Sponsor shall assume and be responsible for all of ASARCO's obligations to pay retiree benefits, as defined in section 1114 of the Bankruptcy Court, pursuant to the CBA as amended by letter agreement entered into between the USW and the Plan Sponsor and dated June 23, 2008, which shall become effective on the Closing Date, and the retiree class action settlement agreement approved by the Bankruptcy Court by order dated March 15, 2007 (Docket No 4178), which settled the cause of action captioned *Asarco Incorporated et al. v. United Steelworkers of America, AFL-CIO/CLC, et al.*, No. CV-03-1297.

9.9 Bonds and Assurances. Pursuant to section 7.9 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 2.2(j) of the Disclosure Schedule shall be retained by ASARCO and shall revert in Reorganized ASARCO on the Effective Date.

ARTICLE X

CONDITIONS TO EFFECTIVENESS

10.1 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 until and unless each of the following conditions to effectiveness have been satisfied or waived pursuant to Article 10.2 of this Plan:

(a) *Disclosure Statement.*

The Bankruptcy Court has approved the Disclosure Statement.

(b) *Confirmation Findings and Conclusions.*

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

(1) As of the Petition Date, ASARCO and the Asbestos Subsidiary Debtors have each been named as a defendant in personal injury, wrongful death, or property damage actions seeking recovery for damages allegedly caused by the presence of, or exposure to, asbestos or asbestos-containing products;

(2) This Plan has been approved by creditors in Class 5 under this Plan in the requisite numbers and amounts required by sections 524(g), 1126, and 1129 of the Bankruptcy Code;

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

(4) As of the Effective Date, there were no pending or known property damage actions seeking damages as a result of property damage allegedly caused by or arising out of asbestos or asbestos-containing products;

(5) The Asbestos Trust is to be funded in part by securities of Reorganized Covington and by the obligation of such debtor to make future payments;

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

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

(8) The Debtors are likely to be subject to substantial future Demands for payment arising out of the same or similar conduct or events that gave rise to the Asbestos Personal Injury Claims, which are addressed by the Permanent Channeling Injunction and the Asbestos Insurance Company Injunction;

(9) The actual amounts, numbers, and timing of future Demands cannot be determined;

(10) Pursuit of Demands outside the procedures prescribed by this Plan is likely to threaten this Plan's purpose to deal equitably with Claims and future Demands;

(11) The terms of the Permanent Channeling Injunction and the Asbestos Insurance Company Injunction, including any provisions barring actions against third parties, are set out in this Plan and in the Disclosure Statement;

(12) The Asbestos Trust shall operate through mechanisms such as structured, periodic, or supplemental payments, pro rata distributions, matrices, or periodic review of estimates of the numbers and values of Unsecured Asbestos Personal Injury Claims and Demands, or other comparable mechanisms, that provide reasonable assurance that the Asbestos Trust shall value, and be in a financial position to pay, all Unsecured Asbestos Personal Injury Claims and Demands in substantially the same manner;

(13) The FCR was appointed by the Bankruptcy Court as part of the proceedings leading to the issuance of the Permanent Channeling Injunction and the Asbestos Insurance Company Injunction for the purpose of, among other things, protecting the rights of persons that might subsequently assert Demands of the kind that are addressed in the Permanent Channeling Injunction or the Asbestos Insurance Company Injunction and that are to be assumed and paid by the Asbestos Trust in accordance with the Asbestos Trust Documents;

(14) In light of the respective benefits provided, or to be provided, to the Asbestos Trust by, or on behalf of, each ASARCO Protected Party, the Permanent Channeling Injunction is fair and equitable with respect to the persons that might subsequently assert Demands against any ASARCO Protected Party;

(15) In light of the respective benefits provided, or to be provided, to the Asbestos Trust by a Settling Asbestos Insurance Company in order to receive the benefits of the Asbestos Insurance Company Injunction, the Asbestos Insurance Company Injunction is fair and equitable with respect to the persons who might subsequently assert Demands against any Settling Asbestos Insurance Company;

(16) The Settling Asbestos Insurance Companies are alleged to be directly or indirectly liable for the Unsecured Asbestos Personal Injury Claims and Demands for one or more of the reasons set forth in section 524(g)(4)(A)(ii) of the Bankruptcy Code;

(17) The Permanent Channeling Injunction and the Asbestos Insurance Company Injunction are integral parts of this Plan and may not be vacated, amended, or modified after Confirmation except to the extent expressly provided in Article 12.3(a) and 12.3(b) of this Plan;

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

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

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

(21) Approval of the settlements and compromises set forth in Articles 11.3, 11.26, and 11.27 hereof as appropriate under Bankruptcy Rule 9019 and applicable law governing approval of such settlements and compromises and shall be ordered as part of the Confirmation Order.

(c) *Confirmation Order.*

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

(d) *No Stay.*

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

(e) *Plan Documents.*

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

(f) *Funding of the Trusts.*

The Trusts have been funded as provided in Articles 11.5 to 11.7 of this Plan.

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

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

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

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

(i) *Approval of Environmental Settlements.*

The settlement agreements for the Previously Settled Environmental Claims, the Miscellaneous Federal and State Environmental Claims, the Residual Environmental Claims, and the Environmental Custodial 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.

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

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

(k) *Approval of Asbestos Settlement Agreement.*

The Confirmation Order approves the Asbestos Settlement Agreement.

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

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

(m) *HSR Act Approval.*

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

10.2 Waiver of Conditions to Effectiveness. The Debtors, in their sole discretion, may waive any condition to effectiveness in Article 10.1 of 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 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 Articles 10.1(e)(1), (f), (i), (j), and (l);

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

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

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

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

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

ARTICLE XI

IMPLEMENTATION OF THIS PLAN

11.1 Sale of Sold Assets to Plan Sponsor.

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

(b) Pursuant to section 3.3(c) of the Plan Sponsor PSA, the Plan Sales Proceeds are subject to adjustment in the amount of the Adjustment Payment (as defined therein). 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 \$~~_____~~90 million in reserve to be used to make any payment that Reorganized ASARCO is required to make to the Plan Sponsor pursuant to section 3.3(c)(ii) of the Plan Sponsor PSA. Such funds shall be held in the Adjustment Payment Reserve by the Plan Administrator until the Closing Accounts Amount (as defined in the Plan Sponsor PSA) has been finally determined and, if applicable, shall be used to satisfy the payment obligations of Reorganized ASARCO under section 3.3(c)(ii) of the Plan Sponsor PSA.

(c) Pursuant to section 2.5(d) of the Plan Sponsor PSA, the Plan Sponsor is entitled to reimbursement from ASARCO of any Unpaid Cure Claim Amount paid by the Plan Sponsor in accordance with such section 2.5(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 \$~~_____~~10 million in the Unpaid Cure Claims Reserve to be used to make payment in respect of any Unpaid Cure Claim Amount for which ASARCO may be required to reimburse the Plan Sponsor pursuant to section 2.5(d) thereof. Such funds shall be held in the Unpaid Cure Claims Reserve until notice is provided by the Plan Sponsor pursuant to section 2.5(d) of the Plan Sponsor PSA (or the period in which any such

notice is required to be provided has expired), whichever occurs later, and shall be applied in accordance with section 2.5(d) thereof, if and as applicable.

(d) Any amounts remaining in the Unpaid Cure Claims Reserve after the application of such reserve pursuant to Article 11.1(c) of this Plan shall be applied to satisfy any remaining obligations of ASARCO under section 3.3(c) of the Plan Sponsor PSA after the application of the Adjustment Payment Reserve pursuant to Article 3.3(b) of this Plan.

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

(a) Upon approval by the Bankruptcy Court in the Confirmation Order, the Plan Administrator shall be appointed. The Plan Administrator shall have and perform all of the duties, responsibilities, rights, and obligations set forth in the Plan Administration Agreement, **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 the Reorganized Debtors are to be engaged. The Plan Administrator shall receive, without further Bankruptcy Court approval, reasonable compensation for such services and reimbursement of reasonable out-of-pocket expenses incurred in connection of such services.

(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; 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 section 3.1(b) of 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 sell or otherwise dispose of, and liquidate or convert to Cash the Remaining Assets including by prosecution, settlement, or other resolution of the Vested Causes of Action, and sale of assets of Reorganized ASARCO that the Plan Administrator determines are not necessary for Reorganized ASARCO's continued operations in a manner compatible with the best interests of the holders of Allowed Claims that are entitled to distributions under this Plan. Once liquidated into Cash, the Cash shall be placed into the Plan Administration Account.

(e) The Plan Administrator shall allocate the funds in the Plan Administration Account to subaccounts corresponding to the enumerated functions of the Plan Administrator. If the Plan Sponsor is required to make the Plan Sponsor Adjustment Payment to Reorganized ASARCO, such funds shall be placed in a subaccount of the Plan Administration Account. Until the Plan Administrator has discharged his, her, or its 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 a subaccount or a Miscellaneous Plan Administration Account (as well as any taxes directly imposed on a subaccount or a Miscellaneous Plan Administration Account) shall be paid out of the assets of such account.

(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 unpaid Claimants and thereafter to the holder of the Class 12 Interest, in accordance with the terms and conditions of the Plan and the Confirmation Order, in the following order of priority: first, to satisfy the ~~Litigation Trust's subrogation rights under Article 6.8(b) of the Plan; second, to satisfy the Class 5 and Class 9 Primary Payment;~~ **second, to satisfy the Pro Rata Post-Petition Interest Payment;** third, to satisfy the Litigation Trust's subrogation rights under Article 6.8(c) of the Plan **hereof to the extent any Class 3, 4, 6, 7, and 8 Litigation Proceeds are paid to Claimants in Classes 3, 4, 6, 7, and 8;** fourth, to satisfy the ~~Pro Rata Post-Petition Interest Payment;~~ **fifth,** to holders of Allowed Class 10 Late-Filed Claims; ~~seventh~~ **sixth,** to holders of Allowed Class 11 Subordinated Claims; and finally, to holders of Class 12 Interests.

(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.

11.3 Approval of Asbestos Settlement Agreement, Environmental Custodial Trust Settlement Agreements, Miscellaneous Federal and State Environmental Settlement Agreement,

and Residual Environmental Settlement Agreement. This Plan implements an agreement in principle with holders of asbestos-related and environmental Claims, which are memorialized in the Asbestos Settlement Agreement attached to this Plan as **Exhibit 9** (as amended, supplemented, or modified at any time prior to the Confirmation Date), and the Environmental Custodial Trust Settlement Agreements, the Miscellaneous Federal and State Environmental Settlement Agreement, and the Residual Environmental Settlement Agreement, which are attached to this Plan as **Exhibits 12-A** through **12-C** (as amended, supplemented, or modified at any time prior to the Confirmation Date). Pursuant to Bankruptcy Rule 9019, Confirmation of this Plan shall approve each of these agreements.

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

11.5 Litigation Trust Creation and Funding. On the Effective Date, the Litigation Trust shall be created and the Litigation Expense Fund shall be established. Also on the Effective Date, the Debtors' respective rights, title, and interests in the Litigation Trust Claims and the Debtors' Privileges associated therewith shall be transferred to the Litigation Trust.

11.6 Asbestos Trust Creation and Funding. On or before the Effective Date, the Asbestos Trust shall be created. On or after the Effective Date, the Debtors' respective rights, title, and interests in the Asbestos Trust Assets shall be transferred to the Asbestos Trust.

11.7 Environmental Custodial Trusts Creation and Funding. On the Effective Date, the Environmental Custodial Trusts shall be created, and 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.

11.8 Prepetition ASARCO Environmental Trust.

(a) The Prepetition ASARCO Environmental Trust shall remain in existence, and shall be unaffected by the Reorganization Cases or any related settlements. The Plan Administrator shall succeed to ASARCO's administrative role, and shall, in its sole discretion, act as Performing Entity (as defined in the trust) from time to time, but shall assume no affirmative liabilities or obligations associated with that role.

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

(c) 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, Reorganized ASARCO and the Plan Administrator shall hold back from distributions under this Plan \$25 million plus accrued interest in accordance with the note and place such amount in the

Prepetition ASARCO Environmental Trust Escrow. The Prepetition ASARCO Environmental Trust Escrow shall be governed by a written escrow agreement under which the Plan Administrator shall serve as the escrow agent and the Prepetition ASARCO Environmental Trust shall be the primary beneficiary. In the event that AMC fails to make any of the payments 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 amounts owed by AMC. Upon AMC's payment of amounts due under the note, the Plan Administrator may release a corresponding amount from the Prepetition ASARCO Environmental Trust Escrow and distribute such funds in accordance with the terms and conditions of this Plan and the Confirmation Order.

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

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

11.11 Substantive Consolidation of ASARCO and the Subsidiary Debtors (Other than Reorganized Covington) and Alternatives Thereto.

(a) On the Effective Date, the Estates of the 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 the Debtors' Estates, (a) all Intercompany Claims (other than between ASARCO and Covington) not otherwise resolved or disposed of pursuant to the Plan are eliminated; (b) all assets and liabilities, including any obligations or guarantees of the Subsidiary Debtors (other than Covington) become the assets and liabilities of ASARCO; and (c) each Proof of Claim is deemed filed against and an obligation of ASARCO.

(b) Alternatively, the Debtors reserve the right to consolidate the 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) As a final alternative, the Debtors reserve the right to proceed with this Plan as to only ASARCO, Covington, ASARCO Master, SPHC, AR Sacaton, and the Asbestos

Subsidiary Debtors. Thereafter, the Other Subsidiary Debtors (other than Covington and ASARCO Master, SPHC, and AR Sacaton,) 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.

11.12 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.

11.13 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 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

11.14 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.

11.15 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 its 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 Trustees shall appoint the persons to serve as officers and directors of Reorganized Covington.

11.16 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.

11.17 Continued Existence and Business Operations of the Reorganized Debtors. Except as otherwise provided in this Article XI, the Reorganized Debtors shall continue their existences as separate entities after the Effective Date for the purposes of satisfying their obligations under 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 ~~businesses~~business of the ~~Reorganized Debtors~~Reorganized ASARCO and the Asbestos Trustees shall, in accordance with the Asbestos Trust Agreement, operate the business of Reorganized Covington. On or after the Effective Date, the Plan Administrator and the Asbestos Trustees, as applicable, may take such action as permitted by applicable law and each of the Reorganized Debtors' organization documents, as ~~the Plan Administrator~~they may determine is reasonable and appropriate, including to cause (a) each of the Reorganized Debtors' legal name to be changed; (b) the

closure of the Reorganized Debtors' bankruptcy cases (upon consultation with the Litigation Trustees and the Asbestos Trustees); or (c) the Reorganized Debtors to be engaged in such businesses or activities as are appropriate to their respective corporate purposes.

11.18 Plan Sponsor's Assumption of Certain Environmental Liabilities. Pursuant to section 2.3(e) of the Plan Sponsor PSA, and except as provided in sections 2.4(f), (g), and (h) of the Plan Sponsor PSA, from and after the Closing, the Plan Sponsor shall assume, pay, perform, and discharge when due the Assumed Environmental Liabilities (as such term is defined in the Plan Sponsor PSA).

11.19 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 this Plan or the Plan Documents, on the Effective Date, the Plan Sales Proceeds, the Distributable Cash, and the Remaining Assets shall vest in Reorganized ASARCO, which may operate free of any restrictions imposed by the Bankruptcy Code or by the Bankruptcy Court. The Madera Property shall vest in Reorganized Covington, which may operate free of any restrictions imposed by the Bankruptcy Code or by the Bankruptcy Court.

11.20 Vesting and Enforcement of Causes of Action.

(a) The Vested Causes of Action (as listed in **Exhibit 14-A**) 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 his, her, or its 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 Litigation Trust Claims (as listed in **Exhibit 14-B**) shall vest in the Litigation Trustees. The Litigation Trust may prosecute, compromise and settle, abandon, release, or dismiss the Litigation Trust Claims, without need for approval by the Bankruptcy Court.

(c) The Debtors' respective rights, title, and interests in and to the Asbestos Insurance Actions (as listed in **Exhibit 14-C**) shall vest in the Asbestos Trustees. The Asbestos Trust may prosecute, compromise and settle, abandon, release, or dismiss the Asbestos Insurance Actions, without need for approval of the Bankruptcy Court.

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

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

rulings that any one or more of them deem necessary to further carry out the intentions and purposes of, and give full effect to the provisions of, this Plan.

11.23 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.

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

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

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

11.27 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 XII

INJUNCTIONS, RELEASES, AND DISCHARGE

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

12.2 Discharge Injunction. *Except as otherwise expressly provided in this Plan, the discharge and release set forth in Article 12.1 shall operate as an injunction permanently prohibiting and enjoining the commencement or continuation of any action or the employment of process with respect to, or any act to collect, recover from, or offset (a) any Claim and Demand discharged and released in Article 12.1, and (b) any cause of action, whether known or unknown, based on the same subject matter as any Claim or Demand discharged and released in Article 12.1. Except as otherwise expressly provided in this Plan, all Entities shall be precluded and forever barred from asserting against the ASARCO Protected Parties, their successors, or assigns, or their assets, properties, or interests in property any other or further Claims or Demands, or any other right to legal or equitable relief regardless of whether such right can be reduced to a right to payment, based upon any act or omission, transaction, or other activity of any kind or nature that occurred prior to the Effective Date, whether or not the facts of or legal bases therefore were known or existed prior to the Effective Date.*

12.3 The Permanent Channeling Injunction and the Asbestos Insurance Company Injunction. In order to supplement the injunctive effect of the Discharge Injunction, and pursuant to the exercise of the legal and equitable jurisdiction and power set forth in section 524(g) or 105(a) of the Bankruptcy Code (or both), the Confirmation Order shall provide for issuance of the following injunction to take effect as of the Effective Date:

(a) *Permanent Channeling Injunction.*

(1) Terms. *In order to induce, preserve, and promote the settlements contemplated by and provided for in this Plan, and pursuant to section 524(g) or 105(a) of the Bankruptcy Code (or both), all Unsecured Asbestos Personal Injury Claims and Demands shall be channeled to the Asbestos Trust for a remedy under the Asbestos TDP, and all holders of Unsecured Asbestos Personal Injury Claims and Demands and all Entities which have held or asserted, which hold or assert, or which may in the future hold or assert, any Unsecured Asbestos Personal Injury Claim or Demand shall be permanently and forever stayed, restrained, and enjoined from taking any action against any ASARCO Protected Party (or any property or interest in property of an ASARCO Protected Party) with respect to such Unsecured Asbestos Personal Injury Claim or Demand, including, without limitation, for the purpose of directly or indirectly obtaining a judgment, collecting, recovering, or receiving payments, satisfaction, or recovery with respect to such Unsecured Asbestos Personal Injury Claim or Demand, including, without limitation:*

(A) *commencing, conducting, or continuing in any manner, directly or indirectly, any suit, action, or other proceeding of any kind (including a judicial, arbitration, administrative, or other proceeding) in any forum with respect to any Unsecured Asbestos Personal Injury Claim or Demand against any of the ASARCO Protected Parties, or against the property or interests in property of any ASARCO Protected Parties;*

(B) *enforcing, levying, attaching (including by prejudgment attachment), collecting, or otherwise recovering, by any manner or means, whether directly or indirectly, any judgment, award, decree, or other order*

against any of the ASARCO Protected Parties, or against the property or interests in property of any ASARCO Protected Parties, with respect to any Unsecured Asbestos Personal Injury Claim or Demand;

(C) *creating, perfecting, or otherwise enforcing in any manner, directly or indirectly, any Lien of any kind against any ASARCO Protected Parties, or the property or interests in property of any ASARCO Protected Parties, with respect to any Unsecured Asbestos Personal Injury Claim or Demand;*

(D) *except as otherwise specifically provided in this Plan, asserting or accomplishing any setoff, right of subrogation, indemnity, contribution, reimbursement, or recoupment of any kind and in any manner, directly or indirectly, against any obligation due any ASARCO Protected Parties, or against the property or interests in property of any ASARCO Protected Parties, with respect to any Unsecured Asbestos Personal Injury Claim or Demand; and*

(E) *proceeding or taking any action, in any manner, in any place whatsoever, that does not conform to, or comply with, the provisions of this Plan, the Plan Documents, or the Asbestos Trust Documents relating to any Unsecured Asbestos Personal Injury Claim or Demand.*

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

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

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

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

(D) *the rights of the Asbestos Trustees, if any, with regard to any Asbestos Insurance Company that is not a Settling Asbestos Insurance Company (with the Asbestos Trust being, and deemed to be, for all purposes of insurance and indemnity, the successor to the Debtors in respect of all Asbestos Personal Injury Claims and Demands and other recoveries from an Asbestos Insurance Company, in its capacity as such); or*

(E) *the rights of Entities to assert any Claim, Demand, debt, obligation, or liability for payment against an Asbestos Insurance Company that*

is not an ASARCO Protected Party unless otherwise enjoined by order of the Bankruptcy Court or the District Court, or estopped by a provision of this Plan.

(b) *Asbestos Insurance Company Injunction.*

(1) *Terms.* *In order to preserve and promote the property of the Estate, as well as the settlements contemplated by and provided for in this Plan, and to supplement where necessary the injunctive effect of the discharge and releases provided for in this Plan, pursuant to section 105(a) of the Bankruptcy Code, all Entities which have held or asserted, which hold or assert, or which may in the future hold or assert any Claim, Demand, or cause of action (including, without limitation, any Unsecured Asbestos Personal Injury Claim or Demand or any Claim for or respecting any Asbestos Trust Expense) against a Settling Asbestos Insurance Company based upon, relating to, arising out of, attributable to, or in any way connected with any Unsecured Asbestos Personal Injury Claim or Demand, Asbestos In-Place Insurance Coverage, or an Asbestos Insurance Policy, shall be permanently and forever stayed, restrained, and enjoined from taking any action against such Settling Asbestos Insurance Company for the purpose of directly or indirectly collecting, recovering, or receiving payments, satisfaction, or recovery with respect to any such Claim, Demand, or cause of action, including without limitation:*

(A) *commencing, conducting, or continuing, in any manner, directly or indirectly, any suit, action, or other proceeding of any kind (including a judicial, arbitration, administrative, or other proceeding) in any forum with respect to any such Claim, Demand, or cause of action against any Settling Asbestos Insurance Company, or against the property or interests in property of any Settling Asbestos Insurance Company;*

(B) *enforcing, levying, attaching, collecting, or otherwise recovering, by any manner or means, whether directly or indirectly, any judgment, award, decree, or order against any Settling Asbestos Insurance Company or against the property or interests in property of any Settling Asbestos Insurance Company with respect to any such Claim, Demand, or cause of action;*

(C) *creating, perfecting, or otherwise enforcing, in any manner, directly or indirectly, any Lien of any kind against any Settling Asbestos Insurance Company, or the property or interests in property of any Settling Asbestos Insurance Company with respect to any such Claim, Demand, or cause of action;*

(D) *except as otherwise specifically provided in this Plan, asserting or accomplishing any setoff, right of subrogation, indemnity, contribution, reimbursement, or recoupment of any kind and in any manner, directly or indirectly, against any obligation due any Settling Asbestos Insurance Company, or against the property or interests in property of any Settling Asbestos Insurance Company with respect to any such Claim, Demand, or cause of action; and*

(E) *taking any act, in any manner, in any place whatsoever, that does not conform to, or comply with, the provisions of the Plan Documents relating to such Claim, Demand, or cause of action.*

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

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

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

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

(D) *the rights of the Asbestos Trustees, if any, with regard to any Asbestos Insurance Company that is not a Settling Asbestos Insurance Company (with the Asbestos Trust being, and deemed to be, for all purposes of insurance and indemnity, the successor to the Debtors in respect of all Asbestos Personal Injury Claims, Demands, and other recoveries from an Asbestos Insurance Company, in its capacity as such);*

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

(F) *the rights of the Asbestos Trust or the Asbestos Trustees to seek relief from the Asbestos Insurance Company Injunction should a Settling Asbestos Insurance Company fail to fulfill all obligations under an Asbestos Insurance Settlement Agreement.*

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

12.5 Exoneration and Reliance. None of the ASARCO Protected Parties shall be liable (other than for criminal liability, willful misconduct or bad faith, or *ultra vires* acts) to any holder of a Claim, Demand, or Interest or any other Entity with respect to any action, omission,

forbearance from action, decision, or exercise of discretion taken at any time through the Effective Date in connection with (a) the management or operation of any of the Debtors or the discharge of 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 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 or Demands asserted against any such Debtor with regard to the Reorganization Cases, (d) any action taken in the negotiation, formulation, preparation, development, proposal, solicitation, disclosure, Confirmation, or implementation of this Plan, other Plan Documents, or related agreements, instruments, or other documents, (e) the administration of this Plan or the assets and property to be distributed pursuant to this Plan, or (f) the administration of any of the Estates. The ASARCO Protected Parties shall be deemed to have participated in each of the Reorganization Cases in good faith and in compliance with all applicable provisions of the Bankruptcy Code. Nothing in this Article 12.5 shall prevent the enforcement of the terms of this Plan.

12.6 Fee Shifting. If any holder of a Claim, Demand, or Interest or 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 12.5 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 TDP), and does not prevail in any such action, suit, or proceeding, such holder of a Claim, Demand, or Interest or other Entity shall be liable for and must pay the reasonable attorneys' fees and costs of such ASARCO Protected Party, and as a condition to going forward with such action, suit, or proceeding at the outset thereof, such holder of a Claim, Demand or Interest or other Entity shall be required to provide appropriate proof and assurances of his, her, or its capacity to make such payment of reasonable attorneys' fees and costs in the event the holder or other Entity fails to prevail. In order for a holder of a Claim, Demand, or Interest or other Entity to be considered a prevailing party, such party must be awarded an enforceable judgment on the merits that constitutes a material alteration of the legal relationship between such party and an ASARCO Protected Party, and does not include a judgment that awards nominal damages. This Article 12.6 shall 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, Demand, or Interest or other Entity prevails in an action, suit, or proceeding that is filed against such ASARCO Protected Party.

12.7 Additional Releases. 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, Demands, obligations, actions, suits, rights, debts, accounts, causes of action, remedies, avoidance actions, agreements, promises, damages, judgments, demands, defenses, or claims in respect of equitable subordination, and liabilities through the Effective Date, (including all Claims and Demands based on or arising out of facts or circumstances that existed as of or prior to this Plan in any of the Reorganization Cases, including Claims and Demands based on negligence or strict liability, and further including any

derivative claims asserted on behalf of any of the Debtors, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity, or otherwise, that any of the Debtors, their respective Estates, or 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, any of the Reorganized Debtors, Claimants, holders of Demands, or other Persons receiving or who are entitled to receive distributions under this Plan 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). None of the ASARCO Protected Parties 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 paragraph shall not extend to any claims by any governmental agency with respect to criminal liability, willful misconduct or bad faith, or *ultra vires* acts.

12.8 Exculpation and Indemnities.

(a) *Exculpation.*

Except in the case of a judicial finding by a Final Order of willful misconduct or bad faith or any criminal liability or liability for *ultra vires* acts asserted by any Governmental Unit, no ASARCO Protected Party (acting in any capacity whatsoever) shall be liable to any Person or Entity for any action, failure or omission to act, or other matter related to the Debtors or any of the Reorganization Cases, including those activities described in Article 12.5 above, through and including the Effective Date. All parties are permanently enjoined from initiating a suit against any ASARCO Protected Party, except in the case of a judicial finding by a Final Order of actions for willful misconduct or bad faith, or any criminal liability or liability for *ultra vires* acts asserted by any Governmental Unit. Any such action by a non-Governmental Unit shall be brought in the Bankruptcy Court within 90 days after the Effective Date. Nothing in this Article 12.8 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, Demand, 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 12.8, 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, or 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 ~~anticipated~~ indemnification obligations under this Article 12.8. 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 as a Subsequent Distribution, in accordance with the terms and conditions of this Plan and the Confirmation Order.

12.9 Releases by Holders of Claims, Demands and Interests. 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 and holders of Demands shall be deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged each of the ASARCO Protected Parties that are not Debtors from any and all Claims, Demands, Interests, obligations, rights, suits, damages, causes of action, remedies, and liabilities whatsoever, including Claims and Demands based on negligence or strict liability, and including any derivative claims asserted on behalf of any Debtor, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity, or otherwise, that such holder of a Claim, Demand, or Interest would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, (1) any of the Debtors, (2) any of the Reorganization Cases, (3) the subject matter of, or the transactions or events giving rise to, any Claim, Demand, or Interest, (4) the business or contractual arrangements between any Debtor and any ASARCO Protected Party, (5) the restructuring of Claims, Demands, 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, other than Claims, Demands, or liabilities arising out of or relating to any action or omission of an ASARCO Protected Party that constitutes a failure to perform the duty to act in good faith, with the care of an ordinarily prudent person and in a manner the ASARCO Protected Party reasonably believed to be in the best interests of the Debtors (to the extent such duty is imposed by applicable non-bankruptcy law) where such failure to perform constitutes willful misconduct or gross negligence.

12.10 Release of Fraudulent Transfer Claims Against Settling Asbestos Insurance Companies. All fraudulent transfer claims against any Settling Asbestos Insurance Company arising under sections 544(b), 548, or 550 of the Bankruptcy Code or otherwise with respect to the Claims, rights, or interests released under the Asbestos Insurance Settlement Agreement shall be released, and the Asbestos Trust shall have no authority to bring any fraudulent transfer actions arising under any applicable state or other non-bankruptcy law against any Settling Asbestos Insurance Company with respect to the Claims, rights, and interests released under the Asbestos Insurance Settlement Agreement. This Article ~~12.11~~12.10 does not apply to any of the existing Avoidance Actions against certain Asbestos Insurance Companies that entered into prepetition settlement agreements, as listed on Exhibit 14-C hereto.

12.11 Limitation Regarding Governmental Units. The releases, discharges, satisfactions, exonerations, exculpations, and injunctions provided under this Plan (including, without limitation, those in Articles 12.1, 12.2, 12.5, 12.7, 12.8, and 12.9 hereof) or the Confirmation Order shall not apply to any liability to a Governmental Unit arising after the Effective Date; *provided, however*, that, except as otherwise expressly provided in this Plan, no Governmental Unit shall assert any Claim or other cause of action under Environmental Laws against any of the Reorganized Debtors, the Plan Administrator, or the Plan Administration Reserve, *except provided, further, however*, that nothing in this Plan or the Confirmation Order releases, discharges, precludes, or enjoins the enforcement of any liability to a Governmental Unit under Environmental Law that any Entity would be subject to as the owner or operator of property after the Effective Date or any criminal liability (other than criminal liabilities that are dischargeable). Nothing in this Article 12 shall be construed to preclude enforcement by the United States or any individual state of any requirements under an Environmental Custodial Trust Agreement against an Environmental Custodial Trustee.

12.12 Limitation Regarding Flow Through Bonds. In accordance with the SPT Settlement Agreement, and except as otherwise provided in Article ~~9.10~~9.9 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.

12.13 Discharge, Injunctions, and Releases Integral to the Plan.

The discharge, Injunctions, and releases set forth in this Article XII are integral parts of the Plan.

ARTICLE XIII

MATTERS INCIDENT TO PLAN CONFIRMATION

13.1 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, section 524, or any other provision of the Bankruptcy Code, other applicable law, or court order, in effect immediately prior to Confirmation shall remain in full force and effect until the Injunctions

become effective and thereafter if so provided by this Plan, the Confirmation Order, or by their own terms. In addition, on and after the Confirmation Date, the Debtors may seek such further orders as they may deem necessary to preserve the status quo during the time between the Confirmation Date and the Effective Date.

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

13.2 No Liability for Tax Claims. Unless a taxing authority has asserted a Claim against a Debtor prior to the applicable Bar Date, no Claim of such taxing authority shall be Allowed against 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.

13.3 No Successor Liability.

(a) Except as otherwise expressly provided in this Plan, none of the ASARCO Protected Parties shall be deemed a successor or successor in interest to the Debtors or to any Entity for which the Debtors may be held legally responsible, by reason of any theory of law or equity, and none shall be responsible for any successor or transferee liability of any kind or character.

(b) Except as otherwise expressly provided in this Plan, none of the ASARCO Protected Parties shall have any obligations to perform, pay, indemnify creditors for, or otherwise have any responsibilities for any liabilities or obligations of any of the Debtors or the Reorganized Debtors, whether arising before, on, or after the Confirmation Date.

13.4 Asbestos Insurance Actions and Preservation of Insurance Claims and Defenses. Subject to the remaining terms of this Article 13.4 and the terms of the Confirmation Order, Asbestos Insurance Actions and Asbestos Insurance Recoveries shall be preserved pursuant to this provision for pursuit by the Asbestos Trust for the benefit of the Asbestos Trust Beneficiaries. On or after the Effective Date, the Asbestos Trustees shall be entitled, in their sole and complete discretion, to pursue, compromise, or settle any and all Asbestos Insurance Actions and Asbestos Insurance Recoveries. All proceeds from the Asbestos Insurance Actions shall be paid to the Asbestos Trust.

13.5 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 this 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 and transferred to the Asbestos Trustees in accordance with the provisions herein. Nothing herein shall limit the ability of ASARCO, the Asbestos Subsidiary Debtors, the 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 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 13.5(f) below. Moreover, nothing in the Confirmation process shall in any way operate to, or have the effect of, impairing, prejudicing, or expanding such Asbestos Insurance Company’s legal, equitable, or contractual rights in any respect, or of increasing, accelerating, creating, or triggering such Asbestos Insurance Company’s insurance coverage obligations, if any, in comparison to what those respective rights or obligations would have been if this Plan had not been confirmed except as set out in Article 13.5(f) below; and all of such Asbestos Insurance Company’s rights are expressly reserved and preserved. Such Asbestos Insurance Company’s rights shall be determined pursuant to its insurance policies with the Debtors, and under applicable law. Such Asbestos Insurance Company’s rights to conduct discovery, either written or oral, in any future proceeding in any insurance coverage litigation relating to 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 13.5(f) below, no proceedings undertaken pursuant to or otherwise as part of the Confirmation process (including, without limitation, any evidentiary hearings or any findings or conclusions constituting or relating to the determination of any Alter Ego 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 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 reserves all of their rights, if any, to adjudicate in a fully “adversarial” trial or hearing on the merits any or all of the Debtors’ asbestos-related liabilities including, without limitation, any liability with respect to any individual asbestos claim; and any other party reserves all of its rights, if any, to oppose such Asbestos Insurance Company’s assertion of any such right.

(e) That an Asbestos Insurance Company that is subject to insurance neutrality under the 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 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 Trust.

ARTICLE XIV

PROVISIONS GOVERNING DISTRIBUTIONS

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

14.2 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 maintained by the Claims Agent. ~~Nonetheless, if such holder holds such Claim through a Nominee, distributions with respect to such Claim shall be made to such Nominee, and such Nominee shall, in turn, make appropriate distributions and book entries to reflect such distributions to such holder; provided, however, that where an Indenture Trustee is acting on behalf of certain Bondholders, distributions on account of those Bondholder Claims shall be made to such Indenture Trustee for its subsequent distribution, subject to the terms and conditions of the applicable indenture or other governing document, to the holders of such Claims. Payments may be made at the election of Reorganized ASARCO or the Plan Administrator by check, wire transfer, or the customary method used for payment by any of the Debtors prior to the Petition Date.~~

(b) ~~Except as otherwise expressly provided in an environmental settlement agreement, [instructions for delivery to the United States to come].~~ 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). If a distribution is made to the Indenture Trustee, such Indenture Trustee shall administer the distribution in accordance with the Plan and the Indenture and 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, 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 4.2(d) above, the compensation of the Indenture Trustees for services relating to distributions under the 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 the Plan, and any fees and expenses of 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.

14.3 Distribution Record Date. Reorganized ASARCO and the Plan Administrator shall have no obligation to recognize the transfer of, or the sale of any participation in, any Allowed Claim that occurs after the Distribution Record Date and shall be entitled for all purposes herein to recognize and make distributions only to those holders of Allowed Claims that are holders of such Claims or participants therein, as of the Distribution Record Date; 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 not be made as of the Distribution Record Date but rather shall be accomplished in accordance with the respective Indentures and the policies and procedures of DTC.

14.4 Unclaimed Property.

(a) *Distributions by the Asbestos Trust.*

Any Cash, assets, or other property to be distributed under this Plan by the Asbestos Trust that remains unclaimed (including by 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 Trust, for use in accordance with the terms of the Asbestos Trust Agreement.

(b) *Distributions by the Plan Administrator.*

(1) If the distribution to any holder of an Allowed Claim (other than the holder of an Unsecured Asbestos Personal Injury Claim or Demand) is returned to Reorganized ASARCO or the Plan Administrator as undeliverable or is otherwise unclaimed (including by a Claimant's failure to 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 14.5(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 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 unpaid Claimants, in accordance with the terms and conditions of this Plan and the Confirmation Order.

14.5 Compliance with Tax Requirements. Reorganized ASARCO, the Plan Administrator, and the Asbestos Trust shall comply with all applicable withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authorities, and all distributions hereunder or under any Plan Document shall be subject to such withholding and reporting requirements, if any. 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.

14.6 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.

14.7 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.

14.8 Disputed Claims Reserve.

(a) The Plan Administrator shall maintain, in accordance with his, her, or its 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 Cash in the Disputed Claim Reserve that would have been distributed to the holders of Disputed Claims if such Disputed Claims had been Allowed Claims on the Effective Date. This amount 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 and ~~may (if appropriate)~~ **shall (if the Plan Administrator believes that he, she, or it will have sufficient funds to pay Post-Petition Interest to the Class of Claimants to which the Disputed Claims belong)** include an estimate of Post-Petition Interest. **No payment shall be made on account of the Class 5 and Class 9 Supplemental Distribution or on account of Claims and Interests in Classes 10, 11, and 12 until all Post-Petition Interest payable to Classes 3, 4, 6, 7, and 8 has been fully paid or reserved.**

(c) In the case of objections to allegedly Secured Claims, any Lien asserted by the holder of such a Claim against Remaining Assets that vest in Reorganized ASARCO or any assets (including the Madera Property) that vest in Reorganized Covington shall remain in place, pending resolution of the objection to the allegedly Secured Claim. Any Lien asserted by the holder of an allegedly Secured Claim against an asset that is sold to the Plan Sponsor shall attach to Cash held by the Plan Administrator in an amount equal to the lesser of (1) the amount of the allegedly Secured Claim; (2) the amount, if any, estimated by the Bankruptcy Court pursuant to section 502(c) of the Bankruptcy Code; or (3) the amount otherwise agreed to by the Debtors and the holders of such 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) 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 any Disputed Claim that has become an Allowed Claim, an amount equal to the Allowed Claim as if such Claim had been an Allowed Claim on the Effective Date, including, if appropriate, Post-Petition Interest.

(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, in accordance with the terms and conditions of this Plan and the Confirmation Order.

14.9 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 the 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 14.9 by a holder of an Allowed Bondholders' Claim, such holder will, for all purposes under the 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 14.9(a) hereof shall be deemed to have had its right to distributions pursuant to this Plan on account thereof discharged, and will be forever barred from asserting any such Claim against the Debtors, Reorganized ASARCO, the Plan Administrator, the 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.

14.10 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 Indenture 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 will continue in effect solely for the purposes of (a) allowing distributions to be made under the 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 XV

PROCEDURES FOR TREATING DISPUTED CLAIMS

15.1 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 and Demands and objections to Claims that have been Allowed by Final Order) and litigate to judgment, settle, or withdraw such objections to Disputed Claims. Without limiting the preceding, 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 Trust shall have the authority to file objections to Unsecured Asbestos Personal Injury Claims and Demands and litigate to judgment, settle, or withdraw such objections. Unsecured Asbestos Personal Injury Claims and Demands, whether or not a Proof of Claim is filed, shall be satisfied exclusively in accordance with this Plan, the Asbestos Trust Agreement, and the Asbestos TDP. For the avoidance of doubt, no objection to Unsecured Asbestos Personal Injury Claims or Demands shall be filed in the Bankruptcy Court. Except as provided herein as to objections to Unsecured Asbestos Personal Injury Claims filed after the Effective Date, nothing in this Article 15.1 shall prejudice any party in interest's right or standing to file objections to Claims.

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

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

ARTICLE XVI

MISCELLANEOUS

16.1 General Retention of Jurisdiction. Until the Reorganization Cases are closed, the Bankruptcy Court (and, with respect to the Permanent Channeling Injunction and the Asbestos Insurance Company Injunction, the District Court) shall retain the fullest and most extensive jurisdiction permissible, including, without limitation, that necessary (a) to ensure that the purposes and intent of this Plan are carried out; (b) to enforce and interpret the terms and conditions of the Plan Documents; and (c) to enter such orders or judgments, including, without limitation, injunctions necessary to enforce the rights, title, and powers of a Debtor, a Reorganized Debtor, a Settling Asbestos Insurance Company, the Plan Sponsor, and 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 Trustees or the Litigation Trustees (as appropriate) from taking such action as may be necessary in the enforcement of any cause of action that such Entity has or may have and that may not have been enforced or prosecuted by 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.

16.2 Jurisdiction over the Asbestos Trust and the Environmental Custodial Trusts. The Asbestos Trust and the Environmental Custodial Trusts shall be subject to the continuing jurisdiction of the Bankruptcy Court in accordance with the requirements of section 468B of the Internal Revenue Code and the regulations issued pursuant thereto.

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

(a) modify this Plan after entry of the Confirmation Order, pursuant to the provisions of this Plan, the Bankruptcy Code, and the Bankruptcy Rules;

(b) correct any defect, cure any omission, reconcile any inconsistency, or make any other necessary changes or modifications in or to this Plan, the Plan Documents, or the Confirmation Order as may be necessary to carry out the purposes and intent of this Plan;

(c) hear and determine any cause of action, and 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 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;

(f) enter and implement orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with the consummation or implementation of 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;

(g) 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;

(h) enter such orders or judgments, including 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;

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

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

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

(l) hear and determine any timely objections to or motions or applications concerning Claims or the allowance, classification, priority, compromise, setoff, estimation, or payment of any Claim, to the fullest extent permitted by the provisions of section 157 of title 28 of the United States Code;

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

(n) hear and determine any motions, contested matters, or adversary proceedings involving taxes, tax refunds, tax attributes, tax benefits, and similar or related matters with respect to 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;

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

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

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

(r) 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;

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

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

(u) consider and act on the compromise and settlement of any Claim against, or Interest in, 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;

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

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

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

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

(z) enter 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.

16.4 Exclusive Jurisdiction of District Court for Certain Matters.

(a) The District Court shall, without regard to the amount in controversy, retain exclusive jurisdiction after Confirmation over matters relating to section 524(g) of the Bankruptcy Code and the Permanent Channeling Injunction and the Asbestos Insurance Company Injunction, including, without limitation, the validity, application, or construction of the Permanent Channeling Injunction and the Asbestos Insurance Company Injunction, or of section 524(g) of the Bankruptcy Code with respect to the Permanent Channeling Injunction and the Asbestos Insurance Company Injunction; *provided, however*, that, from and after the Effective Date, the jurisdiction of the District Court shall be non-exclusive with respect to any Asbestos Insurance Action or Asbestos Insurance Recovery. Nothing contained herein shall be deemed a finding or conclusion that: (a) the Bankruptcy Court or District Court in fact have jurisdiction with respect to any Asbestos Insurance Action or Asbestos Insurance Recovery; (b) any such jurisdiction is exclusive with respect to any Asbestos Insurance Action or Asbestos

Insurance Recovery; or (c) abstention or dismissal or reference of actions effecting the transfer of jurisdiction of any Asbestos Insurance Action or Asbestos Insurance Recovery pending in the Bankruptcy Court or District Court to another court is precluded, inadvisable, or unwarranted. Any court other than the Bankruptcy Court or the District Court that has or is capable of having jurisdiction over any Asbestos Insurance Action or Asbestos Insurance Recovery shall have the right to exercise such jurisdiction.

(b) Notwithstanding entry of the Confirmation Order or the occurrence of the Effective Date, the reference to the Bankruptcy Court pursuant to the Reference Order shall continue, but subject to this Article 16.4 and any other modifications or withdrawals of the reference specified in the Confirmation Order, the Reference Order, any case management order, or other order of the District Court.

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

16.6 Modification of Plan. The Debtors may alter, amend, or modify this Plan under section 1127(a) of the Bankruptcy Code at any time prior to the Confirmation Date and expressly reserve their 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; *provided, however*, that ASARCO shall not, without the prior written consent of the Plan Sponsor, seek to amend or modify any provision of the Bid Protections Order, the Disclosure Statement, this Plan, or the Confirmation Order to effect a change in the terms and conditions of the transactions contemplated by the Plan Sponsor PSA which would reasonably be expected to have a material adverse effect on the Plan Sponsor (or the Plan Sponsor Parent) or on the ability of the Sellers and Plan Sponsor (and Plan Sponsor Parent) to consummate the transactions contemplated by the Plan Sponsor PSA within the time periods set forth in sections 7.7(a) and 12.1 thereof. After the Confirmation Date, the Debtors may, under section 1127(b) of the Bankruptcy Code, seek Bankruptcy Court approval to remedy any defects or omissions or reconcile any inconsistencies in this Plan or the Confirmation Order

in such manner as may be necessary to carry out the purposes and intent of this Plan, so long as the proposed alteration, amendment, or modification does not adversely affect the treatment of Claims or Interests under this Plan and would not reasonably be expected to have a material adverse effect on the Plan Sponsor, the Plan Sponsor Parent, or on the ability to consummate the transactions contemplated by the Plan Sponsor PSA.

16.7 Revocation, Withdrawal or Non-Consummation. The Debtors reserve the right to revoke or withdraw this Plan prior to the Confirmation Hearing and to file subsequent plans of reorganization. If the Debtors revoke or withdraw this Plan, or if Confirmation or Consummation does not occur, then (a) 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.

16.8 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.

16.9 Rules Governing Conflicts Between Documents. In the event of a conflict between the terms or provisions of this Plan and the Plan Documents, the terms of this Plan shall control over the Plan Documents. In the event of a conflict between the terms of 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 the Plan or any other Plan Document, the Plan or other Plan Document (as the case may be) shall control.

16.10 Severability. In the event any provision in this Plan should be determined to be unenforceable either on its face or as applied to any Claim, Demand, Interest or transaction, the Debtors may modify this Plan in accordance with Article 16.6 hereof so that such provision shall not be applicable to the holder of any Claim, Demand, Interest, or transaction. Such determination of unenforceability shall not (a) limit or affect the enforceability and operative effect of any other provision of this Plan or (b) require the re-solicitation of any acceptance or rejection of this Plan.

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

16.12 Bar Date for Compensation and Reimbursement Claims. All applications for final allowances of compensation or reimbursement of expenses under section 330 of the Bankruptcy Code or applications for allowance of Administrative Claims arising under subsections (b)(2) through (b)(6) of section 503(b) of the Bankruptcy Code must be filed on or before 90 days after the Effective Date, unless otherwise ordered by the Bankruptcy Court; *save and except that* any application under section 503(b)(3)(D) of the Bankruptcy Code or any application for a fee

enhancement or success fee under the Bankruptcy Code must be filed on or before 60 days after the Effective Date, unless otherwise ordered by the Bankruptcy Court. Objections to applications of such Professionals Persons or other Entities for compensation or reimbursement of costs and expenses or for substantial contribution Claims must be filed within 20 days after the applicable application for compensation or reimbursement was served.

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

16.14 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.

16.15 Consent to Jurisdiction. Except for the matters within the exclusive jurisdiction of the District Court as described in Article 16.4 hereof, the Debtors, Reorganized ASARCO, the Plan Administrator, the Trustees, the Trusts, the Asbestos TAC, and the FCR consent to the jurisdiction of the Bankruptcy Court, or any successor thereto, for all proceedings relating to the enforcement of this Plan and the Plan Documents, the Confirmation Order, and the Asbestos Insurance Company Injunction. As to the matters within the exclusive jurisdiction of the District Court as described in Article 16.4 hereof, the Debtors, Reorganized ASARCO, the Plan Administrator, the Asbestos Trustees, the Asbestos Trust, the Asbestos TAC, and the FCR consent to the jurisdiction of the District Court, or any successor thereto, and agree that it shall be the preferred forum for all matters within the exclusive jurisdiction of the District Court as described in Article 16.4.

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

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

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

16.19 Waiver of Rights. Holders of Claims, Demands or Interests shall have the right voluntarily to waive any rights, benefits, or protections that are afforded to them under the provisions of this Plan or any order issued in furtherance of 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.

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

The Debtors

Jack L. Kinzie
Baker Botts L.L.P.
2001 Ross Avenue
Dallas, TX 75201-2980
Facsimile: (214) 661-4727
Email: *jack.kinzie@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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The FCR

Judge Robert C. Pate
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The DOJ

David L. Dain
Alan S. Tenenbaum
United States Department of Justice
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Counsel for the Plan Sponsor

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16.21 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 Litigation Trustees, may (in his, her or its discretion and without liability or recourse) dispose of any Retained Books and Records which he, she, or it determines are appropriate for disposal. The Plan Administrator shall provide the Litigation Trustees with a reasonable opportunity to segregate and remove, at the expense of the Litigation Trust, such Retained Books and Records as the Litigation Trustees 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 for retention and disposal of Asbestos Books are set forth in Article 8.13 above.

Dated: September ~~12,~~25, 2008

Respectfully submitted,

ASARCO LLC, a Delaware limited liability
company

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

ALC, INC., a Tennessee corporation

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

ALTA MINING AND DEVELOPMENT
COMPANY, a Utah corporation

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

AMERICAN SMELTING AND REFINING
COMPANY, a New Jersey corporation

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

AR MEXICAN EXPLORATIONS, INC., a
Delaware corporation

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

AR SACATON, LLC, a Delaware limited liability company

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

ASARCO CONSULTING, INC., a Delaware corporation

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

ASARCO EXPLORATION COMPANY, INC., a New York corporation

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

ASARCO MASTER, INC., a Delaware corporation

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

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

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

BLACKHAWK MINING AND
DEVELOPMENT COMPANY, LIMITED, an
Idaho corporation

By: /s/ Douglas E. McAllister

Douglas E. McAllister
President and Secretary

BRIDGEVIEW MANAGEMENT COMPANY,
INC., a New Jersey corporation

By: /s/ Douglas E. McAllister

Douglas E. McAllister
President and Secretary

CAPCO PIPE COMPANY, INC., an Alabama
corporation

By: /s/ William Perrell

William Perrell
President and Secretary

CEMENT ASBESTOS PRODUCTS
COMPANY, an Alabama corporation

By: /s/ William Perrell

William Perrell
President and Secretary

COVINGTON LAND COMPANY, a Delaware
corporation

By: /s/ Douglas E. McAllister

Douglas E. McAllister
President and Secretary

ENCYCLE, INC., a Delaware corporation

By: /s/ Douglas E. McAllister

Douglas E. McAllister
President and Secretary

GOVERNMENT GULCH MINING
COMPANY LIMITED, an Idaho corporation

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

GREEN HILL CLEVELAND MINING
COMPANY, a Nevada corporation

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

LAC D'AMIANTE DU QUÉBEC LTÉE, a
Delaware corporation

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

LAKE ASBESTOS OF QUEBEC, LTD., a
Delaware corporation

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

LAQ CANADA, LTD., a Delaware corporation

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

PERU MINING EXPLORATION AND
DEVELOPMENT COMPANY, a Delaware
corporation

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

SOUTHERN PERU HOLDINGS, LLC, a
Delaware limited liability company

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

TULIPAN COMPANY, INC., a Delaware
corporation

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

WYOMING MINING AND MILLING
COMPANY, an Idaho corporation

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