

## **SETTLEMENT AGREEMENT AND MUTUAL RELEASE WITH WESTPORT**

This Settlement Agreement and Mutual Release (hereinafter the "Agreement") is made by and between Kaiser Aluminum, on its own behalf, and on behalf of the KACC Parties, and Westport Insurance Company, formerly known as The Manhattan Fire and Marine Insurance Company and as Puritan Insurance Company, and as successor in interest to Puritan Excess and Surplus Lines Insurance Company ("Westport"), on its own behalf and on behalf of the Westport Parties, as more fully defined below, (the aforementioned parties being referred to hereinafter collectively as the "Parties" or individually as a "Party") and upon its creation, the Funding Vehicle Trust. Pursuant to Article V of the Plan, and as set forth herein, the Funding Vehicle Trust shall, upon the Trigger Date, be bound by all of the provisions of this Agreement with the same force and effect as if it had been a Party on the Execution Date.

WITNESSETH THAT:

WHEREAS, Westport issued insurance policies to certain KACC Parties more fully described below as the Subject Policies; and,

WHEREAS, the KACC Parties have incurred and may incur in the future certain liabilities, expenses and losses arising out of Tort Claims, as that term is defined herein; and

WHEREAS, in an effort to obtain an adjudication of its rights for coverage under the Subject Policies as to asbestos containing product bodily injury liabilities, KACC filed an action captioned Kaiser Aluminum & Chemical Corporation v. Certain Underwriters at Lloyd's, London, et al., Case No. 312415, in the Superior Court of California, County of San Francisco ("the Products Action"); and

WHEREAS, KACC filed another coverage action seeking an adjudication of its rights for coverage under certain other insurance policies as to asbestos and certain other bodily injury claims arising out of former KACC premises, captioned Kaiser Aluminum & Chemical Corporation v. Insurance Company of North America, et al., Case No. 322710, in the Superior Court of California, County of San Francisco ("the Premises Action"); and

WHEREAS, Westport is a defendant in the Products Action; and

WHEREAS, on or about February 12, 2002, Kaiser Aluminum and other debtors filed a reorganization case pursuant to Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware, Bankruptcy Petition No. 02-10429-JKF, et seq. (the "Bankruptcy Proceeding(s)") and Kaiser Aluminum continues to operate its business as debtor and debtor-in-possession; and

WHEREAS, the KACC Parties assert, and Westport disputes, that Westport is obligated or will be obligated under the Subject Policies to make liability payments and pay defense costs in connection with Claims; and

WHEREAS, there are disputes among the Parties regarding their respective rights and obligations with respect to insurance coverage for such Claims, and certain of the Parties are engaged in coverage litigation regarding such disputes; and

WHEREAS, on or about September 7, 2005, certain Debtors filed a Second Amended Joint Plan of Reorganization of Kaiser Aluminum Corporation, Kaiser Aluminum & Chemical Corporation and Certain of Their Debtor Affiliates, as subsequently modified pursuant to the Bankruptcy Court's Order dated November 14, 2005; and

WHEREAS, by this Agreement, the Parties intend to adopt, by way of compromise, and without prejudice to or waiver of their respective positions in other matters, without further trial or adjudication of any issues of fact or law, and without Westport's admission of liability or responsibility under the Subject Policies, a full and final settlement that releases and terminates all rights, obligations and liabilities (if any) that the Parties may owe one another with respect to the Subject Policies, without prejudice to their respective positions on policy coverage or any other issues in the Products Action, or any other action, except as expressly set forth otherwise herein, and fully and finally settle all Claims (past, present, known or unknown) that the Parties asserted or could have asserted against one another in the coverage litigation, including the Products Action; and

WHEREAS, the KACC Parties and the Westport Parties agree that the injunctive relief set forth in the injunctions contemplated by this Agreement and to be incorporated into the Plan and the Confirmation Order in connection with the Reorganization Case is reasonable, appropriate and material to the Parties entering into the Agreement; and

WHEREAS, the payment of the Settlement Amount by Westport pursuant to this Agreement, and the effectiveness of the releases provided in this Agreement are contingent upon the satisfaction of certain conditions subsequently specified herein; and,

WHEREAS, this Agreement is entered into by the Parties in good faith and is the result of arms-length negotiations between the Parties.

### **AGREEMENTS**

**NOW, THEREFORE**, in full consideration of the foregoing and of the mutual promises and covenants herein contained, and intending to be legally bound, subject to the entry of the Approval Order and subject to the terms and conditions set forth herein, the Parties hereby agree as follows:

## **I. Definitions**

The following definitions will apply to the capitalized terms wherever those terms appear throughout the Agreement or in any attachments hereto. Capitalized terms in the prefatory paragraph, recitals, the Definitions section, and in the sections below have the meanings ascribed to them therein to the extent they are not otherwise defined in this Definitions section. Capitalized terms that are not defined in this Agreement have the meanings set forth in the September 7, 2005 Second Amended Joint Plan of Reorganization of Kaiser Aluminum Corporation, Kaiser Aluminum & Chemical Corporation and Certain of Their Debtor Affiliates, as subsequently modified pursuant to the Bankruptcy Court's Order dated November 14, 2005. Each defined term stated in a singular form includes the plural form, each defined term stated in plural form includes the singular form, and each defined term stated in the masculine, feminine, or neuter form includes each of the masculine, feminine and neuter forms. The word "including" means "including but not limited to."

A. ACC: The term "ACC" means the Asbestos Claimants' Committee in the Bankruptcy Proceeding.

B. Affiliate: An "Affiliate" of an Entity shall mean another Entity that is directly or indirectly controlled through one or more intermediaries by the first Entity.

C. Agreement: The term "Agreement" means this Settlement Agreement And Mutual Release With Westport, as the same may be amended or modified from time to time in accordance with its provisions.

D. Approval Order: The term "Approval Order" means a Final Order (as defined herein) of the Bankruptcy Court or the District Court exercising its original bankruptcy jurisdiction, substantially in the form of Attachment A hereto, approving this Agreement and the compromise and settlement memorialized herein between and among the Parties.

E. Bankruptcy Court: The term "Bankruptcy Court" means the United States Bankruptcy Court for the District of Delaware.

F. Business Day: The term "Business Day" means any day that is not a Saturday, a Sunday, or a federal holiday in the United States of America.

G. Claim: The term "Claim" means:

1. "Claim" as that term is defined in the United States Bankruptcy Code, 11 U.S.C. Sec. 101(5);

2. "Demand" as that term is defined in the United States Bankruptcy Code, 11 U.S.C. Sec. 524(g)(5); and

3. any claim (whether past, present or future, known or unknown, asserted or unasserted, foreseen or unforeseen, fixed or contingent, direct or indirect, matured or unmatured, liquidated or unliquidated, direct or consequential, and whether in law, equity, admiralty or otherwise), assertion of right, complaint, cross-complaint, counterclaim, affirmative defense, writ, demand, inquiry, request, directive, obligation, suit, lawsuit, action, cause of action, administrative proceeding, governmental claim or action, order, judgment, settlement, mediation, arbitration, lien, and any other assertion of liability of any kind. For the avoidance of doubt, "Claim" includes, but is not limited to, any Asbestos Personal Injury Claim, Silica Personal Injury Claim, CTPV Personal Injury Claim, NIHL Personal Injury Claim and any Channeled Personal Injury Claim and any Indirect Channeled Personal Injury Claim, or any other claim:

- a. arising out of, related to, involving, resulting from or attributable in any way, in whole or in part, to asbestos, silica, coal tar, or benzene in any form and from any source, including products containing such substances, or to any other substance, product, matter or material in any form or state;
- b. any cumulative or other injury or damage, including noise induced hearing loss, arising from any activity, operation, or exposure;
- c. any alleged bad faith, conspiracy, unfair claim practice, unfair trade practice, unfair insurance practice, fraud or misrepresentation, or extra-contractual or tort liability, under any theory of liability whatsoever;
- d. for damages (including any damage or injury of any kind whatsoever caused by or allegedly caused by asbestos, silica, coal tar, benzene or noise), including damages as a result of death, bodily injury, sickness, disease, emotional injury, damage to property, diminution in value or loss of use, economic loss, and punitive, exemplary, statutory damages or penalties, indemnity or defense obligations, insurance premiums (whether retrospectively rated or otherwise), deductibles, self-insured retentions, costs, expenses, contribution or subrogation; or

- e. pursuant to or under a contract, other agreement, promise, representation or warranty or pursuant to any direct action or statutory or regulatory right of action or based on tort liability.

H. Confirmation Order: The term “Confirmation Order” means an order entered by the Bankruptcy Court in the Reorganization Case confirming the Plan, including the PI Channeling Injunction provisions applicable to the Westport Parties as provided under this Agreement, together with any order of the United States District Court issued pursuant to section 524(g)(3)(A) of the Bankruptcy Code confirming or affirming such order.

I. Court: The term “Court” means either the Bankruptcy Court or the District Court, as appropriate.

J. District Court: The term “District Court” means the United States District Court for the District of Delaware.

K. Entity: The term “Entity” shall mean any individual, corporation, limited liability company, partnership, association, joint stock company, joint venture, estate, trust, unincorporated organization, federal, state, local or foreign government (or any governmental or quasi-governmental body or political subdivision or any agency, department, board or instrumentality thereof), or other person or entity.

L. Execution Date: The term “Execution Date” means the earliest date on which this Agreement has been signed by all of the Parties.

M. FACR: The term “FACR” means the Future Claimants’ Representative for asbestos-related claimants in the Bankruptcy Proceeding (also known as the “Future Asbestos-Related Claimants’ Representative”).

N. FCRs: The term “FCRs” means the FACR, the FSCR and the FCTPVCR, solely in their capacity as such.

O. FCTPVCR: The term “FCTPVCR” means the Future Claimants’ Representative for coal tar pitch volatiles-related claimants in the Bankruptcy Proceeding (also known as the “Future CTPV-Related Claimants’ Representative”).

P. FSCR: The term “FSCR” means the Future Claimants’ Representative for silica-related claimants in the Bankruptcy Proceeding (also known as the “Future Silica-Related Claimants’ Representative”).

Q. Final Order: "Final Order" means an order or judgment of the Bankruptcy Court or other court of competent jurisdiction, as entered on the docket in any Reorganization Case or the docket of any other court of competent jurisdiction, that has not been reversed, stayed, modified or amended, and as to which the time to appeal or seek certiorari or move for a new trial, reargument or rehearing has expired, and no appeal or petition for certiorari or other proceedings for a new trial, reargument or rehearing has been timely taken, or as to which any appeal that has been taken or any petition for certiorari that has been timely filed has been withdrawn or resolved by the highest court to which the order or judgment was appealed or from which certiorari was sought or the new trial, reargument or rehearing has been denied or has resulted in no modification of such order.

R. Insurance Escrow Account: The term "Insurance Escrow Account" means the account established by the Insurance Escrow Agreement.

S. Insurance Escrow Agent: The term "Insurance Escrow Agent" means:

1. The escrow agent established by the Insurance Escrow Account and as may be changed from time to time in accordance with Court Order, prior to the occurrence of the Plan Effective Date; and
2. the Funding Vehicle Trust, following the occurrence of the Plan Effective Date.

T. Insurance Escrow Agreement: The term "Insurance Escrow Agreement" means the agreement which is Attachment B hereto and which is dated 21st day of December, 2004 by and between Kaiser Aluminum and Wells Fargo Bank, NA, as Escrow Agent to establish the Tort Claims Settlement Fund pursuant to the Court's Order dated December 29, 2004, and as modified from time to time thereafter.

U. KACC Parties: The term "KACC Parties" means:

1. Kaiser Aluminum Corporation;
2. Kaiser Aluminum;
3. All other Debtors;
4. All Subsidiaries, divisions, and Affiliates of the foregoing and any other Entities in which any of the foregoing has an ownership interest of fifty (50) per cent or greater;
5. Any Entity on whose behalf any of the foregoing has the power to release Claims under the Subject Policies or the Other Westport Parties Policies;

6. The predecessors of any of the foregoing, and any Entities that have been merged into or acquired by any of the foregoing, in their capacity as such; and,
7. The directors, officers, agents, employees, representatives, shareholder principals, and attorneys of any of the foregoing, solely in their respective capacities as such.

V. Kaiser Aluminum: The term "Kaiser Aluminum" means Kaiser Aluminum & Chemical Corporation, a Delaware corporation.

W. Other Westport Parties Policies: The term "Other Westport Parties Policies" shall mean any and all liability policies, known or unknown, but other than the Subject Policies, issued to any of the KACC Parties by any of the Westport Parties. For the avoidance of doubt, the term "Other Westport Parties Policies" shall not include any Included PI Trust Insurance Policy.

X. Plan: The term "Plan" means the Second Amended Joint Plan of Reorganization of Kaiser Aluminum Corporation, Kaiser Aluminum & Chemical Corporation and Certain of Their Debtor Affiliates filed on September 7, 2005, and as subsequently modified by Order of the Bankruptcy Court dated November 14, 2005, or any modification to such Plan, provided, however, that such modifications:

1. are consistent with the terms of this Agreement;
2. do not materially and adversely affect the interests under this Agreement of the Westport Parties or the KACC Parties;
3. do not narrow the scope of the PI Channeling Injunction or its application to the Westport Parties;
4. continue to provide that the Funding Vehicle Trust shall be bound to the provisions of this Agreement;
5. continue to provide that the Funding Vehicle Trust shall be the only Entity under the Plan with the right of recovery from any PI Insurance Company for Channeled Personal Injury Claims or, if not, provide that any such Entity that has such right to pursue such insurance recovery shall be bound to the provisions of this Agreement (among others) with the same force and effect as if said Entity was a party to this Agreement; and,

6. continue to provide that the PI Trusts shall be bound at the demand of the Funding Vehicle Trust to comply with the obligations of this Agreement.

Y. Plan Effective Date: The term "Plan Effective Date" means the Effective Date as defined in the Plan.

Z. Settlement Account: The term "Settlement Account" means the bank trust or escrow account created pursuant to the Settlement Account Agreement.

AA. Settlement Account Agent: The term "Settlement Account Agent" means the bank or financial institution which serves as trustee of the Settlement Account that shall be appointed pursuant to this Agreement and the Settlement Account Agreement with the prior written consent of the Parties, which shall not be unreasonably or unseasonably withheld. The following financial institutions shall be deemed to have been consented to by the Parties: Wachovia National Bank, NA and Wells Fargo Bank, NA.

BB. Settlement Account Agreement: The term "Settlement Account Agreement" means the agreement creating the Settlement Account, which shall either:

1. be substantially in the form of the Bank Trust Agreement attached as Attachment C hereto; or
2. such other bank trust agreement or escrow agreement acceptable to Kaiser Aluminum and Westport.

CC. Settlement Amount: The term "Settlement Amount" means the sum of Twelve Million Nine Hundred Thousand Dollars U.S. (\$12,900,000.00 (U.S.)).

DD. Subject Policies: The term "Subject Policies" shall mean the following policies, described by reference to plaintiff exhibit number in the Phase 1 Trial in the Products Action.

<u>Policy #</u>	<u>Term</u>			<u>Exhibit #</u>
ML 65 06 35	04/01/76	to	04/01/77	50
ML 65 07 51	12/01/76	to	04/01/77	146
ML 65 02 60	04/01/77	to	04/01/78	56
ML 65 02 61	04/01/77	to	04/01/78	151
ML 65 05 57	04/01/78	to	04/01/79	62
XML 00 00 20	04/01/82	to	04/01/83	263



EE. Subsidiary: The term “Subsidiary” of an Entity shall mean a corporation as to which the Entity possesses shares of common stock and exercises control through the voting power of said stock.

FF. Tort Claims: The term “Tort Claims” shall mean any and all Asbestos Personal Injury Claims, Silica Personal Injury Claims, CTPV Personal Injury Claims and NIHL Personal Injury Claims.

GG. Trigger Date: The term “Trigger Date” means the day that the last of the following has occurred:

1. the Approval Order becomes a Final Order;
2. the Confirmation Order becomes a Final Order; and
3. the occurrence of the Plan Effective Date.

HH. Westport: The term “Westport” means Westport Insurance Company, formerly known as The Manhattan Fire and Marine Insurance Company and as Puritan Insurance Company, and as successor in interest to Puritan Excess and Surplus Lines Insurance Company.

II. Westport Parties: The term “Westport Parties” means (i) Westport; (ii) each of Westport's direct and indirect parents, Subsidiaries, Affiliates, associated corporations, divisions, holding companies direct and indirect, merged companies, acquired companies, predecessors, successors and assigns, solely in their capacities as such, as of the Execution Date; and (iii) the directors, officers, shareholders, agents, representatives, employees, managing agents, principals, and attorneys of each of the foregoing, solely in their capacities as such.

## **II. Payment of Settlement Amount**

The Settlement Amount under this Agreement is payable as follows:

A. No later than on each of the dates set forth below in this Section II(A), Westport shall pay the following amounts, as specified below in this Section II(A), by wire transfer to the Settlement Account Agent for payment into the Settlement Account, except that such payments shall be made directly to the Insurance Escrow Agent for deposit into the Insurance Escrow Account if the Trigger Date has occurred, provided however that the Approval Order has become a Final Order. If the Approval Order becomes a Final Order after any of the dates set forth below, then the payment corresponding to such date(s) shall be made in accordance with this Section II(A) no later

than two (2) Business Days after Kaiser Aluminum provides Westport with notice, pursuant to Section XIX(A), that the Approval Order has become a Final Order.

Date:	Amount:
2/1/2006	\$2,150,000.00
1/15/2007	\$2,150,000.00
1/15/2008	\$2,150,000.00
1/15/2009	\$2,150,000.00
1/15/2010	\$2,150,000.00
1/15/2011	\$2,150,000.00

B. Within five (5) business days following the occurrence of the Trigger Date, the Parties shall direct the Settlement Account Agent to release that portion of the Settlement Amount paid into the Settlement Account in full, provided that this Agreement has not earlier been terminated in accordance with its terms, along with any and all interest or investment income accrued (less (a) any expenses that the Settlement Account Agent incurs pursuant to the Settlement Account Agreement; (b) any reserves required under the Settlement Account Agreement to be held for the payment of taxes, indemnities, or otherwise; and (c) any losses incurred under any investment of the Settlement Amount permissible under the Settlement Account Agreement) to the Insurance Escrow Agent for deposit into the Insurance Escrow Account. Upon the release of the Settlement Amount to the Insurance Escrow Agent, legal and equitable title to the Settlement Amount shall pass irrevocably to the Insurance Escrow Agent to be distributed pursuant to this Agreement and the Plan.

C. The proceeds of Westport's payment in full of the Settlement Amount shall be used by the Funding Vehicle Trust and PI Trusts to pay Claims and other expenses and obligations payable by the Funding Vehicle Trust and PI Trusts pursuant to the Plan and the PI Trust Distribution Procedures for the PI Trusts, as may be amended from time to time. Notwithstanding the foregoing, this Agreement does not obligate the Funding Vehicle Trust or PI Trusts to segregate or allocate the Settlement Amount in any way or to provide to Westport an accounting or audit of or right to challenge the Funding Vehicle Trust's or any PI Trusts' payments or expenses.

D. Time is of the essence with respect to the payment of the Settlement Amount. Except as provided otherwise herein, the payments made by Westport pursuant hereto shall be made no later than the dates when due, without any set off, counterclaim, diminution or any other deduction; provided however, that if such applicable date is not a Business Day, then such payment shall be made on the next Business Day.

E. Westport shall have the right to allocate the Settlement Amount, or any portions thereof, solely for its own purposes, in its own books and records, to the various types and classifications of claims released by the KACC Parties pursuant to Section III

below, including the value of claims when actually paid by any of the PI Trusts; provided, however, that neither the KACC Parties, the Funding Vehicle Trust, nor the PI Trusts shall be bound by or be deemed to agree with any such allocation for any reason or purpose and that Westport's allocation shall not, in any way, limit its obligation to pay the Settlement Amount in full when due or limit the Funding Vehicle Trust's or PI Trusts' use or allocation of the Settlement Amount.

### **III. Releases**

#### **A. Releases By The KACC Parties**

Except for the obligations imposed by this Agreement,

1. Effective on the Trigger Date, the KACC Parties (on behalf of themselves and their successors and assigns, in their capacities as such) and, upon its creation, the Funding Vehicle Trust, hereby release, remise, covenant not to sue and forever discharge the Westport Parties from and against:
  - a. any and all Claims that the KACC Parties, or the Funding Vehicle Trust ever had, now have, or hereafter may have; and/or
  - b. liabilities to any KACC Party or the Funding Vehicle Trust of the Westport Parties,in either the case of (a) or (b) above,
  - w. for, arising out of, or in connection with insurance coverage (including both defense costs and indemnification claims) under the Subject Policies; or
  - x. arising out of or in connection with any act, omission, representation, or conduct of any sort in connection with any of the Subject Policies, the Products Action or the Premises Action.
2. Effective on the Trigger Date, the KACC Parties (on behalf of themselves and their successors and assigns, in their capacities as such) and, upon its creation, the Funding Vehicle Trust, hereby release, remise, covenant not to sue and forever discharge the Westport Parties from and against:

- a. any and all Tort Claims, as defined herein, that the KACC Parties or, the Funding Vehicle Trust ever had, now have, or hereafter may have; and/or
  - b. liabilities to any KACC Party or the Funding Vehicle Trust resolved or channeled by the Plan of the Westport Parties,
- in either the case of (a) or (b) above,
- w. for, arising out of, or in connection with insurance coverage (including both defense costs and indemnification claims) under the Subject Policies and/or the Other Westport Parties Policies; or
  - x. arising out of or in connection with any act, omission, representation, or conduct of any sort in connection with any of the Subject Policies and/or the Other Westport Parties Policies, the Products Action or the Premises Action.
3. Effective on the Trigger Date, the KACC Parties and, upon their creation, the Funding Vehicle Trust, intend to reserve no rights or benefits whatsoever under or in connection with the (i) Subject Policies, with respect to any past, present or future Claims; and (ii) the Other Westport Parties Policies with respect to any past, present or future Tort Claims. For the avoidance of doubt, upon the conveyance of the Settlement Amount by Westport pursuant to the terms herein, the KACC Parties hereby sell the Subject Policies to Westport, pursuant to 11 U.S.C. §§ 363(b) and 363(f), free and clear of all liens on, claims against, or interests in the Subject Policies, in accordance with the Approval Order, including its findings and notice requirements relating to this sale, attached hereto as Attachment A.
4. Effective on the Trigger Date, any and all rights, duties, responsibilities and obligations of Westport created by or in connection with the Subject Policies are hereby terminated. Effective on the Trigger Date, the KACC Parties and, upon its creation, the Funding Vehicle Trust, have no insurance coverage from any of the Westport Parties: (i) under the Subject Policies with respect to any past, present or future Claims, or (ii) under the Other Westport Parties Policies, with respect to any past, present or future Tort Claims. The releases contained in this Agreement as between the KACC Parties, the Funding Vehicle Trust and the Westport Parties are intended to operate as though the Subject Policies were

never issued. Nothing in this Section III(A)(4) is intended to affect any PI Insurance Company's rights and obligations under any insurance policy or settlement agreement other than the rights and obligations of the Westport Parties.

5. THE KACC PARTIES ACKNOWLEDGE THAT THEY HAVE BEEN ADVISED BY THEIR ATTORNEYS CONCERNING, AND ARE FAMILIAR WITH, THE CALIFORNIA CIVIL CODE SECTION 1542 AND EXPRESSLY WAIVE ANY AND ALL RIGHTS UNDER CALIFORNIA CIVIL CODE SECTION 1542, WHICH PROVIDES THAT "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR," AND UNDER ANY OTHER FEDERAL OR STATE STATUTE OR LAW OF SIMILAR EFFECT.
6. The KACC Parties and, upon its creation, the Funding Vehicle Trust, expressly assume the risk that acts, omissions, matters, causes or things may have occurred that they do not know or do not suspect to exist.
7. Notwithstanding anything to the contrary in this Agreement, the release provisions of this Agreement do not apply to any rights, obligations, Claims, or liabilities:
  - a. with respect to any Entity, other than the Westport Parties, that insures or co-insures under, or subscribes to or provides any insurance, rights or benefits under, any Included PI Trust Insurance Policy; or
  - b. under or arising as a result of this Agreement. Nothing in this Agreement shall affect the KACC Parties' rights or ability to continue to pursue Claims against any Entity other than the Westport Parties.

B. Releases By The Westport Parties

Except for the obligations created by this Agreement,

1. Effective on the Trigger Date, the Westport Parties (on behalf of themselves and their successors and assigns, in their capacities as

such) hereby release, remise, covenant not to sue and forever discharge the KACC Parties and, upon its creation, the Funding Vehicle Trust, from and against:

a. any and all Claims that the Westport Parties had, now have, or hereafter may have; and/or

b. liabilities to the Westport Parties of any KACC Party,

in either the case of (a) or (b) above,

w. for, arising out of, or in connection with insurance coverage, including both defense costs and indemnification claims, under the Subject Policies; or

x. arising out of or in connection with any act, omission, representation, or conduct of any sort in connection with any of the Subject Policies, the Products Action or the Premises Action.

2. Effective on the Trigger Date, the Westport Parties (on behalf of themselves and their successors and assigns, in their capacities as such) hereby release, remise, covenant not to sue and forever discharge the KACC Parties and, upon its creation, the Funding Vehicle Trust, from and against:

a. any and all Tort Claims, as defined herein; and/or

b. liabilities to the Westport Parties resolved or channeled by the Plan of any KACC Party,

in either the case of (a) or (b) above,

w. for, arising out of, or in connection with insurance coverage, including both defense costs and indemnification claims, under the Subject Policies and/or the Other Westport Parties Policies; or

x. arising out of or in connection with any act, omission, representation, or conduct of any sort in connection with any of the Subject Policies and/or the Other Westport Parties Policies, the Products Action or the Premises Action.

3. Except as set forth in Paragraph V.A, effective on the Trigger Date, Westport intends to reserve no rights or benefits whatsoever under or

in connection with the Subject Policies, with respect to any past, present or future Claims.

4. Effective upon the Trigger Date, any and all rights, duties, responsibilities and obligations of the KACC Parties or, upon its creation, the Funding Vehicle Trust, created by or in connection with the Subject Policies are hereby terminated. As of the Trigger Date, the Westport Parties have no rights with respect to the KACC Parties and, upon its creation, the Funding Vehicle Trust, from any of the Westport Parties: (i) under the Subject Policies with respect to any past, present or future Claims, or (ii) under the Other Westport Parties Policies, with respect to any past, present or future Tort Claims. The releases contained in this Agreement are intended to operate as though the Subject Policies were never issued. Nothing in this Section III(B)(4) shall affect the Westport Parties' right to seek reimbursement from their reinsurers or retrocessionaires in their capacities as such (but not including any KACC Party) or the Westport Parties' right to pursue a contribution, subrogation, indemnification or similar Claim against a third party in accordance with the provisions of Section V(A).
5. THE WESTPORT PARTIES ACKNOWLEDGE THAT THEY HAVE BEEN ADVISED BY THEIR ATTORNEYS CONCERNING, AND ARE FAMILIAR WITH, THE CALIFORNIA CIVIL CODE SECTION 1542 AND EXPRESSLY WAIVE ANY AND ALL RIGHTS UNDER CALIFORNIA CIVIL CODE SECTION 1542, WHICH PROVIDES THAT "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR," AND UNDER ANY OTHER FEDERAL OR STATE STATUTE OR LAW OF SIMILAR EFFECT.
6. The Westport Parties expressly assume the risk that acts, omissions, matters, causes or things may have occurred that they do not know or do not suspect to exist.
7. Notwithstanding anything to the contrary in this Agreement, the release provisions of this Agreement do not apply to any rights, obligations, Claims, or liabilities under or arising as a result of this Agreement.

#### **IV. Defense Of The PI Channeling Injunction**

A. In the event that any Claim is brought against the Westport Parties that is subject to any PI Channeling Injunction, the Funding Vehicle Trust will exercise its reasonable best efforts (at the expense of the Funding Vehicle Trust) to establish that such Claim is enjoined as to the Westport Parties by the PI Channeling Injunction. To that end, the Funding Vehicle Trust will, at its expense, defend the application of the PI Channeling Injunction as to any Claim asserted against the Westport Parties that is subject to the PI Channeling Injunction. For the avoidance of doubt, other than the obligation provided in this Section IV(A), the Funding Vehicle Trust has no obligation:

1. to defend any Claim against the Westport Parties with respect to any issue, including the application of any defense to insurance coverage or defense to any tort liability; or
2. to indemnify the Westport Parties for any Claims, whether for defense costs, expenses, judgments, settlements, or otherwise.

B. In the event that the Funding Vehicle Trust is precluded by an order of any court of competent jurisdiction from defending the application of any PI Channeling Injunction as to any Claim asserted against the Westport Parties that is subject to such PI Channeling Injunction, the Funding Vehicle Trust shall reimburse the Westport Parties for the reasonable costs they incur in defending the application of such PI Channeling Injunction; provided, however, that the Funding Vehicle Trust shall have no obligation to pay any internal costs of the Westport Parties (including costs associated with time or expenses of Westport Parties' employees). For the avoidance of doubt, other than the obligations provided in Sections IV(A) and (B), the Funding Vehicle Trust has no obligation:

1. to defend any Claim against the Westport Parties with respect to any issue, including the application of any defense to insurance coverage or defense to any tort liability; or
2. to indemnify the Westport Parties for any Claims, whether for defense costs, expenses, judgments, settlements, or otherwise.

C. Within fifteen (15) Business Days of receipt of any demand, notice, summons or other process received by any of the Westport Parties in connection with any Claim that the Westport Parties believe is subject to a PI Channeling Injunction, the Westport Parties shall forward such demand, notice, summons or other process to the Funding Vehicle Trust. The Funding Vehicle Trust shall notify the Westport Parties in writing within fifteen (15) Business Days of receipt of notice of such Claim from the Westport Parties whether the Funding Vehicle Trust agrees that such Claim triggers the Funding Vehicle Trust's obligations pursuant to Section IV(A) hereto. In the event that there is a dispute whether a Claim triggers the Funding Vehicle Trust's obligations pursuant to Section IV(A) hereto, the Funding Vehicle Trust and the Westport Parties



shall meet and confer to attempt to resolve any such dispute. If they are unable to resolve such dispute by meeting and conferring, they may litigate whether the Claim at issue triggers the Funding Vehicle Trust's obligations pursuant to Section IV(A) hereto before the Bankruptcy Court or, if the Bankruptcy Court refuses to exercise jurisdiction, before any court of competent jurisdiction. While such dispute remains unresolved, the Westport Parties have the right to defend the application of the PI Channeling Injunction as they deem appropriate. Westport Parties shall cooperate reasonably with the Funding Vehicle Trust with respect to the obligations provided in this Section IV.

## **V. Subrogation, Contribution and Indemnification Claims**

A. The Westport Parties shall not seek reimbursement from any Entity of any payments Westport is obligated to make under this Agreement, or any other payments Westport has made to or for the benefit of any KACC Party under the Subject Policies and the Other Westport Parties Policies, whether by way of a Claim for contribution, subrogation, indemnification or otherwise, from anyone other than the Westport Parties' reinsurers or retrocessionaires in their capacity as such, provided that in no event shall the Westport Parties make any Claim for or relating to insurance, reinsurance or retrocession against any KACC Party. Notwithstanding the foregoing, if an Entity pursues a contribution, subrogation, indemnification or similar Claim against the Westport Parties relating to any of the Subject Policies or the Other Westport Parties Policies, then the Westport Parties shall be free to assert such a Claim against such Entity. To the extent the Westport Parties recover any amount from such Entity, the net proceeds of such recovery (after any payment made by the Westport Parties to such Entity on its Claim and after the Westport Parties are reimbursed from such proceeds for their fees, costs, and expenses incurred in prosecuting or defending such Claims) shall be paid by the Westport Parties promptly after the Trigger Date to the Insurance Escrow Agent for deposit in the Insurance Escrow Account. For the avoidance of doubt, any payment to the Insurance Escrow Agent made by the Westport Parties pursuant to this Section V(A) shall not reduce or count towards the Westport Parties' obligation to pay the Settlement Amount pursuant to this Agreement. The KACC Parties shall use reasonable best efforts to obtain agreements similar to those contained in this Section V(A) from all insurers with which they settle.

B. In the event that the Trigger Date occurs and

1. Kaiser Aluminum, the Reorganized KAC and/or the Funding Vehicle Trust become entitled to receive a payment from one or more of its insurers other than the Westport Parties for any Claims that have been remised, released, acquitted and forever discharged as to the Westport Parties pursuant to this Agreement, and

2. as a result of such other insurer's obligation to pay described in Section V(B)(1) above, such insurer either:
  - a. enters into a settlement with the Westport Parties, which settlement has been consented to by Kaiser Aluminum, the Reorganized KAC and/or the Funding Vehicle Trust (as applicable) (which consent shall not be unreasonably withheld), requiring the Westport Parties to reimburse some or all of the payment made or to be made by such insurer; or
  - b. obtains a final, non-appealable judicial or quasi-judicial determination or award entitling such insurer to obtain a sum certain from the Westport Parties for contribution, subrogation or indemnification, or other similar Claim, against the Westport Parties for their alleged share or equitable share, or to enforce subrogation rights, if any, relating to such payment referenced in Section V(B)(1) above,

Kaiser Aluminum, the Reorganized KAC and/or the Funding Vehicle Trust shall promptly reduce the amount of payment to be received by them (referenced in Section V(B)(1) above) by such amount to the extent necessary to reduce or eliminate such settlement, determination or award against the Westport Parties (referenced in Section V(B)(2) above). To ensure that such a reduction is accomplished, the Westport Parties shall be entitled to introduce this Agreement into evidence and assert this Section V as a defense in any action against it for any such portion of the determination or award against the Westport Parties (referenced in Section V(B)(2) above) and shall be entitled to have the court or appropriate tribunal issue such orders as are necessary to effectuate the reduction to protect the Westport Parties from any liability for the determination or award.

## **VI. Dismissal as to Products Action**

A. After the Approval Order becomes a Final Order, Kaiser Aluminum shall promptly dismiss without prejudice any claims asserted against Westport. Such dismissals shall be accomplished by filing either (i) a request for dismissal without prejudice, or (ii) a motion for dismissal without prejudice, no later than 14 days after the Approval Order becomes a Final Order. Following the occurrence of the Trigger Date, such dismissal shall be deemed to be with prejudice. The KACC Parties and Westport covenant not to sue each other as to any such claims that were dismissed without prejudice until the Trigger Date, at which time this covenant is superceded by the releases provided in Section III, or the date on which the Agreement is terminated and becomes null and void pursuant to Section VIII. For the avoidance of doubt, this Section VI(A) is not intended to impair, affect or modify the KACC Parties' rights to sue or prosecute

claims as to any Entity other than the Westport Parties in the Products Action, or to enforce this Agreement.

B. Upon the occurrence of the Trigger Date, the KACC Parties shall dismiss with prejudice any claims asserted against Westport in the Products Action.

C. The Parties shall bear their own costs, expenses, and counsel fees in the Products Action. Nothing herein shall prevent the KACC Parties from recovering their costs, expenses and counsel fees in the Products Action from any Entity other than the Westport Parties.

## **VII. Bankruptcy Obligations**

A. In consideration for the promises and covenants hereunder, Kaiser Aluminum shall designate the Westport Parties as Settling Insurance Companies in the schedule of Settling Insurance Companies filed by Kaiser Aluminum prior to the Confirmation Date pursuant to the Plan by no later than sixty (60) days after the Approval Order becomes a Final Order. The Parties agree that the designation: "Westport Parties, all as defined, and to the extent of the releases provided, in the Settlement Agreement and Mutual Release with Westport, if said Agreement is not terminated and rendered null and void pursuant to its terms" is an acceptable designation for the schedule.

B. Kaiser Aluminum shall file a motion pursuant to Federal Rule of Bankruptcy Procedure 9019 seeking entry of the Approval Order, and shall use reasonable efforts to set the motion for hearing at the next available Omnibus Hearing with respect to which there are at least three (3) Business Days between the Execution Date and the last day to serve by mail notice that the motion will be heard at that hearing. The Westport Parties shall be given a reasonable opportunity to review and comment on any such motion before any such motion is filed.

C. Promptly following the Execution Date, Westport and the Debtors shall advise the Bankruptcy Court and the Superior Court in the Products Action that the Parties have executed a settlement agreement requiring Bankruptcy Court approval. Promptly following the later of the Execution Date and the date on which the Approval Order becomes a Final Order, the Westport Parties shall:

1. withdraw any and all objections they have made to the Plan and/or to any findings or conclusions of law issued by or recommended by the Bankruptcy Court, and any and all motions, Claims, and any appeals or notices of appeal that they have filed or made in the Bankruptcy Proceeding, and,
2. not pursue any Claims against the Debtors.

Such withdrawals shall be without prejudice until the occurrence of the Trigger Date, at which time such withdrawals shall be deemed to be with prejudice. After the Execution Date, the Westport Parties shall not object to or oppose confirmation of the Plan and shall not appeal the Confirmation Order, unless this Agreement becomes null and void pursuant to its terms. Promptly following the date on which the Approval Order becomes a Final Order, each Party shall as to the Bankruptcy Proceedings:

- x. withdraw any and all outstanding discovery requests against the other; and
- y. serve no new discovery requests,

in either the case of (x) and (y), directed by any KACC Party to the Westport Parties or by the Westport Parties to any KACC Party. Such withdrawals shall be without prejudice until the occurrence of the Trigger Date, at which time such withdrawals shall be deemed to be with prejudice.

D. After the Execution Date, the KACC Parties shall use their reasonable best efforts to obtain entry of the Approval Order. Westport shall support their efforts to obtain such approval; provided, however, that Westport is not required to join in each factual assertion or legal argument propounded by the KACC Parties.

E. Conditioned upon the occurrence of the Trigger Date, the Westport Parties hereby consent as of the Plan Effective Date to the assignment of rights under this Agreement to the Funding Vehicle Trust, as necessary, pursuant to the Plan, automatically and without need of further action by any Party or Entity which shall have the right to enforce the terms of this Agreement, provided that this Agreement does not terminate pursuant to its terms.

F. Subject to Section VIII, no ruling, proceeding, or other matter in connection with the Plan or the Bankruptcy Proceeding will impair, affect or modify the Parties' rights or obligations under this Agreement, and the KACC Parties shall exercise reasonable best efforts to ensure that the Confirmation Order expressly will so affirm. For the avoidance of doubt, this Section VII(F) is not intended to impair, affect or modify the Parties' rights or obligations under this Agreement, including the Parties' rights under Section VIII of this Agreement.

### **VIII. Effectiveness Of Agreement**

A. Subject to Section VIII(C), this Agreement shall automatically terminate and shall, without the need of any further action by the Parties or any court, become null and void as provided in Section VIII(D) hereto if any of the following occurs:

1. a court of competent jurisdiction enters an order confirming a Chapter 11 plan of reorganization for Kaiser Aluminum or one or more of the other Debtors other than the Plan;
2. a court of competent jurisdiction enters an order that provides that the Westport Parties are not Settling Insurance Companies or that narrows the scope of any PI Channeling Injunction or its application to the Westport Parties;
3. the Court or any other court of competent jurisdiction enters a Final Order denying approval of the Agreement;
4. the Court or a court of competent jurisdiction enters an order converting one or more of the Bankruptcy Proceedings of the Debtors into Chapter 7 cases or dismissing one or more of the Bankruptcy Proceedings of the Debtors; or,
5. the Court or a court of competent jurisdiction enters an order appointing a trustee or examiner substantially possessing the rights, powers and duties of a trustee in one or more of the Bankruptcy Proceedings of the Debtors.

B. In the event that this Agreement is terminated or voided for any reason, including those listed in this Section VIII, the Parties agree that venue of any dispute over any issue that was, or could have been made, an issue in the Coverage Actions shall be the San Francisco Superior Court. Westport does hereby submit to the jurisdiction of said Court and will comply with all requirements necessary to give such court jurisdiction and venue.

C. Notwithstanding anything in this Section VIII to the contrary, in the event any of the events set forth in Section VIII(A) occurs, Westport, at its sole option and upon notice to all other Parties, shall have the right to waive the requirements that this Agreement shall be terminated and shall become null and void in such event (in which case the Agreement shall continue in full force and effect and such conditions shall be deemed satisfied).

D. Notwithstanding anything in this Agreement to the contrary, in the event this Agreement terminates, is ineffective, and/or is null and void pursuant to Section VIII hereto:

1. the Agreement, other than Sections I, VIII, X(A-B), XI, XII, XIII, XVI, XVII, and XVIII (which Sections shall remain in full force and effect), shall be vitiated and shall be a nullity and shall be void ab initio;

2. The Parties (including the Funding Vehicle Trust, if it exists) shall promptly direct the Settlement Account Agent to return to Westport, with thirty (30) days prior written notice to the Westport Parties and KACC Parties (and the Funding Vehicle Trust, if it exists), that portion of the Settlement Amount that Westport has already paid plus any interest or investment income accrued on the Settlement Amount (minus (i) any reasonable and proper costs incurred by the Settlement Account Agent; (ii) any reserves required under the Settlement Account Agreement to be held for the payment of taxes, indemnities, or otherwise; or (iii) losses incurred under any investment of the Settlement Amount permissible under the Settlement Account Agreement) at the direction of Westport. While all Parties are required to provide the direction set forth above in the event of termination of this Agreement, the Settlement Account Agent shall disburse the funds to or at the direction of Westport, upon the notices, certifications, or Bankruptcy Court orders provided for in Section 2.6 of the Settlement Account Agreement whether all Parties provide the direction set forth above or not;
3. none of the Parties shall be bound by the terms of any Approval Order;
4. the Westport Parties shall not be designated as Settling Insurance Companies, and the Westport Parties shall neither seek nor receive any benefit or protection of a Settling Insurance Company pursuant to this Agreement;
5. the Parties shall have the rights, defenses, claims and obligations under or with respect to the Subject Policies and the Other Westport Parties Policies that they would have had absent this Agreement, including, without limitation, any rights, claims and defenses raised in connection with the Products Action,
6. the releases provided in Section III shall become null and void ab initio;
7. the Westport Parties shall be free to pursue such objections as they are entitled to make to the Plan and to take such appeals from the Confirmation Order as they are entitled to take; and
8. any otherwise applicable statutes of limitations or repose, or other time-related limitations, shall be deemed to have been tolled for the period from the Execution Date through the date that the Agreement becomes null and void, and no Party shall assert, plead, raise or

otherwise rely on or take advantage, whether actively or passively, of any time-related defense to any Claim by any other Party related to such period and if any Party breaches this obligation, it shall be deemed to have created a new cause of action against it at the time of such breach for which it shall be liable in damages equal to the amount of damages it avoided by reason of the breach. This covenant shall be deemed to last for the maximum time period allowed by applicable law as provided in Section XIV.

E. In the event that a Party asserts that any action or refusal to take action that is required by this Agreement is wrongfully taken or not taken by a Party, the Party so asserting may not claim that the Agreement is terminated, but must pursue such rights as it has to enforce the Agreement against the Party asserted to have been in breach; provided, however, the obligations of the KACC Parties, on the one hand, and the Funding Vehicle Trust and the PI Trusts, on the other hand, are several, and not joint, and neither the KACC Parties nor the Funding Vehicle Trust and the PI Trusts shall be liable for any action or refusal to act or other breach of the Agreement by the other.

#### **IX. Reasonably Equivalent Value**

The Parties acknowledge and agree that:

A. This Agreement was bargained for and entered into in good faith and as the result of arms'-length negotiations.

B. Based on their respective independent assessments, with the assistance and advice of counsel, of the Products Action, the Bankruptcy Proceeding, and other matters, the consideration exchanged by the Parties pursuant to this Agreement (including the payments from Westport, the mutual releases, the designations of the Westport Parties as Settling Insurance Companies, and the other benefits exchanged by the Parties) constitute a fair and reasonable settlement of the Parties' disputes and of their respective rights and obligations relating to the Subject Policies and the Other Westport Parties Policies and constitute reasonably equivalent value.

#### **X. Confidentiality**

A. Settlement negotiations leading up to this Agreement and all related discussions and negotiations are confidential and shall be deemed to fall within the protection afforded to compromises and to offers to compromise by Rule 408 of the Federal Rules of Evidence and any parallel state law provisions.

B. In the event that a private litigant (other than a Party to this Agreement, the Reorganized Debtor, the Funding Vehicle Trust, or any PI Trust), by way of document request, interrogatory, subpoena, or questioning at deposition or trial, attempts to compel

disclosure of anything protected by this Section X, the Party from whom disclosure is sought shall decline to provide the requested information on the ground that this Agreement prevents such disclosure. In the event that such private litigant seeks an order from any court or governmental body to compel such disclosure, or in the event that a court, government official, or governmental body (other than the Inland Revenue, Internal Revenue Service, Securities and Exchange Commission or Financial Services Authority) requests or requires disclosure of anything protected by this Section X, the Party from whom disclosure is sought promptly shall give written notice by facsimile or hand-delivery to the other Party, and promptly shall provide copies of all notice papers, orders, requests or other documents in order to allow each Party to take such protective steps as may be appropriate. All costs incurred by a Party in accordance with this provision shall be the sole responsibility of the Party incurring such costs.

C. Notwithstanding anything in this Section X, nothing in this Agreement shall prevent any Party from disclosing or releasing this Agreement in any form and at any time after the Execution Date.

#### **XI. Non-Prejudice and Construction of Agreement**

A. This Agreement is not a contract of insurance. This Agreement is not subject to rules or construction governing contracts of insurance, including the doctrine of *contra proferentum*. This Agreement is a compromise between the Parties and shall not be construed as an admission of coverage under the Subject Policies or the Other Westport Parties Policies, nor shall this Agreement or any provision hereof be construed as a waiver, modification or retraction of the positions of the Parties with respect to the interpretation and application of the Subject Policies or the Other Westport Parties Policies.

B. This Agreement is the product of informed negotiations and involves compromises of the Parties' previously stated legal positions. Accordingly, this Agreement does not reflect upon the Parties' views as to rights and obligations with respect to matters or Entities outside the scope of this Agreement. This Agreement is without prejudice to positions taken by the Westport Parties with regard to other insureds, and without prejudice to positions taken by the KACC Parties with regard to other insurers.

C. This Agreement is the jointly drafted product of arms'-length negotiations between the Parties with the benefit of advice from counsel, and the Parties agree that it shall be so construed. As such, no Party will claim that any ambiguity in this agreement shall, as a matter of law, be construed against the other Party. The negotiation, execution and performance of this Agreement shall not be deemed to be or cited as an act of bad faith or a violation of any statute, regulation, contract or duty owed by any Party to any other Party.



## **XII. Modification**

Except as expressly provided herein, no change or modification of this Agreement shall be valid unless it is made in writing and signed by the Parties. In the event that any Party is dissolved or otherwise ceases to exist, the remaining Parties may modify this Agreement without that Party's consent. After the Plan Effective Date, any change or modification of this Agreement will require the consent of the Funding Vehicle Trust.

## **XIII. Integration**

A. This Agreement, including its Attachments, constitutes the entire agreement and understanding among the Parties with respect to the subject matter hereof, and supersedes all discussions, agreements and understandings, both written and oral, among the Parties with respect hereto. Except as expressly set forth in this Agreement, there are no representations, warranties, promises or inducements, whether oral, written, expressed or implied, that in any way affect or condition the validity of this Agreement or alter its terms. If the facts or law related to the subject matter of this Agreement are found hereafter to be other than is now believed by any of the Parties, the Parties expressly accept and assume the risk of such possible difference of fact or law and agree that this Agreement nonetheless shall be and remain effective according to its terms. This Agreement shall have perpetual existence except as provided herein.

B. Titles and captions contained in this Agreement are inserted only as a matter of convenience and are for reference purposes only. Such titles and captions are intended in no way to define, limit, expand, or describe the scope of this Agreement or the intent of any provision hereof.

## **XIV. Governing Law**

This Agreement shall be governed by, and shall be construed in accordance with, the laws of the State of California without regard to its choice of law rules. Nothing in this Section XIV shall affect what law would govern the interpretation or application of the Subject Policies or the Other Westport Parties Policies.

## **XV. Cooperation**

As of the Trigger Date, the Funding Vehicle Trust shall cause each of the PI Trusts to cooperate, at the sole expense of the Westport Parties, in the Westport Parties' reasonable requests for information as follows: The Westport Parties shall have the right, at their own expense, upon reasonable request and notice, at a time and place convenient to the responding PI Trust, to review and/or audit any Claims or payments funded in whole or in part by the proceeds of this Agreement. Neither the Funding Vehicle Trust nor any PI Trust shall have any obligation to create any new documents or to collect any information in connection with any such review beyond those ordinarily created or

maintained by the Funding Vehicle Trust or PI Trust, as applicable, and the Westport Parties shall not be permitted to challenge the allowance or payment of the Claims by the Funding Vehicle Trust or PI Trusts, as applicable, or any administrative payments or costs of the Funding Vehicle Trust or PI Trusts, as applicable. This Section XV, and any results of such a review contemplated hereunder, shall not affect the Westport Parties' payment obligations under this Agreement. The Westport Parties shall not provide any results of such review to any other Entity and shall keep any and all such results confidential, except that the Westport Parties may provide such results to any of their auditors, tax consultants, regulators, or reinsurers for the purpose of obtaining reinsurance for any portion of the Settlement Amount, or complying with applicable regulations, provided that the Westport Parties shall inform such parties that the audit results are confidential and use reasonable efforts to obtain a commitment from such parties to maintain the confidentiality of the information. The Westport Parties may provide such information to any others with the prior written consent of the Funding Vehicle Trust.

#### **XVI. Representations**

Each Party represents and warrants that it has authority to execute this Agreement as its binding and legal obligation (subject, however, in the case of the Debtors, to the requirement that the Approval Orders be entered). Each Party represents and warrants that the persons signing this Agreement on its or their behalf is authorized to execute this Agreement (subject, however, in the case of the Debtors to the requirement that the Approval Order be entered).

#### **XVII. Execution**

This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. Each counterpart may be delivered by facsimile transmission or by e-mailing a scanned version, and a faxed or scanned signature shall have the same force and effect as an original signature.

#### **XVIII. Notices**

A. Unless another person is designated, in writing, for receipt of notices hereunder, any and all statements, communications, or notices to be provided pursuant to this Agreement shall be in writing and sent by next-Business-Day courier service, with receipt or tracking number requested, postage prepaid (except as otherwise specified in this Agreement). Such notices shall be sent to the following:

If to Kaiser Aluminum:

John M. Donnan, Esq.  
Vice President, Secretary and General Counsel  
Kaiser Aluminum Corporation  
27422 Portola Parkway, Ste. 350

Foothill Ranch, California 92610-2831  
Fax: 949-614-1930

With a copy to:

Gregory M. Gordon, Esq.  
Jones Day  
2727 North Harwood  
Dallas, Texas 75201  
Fax: 214-969-5100

--and--

Lawrence A. Hobel, Esq.  
Heller Ehrman LLP  
333 Bush Street, Suite 3000  
San Francisco, California 94104-2878  
Fax: 415-772-6268

If to the Westport Parties:

Julie Manello  
GE Insurance Solutions  
525 W. Van Buren, Suite 500  
Chicago, IL 60607  
Fax: 800-388-0931

With a copy to:

Andrew R. McCloskey  
Riedl, McCloskey & Waring LLP  
550 West C Street, Suite 500  
San Diego, CA 92101  
Fax: 619-237-3789

The Funding Vehicle Trust shall notify the parties pursuant to this provision as to how it is to be notified pursuant to this Settlement Agreement.

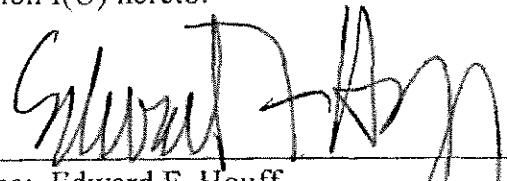
#### **XIX. Continuing Court Jurisdiction**

The Bankruptcy Court shall retain exclusive jurisdiction over any dispute relating to this Agreement. If the Bankruptcy Court refuses to exercise jurisdiction over any such dispute, the Parties may submit such dispute to any court of competent jurisdiction.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized representatives.

KAISER ALUMINUM & CHEMICAL CORPORATION, on its own behalf and on behalf of the KACC Parties, as defined in Section I(U) hereto.

By:   
Name: Edward F. Houff  
Title: Chief Restructuring Officer, Kaiser Aluminum  
Date: 12/16/05

Westport, on behalf of itself and on behalf of the Westport Parties, as defined in Section I(II) hereto.

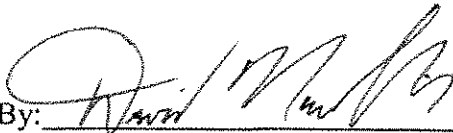
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized representatives.

KAISER ALUMINUM & CHEMICAL CORPORATION, on its own behalf and on behalf of the KACC Parties, as defined in Section I(U) hereto.

By: \_\_\_\_\_  
Name: Edward F. Houff  
Title: Chief Restructuring Officer, Kaiser Aluminum  
Date:

Westport, on behalf of itself and on behalf of the Westport Parties, as defined in Section I(II) hereto.

By:  \_\_\_\_\_  
Name: DAVID NEWKIRK  
Title: VICE PRESIDENT + ASSOCIATE GENERAL COUNSEL  
Date: DECEMBER 19, 2005

## **ATTACHMENT A**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

<b>In re:</b>  <b>KAISER ALUMINUM CORPORATION, a Delaware corporation, <u>et al.</u>,</b>  <b>Debtors.</b>	<b>: Jointly Administered</b> <b>: Case No. 02-10429 (JKF)</b> <b>:</b> <b>: Chapter 11</b> <b>:</b> <b>: Hearing Date:</b> <b>: Docket No. ____; Agenda Item ____</b> <b>:</b>
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**ORDER (A) APPROVING SETTLEMENT AGREEMENT AND  
MUTUAL RELEASE WITH WESTPORT INSURANCE COMPANY AND IN  
CONJUNCTION THEREWITH (B) AUTHORIZING THE SALE OF THE  
SUBJECT POLICIES TO WESTPORT INSURANCE COMPANY FREE AND  
CLEAR OF ANY LIENS OR INTERESTS**

This matter coming before the Court on the Motion of Debtor and Debtor in Possession Kaiser Aluminum & Chemical Corporation for Entry of an Order (A) Approving Settlement Agreement and Mutual Release With Westport Insurance Company and in Conjunction Therewith (B) Authorizing the Sale of the Subject Policies to Westport Insurance Company Free and Clear of Any Liens or Interests (the "Motion"), filed on December \_\_, 2005 by Kaiser Aluminum & Chemical Corporation ("KACC"), one of the debtors and debtors in possession herein (collectively, the "Debtors"), seeking approval, pursuant to Rules 2002 and 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and sections 363, 1107, 1108 and other applicable sections of the Bankruptcy Code, 11 U.S.C. §§ 101-1330 (the "Bankruptcy Code"), of that certain Settlement Agreement and Mutual Release with Westport (such agreement, including the exhibits thereto, the "Settlement Agreement") dated as of December \_\_, 2005, among (a) the Debtors, on their own behalf and on behalf of all KACC Parties (as identified in



the Settlement Agreement); (b) Westport Insurance Company, formerly known as The Manhattan Fire and Marine Insurance Company and as Puritan Insurance Company, and as successor in interest to Puritan Excess and Surplus Lines Insurance Company ("Westport"), on its own behalf and on behalf of the Westport Parties (as identified in the Settlement Agreement); and (c) upon its creation, the Funding Vehicle Trust.<sup>1</sup>

Capitalized terms used in this Approval Order and not otherwise defined herein shall have the meanings ascribed to such terms in the Settlement Agreement. The Settlement Agreement relates to the Subject Policies and the Other Westport Parties Policies.

Notice of the Motion was given by individual mailing to: (a) the U.S. Trustee; (b) counsel to the Creditors' Committee; (c) counsel to the Asbestos Claimants' Committee, (d) counsel to the Debtors' postpetition lenders; (e) counsel to MAXXAM Inc., the Debtors' principal equity holder; (f) counsel to the Future Representatives; (g) counsel for Westport; (h) the parties that have requested notice in these chapter 11 cases; and (i) all known counsel to holders of Tort Claims (as that term is defined in the Settlement Agreement).

A hearing was held on \_\_\_\_\_, 2006 (the "Hearing") to consider the Motion and the Settlement Agreement, and all interested parties were given an opportunity to be heard. Objections to the Motion, if any, have been resolved by agreement or are overruled, and after due deliberation and sufficient cause appearing

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<sup>1</sup> As such capitalized term is defined in the Second Amended Joint Plan of Reorganization of Kaiser Aluminum Corporation, Kaiser Aluminum & Chemical Corporation and Certain of Their Debtor Affiliates, dated September 7, 2005 (the "Plan"), as presently constituted.

therefore, this Court hereby makes the following Findings of Fact and Conclusions of Law:

**I. FINDINGS OF FACT:**

IT IS HEREBY FOUND AND DETERMINED THAT:<sup>2</sup>

**Jurisdiction, Final Order And Statutory Predicates**

- A. This Court has jurisdiction to hear and determine the Motion and to grant the relief requested therein pursuant to 28 U.S.C. §§ 157(b)(1) and 1334(b). This Motion presents a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A), (M) and (O).
- B. This Approval Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). The Parties may consummate the Settlement Agreement immediately upon entry of this Approval Order, provided that the other conditions precedent have been satisfied or waived in accordance with the terms of the Settlement Agreement.

**Notice of the Motion and the Settlement**

- C. The notice of the Motion described above constitutes due, sufficient and timely notice of the Motion, the Hearing, and the Settlement Agreement to all Entities entitled thereto in accordance with the requirements of the Bankruptcy Code, the Bankruptcy Rules, this Court's orders in the chapter 11 case, and of due process. No other or further notice of the Motion, the Hearing, the Settlement Agreement or this Approval

Order is necessary. This Court hereby further finds that notice to an attorney for the holder of a Claim constitutes notice to such holder for purposes of notice of the Motion, the Hearing, the Settlement Agreement or this Approval Order and any other matters set forth in this Order.

**Good Faith Nature of Settlement Agreement  
and Reasonableness of the Terms of the Settlement**

- D. KACC negotiated with Westport at arm's length and in good faith to reach agreement on the matters resolved through the Settlement Agreement. The purchase of the Subject Policies, and all coverages thereunder, by Westport pursuant to the Settlement Agreement is in good faith and Westport is entitled to the protection of 11 U.S.C. §363(m).
- E. Pursuant to Bankruptcy Rule 9019, and in consideration of the terms, compromises and exchanges of consideration contained in the Settlement Agreement and all other facts and circumstances of this chapter 11 case, the provisions of the Settlement Agreement are (i) fair and reasonable settlements; (ii) valid and proper exercises of KACC's business judgment; (iii) exchanges for reasonably equivalent value; (iv) fair, equitable, and well within the range of reasonableness required for approval of the Settlement Agreement; and (v) considering all the factors set forth in In re Martin, 91 F.3d 389, 393 (3d Cir. 1996), as discussed in the Motion,

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(continued...)

<sup>2</sup>

Findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact when appropriate. See Fed. R. Bankr. P. 7052.

in the best interests of the Debtors, their Estates, their creditors, the Funding Vehicle Trust, and other parties-in-interest.

F. The Settlement Agreement confers a substantial benefit upon the Debtors' Estates by providing for, among other things: (i) the settlement of complex litigations; and (ii) payment of the Settlement Amount, with eventual distribution to the Funding Vehicle Trust for further distribution pursuant to the Plan.

G. The payments by Westport under the Subject Policies and pursuant to the Settlement Agreement constitute reasonable and substantial settlements and fair resolutions of the alleged liability of Westport under the Subject Policies for any and all Claims, and such contributions satisfy the alleged liability of the Westport Parties, if any, for Tort Claims under the Other Westport Parties Policies.

**Authority To Enter Into Settlement Agreement And To Effect The Transactions**

H. KACC, for itself and on behalf of all KACC Parties, and, upon its creation, the Funding Vehicle Trust: (i) has full corporate or trust (as the case may be) power and authority to enter into and perform the Settlement Agreement; and (ii) has the authority to take all corporate or trust action (as the case may be) necessary to authorize and approve the Settlement Agreement. In addition, no consent, authorization or approval, and no filing or registration, of any type or kind, other than those expressly provided for in the Settlement Agreement, is required for KACC and the

Funding Vehicle Trust to give effect to the terms of the Settlement Agreement. Further, the consummation of the Settlement Agreement by KACC and the Funding Vehicle Trust does not conflict, contravene, or cause a breach, default or violation of any law, rule, regulation, contractual obligation or organizational or formation document.

**Releases And Designation Of The Westport Parties As Settling Asbestos Insurance Companies**

- I. Pursuant and subject to the terms and conditions of the Settlement Agreement, the Westport Parties specifically have contracted to receive:
  - (a) all of the benefits of being designated in the Confirmation Order as a Settling Insurance Company, including, but not limited to, the channeling injunction and releases set forth in Section 12.2 (as presently enumerated) of the Plan, and the Westport Parties shall be entitled to, upon entry of this Approval Order and the Effective Date of the Plan, the protections provided by such designation without further order of this Court, and (b) the releases contained in the Settlement Agreement.

Pursuant and subject to the terms and conditions of the Settlement Agreement, the Westport Parties specifically have agreed not to object to or oppose confirmation of the Plan, and the Westport Parties have agreed not to appeal the Confirmation Order, provided that the Settlement Agreement has not terminated pursuant to its terms. The Westport Parties are, however, permitted to object to or oppose confirmation of, and to appeal

from confirmation of, a plan of reorganization other than the Plan to the extent provided in the Settlement Agreement.

### **Objections Overruled**

J. All objections filed with respect to the Motion or the entry of this Approval Order and not withdrawn are hereby overruled. To the extent any Entity (a) either (i) received proper notice of these matters (or is represented by an Entity (including, without limitation, the FCRs or counsel) that received such notice) or (ii) having had notice of this chapter 11 case, elected not to request notices regarding this chapter 11 case, and (b) failed to object to the Motion and the entry of the Approval Order, then such Entities (including, without limitation, the Debtors and the Funding Vehicle Trust (or, to the extent that it has not yet been formed or does not yet exist, its predecessor(s) in interest), the FCRs, the ACC) hereby shall have no right to file or prosecute an appeal of this Approval Order.

## **II. CONCLUSIONS OF LAW**

**NOW, THEREFORE, BASED ON THE FOREGOING FINDINGS OF FACT, IT IS HEREBY ORDERED, ADJUDGED AND DECREED EFFECTIVE IMMEDIATELY, AS FOLLOWS:**

To the extent any Conclusion of Law set forth below herein constitutes a Finding of Fact, this Court so finds.

### **General Provisions**

1. Pursuant to the terms of this Approval Order, the relief requested in the Motion is granted and approved in all respects, and the Settlement Agreement is hereby approved in all respects.
2. All objections, if any, to the Motion or the relief requested therein that have not been withdrawn, waived, or settled, and all reservations of rights included in such objections, are overruled on the merits.

### **Approval of Settlement Agreement**

3. The Settlement Agreement and all of the terms and conditions thereof are hereby approved in their entirety and, notwithstanding anything to the contrary in this Approval Order, to the extent of any conflict or inconsistency between the provisions of this Approval Order and the terms and conditions of the Settlement Agreement, as between the KACC Parties, and the Westport Parties, as the case may be, the Settlement Agreement shall govern and control.
4. Each of the Debtors and the Funding Vehicle Trust (upon its creation) are authorized and empowered, and hereby directed, to take any and all actions necessary or appropriate, in accordance with the terms of the Settlement Agreement, and,

without further order of the Court, to (a) consummate, carry out and implement the Settlement Agreement, (b) execute and deliver, perform under, consummate, carry out, implement and close fully the Settlement Agreement, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Settlement Agreement, and (c) to take all further actions as may be reasonably requested in accordance with the Settlement Agreement by Westport as may be reasonably necessary or appropriate to the performance of the obligations as contemplated by the Settlement Agreement. The Settlement Agreement and this Approval Order constitute valid and binding obligations of the Debtors, their Estates and the Funding Vehicle Trust (upon its creation), which shall be enforceable in accordance with the terms thereof. The Funding Vehicle Trust Agreement shall include as an obligation of the Funding Vehicle Trust, effective from the creation of the Funding Vehicle Trust, that such trust shall be subject to and bound by the Settlement Agreement and the Approval Order. Upon its creation, the Funding Vehicle Trust, without further order of any court or action by any Entity, shall be deemed to be automatically a party to the



Settlement Agreement. The Debtors are hereby authorized and directed to amend the Funding Vehicle Trust Agreement (as defined in the Plan), to the extent already in existence, to provide that the Funding Vehicle Trust shall be subject to and bound by the Settlement Agreement and the Approval Order. The PI Trusts, upon their creations, shall be subject to and bound by the Settlement Agreement and the Approval Order.

5. All of the terms and provisions of this Approval Order shall be binding in all respects upon each of the Debtors, the Funding Vehicle Trust and PI Trusts, any trustees of any of the Debtors, the Debtors' Estates, the FCRs and each of the Entities whose interests such FCRs represent, the ACC, each present and future holder of a Claim, all other creditors and shareholders of any of the Debtors, all interested parties, and their respective successors and assigns.
6. No later than fourteen (14) days after this Order becomes a Final Order KACC will dismiss without prejudice its Claims, counterclaims or cross-claims (if any) against Westport in the Products Action. Upon the occurrence of the Trigger Date, the dismissal provided for above shall be deemed to be a dismissal with prejudice. The Parties shall bear their own costs, expenses, and counsel fees in the Products Action.

Nothing herein shall prevent KACC from recovering its costs, expenses and counsel fees in the Products Action from any Entity other than the Westport Parties.

7. Westport's payment in full of the Settlement Amount, as provided for in Section II of the Settlement Agreement: (i) shall satisfy and extinguish in full Westport's obligation with respect to any and all Claims under the Subject Policies; and (ii) shall satisfy and extinguish in full the Westport Parties' obligations with respect to any and all Tort Claims under the Other Westport Parties Policies, as more fully set forth in Section III of the Settlement Agreement.
- 7a. Pursuant to 11 U.S.C. §§ 363(b) and 363(f), the Subject Policies, and all coverages thereunder, are hereby sold, effective upon Westport's payment of the Settlement Amount, by KACC and the KACC Parties to Westport, free and clear of all liens on, claims against, or interests in the Subject Policies

#### **Additional Provisions**

8. Westport's payment of the Settlement Amount shall be made to the Settlement Account Agent, pursuant to the Settlement Account Agreement, unless the Trigger Date has occurred, in

which case to the Insurance Escrow Agent for distribution to the Funding Vehicle Trust. After the Trigger Date has occurred, payments to the Settlement Account Agent shall be disbursed to the Insurance Escrow Agent for distribution to the Funding Vehicle Trust, or as otherwise directed by the Bankruptcy Court. The proceeds of the Settlement Amount shall be utilized only as prescribed by the Plan.

9. The failure specifically to include any particular provision of the Settlement Agreement in this Approval Order shall not diminish or impair the efficacy of such provision, it being the intent of this Court that the Settlement Agreement and each and every provision, term, and condition thereof be authorized and approved in its entirety.
10. This Approval Order shall be effective immediately upon its entry. The ten (10) day stay provided in Bankruptcy Rule 6004 is hereby waived.
11. The Settlement Agreement and other related documents may be modified, amended, or supplemented by the parties thereto, in a writing signed by such parties in accordance with the terms thereof, without further order of the Court, provided that (a) any such modification, amendment, or supplement is not material and (b) to the extent practicable, notice of any

modification, amendment, or supplement should be delivered to (i) the Creditors' Committee, (ii) the FCRs and (iii) the Asbestos Claimants Committee Counsel at least five (5) days prior to the effective date of any such modification, amendment, or supplement.

12. Notwithstanding any other provision of this Approval Order, if the Settlement Agreement is properly terminated under the terms thereof, then this Approval Order, with the exception of sections 13 and 14 hereof, subject to the terms of Section VIII of the Settlement Agreement, shall be null and void and not be binding on any entity.
13. If the Settlement Agreement is properly terminated under the terms thereof, then any and all statutes of limitation or repose or other time-related limitations, with respect to any Claim by any Entity, shall be deemed to have been tolled for the period from the Execution Date through the date on which the Settlement Agreement terminates or becomes null and void, and no Party shall be entitled to assert or rely on any time-related defense to any Claim by any other Party related to such period.
14. The Court shall retain exclusive jurisdiction over any proceeding that involves the validity, application,

construction, modification or termination of the Settlement Agreement and this Approval Order, and may make such further orders with respect thereto as are proper and appropriate.

15. The provisions of this Approval Order are non-severable and mutually dependent.
16. Counsel for the Debtors shall promptly serve a copy of this Approval Order on all parties who have filed a request for notice in this case, all parties to the Settlement Agreement, counsel to the Asbestos Claimants Committee, and the FCRs and file a certificate of service with the Clerk of the Bankruptcy Court within ten (10) days hereof.

Dated: \_\_\_\_\_, 2006

\_\_\_\_\_  
UNITED STATES BANKRUPTCY JUDGE

## **ATTACHMENT B**

## ESCROW AGREEMENT

AGREEMENT made this 21st day of December, 2004, by and between Kaiser Aluminum & Chemical Corporation (the "Company") and Wells Fargo Bank, NA as Escrow Agent (the "Escrow Agent") to establish the Tort Claims Settlement Fund (the "Fund").

WHEREAS, the Company is a party to the proceedings under chapter 11 of the Bankruptcy Code, 11 U.S.C §§ 101-1330 (the "Bankruptcy Code"), styled *In re Kaiser Aluminum Corporation, et al.*, Case No. 02-10429 (the "Chapter 11 Proceedings"), pending in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court");

WHEREAS, the creditors or potential creditors of the Company include: (a) certain asbestos claimants, represented by a statutory committee of asbestos claimants (the "Asbestos Committee") that has been appointed in the Chapter 11 Proceedings; (b) future asbestos claimants, represented by a legal representative (the "Asbestos Representative") who has been appointed in the Chapter 11 Proceedings; (c) future silica and coal tar pitch volatiles claimants, represented by a legal representative (the "Silica Representative") who has been appointed in the Chapter 11 Proceedings; and (d) other tort claimants, including noise-induced hearing loss claimants, represented by certain other counsel (collectively, the "Present and Future Tort Claimants");

WHEREAS, the Company intends from time to time to enter into certain settlement agreements with certain of its insurers (collectively, the "Insurers"), in compromise of tort liability coverage claim disputes with such Insurers (the "Settlement Agreements");

WHEREAS, the Bankruptcy Court has approved one or more Settlement Agreements and may approve other similar settlement agreements with the Insurers in the future;

WHEREAS, the Company desires to establish the Fund and, when applicable, to have transferred to the Fund by the Insurers, on behalf of the Company, a designated portion of the amounts paid by the Insurers pursuant to the Settlement Agreements (the "Settlement Funds"), which amounts, together with investment earnings thereon (collectively, the "Fund Assets"), subject to any further order of the Bankruptcy Court, shall be held therein for the benefit of the Present and Future Tort Claimants until the respective interests of such claimants, if any, with respect to the Fund Assets shall have been determined and the Escrow Agent has been directed to distribute the Fund Assets pursuant to a confirmed plan of reorganization of the Company (a "Confirmed Plan") or as otherwise ordered by the Bankruptcy Court, in full or partial satisfaction of the tort claims of the Present and Future Tort Claimants receiving such funds, in such manner and at such times as set forth herein; and

WHEREAS, this Fund is intended to qualify as a fund described in Treasury Regulations or proposed Treasury Regulations (the "Regulations") under section 468B of the Internal Revenue Code of 1986, as amended (the "Internal Revenue Code");

NOW, THEREFORE, the parties do hereby establish the Fund and agree that the Fund shall be comprised, held and disposed of as follows:

### Section 1. Establishment of Fund.

- (a) The principal of the Fund shall consist of the Settlement Funds, which shall be paid and delivered to and accepted by the Escrow Agent from the Insurers on behalf of the Company pursuant to the Settlement Agreements and Bankruptcy Court approval. The Fund Assets shall be held and disposed of by the Escrow Agent as provided in this Escrow Agreement (the "Agreement").
- (b) At all times the purpose of the Fund is to qualify as a fund pursuant to the Regulations. The Company and the Escrow Agent will take whatever actions may be necessary to ensure such qualification.
- (c) The Fund has been established to hold money and property for the benefit of the Present and Future Tort Claimants as such claims shall ultimately be determined. The Fund shall be subject to the continuing jurisdiction of the Bankruptcy Court until such time as it is terminated in accordance with the terms of this Agreement, and accordingly, no money or property shall be paid or distributed from the Fund to or on behalf of a Present or Future Tort Claimant, or otherwise, except with the approval of the Bankruptcy Court.
- (d) The Escrow Agent agrees to accept custody of the Fund Assets and to serve as Escrow Agent thereof, on and subject to the terms and conditions set forth in this Agreement. The Escrow Agent shall have no responsibility for any money or property until it is received and accepted by the Escrow Agent.
- (e) Other than its rights to payments under the Settlement Agreements, all or a portion of which the Company hereby assigns to the Fund, and the Settlement Funds being transferred or to be transferred to the Fund on behalf of the Company pursuant to the terms of the Settlement Agreements, the Company shall have no obligation to transfer any money or property to the Fund, nor shall it have any further or ongoing obligations or responsibilities of any kind with respect to the creation, funding, operation, administration, distributions, termination, or other activities of the Fund, except as specifically set forth in Sections 2, 5, 6 and 9 of this Agreement.
- (f) The Company shall not be entitled to any residual interest in, or distributions from, the Fund.

### Section 2. Beneficiaries.

The beneficiaries of the Fund are the Present and Future Tort Claimants, as their interests may be determined by the Bankruptcy Court or pursuant to a Confirmed Plan, or as otherwise directed by the Bankruptcy Court from time to time. The Company will provide the Escrow Agent with a copy of any Confirmed Plan or order of the Bankruptcy Court directing the distribution of Fund Assets and, if practicable, such Confirmed Plan or order will include a certified list of the Present and Future Tort Claimants, or any trust or trusts that may be



established pursuant to a Confirmed Plan, receiving Fund Assets and the amounts to be paid to each. The Escrow Agent has no duty to resolve any claims disputed by the Company and will make distributions only in accordance with the Confirmed Plan or order of the Bankruptcy Court.

### **Section 3. Payments.**

- (a) During the term of this Fund, all income received by the Fund shall be accumulated and reinvested except that income (and, to the extent necessary, principal) may be used to pay, in the following priority order, (i) the Escrow Agent's fees and costs, as provided in Section 7, (ii) taxes and other Fund expenses, and (iii) distributions in accordance with a Confirmed Plan or a Bankruptcy Court order.
- (b) The Escrow Agent shall treat the Fund as a separate taxable entity and accordingly shall obtain a federal tax EIN for the Fund, and on behalf of the Fund shall timely file (and make payments with respect to) such income tax and other returns and statements as are required to comply with applicable provisions of the Internal Revenue Code and the Regulations promulgated thereunder, including the requirements set forth in the Regulations, and of any applicable state and local law and the regulations promulgated thereunder.
- (c) Notwithstanding any other provision of this Agreement, the Escrow Agent shall have no obligation to pay any amount under this Agreement unless there are sufficient assets in the Fund to cover such payment and the Escrow Agent's remaining fees and unpaid expenses under Section 7.

### **Section 4. Authority and Responsibilities.**

The Escrow Agent shall have the powers and responsibilities described below:

- (a) The Escrow Agent shall act as the "administrator" of the Fund, within the meaning of the Regulations.
- (b) The Escrow Agent shall invest and reinvest the principal and income of the Fund and keep it invested, without distinction between principal and income, in any security or property provided in Exhibit A hereto, as it, in its sole discretion, deems advisable.
- (c) The Escrow Agent shall take receipt of any and all money and other property due the Fund and promptly thereafter provide to the Company a receipt therefor.
- (d) The Escrow Agent may hold property in nominee name, in bearer form, or in book entry form, in a clearinghouse corporation or in a depository (including an affiliate of the Escrow Agent), so long as the Escrow Agent's records clearly indicate that the assets held are a part of the Fund. The Escrow Agent shall not be responsible for any losses resulting from the deposit or maintenance of securities or other

property (in accordance with market practice, custom, or regulation) with any recognized clearing facility, book-entry system, centralized custodial depository, or similar organization.

- (e) The Escrow Agent shall keep accurate and detailed records of all investments, receipts, disbursements, and all other transactions required to be made. Such records shall be open to inspection during reasonable business hours by the Company, the United States Trustee for the District of Delaware ("U.S. Trustee"), the Asbestos Committee, the Asbestos Representative, the Silica Representative and the statutory committee of unsecured creditors appointed in the Chapter 11 Proceedings (the "Unsecured Creditors' Committee"). Within 15 business days following the close of each calendar quarter and within 15 business days after the removal or resignation of the Escrow Agent, the Escrow Agent shall file with the Bankruptcy Court and shall serve the Company, the U.S. Trustee, the Asbestos Committee, the Asbestos Representative, the Silica Representative and the Unsecured Creditors' Committee with an accounting of the Fund during such quarter or during the period from the close of the last preceding quarter to the date of such removal or resignation, setting forth all investments, receipts, and disbursements, including a description of all sales or purchases of securities, investments, and showing all cash, securities and other property held in the Fund at the end of such quarter or as of the date of such removal or resignation, as the case may be. The Escrow Agent shall be released and discharged with respect to all distributions made pursuant to a Confirmed Plan or a Bankruptcy Court order.

#### **Section 5. Statement of the Company.**

The Company shall timely provide a statement to the Escrow Agent pursuant to the Regulations, setting forth the information described in the Regulations that is required by the Regulations to be provided by a transferor by February 15 of the year following each calendar year in which such transferor makes a transfer (directly or indirectly) to a fund, and shall attach a copy of such statement to (and as part of) its timely filed income tax return (including extensions) for the taxable year of the Company in which the transfer is made.

#### **Section 6. Indemnification.**

- (a) The Escrow Agent shall not be responsible for the title, validity or genuineness of any property or evidence of title thereto received by it or delivered by it pursuant to this Agreement and shall be held harmless in acting upon any notice, request, direction, instruction, consent, certification or other instrument believed by it to be genuine and delivered by the proper party or parties.
- (b) The Company agrees to indemnify and hold harmless the Escrow Agent, its parent, subsidiaries and affiliates, and its officers, directors, employees and agents from and against all liability, loss and expense, including reasonable Escrow Agent fees and costs and attorneys' fees and expenses incurred by the Escrow Agent or any of the foregoing indemnitees arising out of or in connection with this

Agreement, except as a result of the gross negligence or willful misconduct of the Escrow Agent or any of the foregoing indemnitees. This indemnification shall survive the termination of this Agreement.

#### **Section 7. Compensation and Expenses of Escrow Agent.**

The Escrow Agent shall be paid ordinary, customary and reasonable fees and expenses for holding and administering the Fund Assets in accordance with this Agreement, including those fees set forth on Exhibit B. Such ordinary, customary and reasonable fees and expenses shall be paid to the Escrow Agent from the Fund Assets. Any other fees and expenses (including, but not limited to, indemnity expenses) shall be paid from the Fund only upon application by the Escrow Agent to, and approval by, the Bankruptcy Court.

#### **Section 8. Resignation and Removal of Escrow Agent.**

- (a) The Escrow Agent may resign at any time by filing a written notice with the Bankruptcy Court and serving such notice on the Company, the U.S. Trustee, the Asbestos Committee, the Asbestos Representative, the Silica Representative and the Unsecured Creditors' Committee. This written notice shall be effective 60 calendar days after receipt of such notice unless the Bankruptcy Court orders, or the Escrow Agent agrees, otherwise.
- (b) The Escrow Agent may be removed by order of the Bankruptcy Court on 60 calendar days' written notice or upon shorter written notice accepted by the Escrow Agent.
- (c) If the Escrow Agent resigns or is removed, a successor shall be appointed in accordance with Section 9 hereof by the effective date of resignation or removal under Subsections (a) or (b) of this Section 8. If no such appointment has been validly made, the Escrow Agent shall apply to the Bankruptcy Court for appointment of a successor or for instructions, and the resignation or removal shall not be effective until a successor Escrow Agent is validly appointed. All expenses of the Escrow Agent in connection with the proceeding shall be allowed as administrative expenses of the Fund and paid in accordance with Section 7 of this Agreement.

#### **Section 9. Appointment of Successor.**

- (a) If the Escrow Agent resigns or is removed in accordance with Subsection 8(a) or (b) hereof, the Company, by filing a written notice with the Bankruptcy Court and serving such notice on the Escrow Agent, the U.S. Trustee, the Asbestos Committee, the Asbestos Representative, the Silica Representative and the Unsecured Creditors' Committee, shall appoint a successor to replace the Escrow Agent upon such resignation or removal. The appointment shall be effective when accepted in writing by the new Escrow Agent, who shall have all of the rights and powers of the former Escrow Agent. The former Escrow Agent shall

execute any instrument necessary or reasonably requested by the Court or the successor Escrow Agent to evidence the transfer.

- (b) The successor Escrow Agent need not examine the records and acts of any prior Escrow Agent and shall retain or dispose of existing Fund Assets in accordance with the provisions hereof. The successor Escrow Agent shall not be responsible for and the Company shall indemnify and defend the successor Escrow Agent from any claim or liability resulting from any action or inaction of any prior Escrow Agent or from any other past event, or any condition existing at the time it becomes successor Escrow Agent.

#### **Section 10. Amendment or Termination.**

- (a) This Agreement (including Exhibit A hereto) may be amended in a written instrument executed by the Company and the Escrow Agent, with the approval of the Bankruptcy Court; provided, however, that in no event shall this Agreement be amended to permit the Company to have a reversionary interest in the Fund Assets; provided, further, that in no event shall this Agreement (including Exhibit A hereto) be amended in a manner that would permit the Company to direct or control the investment of the Fund Assets.
- (b) The Fund shall terminate on the earlier of December 31, 2006, or the date on which it no longer has any assets, unless the term of the Fund is extended pursuant to an order of the Bankruptcy Court. Any Fund Assets held in the Fund as of such termination shall be disbursed as ordered by the Bankruptcy Court.

#### **Section 11. Miscellaneous.**

- (a) Neither the Company nor the Escrow Agent may assign this Agreement without the prior written consent of the other. This Agreement shall be binding upon, and inure to the benefit of, the Company and the Escrow Agent and their respective successors and permitted assigns.
- (b) Any provision of this Agreement prohibited by law shall be ineffective to the extent of any such prohibition, without invalidating the remaining provisions hereof.
- (c) To the extent that this Agreement provides that the Company will provide notice or information to the Escrow Agent, the Escrow Agent will be entitled to rely on such notification and information provided by the Company and shall be without liability for any action reasonably taken or omitted pursuant thereto.
- (d) This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware.

- (e) In the event that the jurisdiction of the Bankruptcy Court should cease, any action under this Agreement that requires the approval of or action by the Bankruptcy Court may be sought from or taken by a court of competent jurisdiction.
- (f) The Fund shall be a calendar-year taxpayer.
- (g) In the absence of actual knowledge to the contrary, any person dealing with the Fund or the Escrow Agent shall be entitled to rely on the authority of the Escrow Agent or any of its agents to act in connection with the Fund Assets. There is no obligation on any person dealing with the Escrow Agent to inquire into the validity, expediency, or propriety of any transaction by the Escrow Agent or any agent of the Escrow Agent.

#### Section 12. Notices.

All notices and other communications provided for in this Agreement shall be deemed validly given only if they are in writing and delivered personally or sent by certified mail, postage prepaid, or by overnight courier, or by telecopier, to the following addresses or such other address as either party provides to the other party at the address set forth below:

**If to the Company:**

Kaiser Aluminum & Chemical Corporation  
5847 San Felipe, Suite 2500  
Houston, Texas 77057  
Attn: General Counsel

**If to the U.S. Trustee:**

Frank J. Perch, III, Esq.  
Office of the United States Trustee  
844 King Street, Suite 2313  
Wilmington, Delaware 19801

**If to the Asbestos Committee:**

Elihu Inselbuch, Esq.  
Caplin & Drysdale, Chartered  
399 Park Avenue  
27th Floor  
New York, NY 10022

If to the Asbestos Representative:

Martin J. Murphy, Esq.  
Davis & Young  
1700 Midland Bldg.  
101 Prospect Ave. West  
Cleveland, OH 44115

If to the Silica Representative:

Anne M. Ferrazi, Esq.  
22 Sandalwood Drive  
Houston, Texas 77024

If to the Unsecured Creditors' Committee:

Lisa G. Beckerman, Esq.  
Akin, Gump, Strauss, Hauer & Feld, L.L.P.  
590 Madison Avenue  
New York, NY 10022

If to the Escrow Agent:

Wells Fargo Bank, NA  
Customized Fiduciary Services Group  
Sixth and Marquette; N9303-120  
Minneapolis, MN 55479  
Fax: 612-667-9825  
Attention: Jeffrey T. Rose

**Section 13. Reliance on Representations; Counterparts.**

- (a) The Company and the Escrow Agent each acknowledge that the other will be relying, and shall be entitled to rely, on the representations, undertakings and acknowledgments of the other as set forth in this Agreement. The Company and the Escrow Agent each agree to notify the other promptly if any of its representations, undertakings, or acknowledgments set forth in this Agreement ceases to be true.
- (b) The Company and the Escrow Agent hereby each represent and warrant to the other that it has full authority to enter into this Agreement upon the terms and conditions hereof and that the individual executing this Agreement on their behalf has the requisite authority to bind the Company and the Escrow Agent to this Agreement.

- (c) This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument, and shall become effective when one or more counterparts have been signed by each of the parties.

**Section 14. Effective Date.**

The effective date of this Agreement shall be the 21st day of December, 2004.

\* \* \* \* \*

EXECUTED on the dates set forth below to be effective on the date set forth above.

**KAISER ALUMINUM & CHEMICAL  
CORPORATION**

By: 

Name: Edward F. Houff

Title: Vice President, Secretary and  
General Counsel

Date: December 21, 2004

**WELLS FARGO BANK, NA**

By: 

Name: Nicholas Tally

Title: Vice President

Date: December 21, 2004

## EXHIBIT A

The permitted investments referred to under Section 4(a) shall be:

- (a) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the United States of America), in each case maturing within twelve months from the date of acquisition thereof;
- (b) without limiting the provisions of paragraph (d) below, investments in commercial paper maturing within six months from the date of acquisition thereof and having, at such date of acquisition, a rating of at least "A-1" or the equivalent thereof from Standard & Poor's Corporation or of at least "P-1" or the equivalent thereof from Moody's Investors Service, Inc.;
- (c) investments in certificates of deposit, banker's acceptances and time deposits (including Eurodollar time deposits) maturing within six months from the date of acquisition thereof issued or guaranteed by or placed with any domestic office of any commercial bank of recognized standing organized under the laws of the United States of America or any State thereof that has a combined capital and surplus and undivided profits of not less than \$250,000,000 and is the principal banking subsidiary of a bank holding company having a long-term unsecured debt rating of at least "A-1" or the equivalent thereof from Standard & Poor's Rating Services or at least "P-1" or the equivalent thereof from Moody's Investors Service, Inc.;
- (d) investments in commercial paper maturing within six months from the date of acquisition thereof and issued by the holding company of any commercial bank of recognized standing organized under the laws of the United States of America or any State thereof that has (A) a combined capital and surplus in excess of \$250,000,000 and (B) commercial paper rated at least "A-1" or the equivalent thereof from Standard & Poor's Corporation or of at least "P-1" or the equivalent thereof from Moody's Investors Service, Inc.;
- (e) investments in repurchase obligations with a term of not more than seven days for underlying securities of the types described in clause (a) above entered into with any office of a bank or trust company meeting the qualifications specified in clause (c) above; and
- (f) investments in money market funds substantially all the assets of which are comprised of securities of the types described in clauses (a) through (e) above.



## EXHIBIT B

### Fee Proposal of Wells Fargo Bank Minnesota, NA To Serve as Escrow Agent For the Asbestos Claims Settlement Fund

**One Time Acceptance Fee:** **\$1,500.00**

This fee covers negotiation and review of the escrow agreement, review of settlement agreement and related court orders, set up of fund under 468B and retention of outside tax professionals, establishing administration processes and procedures, compliance review and set up of account.

**Annual Administration Fee:** **\$3,000.00**

This fee covers 20 hours of administration time annually plus fixed costs relating to generating account statements, fund transfers, routine reconciliation, file retention and internal account compliance administration, tracking of funds and reviewing that the investment of securities conforms with the investment language set in agreement.

**Securities Transaction Fees:** **\$25.00 / Transaction**

This fee is charged for each purchase, sale or settlement of securities for the fund.

**Out-of-Pocket Expenses:** **Billed at Cost**

This includes engaging, or retaining any Person as agent, representative, or independent contractor (including, without limitation, tax advisors and accountants for the 468B fund, attorneys at law, or otherwise), telephone charges; postage expenses, special delivery expenses, printing, etc.

**Extraordinary Administration:**

This fee may be charged in the event services beyond those contemplated in the agreement are provided by the Escrow Agent or account administration exceeds the 20 hours allotted above.

Relationship Manager **\$175.00/hr**  
Relationship Specialist **\$100.00/hr**

**Itemized Transactional Fees:**

Outgoing Wire transfer of Funds **\$25.00/Wire**  
Checks **\$2.50/Check**  
Check stop payment & reissue **\$4.50/Form**  
IRS Form 1099- tax reporting (if applicable) **\$10.00/Item**

## **ATTACHMENT C**

## ATTACHMENT C

### BANK TRUST AGREEMENT

This BANK TRUST AGREEMENT (the "Bank Trust Agreement") is made and entered this \_\_\_ day of December, 2005, by and among Kaiser Aluminum & Chemical Corporation ("Kaiser Aluminum") (and the Funding Vehicle Trust after the Trigger Date), and Wachovia Bank, National Association (the "Trustee") (collectively, the "Parties").

WHEREAS, simultaneously with the making of this Bank Trust Agreement, Kaiser Aluminum and Westport Insurance Company, formerly known as The Manhattan Fire and Marine Insurance Company and as Puritan Insurance Company, and as successor in interest to Puritan Excess and Surplus Lines Insurance Company ("Westport") (collectively, the "Settlement Parties") have entered into a Settlement Agreement And Mutual Release With Westport (the "Agreement"), to which a copy of this Bank Trust Agreement is attached as Attachment C, with respect to coverage for certain claims under the Subject Policies and the Other Westport Parties Policies; and

WHEREAS, the Agreement provides for the deposit by Westport of a total of Twelve Million Nine Hundred Thousand Dollars (US) (\$12,900,000.00 (U.S.)) into a bank trust and/or escrow account pending further distribution of funds; and

WHEREAS, the Parties desire to arrange for such a bank trust and appoint the Trustee in accordance with the terms hereof;

NOW, THEREFORE, in consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

#### **I. DEFINED TERMS**

Except as defined in this section or as otherwise indicated in this Bank Trust Agreement, all capitalized terms used herein shall have the respective meanings attributed to them in the Agreement.

1.1. Deposit. The term "Deposit" shall mean the collective amount of Twelve Million Nine Hundred Thousand Dollars (US) (\$12,900,000.00 (U.S.)), or that portion thereof to be paid prior to the Trigger Date, as defined in the Agreement, by or at the direction of Westport pursuant to Section II of the Agreement.

1.2. Expenses. The term "Expenses" shall mean all reasonable costs and expenses incurred by the Trust and the Trustee (in its capacity as such) pursuant to this Bank Trust Agreement, including without limitation all compensation paid to the Trustee pursuant to Section 3.2 hereof, the costs and expenses incurred in preparing and circulating the records and reports pursuant to Section 3.3 hereof, all taxes paid pursuant to Section 3.4 hereto, and any

indemnification paid pursuant to Section 3.5 hereof, and any amounts reserved pursuant to this Bank Trust Agreement for any of the foregoing.

1.3 Income. The term "Income" shall mean the interest, income and earnings on the Trust Funds.

1.4 Termination Date. The term "Termination Date" shall mean the date on which all the Trust Funds have been disbursed.

1.5 Trust. The term "Trust" shall mean a trust established pursuant to the terms of this Bank Trust Agreement.

1.6 Trust Funds. The term "Trust Funds" shall mean all funds held by the Trust, including without limitation the Deposit and the Income.

## **II. THE TRUST**

2.1 Trust. The Parties shall establish the Trust in accordance with the terms of this Bank Trust Agreement.

2.2 Deposit. Westport shall cause to be paid the Deposit into the Trust when and as required by Section II of the Agreement.

2.3 Investment of Trust Funds. The Trustee herein is directed and instructed to initially invest and reinvest the Trust Funds in Evergreen Institutional Treasury Money Market Fund (Institutional Service Shares). The ACC and FACR (with the prior written consent of Kaiser Aluminum and Westport) may provide instructions changing the investment of the Trust Funds (subject to applicable minimum investment requirements) by the furnishing of a joint certification (which shall include certification that they have obtained prior written consent of Kaiser Aluminum and Westport) to the Trustee; *provided, however*, that no investment or reinvestment may be made except in the following:

a. direct obligations of the United States of America or obligations the principal of and the interest on which are unconditionally guaranteed by the United States of America;

b. certificates of deposit issued by any bank, bank and trust company, or national banking association (including the Trustee and its affiliates), which certificates of deposit are insured by the Federal Deposit Insurance Corporation or a similar governmental agency;

c. repurchase agreements with any bank, trust company, or national banking association (including the Trustee and its affiliates) for instruments described in 2.3(a and b); or

d. any institutional money market fund offered by the Trustee, including any institutional money market funds managed by the Trustee or any of its affiliates.

If the Trustee has not received a joint certification from the ACC and FACR at any time that an investment decision must be made, the Trustee shall invest the Trust Funds, or such portion thereof as to which no joint certification from the ACC and FACR has been received, in Evergreen Institutional Treasury Money Market Fund (Institutional Service Shares). Each of the foregoing investments shall be made in the name of the Trustee. No investment shall be made in any instrument or security that has a maturity of greater than six (6) months. Notwithstanding anything to the contrary contained herein, the Trustee may, without notice to the other Parties, sell or liquidate any of the foregoing investments at any time if the proceeds thereof are required for any disbursement of Trust Funds permitted or required hereunder. All investment earnings shall become part of the Trust Funds and investment losses shall be charged against the Trust Funds. The Trustee shall not be liable or responsible for loss in the value of any investment made pursuant to this Bank Trust Agreement, or for any loss, cost or penalty resulting from any sale or liquidation of the Trust Funds. With respect to any Trust Funds received by the Trustee after ten o'clock, a.m., New York, New York, time, Trustee shall not be required to invest such funds or to effect any investment instruction until the next day upon which banks in New York, New York, are open for business.

#### 2.4 Rights of the Parties.

(a) Nothing in this Bank Trust Agreement shall be interpreted as conferring upon any Party any rights to the Trust or the Trust Funds other than as may be set forth in the Agreement or this Bank Trust Agreement.

(b) Interest in the Trust Funds shall vest solely in the Trustee until the Trust Funds are disbursed by the Trustee in accordance with Section 2.6 below.

2.5 Income. Income earned by the Trust Funds shall be considered part of the Trust Funds and shall be reinvested in accordance with the terms of Section 2.3.

#### 2.6 Disbursement of the Trust Funds.

(a) Subject to Section 2.6(c) below, upon presentation of (i) certification to the Trustee by any authorized agent of Reorganized KAC and the Funding Vehicle Trust or (ii) a Bankruptcy Court Order so providing, that the Trigger Date has occurred and that Westport is not entitled to the Settlement Amount or a portion of the Settlement Amount pursuant to Section VIII of the Agreement, the Trustee shall release all of the Trust Funds (including the Settlement Amount and any and all Income, less any Expenses or reserves that the Trustee incurs pursuant to this Bank Trust Agreement) to the Insurance Escrow Agent for deposit in the Insurance Escrow Account.

(b) Subject to Section 2.6(c) below, upon presentation of (i) certification to the Trustee by Westport, or (ii) a Bankruptcy Court Order so providing, that Westport is entitled to the Settlement Amount pursuant to Section VIII of the Agreement, the Trustee shall release the Trust Funds to Westport (including the Settlement Amount and any and all Income, less any Expenses or reserves that the Trustee incurs pursuant to this Bank Trust Agreement).

(c) The Trustee shall provide thirty (30) days written notice to Kaiser Aluminum, the ACC, FACR, and to Westport prior to distributing the Trust Funds pursuant to Section 2.6(a-b) of this Bank Trust Agreement, which shall include a copy of the certification authorizing distribution, except in the circumstances described in the following three sentences. To the extent that Westport provides notice to Kaiser Aluminum and to the ACC and FACR that Westport is entitled to all or any portion of the Settlement Amount pursuant to Section VIII of the Agreement, the Trustee shall provide written notice (which shall contain a copy of the certification authorizing distribution) to Kaiser Aluminum and to the ACC and FACR concurrently with distributing the Trust Funds pursuant to this Section 2.6. In the event of a dispute over whether the Agreement has terminated pursuant to Section VIII of the Agreement, the Trustee shall disburse funds in accordance with the determination of the Bankruptcy Court. Finally, upon presentation of a joint certification to the Trustee by Westport, and any authorized agent of each of Kaiser Aluminum (or, upon its creation, the Funding Vehicle Trust), the ACC and the FACR that the Trust Funds should be disbursed as provided in such joint certification, the Trustee shall release all of the Trust Funds (including the Settlement Amount and any and all Income, less any Expenses incurred or reserves retained by the Trustee pursuant to this Bank Trust Agreement) and shall provide written notice (which shall contain a copy of the certification authorizing distribution) to all Settlement Parties concurrently with distributing the Trust Funds pursuant to this Section 2.6.

(d) Any certification under this Section 2.6 shall include a statement of reasons that a distribution is authorized and certification that the signor of the certification is an authorized agent of the certifying entity. The Trustee may confirm that the signor of the certification is an authorized agent of the certifying entity by contacting that entity as provided in Section 4.5 hereof.

(e) Upon providing certification as required under this Section 2.6, Westport and the Funding Vehicle Trust shall provide written instructions to the Trust for the distribution of the Settlement Amount to Westport and the Insurance Escrow Account (as appropriate) in accordance with this Section 2.6. The Trustee shall not distribute any part of the Settlement Amount to Westport unless and until Westport provides such instructions, and the Trustee shall not distribute any part of the Settlement Amount to the Insurance Escrow Agent unless and until the Funding Vehicle Trust provides such instruction.

### **III. TRUSTEE**

3.1 Appointment and Duties. Kaiser Aluminum hereby appoints and designates Wachovia Bank, National Association, as Trustee hereunder. The Trustee accepts such appointment and agrees to serve hereunder for the purposes and on the terms set forth in this Bank Trust Agreement.

3.2 Compensation. The Trustee shall be entitled to receive from the Income compensation (as set forth in Schedule A to this Bank Trust Agreement) for its services rendered as Trustee under this Bank Trust Agreement and shall be entitled to reimbursement for its reasonable Expenses incurred in serving as Trustee. The indemnification obligations set forth in Section 3.5 of this Bank Trust Agreement shall survive any termination of this Bank Trust

Agreement and the resignation or removal of the Trustee. All fees and Expenses shall be paid from the assets held in the Bank Trust, and no Party shall be obligated to pay any fee or Expense under this Agreement. The Trustee shall provide periodic statements reflecting such charges to the Settlement Parties at the addresses provided in Section 4.5 hereof.

3.3 Records and Reports. The Trustee shall maintain detailed accounts of all receipts, disbursements, distributions, and other transactions relating to the Trust and any Income accruing thereon, and such accounts, books, and records relating to the Trust shall be available for inspection at reasonable hours by the Settlement Parties. The Trustee shall establish a fiscal year for the Trust (the "Fiscal Year"). At monthly intervals and again within sixty (60) days following the end of the Fiscal Year, the Trustee shall deliver a written report to the Settlement Parties setting forth the receipts, disbursements, and distributions of the Trust.

3.4 Payment of Taxes. The Trustee is hereby directed to retain the services of a CPA firm (with the prior written consent of Kaiser Aluminum, which is not to be withheld unreasonably) to timely file all required and appropriate federal, state and local tax returns and make timely payment out of the Trust Funds of any taxes due by or lawfully assessed against the Trust. The designated CPA firm shall apply for and obtain a federal tax identification number for the Trust, which shall be taxed as a non-grantor trust. If the Trustee believes any particular tax to be unlawfully assessed or asserted to be due, it may contest the validity thereof in such manner as the Trustee deems appropriate and may retain and compensate tax counsel for that purpose, subject to the prior approval of Kaiser Aluminum, the ACC and the FACR. The Trustee shall pay out of the Trust Funds any Expenses for tax preparation or for contesting any tax liability. The Trustee shall act reasonably to set aside a sufficient reserve from the Income to pay any tax liability and associated fees.

3.5 Indemnification of Trustee. From and at all times after the date of this Bank Trust Agreement, the Trust shall, to the fullest extent permitted by law, defend, indemnify and hold harmless Trustee and each director, officer, employee, attorney, agent, and affiliate of Trustee (collectively, the "Indemnified Parties") against any and all actions, claims (whether or not valid), losses, damages, liabilities, costs and expenses of any kind or nature whatsoever (including without limitation reasonable attorneys' fees, costs and expenses) incurred by or asserted against any of the Indemnified Parties from and after the date hereof, whether direct, indirect or consequential, as a result of or arising from or in any way relating to any claim, demand, suit, action or proceeding (including any inquiry or investigation) by any person, whether threatened or initiated, asserting a claim for any legal or equitable remedy against any person under any statute or regulation, including, but not limited to, any federal or state securities laws, or under any common law or equitable cause or otherwise, arising from or in connection with the negotiation, preparation, execution, performance or failure of performance of this Bank Trust Agreement or any transactions contemplated herein, whether or not any such Indemnified Party is a party to any such action, proceeding, suit or the target of any such inquiry or investigation; provided, however, that no Indemnified Parties shall have the right to be indemnified hereunder for any liability or losses caused by their own bad faith, gross negligence or willful misconduct. The Trustee shall have the right to select its own counsel, whose fees shall be paid as an Expense from the Trust Funds. The indemnification obligations under this Section 3.5 shall survive any termination of this Bank Trust Agreement and the resignation or

removal of the Trustee (and, upon the Trigger Date, shall become the obligation of the Funding Vehicle Trust). Any amount that the Trust becomes liable to pay as a result of the indemnification obligations set forth in this Section 3.5 shall be paid from the Trust Funds.

3.6 Indemnification by Trustee. The Trustee shall indemnify the Trust and the Settlement Parties, and hold them harmless against any loss, liability, or expense (including without limitation, reasonable fees and disbursements of counsel) incurred as the result of gross negligence, embezzlement, or other willful misconduct by the Trustee, its officers, directors, employees, and agents.

3.7 No Implied Duties of Trustee. The Trustee shall be obligated only for the performance of such duties as are expressly set forth in this Bank Trust Agreement. No implied duties of the Trustee shall be read into this Bank Trust Agreement. The Trustee is not a principal, participant, or beneficiary in any transaction underlying this Bank Trust Agreement, is not a party to the Agreement, and shall have no duty for the content or application of the Agreement, except as expressly stated herein, to determine or inquire into the happening or occurrence of any event or contingency.

3.8 Resignation. The Trustee may resign at any time upon giving Kaiser Aluminum, Westport and the ACC and FACR thirty (30) days prior written notice to that effect. In such event, the successor shall be such person, firm, or corporation as shall be selected by Kaiser Aluminum with the prior written consent of Westport. The Trustee shall deliver a true and correct copy of the records relating to the Trust to its successor. It is understood and agreed that such resignation shall not be effective until the successor agrees to act hereunder; provided, however, that if no successor is appointed and acting hereunder within thirty (30) days after such notice is given, the Trustee may pay and deliver the Trust into the Bankruptcy Court. The Trustee shall have no liability to Kaiser Aluminum, its shareholders or members or any other person with respect to any suspension of performance or disbursement into court; specifically including any liability or claimed liability that may arise, or be alleged to have arisen, out of or as a result of any delay in the disbursement of funds held in the Trust Funds or any delay in or with respect to any other action required or requested of Trustee. The retiring Trustee shall transmit all records pertaining to the Trust Funds and shall pay all Trust Funds to the successor Trustee, after making copies of such records as the retiring Trustee deems advisable and after deduction and payment to the retiring Trustee of all fees and expenses (including court costs and attorneys' fees) payable to, incurred by, or expected to be incurred by the retiring Trustee in connection with the performance of its duties and the exercise of its rights hereunder. After any retiring Trustee's resignation, the provisions of this Bank Trust Agreement shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Trustee under this Bank Trust Agreement. Any corporation or association into which Trustee may be merged or converted or with which it may be consolidated, or any corporation or association to which all or substantially all of the trust business of Trustee's corporate trust line of business may be transferred, shall be the Trustee under this Bank Trust Agreement without further act.

3.9 Removal. Prior to the Trigger Date, Kaiser Aluminum shall have the right at any time, with or without cause, but only with the prior written consent of Westport, the ACC and the FACR or Order of the Bankruptcy Court, to substitute a new Trustee by giving notice thereof to



the Trustee then acting. After the Trigger Date, the Funding Vehicle Trust, and no other Entity, shall have the right to substitute a new Trustee after the Trigger Date has occurred. The Trustee shall deliver to its successor a true and correct copy of all records relating to the Trust.

### 3.10 Liability of Trustee.

(a) The Trustee undertakes to perform only such duties as are expressly set forth herein and no duties shall be implied. The Trustee shall have no liability under and no duty to inquire as to the provisions of any agreement other than this Bank Trust Agreement and the portions of the Agreement referenced herein. The Trustee shall not be liable for any action taken or omitted by it in good faith in the absence of gross negligence or willful misconduct. The Trustee's sole responsibility shall be for the safekeeping, administration and disbursement of the Trust Funds in accordance with the terms of this Bank Trust Agreement. The Trustee shall have no implied duties or obligations and shall not be charged with knowledge or notice of any fact or circumstance not specifically set forth herein. The Trustee may rely upon any notice, instruction, request or other instrument, not only as to its due execution, validity and effectiveness, but also as to the truth and accuracy of any information contained therein, which the Trustee shall believe to be genuine and to have been signed or presented by the person or parties purporting to sign the same. In no event shall the Trustee be liable for incidental, indirect, special, consequential or punitive damages (including, but not limited to lost profits), even if the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action. The Trustee shall not be obligated to take any legal action or commence any proceeding in connection with the Trust Funds, any account in which Trust Funds are deposited, this Bank Trust Agreement or the Agreement, or to appear in, prosecute or defend any such legal action or proceeding. The Trustee may consult legal counsel selected by it in the event of any dispute or question as to the construction of any of the provisions hereof or of any other agreement or of its duties hereunder, or relating to any dispute involving any party hereto, and shall incur no liability and shall be fully indemnified from any liability whatsoever in acting in accordance with the opinion or instruction of such counsel. The Trust shall promptly pay from the Trust Funds, upon demand, the reasonable fees and expenses of any such counsel.

(b) The Trustee is authorized, in its sole discretion, to comply with orders issued or process entered by any court with respect to the Trust Funds, without reasonable determination by the Trustee of such court's jurisdiction in the matter or reasonable determination by the Trustee of the appealability of such orders. If any portion of the Trust Funds is at any time attached, garnished or levied upon under any court order, or in case the payment, assignment, transfer, conveyance or delivery of any such property shall be stayed or enjoined by any court order, or in case any order, judgment or decree shall be made or entered by any court affecting such property or any part thereof, then and in any such event, the Trustee is authorized, in its sole discretion, to rely upon and comply with any such order, writ, judgment or decree which it is advised by legal counsel selected by it is binding upon it without the need for appeal or other action; and if the Trustee complies with any such order, writ, judgment or decree, it shall not be liable to any of the parties hereto or to any other person or entity by reason of such compliance even though such order, writ, judgment or decree may be subsequently reversed, modified, annulled, set aside or vacated.

#### IV. MISCELLANEOUS

4.1 Termination. After one year following termination of the Trust, the Trustee may dispose of any records or reports concerning this Trust and any transactions relating to it in accordance with the Trustee's established procedures, but in any event only upon ninety (90) days prior written notice to the Settlement Parties.

4.2 Counterparts. This Bank Trust Agreement may be executed in multiple counterparts, all of which constitute a single agreement.

4.3 Amendments and Modifications. This Bank Trust Agreement, and the Agreement to the extent its provisions are referenced herein, contains all the terms agreed upon by the Parties with respect to the subject matter hereof. This Bank Trust Agreement may be amended or modified only by subsequent written instrument executed by the Parties, and if the amendment in any way affects the compensation, duties, or responsibilities of the Trustee, by a duly authorized representative of the Trustee. In the event that any Party is dissolved or otherwise ceases to exist, the remaining Parties may amend or modify this Agreement without that Party's consent. No waiver of any provision hereof or rights hereunder shall be binding upon a Party unless evidenced by a writing signed by such party.

4.4 Enforceability. In the event that any one or more of the provisions contained in this Bank Trust Agreement shall be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Bank Trust Agreement shall be construed as if such invalid, illegal, or unenforceable provision did not exist.

4.5 Notices. All notices required or authorized under this Bank Trust Agreement shall be in writing, (a) sent by telecopy (with receipt personally confirmed by telephone), delivered by personal delivery, or sent by commercial delivery service or certified mail, return receipt requested, (b) deemed to have been given on the date telecopied with receipt confirmed, the date of personal delivery, or the date set forth in the records of the delivery service or on the return receipt, and (c) addressed to the Settlement Parties as per Section XVIII of the Agreement, and to the Trustee as follows:

If to Kaiser Aluminum:

John M. Donnan, Esq.  
Vice President, Secretary and General Counsel  
Kaiser Aluminum Corporation  
27422 Portola Parkway, Ste. 350  
Foothill Ranch, California 92610-2831

Fax: 949-614-1930

With a copy to:

Gregory M. Gordon, Esq.  
Jones Day  
2727 North Harwood  
Dallas, Texas 75201

Fax: 214-969-5100

If to the Asbestos Claimants' Committee:

Caplin & Drysdale, Chartered  
399 Park Avenue, 27<sup>th</sup> Floor  
New York, NY 10022-4614  
Attn: Elihu Inselbuch, Esq.

Fax: 212-644-6755

- and -

Caplin & Drysdale, Chartered  
One Thomas Circle, NW  
Washington, DC 20005  
Attn: Peter Van N. Lockwood, Esq.

Fax: 202-429-3301

If to the Future Asbestos Claimants'  
Representative:

Martin J. Murphy, Esq.  
1700 Midland Bldg.  
101 Prospect Ave. West  
Cleveland, Ohio 44115  
Attn: Eric D. Green, Esq.

Fax: 216-621-0602

With a copy to:

Young Conaway Stargatt & Taylor, LLP  
The Brandywine Building  
1000 West Street, 17<sup>th</sup> Floor  
Wilmington, DE 19801  
Attn: James L. Patton, Jr., Esq.

Fax: 302-576-3325

If to Westport:

Julie Manello  
GE Insurance Solutions  
525 W. Van Buren, Suite 500  
Chicago, IL 60607

Fax: 800-388-0931

With a copy to:

Andrew R. McCloskey  
Riedl, McCloskey & Waring LLP  
550 West C Street, Suite 500  
San Diego, CA 92101

Fax: 619-237-3789

If to the Trustee:

Wachovia Bank, National Association  
5847 San Felipe  
Suite 1050  
Houston, Texas 77057  
Attn: Corporate Trust Administration

Fax: 713-278-4329

4.6 Headings. Titles, headings, or subheadings contained in this Bank Trust Agreement are included only for ease of reference and have no substantive effect.

4.7 Governing Law. This Bank Trust Agreement shall be governed by and construed in accordance with the internal laws of the State of New York applicable to contracts made and to be performed entirely within such State, without regard to the conflicts of law principles of such State.

4.8 Benefit of Agreement. Nothing in this Bank Trust Agreement, express or implied, confers on any Person, other than the Parties hereto and their successors and assigns hereunder, and Westport, any benefit or any legal or equitable right, remedy or claim under this Bank Trust Agreement. Westport is an intended third party beneficiary of this Bank Trust Agreement with the right to enforce the provisions of this Bank Trust Agreement.

4.9 Confidentiality. Copies of all documents, notices, statements, and reports provided to any Party under this Bank Trust Agreement shall be provided on a confidential basis and shall be kept confidential by all other Parties, unless such information is otherwise publicly available or unless such information is required by law to be released to any third party. Notwithstanding the foregoing, any Party may share such information with their employees, agents, representatives, accountants, attorneys, and advisors subject to advising such persons of the requirement that such information must be kept confidential.

4.10 Dealings. The Trustee and any stockholder, director, officer or employee of the Trustee may buy, sell and deal in any of the securities of the Parties and become pecuniarily interested in any transaction in which the Parties may be interested, and contract and lend money to the Parties and otherwise act as fully and freely as though it were not Trustee under this Bank Trust Agreement. Nothing herein shall preclude the Trustee from acting in any other capacity for the Settlement Parties or for any other entity.

4.11 Identifying Information. Kaiser Aluminum acknowledges that certain identifying information is being requested by the Trustee in connection with the USA Patriot Act, Pub. L. 107-56 (the "Act"), and agrees to provide any information reasonably requested by the Trustee in connection with the Act or any similar legislation or regulation to which the Trustee is subject, in a timely manner.

**[SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, the parties hereto have caused this Bank Trust Agreement to be signed by their respective duly authorized officers as of the date first above written:

KAISER ALUMINUM & CHEMICAL CORPORATION

By: \_\_\_\_\_  
Name: Edward F. Houff  
Title: Chief Restructuring Officer  
Date: \_\_\_\_\_

WACHOVIA BANK, NATIONAL ASSOCIATION

By: \_\_\_\_\_  
Name: John C. Stephens III  
Title: Vice President  
Date: \_\_\_\_\_

## **SCHEDULE A TO THE BANK TRUST AGREEMENT**

### **SCHEDULE OF FEES**

#### **Trust Services**

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#### **Settlement Account Trust**

**December, 2005**

**I. ACCEPTANCE FEE (Payable from Investment earnings as collected)\$1,500 Per Trust**

Initial fee for reviewing documents, communication with counsel and other parties connected with the transaction, setting up accounts and administration records.

Legal Review

Billed at Cost

**II. ANNUAL ADMINISTRATION FEE \$5,000 Per Trust  
(Payable from Investment earnings as collected – no proration allowed)**

Day-to-day administration of governing documents, maintenance of investments, communications with obligor and providing statements, and other duties defined in the Bank Trust Agreement.

**III. OUT-OF-POCKET EXPENSES Billed at Cost**

Advance or Out-of-Pocket expenses including but not limited to postage, legal, telephone, freight, courier and express mail.

**IV. INVESTMENT MANAGEMENT OPTIONS**

- |   |                               |
|---|-------------------------------|
| A. Securities Transactions (Buy/Sell/Collateral Substitution) | \$50 Per Transaction          |
| B. Automatic Cash Management<br>(Selected Money Market Funds) | Floating Rate net of expenses |
| C. Specialty Fixed Portfolio                                  | As Bid                        |

**V. ACTIVITY CHARGES**

- A. Wire Transfers / Assignment Processing

\$35 Per Wire

B. Check Disbursements	\$15 Per Check
C. Tax Reporting Co-ordination, exclusive of CPA fees	\$2500 annually

***It is understood by Wachovia that all fees associated with the account will be collected out of the interest earning from the deposits in the account and no fees shall become due or owing until such interest is earned. No hard dollar charges will be billed to any of the parties.***