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

IN RE:

ASARCO LLC, et al.,

Debtor.

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Case No. 05-21207
(Chapter 11)

**INTERIM ORDER AUTHORIZING POSTPETITION FINANCING,
GRANTING SENIOR LIENS AND PRIORITY ADMINISTRATIVE
EXPENSE STATUS, AND MODIFYING THE AUTOMATIC STAY**

CAME ON FOR INTERIM HEARING the *Motion For Final Order Pursuant To 11 U.S.C. §§ 105, 361, 362, 363 And 364 And Rule 4001 (1) Authorizing The Debtor To Enter Into Certain Financial Arrangements With The CIT Group/Business Credit, Inc. To Incur Postpetition Secured Indebtedness, And (2) Granting Additional Security Interest And Liens And Priority Claims Pursuant To 11 U.S.C. § 364* (Docket Number 366, the "Financing Motion") filed by ASARCO LLC, as debtor and debtor in possession (the "Debtor"), seeking, *inter alia*, pursuant to §§ 364(c)(1), 364(c)(2), 364(c)(3) and 364(d)(1) of title 11 of the United States Code (the "Bankruptcy Code"), and Rules 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), the following relief in the above-captioned Chapter 11 bankruptcy case (the "Case"):

- (i) authority for the Debtor to obtain postpetition secured credit from The CIT Group/Business Credit, Inc., as agent (the "DIP Agent") for itself and other lenders (collectively, the "DIP Lenders") who become a party to the DIP Financing Agreement (as herein defined), in an amount not to exceed \$75,000,000, subject to being increased to an amount not to exceed \$150,000,000, in accordance with the terms and conditions set forth

herein and in the DIP Financing Agreement (as defined herein) (collectively, the “DIP Facility”), secured by (a) automatically perfected first-priority security interests and liens in all unencumbered properties and assets that constitute the Collateral (as defined herein) pursuant to Bankruptcy Code § 364(c)(2); (b) automatically perfected highest available priority security interests and liens in all properties and assets that constitute the Collateral and are subject to the Prior Liens (as defined herein) pursuant to Bankruptcy Code § 364(c)(3); and (c) automatically perfected first-priority security interests and liens that are superior to the security interests and liens, if any, of three certain parties that have filed UCC-1 financing statements with respect to Inventory owned by the Debtor pursuant to Bankruptcy Code § 364(d)(1);


- (ii) authority for the Debtor to execute, deliver, and perform, under the DIP Financing Agreement, notes, security agreements, pledge agreements, mortgages, deeds of trust, and financing statements related to the DIP Financing Agreement, and all other related agreements and documents to create, evidence, and secure indebtedness of the Debtor to the DIP Agent and the DIP Lenders on account of the DIP Facility and to grant and perfect security interests and liens by the Debtor in favor of, and for the benefit of, the DIP Agent and the DIP Lenders on account of the DIP Facility, as same may hereafter be amended, modified, supplemented, ratified, assumed, extended, renewed, restated, or replaced, and any and all other documents to be executed in connection therewith or related

thereto, by and among the Debtor, the DIP Agent and the DIP Lenders, the terms of which are referenced and incorporated herein as if set forth *in haec verba* (together with this Order (as defined herein), the "DIP Financing Documents");

- (iii) approval of the terms and conditions of the DIP Facility and the DIP Financing Documents;
- (iv) modification of the automatic stay of Bankruptcy Code § 362 (the "Automatic Stay") to the extent provided hereinbelow; and
- (v) granting to the DIP Agent and the DIP Lenders their superpriority claims on account of the DIP Facility pursuant to Bankruptcy Code § 364(c)(1).

Included among the DIP Financing Documents is the Debtor in Possession Financing Agreement, a copy of which is attached hereto as Exhibit "1" (the "DIP Financing Agreement"). Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the DIP Financing Agreement. The Debtor and the DIP Agent have advised the Court that they have bargained, negotiated, and agreed in good faith to the terms and conditions of this *Interim Order Authorizing Postpetition Financing, Granting Senior Liens and Priority Administrative Expense Status, and Modifying the Automatic Stay* (the "Order"). The Court finds notice of the interim hearing on the Financing Motion to have been sufficient and appropriate as required under the Bankruptcy Rules and the Local Bankruptcy Rules under the particular circumstances of this Case. The parties hereto have stipulated and agreed as follows, and based upon the pleadings, proffers of evidence, and representations of counsel, the Court hereby approves and adopts said stipulations and agreements as findings of fact and conclusions of law, as

↑ Please refer to Docket Entry # 63 for Exhibit 1, which is incorporated into this Order by reference.



appropriate, grants the relief requested herein, on an interim basis, to facilitate the reorganization of the Debtor's business, and hereby orders as follows:

STATEMENT OF JURISDICTION

1. Pursuant to 28 U.S.C. § 1334, this Court has jurisdiction over this Case, the Financing Motion and the proceedings thereon, the parties, and the property affected hereby. The Financing Motion is a core matter under 28 U.S.C. § 157(b). Venue is proper in this judicial district.

NOTICE

2. Sufficient and appropriate notice of the Financing Motion and the interim hearing with respect thereto has been given by the Debtor pursuant to Bankruptcy Code §§ 102(1) and 364, Bankruptcy Rules 2002, 4001(c) & (d), 9006, and 9013 and Local Bankruptcy Rule 4001.

FACTUAL AND PROCEDURAL BACKGROUND

3. On August 9, 2005 (the "Petition Date"), the Debtor filed its voluntary petition for relief under Chapter 11 of the Bankruptcy Code and thereby commenced the Case. The Debtor has continued in the management and possession of its business and property as debtor in possession pursuant to Bankruptcy Code §§ 1107 and 1108.

4. On October 17, 2005, the Court conducted the interim hearing on the Financing Motion and pronounced its interim approval of the Financing Motion.

5. An Official Committee of Unsecured Creditors (the "Committee") has been appointed in this Case prior to the date the Financing Motion was filed.

BINDING AGREEMENT

6. The agreements and arrangements authorized in this Order have been negotiated at arms-length; are fair, reasonable, and equitable under the circumstances; reflect the Debtor's exercise of prudent business judgment consistent with its fiduciary duties; are supported by reasonably equivalent value and fair consideration; and are enforceable pursuant to their terms. The DIP Agent and the Debtor have acted in good faith (including, without limitation, as that term is used in Bankruptcy Code § 364) in the negotiation and preparation of this Order and the other DIP Financing Documents, have been represented by their respective counsel, and intend to be and are bound by the terms thereof.

DIP FINANCING

7. Pursuant to the DIP Financing Agreement by and between the Debtor and the DIP Agent and the DIP Lenders, the DIP Agent and the DIP Lenders will establish in favor of the Debtor a senior secured revolving line of credit facility (the "Revolving Line of Credit") in the maximum amount of \$75,000,000, inclusive of an amount equal to \$50,000,000 for letters of credit (the "Letter of Credit Subfacility"), which Revolving Line of Credit is subject to being increased to an amount not to exceed \$150,000,000 at the Debtor's option and subject to the DIP Agent receiving satisfactory collateral audits, appraisals, and title and lien reports with respect to the Supplemental Asset Component (as defined herein).

8. The availability to obtain advances under the Revolving Line of Credit will be equal to the lesser of (a) \$75,000,000 or (b) the sum of (i) 85% of eligible accounts receivable; (ii) the lesser of 70% of the gross metal value (derived by multiplying pounds

of copper held in inventory by the current market price) of eligible copper “concentrate,” “reverts,” anode, and finished goods inventory or 90% of the gross metal value thereof less marketing, treating, and refining costs and other limiting conditions as determined by the DIP Agent’s collateral consultant; and (iii) the lesser of 70% of the gross metal value (derived by multiplying ounces of precious metals held in inventory by the current market price) of eligible precious metals inventory or 90% of the gross metal value thereof less marketing, treating, and refining costs and other limiting conditions as determined by the DIP Agent’s collateral consultant (collectively the “Initial Borrowing Base”). In addition, until there is an increase in the size of the Revolving Line of Credit, and subject to the entry of a final order on the Financing Motion, \$35,000,000 of availability based on the agreed minimum value of the Borrower’s equity interest in AR Silver Bell, Inc. and other currently unencumbered assets will be added to the Initial Borrowing Base. If there is an increase in size of the Revolving Line of Credit, any availability derived from the agreed minimum value of the Borrower’s equity interest in AR Silver Bell, Inc. or other unencumbered assets will be computed as part of the Supplemental Asset Component. The Initial Borrowing Base will be subject to a minimum availability reserve of \$10,000,000 at all times.

9. In connection with any increase in the size of the Revolving Line of Credit in excess of \$75,000,000, there may be added to the Initial Borrowing Base a supplemental asset component (the “Supplemental Asset Component”) consisting of the lesser of (a) \$75,000,000 or (b) the sum of (i) 80% of the net orderly liquidation value of eligible equipment; (ii) 70% of the fair market value of the Borrower’s equity interest in

AR Silver Bell, Inc.; and (iii) 70% of the fair market value of eligible real estate, and the availability reserve may be increased.

10. Within the Letter of Credit Subfacility, the DIP Agent will assist Borrower in opening up documentary and/or standby letters of credit. All letters of credit will be reserved from availability.

11. Absent the occurrence of certain events specified in the DIP Financing Agreement and Paragraph 59 of this Order, the Revolving Line of Credit will have a term of twenty-four (24) months. The interest rate, fees, events of default and remedies, and all other terms and conditions of the DIP Facility are specified in the DIP Financing Agreement.

12. The Debtor is seeking interim approval of the DIP Facility to assure that it has adequate working capital to operate the business optimally and sufficient liquidity to deal with contingencies of its mining business; to provide financial information; to attempt to reorganize its affairs; and to perform the tasks that the Debtor believes are necessary to maximize the value of its assets.

13. The Debtor has been unable to obtain financing from sources other than the DIP Agent on terms more favorable than, or equally as favorable as, the terms of the DIP Financing Documents. The Debtor has been unable to obtain unsecured credit allowable under Bankruptcy Code § 503(b)(1), or pursuant to Bankruptcy Code §§ 364(a), (b) and/or (c).

14. Good, adequate, and sufficient cause has been shown to justify the granting of the relief requested in the Financing Motion. The extension of credit as provided under the terms and conditions in the DIP Financing Documents and this

Order is necessary to preserve the estate and will avoid immediate and irreparable harm to the Debtor and its estate and assets.

15. Americas Sales Corporation ("ASC"), Sempra Metals & Concentrates Corp., and Gerald Metals Inc. ("Gerald Metals") have filed UCC-1 financing statements that purport to perfect security interests or liens against the Debtor's Inventory. The Debtor believes that it owes no debt and has no other outstanding obligations to ASC.

AUTHORIZATION TO INCUR CREDIT

16. The Financing Motion is hereby granted, and the DIP Facility is hereby approved on a interim basis. The Debtor is authorized to borrow up to \$20 million in accordance with the Budget (as defined herein) and the terms of the DIP Financing Agreement until the date set for the final hearing on the Financing Motion. Any objections thereto that have not been previously withdrawn are overruled in their entirety. This Order is valid immediately and is fully effective upon its entry.

17. The Debtor is hereby authorized to execute, deliver, and perform the DIP Financing Agreement and to incur the DIP Facility in strict accordance with the DIP Financing Documents and this Order. This Order is entered pursuant to, and shall be construed and be consistent with, Bankruptcy Code § 364 and Bankruptcy Rule 4001(c) & (d).

COLLATERAL

18. To secure the prompt payment and performance of any and all obligations, liabilities, and indebtedness of the Debtor to the DIP Agent and the DIP Lenders under the DIP Facility, of whatever kind or nature or description, consisting of all obligations, liabilities, and indebtedness of the Debtor arising under the DIP

Financing Documents and this Order, the DIP Agent shall have, and hereby is granted on behalf of the DIP Lenders, subject to the Excluded Collateral (as defined herein) and the Carve-Out (as defined herein), effective on and after the date of entry of this Order, valid and automatically perfected security interests and liens (collectively, the “DIP Liens”) in and upon all of the Debtor’s right, title, and interest in and to all of the real and personal properties and assets of the Debtor’s estate, including, without limitation, those assets described in the DIP Financing Agreement and the other DIP Financing Documents, whether now owned and existing or hereafter acquired, created, or arising, and wherever located, and all products and proceeds thereof, including, without limitation, claims of the Debtor against third parties for loss or damage to such property, together with all accessions thereto, substitutions, and replacements therefor (collectively, the “Collateral”). The DIP Liens shall be:

(i) pursuant to Bankruptcy Code § 364(c)(2), valid, enforceable, nonavoidable, first-priority, perfected security interests and liens, superior to any and all other creditors and interest holders of the Debtor, in and upon all the Collateral that is not otherwise encumbered by a Prior Lien on the Petition Date; and

(ii) pursuant to Bankruptcy Code § 364(c)(3), valid, enforceable, nonavoidable, second-priority, perfected security interests and liens upon all the Collateral that is subject only to a Prior Lien; and

(iii) pursuant to Bankruptcy Code § 364(d)(1), valid, enforceable, nonavoidable, perfected, priming security interests and liens that are superior to the security interests and liens, if any, of ASC and Gerald Metals in Inventory

owned by the Debtor, provided that in the event adequate protection of ASC's interest should fail, ASC shall have a superpriority claim pursuant to Bankruptcy Code §507(b) (junior to the Superpriority Claims of the DIP Agent pursuant to Bankruptcy Code §364(c)(1)).

For the sake of clarity: with respect to equipment leased by lessors to the Debtor, the DIP Liens shall attach only to the Debtor's right, title, and interest (not the lessor's right, title, and interest) in such equipment if such leases are true leases (rather than secured transactions); and in the event any such lease is determined to be a secured transaction and the lessor is determined to hold a perfected and nonavoidable pre-Petition Date security interest in such equipment, the DIP Liens will be junior in priority to such security interest in such equipment. Further, the DIP Liens shall not attach to: (a) the KWELM insurance proceeds currently held in an escrow account at Wells Fargo Bank, National Association, pursuant to that certain Escrow Agreement dated July 8, 2005, among the Debtor, Capco Pipe Company, Inc., Lac d'Amiante du Quebec, Ltd., and the Official Committee of Unsecured Creditors (the "Subsidiary Debtors' Committee") in the affiliated Chapter 11 cases of Lac d'Amiante du Quebec, Ltd. and Capco Pipe Company, Inc., et al. (the "Subsidiary Debtors' Cases"); (b) the Debtor's right, title, and interest in and to any other insurance payment or insurance proceeds arising from or payable as a result of asbestos-based personal injury claims for which the Debtor or its subsidiaries have liability; (c) the Debtor's right, title, or interest in the claims or causes of action against certain persons that have been described or arise from facts alleged in those certain motions (and exhibits thereto) filed in Adversary Proceeding No. 05-2048 under Docket Numbers 8 and 10 by the Subsidiary Debtors' Committee and the Future

Claims Representative in the Subsidiary Debtors' Cases, whether the same be prosecuted in that pending adversary proceeding or in any other proceeding; and (d) any right of indemnification or contribution of the Debtor to collect from entities, if any, that are liable to the Debtor on a claim of a creditor against the Debtor if the claim arises as a consequence of a payment that is made to a personal injury claimant on account of any asbestos-related liability other than entities that owe an Account to the Debtor or are critical vendors to the Debtor; (e) notes receivable of the Debtor received in connection with sales of business divisions which notes receivable have been issued to the Debtor for the sole purpose of paying costs for environmental remediation or asbestos claims associated with the business division sold and proceeds thereof; (f) Inventory owned by any Person and provided to the Debtor pursuant to tolling agreements or arrangements with the Debtor as listed on Schedule 1.1(D) to the DIP Financing Agreement; (g) any and all Proceeds of the AMC Note (whether principal, interest or otherwise) received by the Debtor until such time as the Debtor has performed all of its payment obligations to the Coeur d'Alene Tribe pursuant to the settlement agreement dated January 31, 2003 between it and the Debtor; and (h) the Avoidance Claims (as defined in the DIP Financing Agreement) (collectively, the "Excluded Collateral").

19. Except as provided in Paragraph 18(iii) hereof, the DIP Liens shall not prime (a) any validly perfected and nonavoidable pre-Petition Date security interests in certain silver inventory, equipment, real estate and other Collateral listed on Schedule 1.1(B) to the DIP Financing Agreement, (b) valid government offset rights, (c) valid ad valorem tax liens on any of the Collateral for any tax years, and (d) certain

other Permitted Encumbrances as identified in the DIP Financing Agreement (collectively, the "Prior Liens"), subject to any rights of the estate to avoid any such Prior Lien.

20. The DIP Liens shall be free from any application of Bankruptcy Code § 551. In the event the estate were to avoid any Prior Lien, the DIP Liens shall automatically succeed to the priority of such avoided Prior Lien with respect to all property of the estate to which such Prior Lien had attached.

21. In addition, to the extent of the outstanding obligations of the Debtor under the DIP Facility, the DIP Agent and the DIP Lenders are hereby granted superpriority claims, pursuant to Section 364(c)(1) of the Bankruptcy Code, over all other claims against the Debtor other than claims seeking payment out of the Carve-Out or from the Excluded Collateral (the "Superpriority Claims").

OTHER FINANCING PROTECTION

22. All proceeds of the DIP Facility shall be used in the ordinary course of business subject to the budget required by the DIP Financing Agreement and subsequent budgets approved by the DIP Agent (collectively, the "Budget"), or, if not in the ordinary course of business or in accordance with the Budget, subject to approval of the DIP Agent and the Court.

23. Until the DIP Facility is fully satisfied by its terms, the Debtor shall not be authorized to obtain credit secured by a security interest or lien in any of the Collateral without the prior written consent of the DIP Agent except for the Permitted Encumbrances.

24. To the extent that any applicable nonbankruptcy law otherwise would restrict the granting, scope, enforceability, attachment, or perfection of the DIP Liens as authorized or created by this Order with respect to the DIP Facility, or otherwise would impose filing or registration requirements with respect to the DIP Liens, such law is hereby preempted to the maximum extent permitted by the Bankruptcy Code, otherwise applicable federal law, and the judicial power of the Court.

25. The Debtor is authorized and directed to execute, deliver, perform, and comply with the terms and conditions of the DIP Financing Documents, and shall be bound thereby, and the Debtor is directed to perform any and all acts required by the DIP Financing Documents and this Order.

26. The terms and conditions of the DIP Financing Documents and this Order shall be sufficient and conclusive evidence of the DIP Facility borrowing arrangements by and between the Debtor and the DIP Agent and the DIP Lenders, and of the Debtor's agreement to the terms and conditions of the DIP Facility pursuant to the DIP Financing Documents and this Order for all purposes, including, without limitation, the payment of all principal, interest, and other fees and expenses, including the professional fees and expenses of the DIP Agent in connection with the DIP Facility and this Case (such fees and expenses shall be subject to the DIP Agent's Fee Procedure (as defined below)), and the grant of the DIP Liens and the automatic perfection of same hereunder.

27. This Order and the DIP Financing Documents shall be sufficient and conclusive evidence of the attachment, validity, perfection, and priority of all the DIP Liens in and on the Collateral, and the DIP Liens granted and created herein shall, by virtue of this Order, constitute valid, automatically perfected, and nonavoidable security

interests and liens, with the priorities granted hereunder, without the necessity of creating, filing, recording, or serving any financing statements or other documents that might otherwise be required under federal or state law in any jurisdiction or the taking of any other action to validate or perfect the DIP Liens granted to the DIP Agent and the DIP Lenders in this Order and the DIP Financing Documents in respect of the DIP Facility.

28. If the DIP Agent shall elect to file any financing statements, mortgages, deeds of trust, powers of attorney on any pertinent IRS form regarding tax refunds, or other documents with respect to the DIP Liens in property of the estate, the DIP Agent is authorized to file all such financing statements, and the Debtor is authorized to execute, or cause to be executed, all such documents in respect of the DIP Facility upon the DIP Agent's request; and the filing, recording, or service (as the case may be) of such financing statements or similar documents shall be deemed to have been made at the time of and on the date of entry of this Order approving the DIP Facility. The DIP Agent may file a certified copy of this Order in any filing or recording office in any county or other jurisdiction in which the Debtor has real or personal property, and, in such event, the subject filing or recording officer is authorized and directed to file or record such documents or certified copy of this Order.

29. The Debtor is authorized and directed to perform all acts, take any action, and execute and comply with the terms of such other documents, instruments, and agreements, as the DIP Agent may reasonably require as evidence of and for the protection of the Collateral, or which may be otherwise deemed reasonably necessary

by the DIP Agent to effectuate the terms and conditions of this Order and the DIP Financing Documents.

30. The Debtor is authorized and directed to pay or reimburse the DIP Agent promptly for all reasonable fees, expenses, and other costs of the DIP Agent's counsel, Vinson & Elkins L.L.P., the DIP Agent's collateral consultant, and all other financial advisors and professional persons now or hereafter employed by the DIP Agent in connection with the DIP Facility and this Case (the "DIP Agent's Professionals") as and to the extent required by the DIP Financing Agreement, subject to the following procedure (the "DIP Agent's Fee Procedure"): (i) upon the closing of the DIP Financing Agreement and thereafter during the Case, the DIP Agent shall pay (after first deducting any deposit held by the DIP Agent for such purpose) the fees, costs, and expenses of the DIP Agent's Professionals and the out-of-pocket costs and expenses of the DIP Agent that are incurred as a result of the DIP Financing and the Case, as advances on the Revolving Line of Credit; and (ii) upon making such payments, the DIP Agent will furnish to the Debtor copies of the redacted invoices of the DIP Agent's Professionals and of the evidence of the DIP Agent's out-of-pocket costs and expenses. Such post-closing fees, costs, and expenses of the DIP Agent's Professionals and of the DIP Agent that are paid pursuant to the DIP Agent's Fee Procedure shall be deemed allowed without further order of this Court.

31. From and after the date of entry of this Order, no act performed or action taken by the DIP Agent or any DIP Lender to collect the DIP Facility under this Order shall be used, construed, or deemed to hold the DIP Agent or any DIP Lender to be in control of or participating in the governance, management, or operations of the Debtor

for any purpose, without limitation, or to be acting as a “responsible person” or “owner or operator” or a person in “control” with respect to the governance, management, or operation of the Debtor or its business (as such terms, or any similar terms, are used in the Internal Revenue Code, Comprehensive Environmental Response, Compensation and Liability Act, and the Bankruptcy Code, each as may be amended from time to time, or any other federal or state statute, at law, in equity, or otherwise) by virtue of the interests, rights, and remedies granted to or conferred upon the DIP Agent or the DIP Lenders in respect of the DIP Facility under the DIP Financing Documents or this Order including, without limitation, such rights and remedies as may be exercisable by the DIP Agent in connection with this Order in respect of the DIP Facility, provided that this Paragraph shall apply to environmental liabilities only so long as the actions of the Agent and the Lenders do not constitute, within the meaning of 42 U.S.C. § 9601(20)(F), actual participation in the management or operational affairs of a vessel or facility owned or operated by the Debtor, or otherwise cause the Agent or any Lender to have the status of a responsible person, owner, or operator with respect to such vessel or facility under applicable law.

32. Subject to the terms of this Order, the Automatic Stay is hereby modified to any extent necessary (a) to authorize and permit the Debtor to grant the DIP Liens and to perform all acts and take all actions necessary to perform its obligations to the DIP Agent and the DIP Lenders under the DIP Facility, the DIP Financing Agreement, and the DIP Financing Documents and (b) to authorize and permit the DIP Agent and the DIP Lenders to perform all acts and take all actions necessary to implement and

enforce the DIP Facility, DIP Financing Documents, and this Order, except as to DIP Events of Default as hereinafter set forth.

COLLATERAL INSURANCE; MAINTENANCE; DEPOSITS

33. The Debtor shall maintain, with financially sound and reputable insurance companies, insurance covering the Collateral in accordance with the DIP Financing Documents.

34. To the extent the Debtor has made or makes any deposits for the benefit of utility companies or any other entity (and the Debtor shall not make any such deposits which are not included in the Budget without first obtaining the consent of the DIP Agent), such deposits shall be, and hereby are, upon any return of same to the Debtor, subject to the DIP Liens of the DIP Agent granted by the DIP Financing Documents and this Order. The Debtor may not use or transfer any such returned deposits, and the Debtor assigns and sets over its rights in and to all such returned deposits to the DIP Agent.

REPORTING REQUIREMENTS

35. The Debtor is authorized and directed to provide to the DIP Agent all the documentation, reports, schedules, assignments, financial statements, insurance policies, and endorsements, inspections, audits, and other information required by the DIP Financing Documents (the "Loan Document Reports"). Upon reasonable prior notice to the Debtor and the Debtor's counsel, the DIP Agent and its agents shall have access during normal business hours to the Debtor's business premises and to the Collateral and to review, appraise, and evaluate the physical condition of the Collateral and to inspect the financial records and all other records of the Debtor concerning the

operation of the Debtor's business, for review of the Debtor's overall financial condition, the expenditure of funds generated therefrom, the accrual of expenses relating thereto, and any and all other records relating to the operations of the Debtor. The Debtor shall cooperate fully with the DIP Agent regarding such reviews, evaluations, and inspections, and shall make its employees and professionals reasonably available to the DIP Agent and its professionals and consultants to conduct such reviews, evaluations, and inspections.

CARVE-OUT; PROFESSIONAL FEES; ADMINISTRATION

36. Except for the Carve-Out (as defined below), no priority claims shall be allowed that are or will be prior to or on a parity with the Superpriority Claims or the DIP Liens of the DIP Agent and the DIP Lenders against the Debtor and its estate arising out of the DIP Financing Documents in respect of the DIP Facility or this Order. Upon a DIP Event of Default (as defined herein), the DIP Agent's DIP Liens and Superpriority Claims shall be subject to a carve-out in the maximum aggregate amount of \$5 million (the "Carve-Out") for (a) fees owed by the Debtor pursuant to 28 U.S.C. § 1930 and any fees payable by the Debtor to the Clerk of the Bankruptcy Court, (b) out-of-pocket expenses of the members of the Committee, and (c) the fees, costs, and expenses of the Debtor's and the Committee's court-approved professional persons (the "Estate Professionals")¹, provided so long as no DIP Event of Default exists the Debtor can pay

¹ The fact that fees and expenses of the Subsidiary Debtors' Committee and the Future Claims Representative and their court-appointed professionals (including counsel, accountants, and advisors) in the Subsidiary Debtors' Cases are not presently included within the ambit of the Carve-Out shall not preclude such parties in interest from requesting an order of the Court in this Case to become included therein, and the Debtor and the Committee reserve the right to object to any such request. The Debtor
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the Estate Professionals, and such payments will not count against the amount of the Carve-Out nor will the fees of such professionals incurred during the month prior to the date on which the default occurred count against such amount. All fees, costs, and expenses of the Estate Professionals payable from the Carve-Out shall be subject to Court approval following a hearing on at least twenty (20) days' notice to the DIP Agent, the U.S. Trustee, and other parties in interest entitled to notice, unless an interim fee procedure shall be approved by the Court, in which case said procedure shall govern timing of and holdback terms related to such payments. So long as no DIP Event of Default shall have occurred, the Debtor shall be allowed to pay administrative expenses under Bankruptcy Code §§ 330 and 331 as the same may be due and payable, and such payments shall not be applied against the Carve-Out. Notwithstanding anything to the contrary in any provision of this Order, the interim payments of fees and expenses that have been made to the Estate Professionals and the payments made pursuant to the *Order Granting Motion for Authority to Pay or Honor Prepetition Obligations to Certain Critical Vendors* (Docket Number 425) to any party listed on Exhibit A thereto prior to a DIP Event of Default shall not be subject to disgorgement on account of the Superpriority Claims and the DIP Liens of the DIP Agent.

37. No advances under the DIP Facility and no Carve-Out funds shall be used for the payment or reimbursement of any fees, expenses, costs, or disbursements of

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agrees that the Bankruptcy Court has jurisdiction to rule on this issue. In addition, nothing in the DIP Order or the DIP Financing Agreement shall in any way affect or change the court-approved procedures in place by which such professionals of the Subsidiary Debtors' Cases are paid from certain escrow accounts that are Excluded Collateral pursuant to paragraph 18(a) hereof.

any of the Estate Professionals incurred in connection with the prosecution, assertion, or joinder in any claim, counterclaim, action, proceeding, application, motion, objection, defense, or contested matter, the purpose of which is to seek any order, judgment, determination, or similar relief: (i) invalidating, challenging, setting aside, avoiding, or subordinating in whole or in part any of the DIP Facility or the DIP Liens provided by the DIP Financing Documents and this Order; or (ii) preventing, hindering, interfering with, or delaying, whether directly or indirectly, the DIP Agent's assertion, enforcement, enjoyment, receipt, or realization upon any Collateral.

38. Bankruptcy Code § 506(c) is not applicable to the DIP Facility, the Collateral, and the DIP Agent and the DIP Lenders.

DIP EVENTS OF DEFAULT; REMEDIES

39. Events of default shall be as follows: (i) any "Event of Default" as defined in the DIP Financing Documents or (ii) any failure to comply with, or breach by the Debtor of any term or provision of, this Order (any of the foregoing events being referred to in this Order, individually, as a "DIP Event of Default," or collectively as "DIP Events of Default").

40. The Debtor will promptly notify counsel to the DIP Agent and counsel to the Committee in writing of the occurrence of any DIP Event of Default. If any person shall give any notice or take any other action in respect of a claimed default (whether or not constituting a DIP Event of Default) under any other note, evidence of indebtedness, indenture, or other obligation to which or with respect to which the Debtor is a party or obligor, whether as principal, guarantor, surety, or otherwise, the Debtor shall forthwith

give written notice thereof to the DIP Agent, describing the notice or action and the nature of the claimed default.

41. Upon the occurrence of any DIP Event of Default and five (5) days written notice, served via email and facsimile, to the Debtor and the Committee, which notice the DIP Agent shall also file contemporaneously with the Court, of such DIP Event of Default, the following shall occur: (i) the principal of and accrued interest on the outstanding indebtedness under the DIP Facility may, at the option of the DIP Agent, be declared immediately due and payable; and (ii) after opportunity for a hearing by the Court during such notice period, and subject to any contrary order of the Court, the Automatic Stay shall terminate with respect to the DIP Facility, and the DIP Agent may perform any act, take any action, and exercise any other right or remedy permitted under the DIP Financing Documents, this Order, and applicable law, each and all without further action or order of this Court. In any event, after such notice has been given, the DIP Agent may, in its sole and absolute discretion, make additional advances under the terms of the DIP Facility with all benefits and protections granted to the DIP Agent under this Order and the DIP Financing Documents inuring to such additional advances. In the event the Debtor should disagree that a DIP Event of Default has occurred, the sole issue the Debtor may present to the Court during such five-day period shall be whether or not a DIP Event of Default has occurred.

42. Additionally, upon the termination of DIP Facility and the termination of the Automatic Stay in favor of the DIP Agent, upon demand by the DIP Agent and to the extent required by the DIP Financing Agreement, and subject to the rights of holders of Prior Liens and equipment lessors holding true leases, the Debtor shall immediately (i)

marshal all Collateral consisting of Accounts and Inventory or proceeds thereof for the benefit of the DIP Agent and the DIP Lenders; (ii) provide adequate security for the Collateral; (iii) turn over the Collateral consisting of Accounts and Inventory or proceeds thereof to the DIP Agent or the DIP Agent's designee; (iv) cooperate fully with the DIP Agent in the pursuit of the DIP Agent's rights and remedies against the Collateral; and (v) immediately, and on an ongoing basis in the ordinary course pursuant to the DIP Financing Agreement, pay to the DIP Agent any and all cash and cash equivalents of the Debtor's estate, and the DIP Agent is authorized to offset and/or apply any of such cash or cash equivalents or other funds of this estate, as applicable, against the DIP Facility in a manner deemed appropriate in the DIP Agent's sole and absolute discretion and/or to direct those entities holding funds of this estate on deposit to transfer same to the DIP Agent for application against the DIP Facility. The requirements of marshalling and turn-over in subsections (i) and (iii) of this Paragraph 42 shall apply and become effective thirty (30) days after the termination of the Automatic Stay with respect to all categories of Collateral other than Inventory and Accounts and proceeds thereof.

43. Upon termination of the DIP Facility and the termination of the Automatic Stay in favor of the DIP Agent, the DIP Agent may, in its discretion, in connection with the enforcement of its rights and remedies to collect the DIP Facility and against the Collateral, and subject to the rights of holders of Prior Liens and equipment lessors holding true leases, use any real or personal property constituting Collateral that is owned by the Debtor or owned by or subject to a lien of any third party and that is used by the Debtor in its business without payment of fees or rentals to the Debtor, without

prejudice to the DIP Agent's rights to foreclose, repossess, and exercise other remedies under the DIP Financing Documents and this Order.

OTHER TERMS

44. Until all of the DIP Facility obligations shall have been indefeasibly paid and satisfied in full by their terms, and without further order of the Court: (a) no other entity shall foreclose or otherwise seek to enforce any security interest or lien such other party may have in and to any property of the estate of the Debtor upon which the DIP Agent holds a DIP Lien that is a first-priority DIP Lien.

45. All advances under the DIP Financing Documents shall be made in reliance on this Order. Until the DIP Facility has been repaid in full, except for orders regarding the alleged cash collateral (as such term is defined in Bankruptcy Code § 363(a)) of Mitsui & Co. (USA), Inc., or as otherwise permitted by the DIP Financing Agreement, there shall not at any time be entered in the Case any other order at the request of the Debtor that (i) authorizes the sale, lease, or other disposition of any of the Collateral (except to the extent consented to by the DIP Agent); (ii) authorizes the obtaining of credit or the incurring of indebtedness secured by a security interest or lien in property in which the DIP Agent holds a DIP Lien; (iii) grants to any party or claimant a priority administrative claim status that is equal or superior to the Superpriority Claims granted to the DIP Agent herein; or (iv) provides for the return of any item of Collateral pursuant to Bankruptcy Code § 546(g)*.

46. The Debtor waives promptness, diligence, presentment, demand, protest, notice of acceptance, notice of any DIP Facility obligations incurred, notice of intent to accelerate and notice of acceleration, and all other notices of any kind, all defenses

which may be available by virtue of any valuation, stay, moratorium law, or other similar law now or hereafter in effect, any right to require the marshalling of assets of any other entity or other Person primarily or secondarily liable with respect to any of the DIP Facility obligations, and all suretyship defenses generally, except as otherwise provided herein or in the DIP Financing Agreement. Without limiting the generality of the foregoing, the Debtor agrees that the obligations of the Debtor hereunder shall not be released or discharged, in whole or in part, or otherwise affected by (i) the failure of the DIP Agent or any DIP Lender to assert any claim or demand or to enforce any right or remedy against any other Person primarily or secondarily liable with respect to any of the DIP Facility obligations; (ii) the addition, substitution, or release of any entity or other Person primarily or secondarily liable for any DIP Facility obligation; (iii) the adequacy of any rights that the DIP Agent or any DIP Lender may have against any collateral security or other means of obtaining repayment of any of the DIP Facility obligations; (iv) the impairment of any collateral securing any of the DIP Facility obligations, including without limitation the failure to perfect or preserve any rights that the DIP Agent or any DIP Lender might have in such collateral security or the substitution, exchange, surrender, release, loss, or destruction of any such collateral security; or (v) any other act or omission that might in any manner or to any extent vary the risk of the Debtor or otherwise operate as a release or discharge of the Debtor, all of which may be done without notice to the Debtor. To the fullest extent permitted by law, the Debtor hereby expressly waives any and all rights or defenses arising by reason of (A) any “one action” or “anti-deficiency” law that would otherwise prevent the DIP Agent or any DIP Lender from bringing any action, including any claim for a deficiency, or exercising

any other right or remedy (including any right of offset), against the Debtor before or after the DIP Agent's commencement or completion of any foreclosure action, whether judicially, by exercise of power of sale or otherwise, or (B) any other law that in any way would otherwise require any election of remedies by the DIP Agent or any DIP Lender.

47. The terms hereunder and under the DIP Financing Documents in respect of the DIP Facility, the DIP Liens, and the rights of the DIP Agent and the DIP Lenders pursuant to this Order with respect to the Collateral shall not be altered, modified, extended, impaired, or affected by any plan of reorganization of the Debtor without the prior written approval of the DIP Agent.

48. Prior to the payment and satisfaction in full of the DIP Facility, the Debtor shall not seek, and it shall constitute a DIP Event of Default if the Debtor seeks, an order dismissing the Case or converting the Case to a case under Chapter 7 of the Bankruptcy Code. If such order is at any time entered, whether or not it was sought by the Debtor, such order shall provide that the DIP Liens and Superpriority Claims in favor of the DIP Agent and the DIP Lenders, and the terms and provisions of this Order and any actions taken pursuant hereto, except for any obligation of the DIP Agent or any DIP Lender under the DIP Financing Documents in respect of the DIP Facility, shall continue in full force and effect and shall remain binding on all parties in interest until all obligations of the Debtor pursuant to the DIP Facility shall have been paid and satisfied in full; and this Court shall retain jurisdiction, notwithstanding such dismissal, for the limited purpose of enforcing the DIP Liens and the Superpriority Claims.

49. The provisions of this Order shall inure to the benefit of the Debtor, the DIP Lenders, and the DIP Agent, and they shall be binding upon (a) the Debtor and its

successors and assigns, including any trustees or other fiduciaries hereafter appointed as legal representatives of the Debtor or with respect to property of the estate of the Debtor, whether under chapter 11 of the Bankruptcy Code or any subsequent chapter 7 case or otherwise, and (b) all creditors of the Debtor and other parties in interest.

50. If any or all of the provisions of this Order are hereafter modified, vacated, or stayed, or if the Financing Motion is not approved on a final basis, such modification (which shall not occur without the prior written agreement of the DIP Agent), vacation, stay, or failure to obtain approval on a final basis shall not affect (a) the validity of any obligation, indebtedness, or liability incurred by the Debtor to the DIP Agent or any DIP Lender in respect of the DIP Facility before the effective date of such modification, vacation, stay, or failure to obtain approval on a final basis or (b) the validity or enforceability of any security interest, lien, priority, or other protection in respect of the DIP Facility authorized or created hereby or pursuant to the DIP Financing Documents. Notwithstanding any such modification, vacation, stay, or failure to obtain approval on a final basis, any indebtedness, obligation, or liability incurred by the Debtor to the DIP Agent or any DIP Lender in respect of the DIP Facility before the effective date of such modification, vacation, or stay shall be governed in all respects by the original provisions of this Order, and the DIP Agent and the DIP Lenders shall be entitled to all the rights, remedies, privileges, and benefits granted herein and pursuant to the DIP Financing Documents with respect to all such indebtedness, obligations, and liabilities in respect of the DIP Facility.

51. The Debtor irrevocably waives any right to seek any modifications or extensions of this Order without the prior written consent of the DIP Agent.

52. No approval, agreement, or consent requested of the DIP Agent by the Debtor pursuant to the terms of this Order or otherwise shall be inferred from any action, inaction, or acquiescence of the DIP Agent other than a writing acceptable to the DIP Agent which is signed by the DIP Agent and expressly shows such approval, agreement, or consent, without limitation. Nothing herein shall in any way affect the rights of the DIP Agent or any DIP Lender as to any non-debtor entity, without limitation.

53. This Order, and the findings of fact and conclusions of law contained herein, shall be effective upon entry of this Order by the Court. To the extent any findings may constitute conclusions, and vice versa, they are hereby deemed as such.

54. This Court hereby expressly retains jurisdiction over all Persons and entities, co-extensive with the powers granted to the Court under the Bankruptcy Code and applicable law, to enforce the terms of this Order and to adjudicate any and all disputes in connection therewith.

55. Subject to the terms hereof, nothing herein shall be deemed or construed to waive, limit, or modify the rights of any party to seek additional relief in this Case in accordance with any provision of the Bankruptcy Code or applicable law or the rights of any other party to oppose the same.

56. Except as otherwise specified herein, any notice, objection, report, or other document required to be given hereunder shall be deemed given upon its transmission by facsimile and email addressed as follows:

(a) *if to the DIP Agent:*

The CIT Group/Business Credit, Inc.
Attn: Richard Hatley, Jr. and Neal T. Legan
Two Lincoln Centre
5420 LBJ Freeway, Suite 200
Dallas, Texas 75240
Facsimile: 972-455-1690
Email: Richard.Hatley@cit.com and
Neal.Legan@cit.com

with a copy to counsel to the DIP Agent:

Josiah M. Daniel, III
James A. Markus
Courtney S. Lauer
Vinson & Elkins L.L.P.
2001 Ross Avenue, Ste. 3700
Dallas, Texas 75201
Facsimile: 214-999-7718
Email: jdaniel@velaw.com, jmarkus@velaw.com, and
clauer@velaw.com

(b) *if to the Debtor:*

ASARCO LLC
Attn: Genaro Guerrero, Vice President, Finance
1150 North Seventh Avenue
Tucson, Arizona 85705
Facsimile: 520-798-7705
Email: gguerrero@asarco.com

with a copy to in-house counsel for Debtor:

Karen Paul
2575 E. Camelback Road, Suite 500
Phoenix, AZ 85016-9251
Facsimile: 602-977-6706
Phone: 602-977-6516
kpaul@asarco.com

and with a copy to counsel to the Debtor:

Jack L. Kinzie
Tony M. Davis
James R. Prince
C. Luckey McDowell
Alison Boren
Baker Botts L.L.P.
2001 Ross Avenue, Suite 700
Dallas, Texas 75201-2980
Facsimile: 214-661-4727
Email: jack.kinzie@bakerbotts.com,
tony.davis@bakerbotts.com,
jim.prince@bakerbotts.com,
luckey.mcdowell@bakerbotts.com, and
alison.boren@bakerbotts.com

(c) *if to the Committee:*

Jim McCarroll
Reed Smith LLP
435 Sixth Ave.
Pittsburgh, Pennsylvania 15219
Facsimile: 412-288-3114
Email: jmccarroll@reedsmith.com

with a copy to:

Zack Clement
Evelyn H. Biery
Fulbright & Jaworski L.L.P.
1301 McKinney, Suite 5100
Houston, Texas 77010-3095
Facsimile: 713-651-5246
Email: zclement@fulbright.com and ebiery@fulbright.com

Additionally, a courtesy copy of each such notice, objection, report, or other document shall be furnished to:

counsel to the Subsidiary Debtors' Committee:

Sandy Esserman
Stutzman, Bromberg, Esserman & Plifka
A Professional Corporation
2323 Bryan Street, Ste. 2200
Dallas, Texas 75201
Facsimile: 214-969-4999
Email: esserman@sbep-law.com

and the Future Claims Representative in the Subsidiary Debtors' Cases:

Judge Robert C. Pate
802 American Bank Plaza
Corpus Christi, Texas 78475
Facsimile: 361-887-6207
Email: judgepate@swbell.net

and counsel to the Future Claims Representative:

John H. Tate, II
Oppenheimer, Blend, Harrison & Tate, Inc.
711 Navarro Street, Ste. 600
San Antonio, Texas 78205
Facsimile: 210-224-7540
Email: JTate@obht.com

57. Nothing contained herein shall waive or modify any rights and remedies that the DIP Agent and the DIP Lenders have or may come to have under the DIP Financing Documents and this Order, at law, in equity, or otherwise.

58. The terms and provisions of this Order control over any inconsistent term or provision in the DIP Financing Agreement and the DIP Financing Documents

59. The authorizations granted hereunder for the benefit of the Debtor shall automatically expire upon the earliest to occur (the "Expiration Date") of (i) the date that is twenty-four (24) months from the date of the entry of this Order, subject to extension in the sole and absolute discretion of the DIP Agent and the DIP Lenders, (ii) the

termination of the DIP Facility, (iii) the effective date of a confirmed plan of reorganization under chapter 11, (iv) the closing date of a sale pursuant to Bankruptcy Code § 363 of substantially all assets of the Debtor, (v) conversion or dismissal of the Case, or (vi) the date of the final hearing on the Financing Motion scheduled in Paragraph 62(ii) hereof, at which time all of the Debtor's authority to obtain credit and financial accommodations under this Order shall terminate, as shall the DIP Agent's obligation to provide the DIP Facility, unless extended by written agreement of all of the parties hereto, a copy of which shall be promptly filed with this Court.

60. The Financing Motion is approved on an interim basis as and to the extent provided herein.

61. The Debtor's counsel shall serve this Order on all of the following parties: (i) the United States Trustee; (ii) the DIP Agent and the attorneys for the DIP Agent; (iii) the attorneys for the Committee, (iv) all creditors known to the Debtor who have or may assert liens against the Debtor's properties and assets; (v) the United States Internal Revenue Service; and (vi) all parties required to be served under the Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules.

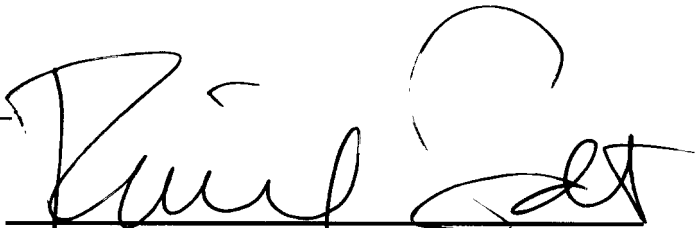
62. NOTICE IS HEREBY GIVEN TO ALL CREDITORS AND PARTIES IN INTEREST THAT:

- (i) Objections to the Financing Motion that are not duplicative of objections that have been resolved in connection with the interim hearing on the Financing Motion, if any there be, shall be in writing, shall set forth with particularity the grounds for such objections, shall be filed with the Clerk of the Bankruptcy Court, and served

upon (i) the attorneys for parties set forth in Paragraph 56 above, (ii) the United States Trustee, (iii) the United States Internal Revenue Service, and (iv) all parties in interest who have filed a notice of appearance or upon whom service must be effected under the Bankruptcy Rules or the Local Rules of the Southern District of Texas so as to be actually received by Noon (Texas Time) on November 18, 2005.

- (ii) THE FINAL HEARING ON THE FINANCING MOTION, PURSUANT TO BANKRUPTCY RULE 4001(C)(2), SHALL BE HELD ON NOVEMBER 28, 2005 AT 2:00 O'CLOCK P.M. (TEXAS TIME) IN THE COURTROOM OF THE HONORABLE RICHARD S. SCHMIDT, UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF TEXAS, SOUTHERN DISTRICT OF TEXAS, 1133 N SHORELINE BLVD., CORPUS CHRISTI, TEXAS 78401.

SIGNED 10/18/05


HONORABLE RICHARD S. SCHMIDT
UNITED STATES BANKRUPTCY JUDGE

ACCEPTED AND AGREED TO:

Jack L. Kinzie, SBT #11492130
James R. Prince, SBT #00784791
C. Luckey McDowell, SBT #24034565

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By: /s/ Tony M. Davis
One of Counsel

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By: /s/ Josiah M. Daniel III
One of Counsel

COUNSEL FOR THE DIP AGENT

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