

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

In re:)	
)	Case No. 05-21207
ASARCO LLC, et al.)	Chapter 11
)	
_____ Debtors.)	

**AMENDED CONSENT DECREE AND SETTLEMENT AGREEMENT ESTABLISHING
A CUSTODIAL TRUST FOR CERTAIN OWNED SITES IN ALABAMA, ARIZONA,
ARKANSAS, COLORADO, ILLINOIS, INDIANA, NEW MEXICO, OHIO,
OKLAHOMA, UTAH, AND WASHINGTON**

WHEREAS, the sites set forth and defined in Attachment A (the “Sites”) hereto are owned in whole or part by Debtors (as defined below), with the possible exception of the Whiting Site (as defined in Attachment A), and have been or will be the subject of environmental response activities and other work. The portions of these Sites owned by Debtors are referred to herein as the Designated Properties;

WHEREAS, the United States on behalf of the Environmental Protection Agency (“US EPA”) and the States of Alabama, Arizona, Arkansas, Colorado, Illinois, Indiana, New Mexico, Ohio, Oklahoma, Utah, and Washington (the “States”) (and, together with US EPA, the “Governments”) have alleged that ASARCO LLC (“ASARCO”), formerly known as ASARCO Incorporated, and/or affiliated debtors that are Chapter 11 debtors in the Reorganization Cases, as defined below, are potentially responsible parties with respect to the Sites and Designated Properties;

WHEREAS, the United States on behalf of US EPA has alleged that it has incurred past response costs, and/or may incur future response costs, under the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”) in connection with the Designated

Properties and/or the Sites for which Debtors, as defined below, allegedly are liable and that Debtors are liable for all post-petition response costs and the performance of work under CERCLA relating to the Designated Properties as a present owner thereof;

WHEREAS, the States have alleged that they have incurred past response costs, and/or may incur future response costs, under CERCLA or state environmental law and, for certain States only, natural resource damages (“NRD”) related costs (including assessment costs) in connection with the Designated Properties and/or the Sites for which ASARCO allegedly is liable and that ASARCO is allegedly liable for all post-petition environmental response costs, NRD (including assessment costs), and the performance of work under CERCLA or state law relating to the Designated Properties as a present owner thereof;

WHEREAS, on April 11, 2005, several of ASARCO’s wholly-owned direct or indirect subsidiaries (the “Asbestos Subsidiary Debtors”¹) filed their voluntary petitions in this Court; then ASARCO filed its voluntary petition for relief under chapter 11 of title 11 of the United States Code with the United States Bankruptcy Court for the Southern District of Texas (the “Bankruptcy Court”) on August 9, 2005 (the “Bankruptcy Case”); later in 2005, several other of ASARCO’s wholly-owned direct or indirect subsidiaries (the “2005 Subsidiary Debtors”²) filed similar petitions for relief in this Court; next, on December 12, 2006, three more ASARCO

¹ The Asbestos Subsidiary Debtors consist of the following five entities: Lac d’Amiante du Québec Ltée (f/k/a Lake Asbestos of Quebec, Ltd.); Lake Asbestos of Quebec, Ltd.; LAQ Canada, Ltd.; CAPCO Pipe Company, Inc. (f/k/a/ Cement Asbestos Products Company); and Cement Asbestos Products Company.

² The 2005 Subsidiary Debtors are: ASARCO Consulting, Inc.; Encycle, Inc.; ALC, Inc.; American Smelting and Refining Company; AR Mexican Explorations Inc.; AR Sacaton, LLC, an Arizona limited liability company; Asarco Master, Inc.; Asarco Oil and Gas Company, Inc.; Bridgeview Management Company, Inc.; Covington Land Company; Government Gulch Mining Company, Limited; and Salero Ranch, Unit III, Community Association, Inc. Encycle/Texas, Inc. also filed a petition for relief; but its case, which was later converted to a chapter 7 case, is being administered separately.

subsidiaries (the “2006 Subsidiary Debtors”³) filed similar petitions for relief with this Court; finally, on April 21, 2008, six more direct or indirect ASARCO subsidiaries (the “2008 Subsidiary Debtors”⁴) filed similar petitions for relief with this Court (collectively with ASARCO, the Asbestos Subsidiary Debtors, the 2005 Subsidiary Debtors and the 2006 Subsidiary Debtors, the “Debtors”). The Debtors’ cases are collectively referred to as the “Reorganization Cases;

WHEREAS, the United States filed Proof of Claim Nos. 8375, 11008, 11009, and 10746, in the Bankruptcy Case protectively setting forth claims or causes of action for future response costs and work with respect to the Sites and/or Designated Properties and pursuant to Debtors’ status as present owner of the Designated Properties and setting forth a claim for past costs for the Murray Site (as defined in Attachment A);

WHEREAS, Lake County, Indiana purported to sell the Whiting property in a tax sale on March 31, 2008, and alleges that it became unredeemable as of July 29, 2008; **WHEREAS**, the States filed Proof of Claim Nos. 10740, 10741, 10827-10830, 18227, 18228 (Arizona), 10408 (Colorado), 9387, 9388 (Indiana), 9400, 9402, 9403, 10320-10332 (New Mexico), 7865, 9993 (Ohio), 7989, 10541, 10542, 10543, 10544 (Oklahoma), 10716-10733, 11098-11115 (Washington) in the Bankruptcy Case setting forth claims and causes of action under environmental laws with respect to the Designated Properties and/or Sites and pursuant to Debtors’ status as present owner of the Designated Properties;

³ The 2006 Subsidiary Debtors are: Southern Peru Holdings, LLC; AR Sacaton, LLC, a Delaware limited liability company; and ASARCO Exploration Company, Inc.

⁴ The 2008 Subsidiary Debtors are: Alta Mining and Development Company; Blackhawk Mining and Development Company, Limited; Green Hill Cleveland Mining Company; Peru Mining Exploration and Development Company; Tulipan Company, Inc.; and Wyoming Mining and Milling Company.

WHEREAS, New Mexico's Proof of Claim Nos. 10320-10331 were disallowed pursuant to the Order Granting Debtor's Ninth Omnibus Objection, in Part, and Disallowing Certain Proofs of Claim as Asserting Wrong Debtor Claim [Docket Number 8849], and Proof of Claim Nos. 9400, 9402, and 10332 are being resolved as part of the Separately Settled Matters (as defined below);

WHEREAS, New Mexico's Proof of Claim No. 9401 regarding the Dona Ana Site, also referred to as the El Paso County Metal Survey Site, (the "Dona Ana Site") was addressed in the Stipulation Relating to Proofs of Claim for El Paso County Metals Survey Site and Dona Ana Metal Site and Modification of Case Management Order [Docket Number 5775] (the "Dona Ana Stipulation") approved by the Bankruptcy Court on October 5, 2007 [Docket Number 6019]. The claims in the Dona Ana Stipulation are resolved and released by this Settlement Agreement;

WHEREAS, St. Paul Travelers filed Proof of Claim No. 18307 for the bond related to the Deming Mine;

WHEREAS, Debtors have disputed the claims and protective claims with respect to the Designated Properties and the Sites filed by the United States and the States as set forth in their respective Proofs of Claim;

WHEREAS, on July 31, 2008, as amended on September 12, 2008 and September 25, 2008, Debtors filed a plan of reorganization (the "2008 Plan") that incorporated in the 2008 Plan Exhibit 12 a proposed resolution of the claims for the Designated Properties and the Sites;

WHEREAS, on October 20, 2008, the Bankruptcy Court suspended all proceedings on the 2008 Plan;

WHEREAS, Debtors and the Governments wish to enter into this Settlement Agreement (“Settlement Agreement”) for the Designated Properties and the Sites as provided herein which will place the Designated Properties into environmental custodial trusts;

WHEREAS, this Settlement Agreement is not conditioned on confirmation of any particular plan of reorganization;

WHEREAS, Debtors and the United States have entered into a separate settlement relating to the off-site portions of the Beckemeyer Site (also known as the Circle Smelting Site, as defined in Attachment A). Debtors and the State of Ohio have entered into a separate settlement relating to the off-site portions of the Columbus Site, as defined below. Debtors and the State of New Mexico have entered into separate settlements or stipulations relating to NRD with respect to the Deming, Magdalena, Blackhawk, Stephenson-Bennett, and Dona Ana Sites (as each is defined in the respective settlement agreement) and response costs at the Blackhawk and Stephenson-Bennett Sites (as each is defined in the respective settlement agreement) (collectively with the matters covered by the separate Beckemeyer and Columbus settlements, the “Separately Settled Matters”);

WHEREAS, the parties hereto desire to settle, compromise and resolve their disputes relating to the Designated Properties, the Sites and other properties specifically addressed herein, other than the Separately Settled Matters, as provided herein;

WHEREAS, this Settlement Agreement is intended to serve as a comprehensive settlement of the claims and causes of action of the Governments against Debtors with respect to all past costs and any potential future costs incurred and work performed by the Governments relating to or in connection with the Designated Properties, the Sites and other properties specifically addressed herein, other than the Separately Settled Matters, as provided herein;

WHEREAS, in consideration of, and in exchange for, the promises and covenants herein, the parties hereby agree to the terms and provisions of this Settlement Agreement;

WHEREAS, the settlement amounts herein are in the nature of compromises and these amounts are lower than the Governments would claim in the absence of this settlement; and

WHEREAS, this Settlement Agreement is fair and reasonable and in the public interest, and is an appropriate means of resolving these matters.

NOW, THEREFORE, without the admission of liability or any adjudication on any issue of fact or law, and upon the consent and agreement of the parties by their attorneys and authorized officials, it is hereby agreed as follows:

I. DEFINITIONS

1. “Custodial Trust Parties” shall mean the Custodial Trust, the Custodial Trustee, as each is hereinafter defined, and the Custodial Trustee’s shareholders, officers, directors, employees, consultants, agents or other professionals or representatives employed by the Custodial Trust or Custodial Trustee.

2. “Environmental Actions” shall mean any response, removal, investigation, remediation, reclamation, closure, post-closure, corrective actions, institutional controls, operation and maintenance activities, and coordination and integration of reuse and remedial efforts and initiatives (including, without limitation, multi-stakeholder communications), and, if required, long-term stewardship and perpetual custodial care activities selected and approved by the Lead Government Agency (“Lead Government Agency”) as identified in Paragraph 10(1).

Environmental Actions may also include restoration or other actions related to natural resource damages but only with respect to Designated Properties other than the Alton, Beckemeyer, and Taylor Springs Designated Properties (as each is defined in Attachment B).

3. The “Designated Properties” are as set forth on Attachment B hereto.
4. “Closing Date” shall mean the effective date of the Settlement Agreement, as provided in Paragraph 38 hereof.
5. “Prepetition ASARCO Environmental Trust” means the trust created pursuant to the Consent Decree entered in United States v. ASARCO Inc., et al., Civil Action No. 02-2079, filed in the United States District Court for the District of Arizona.
6. Capitalized terms not otherwise defined herein shall have the meanings provided for in CERCLA, otherwise applicable environmental law, or Attachments A and B. In the case of a conflict between a term under CERCLA and other applicable environmental law, the law of the jurisdiction of the Lead Agency shall apply.

II. JURISDICTION

7. The Bankruptcy Court has jurisdiction over the subject matter hereof pursuant to 28 U.S.C. §§ 157, 1331, and 1334.

III. PARTIES BOUND; SUCCESSION AND ASSIGNMENT

8. This Settlement Agreement applies to, is binding upon, and shall inure to the benefit of the parties hereto, their legal successors and assigns, including any reorganized debtors under a confirmed plan of reorganization (the “Reorganized Debtors”), and any trustee, examiner or receiver appointed in the Bankruptcy Case.

IV. FORMATION AND PURPOSES OF THE CUSTODIAL TRUST

9. The Custodial Trust.
 - a. On the effective date of the plan of reorganization that the Bankruptcy Court approves in the Reorganization Cases (the “Effective Date”) and simultaneously with receipt of the payments to the Custodial Trust Environmental Costs Accounts (as defined

below) under Subparagraph 10(e), Debtors will transfer all of their right, title, and interest in and to, including, without limitation, all of their fee ownership in, all appurtenances, rights, easements, rights-of-way, mining rights (including unpatented mining claims, mill site claims, and placer claims), mineral rights, mineral claims, appurtenant groundwater rights, associated surface water rights, claims, and filings, permits, or other interests related to the Designated Properties⁵ (including without limitation all fixtures, improvements, and equipment located thereon as of the Effective Date), with the exception of: (i) any machinery, equipment, fixtures, furniture, computers, tools, parts, supplies, and other tangible personal property, used, or held for use, in connection with the operation of Debtors' operating assets; (ii) equipment and other items of personal property on Attachment C; and (iii) records, a forklift, and core samples at the Sacaton Site, to a Custodial Trust ("Custodial Trust"). Debtors shall retain no ownership or other interest whatsoever in the Designated Properties (except to the extent provided in subparts (i), (ii) and (iii) above, and in subparagraphs 9(e) and (f) below). The transfer of ownership shall be by quit claim deed or deed without warranty or other conveyance document, and personal property bill of sale without warranty of all of Debtors' rights, title and interests and shall be free and clear of all claims, liens, and interests against Debtors or, to the extent created by Debtors and affecting Debtors' interest in the Designated Properties, claims and liens against the Designated Properties other than any liability to the Governments under this Settlement Agreement, but subject to any existing *in rem* claims or interests other than liens for the payment of monetary claims such as property taxes or other monetary claims asserted or that could have been asserted in the

⁵ For purposes of this Paragraph 8, "Designated Properties" shall include any portion of the Whiting Site that Debtors own as of the Effective Date, including but not limited to any portion Debtors have title to following any

Reorganization Cases. All such conveyance documents shall be agreed to in form by ASARCO and the Custodial Trust, provided that in no event shall the conveyance document include any warranty whatsoever by the grantor by virtue of the grant document or the statutory or common law, or otherwise. In the event a quit claim deed is used, the parties agree that a deed substantially in the form of quit claim deed in Attachment G is acceptable. Debtors, Reorganized Debtors, or the entity administering the plan of reorganization for the benefit of the creditors, as applicable, will cooperate with the Governments and the Custodial Trustee to record or cause to be recorded in the appropriate real property records the transfer documents within five business days of the Effective Date. Debtors shall pay all property taxes relating to the Designated Properties prorated through the Effective Date. The transfer of the Columbus Designated Property to the Custodial Trust shall be subject to that certain Environmental Covenant filed in Ohio in the Office of the Franklin County Recorder. Further, as part of the conveyance of the Columbus Designated Property to the Custodial Trust, Debtors agree to transfer, and the Custodial Trustee, as hereinafter defined, agrees to accept transfer of the “Operation and Maintenance Agreement and Escrow Agreement for the Columbus Site” (the “Columbus Onsite Agreements”) if such agreements have been executed at the time of conveyance. If the Columbus Onsite Agreements and the related Environmental Covenant for the Columbus Designated Property have not been executed, the Custodial Trustee, as hereinafter defined, agrees to make a good faith, best effort to finalize, execute, and record the Columbus Onsite Agreements and the Environmental Covenant. Debtors shall execute and record releases of any liens or security interests held by any of the Debtors against any Designated Property. After Debtors execute this Settlement

action that reverses or sets aside the Lake County, Indiana purported tax sale of the Whiting property.

Agreement, Debtors shall not further encumber the Designated Properties or their other interests therein and shall maintain such properties, including the improvements thereon and the fixtures thereto that are related to ongoing remediation activities in the condition that they exist as of the date of such execution, except to the extent that ongoing environmental actions require otherwise.

b. The purpose of the Custodial Trust shall be to own the Designated Properties, carry out administrative and property management functions related to the Designated Properties, manage and/or fund implementation of future Environmental Actions approved by the Lead Government Agencies with respect to the Designated Properties and Sites, pay certain future oversight costs, and ultimately sell, transfer, or otherwise dispose or facilitate the reuse of all or part of the Designated Properties, if possible, all as provided herein with no objective or authority to engage in any trade or business. The sale, lease or other disposition of some or all of a Designated Property by the Custodial Trust shall not be deemed an engagement in any trade or business. The Custodial Trust by and through its Custodial Trustee not individually but solely in its representative capacity (hereafter the "Custodial Trustee"), Debtors, and the Lead Government Agency for each of the Designated Properties shall exchange information and reasonably cooperate to determine the appropriate disposition of any executory contracts or unexpired leases that relate to the relevant site. The Custodial Trust shall be funded as specified in Paragraph 10 herein.

c. Le Petomane XXV, Inc., not individually but solely in its representative capacity as Custodial Trustee, by and through Jay A. Steinberg, not individually but solely in his representative capacity as president of the Custodial Trustee, is appointed as the

Custodial Trustee to administer the Custodial Trust and the Custodial Trust Accounts, as defined in Paragraph 10(a)-(c) below, in accordance with this Settlement Agreement and a Custodial Trust Agreement substantially in the form attached hereto as Attachment D.

d. No later than the earlier of (i) the Effective Date or (ii) 90 days after the Closing Date, Debtors shall provide to the Custodial Trustee all environmental information and/or data in possession of Debtors or their contractors regarding the Designated Properties in the state and condition in which such records are found.

e. ASARCO,⁶ on behalf of itself and its agents, employees, invitees, guests, permittees, representatives, successors and assigns, shall retain a license (the "License") for the purpose of (i) free and unrestricted access at all times on, over, and across the Sacaton Designated Property to the warehouse and other existing buildings in which documents and records are located ("Warehouse Space") as of the Effective Date, (ii) entering the Warehouse Space to inspect, maintain, remove and/or destroy the documents contained within the Warehouse Space, (iii) storing in the Warehouse Space any and all documents currently contained or hereafter stored in the Warehouse Space, and (iv) vehicular ingress to and egress from the Sacaton Designated Property together with the right to park vehicles on the Sacaton Designated Property, and any and all rights incidental thereto. The Custodial Trustee (or the purchaser in the event that the property is sold), shall, at the sole cost and expense of Custodial Trustee from the Custodial Trust Administrative Account (or the purchaser in the event that the property is sold), provide all utilities to the Warehouse Space necessary to facilitate ASARCO's use of the Warehouse Space as provided in this Subparagraph, including, but not limited to, heating,

⁶ For purposes of this Settlement Agreement, any rights granted to ASARCO or Debtors that extend after the Effective Date, shall also be deemed granted to the Reorganized Debtors.

ventilation, air conditioning, gas, water, sewer, and electrical utilities for up to one year from the Effective Date. After the Custodial Trustee (or the purchaser in the event that the property is sold) has paid these expenses for the first year, ASARCO or its successor in interest shall pay any further heating, ventilation, air conditioning, gas, water, sewer, and electric costs so long as ASARCO retains the License. ASARCO, its successors, or assigns shall at their sole cost and expense obtain appropriate insurance coverage related to the licensees' use and activities at the Designated Property reasonably satisfactory to the Custodial Trustee and naming the Custodial Trustee as an additional insured for so long as it retains the License. Notwithstanding anything to the contrary, ASARCO and Custodial Trustee agree that at all times during the License Term (as defined below) ASARCO shall have the right, but not the obligation, to lock entrances to and exits from the Warehouse Space or otherwise restrict access to the Warehouse Space by third parties, including, but not limited to, Custodial Trustee, subject to any Bankruptcy Court order providing for access. In connection with any entry by Custodial Trustee, its agents, employees, invitees, guests, permittees, and representatives into the Warehouse Space, Custodial Trustee shall give ASARCO at least five days advance written notice of such entry, subject to any Bankruptcy Court order providing for earlier access. Custodial Trustee shall cooperate with ASARCO in scheduling such visits so that an ASARCO representative may accompany Custodial Trustee to the Warehouse Space. Unless agreed to in writing by Custodial Trustee and ASARCO, the term of the License (the "License Term") shall automatically expire upon the earlier to occur of (i) 24 months after the Effective Date and (ii) the date of destruction of all records contained in the Warehouse Space in accordance with the terms and conditions contained in any plan of

reorganization or pursuant to a Bankruptcy Court order. Notwithstanding anything to the contrary contained in this Settlement Agreement, the rights granted pursuant to this Paragraph 9(e) by Custodial Trustee, as licensor, to ASARCO, as licensee, constitute a license and do not create any real property interest.

f. ASARCO and Custodial Trustee hereby acknowledge that ASARCO is involved in a lawsuit filed against Americas Mining Corporation (“AMC”), Tri-Point Development, LLC, CRM/Casa Grande, LLC, Vanguard Properties, Inc., and First American Exchange Company, LLC, Adversary Proceeding No. 07-02071 (the “Lawsuit”) regarding certain real property located adjacent to the Sacaton Designated Property and subject to the Lawsuit (the “Sacaton Adjacent Property”). Prior to the earlier to occur of (i) 270 days after the date of the final resolution of the Lawsuit and (ii) 5 years after the Effective Date (the “Option Period”), Custodial Trustee, its successors or assigns, shall not lease or sell to any party, nor enter into any agreements that restrict the right of Custodial Trustee, its successors or assigns, to lease or sell, all or any portion of the Sacaton Designated Property, the minerals located on or under the Sacaton Designated Property, appurtenant groundwater rights, or associated surface water rights, claims, or filings. Custodial Trustee hereby grants to ASARCO, its successors, or assigns an exclusive option to lease (the “Option”) the mineral rights and interests located on and under the Sacaton Designated Property, and any associated surface water rights, claims and filings, and appurtenant groundwater rights, and the rights of access, exploration, development and mining in connection with such lease (collectively, the "Option Property") from Custodial Trustee, its successors or assigns, on the following terms and conditions:

- (i) prior to the exercise of the Option, ASARCO, its successors, or its assigns must obtain title to the Sacaton Adjacent Property;
- (ii) the Option may be exercised only by the delivery of written notice (the “Option Notice”) from ASARCO, its successors, or its assigns to the Custodial Trustee during the “Option Period”;
- (iii) upon the timely delivery of the Option Notice, ASARCO, its successors, or its assigns and Custodial Trustee shall execute a mineral lease.

ASARCO, its successors, or its assigns and the Custodial Trustee shall agree on the form of the mineral lease, and the annual royalty to be paid to the Custodial Trustee under such lease shall be set at \$1,022 (50 cents an acre) and the production royalty shall be 0.25 percent of net smelter returns on all metals based on the quoted price (the “Mining Lease”); and

- (iv) ASARCO and Custodial Trustee agree that the consideration provided by ASARCO in connection with this Settlement Agreement (including but not limited to Subparagraph 9(f)(iii) above) shall serve as consideration for the Option and the lease of the Option Property, and ASARCO, its successors, or its assigns shall not be required to pay any additional consideration for the exercise of the Option or the transfer or lease of the Option Property.
- (v) Except as to damages caused by the Custodial Trust Parties while on the Sacaton Designated Property, ASARCO, its successors, or its assigns agree to hold the Custodial Trust Parties harmless and fully indemnify the Custodial Trust Parties against any and all claims or demands which may

be made upon them or against the Sacaton Designated Property, for, or on account of, any debt or expense contracted or incurred by ASARCO, its successors, or its assigns in conducting its activities during the term of the mineral lease pursuant to the Mining Lease, as well as against any and all acts, transactions, and omissions of ASARCO, its successors, its assigns, its agents or servants, in conducting its activities pursuant to the Mining Lease, and ASARCO, its successors, or its assigns will defend and save the Custodial Trust Parties harmless and fully indemnify them as to any liability for, or on account of, injury to, or death of, any person or damage to any property sustained during the term of the Mining Lease, resulting from any such act or omission of ASARCO, its successors, its assigns, its agents or servants. ASARCO, its successors, and its assigns shall obtain insurance coverage reasonably acceptable to the Custodial Trustee who shall be named as an additional insured.

- (vi) ASARCO, its successors, or its assigns shall conduct all activities under the Mining Lease in accordance with applicable law and with appropriate financial assurance and shall obtain all required permits. ASARCO, its successors, or its assigns recognize that the Custodial Trustee will be conducting cleanup activities on the Sacaton Designated Property. ASARCO, its successors, or its assigns, and the Custodial Trustee agree to include mutual cooperation provisions in the Mining Lease such that the activities of ASARCO, its successors, or its assigns shall not unreasonably interfere with any cleanup activities by the Custodial

Trustee. If ASARCO, its successors, or its assigns undertake any activity that disturbs or may disturb any cap, berm, or other response action that has been implemented or is being implemented, ASARCO, its successors, or its assigns shall provide financial security or other assurances in a reasonable amount acceptable to the Custodial Trustee with respect to such disturbances. The provisions in this Subparagraph 9(f)(vi) will be subject to the execution version of the Mining Lease, and in the event of any conflict, the Mining Lease shall control.

- (vii) In connection with the rights in this Paragraph 9(f), ASARCO also has the right to create a separate custodial trust for the Sacaton Designated Property provided it must do so by the Effective Date, and such separate trust will not add additional costs to the cost of total trust administration. The separate custodial trust will be in substantially the same form as the Custodial Trust and will have the same Custodial Trustee. The State of Arizona and the United States shall have the right to approve the separate custodial trust, and such approval shall not be unreasonably withheld.

10. The Custodial Trust Accounts

- a. The Custodial Trustee shall create a segregated Custodial Trust Environmental Costs Account (“Custodial Trust Environmental Costs Account”) within the Custodial Trust for each of the Designated Properties (except that the accounts for (i) the Trench Mine Designated Property and Salero Designated Property in Arizona and (ii) Gold Hill Designated Property and Belshazzar Designated Property in Utah, shall each cover the two properties respectively as provided herein). The purpose of a Custodial Trust

Environmental Costs Account for a Designated Property shall be to provide funding for future Environmental Actions and certain future oversight costs of the Governments with respect to the Designated Property and related Site. Funding from a Custodial Trust Environmental Costs Account for a Designated Property may not be used for another Designated Property and related Site except as otherwise expressly provided by and in accordance with Subparagraphs 10(m) and (n) hereof.

b. The Custodial Trustee shall also create a segregated Custodial Trust administrative account (“Custodial Trust Administrative Account”) to fund the payment of real estate taxes, insurance, and other administrative costs incurred in administering the Custodial Trust (“Administrative Costs”).

c. Assets of the Custodial Trust Environmental Cost Accounts and Custodial Trust Administrative Account (collectively, the “Custodial Trust Accounts”) shall be held in trust solely for the purposes provided in this Settlement Agreement. The Governments shall be the sole beneficiaries of the Custodial Trust Accounts.

d. All interest earned in an account shall be retained in the respective Custodial Trust Account and used only for the same purposes as the principal in that account as provided in this Settlement Agreement, subject to any reallocation approved by the Governments in accordance with the terms of this Settlement Agreement.

e. In settlement and full satisfaction of all claims against Debtors related to the Designated Properties and the Sites (including but not limited to the liabilities and other obligations asserted in the United States’ and States’ proofs of claim and other pleadings filed or evidence presented to the Bankruptcy Court relating to the Designated Properties and the Sites other than the Separately Settled Matters) other than the Separately Settled

Matters, Debtors shall make a payment of \$10,400,000 for the Custodial Trust Administrative Account and contributions and accretions totaling \$60,555,493 (which shall be reduced as provided in Subparagraph 10(f) below) to the Custodial Trust Environmental Cost Accounts on the Effective Date (as defined in Subparagraph 9(a)) and simultaneously with the transfer of the Designated Properties to be allocated as follows:

- (i) payment of \$10,400,000 on the Effective Date to fund the Custodial Trust Administrative Account;
- (ii) payment of \$200,000 on the Effective Date to fund future Environmental Actions and certain future oversight costs of the Governments with respect to the Ragland Site in St. Clair County, Alabama, to be deposited in the Custodial Trust Environmental Cost Account for that site;
- (iii) payment of \$20 million on the Effective Date to fund future Environmental Actions and certain future oversight costs of the Governments with respect to the Sacaton Site near Case Grande, Arizona, to be deposited in the Custodial Trust Environmental Cost Account for that site;
- (iv) payment of \$2.825 million on the Effective Date to fund future Environmental Actions and certain future oversight costs of the Governments with respect to the Trench Mine Site and the Salero Site near Patagonia and Rio Rico, Arizona, respectively, to be deposited in a single jointly managed Custodial Trust Environmental Cost Account for those sites;

- (v) payment of \$200,000 on the Effective Date to fund future Environmental Actions and certain future oversight costs of the Governments with respect to the Van Buren Site in Crawford County, Arkansas, to be deposited in the Custodial Trust Environmental Cost Account for that site;
- (vi) payment of \$4 million on the Effective Date to fund future Environmental Actions and certain future oversight costs of the Governments with respect to the Silverton Site in San Juan County, Colorado, to be deposited in the Custodial Trust Environmental Cost Account for that site;
- (vii) payment of \$16 million on the Effective Date to fund future Environmental Actions and certain future oversight costs of the Governments with respect to the Globe Site in Adams and Denver Counties, Colorado, to be deposited in the Custodial Trust Environmental Cost Account for that site;
- (viii) payment of \$7 million on the Effective Date to fund future Environmental Actions and certain future oversight costs of the Governments with respect to the Alton Site in Madison County, Illinois, to be deposited in the Custodial Trust Environmental Cost Account for that site;
- (ix) payment of \$200,000 on the Effective Date to fund future Environmental Actions and certain future oversight costs of the Governments, including but not limited to purchasing adjacent property needed to complete the landfill, with respect to the Beckemeyer Site in Clinton County, Illinois, to be deposited in the Custodial Trust Environmental Cost Account for that site;

- (x) payment of \$4.2 million on the Effective Date to fund future Environmental Actions and certain future oversight costs of the Governments with respect to the Taylor Springs Site in Taylor Springs, Illinois, to be deposited in the Custodial Trust Environmental Cost Account for that site;
- (xi) payment of \$1.2 million on the Effective Date to fund future Environmental Actions and certain future oversight costs of the Governments with respect to the Whiting Site in Lake County, Indiana, to be deposited in the Custodial Trust Environmental Cost Account for that site;
- (xii) payment of \$120,493 on the Effective Date to fund future Environmental Actions and certain future oversight costs of the Governments with respect to the Deming Site in Luna County, New Mexico, to be deposited in the Custodial Trust Environmental Cost Account for that site. In the event this payment is not made prior to the expiration of the current letter of credit related to surety bond number 386149 (the "Bond"), ASARCO agrees to post another letter of credit or other appropriate security for this amount acceptable to the State of New Mexico. In addition, ASARCO and St. Paul Travelers consent to the Custodial Trustee's right to draw on the Bond in the amount of \$850,000 within two months after the Effective Date to fund future Environmental Actions and certain future oversight costs of the Governments with respect to the Deming Site in exchange for a full and final release of the Bond. The funds from the Bond shall be

deposited in the Custodial Trust Environmental Cost Account for that site. The Custodial Trustee shall initiate all appropriate efforts to draw upon the Bond in order to obtain said funds within 30 days of the Effective Date and shall obtain said funds within two months of the Effective Date or have initiated appropriate legal actions. In connection with asserting a claim on the Bond, the Custodial Trustee shall provide written notice to St. Paul Travelers in substantially the form of the "Draw Letter" as attached as Attachment E as follows: Robert L. Scanlon, St. Paul Travelers Bond, One Tower Square, 2S2A, Hartford, CCT 06183, Fax: 860-277-5722; with a copy to: Andrew Rosenblatt, Esq., Chadbourne & Parke LLP, 30 Rockefeller Plaza, New York, New York 1011, Fax: 212-541-5369. Upon such payment, St. Paul Travelers shall immediately be released from all past, present and future liability with respect to the Bond without further court order, proceeding or other documentation. St. Paul Travelers waives any defenses to the Custodial Trustee's draw on the Bond during the two months after the Effective Date, and shall have an allowed general unsecured claim against ASARCO for \$850,000 without further Court order or proceeding if the Custodial Trustee draws on the Bond within two months after the Effective Date. Within five business days of its receipt of payment from St. Paul Travelers under the Bond, the Custodial Trustee shall notify ASARCO or its designated successor under the plan of reorganization that the Bankruptcy Court approves in the Reorganization Cases that the conditions precedent for the allowance of St. Paul

Travelers' claim have been satisfied. On the Effective Date, St. Paul Travelers shall have an allowed general unsecured claim against ASARCO in the amount of \$30,000 for attorneys fees associated with the Bond. St. Paul Travelers shall waive all attorneys fees except those allowed in this subparagraph. As of the Effective Date, only the Custodial Trustee may draw on the Bond. The State of New Mexico, the obligee under the Bond, waives any and all rights with respect to the Bond including the ability to assert a claim against the Bond, subject to St. Paul's complying with the Agreement. If the Custodial Trustee fails to draw on the Bond within two months after the Effective Date, the Bond shall be automatically deemed released, and all claims against the Bond shall be forever waived; provided, however, that St. Paul Travelers' failure to pay the Custodial Trustee's timely request for a draw on the Bond shall not result in any such release and waiver;

- (xiii) payment of \$1.34 million on the Effective Date to fund future Environmental Actions and certain future oversight costs of the Governments with respect to the Magdalena Site in Socorro County, New Mexico, to be deposited in the Custodial Trust Environmental Cost Account for that site;
- (xiv) payment of \$420,000, minus any monies put in escrow pursuant to the Operation and Maintenance Agreement Between Ohio EPA and ASARCO LLC Regarding ASARCO LLC's Former Zinc Oxide Facility Columbus, Franklin County, Ohio, on the Effective Date to fund future

Environmental Actions and certain future oversight costs of the Governments with respect to the Columbus Site in Franklin County, Columbus, Ohio, to be deposited in the Custodial Trust Environmental Cost Account for that site;

- (xv) payment of \$120,000 on the Effective Date to fund future Environmental Actions and certain future oversight costs of the Governments with respect to the Sand Springs Site in Tulsa County, Oklahoma to be deposited in the Custodial Trust Environmental Cost Account for that site;
- (xvi) payment of \$2.43 million on the Effective Date to fund future Environmental Actions and certain future oversight costs of the Governments with respect to the Murray Site in Salt Lake County, Utah, to be deposited in the Custodial Trust Environmental Cost Account for that site;
- (xvii) payment of \$100,000 on the Effective Date to fund future Environmental Actions and certain future oversight costs of the Governments with respect to the Gold Hill Site in Tooele County, Utah and Belshazzar Site in Salt Lake County, Utah, to be deposited in a single, jointly managed Custodial Trust Environmental Cost Account for those Sites; and
- (xviii) payment of \$200,000 on the Effective Date to fund future Environmental Actions and certain future oversight costs of the Governments with respect to the McFarland Site in Pierce County, Washington, to be deposited in the Custodial Trust Environmental Cost Account for that site.

The payments set forth in this Subparagraph (e) shall for purposes of the Chapter 11 case be accorded the status of expenses of administration.

f. The amount of payment for any Designated Property under Subparagraph 10(e)(ii)-(xviii) shall be reduced to reflect actual expenditures by Debtors at a Designated Property for Capital Expenditure Response Costs⁷ for work performed between February 1, 2009 and the Effective Date. Such costs shall not be associated with the Prepetition ASARCO Environmental Trust. Such response costs must be approved in writing in advance by the Lead Agency for the Designated Property. Debtors shall include an estimate of the expenditures in any such request. The Lead Agency shall seek to respond within 10 business days of any requests for approval of expenditures. If the Lead Agency has ordered or otherwise directed that ASARCO perform specific remediation at a Designated Property between February 1, 2009 and the Effective Date, but rejects ASARCO's proposed plan and related Capital Expenditure Response Costs for such work, the Lead Agency may provide an alternative plan to accomplish the remediation within 10 business days after the rejection. If, in the case of an order or other direction by the Lead Agency and, either the Lead Agency fails to respond within 10 business days of any requests for approval of expenditures or the Lead Agency fails to provide an alternative within 10 business days, and the Lead Agency does not indicate or otherwise agree that ASARCO should delay work until the Lead Agency responds or provides an alternative plan for remediation, then ASARCO may perform work and seek approval from the Bankruptcy Court for determination of appropriate credit for the performance of

⁷ "Capital Expenditure Response Costs" are third party contractor costs for response actions that are capital expenditures and are not operations and maintenance expenditures and which are either consistent with the National

such work; provided, however, this Paragraph is subject to Paragraph 12(h). Following completion of any work under this Paragraph, the Debtor shall provide documentation to the Governments of the exact amount of the expenditure. No reduction shall be made for expenditures of Debtors that are not reimbursements of third party contractors. No reduction shall be made for expenditures on property not owned by Debtors.

g. The Custodial Trustee shall at all times seek to have the Custodial Trust treated as a “qualified settlement fund” as that term is defined in Treasury Regulation section 1.468B-1. For purposes of complying with Section 468B(g)(2) of the Internal Revenue Code of 1986, as amended, this Settlement Agreement shall constitute a Consent Decree between the parties. Approval of the Bankruptcy Court, as a unit of the District Court, shall be sought, and the Bankruptcy Court shall retain continuing jurisdiction over the Custodial Trust and Custodial Trust Accounts sufficient to satisfy the requirements of Treasury Regulation section 1.468B-1. The Custodial Trustee will not elect to have the Custodial Trust treated as a grantor trust. The Custodial Trust shall be treated as a separate taxable entity. The Custodial Trustee shall cause any taxes imposed on the earnings of the Custodial Trust to be paid out of such earnings and shall comply with all tax reporting and withholding requirements imposed on the Custodial Trust under applicable tax laws. The Custodial Trustee shall be the “administrator” of the Custodial Trust pursuant to Treasury Regulation section 1.468B-2(k)(3).

h. The Custodial Trustee shall use the Custodial Trust Environmental Cost Account for each of the Designated Properties to fund future Environmental Actions and certain future oversight costs pursuant to CERCLA or state environmental statutes with respect

to that Designated Property and related site. The Custodial Trustee shall use the Custodial Trust Administrative Account to fund the Administrative Costs of the Custodial Trust that have been approved by the United States and States that are Lead Government Agencies.

i. Within 60 days of the Effective Date in the first year and thereafter by January 1 of each year following the Effective Date, the Custodial Trustee shall provide to US EPA and the relevant State for each of the Custodial Trust Environmental Cost Accounts, a balance statement and proposed budget for the coming year. The Lead Government Agency shall have the authority to approve or disapprove the proposed budget for the relevant Custodial Trust Environmental Cost Account after consultation with the other governmental agency.

j. The Custodial Trustee shall pay funds from a Custodial Trust Environmental Cost Account to the Lead Government Agency making a written request for funds within 10 days of such request. Such written request shall specify what the funds were used for and shall certify that they were used only for future Environmental Actions and future oversight costs with respect to the Designated Property and related Site. The Custodial Trustee shall also pay funds from a Custodial Trust Environmental Cost Account to the Non-Lead Government Agency (as defined below) making a written request for funds within 10 days of such request where the Lead Government Agency has requested the assistance of the Non-Lead Government Agency with respect to the Designated Property and related site.

k. In the case of requests by the Lead Government Agency to the Custodial Trustee to use the funds from a particular Custodial Trust Cleanup Account to perform

Environmental Actions, the Custodial Trustee shall utilize the funds and interest earned thereon from that Custodial Trust Environmental Cost Account to undertake such work promptly and in accordance with any schedule approved by the Lead Government Agency. The Custodial Trustee shall require appropriate liability insurance from each contractor hired to perform work.

1. For purposes of this Settlement Agreement, the initial Lead Government Agency for the Designated Properties and related sites are as follows:

Ragland	State of Alabama
Sacaton	State of Arizona
Trench/Salero	State of Arizona
Van Buren	State of Arkansas
Silverton	State of Colorado
Globe	State of Colorado
Alton	State of Illinois
Beckemeyer	US EPA
Taylor Springs	US EPA
Whiting	US EPA
Deming	State of New Mexico
Magdalena	State of New Mexico
Columbus	State of Ohio
Sand Springs	State of Oklahoma
Murray	US EPA
Gold Hill/Belshazzar	State of Utah
McFarland	State of Washington

The initial Non-Lead Government Agency (“Non-Lead Government Agency”) will be US EPA for sites where a state is the Lead Government Agency. The Non-Lead Government Agency will be the State of Illinois for the Beckemeyer and Taylor Springs Site. The Non-Lead Government Agency will be the State of Utah for the Murray Site. The Lead Government Agency for a Site shall consult with the Non-Lead Government Agency for that site relating to approval of the budget or requests for funding for cleanup of the Site if such consultation is requested. US EPA and the state may provide the

Custodial Trustee with joint written notice that the Lead Government Agency for a Designated Property has changed.

m. Upon the completion of all final actions and disbursement of all final costs for a Designated Property and related site, any funds remaining in that site's Custodial Trust Cleanup Account shall be transferred in the following order: (i) first, in accordance with instructions provided by the United States Department of Justice and the respective state (or in the case of Arizona, in accordance with instructions provided by Arizona after consultation with US EPA) to any of the other Custodial Trust Environmental Cost Accounts established under this Settlement Agreement for a Designated Property in that state with remaining actions to be performed and a need for additional trust funding; (ii) second, in accordance with instructions provided by the United States Department of Justice after consultation with the States, to any of the other Custodial Trust Environmental Cost Accounts established under this Settlement Agreement or pursuant to the other environmental settlement agreements⁸ established in the Reorganization Cases for a Designated Property in another State with remaining actions to be performed and a need for additional trust funding; and (iii) third, to the EPA Hazardous Substance Superfund (the "Superfund").

n. The United States and the State in which a Designated Property is located may agree in writing at any time after one year from the Effective Date that based on new information about the estimated cost of cleanup or the assumption of liability by a buyer or other party for a Designated Property, the funding in a Custodial Trust Environmental

⁸ These settlement agreements consist solely of the Amended Settlement Agreement and Consent Decree Regarding Residual Environmental Claims for the Coeur D'Alene, Idaho, Omaha, Nebraska, and Tacoma, Washington Environmental Sites; the Consent Decree and Settlement Agreement Regarding the Montana Sites; and the Consent

Cost Account is more than is conservatively projected to be needed. Upon such an agreement, the United States Department of Justice, after consultation with the States, may instruct the Custodial Trustee to transfer any such excess funding to one or more of the other Custodial Trust Accounts established under this Settlement Agreement or pursuant to the other settlement agreements established in the Reorganization Cases for a Designated Property with remaining actions to be performed and a need for additional trust funding (giving priority first to Custodial Trust Accounts in the same state). During the eighth year after the Effective Date, the Custodial Trustee shall provide the United States and the States an update of anticipated future Administrative Costs of the Custodial Trust. The United States Department of Justice may thereafter instruct in writing after consultation with the States and the Custodial Trustee that any conservatively projected surplus funding in the Custodial Trust Administrative Account be transferred to one or more of the other Custodial Trust Accounts established under this Settlement Agreement or pursuant to the other settlement agreements established in the Reorganization Cases for a Designated Property with remaining actions to be performed and a need for additional trust funding.

o. With respect to the Murray Site, the United States on behalf of US EPA shall in addition also have an allowed general unsecured claim for its past costs in the amount of \$167,486. Distributions to US EPA on this allowed claim shall be deposited in a Site-specific special account with respect to the Murray Site within the Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by US EPA to the Superfund.

p. With respect to the Sand Springs Site, the State of Oklahoma shall also have an allowed general unsecured claim for its past costs in the amount of \$10,000.

q. With respect to the Taylor Springs Site, the United States on behalf of US EPA already has an allowed general unsecured claim for past costs in the amount of \$80,740.64 which was established pursuant to the Stipulation and Order (Docket Number 7784) approved by the Bankruptcy Court on June 12, 2008 (Docket Number 8093) (“Taylor Springs Stipulation”). The Taylor Springs Stipulation also includes a capped allowed general unsecured claim for additional costs associated with the Not Owned Portions of the Site (as that term is defined in the Taylor Springs Stipulation, hereinafter referred to as the “Not Owned Portions of the Taylor Springs Site”) in the amount of \$1,581,800 for the United States on behalf of US EPA (the “Taylor Springs Capped Claim”). The Taylor Springs Capped Claim shall be allowed as a general unsecured claim in settlement and resolution of US EPA’s claims against Debtors related to the Not Owned Portions of the Taylor Springs Site (including but not limited to the liabilities and other obligations asserted in the United States’ proofs of claim and other pleadings filed or evidence presented to the Bankruptcy Court relating to this property). This allowed claim is in addition to the \$80,740.64 allowed claim and in addition to the payment Debtors are making hereunder for the Custodial Trust Account for the Taylor Springs Site. However, to the extent that Blue Tee Corp. performs response actions or work at the Not Owned Portion of the Taylor Springs Site under an administrative order on consent by the Effective Date, it will be entitled to a portion of the Taylor Springs Capped Claim as a general unsecured claim in the amount of 20 percent of the costs incurred in performing such response actions or work. The amount of the United States’ \$1,581,800 allowed

claim shall be reduced to the extent that Blue Tee establishes a right to such an allowed claim in accordance with the Taylor Springs Stipulation. Distributions to US EPA on its allowed claims under this Paragraph shall be deposited in a Site-specific special account with respect to the Taylor Springs Site within the Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by US EPA to the Superfund.

r. Notwithstanding anything to the contrary in this Settlement Agreement, unpatented mining claims that have already reverted to the United States shall be deemed relinquished. The Custodial Trustee shall hold unpatented mining claims, mill site claims, and placer claims consistent with the 1872 Mining Law, 30 U.S.C. 22 et seq., and the Federal Land Policy and Management Act, 43 U.S.C. 1701 et seq., or shall abandon such unpatented mining claims in accordance with applicable law. Any actions by the Custodial Trustee on property administered by any federal agency can only be taken after the written concurrence of the federal agency.

11. ASARCO shall continue, at its own expense, the operations of any required ongoing environmental activities being performed by ASARCO at a Designated Property until the payments required by Subparagraph 10(e) of this Agreement are made, including, but not limited to, environmental monitoring activities. ASARCO may receive credit for such activities to the extent permitted pursuant to Subparagraph 10(f) of this Settlement Agreement.

12. Custodial Trust Miscellaneous Provisions

a. The administrative funds within the Custodial Trust Administrative Account shall be used by the Custodial Trustee for Administrative Costs. Within 60 days of the Effective Date in the first year and thereafter by January 1 of each year, the Custodial

Trustee shall provide the Governments with an annual budget for administration of the Custodial Trust for review and approval or disapproval by the United States and States that are Lead Government Agencies.

b. In no event shall any of the Custodial Trust Parties be held liable to any third parties for any liability, action, or inaction of any other party including Debtors or any other of the Custodial Trust Parties.

c. The Custodial Trust Parties shall be deemed to have resolved their civil liability under CERCLA and state environmental statutes, to the United States and the States, and have protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2) or similar state law for matters addressed in this Settlement Agreement. For purposes of this Paragraph, the matters addressed in this Settlement Agreement are all Environmental Actions and past costs and oversight costs with respect to the Designated Properties and Sites, including the States' claims for NRD including assessment costs relating to or in connection with the Designated Properties and Sites except for the Alton, Beckemeyer, and Taylor Springs Sites.

d. The Custodial Trustee shall implement any institutional controls or deed restrictions requested by the Governments with respect to any of the Designated Properties. Additionally, the Custodial Trustee shall abide by the terms of any institutional controls or deed restrictions in place or of record as to any Designated Properties.

e. In the event that the Bankruptcy Court finds that the Custodial Trustee in any material respect, as a result of negligence, exacerbates conditions at any of the Designated Properties, is seriously or repeatedly deficient or late in performance of the

work or violates the provisions of this Settlement Agreement, the Custodial Trust Agreement or other related implementation agreements, the United States and the state in which the relevant site is located may jointly direct that (i) the Custodial Trustee be replaced in accordance with the Custodial Trust Agreement or (ii) that all remaining funds and future recoveries in the Custodial Trust be paid to US EPA or to the applicable state to be used in accordance with the terms of this Settlement Agreement.

f. The Custodial Trustee shall take such actions and execute such documents as are reasonably requested by ASARCO with respect to effectuating the transactions contemplated hereby. To the extent that ASARCO requests the Custodial Trustee to take such an action, the Custodial Trustee shall do so at the sole expense of ASARCO.

g. The Custodial Trust is intended to be governed by the terms of the Multi-State Custodial Trust Agreement and shall not be subject to any provision of the Uniform Custodial Trust Act as adopted by any state, now or in the future.

h. It is the express intent of the parties that Debtors' total financial obligations at each Designated Property shall not exceed the amount of funding provided for the Custodial Trust Environmental Costs Account and the Custodial Trust Administrative Account related to that Designated Property; provided, however, this Paragraph: (i) does not apply to funds expended from the Prepetition ASARCO Environmental Trust; (ii) does not apply to the Separately Settled Matters reserved in Paragraph 30 subpart (b); (iii) does not limit the amount of penalties relating to Debtors' conduct occurring between February 1, 2009 and the Effective Date pursuant to Paragraph 20; ~~and~~ (iv) does not limit the United States' and States' reservation of rights for liability in Paragraph 30,

subpart (c); and (iv) does not apply to any costs required to be incurred prior to the Effective Date that are not Capital Expenditure Response Costs.

i. The Governments agree that they will not oppose the below provisions in any plan of reorganization in the Reorganization Cases that provides for an entity to administer the plan of reorganization for the benefit of the creditors, assets or funds held by the entity administering the plan of reorganization for the benefit of the creditors, or provides for a Reorganized Debtor and which is consistent with this Consent Decree and Settlement Agreement and contains provisions A and B below (a “Qualifying Plan”):

A. The releases, discharges, satisfactions, exonerations, exculpations and injunctions provided under this Plan and the Confirmation Order shall not apply to any liability to a governmental agency arising after the Effective Date; provided, however, that, no governmental agency shall assert any claim or other cause of action under Environmental Laws against the entities administering the plan of reorganization for the benefit of the creditors, the assets or funds being held by the entities administering the plan of reorganization for the benefit of the creditors, or Reorganized Debtors based on or arising from acts, omissions or conduct of the Debtors prior to February 1, 2009 (including but not limited to continuing releases related to acts, omissions or conduct prior to February 1, 2009) except provided, further, however, nothing in the Plan or the Confirmation Order: (i) precludes the enforcement of the Hayden Settlement Agreement, the Mission Mine Settlement Agreement, or the Arizona NRD Settlement Agreement as provided therein; (ii) shall prevent the Governments or Custodial Trusts from recovering under any confirmed Plan on any allowed claim or payment due with

respect to any Site listed on Attachment F, or for any allowed claim for a permit fee or similar assessment or charge owed to the Governments under Environmental Laws; (iii) releases, discharges, precludes, or enjoins the enforcement of any liability to a governmental agency under Environmental Law that any Entity is subject to as the current owner or current operator of property after the Effective Date; (iv) releases, discharges, precludes, or enjoins any allowed claim or liability of Debtor's estate as the current owner or current operator of property between February 1, 2009 and the Effective Date; (v) for sites covered by an approved Custodial Trust Settlement Agreement, permits the Governments or Custodial Trusts to recover more than permitted under the approved Custodial Trust Settlement Agreement, nor does it affect the covenants not to sue in the Custodial Trust Settlement Agreements or the reservation of rights; (vi) releases, discharges, precludes, or enjoins any on-site liability of Debtors' estate as the owner, operator or lessee of the Ray Mine, the Mission Mine, the Hayden Mine, the Amarillo Copper Smelter, the Tucson Office, or the Ventura Warehouse; (vii) precludes enforcement by the United States or a State of any requirements under an Environmental Custodial Trust Agreement against an Environmental Custodial Trustee; or (viii) releases, discharges, precludes, or enjoins the enforcement of liability to a Governmental Unit under Environmental Law for criminal liability (except to the extent that such liabilities are dischargeable).

B. Prepetition ASARCO Environmental Trust:

The Prepetition ASARCO Environmental Trust shall remain in existence, and shall be unaffected by the Reorganization Cases or any related settlements. The entity administering the plan of reorganization for the benefit of the creditors or Reorganized Debtors shall succeed to ASARCO's administrative role, and shall, in its/their sole discretion, act as Performing Entity (as defined in the trust) from time to time, but shall assume no affirmative liabilities or obligations associated with that role.

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

To allow for the possibility that AMC fails to make a required payment due under the note that funds the Prepetition ASARCO Environmental Trust, the plan will provide distributions shall be held back in an amount equal to the amount that the Prepetition ASARCO Environmental Trust would receive if AMC were to have made the required payment, \$25 million plus accrued interest in accordance with the note, and place such amount in the Prepetition ASARCO Environmental Trust Escrow. In the event that AMC fails to make any of the payments remaining due under the note, the Plan Administrator and the United States shall reasonably cooperate in determining the most efficient mechanism to recover the amounts owed by AMC. Upon AMC's payment of amounts due under the note, the Plan Administrator may release a corresponding amount from the Prepetition ASARCO Environmental Trust Escrow and distribute such funds in accordance with the terms and conditions of this Plan and the Confirmation Order.

For the avoidance of doubt, if a plan is confirmed that contains the provisions above, and if there is a site at which acts, omissions or conduct by the Debtors created liability under Environmental Laws prior to February 1, 2009 (other than those sites listed on Attachment F and sites owned by the Debtors as of February 1, 2009), no government agency may bring a cause of action or recover under Environmental Laws from the Debtors' estate, the entity administering the plan of reorganization for the benefit of the creditors, assets or funds held by the entity administering the plan of reorganization for the benefit of the creditors, or Reorganized Debtors, even if the government agencies are not currently aware of such liability. This shall not prevent any governmental agency from filing a claim or otherwise taking action to enforce or perfect rights in the event a Qualifying Plan is not confirmed. Debtors agree that any plan of reorganization that they file or support will be consistent with this Consent Decree and Settlement Agreement.

The United States also agrees that it will not object to a provision in a Qualified Plan that provides that the United States' claims for the Kelly Mine Site and the Blue Ledge Site will be general unsecured, subordinated claims.

All of the provisions of this Paragraph and this Settlement Agreement shall apply solely to civil liability under Environmental Laws. The Governments and Debtors reserve all rights with respect to criminal liability or Plan provisions as they may relate to criminal liability.

The Governments have agreed to the language of this Paragraph based on the highly unique facts and circumstances present in this case and nothing in the Paragraph shall be treated as precedential in any other bankruptcy case.

13. The Custodial Trustee shall provide the United States and the state and their representatives and contractors access to all portions of the Designated Properties that the Custodial Trust owns at all reasonable times for the purposes of conducting Environmental Actions at or near the Designated Properties. The Custodial Trustee shall execute and record with the appropriate recorder's office any easements or deed restrictions requested by the Governments for restrictions on use of the Designated Properties in order to protect public health, welfare or safety or the environment or ensure non-interference with or protectiveness of any action. Any existing easements or deed restrictions of record as to any Designated Property prior to the Effective Date of this Settlement Agreement shall survive the Settlement Agreement.

14. The United States, the state in which the relevant Designated Property is located, or a governmental unit that is a designee thereof, may at any time propose in writing to take ownership of any of the Designated Properties or any part thereof. Any such proposed transfer and the terms thereof are subject to approval in writing by US EPA and the state (after consultation with the Custodial Trustee) in which the Designated Property is located.

15. The Custodial Trustee may at any time seek the approval of US EPA and the state in which the relevant Designated Property is located for the sale or lease or other disposition of all or part of a Designated Property. In the event of any approved sale or lease or other disposition under this Paragraph, any net proceeds from the sale or lease or other disposition shall be paid to the Custodial Trust Environmental Cost and/or Administrative Account for that Designated Property (subject to Subparagraphs 10(m) and 10(n) hereof) in a proportion approved by US EPA and the State in writing.

16. No Custodial Trust Party shall be personally liable unless the Bankruptcy Court, by a final order, finds that it committed fraud or willful misconduct after the Effective Date in relation

to the Custodial Trustee's duties. Any judgment against a Custodial Trust Party and any costs of defense relating to any Custodial Trust Party shall be paid from the Custodial Trust Environmental Cost Account for the relevant site or the Administrative Account without the Custodial Trust Party having to first pay from its own funds for any personal liability or costs of defense unless a determination is made by a final order of the Bankruptcy Court finding that it committed fraud or willful misconduct in relation to the Custodial Trust Party's duties.

However, any payment shall be limited to funds in the Custodial Trust Environmental Cost Account for the relevant Designated Properties or the Administrative Account. There shall be an irrebuttable presumption that any action taken or not taken with the approval of the Bankruptcy Court does not constitute willful misconduct.

17. The Custodial Trust Parties are exculpated by all persons, including without limitation, holders of claims and other parties in interest, of and from any and all claims, causes of action and other assertions of liability arising out of the ownership of Custodial Trust assets and the discharge of the powers and duties conferred upon the Custodial Trust and/or Trustee by this Settlement Agreement, the Custodial Trust Agreement, or any order of court entered pursuant to or in furtherance of this Settlement Agreement, the Custodial Trust Agreement, or applicable law or otherwise. No person, including without limitation, holders of claims and other parties in interest, will be allowed to pursue any claims or cause of action against any Custodial Trust Party for any claim against Debtors, for making payments in accordance with this Settlement Agreement or any order of court, or for implementing the provisions of this Settlement Agreement, the Custodial Trust Agreement, or any order of court. Nothing in this Paragraph or the Settlement Agreement shall preclude the Governments from enforcing the terms of this Settlement Agreement against the Custodial Trust Parties.

18. Except as may otherwise be provided herein: (a) the Custodial Trust Parties may rely, and shall be protected in acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, or other paper or document believed by them to be genuine and to have been signed or presented by the proper party or parties; (b) the Custodial Trust Parties may consult with legal counsel, financial or accounting advisors and other professionals and shall not be personally liable for any action taken or not taken in accordance with the advice thereof; and (c) persons dealing with the Custodial Trust Parties shall look only to the Custodial Trust assets that may be available to them consistent with this Settlement Agreement to satisfy any liability incurred by the Custodial Trust Parties to such person in carrying out the terms of this Agreement or any order of the Bankruptcy Court, and the Custodial Trust Parties shall have no personal obligations to satisfy any such liability other than as provided in Paragraph 16.

19. Neither the United States, the States, nor any of Debtors shall be deemed to be an owner, operator, trustee, partner, agent, shareholder, officer, or director of the Custodial Trust or the Custodial Trust Parties, or to be an owner or operator of any of the Designated Properties on account of this Settlement Agreement or actions contemplated thereby.

V. OUTSTANDING OBLIGATIONS

20. All obligations of Debtors to perform work pursuant to any outstanding Consent Decree, Unilateral Administrative Order, Agreed Order, or Administrative Order on Consent regarding any of the Designated Properties or Sites, the Not Owned Portions of the Taylor Springs Site, and the Other Arizona Sites (as defined below), and any statutory, stipulated, or other penalties allegedly due from Debtors as of February 1, 2009, are fully resolved and satisfied by this Settlement Agreement and Debtors shall be removed as a party to such orders or decrees

pursuant to the terms hereof on the Effective Date (as defined in Subparagraph 9(a)); provided, however, that: (a) all requirements to retain records shall remain in full force and effect until the Effective Date (as defined in Subparagraph 9(a)), and that Debtors shall produce, or make available for production, in the state and condition in which such records are found any such records so retained to the United States or any State with respect to a Designated Property or Site as to which such State is a party to any order or consent decree; (b) with respect to the Murray Consent Decree, United States v. ASARCO, Inc. et al., No. 2:98CV0415B (D. Utah), the United States and ASARCO will file papers with the District Court for the District of Utah to modify the Consent Decree to conform to this Settlement Agreement and remove ASARCO as a party to the Consent Decree after the Effective Date; and (c) Debtors shall continue to perform work with respect to the Beckemeyer Designated Property, the Murray Site, and the unowned portions of the Globe Site until the Effective Date if Debtors are designated as the Performing Entity under the 2009 Annual Budget of the Prepetition ASARCO Environmental Trust at these properties to the extent funds are made available. A government agency may not impose any statutory, stipulated, or other penalties allegedly due from Debtors for Debtors' conduct occurring between February 1, 2009 and the Effective Date with respect to the Designated Properties or Sites unless it has given notice to the Debtors, the Official Committee of Unsecured Creditors of ASARCO LLC, the Official Committee of Unsecured Creditors for the Subsidiary Debtors, and the Future Claims Representative of the terms of any potentially applicable statutory, stipulated, or other penalties prior to the date the Debtors' allegedly actionable conduct occurred (except that no additional notice shall be required to enforce stipulated penalties in the amount of \$200 per day for days 1 through 30, \$1,000 per day for days 31 through 45, \$2,500 per day for days 46 through 60, and \$5,000 per day for each succeeding day thereafter that ASARCO fails to

perform operation and maintenance of the water treatment plant and all systems that collect and route ground and surface water to the treatment plant, as well as, operation and maintenance of the groundwater monitoring system at the Globe Designated Property, nor is additional notice required to enforce the statutory civil penalty under Colo. Rev. Statutes 25-8-608 if ASARCO exceeds the limits in its water discharge permit for the effluent from the water treatment plant at the Globe Designated Property for not more than \$10,000 per day for each day during which such violation occurs.). Moreover, if a government agency seeks to impose any such penalties, the amount of the penalty and circumstances under which it is imposed shall be negotiated before the penalty is applied.

VI. COVENANTS NOT TO SUE

21. With respect to the Designated Properties and the Sites (including releases of hazardous substances from any portion of the Designated Properties and the Sites and all areas affected by natural migration of such substances from the Designated Properties and the Sites), including but not limited to the Not Owned Portions of the Taylor Springs Site (including releases of hazardous substances from any portion of the Not Owned Portions of the Taylor Springs Site and all areas affected by natural migration of such substances from the Site), and except as specifically provided in Section VII (Reservation of Rights), upon the Effective Date and Debtors' full funding of all Custodial Trust Accounts as set forth in Subparagraph 10(e) of this Settlement Agreement (subject to any credit pursuant to Subparagraph 10(f)), the United States on behalf of US EPA and the States covenant not to sue or assert any civil claims or causes of action against Debtors, the Reorganized Debtors, and the Custodial Trust Parties pursuant to Sections 106, 107 of CERCLA, 42 U.S.C. §§ 9606, 9607; RCRA §§7002, 7003, 42 U.S.C. § 6972, 6973; and any similar state law; or any liabilities or obligations asserted in the United

States' and States' proofs of claim except as to the Separately Settled Matters. The State of New Mexico further covenants not to sue or assert any civil claims or causes of action against Debtors, the Reorganized Debtors, and the Custodial Trust Parties pursuant to Section 311 of the Clean Water Act, 33 U.S.C. § 1321. With respect to the Dona Ana Site (including releases of hazardous substances from any portion of the Dona Ana Site and all areas affected by natural migration of such substances from the Dona Ana Site), the State of New Mexico further covenants not to sue or assert any civil claims or causes of action against Debtors, the Reorganized Debtors, and the Custodial Trust Parties pursuant to Sections 106, 107 of CERCLA, 42 U.S.C. §§ 9606, 9607; the Resource Conservation and Recovery Act ("RCRA") §§7002, 7003, 42 U.S.C. § 6972, 6973; and any similar state law; or any liabilities or obligations asserted in its proofs of claim and agrees that any liabilities to it under the Dona Ana Stipulation are resolved and released.

22. Arizona has filed Proofs of Claim Nos. 10740, 10741, 10827-10830, 18227, and 18228 under environmental law. This Settlement Agreement and the Settlement Agreement Regarding Miscellaneous Federal and State Environmental Claims resolve upon the Effective Date all of Arizona's claims against Debtors or the Reorganized Debtors under environmental law for the following sites: Helvetia, Flux Mine, Madera Canyon, and Santa Cruz, (collectively, the "Other Arizona Sites") other than NRD claims relating to Mineral Creek and the Gila River allegedly related to releases from the Hayden Smelter and Ray Mine properties (the "Arizona NRD Claims"). The Arizona NRD Claims are being resolved in a separate settlement agreement. Liabilities for the Mission Mine, Ray Mine, Silver Bell Mine, and Hayden Smelter are being or will be assumed by the buyer or successor owner under any plan of reorganization in the Reorganization Cases as provided therein. With respect to the Other Arizona Sites (including

releases of hazardous substances from any portion of the Other Arizona Sites and all areas affected by natural migration of such substances from the Sites), the State of Arizona covenants not to sue or assert any civil claims or causes of action against Debtors, the Reorganized Debtors, and the Custodial Trust Parties pursuant to Sections 106, 107 of CERCLA, 42 U.S.C. §§ 9606, 9607; RCRA §§ 7002, 7003, 42 U.S.C. § 6972, 6973; and any similar state law; or any liabilities or obligations asserted in the state's proofs of claim.

23. The State of Indiana withdraws its claims for the American Chemical Services Sites, Conservation Chemicals Site, and Four County Landfill Site as listed in Proof of Claim No. 9388 and agrees not to assert any further claims against Debtors or the Reorganized Debtors for such Sites.

24. Except as otherwise set forth herein, St. Paul Travelers releases, covenants not to sue, and agrees not to assert any claims or causes of action against Debtors, the Reorganized Debtors, or the Custodial Trust Parties related to the Bond.

25. This Settlement Agreement in no way impairs the scope and effect of Debtors' discharge under Section 1141 of the Bankruptcy Code as to any third parties or as to any claims that are not addressed by this Settlement Agreement.

26. Without in any way limiting the covenants not to sue (and the reservations thereto) set forth in Paragraphs 21-24 and notwithstanding any other provision of this Settlement Agreement, such covenants not to sue shall also apply to Debtors' and Reorganized Debtors' successors, assigns, officers, directors, employees, and trustees, but only to the extent that the alleged liability of the successor, assign, officer, director, employee, or trustee of Debtors or Reorganized Debtors is based solely on its status as and in its capacity as a successor, assign, officer, director, employee, or trustee of Debtors or Reorganized Debtors.

27. The covenants not to sue contained in Paragraphs 21-24 of this Settlement Agreement extend only to Debtors, the Reorganized Debtors, the Custodial Trust Parties and the persons described in Paragraph 26 above and do not extend to any other person. Nothing in this Agreement is intended as a covenant not to sue or a release from liability for any person or entity other than Debtors, or the Reorganized Debtors, the Custodial Trust Parties, the United States, the States, and the persons described in Paragraph 26. Except as provided in Paragraph 10(e)(xii), the United States, the States, Debtors, the Reorganized Debtors, and the Custodial Trust Parties expressly reserve all claims, demands, and causes of action either judicial or administrative, past, present or future, in law or equity, which the United States, States, or Debtors, the Reorganized Debtors, or the Custodial Trust Parties may have against all other persons, firms, corporations, entities, or predecessors of Debtors for any matter arising at or relating in any manner to the Designated Properties and the Sites and/or claims addressed herein.

28. Nothing in this Settlement Agreement shall be deemed to limit the authority of the United States or the States to take response action under Section 104 of CERCLA, 42 U.S.C. § 9604, or any other applicable federal or state law or regulation, or to alter the applicable legal principles governing judicial review of any action taken by the United States or the States pursuant to that authority. Nothing in this Settlement Agreement shall be deemed to limit the information-gathering authority of the United States or the States under Sections 104 and 122 of CERCLA, 42 U.S.C. §§ 9604 and 9622, or any other applicable federal or state law or regulation, or to excuse Debtors or the Reorganized Debtors or the Custodial Trustee from any disclosure or notification requirements imposed by CERCLA or any other applicable federal or state law or regulation.

29. Debtors, the Reorganized Debtors, and the Custodial Trustee covenant not to sue and agree not to assert claims or causes of action against the United States or the States, and Debtors and the Reorganized Debtors covenant not to sue and agree not to assert claims or causes of action against the Custodial Trust Parties, with respect to the Designated Properties and the Sites, including but not limited to any direct or indirect claim for reimbursement from the Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113, 42 U.S.C. §§ 9606(b), 9607, 9611, 9612, 9613, or any other provision of law; any claims against the United States or the States, including any of their departments, agencies or instrumentalities pursuant to Section 107 or 113 of CERCLA, 42 U.S.C. §§ 9607, 9613; and any claims arising out of the response activities at the Designated Properties or the Sites. Nothing in this Settlement Agreement shall be construed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611 or 40 C.F.R. § 300.700(d).

VII. RESERVATION OF RIGHTS

30. The covenants not to sue set forth in Section VI do not pertain to any matters other than those expressly specified therein. The United States and the States reserve, and this Settlement Agreement is without prejudice to, all rights against Debtors, the Reorganized Debtors, or other persons with respect to all matters other than those set forth in Paragraphs 21-23. The United States and the States also specifically reserve: (a) any action to enforce the terms of this Settlement Agreement; (b) the Separately Settled Matters; and (c) liability for response costs and injunctive relief under CERCLA Sections 106 and 107, RCRA Sections 7002 and 7003 or state laws for Debtors' or the Reorganized Debtors' future acts creating liability under CERCLA, RCRA, or state law that occur after the Closing Date. Debtors' or the Reorganized Debtors'

future acts creating liability under CERCLA, RCRA, or state law do not include continuing releases related to Debtors' conduct prior to the Closing Date. The United States and the States also reserve, and this Settlement Agreement is without prejudice to any liability of Debtors' and Reorganized Debtors' successors, assigns, officers, directors, employees, and trustees for response costs and injunctive relief under CERCLA Sections 106 and 107, RCRA Sections 7002 and 7003, and state laws for any future acts by any such respective entity creating liability under CERCLA, RCRA or state law. Future acts creating liability under CERCLA, RCRA, or state law do not include continuing releases related to these entities' conduct prior to the Closing Date.

31. Subject to the provisions of Subparagraph 10(f) hereof, the United States and the States also reserve all rights against Debtors until the Effective Date (as defined in Subparagraph 9(a) hereof), provided, however, this Paragraph is subject to Paragraph 12(h).

32. Debtors, Reorganized Debtors, and the Custodial Trustee reserve, and this Settlement Agreement is without prejudice to all rights against the United States and States with respect to (a) all matters other than those set forth in Paragraph 29, and (b) any action to enforce their rights under the terms of this Settlement Agreement. In addition, Debtors' and Reorganized Debtors' covenant not to sue under Paragraph 29 shall not apply in the event that the United States or a State brings a cause of action or issues an order pursuant to the reservations set forth in Paragraph 30(b) and (c) or Paragraph 31, but only to the extent that Debtors' or Reorganized Debtors' claims arise from the same response action, response costs, damages, or other relief that the United States or the state is seeking pursuant to the applicable reservations.

33. Nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Settlement Agreement.

VIII. CONTRIBUTION PROTECTION

34. The parties hereto agree that, as of the Closing Date, Debtors, the Reorganized Debtors, and the Custodial Trust Parties are entitled to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2) or similar state law for matters addressed in this Settlement Agreement. This specifically includes, without limitation, contribution protection against the alleged purchaser of the Whiting Site pursuant to the purported tax sale conducted by Lake County, Indiana.⁹ The matters addressed in this Settlement Agreement include all costs of Environmental Actions, including oversight costs, incurred or to be incurred by the United States and the States or any other person relating to or in connection with the Designated Properties, the Sites, the Not Owned Portions of the Taylor Springs Site, the Other Arizona Sites, and the Dona Ana Site, including releases of hazardous substances from any portion of the Designated Properties and the Sites, the Not Owned Portions of the Taylor Springs Site, the Other Arizona Sites, and the Dona Ana Site, and all areas affected by natural migration of such substances from such sites. Matters addressed in this Settlement Agreement also include the States' claims for NRD including restoration and assessment costs relating to or in connection with the Designated Properties and the Sites except for the Alton, Beckemeyer, Taylor Springs Sites, and Separately Settled Matters. Matters addressed in this Settlement Agreement do not include the City of Murray's claim for maintenance of the road repository containing Category II Waste Materials or maintenance of the Parking Repository at the Murray Site, the City and County of Denver's claims at the Globe Site, and the Separately Settled Matters

IX. PUBLIC COMMENT

⁹ All other provisions of this Settlement Agreement related to the Whiting Site also still apply in the event that the purported tax sale is not reversed.

35. This Settlement Agreement will be subject to a public comment period following notice published in the Federal Register and notice under any applicable under state law providing for public comment, which may take place concurrent with the judicial approval process under Paragraph 36 hereof. The United States and any state taking public comment reserve the right to withdraw or withhold their consent if the public comments regarding the Settlement Agreement disclose facts or considerations that indicate that this Settlement Agreement is inappropriate, improper, or inadequate. At the conclusion of the public comment period, the United States and any state taking public comment will provide the Bankruptcy Court with copies of any public comments and their response thereto.

X. JUDICIAL APPROVAL

36. The settlement reflected in this Settlement Agreement shall be subject to approval by the Bankruptcy Court pursuant to Bankruptcy Rule 9019. ASARCO shall move promptly for court approval of this Settlement Agreement and shall exercise commercially reasonable efforts to obtain such approval.

XI. RETENTION OF JURISDICTION

37. The Bankruptcy Court shall retain jurisdiction over both the subject matter of this Settlement Agreement and the parties hereto, for the duration of the performance of the terms and provisions of this Settlement Agreement for the purpose of enabling any of the parties to apply to the Bankruptcy Court at any time for such further order, direction and relief as may be necessary or appropriate for the construction or interpretation of this Settlement Agreement, or to effectuate or enforce compliance with its terms.

XII. CLOSING DATE

38. This Settlement Agreement shall be effective after the close of the public comment period in accordance with Paragraph 35, and upon approval by the Bankruptcy Court pursuant to Paragraphs 35 and 36 of this Settlement Agreement.

XIII. SIGNATORIES/SERVICE

39. The signatories for the parties each certify that he or she is authorized to enter into the terms and conditions of this Settlement Agreement and to execute and bind legally such party to this document.

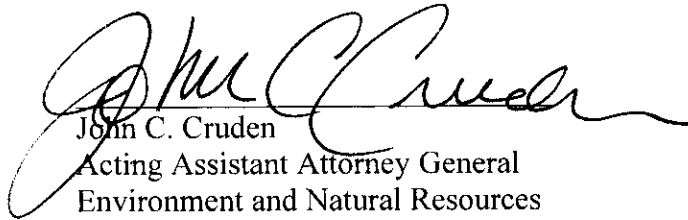
XIV. REPRESENTATIONS

40. St. Paul Travelers represents that it is the parent company of Seaboard Surety Company (“Seaboard”) and is authorized to act for and on behalf of Seaboard to bind Seaboard with respect to the terms of this Settlement Agreement.


THE UNDERSIGNED PARTIES ENTER INTO THIS SETTLEMENT AGREEMENT

FOR THE UNITED STATES

Date: 3/13/09


John C. Cruden
Acting Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice

Date: 3/10/09


Alan S. Tenenbaum
David L. Dain
Eric D. Albert
Environment and Natural Resources
Division
Environmental Enforcement Section
U.S. Department of Justice

Date: _____

Catherine R. McCabe
Acting Assistant Administrator
Office of Enforcement and Compliance
Assurance

U.S. Environmental Protection Agency

THE UNDERSIGNED PARTIES ENTER INTO THIS SETTLEMENT AGREEMENT

FOR THE UNITED STATES

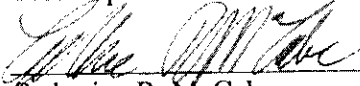
Date: _____

John C. Cruden
Acting Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice

Date: _____

Alan S. Tenenbaum
David L. Dain
Eric D. Albert
Environment and Natural Resources
Division
Environmental Enforcement Section
U.S. Department of Justice

Date: 2/29/09



Catherine R. McCabe
Acting Assistant Administrator
Office of Enforcement and Compliance
Assurance
U.S. Environmental Protection Agency

FOR ASARCO LLC; ALTA MINING AND DEVELOPMENT COMPANY; AR SACATON, LLC; ASARCO MASTER, INC. (FEDERATED METALS); SALERO RANCH, UNIT III, COMMUNITY ASSOCIATION, INC.; GOVERNMENT GULCH MINING COMPANY, LIMITED; COVINGTON LAND COMPANY; BRIDGEVIEW MANAGEMENT COMPANY, INC; ASARCO OIL AND GAS COMPANY, INC.; AR MEXICAN EXPLORATIONS INC.; AMERICAN SMELTING AND REFINING COMPANY; ALC, INC.; ASARCO CONSULTING, INC.; ENCYCLE, INC.; AND ASARCO, INC.

Date: March 13, 2009



Thomas L. Aldrich
Vice President, Environmental Affairs


Date: March 13, 2009



Douglas E. McAllister
Executive Vice President, General Counsel

FOR LAQ CANADA, LTD.; LAKE ASBESTOS OF QUEBEC, LTD.; LAC D'AMIANTE DU QUEBEC, LTEE.; CEMENT ASBESTOS PRODUCTS COMPANY; CAPCO PIPE COMPANY, INC.

Date: _____



William Perrell
President

FOR ASARCO LLC; ALTA MINING AND DEVELOPMENT COMPANY; AR SACATON, LLC; ASARCO MASTER, INC. (FEDERATED METALS); SALERO RANCH, UNIT III, COMMUNITY ASSOCIATION, INC.; GOVERNMENT GULCH MINING COMPANY, LIMITED; COVINGTON LAND COMPANY; BRIDGEVIEW MANAGEMENT COMPANY, INC; ASARCO OIL AND GAS COMPANY, INC.; AR MEXICAN EXPLORATIONS INC.; AMERICAN SMELTING AND REFINING COMPANY; ALC, INC.; ASARCO CONSULTING, INC.; ENCYCLE, INC.; AND ASARCO, INC.

Date: _____

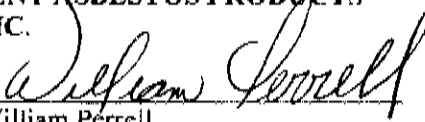
Thomas L. Aldrich
Vice President, Environmental Affairs

Date: _____

Douglas E. McAllister
Executive Vice President, General Counsel

FOR LAQ CANADA, LTD.; LAKE ASBESTOS OF QUEBEC, LTD.; LAC D'AMLANTE DU QUEBEC, LTEE.; CEMENT ASBESTOS PRODUCTS COMPANY; CAPCO PIPE COMPANY, INC.

Date: 3-13-09

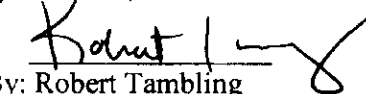


William Perrell
President

FOR THE STATE OF ALABAMA

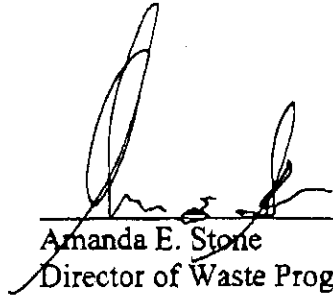
Troy King
Attorney General
State of Alabama

Date: _____


By: Robert Tambling
Assistant Attorney General

FOR THE STATE OF ARIZONA

Date: 3/3/09



Amanda E. Stone
Director of Waste Programs Divisions
Arizona Department of Environmental
Quality

Date: 3/5/09

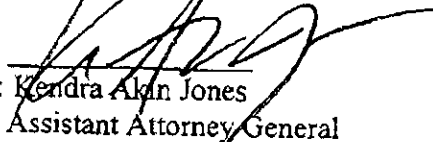


Donald Baier
on behalf of the State Mine Inspector

FOR THE STATE OF ARKANSAS


Date: 2/27/09

Dustin McDaniel
Attorney General


By: Kendra Alan Jones
Assistant Attorney General
Office of the Attorney General
323 Center Street, Suite 400
Little Rock, AR 72201

FOR THE STATE OF COLORADO


Date: Feb 27, 2009


James B. Martin, Executive
Director of Colorado Department
Of Public Health and Environment
For Colorado Hazardous Materials
And Waste Management
Division

FOR THE STATE OF ILLINOIS

FOR THE PEOPLE OF THE STATE OF
ILLINOIS *ex rel.* LISA MADIGAN,
Attorney General of the State of Illinois

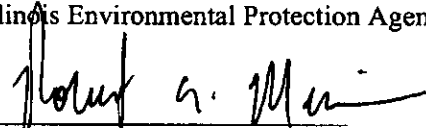
MATTHEW J. DUNN, Chief
Environmental Enforcement/
Asbestos Litigation Division

Date: 2/27/09 BY: 

THOMAS DAVIS, Chief
Environmental Bureau

FOR THE ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

DOUGLAS P. SCOTT, Director
Illinois Environmental Protection Agency

BY: 

ROBERT A. MESSINA
Chief Legal Counsel

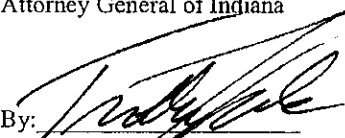
Signature page for Amended Consent Decree and Settlement Agreement,

In re: Asarco, Case No. 05-21207

FOR THE STATE OF INDIANA

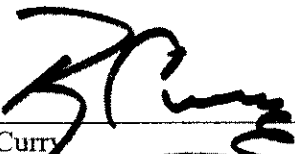
Gregory F. Zoeller
Attorney General of Indiana

Date: 3/2/09

By: 
Timothy J. Link
Deputy Attorney General
Indianapolis, IN

FOR THE STATE OF NEW MEXICO

Date: 3/2/09



Ron Curry
Secretary, ~~New Mexico Department~~
of the Environment

Date: _____

Joanna Prukop
Secretary, New Mexico Energy, Minerals,
and Natural Resources Department

Gary King
New Mexico Attorney General

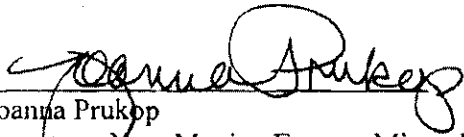
By: _____
Stephen R. Farris
Assistant Attorney General

FOR THE STATE OF NEW MEXICO

Date: _____

Ron Curry
Secretary, New Mexico Department
of the Environment

Date: 03.11.09



Joanna Prukop
Secretary, New Mexico Energy, Minerals,
and Natural Resources Department

Gary King
New Mexico Attorney General

By: _____
Stephen R. Farris
Assistant Attorney General

FOR THE STATE OF NEW MEXICO

Date: _____

Ron Curry
Secretary, New Mexico Department
of the Environment

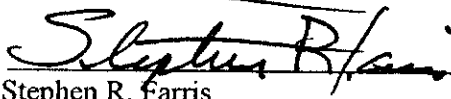
Date: _____

Joanna Prukop
Secretary, New Mexico Energy, Minerals,
and Natural Resources Department

Gary King
New Mexico Attorney General

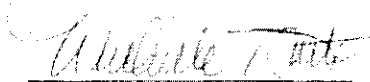
3-11-09

By:


Stephen R. Farris
Assistant Attorney General

FOR THE STATE OF OHIO

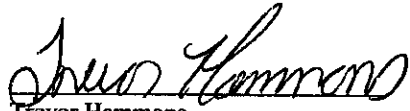
Date: 3/13/09



Michelle T. Sutter
Assistant Attorney General
Environmental Enforcement Section
30 E. Broad Street, 25th Floor
Columbus, OH 43215

FOR THE STATE OF OKLAHOMA

Date: 02/27/09



Trevor Hammons
Assistant Attorney General
Oklahoma Office of the Attorney General
Environmental Protection Unit
313 N.E. 21st Street
Oklahoma City, Oklahoma 73105
Office: (405) 522-4448
Fax: (405) 522-0608

Date: 02/27/09

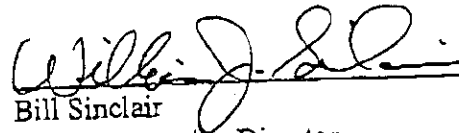


Steven A. Thompson, Executive Director
Oklahoma Department of Environmental Quality
707 N. Robinson
Oklahoma City, Oklahoma 73101

FOR THE STATE OF UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY

Date: 2/19/09

By:

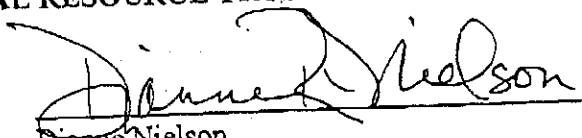


Bill Sinclair
Acting Executive Director
Utah Department of Environmental Quality
168 North 1950 West
P.O. Box 144810
Salt Lake City, Utah 84114-4810

FOR THE STATE OF UTAH NATURAL RESOURCE TRUSTEE

Date: 2/25/09

By:



Dianne Nielson
Utah Natural Resource Trustee

FOR THE STATE OF WASHINGTON

Date: 2-23-09

Robert M. McKenna
Attorney General



Elliott Furst
Senior Counsel
Attorney General of Washington
Ecology Division

Field Code Changed

The ASARCO Multi-State Custodial Trustee
By and through LePetomane XXV, Inc., not
individually but solely in the representative capacity
as Trustee of the ASARCO Multi-State Custodial Trust

Date: March 12, 2009 By: Jay A Steinberg *not individually*
but solely as President
Jay A. Steinberg, not individually but solely
in the representative capacity as President
of the Trustee of the Custodial Trust

FOR ST. PAUL TRAVELERS

Date: _____

Name: _____

Position: _____

[THIS PAGE TO BE SUPPLEMENTED]



ENTERED
06/05/2009

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

In re:	§	Case No. 05-21207
	§	
ASARCO LLC, et al.,	§	Chapter 11
	§	
Debtors.	§	Jointly Administered
	§	

ORDER AND JUDGMENT APPROVING AMENDED CONSENT DECREE AND SETTLEMENT AGREEMENT ESTABLISHING A CUSTODIAL TRUST FOR CERTAIN SITES IN ALABAMA, ARIZONA, ARKANSAS, COLORADO, ILLINOIS, INDIANA, NEW MEXICO, OHIO, OKLAHOMA, UTAH, AND WASHINGTON [DOCKET NOS. 10534, 10542, 10642, 11316, 11343, AND 11519]

Upon consideration of the Motion Under Bankruptcy Rule 9019 For Order Approving Settlement of Environmental Claims (the "Motion"); and it appearing that the Court has jurisdiction over this matter; and it appearing that due notice of the Motion has been provided as set forth in the Motion, and that no other or further notice need be provided; and it appearing that public comment on the Multi-State Custodial Trust Settlement Agreement¹, which was originally filed on March 13, 2009 and to which a supplemental version was filed on March 27, 2009, has occurred and the United States has filed its response to comments; and it further appearing that the relief requested in the Motion is in the best interests of the Debtors and their estates and creditors; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefore, for the reasons set forth in the Court's Findings of Fact and Conclusions of Law on Debtors' Motion For Order Approving Settlement of Environmental Claims, it is

¹ All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion.

ORDERED that the Multi-State Custodial Trust Settlement Agreement, which sets forth a settlement of environmental claims by and between the United States, ASARCO, ASARCO Master, Inc., AR Sacaton, LLC, CAPCO, Alta Mining and Development Company, the States of Alabama, Arizona, Arkansas, Colorado, Illinois, Indiana, New Mexico, Ohio, Oklahoma, Utah, and Washington, LePetomane XXV (not individually, but solely in its representative capacity as trustee of the custodial trust), and St. Paul Travelers is approved; and it is further

ORDERED that, the Debtors are authorized to enter into and implement the Multi-State Custodial Trust Settlement Agreement; and it is further

ORDERED that the multi-state custodial trust shall receive a settlement payment totaling \$70,955,493 which shall be treated as an administrative expense priority claim in accordance with Section 1129 of the Bankruptcy Code and be paid in cash, in full on the effective date, and shall have a general unsecured claim of \$177,486; and it is further

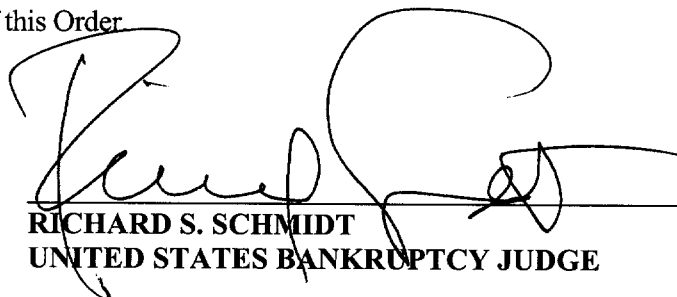
ORDERED that the Multi-State Custodial Trust Settlement Agreement is fair, reasonable, and consistent with environmental law; and it is further

ORDERED that the standards set forth in *Protective Comm. for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414 (1968) and Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") or other applicable environmental law have been met with regard to the Multi-State Custodial Trust Settlement Agreement; and it is further

ORDERED that the Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order

Dated:

50 June 2009



RICHARD S. SCHMIDT
UNITED STATES BANKRUPTCY JUDGE