

**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
)	
<u>Debtors.</u>)	

**CONSENT DECREE AND SETTLEMENT AGREEMENT ESTABLISHING A
CUSTODIAL TRUST FOR THE OWNED SMELTER SITE IN EL PASO, TEXAS AND
THE OWNED ZINC SMELTER SITE IN AMARILLO, TEXAS**

WHEREAS, the El Paso Smelter facility, described in more detail in Attachment A hereto (the “El Paso Smelter Site”) is owned in whole or in part by ASARCO LLC and has been and will be the subject of environmental response activities and other work. The ASARCO-owned portion of the El Paso Smelter Site is referred to herein as the “El Paso Designated Property” and is described more fully in Attachment B substantially in the form attached hereto and the Parties agree to cooperate in good faith to finalize this legal description as soon as practicable;

WHEREAS, the Amarillo Zinc smelter site (the “Amarillo Site”), described in more detail in Attachment A hereto, is owned in whole or in part by ASARCO LLC and has been and will be the subject of environmental response activities and other work. The ASARCO-owned portion of the Amarillo Site is referred to herein as the “Amarillo Designated Property” and is described more fully in Attachment B substantially in the form attached hereto and the Parties agree to cooperate in good faith to finalize this legal description as soon as practicable;

WHEREAS, the property in Corpus Christi, described in more detail in Attachment A (the “Corpus Christi Site,” collectively with the El Paso Smelter Site and the Amarillo Site, the “Sites”), is subject to a conservation easement. The ASARCO-owned portion of the Corpus

Christi Site (subject to the conservation easement) is referred to herein as the "Corpus Christi Designated Property" as more fully described in Attachment B (collectively with the El Paso Designated Property and the Amarillo Designated Property, the "Texas Designated Properties");

WHEREAS, the United States on behalf of the Environmental Protection Agency ("US EPA") and the Texas Commission on Environmental Quality ("TCEQ") (together, the "Governments") have alleged that ASARCO LLC, formerly known as ASARCO Incorporated, and/or affiliated debtors¹ (collectively "ASARCO" or "Debtors") are potentially responsible parties or are otherwise liable for costs with respect to the Sites;

WHEREAS, the United States on behalf of US EPA has alleged that it incurred past response costs and/or may incur future response costs, under federal environmental laws, statutes, and regulations in connection with certain of the Texas Designated Properties and/or the Sites for which ASARCO allegedly is liable and that ASARCO is liable for all post-petition response costs and the performance of work under, *inter alia* CERCLA and RCRA, relating to certain of the Texas Designated Properties as a present owner thereof;

WHEREAS, the TCEQ has alleged that it may incur future response costs, under CERCLA, RCRA, or state environmental law in connection with certain of the Texas 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, and the performance of work under

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. 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. The 2006 Subsidiary Debtors are: Southern Peru Holdings, LLC; AR Sacaton, LLC, a Delaware limited liability company; and ASARCO Exploration Company, Inc. 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. Collectively, all of these entities are referred to herein as the "Affiliated Debtors."

CERCLA, RCRA, or state law relating to certain of the Texas Designated Properties as a present owner thereof;

WHEREAS, ASARCO filed with the United States Bankruptcy Court for the Southern District of Texas a voluntary petition for relief under Title 11 of the United States Bankruptcy Code on August 9, 2005 (the "Bankruptcy Case");

WHEREAS, the United States filed Proofs of Claim Nos. 8375, 10746, and 11008 in the Bankruptcy Case protectively setting forth claims or causes of action for future response costs and work pursuant to ASARCO's status as present owner of certain of the Texas Designated Properties and/or the Sites;

WHEREAS, the TCEQ filed Proofs of Claim Nos. 10451, 10453, 10460, 10462, in the Bankruptcy Case setting forth claims and causes of action under environmental laws and pursuant to ASARCO's status as present owner of certain of the Texas Designated Properties and/or the Sites;

WHEREAS, the Debtors and the United States have entered into separate settlements relating to the International Boundary and Water Commission ("IBWC") Site (a location at which hazardous substances from the El Paso Smelter Site have come to be located) and relating to past response costs at the El Paso County Metals Site (collectively, the "Separately Settled Matters");

WHEREAS, the Dona Ana site is located near ASARCO's El Paso, Texas Smelter in Dona Ana County, New Mexico, and includes locations at which hazardous substances from this property have come to be located (the "Dona Ana Site"); the El Paso County Metals Survey Site is located near ASARCO's El Paso, Texas Smelter in El Paso County, Texas, and includes locations at which hazardous substances from this property have come to be located (the "El

Paso Metals Site”); the United States filed Proof of Claim number 10746 regarding the El Paso Metals Site and the Dona Ana Site; the TCEQ filed Proofs of Claim numbers 10450, 10454, 10459, and 10463 regarding the El Paso Metals Site; which sites were 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 [#5775-2] (the “El Paso Metals/Dona Ana Stipulation”); the claims in such El Paso Metals/Dona Ana Stipulation are being resolved by this Settlement Agreement, with the exception of the response actions described in Paragraph 24 below;

WHEREAS, ASARCO has disputed the claims and protective claims with respect to the Texas Designated Properties and/or the Sites filed by the United States and the TCEQ 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 a proposed resolution of the claims for the Texas Designated Properties and the Sites in the 2008 Plan Exhibit 12;

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

WHEREAS, the Debtors, the United States, and the TCEQ wish to enter into this Settlement Agreement (“Settlement Agreement”) for the Texas Designated Properties and the Sites;

WHEREAS, the Debtors and the Governments (together, the “Parties”) desire to settle, compromise and resolve their disputes relating to the Texas Designated Properties and the Sites, other than Separately Settled Matters;

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

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 a compromise of what the Governments would claim in the absence of this settlement; and

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

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. "Closing Date" shall mean the effective date of the Settlement Agreement, as provided in Paragraph 39 hereof.
2. "Custodial Trust Parties" shall mean the Custodial Trust, the Custodial Trustee, and the Custodial Trustee's employees, consultants, agents or other parties professionals or representatives employed by the Custodial Trust or Custodial Trustee. In the event the Trustee is a corporation, "Custodial Trust Parties" shall also include the Custodial Trustee's officers, directors and shareholders.

3. "Custodial Trustee" shall mean the Custodial Trust by and through its trustee not individually but solely in its representative capacity.

4. "Environmental Actions" shall mean any response, removal, investigation, remediation, reclamation, closure, post-closure, corrective actions, institutional controls, and operation and maintenance activities selected and approved by the TCEQ with respect to the Texas Designated Properties.

5. "Environmental Law" means any Law² pertaining to health, industrial hygiene, public safety, occupational safety, mining, mine reclamation, natural or cultural resources, fish, wildlife or other protected species or the environment, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601, *et. seq.*); the Resource, Conservation and Recovery Act of 1976 (42 U.S.C. § 6901, *et. seq.*); the Toxic Substances Control Act (15 U.S.C. § 2601, *et. seq.*); the Clean Water Act (33 U.S.C. § 1251, *et. seq.*); the Oil Pollution Act of 1990 (33 U.S.C. § 2701, *et. seq.*); the Clean Air Act (42 U.S.C. § 7401, *et. seq.*); the Atomic Energy Act (42 U.S.C. § 2011, *et. seq.*); the Hazardous Materials Transportation Act (49 U.S.C. § 5101, *et. seq.*); the Emergency Planning and Community Right-To-Know Act (42 U.S.C. 11001, *et. seq.*); the Endangered Species Act of 1973 (16 U.S.C. §1531, *et. seq.*); the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1701, *et. seq.*); the Lead-Based Paint Exposure Reduction Act (15 U.S.C. § 2681, *et. seq.*); the Safe Water Drinking Act Amendments of 1996 (42 U.S.C. § 300); the National Historic Preservation Act of 1966; the Mine Safety and Health Act (30 U.S.C. 801 *et seq.*); the Surface Mining Control and Reclamation Act (30 U.S.C. 1201 *et seq.*) and state and local counterparts of each of the foregoing.

² "Law" means any federal, tribal, state or local or provincial law (including common law), statute, code, ordinance, rule, regulation, executive order, Order, administrative or judicial decision, judgment or decree or other requirement enacted, promulgated, issued or entered by a Governmental Authority.

6. "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.

7. The "Texas Designated Properties" are as set forth substantially in the form in Attachment B hereto and the Parties agree to cooperate in good faith to finalize these legal descriptions as soon as practicable.

8. Capitalized terms not otherwise defined herein shall have the meanings provided for in CERCLA or otherwise applicable environmental law, as applicable. In the case of a conflict between a term under CERCLA and other applicable Texas environmental law, Texas law shall apply.

II. JURISDICTION

9. 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

10. 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 debtors under a confirmed plan of reorganization in the Reorganization Cases (the "Reorganized Debtors"), and any trustee, examiner or receiver appointed in the Bankruptcy Case.

IV. FORMATION AND PURPOSES OF THE CUSTODIAL TRUST

11. 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 the receipt of the payments to the Custodial Trust under Subparagraph 12(d), Debtor shall establish a separate Custodial Trust for the El Paso Designated

Property and the Amarillo Designated Property. On the Effective Date, 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, appurtenant groundwater rights, associated surface water rights, claims, and filings, permits, and other interests in, to, related to, or benefiting the El Paso Designated Property and the Amarillo Designated Property, that they hold to that Custodial Trust ("Custodial Trust") (including without limitation all fixtures, improvements, and equipment located thereon as of the Effective Date) with the exception of equipment and other items of personal property on Attachment C. Debtors shall retain no ownership or other interest whatsoever in the El Paso Designated Property and the Amarillo Designated Property (except to the extent property is listed on Attachment C as referenced above). The transfer of ownership shall be by quit claim deed substantially in the form of Attachment F of all of the Debtors' rights, title and interests and shall be free and clear of all claims, liens, and interests against the Debtors other than any liability to the United States, the State of Texas or the TCEQ under this Settlement Agreement, but subject to any existing *in rem* claims other than liens for the payment of monetary claims such as property taxes or other monetary claims asserted or that could have been asserted in the Reorganization Cases. 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 El Paso Designated Property and the Amarillo Designated Property prorated through the Effective Date.

- b. The purpose of the Custodial Trust will be to own the El Paso Designated Property and the Amarillo Designated Property, carry out administrative and property management functions related to such properties, conduct, manage, and/or fund implementation of future Environmental Actions with respect to such properties, and ultimately to sell, transfer, or otherwise dispose of all or part of such properties, if possible. With respect to the El Paso Smelter Site, the purposes of this Texas Custodial Trust further include: 1) addressing contamination (including without limitation Hazardous Substances) on and in the structures, soils, surface water, and groundwater at such site; and 2) remediating such site to standards that are protective of human health and the environment with the oversight of the TCEQ. The proceeds of the sale of the El Paso Designated Property shall be held in the Texas Custodial Trust and may be used for funding any Environmental Actions and administrative costs of the Custodial Trust at the El Paso Designated Property that have been approved by the TCEQ after consultation with US EPA after the original funds from this Settlement Agreement have been exhausted. The remaining proceeds from any such sale will be distributed as provided in Subparagraph 12.i.(2) below. In the event of any approved sale or lease or other disposition of the Amarillo Designated Property, any net proceeds from the sale or lease or other disposition shall be paid to the Custodial Trust (subject to Subparagraph 12(i)(1) and Paragraph 13 hereof).

The Custodial Trustee shall have no authority to engage in any trade or business.

The Debtor and the TCEQ will exchange information and reasonably cooperate to determine the appropriate disposition of any executory contracts or unexpired leases that relate to the El Paso Designated Property and the Amarillo Designated Property. The Custodial Trust shall be funded as specified in Paragraph 12 herein.

- c. ASARCO will appoint a Custodial Trustee selected by TCEQ and the United States at least 10 days prior to the Effective Date (not individually but solely in its representative capacity) 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) 90 days after the Closing Date, or (ii) the Effective Date, the Debtor shall make available to the Custodial Trustee all environmental information and/or data in the state and condition in which such records are found regarding the El Paso Designated Property and the Amarillo Designated Property in possession of Debtor or its contractors. With respect to environmental information and/or data located at the Debtor's offices in Tucson, upon request of the Custodial Trustee, the Debtor shall ship all non-privileged information and/or data maintained by Tom Aldrich and the employees who report to him to the Trustee. With respect to any non-privileged environmental information and/or data not maintained by Tom Aldrich and the employees who report to him, the Debtor shall provide reasonable assistance to the Trustee in locating such records

and the Bankruptcy Court will retain jurisdiction to hear any discovery disputes. With respect to environmental information and/or data located at the Sacaton warehouse, to the extent that any indices, itemizations or other characterizations of the documents exist and are reasonably available, those shall be promptly furnished to the Trustee. The Debtor shall provide reasonable assistance to the Governments in locating requested records.

12. The Custodial Trust Account

- a. There shall be created a segregated Custodial Trust Account to provide funding for future Environmental Actions with respect to the El Paso Designated Property and the Amarillo Designated Property as well as to fund the payment of real estate taxes, insurance, and other administrative costs of the Custodial Trust.
- b. Funds in the Custodial Trust Account shall be held in trust by a financial institution selected by the United States and the TCEQ prior to the Effective Date. The United States and the TCEQ shall be the sole beneficiaries of the Custodial Trust Account.
- c. All interest shall be retained in the 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 United States and the TCEQ in accordance with the terms of this Settlement Agreement.
- d. In settlement and full satisfaction of all claims against Debtors other than the Separately Settled Matters related to the El Paso Designated Property and the Amarillo Designated Property and the El Paso Smelter Site and the Amarillo Site

(including but not limited to the liabilities and other obligations asserted in the United States' and TCEQ's Proofs of Claim and other pleadings filed or evidence presented to the Bankruptcy Court relating to the those Designated Properties and Sites other than the Separately Settled Matters), Debtors shall make cash contributions to the Custodial Trust Account totaling Fifty-Two Million Eighty Thousand Dollars (\$52,080,000.00) (which shall be reduced as provided in Paragraph 12(e) below) on the Effective Date to fund future Environmental Actions and administrative costs of the Custodial Trust. The Parties will reasonably cooperate to find an appropriate disposition of the Corpus Christi Designated Property, including if needed placing the property into a separate custodial trust, the funding of which will either be agreed to or will be decided by the Bankruptcy Court. The funding of such separate custodial trust or other agreed upon disposition shall be in full resolution of all claims of EPA and TCEQ against Debtors related to the Corpus Christi Designated Property and Site, but any easements on the Corpus Christi Designated Property and Site will survive provided any obligations of Debtors thereunder shall be extinguished.

- e. The amount of payment for any Texas Designated Property under Subparagraph 12(d) shall be reduced to reflect actual expenditures by Debtors at a Texas Designated Property for Capital Expenditure Response Costs³ for work performed between February 1, 2009 and the Effective Date. The costs that Debtors receive credit for shall not be associated with the Prepetition ASARCO Environmental Trust. Such costs must be approved in writing in advance by TCEQ for the Texas

³ "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 Contingency Plan or in compliance with applicable law being administered by the TCEQ at the Designated Property.

Designated Property. Debtors shall include an estimate of the expenditures in any such requests. The TCEQ shall seek to respond within 15 business days of any requests for approval of expenditures. If the TCEQ has ordered or otherwise directed in writing that ASARCO perform specific remediation at a Texas 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, TCEQ 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 written direction by TCEQ, and either TCEQ fails to respond within 10 business days of any requests for approval of expenditures or TCEQ fails to provide an alternative within 10 business days, and TCEQ does not indicate or otherwise agree that ASARCO should delay work until TCEQ 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 such work; provided, however, this Paragraph is subject to Paragraph 15(h). Following completion of any work under this Paragraph, the Debtor shall provide documentation to the TCEQ 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 work performed that does not also receive final TCEQ approval after such work is performed, provided that if TCEQ fails to make a determination within 10 business days from the date Debtors request such approval or TCEQ denies final approval for some or all of the costs of a project, ASARCO may seek approval

from the Bankruptcy Court for determination of appropriate credit for the performance of such work and the Bankruptcy Court's decision shall be final. To the extent there is any work in progress that is not anticipated to be completed prior to the Effective Date, the Parties agree to work cooperatively to determine an appropriate stopping point for Debtors' work prior to the Effective Date and to finalize any credit for such work. No reduction shall be made for expenditures on property not owned by Debtors. The Parties further agree that, at a minimum, the following work is not eligible for a reduction of the \$52,080,000.00: 1) the remediation of the diesel in the groundwater, including operation, sampling, and analyticals of the diesel recovery system; 2) semi-annual groundwater sampling to monitor the stability of the groundwater plume contaminated with metals and semi-annual surface water sampling to ensure no impacts to surface water; 3) removal and disposal of excess material from Cell #3; and 4) completion of the cap construction for the three repository cells. The parties further agree, subject to the above requirements and limitations of this Subparagraph, that the following work, at a minimum is eligible for a reduction of the \$52,080,000.00: (1) the costs to site, design, construct, and cap Cell #4.

- f. 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, will be sought and the Bankruptcy Court

shall retain continuing jurisdiction over the Custodial Trust 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 will 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).

- g. The Custodial Trustee shall use the Custodial Trust Account to fund future Environmental Actions pursuant to CERCLA, RCRA, or environmental State statutes with respect to the El Paso Designated Property and the Amarillo Designated Property as well as to fund the administrative costs of the Custodial Trust that have been approved by the TCEQ after consultation with US EPA.
- h. Within sixty 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 TCEQ, a balance statement, fee schedule, annual scope of work and proposed budget for the coming year. The TCEQ shall have the authority to approve, disapprove or modify the proposed budget, fee schedule and scope of work after consultation with US EPA.
- i. Upon the completion of all final actions and disbursement of all final costs for the El Paso Designated Property and the Amarillo Designated Property and/or such

sites, any funds remaining in the Custodial Trust Account shall be transferred as follows:

(1) for all funds remaining from the initial \$52,080,000 payment (which shall be reduced pursuant to Subparagraph 12(e) hereof) to the Texas Custodial Trust, to the following in the order designated: (A) first, in accordance with instructions provided by the United States Department of Justice and the TCEQ to custodial trust accounts that may be established for property in Texas, with remaining actions to be performed and a need for additional trust funding, including but not limited to the Federated Metals State Superfund site and the Encycle/Texas site, or to TCEQ or US EPA for their oversight costs at the Texas Designated Properties and/or Sites; provided, notwithstanding anything to the contrary in this Settlement Agreement, no funds shall be transferred to an account to the extent that expenditures by, or work funded by, such account may reduce (directly or indirectly) any liabilities of ASARCO, the Debtors, the Reorganized Debtors, Americas Mining Corporation, ASARCO USA Incorporated, their successors, their affiliates, or any Persons related to any of the preceding (within the meaning of section 468B(d)(3) of the Internal Revenue Code); (B) second, then in accordance with instructions provided by the United States Department of Justice after consultation with the TCEQ, to any of the other Custodial Trust Environmental Cost Accounts established pursuant to the other environmental settlement agreements⁴ established in the Reorganization Cases for a Property in

⁴ 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

another State with remaining actions to be performed and a need for additional trust funding; and (C) third, then to the EPA Hazardous Substance Superfund (the "Superfund").

(2) for remaining funds from the proceeds of sale of all or a portion of the El Paso Designated Property, to the Reorganized Debtors for the benefit of: (i) Reorganized Debtors to the extent of any resulting taxes relating to this Subparagraph incurred by the Reorganized Debtors, and (ii) the creditors of Debtors as provided in the plan of reorganization that is ultimately approved by the Bankruptcy Court;

The creditors or their representatives shall not by virtue of their interest from the proceeds from this possible sale have standing to object to the manner in which the El Paso Designated Property is remediated. The Trustee shall use ordinary and prudent judgment in considering a proposal to sell the real estate associated with the El Paso Designated Property and may consider criteria other than sales price. Any sale by the Trustee shall however be for at least fair value.

13. The TCEQ and the United States may agree in writing at any time after one year from the Effective Date that based on new information about the estimated cost of cleanup or administration or the assumption of liability by a financially qualified buyer or other party for remediating a Site, that the funding in the Custodial Trust Account is more than is conservatively projected to be needed. Upon such an agreement, any such excess funding remaining in the

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.

Custodial Trust Account shall be transferred as set forth in Paragraph 12(i) (subject to any limitation described therein).

14. Debtor shall continue, at its own expense, the operations of any required ongoing environmental activities being performed by Debtor at a Texas Designated Property until the payments required by Paragraph 12(d) of this Settlement Agreement are made (subject to any credit pursuant to Subparagraph 12(e)). Debtors may receive credit for such activities to the extent permitted pursuant to Subparagraph 12(e) of this Settlement Agreement.

15. Custodial Trust Miscellaneous Provisions

- a. In no event shall the Custodial Trust Parties be held liable to any third parties for any liability, action, or inaction of any other party including each other.
- b. The Custodial Trust Parties shall be deemed to have resolved their civil liability under CERCLA, RCRA and similar State environmental statutes, to the United States and the TCEQ, 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 Subparagraph 15(b), the matters addressed in this Settlement Agreement are all Environmental Actions and past costs and oversight costs with respect to the Texas Designated Properties and Sites other than the Separately Settled Matters.
- c. The Custodial Trustee shall implement any institutional controls or deed restrictions requested by the TCEQ with respect to the Texas 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 the Texas Designated Properties.

- d. The United States and the TCEQ may jointly direct in their sole discretion that the Custodial Trustee be replaced in accordance with the Custodial Trust Agreement.
- e. The Custodial Trust, through the Custodial Trustee, and the Custodial Trustee shall take such actions and execute such documents as are reasonably requested by Debtor with respect to effectuating the Plan and the transactions contemplated thereby, provided that such actions are not inconsistent with the terms of this Settlement Agreement.
- f. The Custodial Trust is intended to be governed by the terms of the Texas 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.
- g. As material condition of this compromise and settlement, no sale of the El Paso Designated Property shall take place out of the bankruptcy estate. Any sale of such property shall only take place after the El Paso Designated Property has been transferred to and in accordance with the terms of the Custodial Trust.
- h. It is the express intent of the Parties that Debtors' total financial obligations at each Texas Designated Property shall not exceed the amount of funding provided for the Custodial Trust Account related to that Texas Designated Property; provided, however, this Subparagraph: (i) does not apply to funds expended from the Prepetition ASARCO Environmental Trust; (ii) does not limit the amount of penalties relating to Debtors conduct occurring between February 1, 2009 and the Effective Date pursuant to Paragraph 22; (iii) does not limit the United States' and Texas' reservation of rights for liability in Paragraph 31, subpart (ii) and (iii); (iv) does not apply to any costs required to be incurred prior

to the Effective Date that are not Capital Expenditure Response Costs; and (v) does not apply to the following four items to the extent costs related to these items are incurred prior to the Effective Date (1) the remediation of the diesel in the groundwater, including operation, sampling, and analyticals of the diesel recovery system; (2) semi-annual groundwater sampling to monitor the stability of the groundwater plume contaminated with metals and semi-annual surface water sampling to ensure no impacts to surface water; (3) removal and disposal of excess material from Cell #3; and (4) completion of the cap construction for the three repository cells.

- i. The United States and Texas 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 Debtor 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 E, 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 effect 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 Debtor's estate as the owner, operator, or lessee of the Ray Mine, the Mission Mine, the Hayden Smelter, the Amarillo Copper Refinery, 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 Plan Administrator or Reorganized Debtor shall succeed to ASARCO's administrative role, and shall, in its sole discretion, act as Performing Entity (as defined in the trust) from time to time, but shall assume no affirmative liabilities or obligations associated with that role.

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 claim 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 that 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 E 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 Plan Administrator, Plan Administration Reserve, or Reorganized Debtor, 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.

All of the provisions of this Paragraph and 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.

16. The Custodial Trustee shall provide the United States and the TCEQ and their representatives and contractors access to all portions of the Texas Designated Properties that it owns at all reasonable times for the purposes of conducting Environmental Actions at or near the Texas 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 Texas 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 the Texas Designated Properties prior to the Effective Date shall survive the Settlement Agreement.

17. The Custodial Trustee may at any time seek the approval of US EPA and the TCEQ for the sale or lease or other disposition of all or part of the Texas Designated Properties. 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.

18. No Custodial Trust Party shall be personally liable unless the Bankruptcy Court, by a final order, finds that it was grossly negligent or committed fraud or willful misconduct after the Effective Date in relation to the Custodial Trustee's duties. It shall be an irrebuttable

presumption that any action taken or not taken with the approval of the Bankruptcy Court shall not constitute gross negligence or willful misconduct.

19. Except to the extent that they are found by a final order of a Court to have been grossly negligent or committed fraud or willful misconduct after the Effective Date in relation to the Custodial Trustee's duties, the Custodial Trust Parties are exculpated by all persons, including without limitation, holders of claims or other parties in interest, of and from any and all claims, causes of action and other assertions of liability relating in any way to Debtors or 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 the Plan, this Settlement Agreement, the Custodial Trust Agreement, or any order of court entered pursuant to or in furtherance of the Plan, 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 the Plan, 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.

20. 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 (c) persons dealing with the Custodial Trust Parties shall look only to the Custodial Trust assets that may be available to them consistent with the 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 18.

21. Neither the United States, the TCEQ, nor any of the 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 the Texas Designated Properties on account of this Settlement Agreement or actions contemplated thereby.

V. OUTSTANDING OBLIGATIONS

22. Except as specifically provided in Paragraph 24 with respect to the El Paso Metals/Dona Ana Stipulation, 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 Texas Designated Properties, and any statutory, stipulated, or other penalties allegedly due as of February 1, 2009 related to such orders or decrees, are fully resolved and satisfied by this Settlement Agreement. Debtor shall be removed as a party to such orders or decrees pursuant to the terms hereof on the Effective Date including but not limited to the TCEQ Agreed Order Docket No. 96-0212-MLM-E and any directives issues thereunder and the consent decree entered by the U.S. District Court for the Southern District of Texas on October 6, 1999 in United States of America and State of Texas v. Encycle/Texas, Inc. and ASARCO LLC, Cause No. H-99-1136 (the "1999 Consent Decree"); provided, however, that all requirements to retain records shall remain in full force and effect until the Effective Date, and that Debtor 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 TCEQ with respect to the Texas Designated Properties. With respect to the 1999 Consent Decree the United States and ASARCO will file papers with the U.S. District Court for the Southern District of Texas to modify the Consent Decree to conform to this Settlement Agreement and remove ASARCO as a party to the Consent Decree. Debtors shall continue to perform work with respect to the El Paso Metals 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. 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

23. With respect to the Texas Designated Properties and the Sites (including releases of hazardous substances from any portion of the Texas Designated Properties and Sites and all areas affected by natural migration of such substances from the Texas Designated Properties and Sites) and except as specifically provided in Section VII (Reservation of Rights), the United States, on behalf of US EPA, and the TCEQ 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 §§ 3008, 7002, 7003, 42

U.S.C. §§ 6928, 6972, 6973; and any similar state law; or any liabilities or obligations asserted in the United States' and TCEQ's Proofs of Claim except as to Separately Settled Matters.

24. With respect to the El Paso Metals Site (including releases of hazardous substances from any portion of the El Paso Metals Site and all areas affected by natural migration of such substances from the El Paso Metals), the United States, on behalf of EPA, and the TCEQ further 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 §§ 3008, 7002, 7003, 42 U.S.C. §§ 6928, 6972, 6973; and any similar state law; or any liabilities or obligations asserted in its Proofs of Claim, except 1) as to Separately Settled Matters, and 2) that the Debtors agree to propose in any plan of reorganization that the Plan Administrator shall have the obligation to enter into agreements with third party contractors to conduct and complete the uncompleted portion of the residential yard cleanups required under the El Paso Metals/Dona Ana Stipulation to the extent funded by the Prepetition ASARCO Environmental Trust or the Prepetition ASARCO Environmental Trust Escrow provided, however, that any agreement entered into by the Plan Administrator and any third party with respect to such response actions shall not include any indemnification obligation by ASARCO, any other Debtor, Reorganized ASARCO, or the Plan Administrator. In the event that the Plan Administrator is unable to enter into an agreement with a third party contractor in respect of such response actions without providing indemnification to the third party, the Plan Administrator shall be excused from any and all obligations with respect to the performance of such response actions. In no event can any funds from the Custodial Trust be used for the uncompleted portion of the residential yard cleanups required under the El Paso Metal/Dona Ana

Stipulation until all the funds available under the Prepetition ASARCO Environmental Trust and the Prepetition ASARCO Environmental Trust Escrow have been exhausted.

25. 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 United States on behalf of US EPA 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; 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, except 1) as to Separately Settled Matters, and 2) as provided in Paragraph 24 above.

26. This Settlement Agreement in no way impairs the scope and effect of the Debtor's 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.

27. Without in any way limiting the covenants not to sue (and the reservations thereto) set forth in Paragraphs 23-25 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.

28. The covenants not to sue contained in Paragraphs 23-25 of this Settlement Agreement extend only to Debtors, Reorganized Debtors, and the persons described in Paragraph 27 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, Reorganized Debtors, the United States, the TCEQ, and the persons described in Paragraph 27. The United States, the TCEQ, Debtors, and Reorganized Debtors 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, TCEQ, Debtors, or Reorganized Debtors 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 Texas Designated Properties and the Sites and/or claims addressed herein.

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

30. With respect to the Texas Designated Properties and Sites and the El Paso Metals Site, Debtors and Reorganized Debtors covenant not to sue and agree not to assert claims or causes of action against the United States or the TCEQ for any direct or indirect claim for reimbursement from the Hazardous Substance 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 TCEQ, 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, provided nothing herein shall preclude the Plan Administrator from receiving funds from the Prepetition ASARCO Environment Trust or the Prepetition ASARCO Trust Escrow as provided in Paragraph 24. 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). With respect to the Dona Ana Site, Debtors, or Reorganized Debtors covenant not to sue and agree not to assert claims or causes of action against the United States for any direct or indirect claim for reimbursement from the Hazardous Substance 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, 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

31. 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 TCEQ reserve, and this Settlement Agreement is without prejudice to, all rights against the Debtors, Reorganized Debtors, or other persons with respect to all other matters, other than those referred to in Paragraphs 23 – 25, including but not limited to: (i) any action to enforce the terms of this Settlement Agreement; (ii) the Separately Settled Matters; and (iii) liability for response costs and injunctive relief under CERCLA Sections 106 and 107, RCRA Sections 7002 and 7003, or state laws for Debtors' or

Reorganized Debtors' future acts creating liability under CERCLA, RCRA, or state law that occur after the Closing Date. Debtors' or 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 TCEQ also reserve, and this Settlement Agreement is without prejudice to, any liability of 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.

32. Subject to the provisions of Subparagraph 12(e) hereof, the United States and Texas also reserve all rights against Debtors until the Effective Date (as defined in Paragraph 11(a) hereof), provided however, this paragraph is subject to Paragraph 15(h).

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

34. 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

35. The Parties hereto agree that, as of the Closing Date, Debtors and Reorganized Debtors 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. The matters addressed in this Settlement Agreement include all Environmental Actions, costs of response, including oversight costs, incurred or to be incurred by the United States and the TCEQ or any other person relating to or in connection with the Texas Designated Properties, the Sites, the Dona Ana Site, and the El Paso Metals Site, including releases of hazardous substances from any portion of the Texas Designated Properties, the Sites, the Dona Ana Site, and the El Paso Metals Site, and all areas affected by natural migration of such substances from such sites. Matters addressed in this Settlement Agreement do not include the Separately Settled Matters.

IX. PUBLIC COMMENT

36. This Settlement Agreement will be subject to a thirty (30) day public comment period following notice published in the Federal Register and the Texas Register which may take place concurrent with the judicial approval process under Paragraph 37 hereof. The United States and the TCEQ 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 the TCEQ will provide the Court with copies of any public comments and their response thereto.

X. JUDICIAL APPROVAL

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

XI. RETENTION OF JURISDICTION

38. This 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

39. This Settlement Agreement shall be effective after the close of the public comment period in accordance with Paragraph 36, and upon approval by the Bankruptcy Court pursuant to Paragraphs 36 and 37 of this Settlement Agreement.

XIII. SIGNATORIES/SERVICE

40. 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.

**THE UNDERSIGNED PARTIES ENTER INTO THIS SETTLEMENT AGREEMENT
FOR THE UNITED STATES**

Date: 3/20/2009 _____

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

Date: 3/20/2009 _____

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

FOR THE UNITED STATES

Date: _____

3/10/09

(Lawrence E. Starfield
Acting Regional Administrator
Region VI
U.S. Environmental Protection Agency

FOR THE UNITED STATES

Date:

3/13/09

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

FOR THE STATE OF TEXAS

GREG ABBOTT
Attorney General of Texas

C. ANDREW WEBER
First Assistant Attorney General

DAVID S. MORALES
Deputy Attorney General for Civil Litigation

RONALD R. DEL VENTO
Assistant Attorney General
Chief, Bankruptcy & Collections Division

Date: 3/19/09

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Attorneys for the Texas Commission On
Environmental Quality(TCEQ)

FOR THE STATE OF TEXAS

Date: 3-19-09

Mark R. Vickery, P.G.
Executive Director
Texas Commission on Environmental Quality

FOR ASARCO LLC and American Smelting and Refining Company

Date: March 19, 2009

Thomas L. Aldrich
Vice President, Environmental Affairs

Date: March 19, 2009

Douglas E. McAllister
Executive Vice President, General Counsel

**Attachment A
Texas Custodial
Trust Settlement Agreement**

Definition of Sites

1. The El Paso smelter site in El Paso County, Texas includes the El Paso Smelter Designated Property, any further description in the proofs of claim, and any location at which hazardous substances from this property have come to be located (the "El Paso Smelter Site").
2. The Amarillo zinc refinery site in Potter County, Texas includes the Amarillo Designated Property, any further description in the proofs of claim, and any location at which hazardous substances from this property have come to be located (the "Amarillo Site").
3. The Corpus Christi site includes the Corpus Christi Designated Property, any further description in the proofs of claim, and any location at which hazardous substances from this property have come to be located (the "Corpus Christi Site").

Amarillo Designated Property

Situated in Potter County, Texas,

61.89 acres located in Section 223, Block 2, A.B.&M. Survey, Potter County, Texas.

70.81 acres located in Section 224, Block 2, A.B.&M. Survey, Potter County, Texas.

Lots 39 and 40, Block 55, University Heights Addition, an Addition to the City of Amarillo, Potter County, Texas according to the map or plat thereof recorded in Volume 29, Page 211 of the Deed Records of Potter County, Texas.

Lots 7 and 8, Block 78, University Heights Addition, an Addition to the City of Amarillo, Potter County, Texas according to the map or plat thereof recorded in Volume 29, Page 211 of the Deed Records of Potter County, Texas.

Lots 37 through 44, inclusive, University Heights Addition, an Addition to the City of Amarillo, Potter County, Texas according to the map or plat thereof recorded in Volume 29, Page 211 of the Deed Records of Potter County, Texas.

Lots 23 and 24, Block 90, University Heights Addition, an Addition to the City of Amarillo, Potter County, Texas according to the map or plat thereof recorded in Volume 29, Page 211 of the Deed Records of Potter County, Texas.

Annex 2.2(g)-OO

El Paso Smelter Designated Property

Situated in El Paso County, Texas,

Parcel 1: Tracts 2-A, 2-C-1, 2-A-1, 2-A-2, 17-C, 17-D1, 24 and 25, JOHN BARKER SURVEY NO. 10, in the City of El Paso, El Paso County, Texas.

Parcel 2: Portion of HARRISON SURVEY NO. 54, in the City of El Paso, El Paso County, Texas.

Parcel 3: Tracts 3, 4, and 8, F. W. BROWN SURVEY NO. 224, in the City of El Paso, El Paso County, Texas.

Parcel 4: Tract 2, Noyes Rand Survey No. 131, in the City of El Paso, El Paso County, Texas.

	Tax Parcel Number	Description of Parcel	Acreage	Situs
1.	X010-999-0000-0200	John Barker Survey 10 Abstract # 7 Tract 2-A	241.9789	
2.	X010-999-0000-0220	John Barker Survey 10 Abstract # 7 Tract 2-C-1	.2830	Executive Center
3.	X010-999-0000-0230	John Barker Survey 10 Abstract # 7 Tract 2-A-1	47.9806	
4.	X010-999-0000-0250	John Barker Survey 10 Abstract # 7 Tract 2-A-2	100.6325	3125 W Paisano Drive
5.	X010-999-0000-1708	John Barker Survey 10 Abstract # 7 Tract 17-C (0.3090 acre) Tract 17-D-1 (0.4634 acre)	0.7724	447 Executive Center

6.	X010-999-0000-2400	John Barker Survey 10 Abstract # 7 Tract 24	0.500	
7.	X010-999-0000-2500	John Barker Survey 10 Abstract # 7 Tract 25	3.7220	
8.	X054-999-000A-0100	Harrison Survey 54 Abstract 2804	8.484	
9.	X054-999-000A-5000	Harrison Survey 54 Abstract 2804	0.8397	
10.	X054-999-000D-0100	Harrison Survey 54 Abstract 2804	2.0660	26500 W Paisano Drive
11.	X054-999-000D-0200	Harrison Survey 54 Abstract 2804	1.2680	
12.	X054-999-000D-0300	Harrison Survey 54 Abstract 2804	1.064	2700 W Paisano Drive
13.	X054-999-000E-0700	Harrison Survey 54 Abstract 2804	21.180	
14.	X054-999-000E-1505	Harrison Survey 54 Abstract 2807	1.657	
15.	X054-999-000E-7500	Harrison Survey 54 Abstract 2804	2.152	2535 V F W ST
16.	X224-999-0000-0301	F W Brown Survey 224 Abstract 3113 Tract 3 (2.531 acres) Tract 4 (1.322 acres) Tract 8 (1.147 acres)	5.000	
17.	X445-999-0000-2100	Noyes Rand Survey 131 Tract 2	18.500	

Corpus Christi Designated Property

Situated in Nueces County, Texas,

18.14 acres of land out of Tract No. 2 in partition in Cause No. 14419-A, Margaret Clare Whelan, et al. vs Edward Whelan, et al. in the District Court of Nueces County, Texas, said portion being more particularly described as follows:

BEGINNING at a set 5/8" iron rod at the established southeast corner this tract on the north R.O.W. line of IH 37 access road. The northeast corner of 1.045 acre tract, from Margaret Clare Whelan, et al. to State of Texas lying in said Tract No. 2 as recorded in Volume 975, Page 114;

THENCE North 20° 07' 15" East-2772.93 feet a set 5/8" iron rod in the south R.O.W. of Upriver Road for the northeast corner of this tract;

THENCE North 73° 00' 49" West-309.35 feet to a set 5/8" iron rod in the south R.O.W. of Upriver Road;

THENCE South 18° 57' 30" West-2863.44 feet to a set 5/8" iron rod in the north R.O.W. line IH 37 access road and the northwest corner of the above mentioned 1.045 acre tract;

THENCE North 86° 55' 19" East-272.81 feet with the north R.O.W. line of said 1.045 acre tract to the P.O.B. and containing 18.14 acres of land.

That certain tract of land out of the tract know as Share 1-Tract 1 of the 111.9 acres, known as the John Whelan Tract, and being a portion of the Tract 1(b) described in a Partition Deed by and between JOHN A. GRANT and wife, FRANCES LEE GRANT, CATHERINE GRANT KELLY and husband, ALDEN KELLY, MARY GRANT HOLY and husband, ERNEST HOLY, and A.G. GRANT, dated October 24, 1940 and recorded in Vol. 261, Page 552-555 of the Deed Records of Nueces County, Texas;

Save and except, that portion of the above described tract which was conveyed to the State of Texas in a deed from JOHN A. GRANT and wife, FRANCES LEE GRANT, to the State of Texas recorded in Vol. 976, Page 337-9 of the Deed Records of Nueces County, Texas.

And containing 5.663 acres, more or less.

That certain tract of land out of the tract known as Share 1-Tract 1 of the 111.9 acres, known as the John Whelan Tract, and being a portion of the Tract 1(c) described in a partition deed by and between JOHN A. GRANT and wife, FRANCES LEE GRANT, CATHERINE GRANT KELLY and husband, ALDEN KELLY, MARY GRANT HOLY and husband, ERNEST HOLY, and A.G. GRANT, dated October 24, 1940 and recorded in Vol. 261, Page 552-555 of the Deed Records of Nueces County, Texas;

Save and except, that portion of the above described tract which was conveyed to the State of Texas in a deed from MARY GRANT HOLY and husband, ERNEST HOLY to the State of Texas recorded in Vol. 969, Page 578 of the Deed Records of Nueces County, Texas;

And more particularly described in a Deed from MARY GRANT HOLY and husband, ERNEST HOLY, to FRANCES LEE GRANT recorded in Vol. 1262, Page 413 of the Deed Records of Nueces County, Texas;

And containing 6.412 acres, more or less.

That certain tract of land out of the tract known as Share 1-Tract 1 of the 111.9 acres, known as the John Whelan Tract, and being a portion of the Tract 1(d) described in a Partition Deed by and between JOHN A. GRANT and wife, FRANCES LEE GRANT, CATHERINE GRANT KELLY and husband, ALDEN KELLY, MARY GRANT HOLY and husband, ERNEST HOLY, and A.G. GRANT, dated October 24, 1940 and recorded in Vol. 261, Page 552-555 of the Deed Records of Nueces County, Texas;

Save and except, that portion of the above described tract which was conveyed to the State of Texas in a deed from CATHERINE GRANT KELLY and husband, A.L. KELLY to the State of Texas recorded in Vol. 969, Page 581 of the Deed Records of Nueces County, Texas;

And more particularly described in a Deed from CATHERINE GRANT KELLY and husband, A.L. KELLY, to FRANCES LEE GRANT recorded in Vol. 1324, Page 30 of the Deed Records of Nueces County, Texas;

And containing 5.00 acres, more or less.

That certain tract of land out of the tract known as Share 1-Tract 1 of the 111.9 acres, known as the John Whelan Tract, and being a portion of the Tract 1(d) described in a Partition Deed by and between JOHN A. GRANT and wife, FRANCES LEE GRANT, CATHERINE GRANT KELLY and husband, ALDEN KELLY, MARY GRANT HOLY and husband, ERNEST HOLY, and A.G. GRANT, dated October 24, 1940 and recorded in Vol. 261, page 552-555 of the Deed Records of Nueces County, Texas;

Save and except, that portion of the above described tract which was conveyed to the State of Texas in a deed from CATHERINE GRANT KELLY and husband, A.L. KELLY, to the State of Texas recorded in Vol. 969, Page 581 of the Deed Records of Nueces County, Texas;

Save and except, that portion of the above described tract which was conveyed to FRANCES LEE GRANT in a deed from CATHERINE GRANT KELLY and husband, A.L. KELLY, to FRANCES LEE GRANT, recorded in Vol. 1324, Page 30 of the Deed Records of Nueces County, Texas;

And containing 1.242 acres, more or less.

**Attachment C
Texas Custodial
Trust Settlement Agreement**

Equipment and Other Personal Property

MOBIL EQUIPMENT
CAR MAZDA 626 1975
CRANE, LOCOMOTIVE, OHIO, MODEL#300S-4931 (NON-OPERABLE)
CRANE, GROVE, 30 TON, RT63S, 1971 (NON-OPERABLE)
CRANE, KRANE KAR, MODEL AZ, 1965 (NON-OPERABLE)
BACKHOE, CAT 436
LOADER, CAT 924, 1991 -
LOADER, SCAT TRAC
GENERATOR, EMERGENCY
GENERATOR, 850 KW
GENERATOR, ONAN
GENERATOR, OXYGEN PLANT
SLAG HAULER, KRESS, 1972, SN#10193 (NON-OPERABLE)
SLAG HAULER, KRESS, 1972, SN#10192 (NON-OPERABLE)
MANLIFT, JLG, 80 FT, 1996
MANLIFT, JLG, 40 FT. (NON-OPERABLE)
FORKLIFT, CAT 7, 6,000 LB.
FORKLIFT, CAT VC60D
FORKLIFT, SELLECK, MODEL SD-80
EXTENDED BOOM FORKLIFT/BPI-836
LOCOMOTIVE, YARD, #5 DINKY, 1947 (NON-OPERABLE)
LOCOMOTIVE, YARD #4 DINKY, 1947 (NON-OPERABLE)
TRAILER, DUST TRANSFER (2 ea)
TRAILER, LO-BOY, 1950
WELDER, ELECT. 440 VOLT, 200-300AMP (3ea)
WELDER, DIESEL, MA504000
VAN, PASSENGER, (NON-OPERABLE)
SWEEPER, TENNANT, MODEL 830 XP
SWEEPER PARTS - "ATHEY"
JEEP, SECURITY DEPT, 1975 (NON-OPERABLE)
JEEP, SECURITY DEPT, 1982 (NON-OPERABLE)
JEEP, SECURITY DEPT, 1982 (NON-OPERABLE)
TRUCK, PICKUP, CHEV. S-10, 1988
TRUCK, PICKUP, F-150 1995
TRUCK, FORD F-350 1991
TRUCK, FORD F-250, 4x4 (3EA)
TRUCK, CHEVY 2500
TRUCK, WATER, DIESEL, F-SERIES 1996
TRUCK, PICKUP, F-150 1993
TRUCK, BOOM, USTC 1410 JBT, F-SERIES 1997
TRUCK, DODGE FLATBED D-250 1993
GRADER, GALION T-600 SN#T600B GC-02054 (NON-OPERABLE)
FORKLIFT, EXTENDED BOOM BPI SS-836 SN#93204 (NON-OPERABLE)

REVISED

2:01 pm, Mar 24, 2009

**Attachment C
Texas Custodial
Trust Settlement Agreement**

MOBIL SCREENING MACHINE
AUTO SHOP
ELECTRIC LIGHTS
HEATERS RADIANT
COMPRESSOR
SWITCH GEAR/CONTROLL PANELS
GARAGE DOORS (4ea)
CUTOFF SAW
HYDRALIC PRESS/50 TON
HYDRALIC FITTING COMPRESSION PRESS – PORTA-POWER & TANKS
V-BELTS
CATERPILLAR PARTS
FILTERS OIL AND AIR
ENGINE PULLER
VARIOUS MOTORS GAS AND DIESEL
OVERHEAD CRANE
VARIOUS NUTS, BOLTS, FITTINGS, PARTS, AND TOOLS
SLAGHAULER JACK
FLOOR JACKS (2)
PORTABLE RAMP
STEAM CLEANER
MILLER WELDING MACHINE
AUTO SHOP-- METAL BUILDING
UNLOADING AND BEDDING
OVERHEAD CRANES P&H (2ea)
ELECTRIC LIGHTS
SWITCH GEAR/CONTROLL PANELS
BAGHOUSES, FANS AND SCREWS (5ea)
CONVERYOR BELTS
CONVERYOR IDLERS
DRIVE MOTORS AND GEAR BOXES - DIFFERENT SIZES
GALLAGER VERT SUMP PUMPS
FILTER DRUM
THICKNER
PUMPS AND MOTORSBEDD VARYING SIZES
CAR PULLER (2ea)
SHUTTLE WINCH
RR SCALES (2ea)
TRUCK SCALES (1ea) (NON-OPERABLE)
BELT LINE
IMPACTOR/HAMMER MILL -
SWITCH GEAR/CONTROLL PANELS
BAGHOUSES FANS AND SCREWS (2ea)
CONVERYOR BELTS

REVISED

2:01 pm, Mar 24, 2009

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CONVEYOR IDLERS
DRIVE MOTORS AND GEAR BOXES - DIFFERENT SIZES
CONTOP
OVERHEAD CRANES (1ea)
ELECTRIC LIGHTS
SWITCH GEAR/CONTROL PANELS
BAGHOUSES, FANS AND SCREWS (5ea)
CONVEYOR BELTS
CONVEYOR IDLERS
DRIVE MOTORS AND GEAR BOXES - DIFFERENT SIZES
REACTORS (4ea)
BOILERS (2ea)
ROTARY FEEDERS
PNEUMATIC PUMPS
SLAG POTS
COOLING SYSTEM HEAT EXCHANGERS
COPPER JACKETS
MAXUM VALVES, OTHER VALVES & PARTS - (INSTRUMENT SHOP)
CONVERTER/ANODE
OVERHEAD CRANES (1ea)
ELECTRIC LIGHTS
SWITCH GEAR/CONTROL PANELS
HOT METAL CRANES (3ea)
CONVERTERS AND DRIVES (3ea)
ANODES AND DRIVES (2ea)
REFORMER, GAS
RECTIFIER & FUSES
TRUNNIONS & DRIVES
ACID PLANTS AND GAS CLEANING SYSTEM
PUMPS AND MOTORS
PLATE COOLERS
FANS/MOTORS
SWITCH GEAR/CONTROL PANELS
PREHEATERS (2ea) - #1 ACID PLANT - (ORIGINALLY FROM KENNECOTT)
BLOWERS (4ea)
TRANSFORMERS
MACHINE SHOP & BOILERSHOP
KEYSETTER (2EA)
RADIANT HEATERS
PLANNER
LOCKERS/CABINETS
HORIZONTAL MILL
STEEL WORK-TABLES
MILLING MACHINE
METAL SHEAR
TURRET LATHE

REVISED

2:01 pm, Mar 24, 2009

**Attachment C
Texas Custodial
Trust Settlement Agreement**

BUFFALO IRON WORKER
ENGINE LATHE (3EA)
AIR COMPRESSOR/INGERSOL RAND
600 TON PRESS
PIPE THREADER/WITH ATTACHMENTS
LITHOGRAPH TRACER/TRACK CUTTING TABLE
PUMPS
JIB CRANES
MISCELANEOUS TOOLS, DRILL BITS, TOOL HOLDERS, AND CHAINS
GENERAL BUILDINGS, OFFICE, SAFETY, ELECTRICAL, ENGINEERING & SECURITY
DESK, CHAIRS -
FILING CABINETS (2 FIREPROOF CABINETS)
OFFICE SUPPLIES
TABLES
LOCKERS & SAFES
SPARE PARTS/INSTRUMENTATION
BLUE PRINT COPYING MACHINE (2) (NON-OPERATING)
EKG MACHINE/BURDICK ECLIPSE LE
STEEL PLATE AROUND PLANT AND SHOPS
OXYGEN PLANT
COMPLETE OXYGEN PLANT AS UNIT OR
COOLING TOWERS (4)
LIQUID OXYGEN STORAGE TANKS (2)
PUMPS AND MOTORS
BLOWER
SWITCH GEAR/CONTROLL PANELS
SPARE PARTS
AIR COMPRESSOR /QUINCY
CARPENTER SHOP
BAND SAW
LATHE
TABLE SAW
RIPPER
METAL BRAKE/ 8 FT.
NAILS
LUMBER
HILTI BOLTS
VARIOUS SCREWS & BOLTS
PLANT GENERAL
WINCHES
DUMBSTERS/SELF-EMPTYING
GALLAGER VERTICLE PUMPS
MARLEY COOLING TOWER
LIGHTING
REVERB COPPER JACKETS

REVISED
2:02 pm, Mar 24, 2009

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Trust Settlement Agreement**

GUARD SHACK (PORTABLE OFFICE)
SHEET METAL BRAKE/8'- SHEET METAL SHOP
15 VINTAGE MACHINERY DISPLAY PIECES
HIGH VOLTAGE TRANSFORMERS
OPERATORS SHACK 13'X32'

Property Owned by Tenants	Owner
Equipment related to the sign lease	Eller Signs (?)
Equipment related to the land lease	Home Land Security
A camera tower located at the fence line southwest of Retention Ponds A & B	United States Border Patrol/ICE
A cell tower	Crown Castle
Billboards	Clear Channel Outdoor, Inc.
Equipment related to the access agreement for land near the pump house - down at the Rio Grande	United States

REVISED

2:02 pm, Mar 24, 2009

ENVIRONMENTAL CUSTODIAL TRUST AGREEMENT

(Texas Custodial Trust)

BY AND AMONG

ASARCO LLC,

as Settlor,

_____,
as Custodial Trustee,

AND

**Texas Commission on Environmental Quality, and
United States Environmental Protection Agency,
as Beneficiaries**

As of _____, 2009

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ENVIRONMENTAL CUSTODIAL TRUST AGREEMENT

(Texas Custodial Trust)

This Environmental Custodial Trust Agreement (the "Agreement") is made this _____ day of _____, 2009, by and among ASARCO LLC ("ASARCO") as a debtor in possession in the Reorganization Cases (defined below) ("Settlor") and _____, not individually but solely in [his/its] capacity as Custodial Trustee ("Custodial Trustee") of the ASARCO Texas Custodial Trust established hereby (the "Texas Custodial Trust"), and the Beneficiaries (defined below).

RECITALS:

WHEREAS, on August 9, 2005, ASARCO filed its voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. § 101 *et seq.*, as amended (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division ("Bankruptcy Court") and on April 11, 2005, August 26, 2005, September 1, 2005 and October 13, 2005, various subsidiaries of ASARCO filed voluntary petitions for relief in the Bankruptcy Court, which cases have been jointly administered under Case No. 05-21207 (the "Reorganization Cases");

WHEREAS, the Settlor, American Smelting and Refining Company, the United States and the State have entered into that certain Consent Decree and Settlement Agreement Establishing a Custodial Trust for the Owned Smelter Site in El Paso, Texas and the Owned Zinc Smelter Site in Amarillo, Texas (the "Settlement Agreement") dated _____, 2009, with respect to Sites as defined herein (the portions of such "Sites" owned by the Settlor being referred to herein collectively as the "Designated Properties") located in the State;

WHEREAS, the Settlement Agreement provides for the transfer of the Designated Properties and Attendant Property Interests to the Texas Custodial Trust to be administered by the Custodial Trustee pursuant to this Agreement and the Settlement Agreement;

WHEREAS, in accordance with Article IV of the Settlement Agreement, the Texas Custodial Trust is established for the purposes of (a) owning the Designated Properties and carrying out administrative and property management functions related to the Designated Properties, (b) conducting, managing, and/or funding the implementation of future Environmental Actions with respect to the Designated Properties, and (c) selling, transferring or otherwise disposing of the Designated Properties;

WHEREAS, the Texas Custodial Trust is to be funded in the amount set forth in the Settlement Agreement;

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WHEREAS, this Agreement and the Settlement Agreement govern the Texas Custodial Trust, which is intended to qualify as a qualified settlement fund (for which no grantor trust election has been made) pursuant to section 1.468B-1 of the Treasury Regulations promulgated under the Internal Revenue Code ("Treasury Regulations"); and

WHEREAS, the Custodial Trustee shall be the exclusive holder of the assets described herein for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3);

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants and agreements contained herein and in the Settlement Agreement, the Parties hereby agree as follows:

ARTICLE 1
DEFINITIONS

1.1 Definitions.

The following terms as used in this Agreement shall have the definitions given below:

- 1.1.1 "Agreement" has the meaning as given in the preamble.
- 1.1.2 "Amarillo Site" means the former ASARCO-owned zinc smelter site in Amarillo, Texas set forth and further defined in Exhibit A of this Agreement.
- 1.1.3 "ASARCO Environmental Custodial Trusts" means the other environmental custodial trusts created pursuant to a settlement agreement approved by the Bankruptcy Court in the Reorganization Cases. These settlements 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 Amended Consent Decree and Settlement Agreement Regarding the Montana Sites; and the 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.
- 1.1.4 "Attendant Property Interests" means all appurtenances, rights, easements, rights-of-way appurtenant groundwater rights, associated surface water rights, claims, and filings, permits, and other interests in, to, related to, or benefiting the Designated Properties, with the exception of equipment and other items of personal property in Exhibit D to this Agreement.

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- 1.1.5 “Bankruptcy Court” means the United States Bankruptcy Court for the Southern District of Texas Corpus Christi Division.
- 1.1.6 “Beneficiary” means the United States, on behalf of the United States Environmental Protection Agency, and the State of Texas, on behalf of the Texas Commission on Environmental Quality.
- 1.1.7 “CERCLA” means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601 *et seq.*, as amended.
- 1.1.8 “Closing Date” means the effective date of the Settlement Agreement, as that term is defined in the Settlement Agreement.
- 1.1.9 “Consent” means written consent.
- 1.1.10 “Court” means the Bankruptcy Court or if the Bankruptcy Court abstains from exercising jurisdiction or is otherwise without jurisdiction over any matter arising out of this Agreement, a United States District Court or the District Court of Travis County, Texas having competent jurisdiction with respect to such matters.
- 1.1.11 “Custodial Trust Account” means the Custodial Trust Account established to hold funds to implement necessary Environmental Actions, to pay real estate taxes, insurance, and other administrative costs of the Texas Custodial Trust, and fulfill the purposes of this Texas Custodial Trust.
- 1.1.12 “Custodial Trust Assets” means (a) those assets and properties, including the Funding, the Designated Properties, Attendant Property Interests, and the Transferred Contracts, to be transferred to the Texas Custodial Trust pursuant to the Settlement Agreement and (b) such other assets acquired or held by the Texas Custodial Trust from time to time pursuant to this Agreement, the Settlement Agreement, or an order of the Court.
- 1.1.13 “Custodial Trustee” means the Texas Custodial Trust by and through its trustee not individually but solely in its representative capacity.
- 1.1.14 “Custodial Trust Parties” means the Texas Custodial Trust, the Custodial Trustee and the employees, consultants, contractors, agents or other professionals or representatives employed by the Texas Custodial Trust or the Custodial Trustee. In the event the Custodial Trustee is a corporation, “Custodial Trust Parties” shall also include the Custodial

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Trustee's officers, directors, and shareholders. Each of the Custodial Trust Parties is, individually, a Custodial Trust Party.

- 1.1.15 "Custodial Trust Proceeds" means the proceeds of any liquidations, sale, lease, recovery or other disposition of or other proceeds in respect to the Custodial Trust Assets.
- 1.1.16 "Debtors" shall have the meaning given in the Settlement Agreement.
- 1.1.17 "Designated Properties" means the portions of the Sites owned by the Settlor as set forth in Exhibit B to this Agreement, including without limitation all fixtures, improvements, and equipment located thereon as of the Plan Effective Date except equipment and other items of personal property listed in Exhibit D to this Agreement. "Designated Property" means any one of the Designated Properties.
- 1.1.18 "Effective Date" means the effective date of this Agreement, which shall be the later of (i) the date this Agreement is executed by all parties to this Agreement; and (ii) the Plan Effective Date.
- 1.1.19 "El Paso Smelter Site" means the ASARCO-owned smelter facility site in El Paso, Texas as set forth and further defined in Exhibit A of this Agreement.
- 1.1.20 "Environmental Actions" means any response, removal, investigation, remediation, reclamation, closure, post-closure, corrective actions, institutional controls, and operation and maintenance activities selected and approved by the TCEQ with respect to the Designated Properties.
- 1.1.21 "Environmental Costs" mean the costs and expenses of implementing Environmental Actions with respect to the Designated Properties and related Sites.
- 1.1.22 "Environmental Law" means any applicable federal, tribal, state or local law, statute, ordinance, rule, regulation or code, any license, permit, authorization, administrative or court order, judgment, decree or injunction, including all common law, related to pollution, protection or restoration of health, safety or the environment, reclamation of mined lands, or the use, storage, recycling, treatment, generation, transportation, processing, handling, labeling, production, release or disposal of pollutants or Hazardous Substances, including, without limitation, CERCLA; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901, *et seq.*; the Clean Air Act, 42 U.S.C. Section 7401, *et seq.*; the Federal Water Pollution Control Act, 33 U.S.C. Section 1251, *et seq.*; the Toxic Substances Control Act, 15

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U.S.C. Section 2601, *et seq.*; the Emergency Planning and Community Right to Know Act, 42 U.S.C. Section 11001, *et seq.*; the Safe Drinking Water Act, 42 U.S.C. Section 300f, *et seq.*; the Oil Pollution Act of 1990, 33 U.S.C. Section 2701 *et seq.*; and the Occupational Safety and Health Act, 29 U.S.C. 651, *et seq.*, and any applicable tribal, state, or local law counterparts, as the same may be reauthorized or amended from time to time.

- 1.1.23 "Funding" shall have the meaning given in Section 2.1.2 hereof.
- 1.1.24 "Hazardous Substances" means all materials, substances, or wastes defined, designated, regulated or classified as hazardous, toxic or radioactive, under any Environmental Laws, whether by type or by quantity, and shall include petroleum or any derivative or by-product thereof and asbestos containing materials.
- 1.1.25 "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended.
- 1.1.26 "Parties" means the Settlor, Custodial Trustee, and Beneficiaries.
- 1.1.27 "Person" means any individual, corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust, charitable foundation, unincorporated organization, government or any agency or political subdivision thereof or any other entity.
- 1.1.28 1.1.30 "Plan Administrator" means the administrator of any plan of reorganization confirmed by an order of the Bankruptcy Court in the Reorganization Cases.
- 1.1.29 "Plan Effective Date" shall have the same meaning as the term "Effective Date" as such term is defined in the Settlement Agreement.
- 1.1.30 "Reorganization Cases" has the meaning given in the recitals to this Agreement.
- 1.1.31 "Reorganized ASARCO" shall have the meaning given in any plan of reorganization confirmed by an order of the Bankruptcy Court in the Reorganization Cases.
- 1.1.32 "Reorganized Debtors" shall mean any debtors under a confirmed plan of reorganization in the Reorganization Cases.
- 1.1.33 "Settlement Agreement" means that certain Consent Decree and Settlement Agreement Establishing a Custodial Trust for the Owned Smelter Site in El Paso, Texas and the Owned Zinc Smelter Site in

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Amarillo, Texas executed by Beneficiaries and Settlor on _____, 2009, and approved by the Bankruptcy Court.

- 1.1.34 "Sites" means the sites set forth in Exhibit A to this Agreement.
- 1.1.35 "State" means the State of Texas.
- 1.1.36 "Superfund" means the "Hazardous Substance Superfund" established by 26 U.S.C. § 9507 or, in the event such Hazardous Substance Superfund no longer exists, any successor fund or comparable account of the Treasury of the United States to be used for removal or remedial actions to address releases or threats of release of hazardous substances.
- 1.1.37 "Texas Commission on Environmental Quality" ("TCEQ") means the agency of the State known as the Texas Commission on Environmental Quality, being the agency of the State with primary environmental oversight authority over such Designated Properties as specified in the Settlement Agreement as well as any successor departments or agencies of the State.
- 1.1.38 "Texas Custodial Trust" means the trust established pursuant to this Agreement and has the same meaning as the term "Custodial Trust" as defined in the Settlement Agreement.
- 1.1.39 "Transferred Contracts" means those contracts and agreements relating to the Designated Properties listed in Exhibit C to this Agreement.
- 1.1.40 "United States" means the United States of America on behalf of agencies and departments named in the Settlement Agreement.
- 1.1.41 "USEPA" means the United States Environmental Protection Agency and any successor departments or agencies of the United States.

ARTICLE 2
THE TEXAS CUSTODIAL TRUST

2.1 Creation of and Transfer of Assets to the Texas Custodial Trust.

- 2.1.1 Pursuant to the Settlement Agreement, the Parties hereby establish, on behalf of the Beneficiaries named herein, and Settlor hereby transfers, assigns, and delivers to the Texas Custodial Trust, on behalf of the Beneficiaries, all fee ownership or other interests of Settlor in and to the Custodial Trust Assets and Debtors shall retain no ownership or other interest whatsoever in the Designated Properties or the Attendant Property Interests (except to the extent provided by Subparagraph 12(i)(2) of the Settlement Agreement). The transfer of ownership shall be by quit claim

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deed, in a form substantially similar to the quit claim deed attached as Exhibit E to this Agreement, of all of the Debtors' rights, title and interests and shall be free and clear of all claims, liens, and interests against the Debtors other than any liability to the Governments under the Settlement Agreement, but subject to any existing *in rem* claims other than liens for the payment of monetary claims such as property taxes or other monetary claims asserted or that could have been asserted in the Reorganization Cases. Debtors shall pay all property taxes relating to the Designated Properties prorated through the Plan Effective Date. The Custodial Trustee hereby accepts and agrees to hold the Custodial Trust Assets in the Texas Custodial Trust for the benefit of the Beneficiaries for the purposes described in Section 2.2 below, subject to the terms of the Settlement Agreement, this Agreement, and any applicable orders of the Court

- 2.1.2 On the Plan Effective Date, the Settlor shall cause to be transferred to the Custodial Trust Account cash in the amount of **Fifty-Two Million Eighty Thousand Dollars (\$52,080,000)**, reduced in accordance with Paragraph 12(e) of the Settlement Agreement, which constitutes the "Funding" and represents the aggregate amounts approved by the Court as sufficient to pay the Environmental Costs and the costs of administering the Texas Custodial Trust. Neither the Settlor nor any successors thereto shall have any further obligation to provide any funding to the Texas Custodial Trust.
- 2.1.3 The Custodial Trustee shall obtain general and professional liability insurance in the amount of \$ _____ Million Dollars, the cost of which shall be paid out of the Custodial Trust Account, for the benefit of the Parties and the Texas Custodial Trust. Said amount of liability insurance may be amended from time to time with consent of TCEQ and the United States.
- 2.1.4 For all federal income tax purposes, the Custodial Trustee and the Settlor shall treat the transfer of the Custodial Trust Assets by the Settlor to the Texas Custodial Trust as a transfer to a qualified settlement fund pursuant to section 468B of the Internal Revenue Code and related Treasury Regulations. The Custodial Trustee will at all times seek to have the Texas Custodial Trust treated as a "qualified settlement fund" as that term is defined in Treasury Regulation section 1.468B-1. The Custodial Trustee will not elect to have the Texas Custodial Trust treated as a grantor trust. The Texas Custodial Trust will be treated as a separate taxable entity. The Custodial Trustee shall cause any taxes imposed on the earnings of the Texas Custodial Trust to be paid out of such earnings and shall comply with all tax reporting and withholding requirements imposed on the Texas Custodial Trust under applicable tax laws.

2.2 Objective and Purpose.

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- 2.2.1 The exclusive purposes and functions of the Texas Custodial Trust are to own the Designated Properties, carry out administrative and property management functions related to the Designated Properties, conduct, manage, and/or fund implementation of future Environmental Actions with respect to the Designated Properties, and ultimately to sell, transfer or otherwise dispose of all or part of the Designated Properties, if possible, all as provided in the Settlement Agreement, with no objective or authority to engage in any trade or business. With respect to the El Paso Smelter Site, the purposes of this Texas Custodial Trust further include: 1) addressing contamination (including without limitation Hazardous Substances) on and in the structures, soils, surface water, and groundwater at such site; and 2) remediating such site to standards that are protective of human health and the environment with the oversight of the TCEQ.
- 2.2.2 With respect to the Amarillo Designated Property (as defined in Attachment B), the Custodial Trustee shall, within sixty days of the Plan Effective Date, take actions to sell portions of the site that are not subject to Environmental Actions in accordance with Section 2.13 of this Agreement.
- 2.2.3 The Texas Custodial Trust is established pursuant to this Agreement and the Settlement Agreement and approved by the Bankruptcy Court for the purpose of resolving claims asserting environmental liabilities of the Settlor with respect to the Designated Properties and the other purposes set forth in this Agreement and the Settlement Agreement. The Bankruptcy Court shall retain continuing jurisdiction over the Texas Custodial Trust. The Texas Custodial Trust satisfies all the requirements of, and is intended by the Parties to be classified as, a qualified settlement fund (for which no grantor trust election has been made) pursuant to section 468B of the Internal Revenue Code and related Treasury Regulations.

2.3 Holder of Custodial Trust Assets.

The Texas Custodial Trust shall be the exclusive holder of the Custodial Trust Assets and the Custodial Trust Account described herein for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012 (b)(3).

2.4 Management of Custodial Trust Assets.

- 2.4.1 Consistent with this Agreement and the Settlement Agreement, the Custodial Trustee shall fund future Environmental Actions pursuant to CERCLA, RCRA, or similar state or federal statutes with respect to a particular Designated Property. The Custodial Trust Account shall fund the administrative costs of the Texas Custodial Trust that have been expressly approved by the TCEQ.

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2.4.2 The Custodial Trustee may enter into a consent decree or consent order with the United States and/or the TCEQ to facilitate implementation of Section 2.4 with respect to such Designated Properties.

2.5 Remaining/Excess Funds in Custodial Trust Account.

Upon the completion of all final actions and disbursement of all final costs for the Designated Properties and related Sites, any funds remaining in the Custodial Trust Account shall be transferred as follows: (1) for all funds remaining from the initial \$52,080,000 payment to the Texas Custodial Trust (which shall be reduced pursuant to Paragraph 12(e) of the Settlement Agreement), to the following in the order designated: (A) first, in accordance with instructions provided by the United States Department of Justice and the TCEQ to custodial trust accounts that may be established for property in Texas, with remaining actions to be performed and a need for additional trust funding, including but not limited to the Federated Metals State Superfund site and the Encycle/Texas site, or to TCEQ or USEPA for their oversight costs at the Designated Properties and/or Sites; provided, notwithstanding anything to the contrary in this Agreement, no funds shall be transferred to an account to the extent that expenditures by, or work funded by, such account may reduce (directly or indirectly) any liabilities of ASARCO, the Debtors, the Reorganized Debtors, Americas Mining Corporation, ASARCO USA Incorporated, their successors, their affiliates, or any Persons related to any of the preceding (within the meaning of section 468B(d)(3) of the Internal Revenue Code); (B) second, then in accordance with instructions provided by the United States Department of Justice after consultation with the TCEQ, to any of the other custodial trust accounts established under any other ASARCO Environmental Custodial Trust for a property in another State with remaining actions to be performed and a need for additional trust funding; and (C) third, then to the Superfund; (2) for remaining funds from the proceeds of sale of all or a portion of the El Paso Designated Property, to the Reorganized Debtors for the benefit of: (i) Reorganized Debtors to the extent of any resulting taxes relating to this Subsection 2.5(2) incurred by the Reorganized Debtors, and (ii) the creditors of Debtors as provided in the plan of reorganization that is ultimately approved by the Bankruptcy Court.

2.5.1 The creditors or their representatives shall not by virtue of their interest from the proceeds from this possible sale have standing to object to the manner in which the El Paso Designated Property is remediated. The Custodial Trustee shall use ordinary and prudent judgment in considering a proposal to sell the real estate associated with the El Paso Designated Property and may consider criteria other than sales price. Any sale by the Custodial Trustee shall however be for at least fair value.

2.5.2 In addition, the TCEQ and the United States may agree in writing at any time after one year from the Plan Effective Date that based on new information about the estimated cost of cleanup or administration or the assumption of liability by a financially qualified buyer or other party for

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remediating a Site, that the funding in the Custodial Trust Account is more than is conservatively projected to be needed. Upon such an agreement, any such excess funding remaining in the Custodial Trust Account shall be transferred as set forth in Section 2.5 (subject to the limitation described therein).

2.6 Work Performed and Disbursements by the Texas Custodial Trust.

Payments from the Texas Custodial Trust shall be made as provided in accordance with Subparagraphs 12(g) and (h) of the Settlement Agreement.

2.7 Investment and Safekeeping of Custodial Trust Assets.

2.7.1 The Custodial Trust Account, initial funding consisting of Fifty-Two Million Eighty Thousand Dollars (\$52,080,000), reduced pursuant to Paragraph 12(e) of the Settlement Agreement, shall be held in trust by a Corporate Trustee [name of bank selected] defined pursuant to the Bank Trust Agreement attached as Exhibit _____. (Incorporated by reference as if fully set forth herein). The Custodial Trustee shall be under no liability for interest or producing income on any moneys received by the Texas Custodial Trust hereunder and held for distribution or payment as provided in this Agreement, except as such interest shall actually be received by the Texas Custodial Trust. Investments of any moneys held by the Texas Custodial Trust shall be administered in a manner consistent with the standards and requirements applicable to a trustee in connection with a Chapter 7 liquidation; provided, however, that the right and power of the Texas Custodial Trust to invest the Custodial Trust Assets, the Custodial Trust Proceeds, or any income earned by the Texas Custodial Trust, shall be limited to the right and power to invest such assets (pending periodic distributions in accordance with Article 3 hereof) in demand and time deposits, such as certificates of deposit, in banks or other savings institutions whose deposits are federally insured, or other temporary liquid investments, such as Treasury bills; and provided further, that the scope of any such permissible investments shall be limited to include only those investments, or shall be expanded to include any additional investments, as the case may be, that a liquidating trust, within the meaning of Treasury Regulation section 301.7701-4(d), may be permitted to hold, pursuant to Treasury Regulations, or any modification in the IRS guidelines, whether set forth in IRS rulings, other IRS pronouncements or otherwise (although the Parties acknowledge and agree that the Texas Custodial Trust is properly characterized for federal tax purposes as a qualified settlement fund within the meaning of Section 1.468B-1 of the Treasury Regulations, and not as a liquidating trust under Section 301.7701-4(d) of the Treasury Regulations).

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- 2.7.2 The Custodial Trustee is expressly prohibited from holding any or all of the Funding or Custodial Trust Proceeds in a common, commingled, or collective trust fund, and from holding any or all of the Funding or Custodial Trust Proceeds in a common, commingled, or collective trust fund with the assets of any other entity.
- 2.7.3 Nothing in this section shall be construed as authorizing the Custodial Trustee to cause the Texas Custodial Trust to carry on any business or to divide the gains therefrom, including without limitation, the business of an investment company, a company "controlled" by an investment company, or a company required to register under the Investment Company Act of 1940, as amended. The sole purpose of this section is to authorize the investment of the funds in the Custodial Trust Account or any portions thereof as may be reasonably prudent pending use of the proceeds for the purposes of the Texas Custodial Trust.
- 2.7.4 The Custodial Trust Parties shall not incur any liability for following any written direction or order to act (or to refrain to act) from any Beneficiary so long as such written direction is not inconsistent with this Agreement and the Settlement Agreement.

2.8 Insurance Policy to Cover Future Response Actions.

Only at the direction of the TCEQ in consultation with the United States, shall the Custodial Trustee investigate the possible purchase of an insurance policy to cover future Environmental Actions at one or more of the Designated Properties. If, and only if, the TCEQ and the United States direct the Custodial Trustee in writing to purchase such insurance, shall the Custodial Trustee use Custodial Trust Assets to purchase such insurance.

2.9 Access and Deed Restrictions.

The Custodial Trustee shall provide the TCEQ and the United States and their representatives and contractors with reasonable access at all reasonable times to the Designated Properties for the purposes of conducting Environmental Actions or related activities at or near the Designated Properties. The Custodial Trustee shall implement any institutional controls or deed restrictions requested by the Beneficiaries with respect to any of the Designated Properties. The Custodial Trustee shall execute and record in the appropriate local real estate records any easements or deed restrictions restricting the use of the Designated Properties requested by the Beneficiaries in order to protect public health, welfare or safety or the environment or ensure non-interference with or protectiveness of any action. The Custodial Trustee shall abide by the terms of any institutional controls or deed restrictions in place or of record as to any Designated Property.

2.10 Accounting.

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The Custodial Trustee shall maintain proper books, records, and accounts relating to all transactions pertaining to the Texas Custodial Trust, and the assets and liabilities of, and claims against or assumed by, the Texas Custodial Trust in such detail and for such period of time as may be necessary to enable the Custodial Trustee to make full and proper accounting in respect thereof in accordance with Article 6 below and to comply with applicable provisions of law and good accounting practices. Except as otherwise provided herein or by the Settlement Agreement, the Custodial Trustee shall not be required to file any accounting or seek approval of the Court with respect to the administration of the Texas Custodial Trust, or as a condition for making any payment or distribution out of the Custodial Trust Assets. Beneficiaries shall have the right to inspect such books and records.

2.11 Liability.

As provided in Section IV, Paragraph 15 and Section VI of the Settlement Agreement and subject to Section VII of the Settlement Agreement, the Custodial Trust Parties are deemed to have resolved their civil liability under CERCLA, RCRA, the Clean Water Act ("CWA") and similar state environmental statutes to the United States and the State at the conclusion of the Environmental Actions, 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 the Settlement Agreement. The Custodial Trust Parties shall have the benefits of the covenant not to sue as set forth in Section VI of the Settlement Agreement and of contribution protection set forth in Section IV, Paragraph 14 of the Settlement Agreement. However, in the event that the Court finds that the Texas Custodial Trust in any material respect 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 Agreement, the Settlement Agreement, or other related implementation agreements, the United States and the TCEQ may jointly direct that (i) the Custodial Trustee be replaced in accordance with this Agreement or (ii) that all remaining funds and future proceeds or income, if any, attributable to the Custodial Trust Assets in the Texas Custodial Trust be paid to the TCEQ and USEPA to be used in accordance with the terms of this Agreement and the Settlement Agreement (including, without limitation, Section 2.5 of this Agreement); provided, however, so long as title to any Designated Property remains in the name of the Texas Custodial Trust or the Custodial Trustee, funds deemed reasonably sufficient by the Beneficiaries to cover property taxes and other property management costs to be paid by the Texas Custodial Trust for any such Designated Property be left in the Custodial Trust Account.

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2.12 Termination.

Consistent with the terms of the Settlement Agreement, the Custodial Trustee shall not unduly prolong the duration of the Texas Custodial Trust, shall proceed as expeditiously as possible with the Environmental Actions with respect to the Designated Properties as contemplated by this Agreement, and shall at all times endeavor to resolve, settle, or otherwise dispose of all claims against Custodial Trust Assets and to effect the distribution of Custodial Trust Assets and other receipts relating thereto to the Beneficiaries and the others who receive distributions hereunder in accordance with the terms hereof, and to terminate the Texas Custodial Trust as soon as practicable consistent with this Agreement and the Settlement Agreement.

2.13 Property Disposition.

The TCEQ or the United States, may at any time propose in writing to take ownership of any of the Designated Properties transferred to the Texas Custodial Trust or any part thereof. Any such proposed transfer and the terms thereof are subject to the consent of the TCEQ and the United States. The Custodial Trustee shall obtain the approval of TCEQ and the United States for the sale or lease or other disposition of all or part of the Designated Properties prior to any such sale, lease, or other disposition. With the prior approval of the TCEQ and the United States, the Custodial Trustee may sell or lease all or part of the Designated Properties prior to completion of the Environmental Actions at such Designated Properties if such sale or lease does not limit or impede Environmental Actions necessary to address the Designated Properties or Sites. 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 Texas Custodial Trust. No sale of the El Paso Designated Property shall take place out of the bankruptcy estate. Any sale of such property shall only take place after the El Paso Designated Property has been transferred to the Texas Custodial Trust in accordance with the terms of this agreement. The following is included in this Agreement at the sole request and direction of the TCEQ: Prior to the TCEQ or the United States taking ownership of any portion of the El Paso Smelter Site, the Custodial Trustee shall provide the City of El Paso the opportunity to propose its own plan regarding disposition of the El Paso Smelter Site to the Custodial Trustee, the TCEQ, and the United States, which may include private or public entities taking ownership and completing remediation of such Designated Property.

2.14 Payments or Proceeds to the Texas Custodial Trust.

All payments received by the Custodial Trustee and any Custodial Trust Proceeds must be immediately placed by the Custodial Trustee into the Custodial Trust Account to be used for the purposes set forth in this Agreement. Such amounts include payment by TCEQ of up to \$420,000 that the TCEQ may receive in settlement of other claims in the Reorganization Cases.

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ARTICLE 3
WORK AND DISTRIBUTIONS

3.1. Payments and Expenses of the Texas Custodial Trust.

On January 1 of each calendar year, or within sixty days after the Plan Effective Date in the case of the first such period, the Custodial Trustee shall provide the TCEQ and USEPA with balance statements, proposed budgets, fee schedules, and associated scopes of work for the administrative and environmental expenses of the Texas Custodial Trust for that calendar year, which may be approved, disapproved, or modified in whole or in part by the TCEQ after consultation with USEPA. If disapproved, such budget, fee schedule, or scope of work shall be revised and resubmitted as expeditiously as possible. No expenses may be incurred or paid by the Custodial Trustee that are inconsistent with the approved budget, unless the TCEQ, in consultation with USEPA, approves a revised budget; however, the Custodial Trustee may incur or pay ongoing or recurring expenses approved in the prior year's budget that occur between the time a proposed annual budget is submitted and the time it is approved. Each annual budget shall include a future year forecast of expenditures, with annual details for at least the next three years (or such longer period as the TCEQ and the United States shall reasonably request). The Custodial Trustee shall regularly, but not less often than annually, and otherwise upon the reasonable request of the TCEQ and the United States, provide documentation to the TCEQ and the United States to substantiate compliance with the applicable approved budget and application of Custodial Trust Assets consistently with the terms this Agreement and the Settlement Agreement. The approved budget shall be funded by the transfer of the approved amount from Custodial Trust Account in accordance with the approved fee schedule. Further, by January 1 of each year during the term of the Texas Custodial Trust and within nine (9) months after termination of the Texas Custodial Trust, the Custodial Trustee shall prepare and submit to the Beneficiaries an annual report with respect to the Custodial Trust Account. The annual report shall pertain to the prior calendar year, or if the report is a final report, such period from the most recent annual report to the termination of the Custodial Trust Account.

3.2. Remuneration for the Custodial Trustee's Start-Up Fees and Expenses.

The Custodial Trustee shall be entitled to remuneration from the Texas Custodial Trust of up to \$_____ for its fees and expenses in connection with the formation of the Texas Custodial Trust prior to the Effective Date.

3.3. Liens by Government.

Notwithstanding anything to the contrary in this Article 3, the Texas Custodial Trust hereby grants to the TCEQ and the United States, a first-priority lien on and security interest in the Custodial Trust Assets to secure the payment of all amounts owed to, accrued or reserved on account of the Texas Custodial Trust or to be retained by the Custodial Trustee hereunder or otherwise due hereunder. The Texas Custodial Trust agrees to take appropriate actions and execute appropriate documents to perfect the TCEQ's, and the United States' liens and security interest hereunder.

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3.4 Manner of Payment.

Payments made by the Texas Custodial Trust pursuant to the Settlement Agreement and this Agreement shall be in United States dollars by checks drawn on a domestic bank (whose deposits are federally insured) selected by the Custodial Trustee, or by wire transfer from such a domestic bank, at the option of the Custodial Trustee.

3.5 Unclaimed Distributions.

In the event that funds remain in the Texas Custodial Trust at its termination, the amounts remaining shall be transferred as set forth in Section 2.5 of this Agreement.

ARTICLE 4
THE CUSTODIAL TRUSTEE

4.1 Appointment.

4.1.1 The Settlor hereby appoints _____ not individually but solely in its representative capacity, selected by the TCEQ and the United States, to serve as the Custodial Trustee, and the Custodial Trustee hereby accepts such appointment and agrees to serve in such representative capacity, effective upon the Effective Date of this Agreement. Subject to the provisions of Section 4.10 herein, the term of the Custodial Trustee shall be for ten (10) years at which time the Custodial Trustee may be reappointed or terminated. Any successor Custodial Trustee shall be appointed by the Beneficiaries in accordance with Section 4.11 of this Agreement. If the Custodial Trustee is not reappointed and no successor Custodial Trustee is appointed by the expiration of the Custodial Trustee's term, the Court may reappoint the Custodial Trustee or appoint a successor Custodial Trustee.

4.1.2 After consultation with the United States and the State, the Texas Custodial Trust is authorized to obtain the services of an environmental consultant to implement the future Environmental Actions (the "Consultant"). The Consultant shall obtain environmental, general and professional liability insurance in the sum of \$25,000,000 or such lesser amount as agreed to by the Texas Custodial Trust after consultation with the United States and States. The beneficiary of the insurance policies shall be the Texas Custodial Trust and the policies shall cover negligence committed by the Consultant in implementing the future Environmental Actions or any other negligence committed by the Consultant. The legal relationship of the Consultant to the Texas Custodial Trust and Custodial Trustee is that of an independent contractor professional, not that of an entity employed by the Texas Custodial Trust or the Custodial Trustee. The Consultant shall not be deemed a Custodial Trust Party.

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4.2 Generally.

The Custodial Trustee's powers are exercisable solely in a fiduciary capacity consistent with, and in furtherance of, the purposes of the Texas Custodial Trust, this Agreement, and the Settlement Agreement and not otherwise. The Custodial Trustee shall have the authority to bind the Texas Custodial Trust, and any successor Custodial Trustee, or successor or assign of the Texas Custodial Trust, but shall for all purposes hereunder be acting in its representative capacity as Custodial Trustee and not individually. Notwithstanding anything to the contrary contained herein, the Custodial Trustee shall not be required to take action or omit to take any action if, after the advice of counsel, the Custodial Trustee believes in good faith such action or omission is not consistent with the Custodial Trustee's fiduciary duties.

4.3 Powers.

In connection with the administration of the Texas Custodial Trust, except as otherwise set forth in this Agreement or the Settlement Agreement, the Custodial Trustee is authorized to perform any and all acts necessary to accomplish the purposes of the Texas Custodial Trust. The powers of the Texas Custodial Trust shall, without any further Court approval or order, include, without limitation, each of the following: (i) to receive, manage, invest, supervise and protect the Custodial Trust Assets, withdraw, make distributions and pay taxes and other obligations owed by the Texas Custodial Trust or the Custodial Trust Account from funds held by the Custodial Trustee and/or the Texas Custodial Trust (or the Custodial Trust Account) in accordance with the Settlement Agreement, and withhold and pay to the appropriate taxing authority any withholding taxes on distributions from the Texas Custodial Trust; (ii) to engage employees and professional Persons to assist the Texas Custodial Trust and/or the Custodial Trustee with respect to the responsibilities described herein; (iii) to make distributions of the Custodial Trust Assets from the Custodial Trust Account for the purposes contemplated in the this Agreement and the Settlement Agreement; and (iv) to effect all actions and execute all agreements, instruments and other documents necessary to implement this Agreement, including to exercise such other powers as may be vested in or assumed by the Texas Custodial Trust and/or the Custodial Trustee pursuant to this Agreement and any order of the Court or as may be necessary and proper to carry out the provisions of the Settlement Agreement. No Person dealing with the Texas Custodial Trust shall be obligated to inquire into the authority of the Custodial Trustee in connection with the protection, conservation, or disposition of Custodial Trust Assets. The Custodial Trustee is authorized to execute and deliver all documents on behalf of the Texas Custodial Trust to accomplish the purposes of this Agreement and the Settlement Agreement.

4.4 Other Professionals.

The Custodial Trustee shall have the authority, after approval by the TCEQ and the United States, to retain on behalf of the Texas Custodial Trust and pay such third parties as the Custodial Trustee (in accordance with a budget approved by the TCEQ and the United States) may deem necessary or appropriate to assist the Custodial Trustee in carrying out its powers and duties under this Agreement and the Settlement Agreement, including, without limitation, (i) counsel to the Texas Custodial Trust and/or Custodial Trustee, (ii) a public accounting firm to

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perform such reviews and/or audits of the financial books and records of the Texas Custodial Trust as may be appropriate in the Custodial Trustee's reasonable discretion and to prepare and file any tax returns or informational returns for the Texas Custodial Trust or the Custodial Trust Account as may be required, and (iii) environmental consultants, custodians, security personnel, engineers, surveyors, brokers, contractors, and clerks. The Custodial Trustee may pay all such Persons compensation for services rendered and expenses incurred in accordance with a budget approved as provided in Section 3.1.

4.5 Limitation of the Custodial Trustee's Authority.

The Texas Custodial Trust and the Custodial Trustee shall not and are not authorized to engage in any trade or business with respect to the Custodial Trust Assets or any proceeds therefrom except as and to the extent deemed in good faith by the Custodial Trustee to be reasonably necessary or proper for the conservation or protection of the Custodial Trust Assets, or the fulfillment of the purposes of the Texas Custodial Trust; provided, however, that in no event shall the Texas Custodial Trust conduct industrial operations on the Designated Property (e.g., shall not operate a smelter and shall not sell, dispose, or transfer the El Paso Smelter Designated Property as an operating smelter facility). The Texas Custodial Trust and the Custodial Trustee shall not take any actions that would cause the Texas Custodial Trust to fail to qualify as a qualified settlement fund (for which no grantor trust election has been made) under Section 468B of the Internal Revenue Code and the related Treasury Regulations.

4.6 Reliance by the Custodial Trust Parties.

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 to be selected by them, and the Custodial Trust Parties shall not be personally liable for any action taken or omitted to be taken by them in accordance with the advice thereof; and (c) Persons dealing with the Custodial Trust Parties shall look only to the Custodial Trust Assets to satisfy any liability incurred by the Custodial Trust Parties to such Person in carrying out the terms of this Agreement and the Settlement Agreement or any order of the Court, and the Custodial Trust Parties shall have no personal obligation to satisfy any such liability.

4.7 Compensation of the Custodial Trustee.

The Texas Custodial Trust shall pay its own reasonable and necessary costs and expenses, and shall reimburse the Custodial Trustee for the actual reasonable out-of-pocket fees and expenses to the extent incurred by the Custodial Trustee in connection with the Custodial Trustee's duties hereunder, including, without limitation, necessary travel, lodging, postage, photocopying, telephone and facsimile charges upon receipt of periodic billings, all in accordance with an annual budget or fee schedule approved by the Beneficiaries. The Custodial Trustee and employees of the Texas Custodial Trust and the Custodial Trustee who perform

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services for the Texas Custodial Trust shall be entitled to receive reasonable compensation for services rendered on behalf of the Texas Custodial Trust in accordance with an annual budget or fee schedule approved by the Beneficiaries.

The Custodial Trust Assets shall be subject to the claims of the Custodial Trustee, and the Custodial Trustee shall be entitled to reimburse itself out of any available cash in the Custodial Trust Account and the Texas Custodial Trust shall be obligated to pay, for actual out-of-pocket expenses and for actual hours worked.

All compensation and other amounts payable to the Custodial Trustee shall be paid from the Custodial Trust Assets.

4.8 Liability of Custodial Trust Parties.

In no event shall the Custodial Trust Parties be held liable to any third parties for any liability, action, or inaction of any other party including each other. The Custodial Trust Parties shall, further, be indemnified and exculpated in accordance with Section 4.9 of this Agreement.

4.9 Exculpation and Indemnification.

The Custodial Trust Parties shall be exculpated and indemnified, consistent with the provisions of 4.9.1 and 4.9.2, for any claims, causes of action, or other assertions of liability arising out of or in connection with:

- (a) The ownership of Custodial Trust Assets;
- (b) The discharge of duties and powers conferred upon the Texas Custodial Trust and/or Custodial Trustee by this Agreement, the Settlement Agreement, any order of the Court, or applicable law or otherwise, including the making of payments in accordance with this Agreement, the Settlement Agreement, or any order of the Court, and the implementing of the provisions of this Agreement, the Settlement Agreement, or any order of the Court; and
- (c) Any claim against Settlor.

4.9.1 Exculpation

No Custodial Trust Party shall be personally liable unless the Court finds, by a final order, that the Custodial Trust Party was grossly negligent or committed fraud or willful misconduct after the Effective Date in relation to the Custodial Trustee's duties that are alleged to be the basis for liability. Each Custodial Trust Party shall be and hereby is 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 or in connection with the matters contained in the provisions of Section 4.9(a), (b), and

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(c). No person including without limitation, holders of claims and other parties in interest will be allowed to pursue any claims or causes of action against any Custodial Trust Party for the matters contained in the provisions of Section 4.9(a), (b), and (c). However, nothing in this paragraph or this Agreement shall preclude the Beneficiaries from enforcing the terms of the Settlement Agreement or this Agreement against the Parties.

4.9.2 Indemnification

The Texas Custodial Trust shall indemnify, defend and hold harmless (without the Custodial Trust Parties having to first pay from their personal funds) the Custodial Trust Parties from and against any and all claims, causes of action, liabilities, obligations, losses, costs, judgments, damages or expenses (including attorneys' fees) and any other assertion of liability arising out of or in connection with the matters contained in the provisions of Section 4.9 (a), (b) and (c), to the fullest extent permitted by applicable law, provided that such indemnification shall be limited to funds in the Custodial Trust Account. Without limiting the foregoing, any such judgment against a Custodial Trust Party and any such costs of defense relating to any Custodial Trust Party shall be paid by the Texas Custodial Trust consistent with the terms and conditions of this Section 4.9.2. Notwithstanding the foregoing, to the extent gross negligence, fraud, or willful misconduct of any Custodial Trust Party is alleged and the Court finds, by a final order, that such Custodial Trust Party is grossly negligent or committed fraud or willful misconduct after the Effective Date in relation to the Texas Custodial Trustee's duties, there shall be no indemnification, of that Custodial Trust Party, for any judgments arising from such allegations of gross negligence, fraud, or willful misconduct. It shall be an irrebuttable presumption that any action taken, or inaction, consistent with Court approval shall not constitute gross negligence, willful misconduct, or fraud.

4.10 Termination

The duties, responsibilities and powers of the Custodial Trustee will terminate on the date the Texas Custodial Trust is dissolved under applicable law in accordance with the Settlement Agreement, or by an order of the Court; provided that Sections 2.10, 4.6, 4.8 and 4.9 above shall survive such termination, dissolution and entry. The Custodial Trustee may resign by giving not less than sixty (60) days prior written notice thereof to the Court, TCEQ, and United States; however, such resignation is not effective until the TCEQ has appointed a successor trustee and this successor accepts the appointment. The Custodial Trustee may be terminated for any reason upon notice by both TCEQ and the United States or upon completion of any ten (10) year term or by order of the Court for (i) gross negligence, fraud or willful misconduct immediately upon notice and the appointment of a temporary or permanent successor; (ii) having in any material respect exacerbated conditions at any of the Designated Properties, being seriously or repeatedly deficient or late in performance of the work, or violating the provisions of this Agreement, the

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Settlement Agreement, or other related implementation agreements, upon notice and the appointment of a temporary or permanent successor.

4.11 Appointment of Successor Custodial Trustees.

Any successor Custodial Trustee shall be proposed by the TCEQ and the United States and appointed by the Court. Any successor Custodial Trustee appointed hereunder shall execute an instrument accepting such appointment hereunder and shall file such acceptance with the Texas Custodial Trust records. Thereupon, such successor Custodial Trustee shall, without any further act, become vested with all the estates, properties, rights, powers, trusts and duties of its predecessor in the Texas Custodial Trust with like effect as if originally named herein; provided, however, that a removed or resigning Custodial Trustee shall, nevertheless, when requested in writing by the successor Custodial Trustee, execute and deliver an instrument or instruments conveying and transferring to such successor Custodial Trustee under the Texas Custodial Trust all the estates, properties, rights, powers, and trusts of such predecessor Custodial Trustee.

4.12 Bond.

Notwithstanding any state law to the contrary, the Custodial Trustee, including any successor Custodial Trustee, upon written request from TCEQ or the United States shall post a bond.

ARTICLE 5
BENEFICIARIES

5.1 Beneficiaries.

Beneficial interests in the Texas Custodial Trust shall be held by each of the Beneficiaries.

5.2 Identification of Beneficiaries.

5.2.1 In order to determine the actual names, addresses and authorized representatives of a Beneficiary, the Texas Custodial Trust and the Custodial Trustee shall be entitled to rely conclusively on the name(s) and address(es) of authorized representatives for such a Beneficiary listed in this Section 5.2.1 (who may from time to time provide additional or replacement names and addresses of authorized representatives) or listed in any written notice provided to the Custodial Trustee by an authorized representative of such Beneficiary.

TCEQ: 1) Texas Commission on Environmental Quality
Attn: Project Manager for the ASARCO El Paso Smelter Facility
Mail Code 127
P.O. Box 13087
Austin, Texas 78711

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- 2) Executive Director
Texas Commission on Environmental Quality
Re: ASARCO El Paso Smelter Facility
Mail Code 109
P.O. Box 13087
Austin, Texas 78711

- 3) Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Re: ASARCO El Paso Smelter Facility
Mail Code 218
P.O. Box 13087
Austin, Texas 78711

United States: [insert names, addresses]

5.2.2 The Custodial Trustee shall send copies of all reports, budgets, annual balance statements, and other documents that the Custodial Trustee is required to submit to a Beneficiary under the Settlement Agreement, this Agreement, and related implementation documents, including any unilateral orders, consent decrees, or administrative orders on consent to the following persons as applicable:

[insert US and State contacts]

United States:

For the USEPA:

[insert contact]

For the IBWC (to receive electronic versions of documents only):

Legal Advisor

United States Section, International Boundary and Water Commission

4171 N. Mesa, C-100

El Paso, Texas 79902

5.3 Non-Beneficiaries.

Upon the Plan Effective Date, the Settlor shall have no interest, including, without limitation, any reversionary interest, in the Texas Custodial Trust, any Custodial Trust Assets, or the proceeds thereof (except to the extent provided in Section 2.5 of this Agreement).

5.4 Transfer of Beneficial Interests.

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The interests of a Beneficiary in the Texas Custodial Trust, which are reflected only on the records of the Texas Custodial Trust maintained by the Texas Custodial Trust, are not negotiable and may be transferred only after written notice by such Beneficiary to the Texas Custodial Trust, by order of the Court, or by operation of law. The Texas Custodial Trust shall not be required to record any transfer in favor of any transferee which, in the sole discretion of the Texas Custodial Trust, is or might be construed to be ambiguous or to create uncertainty as to the holder of the interest in the Texas Custodial Trust. Until a transfer is in fact recorded on the books and records maintained by the Texas Custodial Trust for the purpose of identifying Beneficiaries, the Texas Custodial Trust, whether or not in receipt of documents of transfer or other documents relating to the transfer, may nevertheless make distributions and send communications to Beneficiaries, as though it has no notice of any such transfer, and in so doing the Texas Custodial Trust and Custodial Trustee shall be fully protected and incur no liability to any purported transferee or any other Person. Interests in the Texas Custodial Trust may not be transferred to ASARCO, the Debtors, the Reorganized Debtors, Americas Mining Corporation, ASARCO USA Incorporated, their successors, their affiliates, or any Persons related to any of the preceding (within the meaning of section 468B(d)(3) of the Internal Revenue Code), except to the extent provided in Section 2.5 of this Agreement.

ARTICLE 6
REPORTING AND TAXES

6.1 Reports.

As soon as practicable after the end of each calendar quarter beginning with the quarter ended after assets are first received by the Texas Custodial Trust and ending as soon as practicable upon termination of the Texas Custodial Trust, the Texas Custodial Trust shall submit to the Beneficiaries a written report, including: (a) financial statements of the Texas Custodial Trust at the end of such calendar quarter or period and the receipts and disbursements of the Texas Custodial Trust for such period; and (b) a description of any action taken by the Texas Custodial Trust in the performance of its duties which, as determined by outside counsel, accountants or other professional advisors, materially and adversely affects the Texas Custodial Trust and of which notice has not previously been given to the Beneficiaries. The Texas Custodial Trust shall promptly submit additional reports to the Beneficiaries whenever, as determined by outside counsel, accountants or other professional advisors, an adverse material event or change occurs which affects either the Texas Custodial Trust or the rights of the Persons receiving distributions (including, without limitation, the Beneficiaries) hereunder. The Texas Custodial Trust shall also provide the reports or information required by Article 3 of this Agreement. Within thirty (30) days following the determination that a distribution will be made to the Reorganized Debtors from the Texas Custodial Trust, the Texas Custodial Trust will notify the Reorganized Debtors in writing of the total amount of such distribution and the date that such determination was made.

6.2 Other.

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The Texas Custodial Trust shall also file (or cause to be filed) any other statements, returns or disclosures relating to the Texas Custodial Trust, that are required by any applicable governmental unit.

6.3 Reports in Support of Insurance Claims.

The Texas Custodial Trust shall also file (or cause to be filed) reports and cost analyses in support of claims against insurance carriers at the request of the United States and the TCEQ and shall provide the United States and the TCEQ a copy of any such reports and cost analyses.

6.4 Taxes.

The Custodial Trustee shall be the "administrator," within the meaning of Treasury Regulation Section 1.468B-2(k)(3), of the Texas Custodial Trust. Subject to definitive guidance from the Internal Revenue Service or a judicial decision to the contrary, the Custodial Trustee shall file tax returns and pay applicable taxes with respect to the Texas Custodial Trust in a manner consistent with the provisions of Treasury Regulation Section 1.468B-2. All such taxes shall be paid from the Custodial Trust Assets.

ARTICLE 7
MISCELLANEOUS PROVISIONS

7.1 Amendments and Waivers.

Any provision of this Agreement may be amended or waived by mutual consent of the Texas Custodial Trust, the TCEQ and the United States; provided, however, that no change shall be made to this Agreement that would alter the provisions of Section 7.2 hereof or adversely affect the federal income tax status of the Texas Custodial Trust as a "qualified settlement fund" for which no grantor trust election has been made (in accordance with Section 2.1.4 hereof), or, unless agreed to in writing by the affected Custodial Trustee, the rights of the Custodial Trustee. Technical amendments to this Agreement may be made as necessary, to clarify this Agreement or enable the Custodial Trustee to effectuate the terms of this Agreement, in a manner consistent with the Settlement Agreement with the mutual consent of the Texas Custodial Trust, the TCEQ and the United States.

7.2 Tax Treatment.

The Texas Custodial Trust created by this Agreement is intended to be treated as a qualified settlement fund (for which no grantor trust election has been made) pursuant to section 468B of the Internal Revenue Code and related Treasury Regulations for federal income tax purposes, and to the extent provided by law, this Agreement shall be governed and construed in all respects consistent with such intent.

7.3 Cooperation.

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No later than the earlier of (i) 90 days after the Closing Date, or (ii) the Plan Effective Date, the Debtor shall make available to the Custodial Trustee all environmental information and/or data in the state and condition in which such records are found regarding the El Paso Designated Property and the Amarillo Designated Property in possession of Debtor or its contractors. With respect to environmental information and/or data located at the Debtor's offices in Tucson, upon request of the Custodial Trustee, the Debtor shall ship all non-privileged information and/or data maintained by Tom Aldrich and the employees who report to him to the Trustee. With respect to any non-privileged environmental information and/or data not maintained by Tom Aldrich and the employees who report to him, the Debtor shall provide reasonable assistance to the Trustee in locating such records and the Bankruptcy Court will retain jurisdiction to hear any discovery disputes. With respect to environmental information and/or data located at the Sacaton warehouse, to the extent that any indices, itemizations or other characterizations of the documents exist and are reasonably available, those shall be promptly furnished to the Trustee. The Debtor shall provide reasonable assistance to the Governments in locating requested records.

7.4 Situs of the Texas Custodial Trust.

The situs of the Texas Custodial Trust herein established is the State of Texas and the laws of the State of Texas shall control with respect to the construction, administration, and validity of the Texas Custodial Trust and to the construction and interpretation of this Agreement, without giving effect to rules governing the conflict of law.

7.5 Severability.

If any provision of this Agreement or application thereof to any Person or circumstance shall be finally determined by the Court to be invalid or unenforceable to any extent, the remainder of this Agreement, or the application of such provision to Persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and such provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

7.6 Sufficient Notice.

Any notice or other communication hereunder shall be in writing and shall be deemed to have been sufficiently given, for all purposes, if deposited, postage prepaid, in a post office or letter box addressed to the Person for whom such notice is intended, to the name and address set forth in the case of a Beneficiary in Section 5.2 of this Agreement or such other address provided in writing to the Texas Custodial Trust by an authorized representative of the respective Beneficiary.

7.7 Headings.

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The section headings contained in this Agreement are solely for convenience of reference and shall not affect the meaning or interpretation of this Agreement or any term or provision hereof.

7.8 Actions Taken on Other Than Business Day.

If any payment or act under the Settlement Agreement or this Agreement is required to be made or performed on a date that is not a business day, then the making of such payment or the performance of such act may be completed on the next succeeding business day, but shall be deemed to have been completed as of the required date. For the purposes of this Agreement, a business day shall be any of the days Monday through Friday excluding national holidays.

7.9 Consistency of Agreements and Construction.

To the extent reasonably possible, the provisions of this Agreement shall be interpreted in a manner consistent with the Settlement Agreement. Where the provisions of this Agreement are irreconcilable with the provisions of the Settlement Agreement, the provisions of the Settlement Agreement shall prevail, with the exception of Article 4, in which case this Agreement controls.

7.10 Compliance with Laws.

Any and all distributions of Custodial Trust Assets shall be in compliance with applicable laws, including, but not limited to, applicable federal and state securities laws.

7.11 Preservation of Privilege.

In connection with the rights, claims, and causes of action that constitute the Custodial Trust Assets, any attorney-client privilege, work-product privilege, or other privilege or immunity attaching to any documents or communications (whether written or oral) transferred to the Texas Custodial Trust shall vest in the Texas Custodial Trust and its representatives, and the Parties are authorized to take all necessary actions to effectuate the transfer of such privileges.

7.12 Uniform Custodial Trust Act

The Texas Custodial Trust is intended to be governed by the terms of this 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

7.13 Information Sharing with City of El Paso.

This Section 7.13 is included in this Agreement at the sole request and direction of the TCEQ. Upon completion of all or significant portions of the Environmental Actions at the El Paso Smelter Site, the Custodial Trustee shall advise the Beneficiaries and the City of El Paso. Additionally the Custodial Trustee shall provide the City of El Paso with no less than forty-five days notice of any proposed sale or disposition of any/all of such property. Communications and notices to the City of El Paso shall be through the following representative: **(name, contact,**

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title), unless and until a different representative is designated by the City through a written communication to the Custodial Trustee.

The City of El Paso may provide the Custodial Trustee its input on any proposed sale or disposition of the property which the Trustee may consider. However, the City of El Paso shall not have veto power over any disposition or sale and the approval or non-approval of any disposition or sale shall rest solely with TCEQ and the USEPA.

Every six months during the course of Environmental Actions at the El Paso Smelter Site, the Custodial Trustee shall advise the City of El Paso through its above representative of the status of Environmental Actions. Additionally, the Custodial Trustee shall provide the City of El Paso's representative with final approved copies of the reports prepared under Section 6.1 hereof at the time such final reports are provided to the Beneficiaries.

The City of El Paso may provide its input concerning Environmental Actions at the El Paso Smelter Site to the Custodial Trustee, the TCEQ, and the USEPA. However, the City of El Paso shall expressly not have veto power over any decisions on Environmental Actions. Such decisions, and the approval or non-approval thereof, shall rest solely with TCEQ and the United States.

7.14 International Boundary and Water Commission (IBWC) Site.

The Custodial Trustee in evaluating groundwater impacts at the El Paso Smelter Site shall consult with IBWC through its representative listed in Paragraph 5.2.2 and may, with the consent of TCEQ, combine remediation efforts/funds to address groundwater issues if the Custodial Trustee and IBWC conclude there is overlap and that combining efforts relating to groundwater would be cost effective and in the best interests of both the Texas Custodial Trust and IBWC.

7.15 Covenant Not to Sue by Custodial Trustee.

With respect to the Texas Designated Properties and Sites and the El Paso Metals Site, the Custodial Trustee covenants not to sue and agrees not to assert claims or causes of action against the United States or the TCEQ for any direct or indirect claim for reimbursement from the Hazardous Substance 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 TCEQ, 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. With respect to the Dona Ana Site, the Custodial Trustee covenants not to sue and agrees not to assert claims or causes of action against the United States for any direct or indirect claim for reimbursement from the Hazardous Substance 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, including any of

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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 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).

IN WITNESS WHEREOF, the Parties hereto have either executed and acknowledged this Agreement, or caused it to be executed and acknowledged on their behalf by their duly authorized officers all as the date of the first above written.

ASARCO LLC

By: _____

(Title)

Name: _____

By: _____

(Title)

Name: _____

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

By: _____

Mark R. Vickery, P.G.

Executive Director

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FOR THE UNITED STATES

U. S. ENVIRONMENTAL PROTECTION AGENCY

By: _____

(Title)

Name: _____

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FOR THE UNITED STATES

U. S. DEPARTMENT OF JUSTICE

By: _____

(Title)

Name: _____

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CUSTODIAL TRUSTEE

_____ not individually, but in **[its/his]** fiduciary capacity as Custodial Trustee of the Texas Custodial Trust

By: _____
_____, not individually, but solely as _____
of _____, not individually, but **[its/his]** fiduciary
capacity as Custodial Trustee of the Texas Custodial Trust

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EXHIBIT A

Definition of Sites

1. The El Paso smelter site in El Paso County, Texas includes the El Paso Smelter Designated Property, any further description in the proofs of claim, and any location at which hazardous substances from this property have come to be located (the "El Paso Smelter Site").
2. The Amarillo zinc smelter site in Potter County, Texas includes the Amarillo Designated Property, any further description in the proofs of claim, and any location at which hazardous substances from this property have come to be located (the "Amarillo Site").

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EXHIBIT B

El Paso Smelter Designated Property

Amarillo Designated Property

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EXHIBIT C

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EXHIBIT D

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EXHIBIT E

**Attachment E
Texas Custodial
Trust Settlement Agreement**

CUSTODIAL TRUST SITES
<i>Montana Custodial Trust</i>
East Helena, MT
Black Pine, MT
Mike Horse, MT
Iron Mountain, MT
<i>Texas Custodial Trust</i>
El Paso Smelter, TX
Amarillo, TX
<i>Other Custodial Trust</i>
Sacaton, AZ
Globe, CO
Alton, IL
Taylor Springs, IL
Silverton, CO
Trench/Salero, AZ
Murray, UT
Magdalena, NM
Whiting, IN
Columbus/Blue Tee, OH
Beckmeyer, IL
McFarland, WA
Ragland, AL
Van Buren, AR
Deming, NM
Sand Springs, OK
Gold Hill/Belshazzar, UT

PREVIOUSLY SETTLED ENVIRONMENTAL CLAIMS	
<i>Site</i>	
Cal Gulch/Black Cloud, CO	
El Paso County Metal Survey, TX	
Golinsky, CA	
Taylor Springs, IL	
Azurite, WA	
Iron Mountain, MT	
Upper Blackfoot/Mike Horse, MT	
Silver Bow Creek/Butte, MT	
B&L Woodwaste, WA	
Tacoma Smelter Plume, WA - Past Costs/NRD & PRP	
Everett Smelter, WA	
Southeast MO	
Encycle, TX	
Bunker Hill/CDA (Box), ID - Unowned Portion	
Selby Smelter, CA	
Tri-State	
Nueces Bay, TX	
Barker Hughesville (Block P), MT	
East Helena, MT - US/MT Costs - Unowned Portion	
Hayden, AZ	
Mission Mine, AZ	

MISCELLANEOUS STATE & FEDERAL SITES	
<i>Site</i>	
Tacoma Federal, WA	
USIBWC, TX	
Jack Waite Mine, ID	
Monte Cristo, WA	
Lower Silver Creek/Richardson Flats, UT	
Circle Smelting, IL	
East Helena, MT - NRD	
Van Stone, WA	
Kusa, OK	
Triumph Mine, ID	
Vasquez Blvd. / I-70, CO	
Isle Terrible, CO	
New Mexico	
South Plainfield, NJ	
Helvetia, AZ	
Stephenson Bennett Mine, NM	
Combination, MT	
Flux, AZ	
Bonanza, CO	
Golden King, WA	
Cholett, WA	
Coy Mine, TN	
Black Pine, MT	
Murray Smelter, UT	
Henryetta, OK	
Summitville, CO	
Sand Springs, OK (past costs)	
Colorado Permits & Fees	

OTHER SITES	
<i>Site</i>	
Perth Amboy, NJ:	to the extent of remediation on unowned sites, past costs of remediation on the owned site, and NRD on unowned and owned sites. The parties are also negotiating the potential resolution of the claim for future remediation of the owned site.
Arizona NRD:	Agreement in principle, subject to the 9019 process, allowance of general unsecured claim of \$4,000,000 and the transfer of certain real property
Hayden (Past Costs):	the parties are negotiating the allowance of a general unsecured claim
Kelly Mine,	WA
Blue Ledge,	CA
Coeur d'Alene,	ID
Tacoma,	WA
Omaha Lead Site,	NB

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FORM OF
QUITCLAIM DEED

WHEN RECORDED RETURN TO:

QUITCLAIM DEED

STATE OF _____ §
 § KNOW ALL BY THESE PRESENTS
COUNTY OF _____ §

THAT _____, a _____
 (“*Grantor*”), for and in consideration of the sum of Ten Dollars and No/100 (\$10.00) and
other good and valuable consideration paid by _____, a
_____ (“*Grantee*”), the receipt of which is hereby acknowledged, and
pursuant to the Order of the United States Bankruptcy Court for the Southern District of
Texas, Corpus Christi Division entered on _____, 2008 in Case No. 05-21207
styled *In re: ASARCO LLC, et al*, has QUITCLAIMED and by these presents does
QUITCLAIM unto Grantee, all of Grantor’s rights, title and interests in and to (a)
 [that/those] certain tract(s) of land located in _____ County, _____,
as more particularly described in Exhibit A attached hereto and incorporated herein by
this reference for all purposes (b) strips and gores between such tract(s) of land and any
abutting properties whether owned or claimed by deed, limitations or otherwise, and
whether or not held under fence by Grantor, (c) any land lying in or under the bed of any
creek, stream or waterway or any highway, avenue, street, road, alley, easement or right-
of-way, open or proposed, in, on, across, abutting or adjacent to such tract(s) of land, (d)
improvements, buildings or fixtures located on such tract(s) of land, (the “*Property*”),
together with all of Grantor’s rights, claim, title and interest in and to any and all
appurtenances, rights, easements, rights-of-way, appurtenant groundwater rights,
associated surface water rights, claims, and filings, and permits (including but not limited
to air quality permit number 20345 (state new source review permit), renewal application
for air quality permit number 4151 (state ore handling permit) and the application for air
quality permit number 2871 (Title V federal operating permit) or other interests in, to
related to, or benefiting the Texas the Designated Properties (the “*Attendant Property
Rights*”).

TO HAVE AND TO HOLD all of Grantor’s rights, titles and interests in and to
the Property and the Attendant Property Rights unto Grantee, its successors and assigns

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forever, so that neither Grantor nor its successors and assigns shall have, claim or demand any right or title to the Property, the Attendant Property Rights or any part thereof.

[Signature on following page]

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EXECUTED effective as of the _____ day of _____, 200_.

GRANTOR:

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

STATE OF _____ §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on _____, 200_, by
_____, the _____ of _____, a _____, the
_____ of _____, a _____, on behalf of said
_____.

NOTARY PUBLIC

STATE OF _____ §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on _____, 200_, by
_____, the _____ of _____, a _____, the
_____ of _____, a _____, on behalf of said
_____.

NOTARY PUBLIC