

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

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

**CONSENT DECREE AND SETTLEMENT AGREEMENT REGARDING THE
MONTANA SITES**

WHEREAS, several sites in Montana set forth and defined in Attachment A (the “Montana Sites”) are owned in whole or part by Debtors and have been or will be the subject of environmental response and natural resource restoration activities; the ASARCO-owned portions of these Montana Sites are identified herein as the Montana Designated Properties (as defined in Paragraph 1);

WHEREAS, the Troy Mine site is a formerly owned ASARCO mining site located near Troy in Lincoln County, Montana (the "Troy Mine Site");

WHEREAS, the United States and the State of Montana, acting through the Montana Department of Environmental Quality (“MDEQ”) and the Montana Department of Justice (“MDOJ”) (the “State”) (collectively, the “Governments”), have alleged that ASARCO LLC, formerly known as ASARCO Incorporated (“ASARCO”), ASARCO Master Inc., and/or certain of the Affiliated Debtors¹ that are Chapter 11 debtors in the

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

Reorganization Cases, as defined below (collectively with the Affiliated Debtors, “Debtors”) are potentially responsible parties with respect to the Montana Sites and the Troy Mine Site, or are otherwise liable for environmental response, natural resource restoration, and natural resource damages with respect to the Montana Sites and the Troy Mine Site;

WHEREAS, prior to filing of the Bankruptcy Case, ASARCO had entered into several administrative and judicial settlements or consent decrees for the payment of costs and/or performance of work under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601 et seq. (“CERCLA”) and/or the Resource Conservation and Recovery Act 42 U.S.C. §§ 6901 et seq. (“RCRA”), or other federal or state statutes for one or more of the Montana Sites, including a consent decree entered on April 6, 1998, in United States v. ASARCO Incorporated, Civil Action No: CV 98-3-H-CCL (D. Mt.) (the “East Helena Consent Decree”), the Process Ponds Consent Decree entered on December 27, 1990, CV 90-46-H-CCL (D.Mont.) (the “Process Ponds Consent Decree,” and together with the East Helena Consent Decree, the “Montana Consent Decrees”), and DEQ Administrative Order on Consent, Docket No. HW-07-01 (“DEQ Order”) (collectively, the “Previous Settlements”);

WHEREAS, the United States has alleged that it has incurred past response costs, and/or may incur future response costs, under CERCLA in connection with the Montana Sites for which ASARCO and ASARCO Master Inc. are allegedly liable, and that

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.”

ASARCO and ASARCO Master Inc. are liable for response costs and the performance of work pursuant to the Previous Settlements;

WHEREAS, the State has alleged that it has incurred past response costs (including remedial action costs) and natural resource damage assessment and litigation costs, and may incur additional future response costs (including remedial action costs) and natural resource damage assessment and litigation costs, under CERCLA and the Montana Comprehensive Environmental Cleanup and Responsibility Act (“CECRA”), Mont. Code Ann. §§ 75-10-701 et seq., and costs related to reclamation and water treatment, in connection with the Montana Sites and the Troy Mine Site for which ASARCO and ASARCO Master Inc. are allegedly liable, and that ASARCO and ASARCO Master Inc. are liable for environmental response costs and the performance of work pursuant to the Previous Settlements;

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

WHEREAS, ASARCO’s Affiliated Debtors filed with the Bankruptcy Court voluntary petitions for relief under Title 11 of the United States Bankruptcy Code at various times in 2005, 2006, and 2008, and these bankruptcy cases are jointly administered with the Bankruptcy Case (collectively with the Bankruptcy Case, the “Reorganization Cases”);

WHEREAS, the United States filed Proofs of Claim Nos. 8375, 10745, 10746, and 11009, in the Bankruptcy Case setting forth, inter alia, claims against ASARCO and

ASARCO Master Inc. under Section 107 of CERCLA for various past and future response costs as defined under CERCLA in connection with the Montana Designated Properties and/or the Montana Sites, and protectively setting forth claims for future environmental response costs and work and natural resource damages pursuant to the Previous Settlements based on the status of ASARCO, ASARCO Master Inc., and their affiliated predecessors in interest ASARCO Consulting, Inc. and American Smelting and Refining Company as past and present owners of the Montana Designated Properties;

WHEREAS, the State filed Proofs of Claim No. 10524, 10525, 10526, 10527, 10841, 10842 and 10843, in the Bankruptcy Case setting forth, inter alia, claims against ASARCO, ASARCO Master Inc., ASARCO Consulting, Inc., and American Smelting and Refining Company under CERCLA and CECRA for various past and future response costs (including remedial action costs and reclamation costs) and natural resource damages as defined under CERCLA and CECRA in connection with the Montana Designated Properties and/or Montana Sites, and protectively setting forth claims for future response costs (including remedial action costs), natural resource damages (including compensatory natural resource damages), natural resource restoration, costs related to reclamation and water treatment, and work pursuant to the Previous Settlements and pursuant to ASARCO's and ASARCO Master Inc.'s status as past and present owners of the Montana Designated Properties;

WHEREAS, the State's Proofs of Claim include a compensatory natural resource damage claim for the East Helena Site (the "East Helena Site Compensatory Natural Resource Damage Claim");

WHEREAS, ASARCO has disputed the claims and protective claims with respect to the Montana Sites filed by the United States and the State as set forth in their respective Proofs of Claim and/or various expert reports submitted by the United States and the State;

WHEREAS, ASARCO has previously entered into settlement agreements, approved in the Bankruptcy Case, for the payment of costs and performance of work under CERCLA and CECRA and other federal and state statutes related to three of the Montana Sites, specifically the Settlement Agreement Regarding the Iron Mountain Site (Docket Numbers 7987 and 8235) (“Iron Mountain Settlement Agreement”), the Settlement Agreement Regarding the Upper Blackfoot Mining Complex Site² (Docket Numbers 7538 and 7792) (“Upper Blackfoot Mining Complex Settlement Agreement”), and the Settlement Agreement Regarding Response Costs at the East Helena Superfund Site (Docket Numbers 9231, 10288, and 10392) (“Separately Settled East Helena Matters”);

WHEREAS, the Iron Mountain Settlement Agreement and Upper Blackfoot Mining Complex Settlement Agreement obligated ASARCO to perform certain actions related to the Iron Mountain Designated Property (as defined herein) and the Mike Horse Designated Property (as defined herein);

WHEREAS, the Separately Settled East Helena Matters resolved claims for the payment of costs under CERCLA related to contaminated soils on those portions of the East Helena Superfund Site that are not currently owned by Debtors;

² The Upper Blackfoot Mining Complex Site is also known as the Mike Horse Site. The ASARCO-owned portion of this site is referred to in this Settlement Agreement as the Mike Horse Designated Property, as defined in Paragraph 1(b).

WHEREAS, the United States and ASARCO are entering into a separate settlement agreement in the Bankruptcy Case which resolves the United States Forest Service's claims at property near the Black Pine Designated Property that is not owned by Debtors ("Amended Settlement Agreement Regarding Miscellaneous Federal and State Environmental Sites" or "Miscellaneous Sites Settlement Agreement");

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 Montana Sites;

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

WHEREAS, the Debtors, the United States, and the State wish to enter into a consent decree and settlement agreement for the Montana Sites ("Settlement Agreement") which will place the Montana Designated Properties into environmental custodial trusts, and is in accord with the Iron Mountain Settlement Agreement, the Upper Blackfoot Mining Complex Settlement Agreement, the Miscellaneous Sites Settlement Agreement, and the Separately Settled East Helena Matters, as contemplated herein;

WHEREAS, the Debtors, the United States, and the State desire to settle, compromise and resolve their disputes relating to the Montana Sites and the Troy Mine Site;

WHEREAS, this Settlement Agreement is intended to serve as a comprehensive settlement of the claims and causes of action of the Governments against Debtors with respect to all work and past costs and any potential future costs incurred by the

Governments and all natural resource damages relating to or in connection with the Montana Sites (except as specifically provided herein for the Iron Mountain Settlement Agreement, the Upper Blackfoot Mining Complex Settlement Agreement, the Miscellaneous Sites Settlement Agreement, and the Separately Settled East Helena Matters) and the Troy Mine Site;

WHEREAS, nothing in this Settlement Agreement shall affect the allowed claims and payments under the Iron Mountain Settlement Agreement, the Upper Blackfoot Mining Complex Settlement Agreement, the Miscellaneous Sites Settlement Agreement, and the Separately Settled East Helena Matters;

WHEREAS, the Miscellaneous Sites Settlement Agreement, the Iron Mountain Settlement Agreement, and the Upper Blackfoot Mining Complex Settlement Agreement include, *inter alia*, allowed claims and payments for actions on Forest Service property at or related to the Black Pine Designated Property, the Iron Mountain Designated Property and the Mike Horse Designated Property;

WHEREAS, in consideration of, and in exchange for, the promises and covenants herein, the Debtors, the United States, the State, and the Custodial Trustee (for itself and the Custodial Trust Parties) (collectively "Parties") hereby agree to the terms and provisions of this Settlement Agreement;

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

WHEREAS, this Settlement Agreement is fair and reasonable, is 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. For purposes of this Settlement Agreement, the Montana Designated Properties consist of the following:
 - a. The Black Pine Designated Property, consisting of all property at or near the Black Pine Mine complex near Philipsburg, Montana that is currently owned by Debtors, including the Combination Mine, the Combination Mill, other mining facilities, the 38 acres adjacent to the Black Pine Mine recently acquired by Debtors, and the associated unpatented mining and mill site claim properties, all as more particularly described in Attachment B substantially in the form attached hereto (the “Black Pine Designated Property ”), and the Debtors and the Governments agree to cooperate in good faith to finalize this legal description as soon as practicable;
 - b. The Mike Horse Designated Property, consisting of those portions of the Upper Blackfoot Mining Complex near Lincoln, Montana that are currently owned by Debtors, including the associated unpatented mining and mill site claim properties, all as more particularly described in Attachment B substantially in the form attached hereto (the “Mike Horse Designated Property”), and the Debtors and the Governments agree to cooperate in good faith to finalize this legal description as soon as practicable;

- c. The Iron Mountain Designated Property, consisting of those portions of the Iron Mountain/Flat Creek Mine complex near Superior, Montana that are currently owned by Debtors, all as more particularly described in Attachment B substantially in the form attached hereto (the “Iron Mountain Designated Property”), and the Debtors and the Governments agree to cooperate in good faith to finalize this legal description as soon as practicable;
 - d. The East Helena Designated Property, consisting of all property at or near East Helena, Montana that is currently owned by Debtors, all as more particularly described in Attachment B substantially in the form attached hereto (the “East Helena Designated Property,” collectively with the Black Pine Designated Property, the Mike Horse Designated Property, and Iron Mountain Designated Property, the “Montana Designated Properties”), and the Debtors and the Governments agree to cooperate in good faith to finalize this legal description as soon as practicable; and
2. “Environmental Actions” shall mean any and all environmental activities related to the Montana Designated Properties, including but not limited to response or remedial actions, removal actions, corrective action, closure, or post-closure care, natural resource restoration, reclamation, investigations, studies, remediation, interim actions, final actions, emergency actions, water treatment, implementation of engineered structures and controls, obtaining and maintaining reasonable financial assurance, monitoring, repair and replacement of engineered structures, monitoring equipment and controls, operation and maintenance, and implementation, operation and maintenance of institutional

controls, coordination and integration of reuse and remedial efforts and initiatives (including, without limitation, multi-stakeholder communications), and, if appropriate, long-term stewardship and perpetual custodial care activities. “Environmental Actions” also include activities related to releases of hazardous substances, hazardous waste, or hazardous constituents from any portion of the Montana Designated Properties, including all areas affected by natural migration of such hazardous substances, hazardous waste, or hazardous constituents from the Montana Designated Properties.

II. JURISDICTION

3. 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

4. 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

5. The Custodial Trust.

- a. On the effective date of the plan of reorganization that the Bankruptcy Court approves in the Reorganization Cases (the “Effective Date”) and simultaneously with receipt of the payments to the Custodial Trust Accounts under Subparagraph 6.b., a Custodial Trust (“Custodial Trust”) shall be established and Debtors will transfer all of their right, interest in, and title to, including without limitation, all of their fee ownership in and

to the Montana Designated Properties and any of their interests in all appurtenances, rights, easements, rights-of-way, mining rights (including unpatented mining claims, mill site claims, and placer claims), mineral rights, mineral claims, riparian rights, water rights, water claims, and water allocations, permits, and other interests related to the Montana Designated Properties to the Custodial Trust; the property to be conveyed shall include, without limitation, all fixtures, improvements, equipment, and personal property located thereon as of the date of execution by Debtors of the Settlement Agreement and owned by the Debtors with the exception of the equipment and other items of personal property specified in Attachment C of this Settlement Agreement that have been removed from the Montana Designated Property prior to the Effective Date, and this Attachment C may be modified by agreement of the Debtors, the United States, the State, and the Trustee up to the Effective Date. After the Effective Date, Debtors shall retain no ownership or other interest whatsoever in the Montana Designated Properties. The transfer of ownership shall be by quit claim deed, substantially in the form of Attachment F, and personal property bill of sale without warranty of all of the Debtors' right, title and interests and shall be free and clear of all claims, liens, and interests against the Debtors or, to the extent created by Debtors and affecting Debtors' interest in the Montana Designated Properties, claims and liens against the Montana Designated Properties other than any liability to the Governments under this Settlement

Agreement, but subject to any existing in rem claims or interests other than liens for the payment of monetary claims (except as provided in Subparagraphs 5.b. and 5.c. below), such as property taxes, or other monetary claims asserted in the Reorganization Cases, provided that Debtors shall pay all property taxes relating to the Montana Designated Properties prorated through the Effective Date. 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 execute and record releases of any liens or security interests held by any of the Debtors against any Montana Designated Property. After Debtors execute this Settlement Agreement, Debtors shall not further encumber the Montana Designated Properties or their other interests therein and shall maintain such properties, including the improvements thereon and the fixtures thereto that are related to ongoing remediation activities in the condition that they exist as of the date of such execution, except to the extent that ongoing environmental actions require otherwise, and ASARCO reserves the right to enter into a contract relating to the sale of slag on the East Helena Designated Property, subject to the following conditions: (1) the contract must be signed prior to 10 business days before the hearing for approval of this Settlement Agreement; and (2) prior to signing said

contract, the Governments must be provided with a copy of the proposed contract and the Lead Agency, after consultation with other governmental agencies pursuant to Subparagraph 6.k., must indicate in writing within 5 business days that they are satisfied that the contract will not interfere with Environmental Actions at the East Helena Designated Property; and (3) the slag buyer/operator, at its sole cost and expense, obtains or provides evidence of appropriate general liability insurance coverage reasonably satisfactory to the Custodial Trustee and naming the Custodial Trust and the Custodial Trustee as additional insureds for so long as the slag buyer/operator has the right to remove the slag. If the Lead Agency fails to respond within 5 business days, ASARCO may seek approval of the Bankruptcy Court instead, which shall be deemed to satisfy the second condition, provided however, that the United States and the State retain the right to object during the bankruptcy proceeding. The Custodial Trustee shall pay premiums for policies of title insurance for any of the Montana Designated Properties if requested jointly by the State and the United States Department of Justice (“USDOJ”), provided however, that nothing in this Paragraph shall require ASARCO to provide any deed or other documentation other than a quit claim deed and personal property bill of sale without warranty for any Montana Designated Property. The purpose of the Custodial Trust shall be to own the Montana Designated Properties, carry out administrative and property management functions related to the Montana Designated Properties as set forth herein, manage

and/or fund implementation of future Environmental Actions approved by the Lead Agency with respect to the Montana Designated Properties (or approved by DOI for the Custodial Trust NRD Accounts), pay certain future oversight costs, and ultimately to sell, transfer, facilitate the reuse of, or otherwise dispose or provide for the long-term stewardship of all or part of the Montana Designated Properties, if possible, all as provided herein and in the Custodial Trust Agreement. Debtors and the Lead Agency for each Montana Designated Property shall exchange information and reasonably cooperate to determine the appropriate disposition of any executory contracts or unexpired leases that relate to the relevant Montana Designated Property. The 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 the same is 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 Custodial Trust. The Custodial Trust and the Custodial Trustee shall not take any actions or fail to take any actions that would cause the 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 of 1986, as amended (the "Internal Revenue Code") and the related Treasury Regulations. The Custodial Trust shall be funded as specified in

Subparagraph 6.b (subject to any credit pursuant to Subparagraphs 6.c. and 6.d).

- b. The Black Pine Designated Property shall be transferred to the Custodial Trust subject to the lien held by the MDEQ under the Hardrock Reclamation Property Bond, DEQ # 002516-HR, filed for record on September 24, 2002, as Document # 045174 in the Records of Granite County, Montana, and the MDEQ will not be treated as a secured creditor under any plan of reorganization with respect to this lien, and the claim is satisfied and withdrawn by this Settlement Agreement.
- c. The East Helena Designated Property shall be transferred to the Custodial Trust subject to the lien held by the United States Environmental Protection Agency (“US EPA”) arising under Section 107(1) of CERCLA, and recorded on April 8, 2002 with the Lewis and Clark County Recorder’s Office, and the US EPA will not be treated as a secured creditor under any plan of reorganization with respect to this lien, and the claim is satisfied and withdrawn by this Settlement Agreement. Such lien shall not be applied to the Separately Settled East Helena Matters.
- d. Montana Environmental Trust Group, LLC, not individually but solely in the representative capacity as Custodial Trustee, is appointed as the Custodial Trustee to administer the Custodial Trust and the Custodial Trust Accounts, in accordance with this Settlement Agreement and a Custodial Trust Agreement executed by the Parties substantially in the form attached hereto as Attachment D.

- e. No later than the earlier of (i) the Effective Date or (ii) 90 days after the Closing Date, the Debtors shall provide to the Custodial Trustee all environmental information and/or data regarding the Montana Designated Properties in possession of Debtors or their contractors in the state and condition in which such information or data is found.
6. The Custodial Trust Accounts.
- a. The Custodial Trustee shall create segregated Custodial Trust Cleanup Accounts for each of the Montana Designated Properties. The purpose of the Custodial Trust Cleanup Accounts shall be to provide funding and proceeds for future Environmental Actions as selected, approved, and authorized by the Lead Agency (as defined in subparagraph 6.j. below) and certain future oversight costs of the Governments as provided herein with respect to each Montana Designated Property. The Custodial Trustee shall create Segregated Custodial Trust Federal Natural Resource Damage Accounts (“Custodial Trust NRD Accounts”) for the Iron Mountain Designated Property, Black Pine Designated Property, and East Helena Designated Property as provided herein. A separate Custodial Trust Administrative Account shall be created to fund the administration of the Custodial Trust. Assets of the Custodial Trust Accounts shall be held in trust solely for these purposes. The Governments shall be the sole beneficiaries of the Custodial Trust Accounts.
 - b. In settlement and full satisfaction of all claims against Debtors related to the Montana Designated Properties and the Montana Sites as provided

herein (including but not limited to the liabilities and other obligations asserted in the United States' and State's proofs of claim and other pleadings filed as evidence presented to the Bankruptcy Court relating to the Montana Designated Properties and the Montana Sites), Debtors shall pay a total of \$138,300,000 (which shall be reduced as provided in Subparagraphs 6.c. and 6.d. below) to the Custodial Trust Accounts on the Effective Date (as defined in Paragraph 5.a.) and simultaneously with the transfer of the Montana Designated Properties, to be allocated as follows: (i) payment of \$8.9 million to establish the Custodial Trust and to fund the Custodial Trust Administrative Account for the purposes of administration of the Custodial Trust; (ii) payment of \$17.439 million to fund future Environmental Actions and certain future oversight costs of the Governments with respect to the Black Pine Designated Property, which the Custodial Trustee shall deposit in the Custodial Trust Cleanup Account for the Black Pine Designated Property; (iii) payment of \$61,000 to fund United States Department of Interior ("DOI") natural resource restoration and future oversight costs with respect to the Black Pine Designated Property, which the Custodial Trustee shall deposit in a segregated Custodial Trust NRD Account for the Black Pine Designated Property; (iv) payment of \$10 million to fund future Environmental Actions and certain future oversight costs of the Governments with respect to the Mike Horse Designated Property, which the Custodial Trustee shall deposit in the Custodial Trust Cleanup Account for the Mike Horse Designated

Property; (v) payment of \$1.864 million to fund future Environmental Actions and certain future oversight costs of the Governments with respect to the Iron Mountain Designated Property, which the Custodial Trustee shall deposit in the Custodial Trust Cleanup Account for the Iron Mountain Designated Property; (vi) payment of \$36,000 to fund DOI natural resource restoration and future oversight costs with respect to the Iron Mountain Designated Property, which the Custodial Trustee shall deposit in a segregated Custodial Trust NRD Account for the Iron Mountain Designated Property; (vii) payment of \$99.294 million to fund future Environmental Actions and certain future oversight costs of the Governments with respect to the East Helena Designated Property, which the Custodial Trustee shall deposit in the Custodial Trust Cleanup Account for the East Helena Designated Property; and (viii) payment of \$706,000 to fund DOI natural resource restoration and future oversight costs with respect to the East Helena Designated Property, which the Custodial Trustee shall deposit in a segregated Custodial Trust NRD Account for the East Helena Designated Property. The payments set forth in this Subparagraph (b) shall, for purposes of the Chapter 11 case, be accorded the status of expenses of administration.

- c. The amount of payment for any Montana Designated Property under Subparagraphs 6.b(ii), 6.b(iv), 6.b(v) and 6.b(vii) shall be reduced to reflect actual expenditures by Debtors at a Montana Designated Property

for Capital Expenditure Response Costs³ for work performed between February 1, 2009 and the Effective Date. Such costs shall not be associated with the Prepetition ASARCO Environmental Trust.⁴ Such response costs must be approved in writing in advance by the Lead Agency for the Montana Designated Property. Debtors shall include an estimate of the expenditures in any such request. The Lead Agency shall seek to respond within 10 business days of any requests for approval of expenditures. If the Lead Agency has ordered or otherwise directed that ASARCO perform specific remediation at a Montana Designated Property between February 1, 2009 and the Effective Date, but rejects ASARCO's proposed plan and related Capital Expenditure Response Costs for such work, the Lead Agency may provide an alternative plan to accomplish the remediation within 10 business days after the rejection. If, in the case of an order or other direction by the Lead Agency and, either the Lead Agency fails to respond within 10 business days of any requests for approval of expenditures or the Lead Agency fails to provide an alternative within 10 business days and the Lead Agency does not indicate or otherwise agree that ASARCO should delay work until the Lead Agency responds or provides an alternative plan for remediation, then

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 Lead Agency at the Designated Property.

⁴ The 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.

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

- d. Debtors contend there is no existing obligation for Debtors to perform natural resource restoration and/or rehabilitation activities at the Montana Designated Properties or Montana Sites. If, however, the government orders or requires such activities, and Debtors actually perform such activities (Debtors deny they have any obligations to perform such activities and reserve all related rights and defenses), the amount of damages for any Montana Designated Property under Subparagraphs 6.b(iii), 6.b(vi), and 6.b(viii) shall be reduced to reflect restoration credits earned by Debtors at a Montana Designated Property for completion of approved natural resource restoration and/or rehabilitation activities (“restoration activities” in this Subparagraph) between February 1, 2009 and the Effective Date. Such restoration activities, the amount of restoration credit, and resulting damages reduction must be approved in writing in advance by DOI for the Montana Designated Property. Debtors shall include a description of the restoration activities and location(s)

proposed in any such request. DOI shall seek to respond within 10 business days of any requests for restoration credit. If DOI rejects ASARCO's proposed plan for restoration activities, DOI may provide an alternative plan to accomplish the restoration within 10 business days after the rejection. If, in the case of an order or other direction by DOI and, either DOI fails to respond within 10 business days of any requests for approval of expenditures or DOI fails to provide an alternative within 10 business days and DOI does not indicate or otherwise agree that ASARCO should delay work until DOI responds or provides an alternative plan for the restoration activities, 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 8(h). Following successful completion of any restoration activity under this Paragraph, the Debtors shall provide documentation to the Governments of the activity completed and 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 restoration activities on property not owned by Debtors.

- e. 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, this Settlement Agreement shall

constitute a consent decree between the Parties. Approval of the Bankruptcy Court, as a unit of the District Court, shall be sought, and the Bankruptcy Court shall retain continuing jurisdiction over the Custodial Trust and the Custodial Trust Accounts sufficient to satisfy the requirements of Treasury Regulation section 1.468B-1. The Custodial Trustee will not elect to have the Custodial Trust treated as a grantor trust. The Custodial Trust shall be treated as a separate taxable entity. The Custodial Trustee shall cause any property taxes imposed on property owned by the Custodial Trust to be paid using assets of the Custodial Trust Administrative Account. The Custodial Trustee shall cause taxes, if any, imposed on the earnings in any Custodial Trust Account 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).

- f. The Custodial Trustee shall only use the Custodial Trust Cleanup Accounts, as authorized by the Lead Agency through the budget process, to fund future Environmental Actions selected and approved by the Lead Agency with respect to each Montana Designated Property and certain future oversight costs of the Governments as provided herein. Approved budgets for the Montana Designated Properties shall include funds for satisfying the respective Montana Designated Property obligations set forth in Paragraph 23; provided, however, that each approved budget for

the East Helena Designated Property shall include such funds to the extent determined appropriate by the Lead Agency after consultation with other governmental agencies pursuant to Subparagraph 6.k. below. The Custodial Trustee shall only use the Custodial Trust Administrative Account to fund the administrative costs of the Custodial Trust that have been approved by the State and USDOJ. The Custodial Trustee shall only use the Custodial Trust NRD Accounts to fund DOI natural resource restoration that has been approved by DOI and related oversight costs.

- g. Within 60 days of the Effective Date in the first year and thereafter by January 1 of each year following the Effective Date, the Custodial Trustee shall provide to USDOJ, MDEQ, MDOJ, US EPA, DOI, and United States Forest Service (“FS”) for each Custodial Trust Cleanup Account and Custodial Trust NRD Account, a balance statement and proposed budget for the coming year together with an estimate for the first quarter of the following calendar year. The budget shall reflect any determinations made by the Lead Agency (or, in the case of the Custodial Trust NRD Account, DOI) regarding which elements of the future Environmental Actions will be performed directly by Custodial Trust Parties and which elements of the future Environmental Actions will be funded by the Custodial Trust but be performed by the Lead Agency or others designated by the Lead Agency (or, in the case of DOI, performed by DOI or others designated by DOI). The Custodial Trustee shall implement the proposed budget as

approved by the Lead Agency (or DOI in the case of the Custodial Trust NRD Accounts).

- h. The Custodial Trustee shall pay funds from a Custodial Trust Cleanup Account to the Lead Agency (or another governmental agency for oversight costs if its assistance had been requested by the Lead Agency and such oversight costs are included in the approved budget) making a written request for funds within ten (10) days of receipt of such request. Any written request shall specify the purpose of the funds, and shall certify that the funds will be used only for Environmental Actions selected and approved by the Lead Agency and conducted after the Effective Date or oversight costs incurred after the Effective Date by the Lead Agency or another governmental agency as provided above. The Lead Agency shall maintain any funds received pending expenditure in accordance with this Settlement Agreement in a site-specific account dedicated to Environmental Actions with respect to the Montana Designated Property corresponding to the Custodial Trust Cleanup Account from which the disbursement was made, and shall expend such funds and interest solely for future Environmental Actions with respect to that Montana Designated Property. Any funds received under this Subparagraph that are held by the Lead Agency for more than sixty ("60") days shall be maintained in an interest-bearing account, with the interest retained and used only for the same purposes as the principal. If the Lead Agency requests assistance from another governmental agency pursuant to this Subparagraph, the

Lead Agency shall ensure that the funds are included in the approved budget for such oversight costs.

- i. In the case of requests by the Lead Agency for the Custodial Trustee to use the funds and interest to perform work or manage the performance of work, the Custodial Trustee shall utilize the funds and interest from the respective Custodial Trust Cleanup Account to undertake such work promptly, in accordance with the schedule and work as approved by the Lead Agency. All activities undertaken by the Custodial Trustee pursuant to this Settlement Agreement shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. The Custodial Trustee shall require appropriate liability insurance from each contractor hired to perform work.
- j. For purposes of this Settlement Agreement, "Lead Agency" shall mean the State for the Black Pine Designated Property, Mike Horse Designated Property, and Iron Mountain Designated Property, and shall mean US EPA for the East Helena Designated Property.
- k. The Lead Agency for a Montana Designated Property shall consult in a timely manner with the other governmental agencies associated with the site under this Settlement Agreement, including natural resource trustee agencies, on the cleanup or other actions to be taken pertaining to the Montana Designated Property if such consultation is requested by such agencies. The Forest Service herein requests consultation with regard to all matters affecting property administered by the Forest Service at the

Black Pine Designated Property, Mike Horse Designated Property, and Iron Mountain Designated Property.

- l. The State and USDOJ may provide the Custodial Trustee with joint written notice that the Lead Agency for a Montana Designated Property has changed.
- m. The Custodial Trustee shall pay funds from a Custodial Trust NRD Account to DOI within 10 days of a written request by DOI. Such written request shall specify the natural resource restoration for which DOI will use the funding requested. DOI shall maintain any such funds pending expenditure in accordance with this Settlement Agreement in the DOI Natural Resource Damage Assessment and Restoration Fund, Account No. 14X5198. A separate site-specific numbered account for the corresponding Montana Designated Property shall be established within the DOI's Natural Resource Damage Assessment and Restoration Fund. DOI shall expend the funds in these accounts, including all interest earned on such funds, solely on natural resource restoration and related oversight costs for that site.
- n. The Custodial Trust shall administer, hold, or dispose of (including abandonment) unpatented mining claims in accordance with the 1872 Mining Law, 30 U.S.C. §§ 22 et seq., and the Federal Land Policy and Management Act, 43 U.S.C. §§ 1701 et seq. All actions of the Custodial Trust, the State, and the Forest Service under this Settlement Agreement as to National Forest Service Lands within the Mike Horse Designated

Property shall be consistent with the “Watershed Restoration Agreement between the State of Montana and the US Department of Agriculture Forest Service, North Region, for the Cleanup of the National Forest System Portion of the Upper Blackfoot Mining Complex Site.” Although it is not anticipated that actions will be taken by the Custodial Trust on property administered by the Forest Service or any other federal land management agency, any actions by the Custodial Trust on property administered by the Forest Service or any other federal land management agency can only be taken after the written concurrence of the federal agency. Notwithstanding anything to the contrary in this Settlement Agreement, unpatented mining claims relating to any of the Montana Sites that have already reverted to the United States shall be deemed relinquished. As to the Mike Horse Designated Property, such claims are set forth in the Upper Blackfoot Mining Complex Settlement Agreement.

- o. When a notice, submission or request is to be given or is allowed under this Settlement Agreement, either by a Party or the Custodial Trustee, such notice, submission, or request shall be written, and shall be provided at the same time to the United States and the State. Prior to the Effective Date, the United States and the State will provide their initial contact information for purposes of this Subparagraph to the Parties, and shall promptly notify each governmental agency upon any change in contact information.

p. Upon Lead Agency determination that all Environmental Actions required by the Lead Agency, except for natural resource restoration pertaining to compensatory losses, related to a Montana Designated Property are complete (and upon the concurrence of the Forest Service with regard to any actions taken pursuant to this Settlement Agreement on any property administered by the Forest Service), any funds remaining in that site's Custodial Trust Cleanup Account shall be transferred in the following order: (1) first, in accordance with instructions provided by USDOJ and the State, to any of the other Custodial Trust Cleanup Accounts established under this Settlement Agreement for a Montana Designated Property with remaining Environmental Actions and a need for additional trust funding; (2) second, to DOI and the State as federal and state trustees, jointly, in an amount and in accordance with instructions provided by USDOJ and the State that reflects compensatory losses from natural resource damages under applicable law, to be used solely for natural resource restoration and related oversight costs for Montana Designated Properties; (3) third, then in accordance with instructions provided by USDOJ after consultation with the states, to any other open and operating environmental custodial trust accounts established pursuant to the other global environmental settlement agreements⁵ in the

⁵ 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 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; and the Consent Decree and Settlement Agreement

Reorganization Cases in other states with remaining environmental response or restoration actions to be performed and a need for additional trust funding; and (4) fourth, then to the US EPA Hazardous Substance Superfund (“Superfund”).

- q. Upon DOI determination that all natural resource restoration required by DOI for a Montana Designated Property is complete and all related oversight costs paid (and upon the concurrence of the Forest Service with regard to any actions taken pursuant to this Settlement Agreement on any property administered by the Forest Service), any funds remaining in that site’s Custodial Trust NRD Account shall be transferred in the following order: (1) first, to DOI and the State as federal and state trustees, jointly, in an amount and in accordance with instructions provided by USDOJ and the State that reflects compensatory losses from natural resource damages under applicable law, to be used solely for natural resource restoration and related oversight costs for Montana Designated Properties; (2) second, in accordance with instructions provided by USDOJ and the State, to any of the other Custodial Trust Cleanup Accounts established under this Settlement Agreement for a Montana Designated Property with remaining Environmental Actions and a need for additional trust funding; (3) third, then in accordance with instructions provided by USDOJ after consultation with the states, to any other open and operating environmental custodial trust accounts established pursuant to the other

Establishing a Custodial Trust for the Owned Smelter Site in El Paso, Texas and the Owned Zinc Smelter Site in Amarillo, Texas.

global environmental settlement agreements⁶ in the Reorganization Cases in other states with remaining environmental response or restoration actions to be performed and a need for additional trust funding; and (4) fourth, then to the Superfund.

- r. The USDOJ and the State at any time during implementation of this Settlement Agreement may jointly agree to transfer a portion of the funds remaining in a Montana Designated Property's Custodial Trust Cleanup Account to other Custodial Trust Cleanup Accounts established under this Settlement Agreement if USDOJ and the State determine that the Montana Designated Property's Custodial Trust Cleanup Account would, after such a transfer, maintain sufficient funding for future Environmental Actions for the Montana Designated Property, including necessary funding for operation and maintenance of Environmental Actions. Neither the State nor USDOJ have any right to petition the Court or any right to other redress should the other Party not agree to a proposed transfer under this Paragraph.
- s. Upon the completion of all Environmental Actions, except for natural resource restoration pertaining to compensatory losses, and disbursement of all final costs for all Montana Designated Properties, and upon approval of USDOJ and the State, any funds remaining in the Custodial Trust Administrative Account shall be transferred in the following order: (1) first, to DOI and the State as federal and state trustees, jointly, in an

⁶ As defined in n.5, supra.

amount and in accordance with instructions provided by USDOJ and the State that reflects compensatory losses from natural resource damages under applicable law, to be used solely for natural resource restoration and related oversight costs for Montana Designated Properties; (2) second, then in accordance with instructions provided by the USDOJ after consultation with the states, to any other open and operating environmental custodial trust account established pursuant to other global environmental settlement agreements⁷ in the Reorganization Cases in other states with remaining environmental response or restoration actions to be performed and a need for additional trust funding; and (3) third, then to the Superfund.

7. Debtors shall continue, at their own expense, or as provided under the Prepetition ASARCO Environmental Trust, the operations of any required ongoing environmental response, reclamation, or natural resource restoration activities being performed by Debtors at any Montana Designated Property until Debtors fully fund all Custodial Trust Accounts as set forth in Subparagraph 6.b. of this Settlement Agreement. Debtors may receive credit for such activities to the extent permitted pursuant to Subparagraphs 6.c. and 6.d. of this Settlement Agreement.

8. Custodial Trust Miscellaneous Provisions.

a. The administrative funds within the Custodial Trust Administrative Account shall be used by the Custodial Trustee for the administration of the Custodial Trust and the management of the Montana Designated

⁷ As defined in n. 5, supra.

Properties. Within 30 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 USDOJ, MDEQ, MDOJ, US EPA, DOI, and FS with a balance statement and an annual proposed budget for administration of the Custodial Trust. The State and USDOJ shall have the authority to approve or disapprove the proposed budget after consultation with the other governmental agencies.

- b. In no event shall the Custodial Trust, the Custodial Trustee, and the Custodial Trustee's shareholders, officers, directors, employees, agents, managers, members, or other parties, professionals or representatives employed by the Custodial Trust or Custodial Trustee (the "Custodial Trust Parties," as more specifically defined in the Custodial Trust Agreement) be held liable to any third parties for any liability, action, or inaction of any other party.
- c. As provided in this Settlement Agreement, the Custodial Trust Parties shall be deemed to have resolved their civil liability under CERCLA, RCRA, and similar State statutes, to the United States and the State, and have contribution protection against any actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. Section 9613(f)(2) or similar state law for contribution for matters addressed in this Settlement Agreement. Provided, however, that nothing in the Settlement Agreement shall be construed to allow the Custodial Trust Parties to violate the

Settlement Agreement or any State, federal or local law, nor to limit the enforcement authorities of the United States or the State.

- d. The Custodial Trust shall implement and ensure the maintenance of any institutional controls or deed restrictions (1) required by law, or (2) requested by the Lead Agency, with respect to a Montana Designated Property. No institutional controls or deed restrictions shall be established on property administered by the Forest Service, without the prior written concurrence of the Forest Service.
- e. In the event that the Custodial Trust or the Custodial Trustee in any material respect exacerbates conditions related to any Montana Designated Property, violates a provision of this Settlement Agreement, or otherwise does not adequately perform under this Settlement Agreement, the State and USDOJ may jointly (1) direct that all remaining funds and future recoveries in the Custodial Trust for a Montana Designated Property be paid to the Lead Agency for the Montana Designated Property, all remaining funds in the Custodial Trust NRD Account for a Montana Designated Property be paid to DOI, to be used in accordance with the terms of this Settlement Agreement, and all remaining funds in the Custodial Trust Administrative Account and title to the Montana Designated Property be transferred as jointly directed by the State and USDOJ; or (2) arrange appointment of a new custodial trustee as provided in the Custodial Trust Agreement.

- f. The Custodial Trust and the Custodial Trustee shall take such actions and execute such documents as are reasonably requested by Debtors with respect to effectuating the terms of this Settlement Agreement. To the extent that Debtors request the Custodial Trust and the Custodial Trustee to take such an action, the Custodial Trust and the Custodial Trustee shall do so at the sole expense of Debtors.
- g. The Custodial Trust is intended to be governed by the terms of the Settlement Agreement and the Custodial Trust Agreement and shall not be subject to any provision of the Uniform Custodial Trust Act as adopted by any state, now or in the future.
- h. It is the express intent of the parties that Debtors' total financial obligations at each Montana Designated Property shall not exceed the amount of funding provided for the Custodial Trust Cleanup Account, the Custodial Trust Administrative Account, and/or the Custodial Trust NRD Account related to that Montana Designated Property; provided, however, this Paragraph: (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 Section VI hereof; ~~and~~ (iii) does not limit the United States' and Montana's reservation of rights for liability under subparts (i), (iii), (iv) and (v) of Paragraph 39; and (iv) does not apply to any costs required to be incurred prior to the Effective Date that are not Capital Expenditure Response Costs.

i. The United States and the State 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 Settlement Agreement and contains provisions A and B below (a “Qualifying Plan” or “Plan”):

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

Custodial Trusts from recovering under any confirmed Plan on any allowed claim or payment due with respect to any Site listed on Attachment 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 Debtors' estate as the current owner or current operator of property between February 1, 2009 and the Effective Date; (v) for sites covered by an approved Custodial Trust Settlement Agreement, permits the Governments or Custodial Trusts to recover more than permitted under the approved Custodial Trust Settlement Agreement, nor does it affect the covenants not to sue in the Custodial Trust Settlement Agreements or the reservation of rights; (vi) releases, discharges, precludes, or enjoins any on-site liability of Debtors' estate as the owner, operator or lessee of the Ray Mine, the Mission Mine, the Hayden 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 entity administering the plan of reorganization for the benefit of the creditors or Reorganized Debtors shall succeed to ASARCO's administrative role, and shall, in its/their sole discretion, act as Performing Entity (as defined in the trust) from time to time, but shall assume no affirmative liabilities or obligations associated with that role. The funds remaining in the Prepetition ASARCO Environmental Trust are separate from and without prejudice to the distributions to be made to holders of environmental claims under this Plan.

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

amounts owed by AMC. Upon AMC's payment of amounts due under the note, the Plan Administrator may release a corresponding amount from the Prepetition ASARCO Environmental Trust Escrow and distribute such funds in accordance with the terms and conditions of this Plan and the Confirmation Order.

For the avoidance of doubt, if a plan is confirmed that contains the provisions above, and if there is a site at which acts, omissions or conduct by the Debtors created liability under Environmental Laws (as defined in the Plan) 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 entity administering the plan of reorganization for the benefit of the creditors, assets or funds held by the entity administering the plan of reorganization for the benefit of the creditors, or Reorganized Debtors, even if the government agencies are not currently aware of such liability. This shall not prevent any governmental agency from filing a claim or otherwise taking action to enforce or perfect rights in the event a Qualifying Plan is not confirmed. Debtors agree that any plan of reorganization that they file or support will be consistent with this Settlement Agreement.

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

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

9. The Custodial Trust shall provide the United States and the State and their representatives access at all reasonable times for the purposes of conducting activities related to Environmental Actions at or near the Montana Designated Properties. The Custodial Trust shall execute and record with the appropriate recorder's office any easements, deed restrictions or other appropriate documents relating to land use requested by the Lead Agency for restrictions on use of any portion of a Montana Designated Property in order to protect public health, welfare, or safety or the environment or ensure non-interference with or the protectiveness of any action related to Environmental Actions.

10. The United States, the State, or a local governmental unit that is a designee of the State, may at any time propose in writing to take ownership, without further consideration, of any of the Montana Designated Properties or any part thereof. Any such proposed transfer and the terms thereof are subject to approval in writing by the State and the FS with respect to the Black Pine Designated Property, Mike Horse Designated Property, and the Iron Mountain Designated Property. Any such proposed transfer and the terms thereof are subject to approval in writing by US EPA and the State with respect to the East Helena Designated Property. For the East Helena Designated Property, proposals to transfer property where DOI or its designee has conducted natural resource restoration activities also require the written approval of DOI. The Custodial Trustee shall transfer such ownership promptly upon written approval of such transfer by

the agencies. Should US EPA collect money from its current lien on the East Helena Designated Property, that money shall be placed in the East Helena Site-wide Special Account within the Superfund to be retained and used to conduct or finance response actions at or in connection with the East Helena Site, or to be transferred by US EPA to the Superfund.

11. The Custodial Trustee may at any time seek approval for the sale or lease or other disposition of all or part of the Montana Designated Properties. No such sale, lease, or disposition may be made without the written approval of the State and FS with respect to the Black Pine Designated Property, Mike Horse Designated Property, and the Iron Mountain Designated Property. No such sale, lease, or disposition may be made without the written approval of US EPA and the State with respect to the East Helena Designated Property. The sale, lease, or disposition of East Helena Designated Property where DOI or its designee has conducted natural resource restoration also requires the written approval of DOI for such properties. Any net proceeds from the sale or lease or other disposition of some or all of a Montana Designated Property shall be paid to the particular Custodial Trust Cleanup Account for that Montana Designated Property.

12. The Custodial Trust Parties shall not be personally liable unless the Bankruptcy Court, by a final order, finds that they were grossly negligent or committed fraud or willful misconduct after the Effective Date in relation to the Custodial Trustee's duties. The Custodial Trust shall indemnify, defend and hold harmless the Custodial Trust Parties from and against all claims, causes of action, liabilities, obligations, losses, costs, judgments, damages or expenses (including attorney's fees) (and any judgment and costs of defense shall be paid from the Custodial Trust Cleanup Account for the relevant

Montana Designated Property without the Custodial Trust Parties having to first pay from their own funds) for any personal liability or costs of defense 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 Custodial Trustee by this Settlement Agreement, the Custodial Trust Agreement, or any order of court entered pursuant to or in furtherance of this Settlement Agreement, the Custodial Trust Agreement, or applicable law unless a determination is made by a final order of the Bankruptcy Court finding that they were grossly negligent or committed fraud or willful misconduct in relation to the Custodial Trust or the Custodial Trustee's duties. However, indemnification shall be limited to funds in the Custodial Trust Cleanup Account for the relevant Montana Designated Property or the Custodial Trust Administrative Account. There shall be an irrebuttable presumption that any action taken or not taken with the specific approval of the Bankruptcy Court does not constitute willful misconduct.

13. The Custodial Trust Parties are exculpated by all persons, including without limitation, holders of claims and other parties in interest, of and from any and all claims, causes of action and other assertions of liability 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 Custodial Trustee by this Settlement Agreement, the Custodial Trust Agreement, or any order of court entered pursuant to or in furtherance of this Settlement Agreement, the Custodial Trust Agreement, or applicable law. No person, including without limitation, holders of claims and other parties in interest, will be permitted to pursue any claim 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 the Bankruptcy Court, or for implementing the provisions of this Settlement Agreement, the Custodial Trust Agreement, or any order of the Bankruptcy 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.

14. 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 as appropriate, within the approved budget allowances for such expenses, and shall not be personally liable for any action taken or not taken in accordance with the advice thereof unless the Bankruptcy Court, by a final order, finds that they were grossly negligent or committed fraud or willful misconduct; and (c) persons dealing with the Custodial Trust Parties shall look only to the Custodial Trust assets that may be available to them consistent with this Settlement Agreement to satisfy any liability incurred by the Custodial Trust Parties to such person in carrying out the terms of this Settlement 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 12.

15. Neither the United States, the State, the Debtors, nor the Reorganized Debtors shall be deemed to be an owner, operator, trustee, partner, agent, shareholder, officer, or director of the Custodial Trust or Custodial Trust Parties, or deemed to be an owner or

operator of any of the Montana Sites, on account of this Settlement Agreement or actions contemplated thereby. Neither the United States nor the State shall be liable for any injury or damages to person or property resulting from acts or omissions of the Custodial Trust Parties in implementing the requirements of this Settlement Agreement.

**V. ALLOWANCE OF STATE CLAIM FOR EAST HELENA SITE
COMPENSATORY NATURAL RESOURCE DAMAGES
AND WITHDRAWAL OF THE TROY MINE SITE CLAIM**

16. In settlement and full satisfaction of all claims and causes of action of the State for the East Helena Site Compensatory Natural Resource Damage Claim (including but not limited to the liabilities and other obligations asserted in the State's Proof of Claim and other pleadings filed by the State in the Bankruptcy Court pertaining to the East Helena Site Compensatory Natural Resource Damage Claim), the State of Montana shall have an allowed general unsecured claim in the total amount of \$5 million. This allowed claim shall not be subordinated to other general unsecured claims pursuant to any provisions of the Bankruptcy Code or other applicable law that may be contended to authorize or provide for subordination of allowed claims, including without limitation sections 105 and 510 of the Bankruptcy Code. This allowed claim is separate and apart from the Custodial Trust funding. As additional consideration for the settlement of this compensatory claim, the State shall have an option to acquire approximately two hundred and thirty two (232) acres of undeveloped land at the East Helena Designated Property, including approximately one hundred and ninety two (192) acres in the vicinity of Upper Lake, and forty (40) acres in the vicinity of Prickly Pear Creek in the northern part of East Helena, from the Custodial Trust without further consideration. The State avers that these undeveloped lands will be dedicated to public recreation, wildlife habitat, open

space and/or wetlands. Prior to any such conveyance, the precise location and future uses of this land shall be agreed upon and approved in a written agreement between the State and US EPA, after consultation with DOI and the Custodial Trustee. Notwithstanding anything to the contrary in this Settlement Agreement, the State shall not be entitled to any additional or alternative consideration beyond that set forth in this Paragraph, and the State shall have no recourse against the Debtors or the Reorganized Debtors as a result of the failure or inability of the State, for any reason, to successfully exercise such option.

17. The State shall provide its electronic funds transfer information to ASARCO at least 20 days prior to the Effective Date. ASARCO shall contact the Fiscal Bureau Chief of the Central Services Division of the Montana Department of Justice at least 48 hours prior to initiating a transfer to provide notice of the date, time, and amount of the expected transfer and to confirm the wiring instructions, bank routing, and account numbers. Upon receipt of any funds paid under this Settlement Agreement, the State will deposit the funds into a State special revenue fund, as provided for in MCA Section 17-2-102(1)(b)(i), to be known as the “East Helena Site Compensatory NRD Special Revenue Fund” (“East Helena Compensatory NRD Fund”), which shall be held and maintained by the State solely to restore, rehabilitate, replace or acquire the equivalent of the injured natural resources. All interest and other earnings on the East Helena Compensatory NRD Fund shall be paid into the East Helena Compensatory NRD Fund, and no portion of the East Helena Compensatory NRD Fund or any earnings on the East Helena Compensatory NRD Fund is to be treated as a general revenue source or as State General Fund money, nor is any portion to be converted or transferred to the State General Fund, and may not be transferred to any other fund except as provided herein. Any non-cash distributions to

the State in the Bankruptcy Case will be made in accordance with instructions provided by the State.

18. The State of Montana agrees that its claim for the Troy Mine Site is withdrawn.

VI. OUTSTANDING OBLIGATIONS

19. Upon the Effective Date and Debtors' full funding of all Custodial Trust Accounts as set forth in Subparagraph 6.b. of this Settlement Agreement (subject to any credit pursuant to Subparagraph 6.c. and 6.d.), all obligations of Debtors to perform work pursuant to the Previous Settlements are fully resolved and satisfied by this Settlement Agreement, provided, however, that: (a) all requirements to retain records shall remain in full force and effect until the Effective Date, and that Debtors shall produce, or make available for production, in the state and condition in which such records are found any such records so retained to the United States or State with respect to a Montana Designated Property or Montana Site as to which the United States or the State is a party to any order or consent decree, (b) upon the Effective Date, the United States, Debtors, and the Custodial Trustee shall file papers with the United States District Court for the District of Montana to substitute the Custodial Trustee for "ASARCO" and "Defendant" under the Montana Consent Decrees for Debtors' obligations to perform work under the Montana Consent Decrees as provided in this Settlement Agreement and remove ASARCO as a party to the Montana Consent Decrees. Any statutory, stipulated, or other penalties allegedly due from Debtors as of February 1, 2009 related to the Montana Consent Decrees and DEQ Order are fully resolved and satisfied by this Settlement Agreement. The Parties shall seek to modify or otherwise conform the Montana Consent Decrees to the terms of this Settlement Agreement. The United States, Debtors and

Custodial Trustee will request that the modification contemplated herein shall only be made effective upon the Effective Date and after Debtors' full funding of all Custodial Trusts as set forth in Subparagraph 6.b. of this Settlement Agreement (subject to any credit pursuant to Subparagraph 6.c. and 6.d.), and that the request for modification shall have no effect unless both conditions occur. 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 Montana Consent Decrees or the DEQ Order 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.

20. Upon the Effective Date and Debtors' full funding of all Custodial Trust Accounts as set forth in Subparagraph 6.b. of this Settlement Agreement (subject to any credit pursuant to Subparagraph 6.c. and 6.d.), ASARCO's obligations under Paragraphs 15 – 19 of the Upper Blackfoot Mining Complex Settlement Agreement are deemed fully resolved and fully assumed by the Custodial Trustee, and ASARCO shall have no responsibility thereunder. Any statutory, stipulated, or other penalties allegedly due from Debtors as of February 1, 2009 related to the Upper Blackfoot Mining Complex Settlement Agreement are fully resolved and satisfied by this Settlement Agreement. 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 Upper Blackfoot Mining Complex Settlement Agreement 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.

21. Upon the Effective Date and Debtors' full funding of all Custodial Trust Accounts as set forth in Subparagraph 6.b. of this Settlement Agreement (subject to any credit pursuant to Subparagraph 6.c. and 6.d.), ASARCO's obligations under Paragraph 9 of the Iron Mountain Settlement Agreement are deemed fully resolved and fully assumed by the Custodial Trustee, and ASARCO shall have no responsibility thereunder. Any statutory, stipulated, or other penalties allegedly due from Debtors as of February 1, 2009 related to the Iron Mountain Settlement Agreement are fully resolved and satisfied by this Settlement Agreement. 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 Iron Mountain Settlement Agreement 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.

22. Any other outstanding obligations⁸ of Debtors, including ASARCO, under any Consent Decree, Unilateral Administrative Order, Agreed Order, or Administrative Order on Consent for the Montana Designated Properties or Montana Sites (including but not limited to obligations to perform), and any statutory, stipulated, or other penalties allegedly due from Debtors as of February 1, 2009 are fully resolved and satisfied by this Settlement Agreement, and Debtors shall be removed as a party as of the Effective Date and Debtors' full funding of all Custodial Trust Accounts as set forth in Subparagraph 6.b. of this Settlement Agreement (subject to any credit pursuant to Subparagraph 6.c. and 6.d.). 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 Montana Designated Properties or Montana 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.

⁸ Other than those obligations listed in Paragraphs 19-21, the general unsecured claims in the Miscellaneous Sites Settlement Agreement, and the Separately Settled East Helena Matters.

23. Upon the Effective Date and Debtors' full funding of all Custodial Trust Accounts as set forth in Subparagraph 6.b. of this Settlement Agreement (subject to any credit pursuant to Subparagraph 6.c. and 6.d.), the Custodial Trust shall assume Debtors' obligations for the following orders and agreements: (1) for the Mike Horse Designated Property, ASARCO's obligations under Paragraphs 15 – 19 of the Upper Blackfoot Mining Complex Settlement Agreement, (2) for the Iron Mountain Designated Property, ASARCO's obligations under Paragraph 9 of the Iron Mountain Settlement Agreement, (3) for the East Helena Designated Property, ASARCO's obligations under the Montana Consent Decrees and ASARCO's obligations under DEQ Administrative Order on Consent, Docket No. HW-07-01.

VII. COVENANTS NOT TO SUE

24. United States' Covenant Not to Sue for the Black Pine Site. Except as provided in Section VIII (Reservation of Rights), with respect to the Black Pine Site (including releases of hazardous substances from any portion of the Black Pine Site, and all areas affected by natural migration of such hazardous substances from the Black Pine Site), upon the Effective Date and Debtors' full funding of all Custodial Trust Accounts as set forth in Subparagraph 6.b. of this Settlement Agreement (subject to any credit pursuant to Subparagraph 6.c. and 6.d.), the United States covenants not to sue or assert any civil claims or civil causes of action against Debtors, the Reorganized Debtors, or the Custodial Trust Parties pursuant to Sections 106, 107(a) and 113 of CERCLA, 42 U.S.C. §§ 9606, 9607(a), and 9613, Section 7003 of RCRA, 42 U.S.C. § 6973, Sections 301(a), 309(b), and 311 of the Clean Water Act ("CWA"), 33 U.S.C. §§ 1311(a), 1319(b), and

1321, or any similar state law, including any liabilities or obligations asserted in the United States' Proofs of Claim with respect to the Black Pine Site.

25. State's Covenant Not to Sue for the Black Pine Site. Except as provided in Section VIII (Reservation of Rights), with respect to the Black Pine Site (including releases of hazardous substances from any portion of the Black Pine Site, and all areas affected by natural migration of such hazardous substances from the Black Pine Site) upon the Effective Date and Debtors' full funding of all Custodial Trust Accounts as set forth in Subparagraph 6.b. of this Settlement Agreement (subject to any credit pursuant to Subparagraph 6.c. and 6.d.), the State of Montana covenants not to sue or assert any civil claims or civil causes of action against Debtors, the Reorganized Debtors, or the Custodial Trust Parties pursuant to Sections 106, 107(a), and 113 of CERCLA, 42 U.S.C. §§ 9606, 9607(a), and 9613, Sections 3004(u), 3004(v), 3008 and 7002 of RCRA, 42 U.S.C. §§ 6924(u), 6924(v), 6928 and 6972, Sections 301(a), 309(b) and 311 of CWA, 33 U.S.C. §§ 1311(a), 1319(b) and 1321 or Sections 711, 714, 715(2) and 722 of CECRA, Mont. Code Ann. §§ 75-10-711, 75-10-714, 75-10-715(2) and 75-10-722, Sections 601, 602, 611, 613, 614, 615, 617, 631, and 635 of the Montana Water Quality Act ("WQA"), Mont. Code Ann. 75-5-601, 75-5-602, 75-5-611, 75-5-613, 75-5-614, 75-5-615, 75-5-617, 75-5-631, 75-5-635, and Montana tort law, including any liabilities or obligations asserted in Montana's Proofs of Claim with respect to the Black Pine Site.

26. United States' and State's Covenants Not to Sue for the Mike Horse Site. The United States' and State's Covenants Not to Sue for the Mike Horse Site are included in the Upper Blackfoot Mining Complex Settlement Agreement, provided however, that upon the Effective Date and Debtors' full funding of all Custodial Trusts as set forth in

Subparagraph 6.b. of this Settlement Agreement (subject to any credit pursuant to Subparagraph 6.c. and 6.d.), the following sentence in both Paragraphs 26 and 28 of the Upper Blackfoot Mining Complex Settlement Agreement shall be deemed deleted, “As to ASARCO only, these covenants also do not apply to ASARCO’s continuing and future work obligations under Paragraphs 15 – 19 of Section VI (Work to be Undertaken By ASARCO)” and ASARCO will be relieved of such obligations. The United States’ and State’s Covenants Not to Sue for the Mike Horse Site shall apply equally to the Custodial Trust Parties.

27. United States’ and State’s Covenants Not to Sue for the Iron Mountain Site. The United States’ and State’s Covenants Not to Sue for the Iron Mountain Site are included in the Iron Mountain Settlement Agreement, provided however, that upon the Effective Date and Debtors’ full funding of all Custodial Trusts as set forth in Subparagraph 6.b. of this Settlement Agreement (subject to any credit pursuant to Subparagraph 6.c. and 6.d.), Paragraph 20 of the Iron Mountain Settlement Agreement is modified in its entirety to read, “The covenants shall become effective on the Effective Date” and ASARCO will be relieved of any obligation to enter an agreed order on consent or to do further work at the Iron Mountain Site. The United States’ and State’s Covenants Not to Sue for the Iron Mountain Site shall apply equally to the Custodial Trust Parties.

28. United States’ Covenant Not to Sue for the East Helena Site. Except as provided in Section VIII (Reservation of Rights), with respect to the East Helena Site (including releases of hazardous substances, hazardous waste, or hazardous constituents from any portion of the East Helena Site, and all areas affected by natural migration of such hazardous substances, hazardous waste, or hazardous constituents from the East Helena

Site) upon the Effective Date and Debtors' full funding of all Custodial Trust Accounts as set forth in Subparagraph 6.b. of this Settlement Agreement (subject to any credit pursuant to Subparagraph 6.c. and 6.d.), the United States covenants not to sue or assert any civil claims or civil causes of action against Debtors, the Reorganized Debtors, or the Custodial Trust Parties pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606, 9607(a), and RCRA, 42 U.S.C. § 6901, et seq., Sections 301(a), 309(b), and 311 of CWA, 33 U.S.C. §§ 1311(a), 1319(b), and 1321, or any similar state law, including any liabilities or obligations asserted in the United States' Proofs of Claim with respect to the East Helena Site.

29. State's Covenant Not to Sue for the East Helena Site. Except as provided in Section VIII (Reservation of Rights), with respect to the East Helena Site (including releases of hazardous substances, hazardous waste, or hazardous constituents from any portion of the East Helena Site, and all areas affected by natural migration of such hazardous substances, hazardous waste, or hazardous constituents from the East Helena Site) upon the Effective Date and Debtors' full funding of all Custodial Trust Accounts as set forth in Subparagraph 6.b. of this Settlement Agreement (subject to any credit pursuant to Subparagraph 6.c. and 6.d.), the State of Montana covenants not to sue or assert any civil claims or civil causes of action against Debtors, the Reorganized Debtors, or the Custodial Trust Parties pursuant to Sections 106, 107(a), and 113 of CERCLA, 42 U.S.C. §§ 9606, 9607(a), and 9613, and Sections 3004(u), 3004(v), 3008 and 7002 of RCRA, 42 U.S.C. §§ 6924(u), 6924(v), 6928 and 6972, Sections 301(a), 309(b), and 311 of the CWA, 33 U.S.C. §§ 1311(a), 1319(b), and 1321 or Sections 711, 714, 715(2) and 722 of CECRA, Mont. Code Ann. §§ 75-10-711, 75-10-714, 75-10-715(2) and 75-10-

722, Sections 601, 602, 611, 613, 614, 615, 617, 631, and 635 of the WQA, Mont. Code Ann. §§ 75-5-601, 75-5-602, 75-5-611, 75-5-613, 75-5-614, 75-5-615, 75-5-617, 75-5-631, 75-5-635, and Montana tort law, including any liabilities or obligations asserted in Montana's Proofs of Claim with respect to the East Helena Site.

30. State's Covenant Not to Sue for the East Helena Site Compensatory Natural Resource Damage Claim. Except as provided in Section VIII (Reservation of Rights), with respect to the East Helena Site Compensatory Natural Resource Damage Claim (including releases of hazardous substances, hazardous waste, or hazardous constituents from any portion of the East Helena Designated Property, and all areas affected by natural migration of such hazardous substances, hazardous waste, or hazardous constituents from the East Helena Site) upon the Effective Date and Debtors' full funding of all Custodial Trust Accounts as set forth in Subparagraph 6.b. of this Settlement Agreement (subject to any credit pursuant to Subparagraph 6.c. and 6.d.), the State of Montana covenants not to sue or assert any civil claims or civil causes of action against Debtors, the Reorganized Debtors, or the Custodial Trust Parties pursuant to Sections 106, 107(a), and 113 of CERCLA, 42 U.S.C. §§ 9606, 9607(a), and 9613, and Sections 3004(u), 3004(v), 3008 and 7002 of RCRA, 42 U.S.C. §§ 6924(u), 6924(v), 6928 and 6972, Sections 301(a), 309(b), and 311 of CWA, 33 U.S.C. §§ 1311(a), 1319(b), and 1321 or Sections 711, 714, 715(2) and 722 of CECRA, Mont. Code Ann. §§ 75-10-711, 75-10-714, 75-10-715(2) and 75-10-722, Sections 601, 602, 611, 613, 614, 615, 617, 631, and 635 of the WQA, Mont. Code Ann. §§ 75-5-601, 75-5-602, 75-5-611, 75-5-613, 75-5-614, 75-5-615, 75-5-617, 75-5-631, 75-5-635, and Montana tort law, including any

liabilities or obligations asserted in Montana's Proofs of Claim with respect to the East Helena Site Compensatory Natural Resource Damage Claim.

31. State's Covenant Not to Sue for the Troy Mine Site. Except as provided in Section VIII (Reservation of Rights), with respect to the Troy Mine Site (including releases of hazardous substances from any portion of the Troy Mine Site, and all areas affected by natural migration of such hazardous substances from the Troy Mine Site) upon the Effective Date and Debtors' full funding of all Custodial Trust Accounts as set forth in Subparagraph 6.b. of this Settlement Agreement (subject to any credit pursuant to Subparagraph 6.c. and 6.d.), the State of Montana covenants not to sue or assert any civil claims or civil causes of action against Debtors or Reorganized Debtors pursuant to Sections 106, 107(a), and 113 of CERCLA, 42 U.S.C. §§ 9606, 9607(a), and 9613, Sections 3004(u), 3004(v), 3008 and 7002 of RCRA, 42 U.S.C. §§ 6924(u), 6924(v), 6928 and 6972, Sections 301(a), 309(b), and 311 of CWA, 33 U.S.C. §§ 1311(a), 1319(b), and 1321 or Sections 711, 714, 715(2) and 722 of CECRA, Mont. Code Ann. §§ 75-10-711, 75-10-714, 75-10-715(2) and 75-10-722, Sections 601, 602, 611, 613, 614, 615, 617, 631, and 635 of the WQA, Mont. Code Ann. §§ 75-5-601, 75-5-602, 75-5-611, 75-5-613, 75-5-614, 75-5-615, 75-5-617, 75-5-631, 75-5-635, and Montana tort law, including any liabilities or obligations asserted in Montana's Proofs of Claim with respect to the Troy Mine Site.

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

33. Without in any way limiting the covenants not to sue, and the reservations thereto, set forth in Paragraphs 24 - 42, 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 arises solely from its status as and in its capacity as a successor, assign, officer, director, employee, or trustee of Debtors or Reorganized Debtors.

34. The covenants not to sue contained in Paragraphs 24 - 31 of this Settlement Agreement extend only to Debtors, Reorganized Debtors, and the Custodial Trust Parties (for Paragraphs 24 –30), and the persons described in Paragraph 33 above and do not extend to any other person. Nothing in this Settlement 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 Custodial Trust Parties, the United States, the State, and the persons described in Paragraph 33. The United States, the State, Debtors, Reorganized Debtors, and the Custodial Trust Parties expressly reserve all claims, demands, defenses, and causes of action either judicial or administrative, past, present or future, in law or equity, which the United States, the State, Debtors, Reorganized Debtors, or the Custodial Trust Parties may have against all other persons, firms, corporations, entities, or predecessors of Debtors or Reorganized Debtors for any matter arising at or relating in any manner to the Montana Sites and/or claims addressed herein.

35. Nothing in this Settlement Agreement shall be deemed to limit the authority of the United States or the State to take response action under Section 104 of CERCLA, 42

U.S.C. § 9604, Sections 711 and 712 of CECRA, Mont. Code Ann. §§ 75-10-711 and 75-10-712, or any other applicable federal or State law or regulation, or to alter the applicable legal principles governing judicial review of any action taken by the United States or the State pursuant to that authority.

36. Nothing in this Settlement Agreement shall be deemed to limit the information-gathering authority of the United States or the State under any applicable federal or State law or regulation, including Sections 104 and 122 of CERCLA, 42 U.S.C. §§ 9604 and 9622, and Section 707 of CECRA, Mont. Code Ann. § 75-10-707, or to excuse the Debtors, Reorganized Debtors, or Custodial Trust Parties from any disclosure or notification requirements imposed by CERCLA, CECRA, RCRA, or any other applicable federal or state law or regulation.

37. Debtors' and Reorganized Debtors' Covenant Not to Sue for the Montana Sites and the Troy Mine Site. Debtors and Reorganized Debtors covenant not to sue and agree not to assert any claims or causes of action against the United States or the State, and Debtors and the Reorganized Debtors covenant not to sue and agree not to assert any claims or causes of action against the Custodial Trust Parties, with respect to the Montana Sites and the Troy Mine Site (including releases of hazardous substances, hazardous waste, or hazardous constituents from any portion of the Montana Sites and the Troy Mine Site, and all areas affected by natural migration of such hazardous substances, hazardous waste, or hazardous constituents from the Montana Sites and the Troy Mine Site), including but not limited to: any direct or indirect claim for reimbursement from the Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113, 42 U.S.C. §§ 9606(b)(2),

9607, 9611, 9612, 9613 or any other provision of law; any direct or indirect claim for reimbursement under CECRA or from any other State source under CECRA or any other provision of law; any claims against the United States or the State, including any of their departments, agencies or instrumentalities, under CERCLA, 42 U.S.C. §§ 9601 et seq., under CECRA, Mont. Code Ann. Sections 75-10-701, et seq., under RCRA, 42 U.S.C. §§ 6901 et seq., under CWA, 33 U.S.C. 1251 et seq., under WQA, Mont. Code Ann. Sections 75-5- 101 et seq., or under any other provision of law, including Montana tort law; and any claims arising out of environmental response, natural resource restoration, or the Environmental Actions related to the Montana Designated Properties, or related to the East Helena Site Compensatory Natural Resource Damage Claim. 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).

38. Custodial Trust Parties' Covenant Not to Sue for the Montana Sites. The Custodial Trust Parties covenant not to sue and agree not to assert any claims or causes of action against the United States or the State, and Custodial Trust Parties covenant not to sue and agree not to assert any claims or causes of action against Debtors and the Reorganized Debtors, with respect to the Montana Sites (including releases of hazardous substances, hazardous waste, or hazardous constituents from any portion of the Montana Sites, and all areas affected by natural migration of such hazardous substances, hazardous waste, or hazardous constituents from the Montana Sites), including but not limited to: any direct or indirect claim for reimbursement from the Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, 9613 or any other

provision of law; any direct or indirect claim for reimbursement under CECRA or from any other State source under CECRA or any other provision of law; any claims against the United States or the State, including any of their departments, agencies or instrumentalities, under CERCLA, 42 U.S.C. §§ 9601 et seq., under CECRA, Mont. Code Ann. Sections 75-10-701, et seq., under RCRA, 42 U.S.C. §§ 6901 et seq., under CWA, 33 U.S.C. 1251 et seq., under WQA, Mont. Code Ann. Sections 75-5- 101 et seq., or under any other provision of law, including Montana tort law; and any claims arising out of environmental response, natural resource restoration, or the Environmental Actions related to the Montana Designated Properties, or related to the East Helena Site Compensatory Natural Resource Damage Claim. 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).

VIII. RESERVATION OF RIGHTS

39. The covenants not to sue set forth in Section VII do not pertain to any matters other than those expressly specified therein. The United States and the State reserve, and this Settlement Agreement is without prejudice to, all rights against the Debtors, Reorganized Debtors, Custodial Trust Parties or other persons with respect to all matters other than those set forth in Paragraphs 24 - 31 of this Settlement Agreement. The United States and the State also specifically reserve: (i) the Separately Settled East Helena Matters and the Miscellaneous Sites Settlement Agreement; (ii) any action by the United States or the State to enforce the terms of this Settlement Agreement; (iii) the allowed claims set forth in the Iron Mountain Settlement Agreement; (iv) the allowed claims set forth in the Upper Blackfoot Mining Complex Settlement Agreement; and (v)

liability for response costs, response actions, remedial actions, natural resource restoration, natural resource damages, penalties, injunctive relief, and Environmental Actions under CERCLA, RCRA, CWA, CECRA or any other law for Debtors' and Reorganized Debtors' future acts creating liability under CERCLA, RCRA, CWA, or CECRA or any other law that occur after the Closing Date. Debtors' or the Reorganized Debtors' future acts creating liability under CERCLA, RCRA, or similar state law do not include continuing releases related to Debtors' conduct prior to the Closing Date. The United States and the State also reserve, and this Settlement Agreement is without prejudice to any liability of Debtors' and Reorganized Debtors' successors, assigns, officers, directors, employees, and trustees for response costs and injunctive relief under CERCLA Sections 106 and 107, RCRA Sections 7002 and 7003, CWA, and state laws for any future acts by any such respective entity creating liability under CERCLA, RCRA, CWA, or state law. Future acts creating liability under CERCLA, RCRA, or CECRA do not include continuing releases related to these entities' conduct prior to the Closing Date.

40. Subject to the provisions of Subparagraph 6.c and 6.d. of the Settlement Agreement, the United States and the State also reserve all rights against Debtors until the Effective Date, including but not limited to the work required under the Iron Mountain Settlement Agreement and Upper Blackfoot Mining Complex Settlement Agreement. This Settlement Agreement does not release claims and causes of action for criminal liability. The Governments and Debtors reserve all rights with respect to criminal liability.

41. Debtors, Reorganized Debtors, and the Custodial Trustee reserve, and this Settlement Agreement is without prejudice to all rights against the United States and State with respect to: (a) for Debtors and Reorganized Debtors, all matters other than those set forth in Paragraph 37; (b) for the Custodial Trustee, all matters other than those set forth in Paragraph 38; and (c) any action to enforce their rights under the terms of this Settlement Agreement. In addition, Debtors' and Reorganized Debtors' covenant not to sue under Paragraph 37 shall not apply in the event that the United States or the State bring a cause of action or issue an order pursuant to the reservations set forth in Paragraphs 39 and 40, but only to the extent that Debtors' or Reorganized Debtors' claims arise from the same response action, response costs, damages or other relief that the United States or the State is seeking pursuant to the applicable reservations.

42. 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.

IX. CONTRIBUTION PROTECTION

43. The Parties hereto agree that, as of the Closing Date, Debtors, the Reorganized Debtors, and the Custodial Trust Parties are entitled to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), or similar state law for matters addressed in this Settlement Agreement. The matters addressed in this Settlement Agreement include all costs of Environmental Actions incurred or to be incurred by the Custodial Trust, the United States, the State or any other person and natural resource damages relating to the Montana Sites except for the Miscellaneous Sites Settlement Agreement and Separately Settled East Helena Matters.

X. PUBLIC COMMENT

44. This Settlement Agreement will be subject to a thirty (30) day public comment period following notice published in the Federal Register, which may take place concurrent with the judicial approval process under Paragraph 45. The United States and the State each 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 and prior to court approval, the United States and the State will provide the Bankruptcy Court with copies of any public comments and their response thereto. If the United States or the State withdraw or withhold their consent, this Settlement Agreement shall be null and void and of no further effect.

XI. JUDICIAL APPROVAL

45. The settlement reflected in this Settlement Agreement shall be subject to approval by the Bankruptcy Court pursuant to Bankruptcy Rule 9019, subject to the provisions of Section X (Public Comment). The Debtors shall move promptly for court approval of this Settlement Agreement and shall exercise commercially reasonable efforts to obtain such approval.

XII. RETENTION OF JURISDICTION

46. The Bankruptcy Court shall retain jurisdiction over both the subject matter of this Settlement Agreement and the Parties 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 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. After the Effective Date, the Parties agree that the United States District Court for the District of Montana and the Bankruptcy Court shall have concurrent jurisdiction for enforcement of the Custodial Trust and Custodial Trust Parties' obligations under the Custodial Trust, including obligations under the East Helena Consent Decree. However, the Bankruptcy Court shall continue to have jurisdiction over any disputes or other matters arising from this Settlement Agreement.

XIII. CLOSING DATE

47. This Settlement Agreement shall be effective after the close of the public comment period in accordance with Paragraph 44 and upon approval by the Bankruptcy Court pursuant to Paragraphs 44 and 45 of this Settlement Agreement.

XIV. SIGNATORIES/SERVICE

48. 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
REGARDING THE MONTANA SITES

FOR THE UNITED STATES

Date: 3/13/09

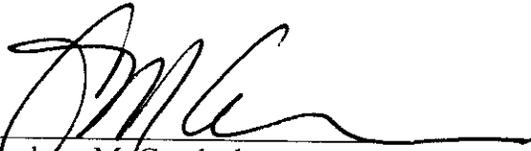

John C. Cruden
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

Date: 3/10/09

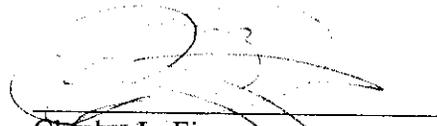

Alan S. Tenenbaum
David L. Dain
Eric D. Albert
Environment and Natural Resources Division
Environmental Enforcement Section
U.S. Department of Justice

THE UNDERSIGNED PARTIES ENTER INTO THIS SETTLEMENT AGREEMENT
REGARDING THE MONTANA SITES

Date: 3/13/09

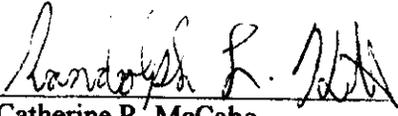

Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement,
Compliance and Environmental Justice

Date: 3/13/09


Charles L. Figur
Senior Enforcement Attorney
Office of Enforcement,
Compliance and Environmental Justice

**THE UNDERSIGNED PARTIES ENTER INTO THIS SETTLEMENT AGREEMENT
REGARDING THE MONTANA SITES**

Date: March 5, 2009

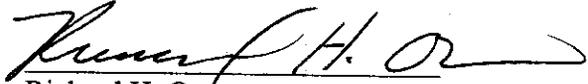

for Catherine R. McCabe
Environmental Protection Agency
Acting Assistant Administrator
Office of Enforcement & Compliance Assurance

THE UNDERSIGNED PARTIES ENTER INTO THIS SETTLEMENT AGREEMENT
REGARDING THE MONTANA SITES

FOR THE STATE OF MONTANA

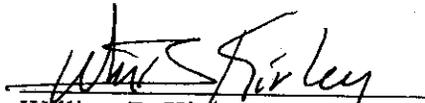
Montana Department of Environmental Quality

Date: March 11, 2009



Richard H. Opper
Director
Montana Department of Environmental Quality

Date: March 11, 2009



William B. Kirley
DEQ Legal Counsel
Montana Department of Environmental Quality
1100 N. Last Chance Gulch
P.O. Box 200901
Helena, Montana 59620-0901

THE UNDERSIGNED PARTIES ENTER INTO THIS SETTLEMENT AGREEMENT
REGARDING THE MONTANA SITES

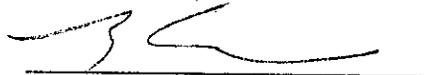
Montana Department of Justice Natural Resource Damage Program

Date: March 11, 2009



Steve Bullock
Attorney General

Date: March 11, 2009



Robert G. Collins
Supervising Assistant Attorney General
Mary Capdeville
Assistant Attorney General
Montana Department of Justice
1301 Lockey Avenue
P.O. Box 201425
Helena, Montana 59620-1425

THE UNDERSIGNED PARTIES ENTER INTO THIS SETTLEMENT AGREEMENT
REGARDING THE MONTANA SITES

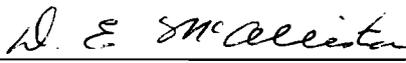
FOR ASARCO LLC; ASARCO CONSULTING, INC., AND AMERICAN SMELTING
AND REFINING CO.

Date: March 13, 2009 
Thomas L. Aldrich
Vice President, Environmental Affairs

Date: March 13, 2009 
Douglas E. McAllister
Executive Vice President, General Counsel

FOR ASARCO Master, Inc.

Date: March 13, 2009 
Thomas L. Aldrich
Vice President, Environmental Affairs

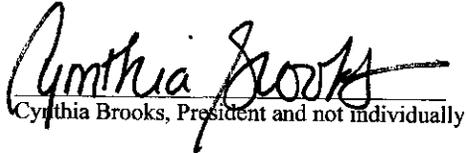
Date: March 13, 2009 
Douglas E. McAllister
Executive Vice President, General Counsel

FOR THE CUSTODIAL TRUSTEE

Montana Environmental Trust Group, LLC, a Montana limited liability company, not individually, but solely in the representative capacity as Trustee of the Custodial Trust

By: Greenfield Environmental Trust Group, Inc.,
not individually but solely as Member

Date: 3/12/09


Cynthia Brooks, President and not individually



ENTERED
06/05/2009

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

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

**ORDER AND JUDGMENT APPROVING CONSENT DECREE AND
SETTLEMENT AGREEMENT REGARDING THE MONTANA SITES
[DOCKET NOS. 10534, 10539, 11315, 11316, 11329, 11343, AND 11519]**

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

ORDERED that the Montana Custodial Trust Settlement Agreement, which sets forth a settlement of environmental claims by and between the United States, the State of Montana, ASARCO, ASARCO Consulting, Inc., American Smelting and Refining Company,

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

ASARCO Master, Inc., and the Montana Environmental Trust Group, LLC (not individually, but solely in its representative capacity as trustee of the custodial trust), is approved; and it is further

ORDERED that the Montana custodial trust shall receive a custodial trust settlement payment totaling \$138.3 million which shall be treated as an administrative expense priority claim in accordance with Section 1129 of the Bankruptcy Code and be paid in cash, in full on the effective date, and the State of Montana shall have a general unsecured claim of \$5 million; and it is further

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

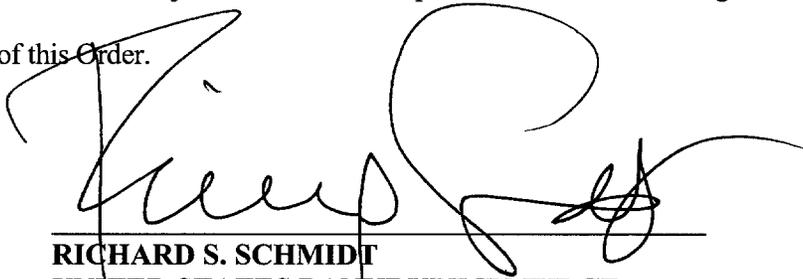
ORDERED that the Montana Custodial Trust Settlement Agreement is fair, reasonable, and consistent with environmental law; and it is further

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

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

Dated:

5 June 2009

A large, stylized handwritten signature in black ink, appearing to read 'Richard S. Schmidt', is written over a horizontal line.

RICHARD S. SCHMIDT
UNITED STATES BANKRUPTCY JUDGE