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This property is subject to an Environmental Covenant held by the Colorado Department of Public Health and Environment pursuant to section 25-15-321, C.R.S.

ENVIRONMENTAL COVENANT

ASARCO Incorporated ("Asarco") grants an Environmental Covenant ("Covenant") this 4th day of October, 2004 to the Hazardous Materials and Waste Management Division of the Colorado Department of Public Health and the Environment ("the Department") pursuant to § 25-15-321 of the Colorado Hazardous Waste Act, § 25-15-101, *et seq.* The Department's address is 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530.

WHEREAS, Asarco is the owner of certain property commonly referred to as The Globe Plant, located at 495 E. 51st Ave., Denver, Colorado 80216, more particularly described in Attachment A, attached hereto and incorporated herein by reference as though fully set forth (hereinafter referred to as "the Property"); and WHEREAS, pursuant to the Consent Decree lodged in the United States District Court for the District of Colorado on October 6, 2004 pursuant to United States of America and State of Colorado v. Asarco, Inc. Civil Action No. 04-RB-2070, the Property is the subject of enforcement and remedial action pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601, *et seq.* ("CERCLA"); and

WHEREAS, the purpose of this Covenant is to ensure protection of human health and the environment by restricting uses that are not compatible with soil remediation levels at the Globe Plant; and

WHEREAS, Asarco desires to subject the Property to certain covenants and restrictions as provided in Article 15 of Title 25, Colorado Revised Statutes, which covenants and restrictions shall burden the Property and bind Asarco, its heirs, successors, assigns, and any grantees of the Property, their heirs, successors, assigns and grantees, and any users of the Property, for the benefit of the Department.

NOW, THEREFORE, Asarco hereby grants this Environmental Covenant to the Department, and declares that the Property as described in Attachment A shall hereinafter be bound by, held, sold, and conveyed subject to the following requirements set forth in paragraph 1 below, which shall run with the Property in perpetuity and be binding on Asarco and all parties having any right, title or interest in the Property, or any part thereof, their heirs, successors and assigns, and any persons using the land. As used in this Environmental Covenant, the term "Owner" means the record owner of the Property and, if any, any other person or entity otherwise legally authorized to make decisions regarding the transfer of the Property or placement of encumbrances on the Property, other than by the exercise of eminent domain, and any heirs, successors and assigns thereof.

1. Environmental Protection Covenant - Use Restrictions:

- a. The use of the property for residential purposes or to raise crops or livestock is prohibited;
- b. The use of the property for child or animal day care facilities, including child or animal day camps and educational facilities, is prohibited;
- c. Except for remediation purposes, any use or extraction of any groundwater, including the unconfined, alluvial aquifer, is prohibited;
- d. Any excavation into the cover of the Former Neutralization Pond or construction of structures on the Former Neutralization Pond is prohibited;
- e. Any excavation, grading, construction, drilling, digging, or any other activity that may damage the integrity of the soil cap at the Plant Site Operable Unit ("Cap") is prohibited without the submission and approval by the Department of a plan for the management and disposition of disturbed and contaminated materials. Any damage to the integrity of the Cap will be followed by repair of the Cap so that the repaired Cap consists of at least 12 inches of borrow soils meeting specifications approved by the Department and a vegetative cover or two inches of asphalt or other durable cover;
- f. Except as permitted in paragraph e, any activity that will impair the effectiveness of the remedy is prohibited, including any activity that will interfere with groundwater extraction and remediation.

2. Purpose of this covenant: The purpose of this Covenant is to ensure protection of human health and the environment by minimizing the potential for exposure to any hazardous substance, hazardous waste, hazardous constituents, and/or solid waste that remains on the Property.

3. Modifications: This Covenant runs with the land and is perpetual, unless modified or terminated pursuant to this paragraph. Owner or its successors and assigns may request that the Department approve a modification or termination of the Covenant. The request shall contain information showing that the proposed modification or termination shall, if implemented, ensure protection of human health and the environment. The Department shall review any submitted information, and may request additional information. If the Department determines that the proposal to modify or terminate the Covenant will ensure protection of human health and the environment, it shall approve the proposal. No modification or termination of this Covenant shall be effective unless the Department has approved such modification or termination in writing. Information to support a request for modification or termination may include one or more of the following:

- a) a proposal to perform additional remedial work;
- b) new information regarding the risks posed by the residual contamination;
- c) information demonstrating that residual contamination has diminished;
- d) information demonstrating that the proposed modification would not adversely impact the remedy and is protective of human health and the environment; and other appropriate supporting information.

4. Conveyances: Owner shall notify the Department at least fifteen (15) days in advance of any proposed grant, transfer or conveyance of any interest in any or all of the Property. Owner agrees to incorporate either in full or by reference the restrictions of this Covenant in any leases, licenses, or other instruments granting a right to use the Property. No owner of the Property shall have any responsibility or liability under this Covenant for obligations required, arising, or occurring from the actions of others after that owner's conveyance or transfer of all of its interests in the Property. Nothing in this paragraph shall alter or impair Asarco's liability under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, et. seq., the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et. seq., the Colorado Hazardous Waste Act, § 25-15-101, et. seq., or any judicial or administrative order issued pursuant to any of the foregoing.

5. Notification for proposed construction and land use: Owner shall notify the Department simultaneously when submitting any application to a local government for a building permit or change in land use.

6. Inspections: The Department shall have the right of entry to the Property at reasonable times with prior notice for the purpose of determining compliance with the terms of this Covenant. Nothing in this Covenant shall impair any other authority the Department may otherwise have to enter and inspect the Property.

7. No Liability: The Department does not acquire any liability under State law by virtue of accepting this Covenant.

8. Enforcement: The Department may enforce the terms of this Covenant pursuant to §25-15-322. C.R.S. Asarco and any Owner may file suit in district court to enjoin actual or threatened violations of this Covenant.

9. Owner's Compliance Certification: Owner shall submit an annual Report to the Department, on the anniversary of the date this Covenant was signed by Asarco, detailing Owner's compliance, and any lack of compliance, with the terms of this Covenant during the period of its ownership.

Accepted by the Colorado Department of Public Health and Environment this 4th day of October, 2004.

By: Gary W. Baughman

Title: Director, HMWMD

STATE OF Colorado)
) ss:
COUNTY OF Denver)

The foregoing instrument was acknowledged before me this 4 day of October, 2004 by Gary Baughman on behalf of the Colorado Department of Public Health and Environment.

Claudette M. Ferris
Notary Public

4300 Cherry Creek Dr So
Address
Denver, CO 80246

My commission expires: October 21, 2007