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RICHARD H. TAKEICH
REGISTER OF DEEDS
DOUGLAS COUNTY, NE

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COVENANT RESTRICTING USE OF OMAHA SMELTING PLANT PROPERTY

ASARCO INCORPORATED, a New Jersey corporation, formerly known as American Smelting and Refining Company ("Covenantor"), being the owner of the real property located in Douglas County, Nebraska, as more particularly described in Exhibit A attached hereto and incorporated herein (the "Property") hereby adopts the covenants, conditions and restrictions set forth herein which shall apply to and run with the Property.

1. Background Purpose. The Property previously was used to operate a lead refining facility. Commencing in 1999, Covenantor voluntarily remediated the Property by means of an engineered capping system pursuant to a Memorandum of Agreement and Work Plan (collectively, the "Remediation Documents") approved by the Nebraska Department of Environmental Quality ("NDEQ"). Covenantor intends that, following remediation, the Property shall be used in a manner that will not hamper, impair or degrade the remediation systems and subject to restrictions, covenants and conditions set forth in a Redevelopment Covenant executed by Covenantor and the City and recorded with the Register of Deeds. The covenants, conditions and restrictions set forth herein are necessary to ensure that the Property is not developed, used or operated in a manner incompatible with the remediation and to protect against uses of the Property that are unsuitable in light of such remediation.

2. Covenant Restricting Use. The Property and every portion thereof shall not be used, developed or operated in any manner except for the following uses, as are then permitted by applicable valid governmental zoning ordinances, to wit: 1) park, open space, recreational, or park-related concession uses; 2) such non-residential and non-industrial uses as may be located on the approximately 20,000 square foot elevated soil pad designated in the Remediation Documents; or, 3) non-residential uses specifically authorized in writing by NDEQ or its successor agency. No development, operations, or other uses, including recreational or other uses as approved by NDEQ, shall be permitted which have a reasonable degree of scientific probability of impairing, degrading or compromising the remediation performed pursuant to the Remediation Documents. Without limiting the generality of the foregoing, nothing shall be done on any portion of the Property that has a reasonable degree of scientific probability of interfering with or impairing the integrity of the engineered environmental cap, surface and subsurface water drainage systems, groundwater monitoring wells or other structures, systems, procedures or devices constructed or implemented at the Property pursuant to the Remediation Documents. Notwithstanding any restriction contained herein, the uses specifically set out in the Remediation Documents shall be permitted. By way of

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illustration, but not in limitation, the following specifically restricted actions shall be prohibited at all times and in all circumstances:

- a. Actions and activities which have a reasonable degree of scientific probability of penetrating or causing damage to the Geosynthetic Clay Liner (GCL) shall be prohibited.
- b. Trees shall not be planted or allowed to grow in any capped area unless they are placed in pots or containers adequate to contain their roots. Grasses, shrubs or plants which are likely of sending roots to the GCL or the rip rap shall not be planted or allowed to grow.
- c. No wastes of any kind shall be stored, treated or disposed of on the Property, except garbage, rubbish or trash accumulated during the routine operation of the Property.
- d. Actions and activities, including, but not limited to, adding soil, or placing equipment or structures, that will likely result in surcharges or unstable slopes shall be prohibited.
- e. Trucks, cars or other vehicles licensed for travel on public highways shall not be allowed on unpaved or non-roadway areas of the Property except to construct elements of the project or except to make repairs to emergency conditions which threaten public health or the environment. Non-roadway areas include but are not limited to areas east of the floodwall not designated as a driveway or parking lot.
- f. No foundation loads shall be increased above loads specified in any approved engineering plans.
- g. Underground utilities shall not be installed outside of the utility corridors designated in the Remediation Documents, except those utility lines necessary to serve allowed uses at the project site and constructed in compliance with the other covenants stated herein.
- h. Actions and activities which have a reasonable degree of scientific probability of damaging the rip rap and shoreline armoring shall be prohibited.
- i. Actions and activities which prevent or impair the operation of the surface and subsurface drainage system shall be prohibited.
- j. Actions and activities which have a reasonable degree of scientific probability of creating undetected or unmanageable leaks or discharges in the underground utilities or sprinkler systems shall be prohibited.

- k. No actions or activities shall be allowed which have a reasonable degree of scientific probability of resulting in material alteration of site drainage patterns (through erosion or sedimentation) or in unstable slopes at the Property.

3. Prohibition against Use of Groundwater. Domestic, irrigation, and other water wells of any type shall not be drilled or maintained on the Site, except for groundwater monitoring wells. Groundwater beneath the Property shall not be used as a source of drinking water or for other direct contact purposes.

4. Covenant to Run With the Land in Perpetuity. The restrictions contained in this Covenant shall run with the land in perpetuity, and shall bind all persons obtaining or succeeding to an interest in the Property after the date hereof.

5. Application. All real estate, lots, parcels or portions thereof located within or on the Property, and any conveyance or transfer covering or describing any part thereof, shall be subject to the covenants, conditions and restrictions contained herein. By acceptance of such conveyance or transfer, each transferee or grantee and each of his heirs, successors, transferees or assigns agree with Covenantor and each other to be bound by the covenants, conditions and restriction contained herein.

6. Partial Resale, Lease or Sublease. The sale, subdivision, leasing and subleasing of a portion of the Property shall be prohibited unless each such portion resulting from such sale, subdivision, leasing or subleasing will meet all of the requirements contained herein and contained in any applicable, valid governmental ordinances and regulations material to the purpose of these covenants.

7. Enforcement. Covenantor and any person, corporation or other entity who hereafter asserts or claims any right, title, claim or interest in and to the Property, whether as successor in title or otherwise and whether voluntarily or by operation of law ("Grantee"), and any person, corporation or other entity claiming by, through or under Covenantor or Grantee, or their heirs, assigns or successors, or any of them severally, shall have the right to enforce the restrictions contained in this Covenant and to proceed at law or in equity to compel compliance with or prevent the violation or breach of the terms hereof. The prevailing party in any action to enforce any provision of this Covenant shall be entitled to recover all costs of such action, including reasonable attorney fees.

8. Non-waiver. To the maximum extent permitted by law, this Covenant and the restrictions set forth herein shall not be subject to waiver or abandonment due to non-enforcement or violation of this Covenant on all or any portion of the Property.

9. Miscellaneous. The determination that any provision of this Covenant is invalid shall not affect any other provision of this Covenant and the other provisions of this Covenant shall remain in full force and effect. No waiver of the breach of any provision of this Covenant shall constitute a waiver of a subsequent breach of the same provision or of any other provision. No right of action shall accrue for or on account of the failure of any person to exercise any right created by this Covenant nor for imposing any provision, condition, restriction or covenant which may be unenforceable.

Dated: March 13, 2002.

ASARCO INCORPORATED, a New Jersey corporation, formerly known as American Smelting and Refining Company

By: [Signature]
Print Name: GENARO LARREA
Print Title: PRESIDENT

By: [Signature]
Print Name: James T. O'Neil, Jr.
Print Title: Vice President, Finance & Administration

STATE OF ARIZONA)
)ss.
COUNTY OF MARICOPA)

On this 13th day of March, 2002, before me a Notary Public in and before said state personally appeared Genaro Larrea, President and James T. O'Neil, Jr., Vice President, Finance & Administration of ASARCO INCORPORATED, a New Jersey corporation, formerly known as American Smelting and Refining Company, known to me to be the identical persons who signed the foregoing instrument and acknowledged the execution thereof to be their voluntary act and deed and the voluntary act and deed of said corporation.

[Signature]
Notary Public
My commission expires: 06-13-2003

After recording return to:
Mark L. Brasee, Esq.
Fraser, Stryker, Meusey,
Olson, Boyer & Bloch, P.C.
500 Energy Plaza
409 South 17th Street
Omaha, Nebraska 68102

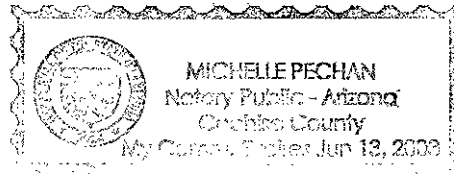


EXHIBIT A

LEGAL DESCRIPTION

07-36660

PARCEL 1: Lot 1, in SMELTER PLANT REPLAT, an Addition to the City of Omaha, as surveyed, platted and recorded, in Douglas County, Nebraska.

03.80000

PARCEL 2: A parcel of land being portions of Lots 8, 9, 10 and 12, in Block 32, in the ORIGINAL CITY OF OMAHA, as surveyed and lithographed, in Douglas County, Nebraska, together with a portion of vacated Cass Street adjacent thereto on the South, and together with a portion of the vacated alley in said Block 32 adjacent to said Lot 9 on the North, all described as follows:

Beginning at the intersection of the South line of vacated Cass Street and the Easterly right-of-way line of Abbott Drive, said point being 60.54 feet East of the Northwest corner of Block 34, in the Original City of Omaha; thence along the Easterly right-of-way line of Abbott Drive, North 110 20~27' East, 158.13 feet; thence continuing along said Easterly line, North 20°39'50" East, 95.67 feet, to a point that is 12.00 feet normally distant Southwesterly from the centerline of an existing railroad track; thence parallel with and/or concentric with and 12.00 feet Southwesterly from said centerline of track, the following seven courses (which are chord bearings and lengths): 1. thence South 37°40'47" East, 26.56 feet; 2. thence South 42°44'18" East, 50.20 feet; 3. thence South 49°02'52" East, 49.95 feet; 4. thence South 54°10'05" East, 50.03 feet; 5. thence South 55°38'36" East, 39.64 feet; 6. thence South 49°53'43" East, 74.71 feet; 7. thence South 41°40'17" East, 72.63 feet, to the South line of said vacated Cass Street; thence along said South line, North 89°58'49" West, 331.59 feet, to the Point of Beginning.