

indicating changes  
from previous draft

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

IN RE:	)	
	)	
NATIONAL GYPSUM COMPANY,	)	Case No. 390-37213-SAF-11
a Delaware corporation,	)	
	)	
AANCOR HOLDINGS, INC.,	)	Case No. 390-37214-SAF-11
a Delaware corporation,	)	
	)	
Debtors.	)	Jointly Administered
	)	Chapter 11
	)	

---

SECOND SETTLEMENT AGREEMENT

Debtors, National Gypsum Company and Aancor Holdings, Inc. ("Debtors") and the United States of America ("United States") hereby enter into this Second Settlement Agreement ("Second Agreement") dated as of October \_\_, 1992 in final settlement of the claim filed by the United States against Debtors in the above-captioned bankruptcy proceedings.

WHEREAS Debtors filed voluntary petitions for bankruptcy in this Court under Chapter 11 of the Bankruptcy Code on October 28, 1990 and are currently Debtors and Debtors-in-Possession;

WHEREAS the United States on behalf of the United States Environmental Protection Agency ("EPA") and the United States Department of the Interior ("DOI") filed a proof of claim in these bankruptcy proceedings on May 29, 1991 (the "Proof of Claim"), alleging liability of Debtors under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9607;

WHEREAS the United States alleged in the Proof of Claim that, inter alia, Debtors were liable for cleanup costs incurred by the United States at certain sites at which there has been a release or threat of release of a hazardous substance. The Proof of Claim also contingently addresses Debtors' alleged liability under CERCLA with respect to such sites for response costs not yet incurred and also for injury, destruction to, or loss of natural resources within the meaning of CERCLA Section 107(a)(4)(C), to the extent either of those categories of costs were considered "claims" within the meaning of the Bankruptcy Code;

WHEREAS among the sites set forth in the United States' Proof of Claim were the Salford Quarry in Lower Salford Township, Pennsylvania ("the Salford Quarry") and the Asbestos Dump Site in and near Millington, New Jersey ("the Asbestos Dump Site");

WHEREAS Debtors filed on August 2, 1991, Debtors' Objection to Allowance of Claim of the United States, opposing the Proof of Claim and asserting counterclaims against the United States. On October 25, 1991, Debtors filed their Objection To Allowance of Claim of the United States of America and Amended Counterclaim;

WHEREAS the United States filed on March 16, 1992, an Amendment to Proof of Claim purporting to add a count under Section 7003 of the Solid Waste Disposal Act (also known as the Resource Conservation and Recovery Act or "RCRA"), 42 U.S.C. §

6973, to its previously filed claim under Section 107 of CERCLA, 42 U.S.C. § 9607, for the Salford Quarry;

WHEREAS the Bankruptcy Court on May 5, 1992, entered an Order (docket number 3383) striking the United States' Amendment to Proof of Claim;

WHEREAS Debtor National Gypsum Company is the current owner of the Salford Quarry;

WHEREAS the United States filed on May 5, 1992, an Application for Reimbursement of Administrative Expenses alleging that the Debtors were liable under Section 107 of CERCLA and Section 7003 of RCRA, at the Salford Quarry;

WHEREAS the Debtors filed on May 15, 1992, Debtors' Objection to the Application for Reimbursement of Administrative Expenses filed by the United States;

WHEREAS by a settlement agreement dated July 15, 1992 ("the First Agreement"), the United States and the Debtors agreed to a settlement of certain of the claims asserted by the United States in its Proof of Claim, subject to the terms and conditions of the First Agreement;

WHEREAS National Gypsum Company entered into a conditional consent agreement with EPA Region III in March 1988 (administrative docket no. III-88-20-DC) for the conduct of certain investigations and studies known as a "Remedial Investigation and Feasibility Study" or "RI/FS" at the Salford Quarry, subject to the terms and conditions of the consent agreement ("the Salford Quarry RI/FS Consent Agreement");

WHEREAS the Asbestos Dump Site has been divided into three Operable Units, known as (1) Asbestos Dump Site Operable Unit One ("the Millington Main Site"); (2) Asbestos Dump Site Operable Unit Two ("ADS OU-2"), consisting of the White Bridge Road Site and New Vernon Road Site; and (3) Asbestos Dump Site Operable Unit Three ("ADS OU-3"), known as the Dietzman Tract;

WHEREAS the Bankruptcy Court entered on July 28, 1992 an Order on the United States' Application for Administrative Expenses pertaining to the Salford Quarry (docket number 3888); entered on July 30, 1992 an Order on Estimation of the United States' general unsecured claim for the Salford Quarry (docket number 3919); entered on July 30, 1992 an Order on Estimation of the United States' Claim for ADS OU-3 (docket number 3920); entered on July 30, 1992 an Order on Estimation of the United States' Claim for ADS OU-2 (docket number 3921); and entered on July 30, 1992 an Order on Estimation of the United States' Claim for Legal Fees and Expenses (docket number 3922);

WHEREAS the United States has filed a notice of appeal (to the District Court) with respect to three of the foregoing Orders of the Bankruptcy Court (the Orders with docket numbers 3888, 3919, and 3920) as well as the Order of the Bankruptcy Court entered on May 5, 1992 (docket number 3383);

WHEREAS the Salford Quarry RI/FS Consent Agreement provided that said agreement would terminate in the event of a final decision by an authorized court reversing or enjoining the listing of the Salford Quarry on the National Priorities List;

WHEREAS on June 19, 1992, the United States Court of Appeals for the District of Columbia Circuit vacated the listing of the Salford Quarry on the National Priorities List and remanded the matter to EPA in National Gypsum Co. v. United States EPA, 968 F.2d 40 (D.C. Cir. 1992);

WHEREAS on August 11, 1992, the United States District Court for the Northern District of Texas, Dallas Division, affirmed the Bankruptcy Court's May 5, 1992 Order (docket number 3383) striking the United States' Amendment to Proof of Claim seeking to add a count under Section 7003 of RCRA with respect to the Salford Quarry;

WHEREAS on October 9, 1992, the United States filed a notice of appeal (to the Court of Appeals for the Fifth Circuit) with respect to the foregoing August 11, 1992 Order of the United States District Court;

WHEREAS the parties have agreed to compromise and settle the general unsecured and administrative expense claims of the United States under CERCLA and Section 7003 of RCRA at the Salford Quarry, ADS OU-2, and ADS OU-3, and all counterclaims related thereto, on the terms set forth herein below to spare the expense and uncertainty of continued litigation;

WHEREAS the Debtors and the United States recognize that this Second Agreement has been negotiated by the Debtors and the United States in good faith and that this Second Agreement is fair, reasonable, and in the public interest.

NOW, THEREFORE, without the admission or any adjudication of any issues of fact or law, and upon the consent and agreement of the parties to this Second Agreement by their attorneys and authorized officials and the Bankruptcy Court, Debtors and the United States hereby agree as follows:

I. AUTHORITY

1. This Second Agreement shall apply to and be binding upon Debtors and the United States. The undersigned representatives for the Debtors and the Assistant Attorney General for the Environment and Natural Resources Division certify that they are fully authorized to execute and bind the Debtors and the United States, respectively, to this Second Agreement. The parties agree not to contest the validity of this Second Agreement in any subsequent proceeding arising from it.

II. BANKRUPTCY COURT APPROVAL

2. This Second Agreement is expressly subject to approval by the Bankruptcy Court. After this Second Agreement has been executed by the United States and the Debtors, and the United States provides final approval under Section XII of this Second Agreement, the parties shall promptly move the Bankruptcy Court for approval of the Second Agreement. Approval of this Second Agreement by the Bankruptcy Court may be done as part of confirmation of a plan of reorganization. In the event that this Second Agreement is not finally approved by the Bankruptcy Court or on appeal, the Second Agreement shall be null and void and

both the United States and the Debtors reserve all their rights with respect to the pending appeals of the United States.

III. EFFECTIVE DATE OF AGREEMENT

3. The Effective Date of this Second Agreement ("Effective Date") shall be the date of the Bankruptcy Court's approval of this Second Agreement in accordance with Section II.

IV. TERMINATION OF CERTAIN ADMINISTRATIVE AGREEMENTS

4.(a) The United States acknowledges that the Salford Quarry RI/FS Consent Agreement entered into between National Gypsum Company and EPA Region III in March 1988 has been terminated. Any penalties under the Salford Quarry RI/FS Consent Agreement are hereby waived.

(b) In April 1985, National Gypsum Company entered into an administrative order on consent with EPA Region II for the conduct of an RI/FS for the Asbestos Dump Site (Administrative Order No. CERCLA-50103). This Administrative Order No. CERCLA-50103 shall be terminated on the Effective Date of this Second Agreement and any penalties under Order No. CERCLA-50103 are hereby waived.

V. ALLOWANCE OF CLAIM

5. In settlement of Debtors' alleged liability to the United States under CERCLA with respect to ADS OU-2, and any counterclaims relating thereto, Debtors agree that the Proof of Claim in connection with ADS OU-2 shall be allowed as a general unsecured pre-petition claim against Debtor National Gypsum

Company in the amount of \$7,270,612 to the United States on behalf of EPA.

6. In settlement of Debtors' alleged liability to the United States under CERCLA with respect to ADS OU-3, and any counterclaims relating thereto, Debtors agree that the Proof of Claim in connection with ADS OU-3 shall be allowed as a general unsecured pre-petition claim against Debtor National Gypsum Company in the amount of \$3.5 million to the United States on behalf of DOI. This \$3.5 million claim shall be deemed to be in restitution for natural resources damages at ADS OU-3.

7. In settlement of Debtors' alleged liability to the United States under CERCLA and Section 7003 of RCRA with respect to the Salford Quarry, Debtors agree that the Proof of Claim and Application for Reimbursement of Administrative Expenses in connection with the Salford Quarry shall be allowed as provided for below:

(a) An administrative expense claim under 11 U.S.C. § 503(b)(1)(A) against Debtor National Gypsum Company in the amount of \$2 million shall be allowed in favor of the United States on behalf of EPA; and

(b) A general unsecured claim in the amount of \$10 million shall be allowed in favor of the Salford Quarry Trust Escrow to be established substantially in the form set out in the Salford Quarry Trust Escrow Agreement (Attachment B to this Second Agreement), the final terms of which shall be subject to agreement by the United States and the Debtors prior to approval

of the Second Agreement by the Bankruptcy Court. All funds in the Salford Quarry Trust Escrow shall be received, managed, and disbursed in accordance with the terms of the Salford Quarry Trust Escrow Agreement.

8. In settlement of Debtors' alleged liability to the United States under CERCLA for legal fees and expenses incurred by the United States in connection with litigation of its claims against the Debtors, and any counterclaims relating thereto, Debtors agree that the Proof of Claim shall be allowed as a general unsecured pre-petition claim against Debtor National Gypsum Company in the amount of \$293,536.00 to the United States on behalf of EPA.

9. The payments made pursuant to this Section V of this Second Agreement are settlement payments of claims for response costs and natural resource damages and are not fines or penalties.

10. The United States agrees that Debtor Aancor Holdings, Inc. is not liable to the United States for any claim asserted in its Proof of Claim. The United States' Proof of Claim shall be deemed withdrawn as to Aancor Holdings, Inc.

11. In no event shall payment to the United States by National Gypsum Company under this Second Agreement be made by assignment to the United States of any other claims that the Debtors potentially have against third parties, including claims for contribution under CERCLA.

12.(a) Payment by the Debtors of any cash payment pursuant to Paragraph 7(a) of this Second Agreement shall be made on the effective date of the confirmed Plan of Reorganization and shall be by Electronic Funds Transfer (EFT or wire transfer) to the U.S. Department of Justice lockbox bank, and referencing: CERCLA Number 03-Y3; DOJ Case Number 90-11-2-689; and the U.S. Attorney's Office File Number 91-04-098. Payment shall be made in accordance with instructions provided by the United States to the Debtors prior to the Effective Date. Any EFTs received at the U.S. Department of Justice lockbox bank after 11:00 a.m. (Central Time) will be credited on the next business day.

(b) Any securities to be distributed to the United States or the Salford Quarry Trust Escrow on allowed general unsecured claims hereunder shall be distributed as soon as possible after the effective date of the confirmed plan of reorganization ("Plan of Reorganization"), as defined therein, but in any event no later than distributions to other general unsecured creditors, to such designated holder and sent to such address as the United States shall notify Debtors not later than 30 days following such effective date.

(c) Copies of all checks, securities and transmittal letters, and EFT or wire transfer documents evidencing National Gypsum Company's payments to the United States or the Salford Quarry Trust Escrow pursuant to this Second Agreement shall be sent by first class mail to each of the following:

Regional Counsel  
U.S. Environmental Protection Agency  
Region II  
26 Federal Plaza - Room 437  
New York, New York 10278

Regional Hearing Clerk (3RC00)  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
Region III  
841 Chestnut Building  
Philadelphia, Pennsylvania 19107

Chief, Environmental Enforcement Section  
Re: DOJ #90-11-2-689  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611, Ben Franklin Station  
Washington, D.C. 20044

John Wheeler  
Office of Enforcement  
LE-134S  
U.S. Environmental Protection Agency  
401 M Street, S.W.  
Washington, D.C. 20460

Associate Solicitor  
Division of Conservation and Wildlife  
U.S. Department of the Interior  
Washington, D.C. 20240

Chief, Division of Finance  
U.S. Fish and Wildlife Service  
4401 N. Fairfax Drive  
Room 380  
Arlington, Virginia 22203

VI. SALFORD QUARRY TRUST

13. In settlement of Debtors' alleged liability to the United States at the Salford Quarry under the Proof of Claim and in settlement of any objections the United States may have under the Bankruptcy Code or otherwise to National Gypsum Company's sale or transfer of its ownership interest in the Salford Quarry to another entity, the United States hereby agrees that it will

not oppose National Gypsum Company's transfer of ownership of the Salford Quarry to the Salford Quarry Trust to be established by National Gypsum Company substantially in the form set out in The Salford Quarry Custodial Trust document (Attachment A to this Second Agreement), the final terms of which shall be subject to agreement by the United States and the Debtors prior to approval of the Second Agreement by the Bankruptcy Court. Neither the United States nor the Debtors shall be or shall be deemed to be an owner, operator, trustee, partner, agent, shareholder, officer, or director of the Salford Quarry Trust or the Salford Quarry Trust Escrow.

14. For the purposes of this Section VI, "response costs" incurred at the Salford Quarry shall mean all costs incurred by the United States (including those costs incurred by EPA or any other agency or department of the United States) in connection with the Salford Quarry, including, but not limited to the following: direct and indirect costs that the United States incurs in reviewing or developing plans, studies, reports and other items pertaining to the Salford Quarry or in performing, or otherwise implementing, overseeing, or enforcing removal, remedial, or other cleanup actions at the Salford Quarry, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, attorneys fees, and just compensation costs incurred by the United States in connection with the Salford Quarry; however, "response costs" for the purposes of Section VI shall not include the cost incurred in

pursuing enforcement actions against persons other than the Debtors (with the exception of actions to obtain access, which costs shall be deemed "response costs" for the purposes of Section VI). In order to reimburse the United States for such response costs incurred and to be incurred at the Salford Quarry, the Salford Quarry Trust Escrow shall make an annual payment by the method specified in Paragraph 12(a) of this Second Agreement to the United States to reimburse the United States for any unreimbursed response costs the United States incurs at the Salford Quarry during the preceding year. (When determining whether response costs have been reimbursed from sources other than those monies paid to the Superfund pursuant to this Second Agreement, monies received from such other sources shall first be credited toward the costs incurred by the United States in pursuing enforcement actions against such other sources and the remainder of such monies from such other sources shall then be credited to the response costs defined above.) The \$2 million payment set forth in Section V of this Second Agreement shall be considered reimbursement for the first \$2 million in heretofore unreimbursed response costs incurred by the United States at the Salford Quarry. The United States shall provide the Salford Quarry Trust Escrow agent with an annual invoice and cost summary information to permit the Salford Quarry Trust Escrow to make its annual payment. The obligation of the Salford Quarry Trust Escrow to make the foregoing annual payment shall cease when all assets of the Salford Quarry Trust Escrow (with the exception of

the Trust Maintenance Reserve as defined in Attachment A hereto) have been paid to the United States. At such time as the Salford Quarry Trust ceases to exist, all remaining assets of the Salford Quarry Trust Escrow shall be paid, transferred, or conveyed to the United States, or, in the event that a settlement agreement between the United States and one or more potentially responsible parties at the Salford Quarry provides for the transfer of the Salford Quarry, to the United States or the nominee of the United States. Such settlement agreement with such other potentially responsible party(ies) may also provide for the termination of the Salford Quarry Trust and the Salford Quarry Trust Escrow. The trustee of the Salford Quarry Trust and the Salford Quarry Trust Escrow agent shall not oppose any such settlement agreement.

15.(a) The Debtors may advance to the Salford Quarry Trust Escrow up to \$100,000 during the pendency of the above captioned bankruptcy proceeding for the purpose of funding any start up expenses of the Salford Quarry Trust or the Salford Quarry Trust Escrow.

(b) The assets of the Salford Quarry Trust Escrow may be used only for the following purposes: (i) repaying to New NGC or equivalent reorganized entity any monies advanced to the Salford Quarry Trust Escrow pursuant to Paragraph 15(a); (ii) reimbursement of the United States pursuant to Paragraph 14; (iii) payment of the administrative expenses of the Salford Quarry Trust Escrow, including the payment of reasonable

investment management and accounting fees, as set forth in the Salford Quarry Trust Escrow Agreement (Attachment B hereto); (iv) payment to the Salford Quarry Trust for the purposes set forth in the Salford Quarry Trust Escrow Agreement (Attachment B hereto). In the event that any assets of the Salford Quarry Trust Escrow are disbursed or are imminently to be disbursed for any purpose other than as set forth above, then all remaining funds in the Salford Quarry Trust Escrow (with the exception of the Trust Maintenance Reserve as defined in Attachment A hereto) shall be immediately payable to the United States in accordance with the procedure set forth in Paragraph 12(a) of this Second Agreement, except that if the United States agrees to assume responsibility for the administration and maintenance of the Salford Quarry, then all remaining funds in the Salford Quarry Trust Escrow without exception shall be immediately payable to the United States in accordance with the procedure set forth in Paragraph 12(a) of this Second Agreement and the Salford Quarry Trust and Salford Quarry Trust Escrow shall be terminated. The United States shall have a lien on all Salford Quarry Trust Escrow assets for the purposes of enforcing this Second Agreement.

16. The Salford Quarry Trust shall provide the United States and its representatives, including EPA and its contractors, access at all reasonable times to the Salford Quarry for the purposes of conducting any activity related to Salford Quarry, including, but not limited to: conducting response actions; conducting investigations relating to contamination at

or near the Salford Quarry; obtaining samples; assessing the need for, planning, or implementing additional response actions at or near the Salford Quarry. Notwithstanding any provision of this Second Agreement, the United States retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statute or regulations.

17. The Salford Quarry Trust Escrow agent shall maintain an orderly account of Salford Quarry Trust Escrow assets and provide an income statement and balance sheet of the Salford Quarry Trust Escrow assets on an annual basis (and upon reasonable request) to the United States and the trustee of the Salford Quarry Trust. Such accounting shall include copies of bank statements and other accounts. As soon as is reasonably practicable and prudent after the effective date of the Plan of Reorganization, the Salford Quarry Trust Escrow shall convert all funds or securities distributed to it under this Second Agreement and shall invest exclusively thereafter in (a) Direct Obligations of the United States (such as U.S. Government Treasury Bonds or Notes); (b) Obligations guaranteed by agencies of the United States Government; (c) well established mutual funds that invest in the foregoing; (d) certificates of deposit to the extent insured by the U.S. Government or its agencies. Notwithstanding the foregoing, the Salford Quarry Trust Escrow is permitted to maintain a checking account at a duly chartered and federally

deposit-insured bank to hold cash for a reasonable period of time awaiting investment, distribution, or other disbursement.

18. Notwithstanding any provision of this Second Agreement, the Salford Quarry Trust Escrow shall at the request of the United States enter into a transaction in which the \$10 million general unsecured claim recognized in Paragraph 7(b) of this Second Agreement is sold for cash or cash-equivalent monies.

VII. DISCHARGE; COVENANT NOT TO SUE; PRESERVATION OF CLAIMS

19. Upon the Effective Date of this Second Agreement, and subject to the limitations set forth in subparagraph (d) below:

(a) Any liability of Debtors and the reorganized companies as defined in the Plan of Reorganization (including "New NGC", "Reorganized NGC", and any other reorganized entity) to the United States under CERCLA or Section 7003 of RCRA, 42 U.S.C. § 6973, including any liability for response costs (including, but not limited to oversight costs and costs of the United States Department of Justice) and natural resource damages incurred or sustained or to be incurred or sustained, regarding (i) ADS OU-2, (ii) ADS OU-3, (iii) the Salford Quarry, or (iv) legal fees and litigation expenses incurred by the United States in connection with its claims relating to ADS OU-2, ADS OU-3, and the Salford Quarry, shall be discharged under the Bankruptcy Court's confirmation of the Plan of Reorganization.

(b) The United States, on behalf of EPA and DOI, covenants not to sue or take any other civil judicial or

administrative claim or action under CERCLA or Section 7003 of RCRA against the Debtors, the Salford Quarry Trust, the Salford Quarry Trust trustee, and the Salford Quarry Trust Escrow agent with respect to (i) ADS OU-2, (ii) ADS OU-3, (iii) the Salford Quarry, or (iv) legal fees and litigation expenses incurred by the United States in connection with its claims relating to ADS OU-2, ADS OU-3, and the Salford Quarry.

(c) The covenant not to sue contained in the preceding paragraph 19(b) (and the reservations thereto) shall also apply to Debtors' successors, assigns, officers, directors, subsidiaries, agents, and employees and the reorganized companies as defined in the Plan of Reorganization (including "New NGC", "Reorganized NGC", and any other reorganized entity), but only to the extent that the alleged liability of the successor, assign, officer, director, subsidiary, agent, employee, and reorganized company is based solely on its status as, and in its capacity of, a successor, assign, officer, director, subsidiary, agent, employee, or reorganized company of the Debtors.

(d) Notwithstanding any other provision of this Second Agreement, this Second Agreement does not include or affect any claims that the United States or Debtors may have as to the following:

(i) Claims concerning the Millington Main Site and the Five Settled Sites addressed in the First Agreement;

(ii) Any claims at the following twenty-seven sites, none of which are presently owned or operated by National Gypsum

Company: (a) Peak Oil/Bay Drum Co., Tampa, Florida; (b) Florence Land Recontouring Landfill, Florence Township, New Jersey; (c) Wide Beach Development, Brant, New York; (d) Sixty-Second Street Dump, Tampa, Florida; (e) Operating Industries, Inc. Landfill, Monterey Park, California; (f) Gold Coast Oil Corp., Miami, Florida; (g) Kin-Buc Landfill, Edison, New Jersey; (h) McKin Co., Gray, Maine; (i) Liquid Disposal Inc., Utica, Michigan; (j) SED Inc., Greensboro, North Carolina; (k) Cannons Engineering Corp., Bridgewater, Massachusetts; (l) Taylor Road Landfill, Hillsborough County, Florida; (m) Sand Springs Petrochemical Complex, Sand Springs, Oklahoma; (n) Ellis Road Site, Jacksonville, Florida; (o) former National Gypsum - Gold Bond, Alabama, New York, (p) former National Gypsum Co. W. Conshohocken Plant, Conshohocken, Pennsylvania; (q) former National Gypsum Co. Evansville Plant, Evansville, Pennsylvania; (r) former National Gypsum, Alexandria, Indiana; (s) American Olean Tile Company, Inc., Lansdale, Pennsylvania; (t) American Olean Tile Company, Inc., Madison County, Tennessee; (u) American Olean Tile Plant, Jackson, Tennessee; (v) American Olean Tile Co. Civ. of National Gypsum, Roseville, California; (w) Cotton Grove Road Landfill, Jackson, Tennessee; (x) Watson Jackson Landfill (alias American Olean Tile Co. Quakertown Plant), Richlandtown, Pennsylvania; (y) Gold Bond Bld Prod, Clarence Center, New York (except for any portion of this site owned by National Gypsum Company as of the Effective Date, any liability with respect to which shall be treated as if such portion were a Debtor-Owned Additional Site);

(z) McCurtain Country Open Dump (alias Gold Bond Building Product), Broken Bow, Oklahoma; (aa) Solvents Recovery Service of New England, Southington, Connecticut. The addresses of the foregoing twenty-seven sites are set forth on Attachment C to this Second Agreement.

(iii) Any claims based on ownership or operation of any site (other than, with respect to the Salford Quarry Trust, the Salford Quarry Trust trustee, and the Salford Quarry Trust Escrow agent, the Salford Quarry) after the Bankruptcy Court's confirmation of the Plan of Reorganization or on transportation or arrangement for treatment or disposal of hazardous substances or solid waste (within the meaning of 42 U.S.C. § 6903(27)) after the Bankruptcy Court's confirmation of the Plan of Reorganization;

(iv) Any claims based on disposal of additional solid waste (within the meaning of 42 U.S.C. § 6903(27)) at the Salford Quarry or other facilities after the Bankruptcy Court's confirmation of the Plan of Reorganization; and

(v) For claims based upon the United States' enforcement of this Second Agreement.

(e) Notwithstanding any other provision of this Second Agreement, this Second Agreement does not include or affect any claims that the United States may have as to any alleged criminal liability.

20. Nothing in this Second Agreement is intended as a covenant not to sue or a release from liability for any person or

entity other than the Debtors (and the Debtors' successors, assigns, officers, directors, subsidiaries, agents, and employees and the reorganized companies as defined in the Plan of Reorganization (including "New NGC", "Reorganized NGC", and any other reorganized entity)), the United States, the Salford Quarry Trust, the Salford Quarry Trust trustee, and the Salford Quarry Trust Escrow agent. The United States and Debtors (and the Debtors' successors, assigns, and the reorganized companies as defined in the Plan of Reorganization (including "New NGC", "Reorganized NGC", and any other reorganized entity)) expressly reserve all claims, demands and causes of action either judicial or administrative, past or future, in law or equity, which the United States or the Debtors (or the Debtors' successors, assigns, and the reorganized companies as defined in the Plan of Reorganization (including "New NGC", "Reorganized NGC", and any other reorganized entity)) may have against any person, firm, corporation, or other entity not a party to this Second Agreement for any matter arising at or relating in any manner to the sites addressed herein. Nothing in the preceding sentence shall be deemed to nullify the scope of the covenant not to sue (and the reservations thereto) contained in Paragraph 19(b) and 19(c) of this Second Agreement.

21. It is the intent of the parties to this Second Agreement, and the parties agree, that:

(a) Debtors (and the Debtors' successors, assigns, officers, directors, subsidiaries, agents, and employees and the

reorganized companies as defined in the Plan of Reorganization (including "New NGC", "Reorganized NGC", and any other reorganized entity)) will be entitled to contribution protection with respect to ADS-OU2 and ADS-OU3 to the extent provided under Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for matters addressed by this Second Agreement; and

(b) Debtors (and the Debtors' successors, assigns, officers, directors, subsidiaries, agents, and employees and the reorganized companies as defined in the Plan of Reorganization (including "New NGC", "Reorganized NGC", and any other reorganized entity)), the Salford Quarry Trust, the Salford Quarry Trust trustee, and the Salford Quarry Trust Escrow agent will be entitled to contribution protection with respect to the Salford Quarry to the extent provided under Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for matters addressed by this Second Agreement.

VIII. SITES NOT EXPRESSLY SET FORTH IN THE UNITED STATES' PROOF OF CLAIM

22. This Section VIII governs the treatment of properties or sites ("Additional Sites") that were not expressly set forth in the United States' Proof of Claim, with the exception of the twenty-seven sites listed in Paragraph 19(d)(ii) above, which twenty-seven sites are not governed or affected in any manner by this Second Agreement and are not Additional Sites (with the exception of any portion of the site discussed in Paragraph 19(d)(ii)(y) that is owned by National Gypsum Company,

which portion shall be treated as set forth in Paragraph 19(d)(ii)(y)). "Debtor-Owned Additional Sites" shall refer to those Additional Sites owned by the Debtors, the Debtors' successors, or the reorganized companies as defined in the Plan of Reorganization (including "New NGC", "Reorganized NGC", and any other reorganized entity) at or at any time after the date of confirmation of the Plan of Reorganization in the above captioned bankruptcy cases. "Other Additional Sites" shall refer to those Additional Sites that are not Debtor-Owned Additional Sites.

23. With respect to the Debtor-Owned Additional Sites, the following claims of or obligations to the United States shall not be discharged under Section 1141 of the Bankruptcy Code by the confirmation of a Plan of Reorganization nor shall such claims or obligations be impaired or affected in any way by the reorganization of the Debtors:

(a) claims for recovery of response costs incurred after the date of confirmation of the Plan of Reorganization in the above captioned bankruptcy cases ("post-confirmation") by the United States at Debtor-Owned Additional Sites or at locations which have been impacted by hazardous substances, hazardous wastes, solid wastes, pollutants or contaminants originating from Debtor-Owned Additional Sites;

(b) actions by the United States seeking to compel the performance of removal action, remedial action, corrective action, closure or any other cleanup action at Debtor-Owned Additional Sites or at locations which have been impacted by

hazardous substances, hazardous wastes, solid wastes, pollutants or contaminants originating from Debtor-Owned Additional Sites;

(c) claims for damages to natural resources at Debtor-Owned Additional Sites or at locations which have been impacted by hazardous substances, hazardous wastes, solid wastes, pollutants or contaminants originating from Debtor-Owned Additional Sites;

(d) any other claim under CERCLA or RCRA at Debtor-Owned Additional Sites, except for claims for recovery of costs incurred during the time period prior to the date of confirmation of the Plan of Reorganization in the above captioned bankruptcy cases ("pre-confirmation") or recovery of civil penalties for pre-petition violations;

(e) criminal liability.

The United States may pursue enforcement actions or proceedings under applicable law with respect to the foregoing proceedings subparagraphs 23(a) through 23(e) in the manner, and by the administrative or judicial tribunals, in which the United States could have pursued enforcement actions or proceedings if the above captioned bankruptcy proceedings had never been commenced. Furthermore, notwithstanding the foregoing, the United States reserves whatever rights it may have to file an application for administrative expenses with respect to pre-confirmation costs incurred by the United States at Additional Sites.

24. With respect to Other Additional Sites, all liabilities and obligations of the Debtors and the Debtors'

successors and assigns, or the reorganized companies as defined in the Plan of Reorganization (including "New NGC", "Reorganized NGC", and any other reorganized entity) to the United States under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, or Section 7003 of RCRA, 42 U.S.C. § 6973, arising from pre-October 28, 1990 ("pre-petition") acts, omissions, or conduct of the Debtors or their predecessors shall be discharged under Section 1141 of the Bankruptcy Code, by the confirmation of a Plan of Reorganization, and the United States shall receive no distributions in the above captioned bankruptcy proceedings on such liabilities and obligations at the time of consummation of the Plan of Reorganization. However, such liabilities and obligations shall be treated and liquidated as general unsecured claims on the terms specified herein. If and when the United States undertakes enforcement activities in the ordinary course, the United States may seek a determination of the liability of the Debtors or the Debtors' successors and assigns, or the reorganized companies as defined in the Plan of Reorganization (including "New NGC", "Reorganized NGC", and any other reorganized entity) or enter into a settlement with regard to any of the Other Additional Sites in the manner, and before the administrative or judicial tribunals, in which the United States' claims would have been resolved or adjudicated as if the above captioned bankruptcy proceedings had never been commenced. However, the United States shall not issue or cause to be issued any unilateral order or seek any injunction against the Debtors

or the Debtors' successors and assigns, or the reorganized companies as defined in the Plan of Reorganization (including "New NGC", "Reorganized NGC", and any other reorganized entity) under Section 106 of CERCLA or Section 7003 of RCRA, arising from the pre-petition acts, omissions, or conduct of the Debtors or their predecessors with respect to the Other Additional Sites. The above liquidation may occur notwithstanding the terms of the Plan of Reorganization, the order confirming the Plan of Reorganization, or the terms of any order entered to effectuate the discharge received by the Debtors. In any action or proceeding with respect to Other Additional Sites, the Debtors or the Debtors' successors and assigns, or the reorganized companies as defined in the Plan of Reorganization (including "New NGC", "Reorganized NGC", and any other reorganized entity) reserve all rights and defenses they would have been entitled to assert had the claim been liquidated in the ordinary course and during the course of the above captioned bankruptcy proceedings.

25. If and when any claim is liquidated pursuant to the preceding Paragraph 24 by settlement or judgment to a determined amount (the "Determined Amount"), the Debtor(s) or the Debtor's(s') successors and assigns, or the reorganized companies as defined in the Plan of Reorganization (including "New NGC", "Reorganized NGC", and any other reorganized entity) with which such settlement is made or against which such judgment is entered will, subject to their right to seek a stay pending appeal, satisfy each such claim within thirty days after the date the

settlement or judgment is final (the "Settlement/Judgment Date") by providing the United States the "Distribution Amount," which amount, as to each such claim, shall be equal to the percentage recovery actually received (taking into account the market value of the securities at the time of distribution(s)) by holders of allowed unsecured claims in the class in which the United States' environmental claims at issue would be allowed pursuant to the confirmed Plan of Reorganization. The Debtor or the Debtor's successors and assigns, or the reorganized companies as defined in the Plan of Reorganization (including "New NGC", "Reorganized NGC", and any other reorganized entity) may provide the Distribution Amount by paying the United States, at the option of the Debtor (or at the option of the Debtor's successors and assigns, or the reorganized companies as defined in the Plan of Reorganization (including "New NGC", "Reorganized NGC", and any other reorganized entity)) (a) the Distribution Amount in cash, (b) the securities distributed that have a value on the Settlement/Judgment Date to the United States that is equivalent to the Distribution Amount, or (c) a combination of (a) and (b) providing the same value as would have been provided under subparagraph (a) or (b). For purposes of determining the market value of the securities at the time of distribution(s) to allowed unsecured creditors in order to determine the Distribution Amount, the fair market value per share of securities shall be the weighted average of the reported regular way sales price of all transactions for the security on the New York Stock Exchange

on the date(s) of distribution (or the first date thereafter on which the security trades), or if the security is not listed or admitted to trade on such exchange, on the principal national securities exchange on which the security is listed or admitted to trading or, if not listed or admitted to trading on any national securities exchange, the weighted average of the reported bid price on all transactions on the National Association of Securities Dealers Automated Quotations National Market System or, if the security is not listed or admitted to trading on any national securities exchange or quoted on such National Market System, the weighted average of the reported sales price on all transactions in the over-the-counter market in the United States as furnished by any New York Stock Exchange member firm selected by the Debtors (or the Debtors' successors and assigns, or the reorganized companies as defined in the Plan of Reorganization (including "New NGC", "Reorganized NGC", and any other reorganized entity)) and the United States for that purpose (or the average of the weighted averages furnished by two member firms of the New York Stock Exchange, one of which shall be selected by the Debtors (or the Debtors' successors and assigns, or the reorganized companies as defined in the Plan of Reorganization (including "New NGC", "Reorganized NGC", and any other reorganized entity)) and one by the United States, in the event that the Debtors (or the Debtors' successors and assigns, or the reorganized companies as defined in the Plan of Reorganization (including "New NGC", "Reorganized NGC", and any

other reorganized entity)) and the United States are unable to agree on one member firm). For purposes of determining the number of shares of securities that have the value of the Distribution Amount on the Settlement/Judgment Date, the fair market value per share of securities on the Settlement/Judgment Date shall be determined as set forth in the immediately proceeding sentence. The terms of distribution set forth above may be modified only by an agreement in writing of the parties.

26. All liabilities and obligations of the Debtors (or the Debtors' successors and assigns, or the reorganized companies as defined in the Plan of Reorganization (including "New NGC", "Reorganized NGC", and any other reorganized entity)) to the United States under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, and Section 7003 of RCRA, 42 U.S.C. § 6973, arising from post- October 28, 1990 ("post-petition") acts, omissions, or conduct of the Debtors shall not be discharged under Section 1141 of the Bankruptcy Code by the confirmation of a Reorganization Plan nor shall such claims be impaired in any way by this Second Agreement.

27. Notwithstanding any other provision of this Second Agreement, the terms of Paragraphs 19, 24, and 25 of this Second Agreement shall apply to, be binding on, and inure to the benefit of any successor, assign, or reorganized company of the Debtors to the extent that and only to the extent that the alleged liability of the successor, assign, or reorganized company for an Additional Site is based solely on its status as and in its

capacity of a successor, assign, or reorganized company of the Debtors.

IX. GENERAL TERMS

28. All general unsecured and administrative expense claims allowed under or pursuant to the terms of this Second Agreement, including without limitation any such claims as may eventually be allowed pursuant to Paragraph 24 and 25 for Additional Sites, will receive the same treatment under the Plan of Reorganization, without discrimination, as other holders of general unsecured claims with all attendant rights provided by the Bankruptcy Code and other applicable law. In no event shall the general unsecured claims or administrative claims to be allowed pursuant to the Second Agreement be subordinated pursuant to any provision of the Bankruptcy Code or other applicable law that authorizes or provides for subordination of allowed claims, including without limitation Sections 105, 510 and 726(a)(4) of the Bankruptcy Code.

29.(a) Notwithstanding any other provision of this Second Agreement, there shall be no restrictions (except as otherwise required by applicable law) on the ability and right of:

(i) the United States on behalf of EPA or DOI to transfer or sell all or a portion of any securities distributed to it under this Second Agreement;

(ii) the United States on behalf of EPA or DOI to sell its right to all or a portion of any of its allowed general

unsecured claims under the Plan of Reorganization under this Second Agreement to one or more third parties;

(iii) the Salford Quarry Trust Escrow to transfer or sell all or a portion of any securities distributed to it pursuant to this Second Agreement; or

(iv) the Salford Quarry Trust Escrow to sell its right to all or a portion of any of its allowed general unsecured claims under the Plan of Reorganization under this Second Agreement to one or more third parties.

(b) In the event that the United States or the Salford Quarry Trust Escrow, pursuant to this Paragraph 29(a)(ii) or 29(a)(iv), or a subsequent seller or transferor, sells or transfers its claim(s), distributions by the Debtors on the claim will be made in accordance with such written instructions as are provided by the buyer/transferee. The seller or transferor of a claim shall give written notice of any sale or transfer to the Debtors within three business days of any sale or transfer.

30. The United States' Proof of Claim shall hereby be deemed amended to include all matters addressed in this Second Agreement but not already included therein. The Proof of Claim, as amended, shall be deemed satisfied in accordance with the terms of this Second Agreement.

31. The Bankruptcy Court Orders described above entered on May 5, 1992 (docket number 3383); on July 28, 1992 (docket number 3888); on July 30, 1992 (docket number 3919); on July 30, 1992 (docket number 3920); on July 30, 1992 (docket

number 3921); and on July 30, 1992 (docket number 3922) shall be deemed vacated and the United States' notices of appeal with respect to these Orders shall be deemed withdrawn. This Paragraph 31 shall take effect at such time after the Effective Date that all appeals from the approval Order referenced in Section II of this Second Agreement have been finally resolved (including any appeals from any orders pursuant to such appeals) and only if such appeals result in final affirmance of such approval Order.

32. Nothing in this Settlement Agreement shall be deemed to limit the authority of the United States to take response action under Section 104 of CERCLA, 42 U.S.C. § 9604, Section 113 of the Clean Air Act, 42 U.S.C. § 7413, or any other applicable law or regulation, or to alter the applicable legal principles governing judicial review of any action taken by the United States pursuant to that authority. Nothing in this Settlement Agreement shall be deemed to limit the information gathering authority of the United States under Sections 104 and 122 of CERCLA, 42 U.S.C. §§ 9604 and 9622, Section 114 of the Clean Air Act, 42 U.S.C. § 7414, or any other applicable law or regulation, or to excuse the Debtors from any disclosure or notification requirements imposed by CERCLA, RCRA, or any other applicable law or regulation.

#### X. WAIVER OF CLAIMS

33. In consideration of the entry of this Second Agreement, the Debtors (and the Debtors' successors, assigns,

officers, directors, subsidiaries, agents, and employees and the reorganized companies as defined in the Plan of Reorganization (including "New NGC", "Reorganized NGC", and any other reorganized entity)), the Salford Quarry Trust, the Salford Quarry Trust trustee, and the Salford Quarry Trust Escrow agent waive any claims or set-off against the United States or the Hazardous Substances Superfund established under 26 U.S.C. § 9507, including any claims or set-off pursuant to Section 111 and 112 of CERCLA, 42 U.S.C. § 9611 and § 9612, with respect to ADS OU-2, ADS OU-3, the Salford Quarry, and legal fees and expenses incurred by the United States in connection with litigation of its claims against the Debtors.

34. In further consideration of the entry of this Second Agreement, Debtors (and the Debtors' successors, assigns, officers, directors, subsidiaries, agents, and employees and the reorganized companies as defined in the Plan of Reorganization (including "New NGC", "Reorganized NGC", and any other reorganized entity)) finally and completely waive, release and covenant not to sue the United States on any claim, counterclaim, or cause of action with respect to ADS OU-2, ADS OU-3, the Salford Quarry, and legal fees and expenses incurred by the United States in connection with litigation of its claims against the Debtors. This Paragraph 34 shall be null and void in the event that the United States files suit against the Debtors (or the Debtors' successors, assigns, officers, directors, subsidiaries, agents, and employees and the reorganized companies

as defined in the Plan of Reorganization (including "New NGC", "Reorganized NGC", and any other reorganized entity)) in contravention of Paragraph 19 of this Second Agreement.

XI. RETENTION OF JURISDICTION

35. The Bankruptcy Court shall retain jurisdiction of this matter for the purpose of enforcing the terms of this Second Agreement.

XII. PUBLIC NOTICE AND COMMENT

36. This Second Agreement shall be subject to publication in the Federal Register and an opportunity for public comment. Final approval of the United States is contingent upon review of any public comments received.

FOR THE UNITED STATES OF AMERICA

\_\_\_\_\_  
VICKI A. O'MEARA  
Acting Assistant Attorney General  
Environment and Natural Resources  
Division  
U.S. Department of Justice

\_\_\_\_\_  
Date

\_\_\_\_\_  
JOEL M. GROSS, Deputy Chief  
ANNA L. WOLGAST, Senior Attorney  
PHILIP E. KARMEL, Trial Attorney  
SUZANNE LACAMPAGNE, Trial Attorney  
JEFFERY K. GORDON, Trial Attorney  
PETER E. JAFFE, Trial Attorney  
Environmental Enforcement Section  
U.S. Department of Justice

\_\_\_\_\_  
Date

\_\_\_\_\_  
HERBERT H. TATE, JR.  
Assistant Administrator for  
Enforcement  
U.S. Environmental Protection  
Agency

\_\_\_\_\_  
Date

\_\_\_\_\_  
JOHN H. WHEELER  
Office of Enforcement  
U.S. Environmental Protection  
Agency

\_\_\_\_\_  
Date

MARVIN COLLINS  
United States Attorney  
Northern District of Texas

By:

\_\_\_\_\_  
REBECCA A. GREGORY  
Assistant United States  
Attorney  
Northern District of Texas

\_\_\_\_\_  
Date

FOR NATIONAL GYPSUM COMPANY:

\_\_\_\_\_  
J. MICHAL CONAWAY  
Vice President and  
Chief Financial Officer

\_\_\_\_\_  
Date

FOR AANCOR HOLDINGS, INC.:

\_\_\_\_\_  
J. MICHAL CONAWAY  
Vice President and  
Chief Financial Officer

\_\_\_\_\_  
Date