

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	Chapter 11
	)	
THE FLINTKOTE COMPANY and	)	Case No. 04-11300 (JKF)
FLINTKOTE MINES LIMITED,	)	(Jointly Administered)
	)	
Debtors.	)	
<hr/>		)

**AMENDED JOINT PLAN OF REORGANIZATION IN RESPECT OF  
THE FLINTKOTE COMPANY AND FLINTKOTE MINES LIMITED**

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**EXHIBITS TO PLAN**

- Exhibit A      Asbestos Personal Injury Trust Agreement
- Exhibit B      Asbestos Personal Injury Trust Distribution Procedures
- Exhibit C      Retention and Contingency Fee Agreement

## **INTRODUCTION**

Flintkote and Mines, the debtors and debtors in possession in the above-captioned cases, the Asbestos Claimants Committee, and the Future Claimants Representative jointly propose the following Plan under chapter 11 of the Bankruptcy Code.

### **ARTICLE I DEFINITIONS AND RULES OF INTERPRETATION**

1.1 **Capitalized Terms**. The capitalized terms used herein have the respective meanings set forth below. Any term that is not otherwise defined in this Section 1.1 of the Plan, but that is defined elsewhere in the Plan or in the Bankruptcy Code or Bankruptcy Rules, shall have the meaning given to that term in the Plan, the Bankruptcy Code or Bankruptcy Rules, as applicable.

1.1.1 **“Administrative Claim”** means any Claim for (a) any cost or expense of administration of the Chapter 11 Cases under section 503(b) of the Bankruptcy Code including, but not limited to (1) any actual and necessary post-petition cost or expense of preserving the Estates or operating the businesses of the Debtors, (2) any payment to be made under the Plan to cure a default on an assumed executory contract or unexpired lease, (3) post-petition cost, indebtedness or contractual obligation duly and validly incurred or assumed by the Debtors in the ordinary course of business, (4) any Fee Claim, including any Claim for compensation or reimbursement of expenses of Professionals to the extent allowed by the Bankruptcy Court under sections 328, 330(a) or 331 of the Bankruptcy Code or the provision of the Plan, and (5) any fee or charge assessed against the Estates under 28 U.S.C. § 1930.

1.1.2 **“Affiliate”** shall have the meaning ascribed to such term in section 101(2) of the Bankruptcy Code.

1.1.3 **“Allowed Amount”** means, with respect to any Claim, the amount for which that Claim is allowed, denominated in dollars.

1.1.4 **“Amended Bylaws”** means, the amended and restated bylaws of Reorganized Flintkote, in substantially the form contained in the Plan Supplement.

1.1.5 **“Amended Certificate of Incorporation”** means, the amended and restated certificate of incorporation of Reorganized Flintkote, in substantially the form contained in the Plan Supplement.

1.1.6 **“Amended Charter Documents”** means, collectively, the Amended Bylaws and the Amended Certificate of Incorporation.

1.1.7 **“Asbestos Claimants Committee”** means the Official Committee of Asbestos Personal Injury Claimants appointed in Flintkote’s Chapter 11 Case by the United States Trustee on or about May 19, 2004.

1.1.8 “Asbestos In-Place Insurance Coverage” means any insurance coverage available for the payment or reimbursement of liability, indemnity or defense costs arising from or related to Asbestos Personal Injury Claims or Trust Expenses under any Asbestos Insurance Policy or any Asbestos Insurance Settlement Agreement.

1.1.9 “Asbestos Insurance Action” means any claim, cause of action, or right of the Debtors or any of them, under the laws of any jurisdiction, against any Asbestos Insurance Company, arising from or related to: (a) any such Asbestos Insurance Company’s failure to provide or pay under Asbestos In-Place Insurance Coverage, (b) the refusal of any Asbestos Insurance Company to compromise and settle any Asbestos Personal Injury Claim under or pursuant to any Asbestos Insurance Policy or Asbestos Insurance Settlement Agreement, (c) the interpretation or enforcement of the terms of any Asbestos Insurance Policy or Asbestos Insurance Settlement Agreement with respect to any Asbestos Personal Injury Claim, or (d) any conduct by an Asbestos Insurance Company constituting “bad faith” or other wrongful conduct under applicable law.

1.1.10 “Asbestos Insurance Action Recoveries” means (a) Cash derived from and paid pursuant to Asbestos Insurance Settlement Agreements entered into after May 1, 2004, attributable to any Asbestos Personal Injury Claim other than reimbursement for payments made on account of Asbestos Personal Injury Claims prior to May 1, 2004, (b) the right to receive proceeds of Asbestos In-Place Insurance Coverage (including any receivables) and (c) the right to receive the proceeds or benefits of any Asbestos Insurance Action.

1.1.11 “Asbestos Insurance Company” means any insurance company, insurance broker or syndicate insurance broker, guaranty association or any other Entity that may have liability under an Asbestos Insurance Policy.

1.1.12 “Asbestos Insurance Policy” means any insurance policy currently or previously in effect at any time on or before the Effective Date naming the Debtors (or any predecessor, subsidiary, or past or present Affiliate of the Debtors) as an insured (whether as the primary or as an additional insured), or otherwise affording the Debtors indemnity or insurance coverage, upon which any claim could have been, has been or may be made with respect to any Asbestos Personal Injury Claim.

1.1.13 “Asbestos Insurance Settlement Agreement” means (a) any settlement agreements existing by and among any Asbestos Insurance Company and one or both Debtors (among other Entities), that amends, modifies, replaces or governs the rights and obligations of, and the coverage afforded to, one or both Debtors under any Asbestos Insurance Policy or (b) any settlement agreement with a Settling Asbestos Insurance Company relating to any Asbestos Personal Injury Claim.

1.1.14 “Asbestos Insurer Coverage Defense” means all rights and defenses at law or in equity that any Asbestos Insurance Company may have under any Asbestos Insurance Policy or applicable law to a claim seeking insurance coverage. Asbestos Insurer Coverage Defenses include, without limitation, any defense based on the terms of the Plan or the Plan Documents or the manner in which the Plan or Plan Documents were

negotiated, including but not limited to (a) the defense that Asbestos Personal Injury Claims asserted against one Debtor cannot be tendered to nor paid by insurers issuing or subscribing Asbestos Insurance Policies to the other Debtor and/or with respect to risks that are not insured under those policies, and (b) the defenses that excess insurers have no duty to undertake the defense of any claim and have no duty to pay defense costs with respect to claims that are not covered by any Asbestos Insurance Policy issued or subscribed by them; but Asbestos Insurer Coverage Defenses does not include any defense that the Plan or any of the Plan Documents does not comply with the Bankruptcy Code. ~~In the event that it is finally determined~~ Upon entry of a Final Order (which may be the Confirmation Order) in these Chapter 11 Cases determining that the Bankruptcy Code authorizes the Assignment by preempting any terms of the Asbestos Insurance Policies or provisions of applicable non-bankruptcy law that otherwise might prohibit the Assignment, Asbestos Insurer Coverage Defense shall not include any defense that the Assignment is prohibited by the Asbestos Insurance Policies or applicable non-bankruptcy law.

1.1.15 “Asbestos Personal Injury Claim” means a ~~liquidated or unliquidated Claim against one or both of the Debtors, or their present or former officers, directors or employees of any of them, whether asserted by agents or employees of the Debtors or any other Person or Entity, whether in the nature of or sounding in tort, contract, warranty, employer liability or any other theory of law, equity or admiralty, whatsoever, for, attributable to or arising under the laws of any jurisdiction, by reason of, directly or indirectly, physical, emotional or other personal injuries, death, or other damages caused, or allegedly caused, in whole or in part, directly or indirectly, by the presence of, or exposure to, asbestos—including, but not limited to, asbestos-containing products, manufacturing processes, improvements to real property or materials manufactured, sold, supplied, produced, specified, selected, distributed or in any way marketed or mined by one or both of the Debtors or their predecessors—and arising or allegedly arising, directly or indirectly, from acts or omissions of one or both of the Debtors, or the predecessors, of any of them, including, but not limited to, all claims, debts, obligations or liabilities for compensatory damages (such as, without limitation, loss of consortium, medical monitoring, personal or bodily injury, wrongful death, survivorship, proximate, consequential, general and special damages) and punitive damages.—Asbestos Personal Injury Claims shall include, without limitation, (i) Indirect Asbestos Personal Injury Claims and (ii) Asbestos Personal Injury Demands.—Notwithstanding the foregoing, Asbestos Personal Injury Claim shall not include any workers’ compensation claim brought directly against either or both Debtors by a past or present employee of either Debtor under any applicable workers’ compensation statute.—Flintkote Asbestos Personal Injury Claim or a Mines Asbestos Personal Injury Claim.~~

1.1.16 “Asbestos Personal Injury Demand or Demand” means a ~~demand as such term is used and defined in section 524(g)(5) of the Bankruptcy Code, including a demand for payment, present or future, that (i) was not a Claim prior to the Effective Date; (ii) arises out of the same or similar conduct or events that gave rise to an~~ Flintkote Asbestos Personal Injury Claim; and (iii) pursuant to the Plan, is to be satisfied exclusively by the Trust Demand or a Mines Asbestos Personal Injury Demand.

1.1.17 “Assignment” means any transfer of (i) Asbestos Insurance Actions, (ii) the Asbestos Insurance Action Recoveries, (iii) the Asbestos Insurance Settlement Agreements attributable to any Asbestos Personal Injury Claims and entered into prior to the Petition Date, (iv) the Asbestos In-Place Insurance Coverage, and (v) other rights or obligations with respect to Asbestos Insurance Policies, to the Trust under the Plan or Plan Documents.

1.1.18 “Bankruptcy Code” or “Code” means title 11 of the United States Code, 11 U.S.C. 101 *et seq.*, as in effect on the Petition Date, together with all amendments, modifications, and replacements of the foregoing as the same may exist on any relevant date to the extent applicable to the Chapter 11 Cases.

1.1.19 “Bankruptcy Court” means the United States Bankruptcy Court for the District of Delaware, or such other court as may have jurisdiction over the Chapter 11 Cases.

1.1.20 “Bankruptcy Rules” means the Federal Rules of Bankruptcy Procedure as promulgated by the United States Supreme Court under section 2075 of title 28 of the United States Code.

1.1.21 “Business Day” means any day other than a Saturday, Sunday or legal holiday (as such term is defined in Bankruptcy Rule 9006(a)).

1.1.22 “Cash” means lawful currency of the United States of America and its equivalents.

1.1.23 “Chapter 11 Cases” means the cases under chapter 11 of the Bankruptcy Code filed by the Debtors, styled In re The Flintkote Company, Case No. 04-11300 (JKF) and In re Flintkote Mines, Limited, Case No. 04-12440 (JKF), both of which are pending in the United States Bankruptcy Court for the District of Delaware and are being jointly administered under Case No. 04-11300 (JKF).

1.1.24 “Claim” shall have the meaning ascribed to such term in section 101(5) of the Bankruptcy Code as it pertains to “claims” against one or both Debtors.

1.1.25 “Claims Agent” means The Garden City Group, Inc.

1.1.26 “Claims Objection Bar Date” means, for all Claims against the Debtors (other than Asbestos Personal Injury Claims, Fee Claims and late-filed claims), ninety (90) days after the Effective Date, unless extended by order of the Bankruptcy Court prior to the expiration of such period. Objections to late-filed Claims against the Debtors shall be filed not later than the later of (a) six months following the Effective Date or (b) ninety (90) days after Reorganized Flintkote receives actual notice of the filing of such Claim. Subject to Article IV of the Plan, objections to Asbestos Personal Injury Claims shall be handled by the Trust in accordance with the Trust Distribution Procedures.

1.1.27 “Claims Processing Agreement” means that certain agreement to be entered into on the Effective Date by and between the Trust and Reorganized Flintkote.

pursuant to which Reorganized Flintkote shall provide post-Effective Date claims processing services to the Trust subject to the terms and conditions set forth in such agreement, which shall be in form and substance satisfactory to each of the Plan Proponents and substantially in the form contained in the Plan Supplement.

1.1.28 ~~1.1.27~~ “Class” means a category of holders of Claims or Equity Interests described in the Plan.

1.1.29 ~~1.1.28~~ “Compensation Procedures Order” means that certain “Order Appointing Fee Auditor and Establishing Related Procedures Concerning the Allowance and Payment of Compensation and Reimbursement of Expenses of Professionals and Members of the Official Committee and Consideration of Fee Applications” dated August 19, 2004.

1.1.30 ~~1.1.29~~ “Confirmation Date” means the date the Confirmation Order is entered on the Docket.

1.1.31 ~~1.1.30~~ “Confirmation Hearing” means the hearing(s) which will be held before the Bankruptcy Court and/or District Court, as applicable, in which the Plan Proponents will seek Confirmation of the Plan.

1.1.32 ~~1.1.31~~ “Confirmation Notice” means the notice of entry of the Confirmation Order.

1.1.33 ~~1.1.32~~ “Confirmation Order” means the order or orders confirming the Plan under section 1129 of the Bankruptcy Code.

1.1.34 ~~1.1.33~~ “Contingency Fee” means the contingency fee as defined and described in the Retention and Contingency Fee Agreement.

1.1.35 ~~1.1.34~~ “Debtors” means Flintkote and Mines, each a debtor and a debtor in possession in the Chapter 11 Cases.

1.1.36 ~~1.1.35~~ “Deferred Distribution” means the payment on the Distribution Date of a Cash payment equal to 5% of the Allowed Amount of a Class 5 or 6 Unsecured Claim, and thereafter the payment of additional subsequent Distributions, if any, at the time and in the identical percentage amount (less credit for the 5% Distribution already paid) on account of (a) such Class 5 or Claim in the same percentage amount as is paid by the Trust on account of Claims in Class 7 and (b) such Class 6 Claim in the same percentage amount as is paid by the Trust on account of Claims in Classes 7 and Class 8.

1.1.37 ~~1.1.36~~ “Disbursing Agent” means Reorganized Flintkote, or such other Entity that is retained by Reorganized Flintkote for such purpose.

~~1.1.37 — “Discharge Injunction” means the injunction described in section 1141 of the Bankruptcy Code and contained in Section 12.1.2 of the Plan.~~

1.1.38 “Disclosure Statement” means the written disclosure statement that relates to this Plan, including the exhibits and schedules thereto, approved by the Bankruptcy Court as containing adequate information pursuant to section 1125 of the Bankruptcy Code and Rule 3017 of the Bankruptcy Rules, as such disclosure statement may be amended, modified, or supplemented from time to time.

1.1.39 “Disputed Claim” means a Claim, or any portion thereof, against the Debtors, or any of them, (i) that is listed in the Schedules as being disputed, contingent and/or unliquidated in amount, and/or (ii) proof of which was filed with the Bankruptcy Court or the Claims Agent and that is subject to a pending objection to the allowance thereof, which has been filed within the applicable period of limitation fixed by the Plan.

~~1.1.40 “Distribution Record Date” means the record date for determining an entitlement to receive Distributions under the Plan on account of allowed Claims, which shall be the Confirmation Date.~~

1.1.40 ~~1.1.41~~ “Distribution(s)” mean those certain distributions of Estate assets to be provided to the holders of allowed Claims under the terms of this Plan.

1.1.41 ~~1.1.42~~ “Distribution Date” means the date which is as soon as reasonably practicable after the later of (i) the Effective Date, or (ii) in the case of a Claim (other than an Asbestos Personal Injury Claim) that is not yet allowed as of the Effective Date, the date that such Claim becomes allowed.

1.1.42 “Distribution Record Date” means the record date for determining an entitlement to receive Distributions under the Plan on account of allowed Claims, which shall be the Confirmation Date.

1.1.43 “District Court” means the United States District Court for the District of Delaware, or the unit thereof having jurisdiction over the matter in question.

1.1.44 “Dividend Recovery Litigation Counsel” means the team of attorneys consisting of the law firm of Snyder, Miller & Orton LLP, the law firm of Schiff Harden LLP (as successor to the law firm of Morgenstein & Jubelirer), The Law Offices of Alan Pedlar, A Professional Corporation, and Mr. Kelly C. Wooster, Esq., each duly retained pursuant to an order of the Bankruptcy Court, and such other counsel as may be designated as Dividend Recovery Litigation Counsel by order of the Bankruptcy Court.

1.1.45 “Docket” means the docket in the Chapter 11 Cases maintained by the Clerk of the Bankruptcy Court.

1.1.46 “Effective Date” means the first Business Day immediately following the date upon which all of the conditions precedent to the occurrence of the Effective Date contained in Section 9.2 of the Plan have been satisfied or waived.

1.1.47 “Encumbrance” means with respect to any property (whether real or personal, tangible or intangible), any mortgage, Lien, pledge, charge, security interest, assignment, or encumbrance of any kind or nature in respect of such property (including

any conditional sale or other title retention agreement, any security agreement, and the filing of, or agreement to give, any financing statement under the Uniform Commercial Code or comparable law of any jurisdiction) to secure payment of a debt or performance of an obligation.

1.1.48 “Entity” means any Person or entity, including, without limitation, any individual, corporation, limited liability company, partnership, association, joint stock company, joint venture, estate, trust, unincorporated organization, or government or any political subdivision thereof.

1.1.49 “Environmental Claim” means any Claim, other than an Asbestos Personal Injury Claim, asserted by any Entity, against the Debtors, or any of them, arising out of, related to, or based upon any applicable state or federal environmental law, including, but not limited to, any Claim to restrict or enjoin, or recover damages, compensation or reimbursement for any damage, penalty, fine or forfeiture, or costs or expenses to remedy any release or threatened release of any environmental pollution, contamination or nuisance, or to require the Debtors to remedy or to reimburse, pay or incur costs to remedy any release or threatened release of any environmental pollution, contamination or any nuisance.

1.1.50 “Equity Interest” means (i) the Flintkote Stock and (ii) the Mines Stock.

1.1.51 “Estate” means, as to each Debtor, the estate created in its Chapter 11 Case under section 541 of the Bankruptcy Code.

1.1.52 “Executory Contract” means any unexpired lease or executory contract that is subject to treatment under section 365 of the Bankruptcy Code.

1.1.53 “Fee Claim” means any Claim of a (i) Professional for allowance of compensation and reimbursement of costs and expenses, and (ii) member of the Asbestos Claimants Committee for reimbursement of costs and expenses, in each case incurred in the Chapter 11 Cases on or before the Effective Date.

1.1.54 “Final Order” means an order or judgment of any court of competent jurisdiction, the implementation, operation or effect of which has not been stayed and as to which order (or any revision, modification or amendment thereof) the time to appeal or seek review, rehearing or writ of certiorari has expired and as to which no appeal or petition for review, rehearing or certiorari has been taken and is pending.

1.1.55 “Flintkote” means The Flintkote Company, a Delaware corporation.

1.1.56 “Flintkote Asbestos Personal Injury Claim” means a liquidated or unliquidated Claim against Flintkote, or its present or former officers, directors or employees, whether asserted by agents or employees of Flintkote or any other Person or Entity, whether in the nature of or sounding in tort, contract, warranty, employer liability or any other theory of law, equity or admiralty, whatsoever, for, attributable to or arising under the laws of any jurisdiction, by reason of, directly or indirectly, physical, emotional or other personal injuries, death, or other damages caused, or allegedly caused, in whole

or in part, directly or indirectly, by the presence of, or exposure to, asbestos – including, but not limited to, asbestos-containing products, manufacturing processes, improvements to real property or materials manufactured, sold, supplied, produced, specified, selected, distributed or in any way marketed or mined by Flintkote or its predecessors – and arising or allegedly arising, directly or indirectly, from acts or omissions of Flintkote or its predecessors, including, but not limited to, all claims, debts, obligations or liabilities for compensatory damages (such as, without limitation, loss of consortium, medical monitoring, personal or bodily injury, wrongful death, survivorship, proximate, consequential, general and special damages) and punitive damages. Flintkote Asbestos Personal Injury Claims shall include, without limitation, (i) Flintkote Indirect Asbestos Personal Injury Claims and (ii) Flintkote Asbestos Personal Injury Demands. Notwithstanding the foregoing, Flintkote Asbestos Personal Injury Claim shall not include any workers’ compensation claim brought directly against Flintkote by a past or present employee of Flintkote under any applicable workers’ compensation statute.

1.1.57 “Flintkote Asbestos Personal Injury Demand” means a demand against Flintkote, as “demand” is used and defined in section 524(g)(5) of the Bankruptcy Code, including a demand for payment, present or future, that (i) was not a Claim prior to the Effective Date; (ii) arises out of the same or similar conduct or events that gave rise to a Flintkote Asbestos Personal Injury Claim; and (iii) pursuant to the Plan, is to be satisfied by the Trust.

1.1.58 “Flintkote Discharge Injunction” means the injunction described in section 1141 of the Bankruptcy Code and contained in Section 12.1.3 of the Plan.

1.1.59 “Flintkote Indirect Asbestos Personal Injury Claim” means a Flintkote Asbestos Personal Injury Claim for contribution, reimbursement, subrogation or indemnity, whether contractual or implied by law (as those terms are defined by the applicable non-bankruptcy law of the relevant jurisdiction), and any other derivative or indirect Flintkote Asbestos Personal Injury Claim of any kind whatsoever, whether in the nature of or sounding in contract, tort, warranty or any other theory of law, equity or admiralty.

1.1.60 “Flintkote Non-Trust Assets” is defined in accordance with Section 11.1 of the Plan.

1.1.61 “Flintkote Reserve Cash” means an amount equal to: (a) a working capital reserve in the amount Flintkote, after consultation with the Asbestos Claimants Committee and the Future Claimants Representative, determines it requires for working capital purposes plus (b)(i) the Allowed Amount of Administrative Claims against Flintkote; (ii) a reasonable estimate by Flintkote of additional Administrative Claims (including Fee Claims) against Flintkote that may become allowed after the Effective Date; (iii) the Allowed Amount of Priority Tax Claims against Flintkote; (iv) a reasonable estimate by Flintkote of additional Priority Tax Claims against Flintkote that may become allowed Priority Tax Claims after the Effective Date; (v) the Allowed Amount of all Priority Claims against Flintkote; (vi) a reasonable estimate by Flintkote of all Priority Claims that may become allowed Priority Claims against Flintkote after the

Effective Date; (vii) an amount equal to 35% of the Allowed Amount of all Unsecured Claims against Flintkote; (viii) an amount equal to 35% of a reasonable estimate of all other Unsecured Claims against Flintkote that may become allowed Claims after the Effective Date; and (ix) an amount sufficient to fund the payment of all estimated future amounts owing to the Dividend Recovery Litigation Counsel pursuant to the Retention and Contingency Fee Agreement (other than the Contingency Fee) in order to fully prosecute the Third Party Causes of Action.

1.1.62 ~~1.1.56~~ “Flintkote Stock” means all of the outstanding stock of Flintkote, 100% of which is held by The Flintkote Trust, a charitable trust established on September 29, 2003, for the sole benefit of the Long Beach Memorial Medical Center.

1.1.63 ~~1.1.57~~ “Future Claimants Representative” means James J. McMonagle (or any Bankruptcy Court-appointed successor), in his capacity as the legal representative for any and all persons who may assert Asbestos Personal Injury Demands.

1.1.64 ~~1.1.58~~ “Hopkins Agreement” means the “Agreement Providing For Joint Pursuit Of Alter Ego Remedies,” as amended, as approved by the Order Approving Alter Ego Agreement In Connection With The Dividend Recovery Litigation entered May 15, 2006, and the “Order Approving Debtors’ First Amendment To Alter Ego Agreement Providing For Joint Pursuit Of Alter Ego Remedies” entered June 16, 2006.

1.1.65 ~~1.1.59~~ “Hopkins Plaintiffs” means collectively Marleen Hopkins, Michelle Hopkins and Michael Hopkins.

1.1.66 ~~1.1.60~~ “Impaired” means a Claim or Equity Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

1.1.67 ~~1.1.61~~ “Indirect Asbestos Personal Injury Claims Claim” means any Flintkote Indirect Asbestos Personal Injury Claim ~~for contribution, reimbursement, subrogation or indemnity, whether contractual or implied by law (as those terms are defined by the applicable non-bankruptcy law of the relevant jurisdiction), and any other derivative or indirect~~ Mines Indirect Asbestos Personal Injury Claim ~~of any kind whatsoever, whether in the nature of or sounding in contract, tort, warranty or any other theory of law, equity or admiralty.~~

1.1.68 ~~1.1.62~~ “Individual Third Party Causes of Action” means any cause of action or right to bring a cause of action or seek a remedy possessed by the holder of an Asbestos Personal Injury Claim against any of the defendants in the Third Party Causes of Action on account of such holder’s Asbestos Personal Injury Claim, to the extent that such cause of action or remedy does not constitute property of a Debtor’s Estate.

1.1.69 ~~1.1.63~~ “Injunctions” means the Flintkote Discharge Injunction, the Mines Liquidating Injunction, the Third Party Injunction, the Insurance Entity ~~and Claimants Injunctions~~ Injunction and any other injunctions entered by the Bankruptcy Court or the District Court that has become a Final Order in the Chapter 11 Cases.

1.1.70 ~~1.1.64~~ “Insured Non-Asbestos Claim” means a Claim that is not an Absbestos Personal Injury Claim that is alleged to be covered by an insurance policy issued or allegedly issued by an Asbestos Insurance Company.

1.1.71 ~~1.1.65~~ “Insurance Entity and Claimants Injunctions Injunction” means the injunction described in Section 12.3.2 of the Plan.

1.1.72 ~~1.1.66~~ “Internal Revenue Code” means title 26 of the United States Code, 26 U.S.C. §§ 1 et seq., as in effect on the Petition Date, together with all amendments, modifications, and replacements of the foregoing as the same may exist on any relevant date to the extent applicable to the Chapter 11 Cases.

1.1.73 ~~1.1.67~~ “Lien” has the meaning ascribed to such term in section 101(37) of the Bankruptcy Code.

1.1.74 ~~1.1.68~~ “Litigation Expenses” means any liabilities, hourly or contingency fees, costs or expenses arising, incurred or assessed in pursuing Third Party Causes of Action both prior and subsequent to the Effective Date, including arising under the Retention and Contingency Fee Agreement for services provided or arranged by the Dividend Recovery Litigation Counsel.

1.1.75 ~~1.1.69~~ “Litigation Guaranty” means the Trust’s guaranty of Litigation Expenses other than the Contingency Fee. The Litigation Guaranty shall be substantially similar, in form and content, to the document contained in the Plan Supplement.

1.1.76 ~~1.1.70~~ “Litigation Note and Security Agreement” means the instrument evidencing Reorganized Flintkote’s obligation to pay 98% of the Net Recoveries on account of Third Party Causes of Action Recoveries to the Trust, and granting the Trust a security interest in the Third Party Causes of Action and the Net Recovery therefrom to secure such obligation. The Litigation Note and Security Agreement shall be in substantially the form contained in the Plan Supplement.

1.1.77 ~~1.1.71~~ “Mines” means ~~Flintkote Mines Limited, a Canadian corporation organized under the laws of Québec.~~ Flintkote Mines Limited, a Canadian corporation organized under the laws of Québec.

1.1.78 “Mines Asbestos Personal Injury Claim” means a liquidated or unliquidated Claim against Mines, or its present or former officers, directors or employees, whether asserted by agents or employees of Mines or any other Person or Entity, whether in the nature of or sounding in tort, contract, warranty, employer liability or any other theory of law, equity or admiralty, whatsoever, for, attributable to or arising under the laws of any jurisdiction, by reason of, directly or indirectly, physical, emotional or other personal injuries, death, or other damages caused, or allegedly caused, in whole or in part, directly or indirectly, by the presence of, or exposure to, asbestos – including, but not limited to, asbestos-containing products, manufacturing processes, improvements to real property or materials manufactured, sold, supplied, produced, specified, selected, distributed or in any way marketed or mined by Mines or its predecessors – and arising or allegedly arising, directly or indirectly, from acts or omissions of Mines or its

predecessors, including, but not limited to, all claims, debts, obligations or liabilities for compensatory damages (such as, without limitation, loss of consortium, medical monitoring, personal or bodily injury, wrongful death, survivorship, proximate, consequential, general and special damages) and punitive damages. Mines Asbestos Personal Injury Claims shall include, without limitation, (i) Mines Indirect Asbestos Personal Injury Claims and (ii) Mines Asbestos Personal Injury Demands. Notwithstanding the foregoing, Mines Asbestos Personal Injury Claim shall not include any workers' compensation claim brought directly against Mines by a past or present employee of Mines under any applicable workers' compensation statute.

1.1.79 "Mines Asbestos Personal Injury Demand" means a demand against Mines, as "demand" is used and defined in section 524(g)(5) of the Bankruptcy Code, notwithstanding that Mines shall not receive an injunction under section 524(g) of the Bankruptcy Code, including a demand for payment, present or future, that (i) was not a Claim prior to the Effective Date; (ii) arises out of the same or similar conduct or events that gave rise to a Mines Asbestos Personal Injury Claim; and (iii) pursuant to the Plan, is to be satisfied by the Trust.

1.1.80 "Mines Distribution Reserve" means the reserve established pursuant to Section 11.2 of the Plan.

1.1.81 "Mines Estate Representative" means Reorganized Flintkote, as the authorized representative of the Mines Estate on and after the Effective Date pursuant to section 1123(b)(3) of the Bankruptcy Code, which shall have the power to, among other things, administer the Mines Estate and effectuate Mines' liquidation in accordance with Section 10.4 of the Plan.

1.1.82 "Mines Indirect Asbestos Personal Injury Claim" means a Mines Asbestos Personal Injury Claim for contribution, reimbursement, subrogation or indemnity, whether contractual or implied by law (as those terms are defined by the applicable non-bankruptcy law of the relevant jurisdiction), and any other derivative or indirect Mines Asbestos Personal Injury Claim of any kind whatsoever, whether in the nature of or sounding in contract, tort, warranty or any other theory of law, equity or admiralty.

1.1.83 "Mines Liquidating Injunction" means the injunction contained in Section 12.1.4 of the Plan

1.1.84 "Mines Reserve Cash" means an amount equal to: (i) the Allowed Amount of Administrative Claims against Mines; (ii) a reasonable estimate by Mines of additional Administrative Claims (including Fee Claims) against Mines that may become allowed after the Effective Date; (iii) the Allowed Amount of Priority Tax Claims against Mines; (iv) a reasonable estimate by Mines of additional Priority Tax Claims against Mines that may become allowed Priority Tax Claims after the Effective Date; (v) the Allowed Amount of all Priority Claims against Mines; (vi) a reasonable estimate by Mines of all Priority Claims against Mines that may become allowed Priority Claims after the Effective Date; (vii) an amount equal to 35% of the Allowed Amount of all

Unsecured Claims against Mines; and (viii) an amount equal to 35% of a reasonable estimate by Mines of all other Unsecured Claims against Mines that may become allowed Claims after the Effective Date.

1.1.85 ~~1.1.72~~ “Mines Stock” means all of the outstanding stock of Mines, 100% of which is held by Flintkote.

1.1.86 ~~1.1.73~~ “Net Recovery” is defined in accordance with Section 6.2 of the Plan.

1.1.87 ~~1.1.74~~ “New Flintkote Stock” means the stock of Reorganized Flintkote, after cancellation of the Flintkote Stock, that will be issued to the Trust pursuant to Section 4.5 of the Plan.

1.1.88 ~~1.1.75~~ “Non-Asbestos Insurance Assets” means any insurance policies, or settlements thereof, that afford the Debtors indemnity or insurance coverage solely with respect to any Insured Non-Asbestos Claims.

~~1.1.76~~ — “Non-Trust Assets” is defined in accordance with Section 11.1 of the Plan.

1.1.89 ~~1.1.77~~ “Person” means any person, individual, partnership, corporation, limited liability company, joint venture company, association or other entity or being of whatever kind, whether or not operating or existing for profit, including, but not limited to, any “person” as such term is defined in section 101(41) of the Bankruptcy Code, but excluding any Governmental Unit.

1.1.90 ~~1.1.78~~ “Petition Date” means, with respect to Flintkote, May 1, 2004, and, with respect to Mines, August 25, 2004, as the dates upon which Flintkote’s and Mines’ respective Chapter 11 Cases were commenced.

1.1.91 ~~1.1.79~~ “Plan” means this Amended Joint Plan of Reorganization filed by the Plan Proponents, as the same may be amended or modified from time to time pursuant to section 1127 of the Bankruptcy Code

1.1.92 ~~1.1.80~~ “Plan Documents” means the Plan, the Disclosure Statement, the Trust Agreement, the Trust Distribution Procedures, any document contained in the Plan Supplement, and all of the exhibits and schedules attached to any of the foregoing.

1.1.93 ~~1.1.81~~ “Plan Proponents” means, collectively, the Debtors, the Asbestos Claimants Committee and the Future Claimants Representative.

1.1.94 ~~1.1.82~~ “Plan Supplement” means the compilation of documents or forms of documents specified in the Plan, including, but not limited to, the documents specified in Article V and Section 14.8 of the Plan and any exhibits to the Plan not included herewith, all of which are incorporated herein by reference.

1.1.95 ~~1.1.83~~ “Present Affiliate Claims” means all pre-petition and post-petition Claims against one Debtor held by the other Debtor, or any interest held by one Debtor in any property of the other Debtor, but excluding Equity Interests.

1.1.96 ~~1.1.84~~ “Priority Claim” means any Claim entitled to priority pursuant to section 507(a) of the Bankruptcy Code, other than an Administrative Claim, Priority Tax Claim, or Fee Claim.

1.1.97 ~~1.1.85~~ “Priority Tax Claim” means any Claim entitled to priority pursuant to section 507(a)(8) of the Bankruptcy Code.

1.1.98 ~~1.1.86~~ “Professional” means any person retained or to be compensated pursuant to sections 327, 328, 330 or 1103 of the Bankruptcy Code, including, without limitation, the Future Claimants Representative and any Professional retained by him.

1.1.99 ~~1.1.87~~ “Proof of Claim” means any proof of claim filed with the Bankruptcy Court or the Claims Agent pursuant to section 501 of the Bankruptcy Code and Rules 3001 or 3002 of the Bankruptcy Rules that asserts a Claim against any of the Debtors.

1.1.100 ~~1.1.88~~ “Pro Rata” means the proportion that an allowed Claim in a particular Class bears to the aggregate amount of all allowed Claims in such Class except in cases where Pro Rata is used in reference to multiple classes, in which case Pro Rata means the proportion that an allowed Claim in a particular Class bears to the aggregate amount of all allowed Claims in such multiple Classes.

1.1.101 ~~1.1.89~~ “Protected Party” means any of the following:

- (a) ~~the Debtors~~ Flintkote;
- (b) Reorganized Flintkote;
- (c) any Entity, except for the Trust, that, pursuant to the Plan or otherwise, after the Effective Date, becomes a direct or indirect transferee of, or successor to, ~~the Debtors~~ Flintkote, Reorganized Flintkote, or any of their respective assets (but only to the extent that liability is asserted to exist as a result of its becoming such a transferee or successor);
- (d) each Settling Asbestos Insurance Company but only to the extent specified in the Confirmation Order; and
- (e) each Entity who contributes funds, proceeds or other consideration to or for the benefit of the Trust, which is designated with the consent of the Asbestos Claimants Committee and the Future Claimants Representative in the Confirmation Order to be a Protected Party.

1.1.102 ~~1.1.90~~ “Qualified Settlement Fund” means the fund established by the Bankruptcy Court’s order dated July 13, 2005 (Docket No. 954), pursuant to section

468B of the Internal Revenue Code and the regulations promulgated thereunder, to serve as the repository of certain funds contributed by Flintkote.

1.1.103 ~~1.1.91~~ “Qualified Settlement Fund Proceeds” means all Cash and investments held in the Qualified Settlement Fund as of the Effective Date.

1.1.104 ~~1.1.92~~ “Rejection Claim” means a Claim for damages under section 502(g) of the Bankruptcy Code resulting from the rejection of an executory contract or unexpired lease by the Debtors.

1.1.105 ~~1.1.93~~ “Released Parties” means any and all Entities who are released or exonerated pursuant to, or in accordance with, Sections 12.2 or 12.6 of the Plan including, without limitation, (a) the Debtors, Reorganized Flintkote, and each of ~~their~~the Debtors’ and Reorganized Flintkote’s respective present and former agents, attorneys, accountants, financial advisors, and restructuring consultants and their respective successors or assigns, (b) the respective present and former officers and directors of the Debtors, (c) the Asbestos Claimants Committee and their respective members, agents, attorneys, accountants, financial advisors, and restructuring consultants (but specifically excluding L. Tersigni Consulting, Inc. (“Tersigni Consulting”), pending the outcome of the examination and/or review of Tersigni Consulting’s professional fees and expenses in the Chapter 11 Cases by the United States Trustee and the Office of the United States Attorney for the District of Delaware), and (d) the Future Claimants Representative and his agents, attorneys, accountants, financial advisors, and restructuring consultants, together in each case with all of their respective officers, directors, employees, agents, attorneys, accountants, financial advisors, and restructuring consultants.

1.1.106 ~~1.1.94~~ “Reorganized Flintkote” means Flintkote on and after the Effective Date.

~~1.1.95~~ — “Reserve Cash” means an amount equal to: (a) a working capital reserve in the amount ~~the Debtors~~, after consultation with the Asbestos Claimants Committee and the Future Claimants Representative, ~~determine they require~~ for working capital purposes ~~plus~~ (b)(i) the Allowed Amount of Administrative Claims; (ii) a reasonable estimate by ~~the Debtors~~ of additional Administrative Claims (including Fee Claims) that may become allowed after the Effective Date; (iii) the Allowed Amount of Priority Tax Claims; (iv) a reasonable estimate by ~~the Debtors~~ of additional Priority Tax Claims that may become allowed Priority Tax Claims after the Effective Date; (v) the Allowed Amount of all Priority Claims; (vi) a reasonable estimate of all Priority Claims that may become allowed Priority Claims after the Effective Date; (vii) an amount equal to 35% of the Allowed Amount of all Unsecured Claims; (viii) an amount equal to 35% of a reasonable estimate of all other Unsecured Claims that may become allowed Claims after the Effective Date; and (ix) an amount sufficient to fund the payment of all estimated future amounts owing to the Dividend Recovery Litigation Counsel pursuant to the Retention and Contingency Fee Agreement (other than the Contingency Fee) in order to fully prosecute the Third Party Causes of Action.

1.1.107 “Reserve Cash” means the Flintkote Reserve Cash and the Mines Reserve Cash.

1.1.108 ~~1.1.96~~ “Retention and Contingency Fee Agreement” means that certain Retention and Contingency Fee Agreement dated February 27, 2006, between the Debtors and the Dividend Recovery Litigation Counsel, and acknowledged and endorsed by the Asbestos Claimants Committee and the Future Claimants Representative, as such agreement may be amended pursuant to Court order, a copy of which is attached hereto as Exhibit C.

1.1.109 ~~1.1.97~~ “Schedules” means the schedules of assets and liabilities and the statements of financial affairs of the Debtors as filed with the Bankruptcy Court in accordance with section 521 of the Bankruptcy Code, as such schedules and statements may be amended or supplemented from time to time.

1.1.110 ~~1.1.98~~ “Secured Claim” means a Claim that is (a) secured in whole or in part as of the Petition Date, by a Lien which is valid, perfected and enforceable under applicable law and is not subject to avoidance under the Bankruptcy Code or other applicable law, or (b) subject to setoff under section 553 of the Bankruptcy Code or other applicable law, but, with respect to both (a) and (b) above, only to the extent of the value of the holder of such Claim’s interest in the particular Estate’s interest in the property securing any such Claim or the amount subject to setoff, as the case may be.

1.1.111 ~~1.1.99~~ “Settling Asbestos Insurance Company” means each Asbestos Insurance Company listed in the Plan Supplement (as the same may be amended from time to time prior to entry of the Confirmation Order) and any other Asbestos Insurance Company that enters into an Asbestos Insurance Settlement Agreement that is thereafter determined by the District Court to justify treating such Asbestos Insurance Company as a Protected Party.

1.1.112 ~~1.1.100~~ “Third Party Causes of Action” means any and all of the actions, claims, rights, remedies, defenses, counterclaims, suits and causes of action of the Debtors and their Estates, whether known or unknown, in law, at equity or otherwise, whenever and wherever arising under the laws of any jurisdiction, ~~including~~ without limitation causes of action for breach of contract, receipt of illegal dividends, fraudulent conveyances and transfers, breach of fiduciary duty, breach of duty of loyalty, legal malpractice, recovery of attorneys’ fees, turnover of property and avoidance or recovery actions of the Debtors and their respective Estates, including actions that constitute property of the estate under section 541 of the Bankruptcy Code that are or may be pursued by a representative of the Estates, including pursuant to ~~Section~~section 323 of the Bankruptcy Code, and actions that may be commenced by a representative of the Estates under sections 502(d), 542, 544, 545, 547, 548, 549, 550, 551 and 553 of the Bankruptcy Code, seeking relief in the form of damages (actual and punitive), imposition of a constructive trust, turnover of property, restitution, alter ego remedies, and declaratory relief against: (i) any or all of the Debtors’ former Affiliates, the Debtors’ former direct and indirect parent companies, the current and former Affiliates and subsidiaries of such parent companies, including without limitation Imperial Tobacco Canada Limited f/k/a

Imasco Limited (Canada) and its affiliates, and (ii) the Debtors' former counsel and the present and former counsel of its former Affiliates and its former direct and indirect parent companies, including without limitation Sullivan & Cromwell LLP. The Third Party Causes of Action include, without limitation, those claims set forth in the complaints filed in the Superior Court of the State of California for the County of San Francisco, Case Nos. CGC-06-450944 and CGC-06-452568, as supplemented and amended, and any additional claims for relief based on the facts and circumstances underlying the foregoing pending actions.

1.1.113 ~~1.1.101~~ "Third Party Causes of Action Recoveries" means (a) Cash derived from, and paid pursuant to, the settlement or adjudication of the Third Party Causes of Action, and (b) the right to receive proceeds or benefits resulting from the settlement or adjudication of the Third Party Causes of Action.

1.1.114 ~~1.1.102~~ "Third Party Injunction" means the injunction described in Section 12.3.1 of the Plan.

1.1.115 ~~1.1.103~~ "Trust" means the trust established pursuant to the Trust Agreement ~~and in accordance with section 524(g) of the Bankruptcy Code~~, which is a "qualified settlement fund" pursuant to section 468B of the IRC and the regulations issued pursuant thereto.

1.1.116 ~~1.1.104~~ "Trust Advisory Committee" means that committee appointed and serving in accordance with Section 4.3.1 of the Plan, and having the powers, duties and obligations set forth in the Trust Agreement.

1.1.117 ~~1.1.105~~ "Trust Agreement" means that certain Asbestos Personal Injury Trust Agreement, substantially in the form of Exhibit A to the Plan.

1.1.118 ~~1.1.106~~ "Trust Assets" means the following assets and any income, profits and proceeds derived from such assets subsequent to the transfer of such assets to the Trust: (a) the New Flintkote Stock, (b) all Cash and instruments held by the Debtors as of the Effective Date other than the Reserve Cash, (c) the Trust Causes of Action and any and all proceeds thereof, (d) the Litigation Note and Security Agreement, (e) Asbestos Insurance Actions, (f) Asbestos Insurance Action Recoveries, (g) the rights of the Debtors with respect to Asbestos Insurance Policies and Claims thereunder, (h) the Qualified Settlement Fund Proceeds, and (h) any and all other funds, proceeds or other consideration otherwise contributed to the Trust pursuant to this Plan and/or the Confirmation Order or other order of the Bankruptcy Court.

1.1.119 ~~1.1.107~~ "Trust Causes of Action" means any and all of the actions, claims, rights, defenses, counterclaims, suits and causes of action of the Debtors and their Estates, whether known or unknown, in law, at equity or otherwise, whenever and wherever arising under the laws of any jurisdiction attributable to: (a) all defenses to any Asbestos Personal Injury Claim, including, but not limited to, all defenses under section 502 of the Bankruptcy Code, (b) with respect to any Asbestos Personal Injury Claim, all rights of setoff, recoupment, contribution, reimbursement, subrogation or indemnity (as

those terms are defined by the non-bankruptcy law of any relevant jurisdiction) and any other indirect claim of any kind whatsoever, whenever and wherever arising or asserted, (c) subject to the provisions of the Plan, any other claims or rights with respect to Asbestos Personal Injury Claims that the Debtors would have had under applicable law if the Chapter 11 Cases had not occurred and the holder of such Asbestos Personal Injury Claim had asserted it by initiating civil litigation against any such Debtor, and (d) any claim, cause of action, or right of the Debtors or any of them, under the laws of any jurisdiction, for reimbursement, indemnity, contribution, breach of contract or otherwise arising from or relating to any payments made by the Debtors on account of Asbestos Personal Injury Claims prior to the Petition Date. Notwithstanding the foregoing, the Trust Causes of Action do not include any Third Party Causes of Action.

1.1.120 ~~1.1.108~~ “Trust Distribution Procedures” means the Asbestos Personal Injury Trust Distribution Procedures, substantially in the form of Exhibit B to the Plan.

1.1.121 ~~1.1.109~~ “Trust Documents” means the Trust Agreement, the Trust Distribution Procedures and all other agreements, instruments and documents governing the establishment, administration and operation of the Trust, which shall be substantially in the form set forth in the Plan, as they may be amended or modified from time to time in accordance with the Plan and Trust Agreement.

1.1.122 ~~1.1.110~~ “Trustee” means an individual appointed by the Bankruptcy Court to serve as one of the trustees of the Trust pursuant to the terms of the Plan and the Trust Agreement or who subsequently may be appointed pursuant to the terms of the Trust Agreement.

1.1.123 ~~1.1.111~~ “Trust Expenses” means any liabilities, costs or expenses of, or imposed upon, or in respect of, the Trust (except for payments to holders of Asbestos Personal Injury Claims on account of such Claims). Trust Expenses shall also expressly include (a) any and all liabilities, costs and expenses incurred subsequent to the Confirmation of the Plan in connection with any and all Asbestos Insurance Actions and the Trust Assets (including, without limitation, the prosecution of any Trust Causes of Action), in each case whether or not any such action results in a recovery for the Trust and (b) any and all liabilities, costs and expenses incurred by Reorganized Flintkote in taking any action on behalf of or at the direction of the Trust, if any, including, without limitation, any costs and expenses incurred by Reorganized Flintkote in being named as a defendant in any Asbestos Insurance Action. Trust Expenses shall also include the Trust’s financial obligations under the Litigation Guaranty.

1.1.124 ~~1.1.112~~ “Unimpaired” means a Claim or Equity Interest, or a Class of Claims or Equity Interests, that is not Impaired under this Plan.

1.1.125 ~~1.1.113~~ “United States Trustee” means the United States Trustee appointed under section 591 of title 28 of the United States Code to serve in the District of Delaware.

1.1.126 ~~1.1.114~~ “Unsecured Claim” means a Claim against one or both Debtors that is not an Administrative Claim, a Priority Claim, a Priority Tax Claim, a Secured Claim, or an Asbestos Personal Injury Claim.

1.1.127 ~~1.1.115~~ “Voting Procedures” means those certain procedures approved by the Bankruptcy Court for soliciting and tabulating the votes to accept or reject the Plan cast by holders of Claims against and Equity Interests in the Debtors, including without limitation, Asbestos Personal Injury Claims.

1.1.128 ~~1.1.116~~ “Voting Procedures Order” means the order entered by the Bankruptcy Court on [\_\_\_\_\_], 2007, which, among other things, (i) fixed Asbestos Personal Injury Claims in the amounts designated in the Trust Distribution Procedures, however such designation shall be solely for voting purposes and not for allowance or distribution purposes, and (ii) approved the Voting Procedures.

1.1.129 “Wellington Agreement” means that certain Agreement Concerning Asbestos-Related Claims dated as of June 19, 1985.

1.2 Interpretation; Application of Definitions Rules of Construction; and Computation of Time. The headings in the Plan are for convenience of reference only and shall not limit or otherwise affect the provisions hereof. Wherever from the context it appears appropriate, each term stated in either the singular or the plural will include both the singular and the plural, and pronouns stated in the masculine, feminine, or neuter gender will include the masculine, feminine, and neuter. Unless otherwise specified, all Article, Section, Schedule or Exhibit references in the Plan are to the respective article or section of, or schedule or exhibit to, the Plan. The words “herein,” “hereof,” “hereto,” “hereunder,” and other words of similar meaning refer to the Plan as a whole and not to any particular section, subsection or clause contained in the Plan. The rules of construction contained in section 102 of the Bankruptcy Code will apply to the construction of the Plan. Unless otherwise stated herein, all references to dollars mean United States dollars. In computing any period of time prescribed or allowed by the Plan, unless otherwise expressly provided, the provisions of Rule 9006(a) of the Bankruptcy Rules will apply.

1.3 Exhibits. All exhibits and schedules to this Plan, to the extent not annexed hereto and any agreements referred to herein and therein will be available for review following their filing with the Bankruptcy Court (i) at ([www.deb.uscourts.gov](http://www.deb.uscourts.gov)), and (ii) on Business Days from 9:00 a.m. through 5:00 p.m. (prevailing Delaware time), at the following address:

Pachulski Stang Ziehl & Jones LLP.  
919 North Market Street, 17<sup>th</sup> Floor  
Wilmington, Delaware 19899-8705  
Attention: James E. O’Neill, Esq.

1.4 Ancillary Documents. Each of the schedules and exhibits to the Plan (whether annexed hereto or included in the Plan Supplement), the Disclosure Statement, and the schedules and exhibits to the Disclosure Statement are an integral part of the Plan, and are hereby incorporated by reference and made a part of the Plan, including, without limitation, the Trust

Agreement, the Trust Distribution Procedures, the Amended Charter Documents, and the other Plan Documents.

## **ARTICLE II TREATMENT OF ADMINISTRATIVE AND PRIORITY TAX CLAIMS**

2.1 Allowed Administrative Claims. Holders of allowed Administrative Claims (other than Fee Claims, which are governed by Section 14.1 of this Plan) shall receive Cash equal to the unpaid portion of such allowed Administrative Claims on the Distribution Date, in full satisfaction, settlement, release, and discharge of and in exchange for such Claims, or such amounts and on such other terms as may be agreed to by the holders of such Claims and the Debtors or Reorganized Flintkote; provided, however, that allowed Administrative Claims representing liabilities incurred on or after the Petition Date in the ordinary course of business by either of the Debtors shall be paid by Reorganized Flintkote in accordance with the terms and conditions of the particular transactions relating to such liabilities and any agreements relating thereto.

2.2 Priority Tax Claims. On the Distribution Date, holders of allowed Priority Tax Claims shall receive Cash equal to the amount of such allowed Priority Tax Claims, in full satisfaction, settlement, release and discharge of and in exchange for such Claims.

## **ARTICLE III TREATMENT OF CLASSIFIED CLAIMS AND EQUITY INTERESTS**

3.1 Claims and Equity Interests Classified. For purposes of organization, voting, and all Plan confirmation matters, and except as otherwise provided herein, all Claims (other than Administrative Claims and Priority Tax Claims) against and Equity Interests in the Debtor are classified as set forth in this Article III of the Plan. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims and Priority Tax Claims described in Article II of this Plan, and Fee Claims described in Section 14.1 of this Plan, have not been classified and are excluded from the following Classes. A Claim or Equity Interest is classified in a particular Class only to the extent that the Claim or Equity Interest falls within the description of such Class, and is classified in another Class or Classes to the extent that any remainder of the Claim or Equity Interest falls within the description of such other Class or Classes. Notwithstanding anything to the contrary contained in this Plan, no Distribution shall be made on account of any Claim that is not an allowed Claim for distribution purposes.

3.2 Treatment and Classification of Claims and Equity Interests. For purposes of all confirmation matters, including, without limitation, voting on, confirmation of, and Distributions under, the Plan, and except as otherwise provided herein, all Claims against (other than Administrative Claims, Fee Claims, and Priority Tax Claims, which are not classified) and Equity Interests in the Debtors shall be classified and treated in the manner set forth below.

### 3.2.1 **Class 1 – Flintkote Priority Claims**

(a) Classification: Class 1 consists of all Priority Claims Against Flintkote.

(b) Treatment: On the Distribution Date, each holder of a Class 1 allowed Priority Claim shall receive Cash equal to the allowed Amount of such Priority Claim.

(c) Voting: Class 1 is Unimpaired and each holder of an allowed Class 1 Claim is not entitled to vote to accept or reject the Plan.

### 3.2.2 **Class 2 – Mines Priority Claims**

(a) Classification: Class 2 consists of all Priority Claims Against Mines.

(b) Treatment: On the Distribution Date, each holder of a Class 2 allowed Priority Claim shall receive Cash equal to the allowed Amount of such Priority Claim.

(c) Voting: Class 2 is Unimpaired and each holder of an allowed Class 2 Claim is not entitled to vote to accept or reject the Plan.

### 3.2.3 **Class 3 – Flintkote Secured Claims**

(a) Classification: Class 3 consists of all Secured Claims Against Flintkote.

(b) Treatment: At the option of the Plan Proponents and in accordance with section 1124 of the Bankruptcy Code, all allowed Secured Claims in Class 3 will be treated pursuant to one of the following alternatives: (i) the Plan will leave unaltered the legal, equitable and contractual rights to which each allowed Secured Claim in Class 3 entitles the holder; (ii) an allowed Secured Claim shall receive such other treatment as the Debtor and the holder shall agree; or (iii) all of the collateral for such allowed Secured Claim will be surrendered by the Debtor to the holder of such Claim on the Effective Date or as soon as practicable thereafter.

(c) Voting: To the extent any Class 3 allowed Secured Claims are treated in the manner set forth above, Class 3 is Unimpaired and such holders are not entitled to vote to accept or reject the Plan.

### 3.2.4 **Class 4 – Mines Secured Claims**

(a) Classification: Class 4 consists of all Secured Claims Against Mines.

(b) Treatment: At the option of the Plan Proponents and in accordance with section 1124 of the Bankruptcy Code, all allowed Secured Claims in Class 4 will be treated pursuant to one of the following alternatives: (i) the Plan will leave unaltered the legal, equitable and contractual rights to which each allowed Secured Claim in Class 4 entitles the holder; (ii) an allowed Secured Claim shall receive such other treatment as the Debtor and the holder shall agree; or (iii) all of the collateral for such allowed Secured Claim will be surrendered by the Debtor to the holder of such Claim on the Effective Date or as soon as practicable thereafter.

(c) Voting: To the extent any Class 4 allowed Secured Claims are treated in the manner set forth above, Class 4 is Unimpaired and such holders are not entitled to vote to accept or reject the Plan.

### 3.2.5 **Class 5 – Flintkote Unsecured Claims**

(a) Classification: Class 5 consists of all Unsecured Claims against Flintkote.

(b) Treatment: Each holder of an allowed Class 5 Unsecured Claim shall receive at its option, exercised on the ballot accepting or rejecting the Plan, either (i) on the Distribution Date, a total Cash payment equal to 35% of the Allowed Amount of such Claim, or (ii) the Deferred Distribution. If a holder of an allowed Class 5 Unsecured Claim does not elect one of the above Distribution options, then the default election shall be to receive the Deferred Distribution.

(c) Voting: Class 5 is Impaired and each holder of an allowed Class 5 Claim is entitled to vote to accept or reject the Plan.

### 3.2.6 **Class 6 – Mines Unsecured Claims**

(a) Classification: Class 6 consists of all Unsecured Claims against Mines.

(b) Treatment: Each holder of an allowed Class 6 Unsecured Claim shall receive at its option, exercised on the ballot accepting or rejecting the Plan, either (i) on the Distribution Date, a total Cash payment equal to 35% of the Allowed Amount of such Claim, or (ii) the Deferred Distribution. If a holder of an allowed Class 6 Unsecured Claim does not elect one of the above Distribution options, then the default election shall be to receive the Deferred Distribution.

(c) Voting: Class 6 is Impaired and each holder of an allowed Class 6 Claim is entitled to vote to accept or reject the Plan.

### 3.2.7 **Class 7 – Flintkote Asbestos Personal Injury Claims**

(a) Classification: Class 7 consists of all [Flintkote](#) Asbestos Personal Injury Claims ~~against Flintkote~~.

(b) Treatment: As of the Effective Date, liability for all Class 7 [Flintkote](#) Asbestos Personal Injury Claims shall be automatically and without further act, deed or Court order, assumed by the Trust. Except as expressly provided in the Hopkins Agreement in respect to the claims of the Hopkins Plaintiffs, and any other agreements entered into among a Claimant, Reorganized Flintkote, and the ~~Trustee~~[Trust](#) with respect to the pursuit of Individual Third Party Causes of Action ~~or actions to recover under insurance policies~~, each [Flintkote](#) Asbestos Personal Injury Claim in Class 7 shall be liquidated and, as appropriate, paid ~~solely~~ by the Trust pursuant to and in accordance with the Trust Distribution Procedures.

(c) Voting: Class 7 is Impaired and each holder of an allowed Class 7 Claim is entitled to vote to accept or reject the Plan.

### 3.2.8 **Class 8 – Mines Asbestos Personal Injury Claims**

(a) Classification: Class 8 consists of all Mines Asbestos Personal Injury Claims ~~against Mines~~.

(b) Treatment: As of the Effective Date, liability for all Class 8 Mines Asbestos Personal Injury Claims shall be automatically and without further act, deed or Court order, assumed by the Trust. ~~Except as expressly provided in the Hopkins Agreement in respect to the claims of the Hopkins Plaintiffs, and any other agreements entered into among a Claimant, Reorganized Flintkote, and the Trustee with respect to the pursuit of Individual Third Party Causes of Action or actions to recover under insurance policies, each~~ Each Mines Asbestos Personal Injury Claim in Class 8 shall be liquidated and, as appropriate, paid ~~solely~~ by the Trust pursuant to and in accordance with the Trust Distribution Procedures.

(c) Voting: Class 8 is Impaired and each holder of an allowed Class 8 Claim is entitled to vote to accept or reject the Plan.

### 3.2.9 **Class 9 – Present Affiliate Claims Against Flintkote**

(a) Classification: Class 9 consists of all Present Affiliate Claims (if any) against Flintkote.

(b) Treatment: ~~On the Effective Date, all~~ All Present Affiliate Claims in Class 9 shall be ~~discharged and extinguished, in their entirety, such that~~ subordinated to the Flintkote Unsecured Claims in Class 5 and the Flintkote Asbestos Personal Injury Claims in Class 7. Mines and its Estate (as the sole holder of ~~such~~ Present Affiliate Claims in Class 9) shall not be entitled to, and shall not receive or retain, any property or interest on account of such ~~Claim under the Plan~~ Present Affiliate Claims under the Plan unless and until all Flintkote Unsecured Claims in Class 5 and Flintkote Asbestos Personal Injury Claims in Class 7 have been paid in full.

(c) Voting: Class 9 is Impaired and Mines, as the sole holder of ~~the Class 9 Claim is conclusively presumed to reject the Plan pursuant to section 1126 of the Bankruptcy Code~~ Class 9 Claims and as a co-proponent of the Plan, intends to vote to accept the Plan.

### 3.2.10 **Class 10 – Present Affiliate Claims Against Mines**

(a) Classification: Class 10 consists of all Present Affiliate Claims (if any) against Mines.

(b) Treatment: ~~On the Effective Date, all~~ All Present Affiliate Claims in Class 10 shall be ~~discharged and extinguished, in their entirety, such that~~ subordinated to the Mines Unsecured Claims in Class 6 and the Mines Asbestos Personal Injury Claims in

Class 8. Flintkote and its Estate (as the sole holder of ~~such~~ Present Affiliate Claims in Class 10) shall not be entitled to, and shall not receive or retain, any property or interest on account of such ~~Claim under the Plan~~ Present Affiliate Claims under the Plan unless and until all Mines Unsecured Claims in Class 6 and Mines Asbestos Personal Injury Claims in Class 8 have been paid in full.

(c) Voting: Class 10 is Impaired and Flintkote, as the sole holder of ~~the Class 10 Claim is conclusively presumed to reject the Plan pursuant to section 1126 of the Bankruptcy Code~~ Class 10 Claims and as a co-proponent of the Plan, intends to vote to accept the Plan.

### 3.2.11 Class 11 – Equity ~~Interest~~Interests in Flintkote

(a) Classification: Class 11 consists of all outstanding shares of Flintkote Stock.

(b) Treatment: On the Effective Date, all existing shares of outstanding Flintkote Stock shall be cancelled, annulled and extinguished. The holder of the Class 11 Equity ~~Interest~~Interests shall not receive or retain any distribution on account of such Equity ~~Interest~~Interests under the Plan.

(c) Voting: Class 11 is Impaired and the holder of the Class 11 Equity ~~Interest~~Interests is conclusively presumed to have rejected the Plan pursuant to section 1126 of the Bankruptcy Code.

### 3.2.12 Class 12 – Equity ~~Interest~~Interests in Mines

(a) Classification: Class 12 consists of all outstanding shares of Mines Stock.

(b) Treatment: ~~On the Effective Date, all existing shares of outstanding Mines Stock shall be cancelled, annulled and extinguished, and Mines shall be merged with and otherwise shall be consolidated into Reorganized Flintkote in accordance with Section 10.3 hereof. The~~ Mines shall be liquidated. Flintkote, as the holder of the Class 12 Equity Interests, shall retain such Equity Interests on and after the Effective Date; provided, however, that Flintkote shall not receive ~~or retain~~ any distribution on account of such Equity Interests ~~under the Plan~~ unless and until all Claims against Mines are paid in full, including legal interest thereon from and after the Petition Date.

(c) Impairment and Voting: Class 12 is Impaired and Flintkote, as the sole holder of ~~the Class 12 Equity Interests is conclusively presumed to have rejected the Plan pursuant to section 1126 of the Bankruptcy Code~~ and as a co-proponent of the Plan, intends to vote to accept the Plan.

## ARTICLE IV THE TRUST

4.1 Establishment and Purpose of the Trust. On the Effective Date, the Trust shall be created in accordance with the Plan Documents. The Trust shall be a “qualified settlement fund”

within the meaning of section 468B of the Internal Revenue Code and the regulations issued thereunder. The purposes of the Trust shall be to assume all present and future Asbestos Personal Injury Claims and to use the Trust Assets to pay holders of Asbestos Personal Injury Claims in accordance with the Trust Agreement and the Trust Distribution Procedures in such a way that provides reasonable assurance that the Trust shall value and be in a financial position to pay present and future Asbestos Personal Injury Claims that involve similar Claims in substantially the same manner, and to otherwise comply in all respects with the requirements of section 524(g)(2)(B)(i) of the Bankruptcy Code. The Trust Distribution Procedures provide, among other things, for the resolution of Asbestos Personal Injury Claims pursuant to the terms of the Trust Documents, and that resolution of an Asbestos Personal Injury Claim by the Trust will result in a full or partial release of such Claim against the Trust in accordance with the Trust Distribution Procedures. The Trust shall pay Asbestos Personal Injury Claims in accordance with the Trust Documents. In the event that an Indirect Asbestos Personal Injury Claim against the Debtors is disallowed pursuant to section 502(e)(1)(B) of the Bankruptcy Code, the right of a holder of such disallowed Claim under applicable non-bankruptcy law to setoff payments by the Trust against such holder's liability to an asbestos personal injury claimant shall be preserved. In the event of a conflict between the terms or provisions of the Plan and the Trust Documents, the terms of the Plan shall control over the terms of the Trust Documents.

4.2 Selection of the Initial Trustees. The three (3) initial Trustees of the Trust shall be the persons identified in the Trust Agreement. All successor Trustees shall be appointed in accordance with the terms of the Trust Agreement. For purposes of performing their duties and fulfilling their obligations under the Trust Agreement and the Plan, each Trustee shall be deemed to be (and the Confirmation Order shall so provide) a “party in interest” within the meaning of section 1109(b) of the Bankruptcy Code.

4.3 Advising the Trust.

4.3.1 The Trust Advisory Committee. The Trust Advisory Committee shall be established pursuant to the Trust Agreement. The Trust Advisory Committee shall have three (3) members and shall have the functions, duties and rights provided in the Trust Agreement. The Asbestos Claimants Committee shall select the three (3) initial members of the Trust Advisory Committee and disclose their identity in the Plan Supplement at least thirty (30) days prior to the Confirmation Hearing.

4.3.2 Successor Committee Members. Each member of the Trust Advisory Committee shall serve in accordance with the terms and conditions contained in the Trust Agreement.

4.3.3 Future Claimants Representative. From and after the Effective Date, the Future Claimants Representative shall continue to serve in that capacity as an advisor to the Trust and shall have the functions, duties and rights provided in the Trust Agreement.

4.4 Assumption of Liability for Asbestos Personal Injury Claims and Demands by the Trust. On the Effective Date, the Trust shall assume the liabilities of the Debtors for all Asbestos Personal Injury Claims, including, but not limited to, Indirect Asbestos Personal Injury Claims.

This assumption shall not affect the existence of (i) Flintkote Asbestos Personal Injury Claims as debts of Flintkote, which debts are subject in all respects to the Discharge Injunction and the Third Party Injunction, or (ii) Mines Asbestos Personal Injury Claims as debts of Mines, which debts are not discharged pursuant to this Plan; provided, however, that Mines Asbestos Personal Injury Claims shall be liquidated and, as appropriate, paid by the Trust pursuant to and in accordance with the Trust Distribution Procedures from assets that constituted property of the Mines Estate or are derived from property of the Mines Estate, including the Mines Estate property that is transferred to the Trust.

#### 4.5 Transfer of Trust Assets to the Trust.

4.5.1 Transfers on Effective Date. On the Effective Date, all right, title, and interest in and to the Trust Assets and any proceeds thereof shall be automatically, and without further act or deed, transferred to, vested in and assumed by the Trust.

4.5.2 Transfers on Distribution Date. To the extent any of the Trust Assets are not transferred to the Trust by operation of law on the Effective Date pursuant to section 4.5.1 above, then on the Distribution Date, the Debtors or Reorganized Flintkote, as the case may be, shall transfer, assign and contribute, such remaining Trust Assets to the Trust. In particular, on the Distribution Date Reorganized Flintkote shall issue the New Flintkote Stock and deliver such stock to the Trust, such that the Trust shall be the sole holder of the New Flintkote Stock.

4.6 Trust Expenses. The Trust shall pay all Trust Expenses from the Trust Assets, including proceeds of applicable Asbestos Insurance Policies, except to the extent specific Trust Assets are precluded by agreement with an Asbestos Insurance Company from being used for payment of Trust Expenses. Neither the Debtors' Estates nor Reorganized Flintkote shall have any obligation to pay any Trust Expenses (except for Reorganized Flintkote's obligation to reimburse the Trust for any Litigation Expenses paid by the Trust pursuant to the Litigation Guaranty). Additionally, the Trust shall promptly pay all Trust Expenses incurred by Reorganized Flintkote for any and all liabilities, costs or expenses as a result of taking any action on behalf of or at the direction of the Trust.

4.7 Execution of the Litigation Guaranty. Upon the Effective Date, the Trustees, on behalf of the Trust, shall execute and deliver the Litigation Guaranty to the Dividend Recovery Litigation Counsel.

4.8 Execution of the Claims Processing Agreement. Upon the Effective Date, the Trustees, on behalf of the Trust, and Reorganized Flintkote shall execute the Claims Processing Agreement.

4.9 ~~4.8~~ Excess Trust Assets. To the extent there are any Trust Assets remaining at such time as the Trust is terminated, such excess Trust Assets shall be transferred to a charity or charities for such charitable purposes as the Trustees, in their reasonable discretion, shall determine, provided that, if practicable, the charity or charities to which such excess Trust Assets are transferred shall be related to the treatment of, research on, or the relief of suffering of individuals suffering from asbestos-related disorders.

4.10 ~~4.9~~ Funds and Investment Guidelines. Pursuant to the Trust Agreement, all monies held in the Trust shall be invested, subject to the investment limitations and provisions enumerated in the Trust Agreement, and shall not be limited to the types of investments described in section 345 of the Bankruptcy Code.

4.11 ~~4.10~~ Retrospective Insurance Premiums and Related Matters. Notwithstanding anything to the contrary in the Plan or the Plan Documents, (i) any entity (including the Trust or ~~either~~ Reorganized Flintkote, on its own behalf or in its capacity as the Mines Estate Representative) that tenders a Claim to an Asbestos Insurance Company shall be responsible, for purposes of such Claim, for any retrospective insurance premium, self-insured retention, deductible, or similar obligation of the insured under the Asbestos Insurance Policies to which such Claim is tendered; (ii) with respect to any self-insured retention, deductible or similar obligation, any Asbestos Insurance Company to which such Claim is tendered may seek to establish, as one of its Asbestos Insurance Coverage Defenses, that such entity has not, in fact, fulfilled the obligations of the insured under the Asbestos Insurance Policies to which such Claim was tendered; and (iii) with respect to any retrospective insurance premium or similar obligation, any Asbestos Insurance Company to which such Claim is tendered may offset the amount of such retrospective insurance premium or similar obligation against any amount otherwise payable by such Asbestos Insurance Company on account of such claim under its Asbestos Insurance Policies.

## **ARTICLE V TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

5.1 General Treatment. Except as otherwise provided in Sections 5.2 and 12.8 of the Plan and the Plan Documents, all Executory Contracts to which the Debtors are a party and that have not been expressly assumed by the Debtors, or any of them, with the Bankruptcy Court's approval on or prior to the Confirmation Date shall, as of the Effective Date, be deemed to have been rejected by the Debtors.

5.2 Assumption of Executory Contracts. ~~The~~ To the extent the Wellington Agreement constitutes an Executory Contract, such contract shall be assumed by the applicable Debtor(s) and assigned to the Trust. As to any other Executory Contracts, the Debtors shall identify in the Plan Supplement any Executory Contract that they wish to assume and, in certain cases assign, pursuant to section 365 of the Bankruptcy Code. Pursuant to entry of the Confirmation Order, effective as of the Effective Date, all Executory Contracts of the Debtors specifically listed in the Plan Supplement for assumption and, in certain cases, assignment, shall be deemed to be automatically assumed and assigned, as the case may be, as of the Effective Date. The Debtors may at any time on or before the Confirmation Date amend the Plan Supplement to delete therefrom or add thereto any Executory Contract, and, as of the Effective Date, such Executory Contract shall be deemed to be assumed, assumed and assigned, or rejected, as applicable, pursuant to Section 5.1 above and this Section 5.2. The Debtors shall provide notice of any amendments to the Plan Supplement to the parties to the Executory Contracts affected thereby and to parties on the master service list. The fact that any contract or lease is listed in the Plan Supplement shall not constitute or be construed to constitute an admission that such contract or lease is an Executory Contract within the meaning of section 365 of the Bankruptcy Code or that

the Debtors or any successor in interest to the Debtors, including Reorganized Flintkote, has any liability thereunder.

5.3 ~~Pre-Petition Settlement Agreements Relating to~~ Asbestos Insurance Policies and Asbestos Insurance Settlement Agreements. Notwithstanding Sections 5.1 and 5.2 above, all ~~settlement agreements affecting~~ Asbestos Insurance Policies and Asbestos Insurance Settlement Agreements (other than the Wellington Agreement) entered into prior to the Petition Date shall be considered non-executory contracts and shall neither be assumed nor rejected by the Debtors. To the extent the Wellington Agreement does not constitute an Executory Contract, the Wellington Agreement shall neither be assumed nor rejected by the Debtors. Except to the extent that the permissibility of the Assignment is determined in the Chapter 11 Cases, which determination will be provided by or in connection with confirmation of the Plan, the rights and obligations of the parties under such ~~settlement agreements~~ Asbestos Insurance Policies and Asbestos Insurance Settlement Agreements, including the question whether any breach has occurred, shall be determined under applicable non-bankruptcy law.

5.4 Payments Related to Assumption of Executory Contracts. Any monetary amounts owed by the Debtors as a result of a default under each Executory Contract to be assumed, or assumed and assigned, under the Plan shall be satisfied in full by payment of the “cure” amount in accordance with section 365(b)(1) of the Bankruptcy Code (the “Cure”). The Debtors shall list the proposed Cure for any Executory Contract to be assumed, or assumed and assigned, in the Plan Supplement. No amount shall be due for the Cure or other compensation to the parties to any Executory Contracts to be assumed, or assumed and assigned, except as expressly provided in the Plan Supplement or as otherwise ordered by the Bankruptcy Court pursuant to a Final Order. In the event of a dispute regarding: (i) the nature or amount of any Cure; (ii) the ability of the Debtors, Reorganized Flintkote, or any proposed assignee to provide “adequate assurance of future performance” (within the meaning of section 365 of the Bankruptcy Code) under the contract or lease to be assumed or assumed and assigned; or (iii) any other matter pertaining to assumption, the payment of Cure shall occur following the entry of a Final Order of the Bankruptcy Court resolving the dispute. On the Distribution Date or as soon thereafter as practicable, Reorganized Flintkote shall pay all undisputed Cure amounts, if any, under the Executory Contracts being assumed, or assumed and assigned, pursuant to this Section 5.4 of the Plan.

5.5 Bar to Rejection Damages. If the rejection or deemed rejection of an Executory Contract by the Debtors results in damages to the other party or parties to such Executory Contract, a Claim for such damages shall be forever barred and shall not be enforceable against any of the Debtors, Reorganized Flintkote, or their properties, whether by way of setoff, recoupment, or otherwise unless a Proof of Claim is filed with the Claims Agent and served upon counsel for the Plan Proponents by the earlier of (i) thirty (30) days after entry of the Confirmation Order, and (ii) thirty (30) days after entry of a Final Order rejecting an Executory Contract pursuant to a motion filed by the Debtors.

## **ARTICLE VI DISTRIBUTIONS UNDER THE PLAN ON ACCOUNT OF CLAIMS**

6.1 Distributions. Distributions on account of allowed Claims (other than Asbestos Personal Injury Claims and Fee Claims) shall be made on or after the Distribution Date as provided in this Plan. All Asbestos Personal Injury Claims shall be liquidated and, as appropriate, paid ~~solely~~ by the Trust pursuant to and in accordance with the Trust Agreement and the Trust Distribution Procedures.

6.2 Distribution of Third Party Causes of Action Recoveries. Third Party Causes of Action Recoveries shall be promptly distributed by Reorganized Flintkote in accordance with the following priorities: *first*, to satisfy all unpaid Litigation Expenses; *second*, to reimburse the Trust for all Litigation Expenses that it has previously paid; and *third*, to reserve an amount sufficient for any Deferred Distribution arising as a result of the Third Party Causes of Action Recovery. The portion of the Third Party Causes of Action Recoveries remaining after paying for the foregoing is defined hereafter as the “Net Recovery.” Following the distribution of ~~the~~any and all Third Party Causes of Action Recoveries set forth above, Reorganized Flintkote shall promptly distribute 98% of the Net Recovery to the Trust in full satisfaction of the Litigation Note and Security Agreement, and shall retain the remaining 2% of the Net Recovery to fund Reorganized Flintkote’s ongoing business operations.

6.3 Execution of the Litigation Note and Security Agreement. Upon the Effective Date, and in furtherance of the distributions to the Trust set forth in this Plan, Reorganized Flintkote shall execute and deliver the Litigation Note and Security Agreement to the Trustees, for the benefit of the Trust, evidencing Reorganized Flintkote’s obligation to pay 98% of the Net Recovery to the Trust, and granting the Trust a security interest in the Third Party Causes of Action and the Net Recovery therefrom to secure such obligation, junior in priority only to the attorneys’ lien granted and acknowledged in favor of the Dividend Recovery Litigation Counsel.

6.4 Means of Cash Payment. Cash payments made pursuant to the Plan shall be in United States dollars, by check drawn on a bank located in the United States or by wire transfer from such bank.

6.5 Delivery of Distributions. The delivery of Distributions to holders of allowed Claims (other than Asbestos Personal Injury Claims and Fee Claims) shall be made at the addresses set forth on the Proofs of Claim filed by such holders or as listed in the Schedules if no Proof of Claim is filed, or such other address if the holder of the applicable Claim has duly notified the Claims Agent of a change of address. If any Distribution to the holder of a Claim is returned as undeliverable, then no further Distributions to such holder shall be made unless and until the Claims Agent or Reorganized Flintkote are notified of such holder’s then-current address, at which time all missed Distributions shall be made to such holder without interest. Cash Distributions that are not claimed (including due to an Entity’s failure to negotiate a check issued to such Entity) by the expiration of twelve (12) months from the Distribution Date shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code, shall revert in Reorganized Flintkote. Following the expiration of such twelve (12) month period the right of any holder of a Claim to such Distributions shall be discharged and forever barred. Nothing contained in the Plan shall require the Debtors or Reorganized Flintkote to attempt to locate any holder of an allowed Claim.

6.6 Time Bar to Cash Payments. Checks issued by Reorganized Flintkote in respect of allowed Claims shall be null and void if not cashed within 180 days of the date of issuance thereof. The holder of the allowed Claim with respect to which such check originally was issued may make a request for re-issuance of any check directly to Reorganized Flintkote; provided, however, that any such request for reissuance of a check shall be made on or before the twelve (12) month anniversary of the Distribution Date. After such date, all Claims in respect of void checks shall be discharged and forever barred.

6.7 Record Date for Holders of Claims. Except as otherwise provided in an order of the Bankruptcy Court that is not subject to any stay, the transferees of Claims that are transferred pursuant to Rule 3001 of the Bankruptcy Rules, on or prior to the Distribution Record Date, shall be treated as the holders of such Claims for all purposes, notwithstanding that any period provided by Rule 3001 of the Bankruptcy Rules for objecting to such transfer has not expired by the Distribution Record Date. If there is any dispute regarding the identity of the Entity entitled to receive a Distribution in respect of a Claim under the Plan, no Distribution need be made in respect of such Claim until such dispute has been resolved.

6.8 Transfers of Claims. In the event that the holder of any Claim shall transfer such Claim on and after the Distribution Record Date, it shall immediately advise the Disbursing Agent, or the Trust (to the extent it pertains to an Asbestos Personal Injury Claim), in writing of such transfer. The Disbursing Agent or the Trust, as the case may be, shall be entitled to assume that no transfer of any Claim has been made by any holder unless and until written notice of a transfer has been actually received by the Disbursing Agent or the Trust. Each transferee of any Claim shall take such Claim subject to the provisions of the Plan, and, except as provided in a notice of transfer, the Disbursing Agent or the Trust, as the case may be, shall be entitled to assume conclusively that the transferee named in any notice of transfer shall thereafter be vested with all rights and powers of the transferor of such Claim.

6.9 Interest on Impaired Claims. Except as specifically provided for in the Plan, Trust Distribution Procedures or the Confirmation Order, interest shall not accrue on Impaired Claims, and no holder of an Impaired Claim shall be entitled to interest accruing on or after the Petition Date on any such Impaired Claim. Interest shall not accrue or be paid on any Disputed Claim in respect of the period from the Petition Date to the date a Distribution is made thereon if and after such Disputed Claim becomes an allowed Claim. Except as expressly provided herein, no pre-petition Impaired Claim shall be allowed to the extent that it is for post-petition interest or other similar charges.

6.10 Setoffs. Each Debtor and Reorganized Flintkote (or the Trust to the extent it pertains to an Asbestos Personal Injury Claim) may, pursuant to the applicable provisions of the Bankruptcy Code, or applicable non-bankruptcy law, set off against any applicable allowed Claim (before any Distribution is made on account of such Claim) any and all claims, rights, causes of action, debts or liabilities of any nature that the applicable Debtor or Reorganized Flintkote (or the Trust to the extent it pertains to an Asbestos Personal Injury Claim) may hold against the holder of such allowed Claim; provided, however, that the failure to effect such a setoff shall not constitute a waiver or release of any such claims, rights, causes of action, debts or liabilities.

**ARTICLE VII**  
**RESOLUTION OF DISPUTED CLAIMS OTHER THAN**  
**ASBESTOS PERSONAL INJURY CLAIMS**

7.1 Disputed Claims. All Disputed Claims against the Debtors, other than Asbestos Personal Injury Claims or Fee Claims, shall be subject to the provisions of this Article VII. All Asbestos Personal Injury Claims shall be liquidated and, as appropriate, paid by the Trust in accordance with the Trust Agreement and the Trust Distribution Procedures. ~~Only the Trust will have the right to object to Asbestos Personal Injury Claims for purposes of distribution under the Plan.~~ All Fee Claims shall be determined and, if allowed, paid by Reorganized Flintkote (on behalf of itself or Mines, as applicable) in accordance with Section 14.1.

7.2 Objection Deadline. Unless otherwise ordered by the Bankruptcy Court, objections to Claims (other than Asbestos Personal Injury Claims or Fee Claims) shall be filed with the Bankruptcy Court and served upon the holders of each such Claim to which objections are made on or before the Claims Objection Bar Date.

7.3 Prosecution of Objections. Subject to the provisions of Section ~~10.6, 10.8~~, after the Effective Date, only Reorganized Flintkote (on behalf of itself or Mines, as applicable) may object to the allowance of any Claim, except that (i) the United States Trustee, the Asbestos Claimants Committee and the Future Claimants Representative shall also have standing and capacity to object to the Fee Claims of professionals employed or retained in these Chapter 11 Cases, and (ii) all rights of any Asbestos Insurance Company with respect to the defense and settlement of Insured Non-Asbestos Claims, or claims asserted by any non-debtor party against either Debtor or an Asbestos Insurance Company for coverage under any Asbestos Insurance Policy, are preserved. After the Effective Date, Reorganized Flintkote (on behalf of itself or Mines, as applicable) shall be accorded the power and authority to allow or settle and compromise any Claim, except for Fee Claims and Insured Non-Asbestos Claims, without notice to any other party or approval of or notice to the Bankruptcy Court.

7.4 No Distributions Pending Allowance. No Distributions or other consideration shall be paid with respect to any Claim that is a Disputed Claim unless and until all objections to such Disputed Claim are resolved and such Disputed Claim becomes an allowed Claim.

**ARTICLE VIII**  
**ACCEPTANCE OR REJECTION OF PLAN; EFFECT OF REJECTION**  
**BY ONE OR MORE CLASSES OF CLAIMS OR EQUITY INTERESTS**

8.1 Classes Entitled to Vote. Except as set forth below, each holder of an allowed Claim ~~or allowed Equity Interest~~, and each holder of a Claim ~~or Equity Interest~~ that has been temporarily allowed for voting purposes only under Rule 3018(a) of the Bankruptcy Rules, in each Impaired Class of Claims ~~or Equity Interest~~, shall be entitled to vote separately to accept or reject the Plan to the extent and in the manner provided in the Voting Procedure Order. Holders of Asbestos Personal Injury Claims shall be entitled to vote to the extent and in the manner provided in the Voting Procedures Order. Unimpaired Classes of Claims shall not be entitled to vote to accept or reject the Plan and are conclusively presumed to have voted to accept the Plan.

Any Class of Claims or Equity Interests that shall not receive or retain any property on account of such Claims or Equity Interests under the Plan shall be deemed to have rejected the Plan.

8.2 Acceptance by Impaired Classes of Claims. Pursuant to section 1126(c) of the Bankruptcy Code, but subject to Section 8.3 below, an Impaired Class of Claims shall have accepted the Plan if, after excluding any Claims held by any holder designated pursuant to section 1126(e) of the Bankruptcy Code, (a) the holders of at least two-thirds in dollar amount of the allowed Claims actually voting in such Class have voted to accept the Plan, and (b) more than one-half in number of such allowed Claims actually voting in such Class have voted to accept the Plan.

8.3 Acceptance Pursuant to Section 524 of the Bankruptcy Code. Pursuant to section 524(g)(2)(B)(ii)(IV)(bb) of the Bankruptcy Code, ~~the respective Classes of~~Class 7 (Flintkote Asbestos Personal Injury Claims) shall have accepted the Plan only if the holders of at least 75 percent of the Claims actually voting in such ~~Classes~~Class have voted to accept the Plan.

8.4 Cramdown. With respect to any Impaired Class of Claims or Equity Interests that fails to accept the Plan in accordance with section 1129(a) of the Bankruptcy Code, including such Classes as may be created pursuant to amendments to the Plan, the Plan Proponents request that the Bankruptcy Court confirm the Plan in accordance with section 1129(b) of the Bankruptcy Code with respect to such non-accepting Classes, in which case or cases the Plan shall constitute a motion for such relief.

8.5 Acceptance by Unimpaired Class. Classes 1, 2, 3 and 4 are Unimpaired under the Plan and are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code.

8.6 Rejection by Impaired Class. ~~Classes 9, 10, Class 11 and 12 do~~does not receive or retain any property or distribution under the Plan, ~~are~~is Impaired under the Plan and ~~are~~is conclusively presumed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code.

## ARTICLE IX CONDITIONS PRECEDENT TO CONFIRMATION AND CONSUMMATION OF THE PLAN

9.1 Conditions Precedent to the Confirmation of the Plan. Confirmation of the Plan shall not occur unless each of the following conditions has been satisfied or waived by the Plan Proponents, and the Bankruptcy Court and/or the District Court, as applicable, shall have made such findings and determinations regarding the Plan as shall enable the entry of the Confirmation Order and any other order entered in conjunction therewith. These findings and conditions to confirmation, which are designed, among other things, to ensure that the Injunctions, releases and discharges set forth in Article XII shall be effective, binding and enforceable shall be in substantially the following form:

- (a) The Third Party Injunction and the Insurance Entity ~~and Claimants~~InjunctionsInjunction are to be implemented in connection with the Trust;

(b) As of the Petition Date, each of the Debtors had been named as defendants in personal injury, wrongful death or property damage actions seeking recovery for damages allegedly caused by the presence of, or exposure to, asbestos or asbestos-containing products;

(c) Upon the Effective Date, the Trust shall assume the liabilities of the Debtors with respect to Asbestos Personal Injury Claims;

(d) The Trust will be funded in part by the New Flintkote Stock and all rights to receive dividends or other distributions on account of such Stock;

(e) On the Effective Date, the Trust will own all of the voting shares of Reorganized Flintkote;

(f) The Trust will use its assets and income to pay Asbestos Personal Injury Claims;

(g) The Debtors are likely to be subject to substantial future Demands for payment arising out of the same or similar conduct or events that gave rise to the Asbestos Personal Injury Claims, that are addressed by the Third Party Injunction and the Insurance Entity ~~and Claimants Injunctions~~ Injunction;

(h) The actual amounts, numbers and timing of future Demands cannot be determined;

(i) Pursuit of Asbestos Personal Injury Claims, including Demands, outside of the procedures prescribed by the Plan and the Plan Documents, including the Trust Distribution Procedures, is likely to threaten the Plan's purpose to treat the Asbestos Personal Injury Claims and Demands equitably;

(j) The terms of the Third Party Injunction and the Insurance Entity ~~and Claimants Injunctions~~ Injunction, including any provisions barring actions against third parties, are set out in conspicuous language in the Plan and in the Disclosure Statement;

(k) Pursuant to court orders or otherwise, the Trust shall operate through mechanisms such as structured, periodic or supplemental payments, pro rata distributions, matrices or periodic review of estimates of the numbers and values of Asbestos Personal Injury Claims or other comparable mechanisms, that provide reasonable assurance that the Trust will value, and be in a financial position to pay present Asbestos Personal Injury Claims and Demands that involve similar Claims in substantially the same manner regardless of the timing of the assertion of such present Asbestos Personal Injury Claims and Demands;

(l) The Future Claimants Representative was appointed by the Bankruptcy Court as part of the proceedings leading to the issuance of the Third Party Injunction and the Insurance Entity ~~and Claimants Injunctions~~ Injunction for the purpose of, among other things, protecting the rights of persons that might subsequently assert Demands of the

kind that are addressed in the Third Party Injunction and the Insurance Entity ~~and Claimants Injunctions~~ Injunction, and transferred to and assumed by the Trust;

(m) The inclusion of ~~each Debtor~~ Flintkote or other Protected Party within the protection afforded by the Third Party Injunction and the Insurance Entity ~~and Claimants Injunctions~~ Injunction, as applicable, is fair and equitable with respect to the persons that might subsequently assert Flintkote Demands against ~~each such Debtor~~ Flintkote or other Protected Party in light of the benefits provided, or to be provided, to the Trust by or on behalf of ~~such Debtor~~ Flintkote or other Protected Party;

(n) The Plan complies with section 524(g) of the Bankruptcy Code in all respects; ~~and~~

(o) The Third Party Injunction and the Insurance Entity ~~and Claimants Injunctions~~ Injunction are essential to this Plan and ~~the Debtors' reorganization efforts. Flintkote's reorganization efforts; and~~

(p) The Bankruptcy Code authorizes the Assignment by preempting any terms of the Asbestos Insurance Policies or provisions of applicable non-bankruptcy law that otherwise might prohibit the Assignment.

9.2 Conditions Precedent to the Effective Date of the Plan. Notwithstanding any other provision of the Plan or the Confirmation Order, the Effective Date of the Plan shall not occur unless and until each of the following conditions has been satisfied or waived by the Plan Proponents:

9.2.1 Confirmation Order. The Confirmation Order shall have been issued or affirmed by the District Court, and the Confirmation Order shall have become a Final Order; provided, however, that the Effective Date may occur at a point in time when the Confirmation Order is not a Final Order at the sole option of the Plan Proponents unless the effectiveness of the Confirmation Order has been stayed or vacated, in which case the Effective Date may be, again at the sole option of the Plan Proponents, the first Business Day immediately following the expiration or other termination of any stay of effectiveness of the Confirmation Order.

9.2.2 Trust. The Trust Assets shall have been transferred to, vested in and assumed by the Trust in accordance with Article IV of the Plan, other than any Trust Assets to be transferred to, vested in and assumed by the Trust after the Effective Date.

9.2.3 Retained Assets. Reorganized Flintkote shall have reserved and retained the Flintkote Reserve Cash, the Third Party Causes of Action (subject to the obligation to distribute the Third Party Causes of Action Recoveries in accordance with the Plan) and such other assets and causes of action set forth in the Plan.

9.2.4 Mines Distribution Reserve. Mines shall have transmitted the Mines Reserve Cash to the Mines Distribution Reserve, in accordance with Section 11.2 hereof.

9.2.5 ~~9.2.4~~ Plan Documents. The Trust Documents and the other applicable Plan Documents necessary or appropriate to implement the Plan shall have been executed, delivered and, where applicable, filed with the appropriate governmental authorities.

9.2.6 ~~9.2.5~~ United States Trustee's Fees. The fees of the United States Trustee then owing by the Debtors shall have been paid in full.

9.2.7 ~~9.2.6~~ Other Assurances. The Plan Proponents shall have obtained tax rulings, decisions, opinions or other assurances regarding certain tax consequences of the Plan, as they deem satisfactory in their reasonable discretion.

9.2.8 ~~9.2.7~~ Notice of Effective Date. The Debtors shall have filed with the Bankruptcy Court a notice of the occurrence of the Effective Date, which notice shall confirm that the foregoing conditions have been satisfied or waived.

9.3 Waiver of Conditions Precedent. To the greatest extent permitted by law, each of the conditions precedent in this Article IX may be waived or modified, in whole or in part, but only with the unanimous written consent of the Plan Proponents. Any such waiver or modification of a condition precedent in this Article IX may be effected at any time, without notice, without leave or order of the Bankruptcy Court or District Court, and without any other formal action.

## ARTICLE X MEANS FOR IMPLEMENTATION OF THE PLAN

10.1 General. On or after the Confirmation Date, the Plan Proponents shall be empowered and authorized to take or cause to be taken, prior to the Effective Date, all actions necessary to enable them to implement the provisions of this Plan on the Effective Date, including, without limitation, the creation of the Trust and the preparations for the transfer of the Trust Assets to the Trust.

10.2 Charter and Bylaws. From and after the Effective Date, Reorganized Flintkote shall be governed pursuant to its Amended Charter Documents. The Amended Bylaws and the Amended Certificate of Incorporation shall contain such provisions as are necessary to satisfy the provisions of the Plan and, to the extent necessary, to prohibit the issuance of non-voting equity securities as required by section 1123(a)(6) of the Bankruptcy Code, subject to further amendment of the Amended Charter Documents after the Effective Date, as permitted by applicable law. The Plan shall constitute, and shall be deemed to constitute, an amendment to the charter of Mines prohibiting the issuance of non-voting equity securities by Mines as necessary to satisfy section 1123(a)(6) of the Bankruptcy Code. On and after the Effective Date, the business and affairs of Reorganized Flintkote shall become the general responsibility of its board of directors, subject to, and in accordance with, the Amended Charter Documents. The initial board of directors for Reorganized Flintkote shall consist of three (3) individuals to be identified in the Plan Supplement.

10.3 ~~Merger of Mines into Flintkote and Continued Corporate Existence of Flintkote. On the Effective Date, Mines shall merge with and otherwise shall be consolidated into~~

~~Reorganized Flintkote, with Reorganized Flintkote continuing in existence as the surviving entity in accordance with Reorganized Flintkote's Amended Charter Documents. Reorganized Flintkote shall perform, or cause to be performed, Mines' obligations under this Plan to pay or otherwise satisfy the allowed Claims against Mines.~~ Liquidation of Mines. Mines shall be liquidated by, among other things, transferring the Mines Reserve Cash to the Mines Distribution Reserve and the Trust Assets to the Trust. In the event Reorganized Flintkote, as the Mines Estate Representative, concludes that Mines may hold assets that do not constitute Mines Reserve Cash or Trust Assets, Reorganized Flintkote reserves the right to establish a liquidating trust into which such additional assets of Mines would be transferred on or after the Effective Date and which would be administered by Reorganized Flintkote, as trustee. Neither the confirmation of this Plan nor the occurrence of the Effective Date shall affect Mines' status as a corporate entity.

10.4 Mines Estate Representative. On the Effective Date, Reorganized Flintkote shall be, and hereby is, appointed as the Mines Estate Representative pursuant to and in accordance with section 1123(b)(3) of the Bankruptcy Code. The Mines Estate Representative shall have the authority to act on behalf of Mines and the Mines Estate for all purposes and shall have all of the rights and powers of a trustee appointed under the Bankruptcy Code. Among other things, the Mines Estate Representative shall be authorized to effectuate the liquidation of Mines; to prosecute, settle or abandon claims, rights and causes of action; to tender insurance claims; to enforce the terms of the Plan; to appear on behalf of Mines or defend Mines in any judicial or administrative proceedings brought against Mines; to act as a foreign representative of Mines; and to file tax returns and annual returns as required by Canadian law.

10.5 ~~10.4~~ Operations of the Debtors Between Confirmation and the Effective Date. The Debtors shall continue to operate as debtors and debtors-in-possession during the period from the Confirmation Date through and until the Effective Date.

10.6 ~~10.5~~ Effectuating Documents; Further Transactions. The President, Chief Financial Officer, or any other appropriate officer of each of the Debtors and Reorganized Flintkote, shall be, and hereby are, authorized to execute, deliver, file, and record such contracts, instruments, releases, indentures, certificates, and other agreements or documents, and take such other actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The Secretary or other appropriate officer of each Debtor will be authorized to certify or attest to any of the foregoing, if necessary.

10.7 Resignation of Mines' Officers and Directors. Mines' officers and directors shall resign on the Effective Date.

10.8 ~~10.6~~ Resolution of Asbestos Personal Injury Claims. Asbestos Personal Injury Claims shall be resolved in accordance with the Trust Distribution Procedures, subject to the right of any Asbestos Insurance Company to raise any Asbestos Insurance Coverage Defense in response to a demand by the Trust that such insurer handle, defend, or pay any such claim.

10.9 ~~10.7~~ Modification of the Plan. The Plan Proponents may propose amendments to or modifications of the Plan under section 1127 of the Bankruptcy Code at any time prior to the Confirmation Date. After Confirmation, the Plan Proponents (or, as the case may be,

Reorganized Flintkote after the Effective Date) may remedy any defects or omissions or reconcile any inconsistencies in the Plan Documents for the purpose of implementing the Plan in such manner as may be necessary to carry out the purposes and intent of the Plan, so long as the interests of the holders of allowed Claims are not adversely affected thereby.

10.10 ~~10.8~~ Revocation or Withdrawal of the Plan. The Plan Proponents reserve the right to revoke and withdraw the Plan as to either Debtor prior to entry of the Confirmation Order. If the Plan Proponents revoke or withdraw the Plan, or if Confirmation of the Plan as to such Debtor does not occur, then, with respect to such Debtor, the Plan shall be deemed null and void and nothing contained herein shall be deemed to constitute a waiver or release of any Claims by or against such Debtor, or any other Entity (including the Plan Proponents), or to prejudice in any manner the rights of such Debtor, or such Entity (including the Plan Proponents) in any further proceedings involving such Debtor.

## ARTICLE XI EFFECT OF CONFIRMATION

11.1 Revesting of Flintkote Non-Trust Assets; Preservation of Non-Asbestos Insurance Assets. Pursuant to section 1141(b) of the Bankruptcy Code, and except as otherwise provided in the Plan or the Confirmation Order, the ~~respective~~ property of ~~each Debtor~~ Flintkote and ~~their Estates~~ its Estate that does not constitute Trust Assets (collectively referred to herein as the “Flintkote Non-Trust Assets”), including, without limitation, the Flintkote Reserve Cash, the Third Party Causes of Action and the Non-Asbestos Insurance Assets, will revest in Reorganized Flintkote on the Effective Date. Upon the Effective Date, Reorganized Flintkote, together with the Trust to the extent provided for in Section 14.2, shall be authorized to pursue the Third Party Causes of Action, including as estate representative appointed for such purposes pursuant to section 1123(b)(3)(B) of the Bankruptcy Code, with the Net Proceeds derived therefrom distributed as provided in Section 6.2 hereof. ~~The Reserve Cash, the Third Party Causes of Action, and the Non-Asbestos Insurance Assets are collectively referred to herein as the “Non-Trust Assets.”~~ From and after the Effective Date, Reorganized Flintkote may use, acquire, and dispose of the Flintkote Non-Trust Assets free of any restrictions imposed under the Bankruptcy Code, the Bankruptcy Rules, and the Bankruptcy Court other than those restrictions and obligations imposed by the Plan and the Confirmation Order. As of the Effective Date, the Flintkote Non-Trust Assets will be vested in Reorganized Flintkote, free and clear of all Claims, Liens, and Encumbrances, except as specifically provided in the Plan, the Confirmation Order, and the Litigation Note and Security Agreement. Without limiting the generality of the foregoing, and subject only to Section 14.1 of this Plan, Reorganized Flintkote may pay Professional fees and expenses, including without limitation, the Litigation Expenses, that it incurs after the Effective Date without further application or order of the Bankruptcy Court.

11.2 Transfer of Mines Reserve Cash to Mines Distribution Reserve. On the Effective Date, the Mines Reserve Cash shall be transmitted to the Mines Distribution Reserve free and clear of all Claims, Liens, and Encumbrances, except as specifically provided in the Plan and the Confirmation Order. From and after the Effective Date, the Disbursing Agent shall make Distributions from the Mines Reserve Cash to holders of allowed Administrative Claims, Priority Tax Claims, Priority Claims and Unsecured Claims against Mines, in accordance with Article III and other applicable provisions of this Plan. To the extent there is any Mines Reserve Cash

remaining after all holders of allowed Administrative Claims, Priority Tax Claims, Priority Claims and Unsecured Claims against Mines have received the Distributions to which they are entitled under this Plan, such excess Mines Reserve Cash shall be transferred to the Trust.

11.3 ~~11.2~~ Preservation of Causes of Action; Defenses. Except as otherwise provided in the Plan or the Confirmation Order, in accordance with section 1123(b) of the Bankruptcy Code, Reorganized Flintkote shall retain and may enforce such claims, rights and causes of action (other than ~~the those that constitute~~ Trust ~~Causes of Action~~ Assets) that were property of ~~each Debtor and their respective Estates~~ Flintkote and its Estate, including without limitation, the Third Party Causes of Action. ~~Reorganized Flintkote~~ Except as otherwise provided in the Plan or the Confirmation Order, all claims, rights and causes of action (other than those that constitute Trust Assets) that were property of Mines and its Estate shall be retained for the benefit of Mines' creditors and may be enforced by the Mines Estate Representative. Reorganized Flintkote (on behalf of itself or Mines, as applicable) shall retain and enforce all defenses and counterclaims to all Claims (other than Asbestos Personal Injury Claims) that were or could have been asserted against ~~the Debtors~~ Flintkote or Mines, respectively, or their respective Estates, including, but not limited to, setoff, recoupment and any rights under section 502(d) of the Bankruptcy Code. On or after the Effective Date, Reorganized Flintkote (on behalf of itself or Mines, as applicable) may pursue, settle or withdraw, without Bankruptcy Court approval, such claims, rights, or causes of action (other than the Trust Causes of Action) as it determines in accordance with its best interests provided, however, that any such determination related to the pursuit, settlement or withdrawal of a claim, right or cause of action related to the Third Party Causes of Action shall require the consent of the Trustees or such other person as specified in the Trust Documents.

11.4 ~~11.3~~ Preservation of Trust Causes of Action; Defenses. On the Effective Date, all Trust Causes of Action and defenses relating to Asbestos Personal Injury Claims shall be transferred and assigned to the Trust. Except as otherwise provided in the Plan or the Confirmation Order, in accordance with section 1123(b) of the Bankruptcy Code, the Trust shall retain and may enforce such Trust Causes of Action and defenses relating to Asbestos Personal Injury Claims and shall retain and may enforce all defenses and counterclaims to all Asbestos Personal Injury Claims asserted against the Trust, including, but not limited to, setoff, recoupment, and any rights under section 502(d) of the Bankruptcy Code. The Trust may pursue such defenses, rights, or causes of action, as appropriate, in accordance with its and its beneficiaries' best interests.

11.5 ~~11.4~~ Asbestos Insurance Actions. Any Asbestos Insurance Action, or the claims and causes of action asserted or to be asserted therein, shall be preserved for the benefit of the Trust, for prosecution by the applicable Debtor(s) until the Effective Date, and thereafter either by Reorganized Flintkote (on behalf of itself or Mines, as applicable) or the Trust (as mutually agreed by such parties) in accordance with the Trust Agreement. As of the date subsequent to the Effective Date on which the Trust confirms in writing to Reorganized Flintkote that the Trust is in a position to assume such responsibility, such actions, along with the rights and obligations of the Debtors and Reorganized Flintkote with respect to Asbestos Insurance Policies and claims thereunder, to the extent that such Policies and claims relate to Asbestos Personal Injury Claims but not as to any other claims covered thereby and subject to the assignability without prejudice of such claims and Policies, shall be assigned to and vested in the Trust as the representative of

the Debtors' Estates, each being appointed by the Bankruptcy Court in accordance with section 1123(b)(3) of the Bankruptcy Code without any further action by the Debtors or Reorganized Flintkote, the Trust or the Bankruptcy Court. Such Asbestos Insurance Actions shall be free and clear of all Liens, security interests and other Claims or causes of action, except for Asbestos Insurer Coverage Defenses as otherwise provided in the Plan. Until such time as the Asbestos Insurance Actions have become vested in the Trust, Reorganized Flintkote ([on behalf of itself or Mines, as applicable](#)) shall be entitled to compromise or settle any Asbestos Insurance Action; provided, however, that any such compromise or settlement shall require the consent of the Future Claimants Representative and either the Asbestos Claimants Committee or the Trust Advisory Committee, as applicable, and the approval of the Bankruptcy Court. Upon vesting in the Trust, the prosecution of the Asbestos Insurance Actions shall be governed by the Trust Documents.

[11.6](#) ~~11.5~~ Insurance Neutrality.

[11.6.1](#) ~~11.5.1~~ Nothing in the Plan, the Plan Documents, the Confirmation Order, or any finding of fact and/or conclusion of law with respect to the Confirmation of the Plan, shall limit the right of any Asbestos Insurance Company to assert any Asbestos Insurer Coverage Defense.

[11.6.2](#) ~~11.5.2~~ The Plan, the Plan Documents, and the Confirmation Order, shall be binding on the Debtors, Reorganized Flintkote, the Trust and the beneficiaries of the Trust. The obligations, if any, of the Trust to pay holders of Asbestos Personal Injury Claims and Demands shall be determined pursuant to the Plan and the Plan Documents. Except as provided in Section ~~11.5.4~~[11.6.4](#) below, none of (a) the Court's approval of the Plan or the Plan Documents, (b) the Confirmation Order or any findings and conclusions entered with respect to Confirmation, nor (c) any estimation or valuation of Asbestos Personal Injury Claims, either individually or in the aggregate (including, without limitation, any agreement as to the valuation of Asbestos Personal Injury Claims) in the Chapter 11 Cases shall, with respect to any Asbestos Insurance Company, constitute a trial or hearing on the merits or an adjudication or judgment; or accelerate the obligations, if any, of any Asbestos Insurance Company under its Asbestos Insurance Policies; or be used as evidence in any forum to prove:

- (i) that any of the Debtors, the Trust, or any Asbestos Insurance Company is liable for, or otherwise obligated to pay with respect to, any individual Asbestos Personal Injury Claim or Demand;
- (ii) the procedures established by the Plan, including the Trust Distribution Procedures, for evaluating and paying Asbestos Personal Injury Claims and Demands are reasonable;
- (iii) that the procedures established by the Plan, including the Trust Distribution Procedures, for evaluating and paying Asbestos Personal Injury Claims and Demands are consistent with any procedures that were used to evaluate or settle Asbestos Personal Injury Claims against the Debtors before the Petition Date;

(iv) that the settlement of, or the value assigned to, any individual Asbestos Personal Injury Claim pursuant to the Trust Distribution Procedures was reasonable and/or otherwise appropriate;

(v) that any of the Asbestos Insurance Companies participated in and/or consented to the negotiation of the Plan or any of the Plan Documents;

(vi) that any of the Debtors or the Trust has suffered an insured loss with respect to any Asbestos Personal Injury Claim or Demand; or

(vii) as to (A) the liability of the Debtors or the Trust for Asbestos Personal Injury Claims or Demands, whether such Claims or Demands are considered individually or on an aggregate basis; or (B) the value of such Asbestos Personal Injury Claims or Demands, individually or in the aggregate.

11.6.3 ~~11.5.3~~ No provision of the Plan, other than those provisions contained in the applicable injunctions set forth in Section 12.3 of the Plan, shall be interpreted to affect or limit the protections afforded to any Settling Asbestos Insurance Company by the Third Party Injunction or the Insurance Entity ~~and Claimants Injunctions~~ Injunction.

11.6.4 ~~11.5.4~~ Nothing in this Section ~~11.5~~ 11.6 is intended or shall be construed to preclude otherwise applicable principles of res judicata or collateral estoppel from being applied against any Asbestos Insurance Company with respect to any issue that is actually litigated by such Asbestos Insurance Company as part of its objections, if any, to Confirmation of the Plan or as part of any contested matter or adversary proceeding filed by such Asbestos Insurance Company in conjunction with or related to Confirmation of the Plan. Plan objections that are withdrawn prior to the conclusion of the Confirmation Hearing shall be deemed not to have been actually litigated.

11.6.5 ~~11.5.5~~ Nothing in the Plan, the Plan Documents, the Confirmation Order, or any finding of fact and/or conclusion of law with respect to the Confirmation or consummation of the Plan shall limit the right, if any, of (a) any Asbestos Insurance Company, in any Asbestos Insurance Action, to assert any Asbestos Insurance Coverage Defense, including by presenting evidence and/or argument with respect to any of the matters specified in clauses (i) through (vii) of Section ~~11.5.2~~ 11.6.2 above, or (b) any other party in any such Asbestos Insurance Action to assert any appropriate position. Except as provided in Section ~~11.5.4~~ 11.6.4 above, none of the matters specified in clauses (i) through (vii) of Section ~~11.5.2~~ 11.6.2 shall have any *res judicata* or collateral estoppel effect against any Asbestos Insurance Company.

11.7 ~~11.6~~ Institution and Maintenance of Legal and Other Proceedings. As of the date ~~subsequent to~~ immediately following the Effective Date, the Trust shall be empowered to initiate, prosecute, defend, settle, maintain, administer, preserve, pursue, and resolve all legal actions and other proceedings related to any asset, liability or responsibility of the Trust, including without limitation the Asbestos Insurance Actions, Asbestos Personal Injury Claims, ~~Individual Third Party Causes of Action~~, Indirect Asbestos Personal Injury Claims and other Trust Causes of Action. Without limiting the foregoing, after the Effective Date the Trust shall be empowered to

initiate, prosecute, defend, settle, maintain, administer, preserve, pursue and resolve all such actions in the name of either of the Debtors or Reorganized Flintkote if deemed necessary or appropriate by the Trust. The Trust shall be responsible for the payment of all damages, awards, judgments, settlements, expenses, costs, fees and other charges incurred subsequent to the Effective Date arising from or associated with any legal action or other proceeding which is the subject of this Section ~~11.6~~11.7 and shall pay or reimburse all deductibles, retrospective premium adjustments or other charges (not constituting Indirect Asbestos Personal Injury Claims) which may arise from the receipt of any insurance proceeds by the Trust. Furthermore, without limiting the foregoing, the Trust shall be empowered to maintain, administer, preserve, or pursue the Asbestos-In-Place Insurance Coverage and the Asbestos Insurance Action Recoveries.

11.8 ~~11.7~~ Terms of Injunction and Automatic Stay.

(a) All of the injunctions and/or automatic stays provided for in or in connection with the Chapter 11 Cases, whether pursuant to sections 105, 362, or any other provision of the Bankruptcy Code, Bankruptcy Rules, or other applicable law in existence immediately prior to the Confirmation Date, shall remain in full force and effect until the injunctions set forth in this Plan become effective pursuant to a Final Order, and shall continue to remain in full force and effect thereafter as and to the extent provided by the Plan, the Confirmation Order, or by their own terms. In addition, on and after the Confirmation Date, the Debtors and Reorganized Flintkote may seek such further orders as they deem necessary or appropriate to preserve the status quo during the time between the Confirmation Date and the Effective Date.

(b) Each of the Injunctions contained in this Plan or the Confirmation Order shall become effective on the Effective Date and shall continue in effect at all times thereafter unless otherwise provided by the Plan or the Confirmation Order.

11.9 ~~11.8~~ The Future Claimants Representative and the Asbestos Claimants Committee. The Future Claimants Representative and the Asbestos Claimants Committee shall continue in their official capacity until the Effective Date. The Debtors shall pay the reasonable fees and expenses incurred by the Future Claimants Representative and the Asbestos Claimants Committee through the Effective Date, in accordance with the Order Appointing Fee Auditor and Establishing Related Procedures Concerning the Allowance and Payment of Compensation and Reimbursement of Expenses of Professionals and Members of the Official Committee and Consideration of Fee Applications, dated August 19, 2004 (Docket No. 183) and Section 14.1 below (but only to the extent such fees and expenses are not Trust Expenses, in which case those portions of such fees and expenses shall be paid as Trust Expenses in accordance with the Trust Agreement, with the remainder to be paid by the Debtors). After the Effective Date, the official capacities of the Future Claimants Representative and the Asbestos Claimants Committee in these Chapter 11 Cases shall be limited to having standing and capacity to (i) prosecute their pre-Effective Date intervention in any adversary proceedings; (ii) object to any proposed modification of the Plan; (iii) object to or defend the Fee Claims of professionals employed by or on behalf of the Estates, or by or on behalf of members of the Asbestos Claimants Committee; (iv) participate in any appeals of the Confirmation Order; (v) participate as a party in interest in any proceeding involving section 524(g) of the Bankruptcy Code; and (vi) participate as a party

in interest in any proceeding relating to the Trust, and the Future Claimants Representative and the members of the Asbestos Claimants Committee shall be released and discharged from all further authority, duties, responsibilities, liabilities and obligations involving these Chapter 11 Cases. Upon the closing of these Chapter 11 Cases the Asbestos Claimants Committee shall be dissolved. After the Effective Date, in addition to the standing and capacity to engage in the activities designated in subparts (i) through (vi) above, the Future Claimants Representative shall have the rights, duties and responsibilities set forth in the Trust Agreement. Reorganized Flintkote shall pay the reasonable fees and expenses incurred by the Future Claimants Representative and the Asbestos Claimants Committee relating to any post-Effective Date activities authorized hereunder (but only to the extent such fees and expenses are not Trust Expenses, in which case those portions of such fees and expenses shall be paid as Trust Expenses in accordance with the Trust Agreement, with the remainder to be paid by the Debtors). Nothing in this Section ~~11.8~~11.9 shall limit or otherwise effect the rights of the United States Trustee under section 502 of the Bankruptcy Code or otherwise to object to Claims or requests for Allowance of Fee Claims or other Administrative Expenses.

## ARTICLE XII RELEASES, INJUNCTION AND EXCULPATION

### 12.1 Discharge and Injunctions.

12.1.1 Discharge of Claims ~~Against~~ and Termination of Equity Interests ~~in~~ Flintkote. Except as provided in the Plan or the Confirmation Order, as of the Effective Date, confirmation of the Plan shall afford ~~the Debtors~~Flintkote a discharge as authorized by Bankruptcy Code section 1141(d)(1).

12.1.2 ~~Non-Discharge of Claims Against and Equity Interests in Mines. In accordance with Bankruptcy Code section 1141(d)(3), confirmation of the Plan shall not afford Mines a discharge.~~

### 12.1.3 ~~12.1.2~~ Flintkote Discharge Injunction.

(a) Except as provided in the Plan or the Confirmation Order, as of the Effective Date, all Persons that hold, have held, or may hold a Claim, Demand or other debt or liability that is discharged, or an Equity Interest or other right of an equity security holder that is terminated pursuant to the terms of the Plan, are permanently enjoined from taking any of the following actions on account of, or on the basis of, such discharged Claims, debts or liabilities, or terminated Equity Interests or rights: (i) commencing or continuing any action or other proceeding against ~~the Debtors~~Flintkote, Reorganized Flintkote, the Trust or their respective property; (ii) enforcing, attaching, collecting or recovering any judgment, award, decree or order against ~~the Debtors~~Flintkote, Reorganized Flintkote, the Trust or their respective property; (iii) creating, perfecting or enforcing any Lien or Encumbrance against ~~the Debtors~~Flintkote, Reorganized Flintkote, the Trust or their respective property; (iv) asserting any setoff, right of subrogation or recoupment of any kind against any debt, liability or obligation due ~~the Debtors~~Flintkote, Reorganized Flintkote, the Trust or their respective property;

and (v) commencing or continuing any judicial or administrative proceeding, in any forum, that does not comply with or is inconsistent with the provisions of the Plan.

(b) Except as provided in the Plan or the Confirmation Order, as of the Effective Date all Entities that hold, have held, or may hold a Claim, Demand, or other debt, right, cause of action, liability or Equity Interest against or in Flintkote, which is afforded treatment pursuant to the provisions of the Plan, are permanently enjoined from taking any of the following actions on account of or based upon such Claims, Demands, debts, rights, causes of action, liabilities, or Equity Interest: (i) commencing or continuing any action or other proceeding against the Released Parties or their respective property; (ii) enforcing, attaching, collecting or recovering any judgment, award, decree or order against the Released Parties or their respective property; (iii) creating, perfecting or enforcing any Lien or Encumbrance against the Released Parties or their respective property; (iv) asserting any setoff, right of subrogation or recoupment of any kind against any debt, liability or obligation due the Released Parties or against their respective property; and (v) commencing or continuing any judicial or administrative proceeding, in any forum, that does not comply with or is inconsistent with the provisions of the Plan.

#### 12.1.4 Mines Liquidating Injunction.

(a) Except as provided in the Plan or the Confirmation Order, as of the Effective Date, all Persons that hold, have held, or may hold a Claim (including a Mines Asbestos Personal Injury Claim), Demand or other debt or liability against Mines, or an Equity Interest or other right of an equity security holder in Mines, are permanently enjoined from taking any of the following actions on account of, or on the basis of, such Claims, Demands, debts or liabilities, or Equity Interests or rights: (i) commencing or continuing any action or other proceeding against the Mines Estate Representative, the Trust, the Trust's property, or any property that constituted property of the Mines Estate or is derived from property of the Mines Estate, including the Mines Estate property that is transferred to the Trust, to the Mines Distribution Reserve, or to a Mines liquidating trust (if any); (ii) enforcing, attaching, collecting or recovering any judgment, award, decree or order against the Mines Estate Representative, the Trust, the Trust's property, or any property that constituted property of the Mines Estate or is derived from property of the Mines Estate, including the Mines Estate property that is transferred to the Trust, to the Mines Distribution Reserve, or to a Mines liquidating trust (if any); (iii) creating, perfecting or enforcing any Lien or Encumbrance against the Mines Estate Representative, the Trust, the Trust's property, or any property that constituted property of the Mines Estate or is derived from property of the Mines Estate, including the Mines Estate property that is transferred to the Trust, to the Mines Distribution Reserve, or to a Mines liquidating trust (if any); (iv) asserting any setoff, right of subrogation or recoupment of any kind against any debt, liability or obligation due the Mines Estate Representative, the Trust, the Trust's property, or any property that constituted property of the Mines Estate or is derived from property of the Mines Estate, including the Mines Estate property that is transferred to the Trust, to the Mines Distribution Reserve, or to a Mines liquidating trust (if any); and (v) commencing or continuing any judicial or administrative

*proceeding, in any forum, that does not comply with or is inconsistent with the provisions of the Plan.*

(b) ~~Except as provided in the Plan or the Confirmation Order, as of the Effective Date all Entities that hold, have held, or may hold a Claim, Demand, or other debt, right, cause of action, liability or Equity Interest that is afforded treatment pursuant to the provisions of the Plan are permanently enjoined from taking any of the following actions on account of or based upon such Claims, Demands, debts, rights, causes of action, liabilities, or Equity Interest~~*Except as provided in the Plan or the Confirmation Order, as of the Effective Date all Entities that hold, have held, or may hold a Claim (including a Mines Asbestos Personal Injury Claim), Demand, or other debt, right, cause of action, liability or Equity Interest against or in Mines, which is afforded treatment pursuant to the provisions of the Plan, are permanently enjoined from taking any of the following actions on account of or based upon such Claims, Demands, debts, rights, causes of action, liabilities, or Equity Interests: (i) commencing or continuing any action or other proceeding against the Released Parties or their respective property; (ii) enforcing, attaching, collecting or recovering any judgment, award, decree or order against the Released Parties or their respective property; (iii) creating, perfecting or enforcing any Lien or Encumbrance against the Released Parties or their respective property; (iv) asserting any setoff, right of subrogation or recoupment of any kind against any debt, liability or obligation due the Released Parties or against their respective property; and (v) commencing or continuing any judicial or administrative proceeding, in any forum, that does not comply with or is inconsistent with the provisions of the Plan.*

## 12.2 Releases.

(a) Releases by Debtors and Estates. Except as otherwise expressly provided in the Plan or the Confirmation Order, on the Effective Date, the Debtors and Reorganized Flintkote on their own behalf and as representatives of their respective Estates, release unconditionally, and are hereby deemed to release unconditionally, each and all of (i) the Debtors' present and former officers and directors, and (ii) the attorneys, accountants, financial advisors, restructuring consultants and investment bankers of the Debtors, of and from any and all claims, obligations, suits, judgments, damages, rights, causes of action and liabilities of any nature whatsoever (including, without limitation, those arising under the Bankruptcy Code), whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, or otherwise, based in whole or in part upon any act, omission, transaction, event or other occurrence taking place before the Petition Date in connection with the Debtors or any of them, or their respective property. Notwithstanding the foregoing, nothing contained in this Section 12.2(a) of the Plan or any other provision of the Plan, constitutes or is intended to constitute a release, waiver, discharge or injunction of any claims, obligations, suits, judgments, damages, rights, causes of action and liabilities of any nature whatsoever, presently asserted or in the future asserted against any Person who is a defendant in any litigation asserting Third Party Causes of Action, except as expressly provided as part of an agreement to settle all or any portion of such claims, obligations, suits, judgments, damages, rights, causes of action and liabilities.

(b) Releases by Holders of Claims. Except as otherwise expressly provided in the Plan or the Confirmation Order, on the Effective Date, each holder of a Claim that ~~has voted to accept the Plan~~ submits a Ballot and does not elect to withhold consent to the releases by checking the appropriate box on the Ballot, shall be deemed to have unconditionally released each and all of (i) the Debtors' former and current officers and directors, and (ii) the attorneys, accountants, investment bankers, restructuring consultants and financial advisors of each of the Debtors, excluding, to the extent applicable, any Person who is a defendant in any litigation asserting Third Party Causes of Action, except as expressly provided as part of an agreement to settle all or any portion of such claims, obligations, suits, judgments, damages, rights, causes of action and liabilities, of and from any and all claims, obligations, suits, judgments, damages, rights, causes of action and liabilities of any nature whatsoever (including, without limitation, those arising under the Bankruptcy Code), whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, or otherwise, based in whole or in part upon any act, omission, transaction, event or other occurrence taking place before the Petition Date in connection with the Debtors or any of them, or their respective property; ~~provided, however, that each holder of a Claim that has voted on the Plan may elect, by checking the appropriate box on its Ballot, not to grant the releases set forth in this Section 12.2(b).~~ Notwithstanding the foregoing, except as expressly provided as part of an agreement to settle all or any portion of such claims, obligations, suits, judgments, damages, rights, causes of action and liabilities, nothing contained in this Section 12.2(b) of the Plan or any other provision of the Plan, constitutes or is intended to constitute a release, waiver, or discharge of any claims, obligations, suits, judgments, damages, rights, causes of action and liabilities of any

nature whatsoever, presently asserted or in the future asserted against any Person, by any holder of a Claim with respect to an Individual Third Party Causes of Action.

12.3 **The Third Party Injunction and the Insurance Entity ~~and Claimants~~**  
**Injunctions****Injunction.** *In order to supplement the injunctive effect of the Flintkote Discharge Injunction, and pursuant to sections 524(g) and 105(a) of the Bankruptcy Code, the Confirmation Order shall provide for the following permanent injunctions to take effect as of the Effective Date.*

12.3.1 **Third Party Injunction**

(a) **Terms.** *In order to preserve and promote the settlements contemplated by and provided for in the Plan and agreements previously or concurrently approved by the Bankruptcy Court, and pursuant to the exercise of the equitable jurisdiction and power of the Bankruptcy Court under section 524(g) of the Bankruptcy Code, all Entities which have held or asserted, which hold or assert or which may in the future hold or assert any claim, demand or cause of action (including, but not limited to, any Flintkote Asbestos Personal Injury Claim or Flintkote Demand, or any claim or demand for or respecting any Trust Expense) directly or indirectly against the Protected Parties (or any of them) (i) based upon, attributable to, or arising out of any Flintkote Asbestos Personal Injury Claim or Flintkote Demand, whenever and wherever arising or asserted, whether in the United States of America, or anywhere else in the world, whether sounding in tort, contract, warranty or any other theory of law, equity or admiralty ~~+~~ or (ii) as a result of the conduct of, claims against, or demands on Flintkote to the extent such alleged liability of such Protected Party arises by reason of (I) the Protected Party's ownership of a financial interest in Flintkote, a past or present affiliate of Flintkote, or a predecessor in interest of Flintkote; (II) the Protected Party's involvement in the management of Flintkote or a predecessor in interest of Flintkote, or service as an officer, director or employee of Flintkote or a related party; (III) the Protected Party's provision of insurance to Flintkote or a related party; or (IV) the Protected Party's involvement in a transaction changing the corporate structure, or in a loan or other financial transaction affecting the financial condition, of Flintkote or a related party, including but not limited to --(aa) involvement in providing financing (debt or equity), or advice to an entity involved in such a transaction; or (bb) acquiring or selling a financial interest in an entity as part of such a transaction (collectively, a "Third Party Claim"), shall be permanently stayed, restrained and enjoined, from taking any action for the purpose of directly or indirectly collecting, recovering or receiving payments or recovery with respect to any such Third Party Claim, including, but not limited to :*

(i) *commencing or continuing in any manner any action or other proceeding of any kind with respect to any such Third Party Claim against any Protected Party or against the property of any Protected Party with respect to any such Third Party Claim;*

(ii) *enforcing, attaching, collecting or recovering, by any manner or means, any judgment, award, decree or order against any Protected Party or against the property of any Protected Party with respect to any such Third Party Claim;*

(iii) *creating, perfecting or enforcing any Lien of any kind against any Protected Party or the property of any Protected Party on the basis of such Third Party Claim;*

(iv) *except as otherwise provided in the Plan, asserting, implementing or effectuating any setoff, right of subrogation or contribution or recoupment of any kind against any obligation due any Protected Party or against the property of any Protected Party with respect to any such Third Party Claim; and*

(v) *taking any act relating to such Third Party Claim in any manner, and in any place whatsoever, that does not conform to, or comply with, the provisions of the Plan, the Plan Documents or the Trust Documents.*

(b) *Reservations. Notwithstanding anything to the contrary in Section 12.3.1(a) of this Plan, this Third Party Injunction shall not impair:*

(i) *the rights of holders of Asbestos Personal Injury Claims to assert such Asbestos Personal Injury Claims solely against the Trust or otherwise in accordance with the Trust Distribution Procedures; or*

(ii) *the rights of Entities to assert any Claim, debt, obligation or liability for payment of Trust Expenses solely against the Trust or otherwise in accordance with the Trust Distribution Procedures.*

(c) *Bankruptcy Rule 3016 Compliance. The Plan Proponents' compliance with the formal requirements of Bankruptcy Rule 3016(c) shall not constitute an admission that the Plan provides for an injunction against conduct not otherwise enjoined under the Bankruptcy Code.*

(d) *If a non-Settling Asbestos Insurance Company asserts that it has rights of contribution, indemnity, reimbursement, subrogation or other similar claims (collectively, "Contribution Claims") against a Settling Asbestos Insurance Company, (i) such Contribution Claims may be asserted as a defense or counterclaim against the Trust or Reorganized Flintkote (as applicable) in any Asbestos Insurance Action involving such non-Settling Asbestos Insurance Company, and the Trust or Reorganized Flintkote (as applicable) may assert the legal or equitable rights, if any of the Settling Asbestos Insurance Company, and (ii) to the extent such Contribution Claims are determined to be valid, the liability (if any) of such non-Settling Asbestos Insurance Company to the Trust or Reorganized Flintkote (as applicable) shall be reduced by the amount of such Contribution Claims.*

12.3.2 Insurance Entity ~~and Claimants Injunctions~~ Injunction.

(a) *Purpose. In order to protect the Trust and to preserve the Trust Assets, pursuant to the equitable jurisdiction and power of the Bankruptcy Court, the Bankruptcy Court shall issue the Insurance Entity ~~and Claimants Injunctions~~ Injunction; provided, however, that the Insurance Entity ~~and Claimants Injunctions are~~ Injunction is not issued for the benefit of any Asbestos Insurance Company ~~or any defendant in any Third Party Cause of Action~~, and no Asbestos Insurance Company, ~~and no defendant in any Third Party Cause of Action~~, is a third-party beneficiary of the Insurance Entity ~~and Claimants Injunctions~~ Injunction, except as otherwise specifically provided in any Asbestos Insurance Settlement Agreement.*

(b) *Terms Regarding Claims Against Asbestos Insurance Companies. Subject to the provisions of Sections 12.3.1 and 12.3.2(a) of this Plan, all Entities that have held or asserted, that hold or assert, or that may in the future hold or assert any claim, demand or cause of action (including any Asbestos Personal Injury Claim or any claim or demand for or respecting any Trust Expense) against any Asbestos Insurance Company based upon, attributable to, arising out of, or in any way connected with any such Asbestos Personal Injury Claim, whenever and wherever arising or asserted, whether in the United States of America or anywhere else in the world, whether sounding in tort, contract, warranty, or any other theory of law, equity, or admiralty, shall be stayed, restrained, and enjoined from taking any action for the purpose of directly or indirectly collecting, recovering, or receiving payments, satisfaction, or recovery with respect to any such claim, demand, or cause of action including, without limitation:*

(i) *commencing, conducting, or continuing, in any manner, directly or indirectly, any suit, action, or other proceeding of any kind (including a judicial, arbitration, administrative, or other proceeding) in any forum with respect to any such claim, demand, or cause of action against any Asbestos Insurance Company, or against the property of any Asbestos Insurance Company, with respect to any such claim, demand, or cause of action;*

(ii) *enforcing, levying, attaching, collecting, or otherwise recovering, by any means or in any manner, whether directly or indirectly, any judgment, award, decree, or other order against any Asbestos Insurance Company, or against the property of any Asbestos Insurance Company, with respect to any such claim, demand, or cause of action;*

(iii) *creating, perfecting, or enforcing in any manner, directly or indirectly, any Encumbrance against any Asbestos Insurance Company, or the property of any Asbestos Insurance Company, with respect to any such claim, demand, or cause of action; and*

(iv) *except as otherwise specifically provided in this Plan, asserting or accomplishing any setoff, right of subrogation, indemnity, contribution, or recoupment of any kind, directly or indirectly, against any obligation of any*

*Asbestos Insurance Company, or against the property of any Asbestos Insurance Company, with respect to any such claim, demand or cause of action;*

*provided, however, that (a) the injunction set forth in this Paragraph 12.3.2(b) shall not impair in any way any actions brought by the Trust and/or Reorganized Flintkote against any Asbestos Insurance Company; and (b) the Trust shall have the sole and exclusive authority at any time to terminate, or reduce or limit the scope of, the injunction set forth in this Paragraph 12.3.2(b) with respect to any Asbestos Insurance Company upon express written notice to such Asbestos Insurance Company, except as otherwise specifically provided in any Asbestos Insurance Settlement Agreement.*

~~*(e) — Terms Regarding Individual Third Party Causes of Action. Subject to the provisions of Sections 12.3.1 and 12.3.2 (a) of this Plan, all Entities that have held or asserted, that hold or assert, or that may in the future hold or assert any Individual Third Party Cause of Action shall be stayed, restrained, and enjoined from taking any action to pursue any Individual Third Party Cause of Action unless and until such Entity shall have reached an agreement satisfactory to both the Trust and Reorganized Flintkote as to the terms and conditions of the pursuit of an Individual Third Party Cause of Action, including the payment of fees and costs related thereto and the sharing of any proceeds derived therefrom. The Hopkins Agreement is such an agreement within the meaning of this provision. The foregoing injunction shall not impair in any way any actions brought by the Trust, the Debtors and/or Reorganized Flintkote against any defendant in the Third Party Causes of Action, nor shall the existence of this injunction or its termination affect any defenses of the defendants with respect to the Third Party Causes of Action Claims.*~~

~~*(c)*~~ ~~*(d) Reservations. Notwithstanding anything to the contrary above, this Insurance Entity and Claimants Injunctions*~~ *Injunction* shall not enjoin:

(i) *the rights of Entities to the treatment accorded them under this Plan, as applicable, including the rights of holders of Asbestos Personal Injury Claims to assert such Claims, as applicable, in accordance with the Trust Distribution Procedures;*

(ii) *the rights of Entities to assert any claim, debt, obligation, cause of action or liability for payment of Trust Expenses against the Trust;*

(iii) *the rights of the Trust (or Reorganized Flintkote, in accordance with the Plan) to prosecute any action based on or arising from the Asbestos Insurance Policies ~~or relating to the facts and circumstances underlying the Third Party Causes of Action;~~*

(iv) *the rights of the Trust (or Reorganized Flintkote, in accordance with the Plan) to assert any claim, debt, obligation, cause of action or liability for payment against an Asbestos Insurance Company based on or arising from the Asbestos Insurance Policies or Asbestos Insurance Settlement Agreements;*

~~or relating to the facts and circumstances underlying the Third Party Causes of Action; and~~

(v) ~~The rights of any Asbestos Insurance Company to assert any claim, debt, obligation, cause of action or liability for payment against any other Asbestos Insurance Company that is not a Settling Asbestos Insurance Company, or the right of any defendant in a Third Party Cause of Action to assert any claim, debt, obligation, cause of action or liability for payment against any other defendant in a Third Party Cause of Action or in an Individual Third Party Cause of Action, except to the extent such party may be protected by the Third Party Injunction or some other injunction that may be issued in connection with settlement of all or part of the Third Party Causes of Action.~~ as otherwise specifically provided in any Asbestos Insurance Settlement Agreement.

12.4 Reservation of Rights. Notwithstanding any other provision of the Plan to the contrary, the satisfaction, release and discharge and the Injunctions set forth in this Article XII, shall not be deemed or construed to satisfy, discharge, release or enjoin claims by the Trust, Reorganized Flintkote, or (subject to Article IV of this Plan) any other Entity, as the case may be, against (a) the Trust for payment of Asbestos Personal Injury Claims in accordance with the Trust Distribution Procedures, (b) the Trust for the payment of Trust Expenses, or (c) any Asbestos Insurance Company that has not performed under an Asbestos Insurance Policy or an Asbestos Insurance Settlement Agreement. Nothing in this Section 12.4 is intended or shall be construed to limit the assertion, applicability, or effect of any Asbestos Insurance Coverage Defense.

12.5 Disallowed Claims and Disallowed Equity Interests. On and after the Effective Date, the Debtors and Reorganized Flintkote shall ~~be fully and finally discharged of any and all~~ have no liability or obligation on a disallowed Claim or a disallowed Equity Interest, and any Order disallowing a Claim or an Equity Interest which is not a Final Order as of the Effective Date solely because of an Entity's right to move for reconsideration of such Order pursuant to section 502 of the Bankruptcy Code or Rule 3008 of the Bankruptcy Rules shall, nevertheless, become and be deemed to be a Final Order on the Effective Date. The Confirmation Order, except as otherwise provided herein, shall constitute an Order: (a) in relation to each Debtor, disallowing all Claims (other than Asbestos Personal Injury Claims) and Equity Interests to the extent such Claims and Equity Interests are not allowable under any provision of section 502 of the Bankruptcy Code, including, but not limited to, time-barred Claims and Equity Interests, and Claims for unmatured interest, and (b) in relation to each Debtor, disallowing or subordinating to all other Claims, as the case may be, any Claims for penalties, punitive damages or any other damages not constituting compensatory damages.

12.6 Exculpation. None of the Debtors, Reorganized Flintkote, the members of the Asbestos Claimants Committee, the Future Claimants Representative nor any of their respective officers, directors and employees, members, agents, attorneys, accountants, financial advisors or restructuring professionals, nor any other professional Person employed by any of them, shall have or incur any liability to any Person or Entity for any act or omission in connection with, relating to, or arising out of the Chapter 11 Cases, the negotiation of the Plan, the pursuit of

confirmation of the Plan, the administration, consummation and implementation of the Plan or the property to be distributed under the Plan, the Disclosure Statement, the Plan Documents, the releases and Injunctions, or the management or operation of the Debtors (except for any liability that results primarily from such Person's or Entity's gross negligence, bad faith or willful misconduct); provided, however, that this exculpation provision shall not apply to (i) Tersigni Consulting, pending the outcome of the examination and/or review of Tersigni Consulting's professional fees and expenses in the Chapter 11 Cases by the United States Trustee and the Office of the United States Attorney for the District of Delaware, and (ii) Asbestos Insurer Coverage Defenses. In all respects, each and all of such Persons, firms and Entities shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under, or in connection with, the Chapter 11 Cases, the Plan, and the administration of each of them.

12.7 No Successor Liability. Except as otherwise expressly provided in the Plan, Reorganized Flintkote (on behalf of itself and Mines, as applicable) does not, pursuant to the Plan or otherwise, assume, agree to perform, pay or indemnify any Entity or Person, or otherwise have any responsibility for any liabilities or obligations of the Debtors relating to or arising out of the operations of or assets of the Debtors, whether arising prior to, on or after the Effective Date. Neither the Plan Proponents, Reorganized Flintkote (on behalf of itself and Mines, as applicable) nor the Trust is, or shall be deemed to be, a successor to either of the Debtors by reason of any theory of law or equity (except as otherwise provided in Article IV of the Plan), and none shall have any successor or transferee liability of any kind or character; provided, however, Reorganized Flintkote (on behalf of itself and Mines, as applicable) and the Trust shall assume and remain liable for their respective obligations specified in the Plan and the Confirmation Order.

## 12.8 Corporate Indemnities.

### 12.8.1 Prepetition Indemnification and Reimbursement Obligations.

The respective obligations of the Debtors to indemnify and reimburse Persons who are or were directors, officers or employees of the Debtors on the Petition Date or at any time thereafter, against and for any obligations pursuant to the articles of incorporation, codes of regulation, bylaws, applicable state or non-bankruptcy law, or specific agreement or any combination of the foregoing, (i) shall survive confirmation of the Plan, and remain unaffected thereby, (ii) are assumed by Reorganized Flintkote, ~~and~~ (on behalf of itself and Mines, as the Mines Estate Representative), and (iii) shall not be discharged under section 1141 of the Bankruptcy Code, irrespective of whether indemnification or reimbursement is owed in connection with any event occurring before, on or after the Petition Date. In furtherance of, and to implement the foregoing, ~~Reorganized Flintkote~~ as of the Effective Date, the Debtors shall obtain and maintain in full force insurance for the benefit of each and all of the above-indemnified directors, officers and employees, at levels no less favorable than those existing as of the date of entry of the Confirmation Order, and for a period of no less than three (3) years following the Effective Date.

### 12.8.2 Plan Indemnity.

In addition to the matters set forth above and not by way of limitation thereof, Reorganized Flintkote (on behalf of itself and Mines, as the Mines Estate Representative) shall indemnify and hold harmless all Persons who are or were officers or directors of the Debtors on the Petition Date or thereafter on account of and with respect to any claim, cause of action, liability, judgment, settlement, cost or expense (including attorney's fees) on account of claims or causes of action threatened or asserted by any third party against such officers or directors that seek contribution, indemnity, equitable indemnity, or any similar claim, based upon or as the result of the assertion of primary claims against such third party by any representative of the Debtors' Estates.

#### 12.8.3 Limitation on Indemnification.

Notwithstanding anything to the contrary set forth in this Plan or elsewhere, Reorganized Flintkote shall not be obligated to indemnify and hold harmless any Entity for any claim, cause of action, liability, judgment, settlement, cost or expense that results primarily from such Entity's bad faith, gross negligence or willful misconduct.

### **ARTICLE XIII JURISDICTION OF BANKRUPTCY COURT**

13.1 Jurisdiction. Until the Chapter 11 Cases are closed, the Bankruptcy Court shall retain the fullest and most extensive jurisdiction that is permissible, including the jurisdiction necessary to ensure that the purposes and intent of the Plan are carried out. Except as otherwise provided in the Plan or the Trust Documents, the Bankruptcy Court shall retain jurisdiction to hear and determine all Claims against and Equity Interests in the Debtors, and to adjudicate and enforce the Asbestos Insurance Actions, the Trust Causes of Action and all other causes of action which may exist on behalf of the Debtors; provided, however, that nothing herein shall prevent Reorganized Flintkote from continuing to pursue the Third Party Causes of Action in another forum. Nothing contained herein shall prevent Reorganized Flintkote or the Trust from taking such action as may be necessary in the enforcement of any Asbestos Insurance Action, Trust Cause of Action or other cause of action which the Debtors have or may have and which may not have been enforced or prosecuted by the Debtors, which actions or other causes of action shall survive Confirmation of the Plan and shall not be affected thereby except as specifically provided herein. Nothing contained herein concerning the retention of jurisdiction by the Bankruptcy Court shall be deemed to be a finding or conclusion that (i) the Bankruptcy Court in fact has jurisdiction with respect to any Asbestos Insurance Action, (ii) that any such jurisdiction is exclusive with respect to any Asbestos Insurance Action, or (iii) that abstention or dismissal of any Asbestos Insurance Action pending in the Bankruptcy Court or the District Court as an adversary proceeding, so that another court can hear and determine such Asbestos Insurance Action(s), is or is not advisable or warranted. Any court other than the Bankruptcy Court that has jurisdiction over an Asbestos Insurance Action shall have the right to exercise such jurisdiction.

13.2 General Retention. Following Confirmation of the Plan, the administration of the Chapter 11 Cases will continue until the Chapter 11 Cases are closed by a Final Order of the Bankruptcy Court. The Bankruptcy Court shall also retain jurisdiction for the purpose of classification of any Claims and the re-examination of Claims which have been allowed for

purposes of voting, and the determination of such objections as may be filed with the Bankruptcy Court with respect to any Claims. The failure by the Plan Proponents to object to, or examine, any Claim for the purposes of voting, shall not be deemed a waiver of the rights of the Debtors, Reorganized Flintkote ([on behalf of itself or Mines, as applicable](#)) or the Trust, as the case may be, to object to or re-examine such Claim in whole or part.

13.3 Specific Purposes. In addition to the foregoing, the Bankruptcy Court shall retain jurisdiction for each of the following specific purposes after Confirmation of the Plan:

- (a) to modify the Plan after Confirmation, pursuant to the provisions of the Bankruptcy Code and the Bankruptcy Rules;
- (b) to correct any defect, cure any omission, reconcile any inconsistency or make any other necessary changes or modifications in or to the Plan, the Trust Documents or the Confirmation Order as may be necessary to carry out the purposes and intent of the Plan;
- (c) to assure the performance by Reorganized Flintkote, [the Trust](#) and the ~~Trust~~[Disbursing Agent](#) of their respective obligations to make distributions under the Plan;
- (d) to enforce and interpret the terms and conditions of the Plan, the Plan Documents, and the Trust Documents; to enter such orders or judgments, including, but not limited to, injunctions (i) as are necessary to enforce the title, rights and powers of Reorganized Flintkote and the Trust, and (ii) as are necessary to enable holders of Claims to pursue their rights against any Entity that may be liable therefor pursuant to applicable law or otherwise;
- (e) to hear and determine any motions or contested matters involving taxes, tax refunds, tax attributes, tax benefits and similar or related matters, including without limitation contested matters arising on account of transactions contemplated by the Plan, or relating to the period of administration of the Chapter 11 Cases;
- (f) to hear and determine all applications for compensation of Professionals and reimbursement of expenses under sections 330, 331 or 503(b) of the Bankruptcy Code;
- (g) to hear and determine any causes of action arising during the period from the Petition Date through the Effective Date, or in any way related to the Plan or the transactions contemplated hereby, against the Debtors, Reorganized Flintkote, the Plan Proponents, the Trust, the Trustees, the Asbestos Claimants Committee or the Future Claimants Representative and their respective current and former officers, directors, stockholders, employees, members, attorneys, accountants, financial advisors, representatives and agents;
- (h) to determine any and all motions pending as of Confirmation for the rejection, assumption or assignment of executory contracts or unexpired leases and the allowance of any Claims resulting therefrom;

(i) to determine such other matters and for such other purposes as may be provided in the Confirmation Order;

(j) to determine the allowance and/or disallowance of any Claims against or Equity Interests in the Debtors or their Estates, including, without limitation, any objections to any such Claims and/or Equity Interests, and the compromise and settlement of any Claim against or Equity Interest in the Debtors or their Estates;

(k) to determine all questions and disputes regarding title to the assets of the Debtors or their Estates or the Trust;

(l) to hear and determine the Asbestos Insurance Actions, any Trust Cause of Action and any similar claims, causes of action or rights of the Trust or Reorganized Flintkote, to construe and take any action to enforce any Asbestos Insurance Policy or Asbestos Insurance Settlement Agreement, and to issue such orders as may be necessary for the execution, consummation and implementation of any Asbestos Insurance Policy or Asbestos Insurance Settlement Agreement, and to determine all questions and issues arising thereunder. Notwithstanding anything herein to the contrary, however, such retention of jurisdiction by the Bankruptcy Court in this Section 13.3 shall not be deemed to be a retention of exclusive jurisdiction with respect to any matter described in this Section 13.3; rather, any court other than the Bankruptcy Court which has jurisdiction over any matter described in this Section 13.3 shall have the right to exercise such jurisdiction;

~~(m) to hear and determine any matters related to the Trust's indemnification obligations under Article IV of the Plan and/or the Trust Documents;~~

(m) ~~(n)~~ to hear and determine any other matters related hereto, including the implementation and enforcement of all orders entered by the Bankruptcy Court in these Chapter 11 Cases;

(n) ~~(o)~~ to enter in aid of implementation of the Plan such orders as are necessary, including but not limited to the implementation and enforcement of the Releases, the Injunctions and the other injunctions described herein; and

(o) ~~(p)~~ to enter and implement such orders as may be necessary or appropriate if any aspect of the Plan, the Trust or the Confirmation Order is, for any reason or in any respect, determined by a court to be inconsistent with, violative of, or insufficient to satisfy any of the terms, conditions, or other duties associated with any Asbestos Insurance Policies, provided however, (i) such orders shall not impair the Asbestos Insurer Coverage Defenses or the rights, claims, or defenses, if any, of any Asbestos Insurance Company that are set forth or provided for in the Plan, the Plan Documents, the Confirmation Order, or any other Orders entered in the Debtors' Chapter 11 Cases, (ii) this provision does not, in and of itself, grant this Court jurisdiction to hear and decide disputes arising out of or relating to the Asbestos Insurance Policies, and (iii) all interested parties, including any Asbestos Insurance Company, reserve the right to oppose or object to any such motion or order seeking such relief.

13.4 District Court Jurisdiction. The District Court shall, without regard to the amount in controversy, retain exclusive jurisdiction after Confirmation to hear and determine any motion to extend the Third Party Injunction to an Asbestos Insurance Company, and shall be deemed to have withdrawn the reference to the Bankruptcy Court for such purpose.

13.5 Reservation of Rights. Nothing contained in the Plan will (i) constitute a waiver of any claim, right or cause of action that a Debtor, Reorganized Flintkote, or the Trust, as the case may be, may hold against the insurer under any policy of insurance or insurance agreement, except to the extent the insurer is a Settling Insurance Company; or (ii) limit the assertion, applicability or effect of any Asbestos Insurer Coverage Defense.

13.6 Compromises of Controversies. From and after the Effective Date, the Trust and/or Reorganized Flintkote, as appropriate based on assets and liabilities retained or owed by each respectively, shall be authorized to compromise controversies on such terms as they may determine, in their sole discretion, to be appropriate, without notice to any other party or approval of or notice to the Bankruptcy Court.

#### **ARTICLE XIV MISCELLANEOUS PROVISIONS**

14.1 Professional Compensation and Reimbursement Claims. All final fee requests for compensation or reimbursement of Fee Claims pursuant to sections 327, 328, 329, 330, 331, 503(b), or 1103 of the Bankruptcy Code for services rendered to the Debtors, the Asbestos Claimants Committee or the Future Claimants Representative, all Claims of members of the Asbestos Claimants Committee for reimbursement of expenses, and all requests or Claims under section 503(b)(4) of the Bankruptcy Code, must be filed and served on Reorganized Flintkote and its counsel, and in accordance with the Compensation Procedures Order, by no later than 120 days after the Effective Date, unless otherwise ordered by the Bankruptcy Court. The terms of the Compensation Procedures Order shall govern the allowance and payment of any final Fee Claims submitted in accordance with this Section 14.1. The Fee Auditor appointed under the Compensation Procedures Order shall continue to act in this appointed capacity unless and until all final Fee Claims have been approved by order of the Bankruptcy Court, and the Debtors and Reorganized Flintkote, as the case may be, shall be responsible to pay the fees and expenses incurred by the Fee Auditor in rendering services prior to and after the Effective Date.

14.2 Post Effective Date Retention and Compensation of the Dividend Recovery Litigation Counsel. On the Effective Date, Reorganized Flintkote shall be deemed to have (i) adopted, ratified, and assumed all obligations under the Retention and Contingency Fee Agreement; (ii) retained the Dividend Recovery Litigation Counsel to pursue the Third Party Causes of Action on the terms and conditions provided in the Retention and Contingency Fee Agreement to the extent the Third Party Causes of Action have not been resolved prior to the Effective Date; and (iii) granted and acknowledged a first priority attorneys' lien in favor of the Dividend Recovery Litigation Counsel on the Third Party Causes of Action and on any Third Party Causes of Action Recoveries to secure payments of amounts due under the Retention and Contingency Fee Agreement. No further order of the Bankruptcy Court shall be required to pay the hourly and contingency fees due the Dividend Recovery Litigation Counsel or to reimburse them for their expenses promptly in accordance the terms of the Retention and Contingency Fee

Agreement, including from Third Party Causes of Action Recoveries. Furthermore, on the Effective Date, the Trust shall be automatically substituted for the Asbestos Creditors Committee and the Future Claimants Representative for all purposes under the “Agreement For Joint Prosecution Of Dividend Recovery Litigation” previously approved by the Bankruptcy Court, and the Trust and all parties to such agreement other than the Asbestos Creditors Committee and the Future Claimants Representative, shall be deemed to have adopted, ratified, and assumed all obligations thereunder, all without the need for any further orders of the Bankruptcy Court or the consent of any party, including any member of the Dividend Recovery Litigation Counsel. The Trust (i) shall be the successor to the Asbestos Claimants Committee and the Future Claimants Representative in any Third Party Causes of Action; and (ii) shall have the authority to substitute in as the successor plaintiff to such parties (subject to obtaining court approval in the litigation asserting such Third Party Causes of Action), as co-representative with Reorganized Flintkote, for purposes of enforcing the estates’ rights asserted in any Third Party Causes of Action.

14.3 Timing of Distributions or Actions. If any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date.

14.4 Governing Law. Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules), or an instrument, agreement or other document executed under the Plan provides otherwise, the rights, duties and obligations arising under the Plan, and the instruments, agreements and other documents executed in connection with the Plan, shall be governed by, and construed and enforced in accordance with, the internal laws of the State of Delaware without giving effect to the principles of conflicts of law thereof.

14.5 Entire Agreement. The Plan Documents set forth the entire agreement and undertakings relating to the subject matter thereof and supersede all prior discussions, negotiations, understandings and documents. No Entity shall be bound by any terms, conditions, definitions, warranties, understandings, or representations with respect to the subject matter hereof, other than as expressly provided for in the Plan or the other Plan Documents or as may hereafter be agreed to by the affected parties in writing.

14.6 Headings. Headings are utilized in the Plan for convenience and reference only and shall not constitute a part of the Plan for any other purpose.

14.7 Notices. All notices, requests and demands required or permitted to be provided to the Debtors, Reorganized Flintkote or the Plan Proponents under the Plan, in order to be effective, shall be in writing, and unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, to the addresses set forth below:

## **THE DEBTORS:**

THE FLINTKOTE COMPANY-AND  
FLINTKOTE MINES LIMITED

Attention: President

Three Two Embarcadero Center, Suite 1190

[410](#)

San Francisco, CA 94111-[3823](#)

Telephone: (415) 765-0785

Facsimile: (415) 989-5045

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[P.O. Box 391](#)

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14.8 Plan Supplement. Any and all exhibits, lists, or schedules referred to herein but not filed with this Plan shall be contained in the Plan Supplement and filed with the Clerk of the Bankruptcy Court at least ~~ten (10) Business Days~~ [thirty \(30\) days](#) prior to the deadline for the filing and service of objections to the Plan. The Plan Supplement will be available for inspection in the office of the Clerk of the Bankruptcy Court during normal court hours and at the Bankruptcy Court's internet site ([ecf.deb.uscourts.gov](http://ecf.deb.uscourts.gov)). Claimants may also obtain a copy of the Plan Supplement, once filed, from the Debtors by written request sent to the following address:

The Garden City Group, Inc.  
105 Maxess Road  
Melville, New York 11747  
Attention: Barbara Keane

14.9 Inconsistencies. To the extent the Plan is inconsistent with the Disclosure Statement or other Plan Documents, the provisions of the Plan shall be controlling. To the extent the Plan is inconsistent with the Confirmation Order, the provisions of the Confirmation Order shall be controlling.

14.10 Withholding of Taxes. The Disbursing Agent or the Trust, as applicable, shall withhold from any assets or property distributed under the Plan any assets or property which must be withheld for foreign, federal, state and local taxes payable with respect thereto or payable by the Person entitled to such assets to the extent required by applicable law.

14.11 Transfer Taxes. Pursuant to section 1146 of the Bankruptcy Code, and to the fullest extent permitted by law, no stamp tax, transfer tax or other similar tax shall be imposed or assessed by any taxing authority on account of (i) the issuance, transfer or exchange of any securities issued under the Plan; (ii) the transfer of any assets or property pursuant to the Plan, or (iii) the making or delivery of an instrument of transfer under the Plan.

14.12 Binding Effect. The rights, duties and obligations of any Entity named or referred to in the Plan shall be binding upon, and shall inure to the benefit of, the successors and assigns of such Entity.

14.13 Payment of Statutory Fees. All fees payable under ~~Section~~section 1930 of title 28 of the United States Code, as determined by the Bankruptcy Court at the Confirmation Hearing, shall be paid on or before the Effective Date. Reorganized Flintkote shall pay all such fees that arise after the Effective Date, but before the closing of the Chapter 11 Cases, and shall comply with all statutory reporting requirements.

14.14 Duty to Cooperate. Nothing in the Plan, the Plan Documents or the Confirmation Order shall relieve (by way of injunction or otherwise) any entity (including the Trust and Reorganized Flintkote, on behalf of itself and Mines, as applicable) that is or claims to be entitled to indemnity under an Asbestos Insurance Policy from any duty to cooperate that may be required by any such insurance policy or under applicable law with respect to the defense and/or settlement of any Claim for which coverage is sought under such Asbestos Insurance Policy. To the extent that any entity incurs costs in satisfying such duty to cooperate with respect to Asbestos Personal Injury Claims, the Trust shall reimburse such entity for all such reasonable out-of-pocket expenses.

14.15 ~~14.14~~ Effective Date Actions Simultaneous. Unless the Plan or the Confirmation Order provides otherwise, actions required to be taken on the Effective Date shall take place and be deemed to have occurred simultaneously, and no such action shall be deemed to have occurred prior to the taking of any other such action.

14.16 ~~14.15~~ Consent to Jurisdiction. Upon default under the Plan, Reorganized Flintkote, the Trust and the Trustees, the Future Claimants Representative, and the Trust

Advisory Committee, respectively, consent to the jurisdiction of the Bankruptcy Court, or any successor thereto, and agree that it shall be the preferred forum for all proceedings relating to any such default.

Dated: \_\_\_\_\_, 2007

THE FLINTKOTE COMPANY,  
a Debtor and Debtor in Possession

By: \_\_\_\_\_  
Name: David J. Gordon  
Its: President

FLINTKOTE MINES LIMITED,  
a Debtor and Debtor in Possession

By: \_\_\_\_\_  
Name: David J. Gordon  
Its: President

OFFICIAL COMMITTEE OF ASBESTOS PERSONAL  
INJURY CLAIMANTS

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

JAMES J. MCMONAGLE, as THE FUTURE  
CLAIMANTS REPRESENTATIVE

By: \_\_\_\_\_

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