

**THE FLINTKOTE COMPANY AND  
FLINTKOTE MINES LIMITED  
AMENDED AND RESTATED ASBESTOS PERSONAL INJURY  
TRUST DISTRIBUTION PROCEDURES**

The Flintkote Company and Flintkote Mines Limited Amended and Restated Asbestos Personal Injury Trust Distribution Procedures (“TDP”) contained herein provide for resolving all Asbestos Personal Injury Claims for which the Flintkote Company and Flintkote Mines Limited and their predecessors, successors, and assigns have legal responsibility, which terms are defined in the Amended Joint Plan of Reorganization in respect of The Flintkote Company and Flintkote Mines Limited (As Modified) (“Plan”)<sup>1</sup> filed on June 22, 2009 (hereinafter referred to collectively for all purposes of this TDP as “Trust Claims”), caused by exposure to asbestos-containing products for which The Flintkote Company and Flintkote Mines Limited (collectively, “Flintkote”) and their predecessors, successors, and assigns have legal responsibility, as provided in and required by the Plan and by the Asbestos Personal Injury Trust Agreement (“Trust Agreement”). The Plan and Trust Agreement establish The Flintkote Asbestos Trust (“Trust”). The Trustees of the Trust (“Trustees”) shall implement and administer this TDP in accordance with the Trust Agreement. Capitalized terms used herein and not otherwise defined shall have the meanings assigned to them in the Plan and the Trust Agreement.

**SECTION I**

**Introduction**

**1.1 Purpose.** This TDP has been adopted pursuant to the Trust Agreement. It is designed to provide fair, equitable, and substantially similar treatment for all Trust Claims that may presently exist or may arise in the future.

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<sup>1</sup> Capitalized terms used herein and not otherwise defined shall have the meanings assigned to them in the Plan.

**1.2 Interpretation.** Except as may otherwise be provided below, nothing in this TDP shall be deemed to create a substantive right for any claimant. The rights and benefits, if any, provided herein to holders of Trust Claims shall vest in such holders as of the Effective Date.

## SECTION II

### Overview

**2.1 Trust Goals.** The goal of the Trust is to treat all holders of Trust Claims equitably and in accordance with the requirements of Section 524(g) of the Bankruptcy Code. Based on the historic claims experience of The Flintkote Company and Flintkote Mines Limited, this TDP provides for a single valuation and payment process for all Trust Claims regardless of whether holders of such claims assert liability against only The Flintkote Company, only Flintkote Mines Limited, or both The Flintkote Company and Flintkote Mines Limited.

This TDP sets forth procedures for processing and paying Flintkote's several share of the unpaid portion of the liquidated value of all Trust Claims generally on an impartial, first-in-first-out ("FIFO") basis, with the intention of paying all claimants over time as equivalent a share as possible of the value of their claims based on historical values for substantially similar claims in the applicable tort system.<sup>2</sup> To this end, this TDP establishes a schedule of seven asbestos-related diseases ("Disease Levels"), all of which have presumptive medical and exposure requirements ("Medical/Exposure Criteria"), six of which have specific liquidated values ("Scheduled Values"), and five of which (Disease Levels III–VII) have anticipated average values ("Average Values") and caps on their liquidated values ("Maximum Values").

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<sup>2</sup> As used in this TDP, the phrase "in the tort system" or "in the applicable tort system" shall not include claims asserted against a trust established for the benefit of asbestos personal injury claimants pursuant to section 524(g) and/or section 105 of the Bankruptcy Code or any other applicable law. References to "tort system" shall include both domestic and foreign tort systems and other foreign claims resolution systems, where appropriate.

These Disease Levels, Medical/Exposure Criteria, Scheduled Values, Average Values, and Maximum Values, which are set forth in Sections 5.3 and 5.4 below, have all been selected and derived with the intention of achieving a fair allocation of the Trust funds as among claimants suffering from different disease processes in light of the best available information considering the domestic settlement history of Flintkote and the rights that claimants would have in the applicable tort system absent the bankruptcy. Except as set forth in Section 5.9 below, a claimant may not assert more than one Trust Claim with respect to a specific injured party.

**2.2 Claims Liquidation Procedures.** Trust Claims shall be processed based on their place in the FIFO Processing Queue to be established pursuant to Section 5.1(a)(l) below. The Trust shall take all reasonable steps to resolve Trust Claims as efficiently and expeditiously as possible at each stage of claims processing and arbitration, which steps may include conducting settlement discussions with claimants’ representatives with respect to more than one claim at a time, provided that the claimants’ respective positions in the FIFO Processing Queue are maintained, and each claim is individually evaluated pursuant to the valuation factors set forth in Section 5.3(b)(2) below. Whether or not to conduct settlement discussions with claimants’ representatives with respect to more than one claim at a time is a decision within the Trust’s sole discretion. The Trust shall also make every effort to resolve each year at least that number of Trust Claims required to exhaust the Maximum Annual Payment and the Maximum Available Payment for Category A and Category B claims, as those terms are defined below.

The Trust may, except as provided below, liquidate all Trust Claims except Foreign Claims (as defined in Section 5.3(b)(1) below)<sup>3</sup> that meet the presumptive Medical/Exposure Criteria of Disease Levels I–IV, VI, and VII under the Expedited Review Process described in

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<sup>3</sup> For all purposes hereunder, Trust Claims of individuals exposed in Canada who were residents in Canada when such claims were filed shall be considered and treated as “domestic claims” (i.e., non-Foreign Claims) with domestic settlement history.

Section 5.3(a) below. Except as set forth below, Trust Claims involving Disease Levels I–IV, VI, and VII that do not meet the presumptive Medical/Exposure Criteria for the relevant Disease Level may undergo the Trust’s Individual Review Process described in Section 5.3(b) below. In such a case, notwithstanding that the claim does not meet the presumptive Medical/Exposure Criteria for the relevant Disease Level, the Trust can offer the claimant an amount up to the Scheduled Value of that Disease Level if the Trust is satisfied that the claimant has presented a claim that would be cognizable and valid in the applicable tort system.

Holders of Trust Claims involving Disease Levels III–VII may alternatively seek to establish a liquidated value for the claim that is greater than its Scheduled Value by electing the Trust’s Individual Review Process. However, the liquidated value of a Trust Claim that undergoes the Individual Review Process for valuation purposes may be determined to be less than its Scheduled Value, and in any event shall not exceed the Maximum Value for the relevant Disease Level set forth in Section 5.3(b)(3) below, unless the claim qualifies as an Extraordinary Claim, as defined in Section 5.4(a) below, in which case its liquidated value cannot exceed the extraordinary maximum value specified in that provision for such claims. Disease Level V (Lung Cancer 2) claims, Secondary Exposure Claims for Disease Levels I–VI, and all Foreign Claims may be liquidated<sup>4</sup> only pursuant to the Trust’s Individual Review Process.

Based upon Flintkote’s domestic claims settlement history in light of applicable tort law, and current projections of present and future unliquidated claims, the Scheduled Values and Maximum Values set forth in Section 5.3(b)(3) have been established for each of the Disease Levels that are eligible for Individual Review of their liquidated values. The Trustees shall use their reasonable best efforts to ensure that the Trust processes claims such that over time the combination of domestic settlements at the Scheduled Values and those resulting from the

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<sup>4</sup> For purposes of this TDP, “liquidated” means approved and valued by the Trust.

Individual Review Process for the five applicable Disease Levels approximate the Average Values set forth in Section 5.3(b)(3) for each such Disease Level.

All unresolved disputes over a claimant's medical condition, exposure history, and/or the validity or liquidated value of a claim shall be subject to binding or non-binding arbitration, at the election of the claimant, under the Alternative Dispute Resolution Procedures ("ADR Procedures") described in Section 5.10 below. Trust Claims that are the subject of a dispute with the Trust that cannot be resolved by non-binding arbitration may enter the tort system as provided in Sections 5.11 and 7.6 below. However, if and when a claimant obtains a judgment in the tort system, the judgment will be payable (subject to the Payment Percentage, Maximum Annual Payment, Maximum Available Payment, and Claims Payment Ratio provisions set forth below) as provided in Section 7.7 below.

**2.3 Application of the Payment Percentage.** After the liquidated value of a Trust Claim is determined pursuant to the procedures set forth herein for Expedited Review, Individual Review, arbitration, or litigation in the tort system, the claimant will ultimately receive a pro-rata share of that value based on a Payment Percentage described in Section 4.2 below. The Payment Percentage shall also apply to all Pre-Petition Liquidated Trust Claims as provided in Section 5.2 below and to all sequencing adjustments pursuant to Section 7.5 below.

The Initial Payment Percentage shall be set pursuant to Section 4.2 below after the Trust is established by the Trustees, the Trust Advisory Committee ("TAC") and the Legal Representative for Future Asbestos Claimants ("Future Claimants' Representative") (who are described in Section 3.1 below). The Initial Payment Percentage will be calculated on the assumption that the Average Values set forth in Section 5.3(b)(3) below will be achieved with respect to existing present domestic claims and projected future domestic claims involving

Disease Levels III–VII. The Payment Percentage may thereafter be adjusted upwards or downwards from time to time pursuant to Section 4.2 below by the Trust, with the consent of the TAC and the Future Claimants’ Representative to reflect then-current estimates of the Trust’s assets and liabilities, as well as the then-estimated value of pending and future claims. However, any adjustment to the Initial Payment Percentage shall be made only pursuant to Section 4.2 below. If the Payment Percentage is increased over time, claimants whose claims were liquidated and paid in prior periods under the TDP may receive additional payments, only as provided in Section 4.2 below. Because there is uncertainty in the prediction of both the number and severity of future claims, and the amount of the Trust’s assets over time, no guarantee can be made of any particular Payment Percentage that will be applicable to a Trust Claim’s liquidated value.

**2.4 Determination of the Maximum Annual Payment and Maximum Available Payment.** After calculating the Payment Percentage, the Trust shall model the cash flow, principal and income year by year anticipated to be paid over its entire life to ensure that funds will be available to treat all present and future claimants as similarly as possible. In each year, based upon that model of cash flow, the Trust will be empowered to pay out the portion of its funds payable for that year according to the model (the “Maximum Annual Payment”). The Trust’s distributions to all claimants for that year shall not exceed the Maximum Annual Payment determined for that year. The Payment Percentage and the Maximum Annual Payment figures are based on projections over the lifetime of the Trust. As noted in Section 2.3 above, if such long-term projections are revised, the Payment Percentage may be adjusted accordingly, which would result in a new model of the Trust’s anticipated cash flow and a new calculation of the Maximum Annual Payment.

However, year-to-year variations in the Trust's flow of claims or the value of its assets, including earnings thereon, will not mean necessarily that the long-term projections are inaccurate; they may simply reflect normal variations, both up and down, from the smooth curve created by the Trust's long-term projections. If, in a given year, however, asset values, including earnings thereon, are below projections, the Trust may need to distribute less in that year than would otherwise be permitted based on the original Maximum Annual Payment derived from long-term projections. Accordingly, the original Maximum Annual Payment for a given year may be temporarily decreased if the present value of the assets of the Trust as measured on a specified date during the year is less than the present value of the assets of the Trust projected for that date by the cash flow model described in the foregoing paragraph. The Trust shall make such a comparison whenever the Trustees become aware of any information that suggests that such a comparison should be made and, in any event, no less frequently than once every six (6) months. If the Trust determines that as of the date in question, the present value of the Trust's assets is less than the projected present value of its assets for such date, then it will remodel the cash flow year by year to be paid over the life of the Trust based upon the reduced value of the total assets as so calculated and identify the reduced portion of its funds to be paid for that year, which will become the "Temporary Maximum Annual Payment" (additional reductions in the Maximum Annual Payment can occur during the course of that year based upon subsequent calculations). If in any year the Maximum Annual Payment was temporarily reduced as a result of an earlier calculation and, based upon a later calculation, the difference between the projected present value of the Trust's assets and the actual present value of its assets has decreased, the Temporary Maximum Annual Payment shall be increased to reflect the decrease in the differential. In no event, however, shall the Temporary Maximum Annual Payment exceed the

original Maximum Annual Payment. As a further safeguard, the Trust's distribution to all claimants for the first nine (9) months of a year shall not exceed 85% of the Maximum Annual Payment determined for that year. If on December 31 of a given year, the original Maximum Annual Payment for such year is not in effect, the original Maximum Annual Payment for the following year shall be reduced proportionately.

In distributing the Maximum Annual Payment, the Trust shall first allocate the amount in question to outstanding Pre-Petition Liquidated Trust Claims (as defined in Section 5.2(a) below). The remaining portion of the Maximum Annual Payment (the "Maximum Available Payment"), if any, shall then be allocated and used to satisfy all other previously liquidated Trust Claims subject to the Claims Payment Ratio set forth in Section 2.5 below; provided, however that if the Maximum Annual Payment is reduced during a year pursuant to the provisions above, the Maximum Available Payment shall be adjusted accordingly.

In the event there are insufficient funds in any year to pay the total number of outstanding Pre-Petition Liquidated Trust Claims, the available funds allocated to that group of claims shall be paid to the maximum extent to claimants in that group based on their place in their respective FIFO Payment Queue (as defined in Section 5.1(c) below). Pre-Petition Liquidated Trust Claims for which there are insufficient funds shall be carried over to the next year and placed at the head of the FIFO Payment Queue. If there is a decrease in the Payment Percentage prior to the payment of such claims, any such Pre-Petition Liquidated Trust Claims shall nevertheless be entitled to be paid at the Payment Percentage that they would have been entitled to receive but for the application of the Maximum Annual Payment.

**2.5 Claims Payment Ratio.** Based upon Flintkote's domestic claims settlement history and analysis of present and future claims, a Claims Payment Ratio has been determined



which, as of the Effective Date, has been set at 80% for Category A claims, which consist of Trust Claims involving severe asbestosis and malignancies (Disease Levels III–VII) that were unliquidated as of the Petition Date, and at 20% for Category B claims, which are Trust Claims involving non-malignant Asbestosis or Pleural Disease (Disease Levels I–II) that were similarly unliquidated as of the Petition Date. However, the Claims Payment Ratio shall not apply to any Pre-Petition Liquidated Trust Claims. In each year, after the determination of the Maximum Available Payment described in Section 2.4 above, 80% of that amount shall be available to pay Category A claims and 20% shall be available to pay Category B claims that have been liquidated since the Petition Date; provided, however, that if the Maximum Annual Payment is reduced during the year pursuant to the provisions of Section 2.4 above, the amounts available to pay Category A claims and Category B claims shall be recalculated based on the adjusted Maximum Available Payment.

In the event there are insufficient funds in any year to pay the liquidated claims within either or both of the Categories, the available funds allocated to the particular Category shall be paid to the maximum extent to claimants in that Category based on their place in the FIFO Payment Queue described in Section 5.1(c) below, which shall be based upon the date of claim liquidation. Claims for which there are insufficient funds allocated to the relevant Category shall be carried over to the next year where they will be placed at the head of the FIFO Payment Queue. If there is a decrease in the Payment Percentage prior to the payment of such claims, such claims shall nevertheless be entitled to be paid at the Payment Percentage that they would have been entitled to receive but for the application of the Claims Payment Ratio. If there are excess funds in either or both Categories, because there is an insufficient amount of liquidated claims to exhaust the respective Maximum Available Payment amount for that Category, then

the excess funds for either or both Categories will be rolled over and remain dedicated to the respective Category to which they were originally allocated. During the first nine (9) months of a given year, the Trust's payments to claimants in a Category shall not exceed the amount of any excess funds that were rolled over for such Category from the prior year plus 85% of the amount that would otherwise be available for payment to claimants in such Category.

The 80%/20% Claims Payment Ratio and its rollover provision shall apply to all Asbestos Trust Voting Claims, except Pre-Petition Liquidated Trust Claims. The term "Asbestos Trust Voting Claims" includes (i) Pre-Petition Liquidated Trust Claims as defined in Section 5.2(a) below; (ii) claims filed against Flintkote in the tort system or actually submitted to Flintkote pursuant to an administrative settlement agreement prior to the Petition Date of May 1, 2004 in the case of The Flintkote Company and August 25, 2004 in the case of Flintkote Mines Limited; and (iii) all claims filed against another defendant in the tort system prior to the date the Plan was filed with the Bankruptcy Court on June 22, 2009 ("Plan Filing Date"), provided, however, that the holder of a claim described in subsection (i), (ii), or (iii) above or his or her authorized agent, actually voted to accept or reject the Plan pursuant to the voting procedures established by the Bankruptcy Court, unless such holder certifies to the satisfaction of the Trustees that he or she was prevented from voting in this proceeding as the result of circumstances resulting in a state of emergency affecting, as the case may be, the holder's residence, principal place of business or legal representative's principle place of business at which the holder or his or her legal representative receives notice and/or maintains material records relating to his or her Asbestos Trust Voting Claim, and provided further that the claim was subsequently filed with the Trust by the Initial Claims Filing Date defined in Section 5.1(a)(1). The initial 80%/20% Claims Payment Ratio shall not be amended until the second

anniversary of the date the Trust first accepts for processing proof of claim forms and other materials required to file a claim with the Trust. Thereafter, both the Claims Payment Ratio and its rollover provision shall be continued absent circumstances, such as a significant change in law or medicine, necessitating amendment to avoid a manifest injustice. However, the accumulation, rollover and subsequent delay of claims resulting from the application of the Claims Payment Ratio, shall not, in and of itself, constitute such circumstances. In addition, an increase in the numbers of Category B claims beyond those predicted or expected shall not be considered as a factor in deciding whether to reduce the percentage allocated to Category A claims.

In considering whether to make any amendments to the Claims Payment Ratio and/or its rollover provisions, the Trustees shall consider the reasons for which the Claims Payment Ratio and its rollover provisions were adopted, the domestic settlement history that gave rise to its calculation, and the foreseeability or lack of foreseeability of the reasons why there would be any need to make an amendment. In that regard, the Trustees should keep in mind the interplay between the Payment Percentage and the Claims Payment Ratio as it affects the net cash actually paid to claimants.

In any event, no amendment to the Claims Payment Ratio to reduce the percentage allocated to Category A claims may be made without the consent of at least 80 percent of the TAC members and the consent of the Future Claimant's Representative, and the percentage allocated to Category A claims may not be increased without the consent of the TAC and the Future Claimants' Representative. In case of any amendments to the Claims Payment Ratio, consents shall be governed by the consent process set forth in Sections 6.7(b) and 7.7(b) of the Trust Agreement. However, the Trustees, with the consent of the TAC and the Future

Claimants' Representative, may offer the option of a reduced Payment Percentage to holders of claims in either Category A or Category B in return for prompter payment (the "Reduced Payment Option").

Notwithstanding any other provision herein, if, at the end of a calendar year following the third anniversary of the date the Trust begins accepting Trust Claims, there are excess funds in either Category A or Category B and insufficient funds in the other Category to pay such Category's claims, the Trustees may transfer up to a specified amount of excess funds (the "Permitted Transfer Amount" as defined below) to the Category with the shortfall; provided, however, that the Trustees shall never transfer more than the amount of the receiving Category's shortfall. The "Permitted Transfer Amount" shall be determined as follows: (a) the Trustees shall first determine the cumulative amount allocated to the Category with excess funds based on the Claims Payment Ratio since the date the Trust last calculated its Payment Percentage; (b) the Trustees shall then determine the cumulative amount that the Trust estimated would be paid to the Category with excess funds since the date the Trust last calculated its Payment Percentage; (c) the Trustees shall then subtract the amount determined in (b) from the amount determined in (a), and the difference between the two shall be referred to as the "Permitted Transfer Amount." When deciding whether to make a transfer, the Trustees shall take into account any artificial failures of the processing queue that may have impacted the amount of funds expended from either Category. The Trustees shall provide the TAC and the Future Claimants' Representative with the Permitted Transfer Amount calculation thirty (30) days prior to making a transfer.

**2.6 Indemnity and Contribution Claims.** As set forth in Section 5.6 below, Trust Claims for indemnity and contribution ("Indirect Trust Claims"), if any, will be subject to the same categorization, evaluation, and payment provisions of this TDP as all other Trust Claims.

## SECTION III

### TDP Administration

**3.1 Trust Advisory Committee and Future Claimants' Representative.** Pursuant to the Plan and the Trust Agreement, the Trust and this TDP shall be administered by the Trustees in consultation with the TAC, which represents the interests of holders of present Trust Claims against Flintkote, and the Future Claimants' Representative, who represents the interests of holders of Trust Claims against Flintkote that will be asserted in the future. The Trustees shall obtain the consent of the TAC and the Future Claimants' Representative on any amendments to this TDP pursuant to Section 8.1 below, and on such other matters as are otherwise required below and in Section 2.2(e) of the Trust Agreement. The Trustees shall also consult with the TAC and the Future Claimants' Representative on such matters as are provided below and in Section 2.2(d) of the Trust Agreement. The initial members of the TAC and the initial Future Claimants' Representative are identified in the Trust Agreement.

**3.2 Consent and Consultation Procedures.** In those circumstances in which consultation or consent is required, the Trustees will provide written notice to the TAC and the Future Claimants' Representative of the specific amendment or other action that is proposed. The Trustees will not implement such amendment or take such action unless and until the parties have engaged in the Consultation Process described in Sections 6.7(a) and 7.7(a) or the Consent Process described in Sections 6.7(b) and 7.7(b) of the Trust Agreement, respectively.

## SECTION IV

### Payment Percentage; Periodic Estimates

**4.1 Uncertainty of Flintkote's Total Personal Injury Asbestos Liabilities.** As discussed above, there is inherent uncertainty regarding Flintkote total asbestos-related tort liabilities, as well as the total value of the assets available to the Trust to pay Trust Claims.

Consequently, there is inherent uncertainty regarding the amounts that holders of Trust Claims will receive. To seek to ensure substantially equivalent treatment of all present and future Trust Claims, the Trustees must determine from time to time the percentage of full liquidated value that holders of Trust Claims are likely to receive, i.e., the “Payment Percentage” described in Section 2.3 above and Section 4.2 below.

**4.2 Computation of Payment Percentage.** As provided in Section 2.3 above, the Initial Payment Percentage shall be set by the Trustees, with the consent of the TAC and the Future Claimants’ Representative, after the Trust is established and sufficient information is available concerning the anticipated assets and liabilities of the Trust over its lifetime. The Initial Payment Percentage may be either increased or decreased pursuant to the terms of this TDP and the Trust Agreement if the Trustees, with the consent of the TAC and the Future Claimants’ Representative, determine that an adjustment is required.

No less frequently than once every three (3) years, commencing with the first day of January occurring after the Plan is consummated, the Trustees shall reconsider the then-applicable Payment Percentage to assure that it is based on accurate, current information and may, after such reconsideration, change the Payment Percentage if necessary, with the consent of the TAC and the Future Claimants’ Representative. The Trustees shall also reconsider the then applicable Payment Percentage at shorter intervals if they deem such reconsideration to be appropriate or if requested to do so by the TAC or the Future Claimants’ Representative. In any event, no less frequently than once every twelve (12) months, commencing on the Initial Claims Filing Date, the Trustees shall compare the liability forecast on which the then applicable Payment Percentage is based with the actual claims filing and payment experience of the Trust to date. If the results of the comparison call into question the ability of the Trust to continue to rely

upon the current liability forecast, the Trustees shall undertake a reconsideration of the Payment Percentage.

The Trustees must base their determination of the Payment Percentage on then-current estimates of the number, types, and values of present and future Trust Claims, the value of the assets then available to the Trust for their payment, all anticipated administrative and legal expenses, and any other material matters that are reasonably likely to affect the sufficiency of funds to pay a comparable percentage of full liquidated value to all holders of Trust Claims. When making these determinations, the Trustees shall exercise common sense and flexibly evaluate all relevant factors. The Payment Percentage applicable to Category A or Category B claims may not be reduced to alleviate delays in payments of claims in the other Category; both Categories will receive the same Payment Percentage, but the payment may be deferred as needed pursuant to Section 7.3 below, and a Reduced Payment Option may be instituted as described in Section 2.5 above.

The uncertainty surrounding the amount of the Trust's future assets is due in significant part to the fact that the estimates of those assets do not take into account the possibility that the Trust may receive substantial additional funds from successful recoveries of insurance proceeds that have been assigned to the Trust with respect to which the coverage is presently in dispute or the solvency of the carrier is in doubt. If the Trust successfully resolves an insurance coverage dispute or otherwise receives a substantial recovery of insurance proceeds, the Trust shall use those proceeds first to maintain the Payment Percentage then in effect. There is also uncertainty surrounding the totality of the Trust Claims to be paid over time as well as the extent to which changes in existing foreign, federal, and/or state law could affect the Trust's liabilities under this TDP. If the value of the Trust's future assets increases significantly and/or if the value or

volume of Trust Claims actually filed with the Trust is significantly lower than originally estimated, the Trust shall use those proceeds and/or claims savings, as the case may be, first to maintain the Payment Percentage then in effect.

If the Trustees, with the consent of the TAC and the Future Claimants' Representative, make a determination to increase the Payment Percentage due to a material change in the estimates of the Trust's future assets and/or liabilities, the Trustees shall also make supplemental payments to all claimants who previously liquidated their claims against the Trust and received payments based on a lower Payment Percentage. The amount of any such supplemental payment shall be the liquidated value of the claim in question times the newly adjusted Payment Percentage, less all amounts previously paid to the claimant with respect to the claim (excluding the portion of such previously paid amounts that was attributable to any sequencing adjustment paid pursuant to Section 7.5 below).

The Trustees' obligation to make a supplemental payment to a claimant shall be suspended in the event the payment in question would be less than \$100.00, and the amount of the suspended payment shall be added to the amount of any prior supplemental payment/payments that was/were also suspended because it/they would have been less than \$100.00. However, the Trustees' obligation shall resume and the Trustees shall pay any such aggregate supplemental payments due the claimant at such time that the total exceeds \$100.00.

**4.3 Applicability of the Payment Percentage.** Except as otherwise provided (a) in Section 5.1(c) below for Trust Claims involving deceased or incompetent claimants for which approval of the Trust's offer by a court or through a probate process is required, (b) in the paragraph below with respect to Released Claims, and (c) in Section 4.2 above with respect to supplemental payments, no holder of any Trust Claim shall receive a payment that exceeds the



liquidated value of the claim times the Payment Percentage in effect at the time of payment; provided, however, that if there is a reduction in the Payment Percentage, the Trustees, in their sole discretion, may cause the Trust to pay a Trust Claim based on the Payment Percentage that was in effect prior to the reduction if such Trust Claim was filed and actionable with the Trust ninety (90) days or more prior to the date the Trustees proposed the new Payment Percentage in writing to the TAC and the Future Claimants' Representative (the "Proposal Date") and the processing of such claim was unreasonably delayed due to circumstances beyond the control of the claimant or the claimant's counsel, but only if such claim had no deficiencies for the ninety (90) days prior to the Proposal Date.

If a redetermination of the Payment Percentage has been proposed in writing by the Trustees to the TAC and the Future Claimants' Representative but has not yet been adopted, the claimant shall receive the lower of the current Payment Percentage or the proposed Payment Percentage. However, if the proposed Payment Percentage was the lower amount but was not subsequently adopted, the claimant shall thereafter receive the difference between the lower proposed amount and the higher current amount. Conversely, if the proposed Payment Percentage was the higher amount and was subsequently adopted, the claimant shall thereafter receive the difference between the lower current amount and the higher adopted amount.

Notwithstanding anything contained herein, if the proposed Payment Percentage is lower than the current Payment Percentage, a claimant who received a release from the Trust prior to the Proposal Date and who either (a) transmitted<sup>5</sup> an executed release to the Trust prior to the Proposal Date or (b) with respect to those claimants who had received releases fewer than thirty (30) days prior to the Proposal Date, transmitted an executed release to the Trust within thirty

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<sup>5</sup> For purposes of this sentence, "transmitted" is defined as the date/time postmarked if submitted by mail or the date/time uploaded if submitted electronically.

(30) days of the claimant's receipt of the release (the claims described in (a) and (b) are collectively referred to herein as the "Released Claims") shall be paid based on the current Payment Percentage (the "Released Claims Payment Percentage"). For purposes hereof, (a) a claimant represented by counsel shall be deemed to have received a release on the date that the claimant's counsel receives the release, (b) if the Trust transmits a release electronically, the release shall be deemed to have been received on the date the Trust transmits the offer notification, and (c) if the Trust places the release in the U.S. mail, postage prepaid, the release shall be deemed to have been received three (3) business days after such mailing date. A delay in the payment of the Released Claims for any reason, including delays resulting from limitations on payment amounts in a given year pursuant to Sections 2.4 and 2.5 hereof, shall not affect the rights of the holders of the Released Claims to be paid based on the Released Claims Payment Percentage.

At least thirty (30) days prior to proposing in writing to the TAC and the Future Claimants' Representative a change in the Payment Percentage, the Trustees shall issue a written notice to claimants or claimants' counsel indicating that the Trustees are reconsidering such Payment Percentage.

## **SECTION V**

### **Resolution of Trust Claims**

#### **5.1 Ordering, Processing and Payment of Claims.**

##### **5.1(a) Ordering of Claims.**

**5.1(a)(1) Establishment of the FIFO Processing Queue.** The Trust will order Trust Claims that are sufficiently complete to be reviewed for processing purposes on a FIFO basis except as otherwise provided herein (the "FIFO Processing Queue"). For all claims filed on or before the date six (6) months after the date that the Trust first makes available the

proof of claim forms and other claims materials required to file a Trust claim (such six-month anniversary being referred to herein as the “Initial Claims Filing Date”), a claimant’s position in the FIFO Processing Queue shall be determined as of the earliest of (i) the date prior to the Petition Date (if any) that the specific claim was either filed against Flintkote in the tort system or was actually submitted to Flintkote pursuant to an administrative settlement agreement; (ii) the date before the Petition Date that an asbestos claim was filed against another defendant in the tort system if at the time the claim was subject to a tolling agreement with Flintkote; (iii) the date after the Petition Date (if any) but before the date that the Trust first makes available the claims materials required to file a Trust Claim that the asbestos claim was filed against another defendant in the tort system; (iv) the date after the Petition Date (if any) but before the Effective Date that the claimant filed a proof of claim against Flintkote in Flintkote’s Chapter 11 proceeding; (v) the date the claimant submitted a ballot in Flintkote’s Chapter 11 proceeding for purposes of voting on the Plan pursuant to the voting procedures approved by the Bankruptcy Court; or (vi) the date after the Effective Date, but on or before the Initial Claims Filing Date, that the claim was filed with the Trust.

Following the Initial Claims Filing Date, the claimant’s position in the FIFO Processing Queue shall be determined by the date the claim is filed with the Trust. If any claims are filed on the same date, the claimant’s position in the FIFO Processing Queue shall be determined by the date of the diagnosis of the claimant’s asbestos-related disease, with claimants with earlier diagnosis dates given priority over later diagnosed claimants. If any claims are filed and diagnosed on the same date, the claimant’s position in the FIFO Processing Queue shall be determined by the date of the claimant’s birth, with older claimants given priority over younger claimants.

**5.1(a)(2) Effect of Statutes of Limitations and Repose.** All unliquidated Trust Claims must meet either, (i) for claims first filed in the tort system against Flintkote prior to the Petition Date, the applicable federal, state, or foreign statutes of limitations and repose that were in effect at the time of the filing of the claim in the tort system, or (ii) for claims that were not filed against Flintkote in the tort system prior to the Petition Date, the applicable federal, state, or foreign statute of limitations that was in effect at the time of the filing with the Trust.

However, the running of the relevant statute of limitations shall be tolled as of the earliest of (A) the actual filing of the claim against Flintkote prior to the Petition Date, whether in the tort system or by submission of the claim to Flintkote pursuant to an administrative settlement agreement; (B) the tolling of the claim against Flintkote prior to the Petition Date by an agreement or otherwise, provided such tolling is still in effect on the Petition Date; or (C) the Petition Date.

If a Trust Claim meets any of the tolling provisions described in the preceding sentence and the claim was not barred by the applicable federal, state or foreign statute of limitations at the time of the tolling event, it will be treated as timely filed if it is actually filed with the Trust within three (3) years after the Initial Claims Filing Date. In addition, any claims that were first diagnosed after the Petition Date, irrespective of the application of any relevant federal, state, or foreign statute of limitations or repose, must be filed with the Trust within three (3) years after the date of diagnosis or within three (3) years after the Initial Claims Filing Date, whichever occurs later, unless the applicable statute of limitations of the Claimant's Jurisdiction, as defined in Section 5.3(b)(2) below, is longer than three (3) years, in which case the claim must be filed within the time period prescribed by the statute of limitations of the Claimant's Jurisdiction in

effect at the time of the filing with the Trust. However, the processing of any Trust Claim by the Trust may be deferred at the election of the claimant pursuant to Section 6.3 below.

**5.1(b) Processing of Claims.** As a general practice, the Trust will review its claims files on a regular basis and notify all claimants whose claims are likely to come up in the FIFO Processing Queue in the near future.

**5.1(c) Payment of Claims.** Trust Claims that have been liquidated under the provisions of this TDP by the Expedited Review Process as provided in Section 5.3(a) below, by the Individual Review Process as provided in Section 5.3(b) below, by arbitration as provided in Section 5.10 below, or by litigation in the tort system as provided in Section 5.11 below, shall be paid in FIFO order based on the date their liquidation became final (the “FIFO Payment Queue”), all such payments being subject to the applicable Payment Percentage, the Maximum Annual Payment, the Maximum Available Payment, and the Claims Payment Ratio, except as otherwise provided herein. If the Trust Claim is entitled to a sequencing adjustment pursuant to the provisions of Section 7.5 below, the Trust shall apply such sequencing adjustment to the liquidated value of the Trust Claim. Pre-Petition Liquidated Trust Claims, as defined in Section 5.2 below, shall be subject to the Maximum Annual Payment and Payment Percentage limitations, but not to the Maximum Available Payment and Claims Payment Ratio provisions set forth above.

Where the claimant is deceased or incompetent, and the settlement and payment of his or her claim must be approved by a court of competent jurisdiction or through a probate process prior to acceptance of the claim by the claimant’s representative, an offer made by the Trust on the claim shall remain open so long as proceedings in that court or in the probate process remain pending, provided that the Trust has been furnished with evidence that the settlement offer has

been submitted to such court or in the probate process for approval. If the offer is ultimately approved by the court or through the probate process and accepted by the claimant's representative, the Trust shall pay the claim in the amount so offered, multiplied by the Payment Percentage in effect at the time the offer was first made, subject to the redetermination provisions set forth in Section 4.3 above. For purposes of placement in the FIFO Payment Queue, the date of final liquidation shall be the date the Trust receives evidence of said approval and acceptance.

If any claims are liquidated on the same date, the claimant's position in the FIFO Payment Queue shall be determined by the date of the diagnosis of the claimant's asbestos-related disease. If any claims are liquidated on the same date and the respective claimants' asbestos-related diseases were diagnosed on the same date, the position of those claimants in the FIFO Payment Queue shall be determined by the Trust based on the dates of the claimants' birth, with older claimants given priority over younger claimants.

## **5.2 Resolution of Pre-Petition Liquidated Trust Claims.**

**5.2(a) Processing and Payment.** As soon as practicable after the Effective Date, the Trust shall pay, upon submission by the claimant of all appropriate documentation required by the Trust, all Trust Claims that were liquidated (i) by a binding settlement agreement for the particular claim entered into prior to the Petition Date that is judicially enforceable by the claimant, (ii) after the Petition Date according to the terms of a binding settlement agreement entered into prior to the Petition Date (a "Pre-Petition Agreement"), (iii) by a jury verdict or non-final judgment in the tort system obtained prior to the Petition Date, or (iv) by a judgment that became final and non-appealable prior to the Petition Date (collectively "Pre-Petition Liquidated Trust Claims"). In order to receive payment from the Trust, the holder of a Pre-Petition Liquidated Trust Claim must submit all documentation necessary to demonstrate to the Trust that

the claim was liquidated in the manner described in (i), (ii), (iii), or (iv), which documentation shall include (A) a copy of the executed, binding settlement agreement, if applicable, (B) a court authenticated copy of the jury verdict (if applicable), non-final judgment (if applicable), or final judgment (if applicable), and (C) the name, Social Security number, and date of birth of the claimant and the name and address of the claimant's lawyer; provided, however, that such documentation shall not be required with respect to any Pre- Petition Liquidated Trust Claim that Flintkote has identified to the Trust as a Pre-Petition Liquidated Trust Claim as to which all conditions to payment under the applicable agreement, jury verdict, or judgment have been satisfied. Flintkote shall deliver to the Trust a list of the Pre-Petition Liquidated Trust Claims that Flintkote has approved for payment (the "Approved Pre- Petition Liquidated Trust Claims"), which claims shall be entitled to rely upon the exception set forth in the preceding sentence.

The liquidated value of a Pre-Petition Liquidated Trust Claim shall be Flintkote's share of the unpaid portion of the amount agreed to in the binding settlement agreement or Pre-Petition Agreement, the unpaid portion of the amount awarded by the jury verdict or non-final judgment, or the unpaid portion of the amount of the final judgment, as the case may be, plus interest, if any, that has accrued on that amount in accordance with the terms of the binding settlement agreement or Pre-Petition Agreement, if any, or under applicable state law for settlements or judgments as of the Petition Date; however, except as otherwise provided in Section 7.4 below, the liquidated value of a Pre-Petition Liquidated Trust Claim shall not include any punitive or exemplary damages. In addition, the amounts payable with respect to such claims shall not be subject to or taken into account in consideration of the Claims Payment Ratio and the Maximum Available Payment limitations, but shall be subject to the Maximum Annual Payment and Payment Percentage provisions. In the absence of a Final Order of the Bankruptcy Court

determining whether a settlement agreement is binding and judicially enforceable, a dispute between a claimant and the Trust over this issue shall be resolved pursuant to the same procedures in this TDP that are provided for resolving the validity and/or liquidated value of a Trust Claim (i.e., arbitration and litigation in the tort system as set forth in Sections 5.10 and 5.11 below).

The Trust shall pay the Approved Pre-Petition Liquidated Trust Claims as expeditiously as possible. The other Pre-Petition Liquidated Trust Claims shall be processed and paid in accordance with their order in a separate FIFO queue to be established by the Trust based on the date the Trust received all required documentation for the particular claim; however, the amounts payable with respect to such claims shall not be subject to or taken into account in consideration of the Claims Payment Ratio or the Maximum Available Payment, but shall be subject to the Maximum Annual Payment and Payment Percentage provisions set forth above. If any Pre-Petition Liquidated Trust Claims are filed with the Trust on the same date, the claimant's position in the FIFO queue for such claims shall be determined by the date on which the claim was liquidated. If any Pre-Petition Liquidated Trust Claims are both filed with the Trust and liquidated on the same dates, those claimants' positions in the FIFO queue shall be determined by the dates of the claimants' birth, with older claimants given priority over younger claimants.

**5.2(b) Marshalling of Security.** Holders of Pre-Petition Liquidated Trust Claims that are secured by letters of credit, appeal bonds, or other security or sureties shall first exhaust their rights against any applicable security or surety before making a claim against the Trust. Only in the event that such security or surety is insufficient to pay the Pre-Petition Liquidated Trust Claim in full shall the deficiency be processed and paid as a Pre-Petition Liquidated Trust Claim.



**5.3 Resolution of Unliquidated Trust Claims.** Within six (6) months after the establishment of the Trust, the Trustees, with the consent of the TAC and the Future Claimants' Representative, shall adopt procedures for reviewing and liquidating all unliquidated Trust Claims, which shall include deadlines for processing such claims. Such procedures shall also require claimants seeking resolution of unliquidated Trust Claims to first file a proof of claim form, together with the required supporting documentation, in accordance with the provisions of Sections 6.1 and 6.2 below. It is anticipated that the Trust shall provide an initial response to the claimant within six (6) months of receiving the proof of claim form.

The proof of claim form shall require the claimant to assert his or her claim for the highest Disease Level for which the claim qualifies at the time of filing. Irrespective of the Disease Level alleged on the proof of claim form, all claims filed with the Trust shall be deemed to be a claim for the highest Disease Level for which the claim qualifies at the time of filing, and all lower Disease Levels for which the claim may also qualify at the time of filing or in the future shall be treated as subsumed into the higher Disease Level for both processing and payment purposes.

When the claim reaches the top of the FIFO Processing Queue, the Trust shall process and liquidate the claim based upon the medical/exposure evidence submitted by the claimant, and under the process elected by the claimant. If the claimant fails to elect either the Individual Review Process or the Expedited Review Process, then the Trust shall process and liquidate the claim under the Expedited Review Process, although the claimant shall retain the right to request Individual Review as described in Section 5.3(b) below.

**5.3(a) Expedited Review Process.**

**5.3(a)(1) In General.** The Trust's Expedited Review Process is designed primarily to provide an expeditious, efficient and inexpensive method for liquidating all

Trust Claims (except those involving Disease Level V (Lung Cancer 2), Secondary Exposure Claims for Disease Levels I-VI, and all Foreign Claims (as defined below), which must be liquidated pursuant to the Trust's Individual Review process) where the claim can easily be verified by the Trust as meeting the presumptive Medical/Exposure Criteria for the relevant Disease Level. Expedited Review thus provides claimants with a substantially less burdensome process for pursuing Trust Claims than does the Individual Review Process described in Section 5.3(b) below. Expedited Review is also intended to provide qualifying claimants a fixed and certain claims value.

Thus, claims that undergo Expedited Review and meet the presumptive Medical/Exposure Criteria for the relevant Disease Level shall be liquidated at the Scheduled Value for such Disease Level set forth in Section 5.3(a)(3) below. However, all claims liquidated by Expedited Review shall be subject to the applicable Payment Percentage, the Maximum Annual Payment, the Maximum Available Payment, and the Claims Payment Ratio. Claimants holding claims that (i) cannot be liquidated by Expedited Review because they do not meet the presumptive Medical/Exposure Criteria for the relevant Disease Level or (ii) have otherwise failed to qualify for payment through the Expedited Review Process may elect the Trust's Individual Review Process set forth in Section 5.3(b) below.

Subject to the provisions of Section 5.8, the claimant's eligibility to have his or her Trust Claim liquidated at the Scheduled Value pursuant to the Expedited Review Process shall be determined solely by reference to the Medical/Exposure Criteria set forth below for each of the Disease Levels eligible for Expedited Review.

**5.3(a)(2) Claims Processing under Expedited Review.** All claimants seeking liquidation of their Trust Claims pursuant to Expedited Review shall file the

Trust's proof of claim form. As a proof of claim form is reached in the FIFO Processing Queue, the Trust shall determine whether the claim described therein meets the Medical/Exposure Criteria for one of the six Disease Levels eligible for Expedited Review, and shall advise the claimant of its determination. If a Disease Level is determined, the Trust shall tender to the claimant an offer of payment of the Scheduled Value for the relevant Disease Level multiplied by the applicable Payment Percentage, together with a form of release approved by the Trust. If the claimant accepts the Scheduled Value and returns the release properly executed, the claim shall be placed in the FIFO Payment Queue, following which the Trust shall disburse payment subject to the limitations of the Maximum Available Payment and Claims Payment Ratio, if any.

**5.3(a)(3) Disease Levels, Scheduled Values and Medical/Exposure**

**Criteria.** The seven Disease Levels covered by this TDP, together with the Medical/Exposure Criteria and Scheduled Values for each, are set forth below. These Disease Levels, Scheduled Values, and Medical/Exposure Criteria shall apply to all Asbestos Trust Voting Claims (other than Pre- Petition Liquidated Trust Claims) filed with the Trust on or before the Initial Claims Filing Date provided in Section 5.1 above for which the claimant elects the Expedited Review Process. Thereafter, for purposes of administering the Expedited Review Process and with the consent of the TAC and the Future Claimants' Representative, the Trustees may add to, change or eliminate Disease Levels, Scheduled Values, or Medical/Exposure Criteria; develop subcategories of Disease Levels, Scheduled Values or Medical/Exposure Criteria; or determine that a novel or exceptional asbestos personal injury claim is compensable even though it does not meet the Medical/Exposure Criteria for any of the then current Disease Levels.

**Disease Level**

**Scheduled Value**

**Medical/Exposure Criteria**

Mesothelioma (Level VII)	\$184,000	(1) Diagnosis <sup>6</sup> of mesothelioma; and (2) evidence of Flintkote Exposure (as defined in Section 5.7(b)(3) below).
Lung Cancer 1 (Level VI)	\$20,000	(1) Diagnosis of a primary lung cancer plus evidence of an underlying Bilateral Asbestos-Related Nonmalignant Disease, <sup>7</sup> (2) six months Flintkote Exposure prior to December 31, 1982, (3) Significant Occupational Exposure, <sup>8</sup> and (4) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the lung cancer in question.
Lung Cancer 2 (Level V)	None	(1) Diagnosis of a primary lung cancer; (2) Flintkote Exposure prior to December 31, 1982, and (3) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the lung cancer in question.  Lung Cancer 2 (Level V) claims are claims that do not meet the more stringent medical and/or exposure requirements of Lung Cancer (Level VI)

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<sup>6</sup> The requirements for a diagnosis of an asbestos-related disease that may be compensated under the provisions of this TDP are set forth in Section 5.7 below.

<sup>7</sup> Evidence of “Bilateral Asbestos-Related Nonmalignant Disease” for purposes of meeting the criteria for establishing Disease Levels I, II, IV, and VI means either (i) a chest X-ray read by a qualified B reader of 1/0 or higher on the ILO scale or, (ii) (x) a chest X-ray read by a qualified B reader or other Qualified Physician, (y) a CT scan read by a Qualified Physician, or (z) pathology, in each case showing either bilateral interstitial fibrosis, bilateral pleural plaques, bilateral pleural thickening, or bilateral pleural calcification. Evidence submitted to demonstrate (i) or (ii) above must be in the form of a written report stating the results (e.g., an ILO report, a written radiology report or a pathology report). Solely for asbestos claims filed against Flintkote or another defendant in the tort system prior to the Petition Date, if an ILO reading is not available, either (i) a chest X-ray or a CT scan read by a Qualified Physician, or (ii) pathology, in each case showing bilateral interstitial fibrosis, bilateral pleural plaques, bilateral pleural thickening, or bilateral pleural calcification consistent with, or compatible with, a diagnosis of asbestos-related disease shall be evidence of Bilateral Asbestos-Related Nonmalignant Disease for purposes of meeting the presumptive medical requirements of Disease Levels I, II, IV, and VI. Pathological proof of asbestosis may be based on the pathological grading system for asbestosis described in the Special Issue of the Archives of Pathology and Laboratory Medicine, “Asbestos-associated Diseases,” Vol. 106, No. 11, App. 3 (October 8, 1982). For all purposes of this TDP, a “Qualified Physician” is a physician who is board certified (or in the case of Canadian Claims or Foreign Claims, a physician who is certified or qualified under comparable medical standards or criteria of the jurisdiction in question) in one or more relevant specialized fields of medicine such as pulmonology, radiology, internal medicine or occupational medicine; provided, however, subject to the provisions of Section 5.8, that the requirement for board certification in this provision shall not apply to otherwise qualified physicians whose x-rays and/or CT scan readings are submitted for deceased holders of Trust Claims.

<sup>8</sup> “Significant Occupational Exposure” is defined in Section 5.7(b)(2) below.

claims. All claims in this Disease Level will be individually evaluated. The estimated likely Average Value of the individual evaluation awards for this category is \$4,000, with such awards capped at \$10,000, unless the claim qualifies for Extraordinary Claim treatment discussed in Section 5.4(a) below).

Level V claims that show no evidence of either an underlying Bilateral Asbestos-Related Non-malignant Disease or Significant Occupational Exposure may be individually evaluated, although it is not expected that such claims will be treated as having any significant value, especially if the claimant is also a Smoker.<sup>9</sup> In any event, no presumption of validity will be available for any claims in this category.

Other Cancer (Level IV)	\$4,500	(1) Diagnosis of a primary colorectal, laryngeal, esophageal, pharyngeal, or stomach cancer, plus evidence of an underlying Bilateral Asbestos-Related Nonmalignant Disease, (2) six months Flintkote Exposure prior to December 31, 1982, (3) Significant Occupational Exposure, and (4) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the other cancer in question.
Severe Asbestosis (Level III)	\$15,000	(1) Diagnosis of asbestosis with ILO <sup>10</sup> of 2/1 or greater, or asbestosis determined by pathological evidence of asbestos,

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<sup>9</sup> There is no distinction between Non-Smokers and Smokers for either Lung Cancer 1 (Level VI) or Lung Cancer 2 (Level V), although a claimant who meets the more stringent requirements of Lung Cancer 1 (Level VI) (evidence of an underlying Bilateral Asbestos-Related Nonmalignant Disease plus Significant Occupational Exposure), and who is also a Non-Smoker, may wish to have his or her claim individually evaluated by the Trust. In such a case, absent circumstances that would otherwise reduce the value of the claim, it is anticipated that the liquidated value of the claim might well exceed the \$20,000 Scheduled Value for Lung Cancer 1 (Level VI) shown above. “Non-Smoker” means a claimant who either (a) never smoked or (b) has not smoked during any portion of the twelve (12) years immediately prior to the diagnosis of the lung cancer.

<sup>10</sup> If the diagnostic images being interpreted in such regard are digital images, then a written report by a Qualified Physician confirming that the images reviewed are with reasonable certainty equivalent to those that would qualify for the required ILO grade shall be acceptable as well.

			plus (a) TLC less than 65%, or (b) FVC less than 65% and FEV1/FVC ratio greater than 65%, (2) six months Flintkote Exposure prior to December 31, 1982, (3) Significant Occupational Exposure, and (4) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the pulmonary disease in question.
Asbestosis/ Pleural Disease (Level II)	\$1,400		(1) Diagnosis of Bilateral Asbestos-Related Nonmalignant Disease, plus TLC less than 80%, or (b) FVC less than 80% and FEV1/FVC ratio greater than or equal to 65%, (2) six months Flintkote Exposure prior to December 31, 1982, (3) Significant Occupational Exposure, and (4) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the pulmonary disease in question.
Asbestosis/ Pleural Disease (Level I)	\$650		(1) Diagnosis of a Bilateral Asbestos-Related Nonmalignant Disease, (2) six months Flintkote Exposure prior to December 31, 1982, and (3) five years cumulative occupational exposure to asbestos.

**5.3(b) Individual Review Process.**

**5.3(b)(1) In General.** Subject to the provisions set forth below, a Flintkote claimant may elect to have his or her Trust Claim reviewed under the Individual Review Process for purposes of determining whether the claim would be cognizable and valid in the applicable tort system even though it does not meet the presumptive Medical/Exposure Criteria for any of the Disease Levels set forth in Section 5.3(a)(3) above. In addition or alternatively, a Flintkote claimant holding a Trust Claim involving Disease Levels III, IV, VI, or VII may elect to have a claim undergo the Individual Review Process for purposes of

determining whether the liquidated value of the claim exceeds the Scheduled Value for the relevant Disease Level also set forth in Section 5.3(a) above. However, except for claimants who allege Disease Level V, Secondary Exposure Claims for Disease Levels I-VI, and all claimants with Foreign Claims (as defined below), until such time as the Trust has made an offer on a claim pursuant to Individual Review, the claimant may change his or her Individual Review election and have the claim liquidated pursuant to the Trust's Expedited Review Process. In the event of such a change in the processing election, the claimant shall nevertheless retain his or her place in the FIFO Processing Queue.

The liquidated value of all Foreign Claims payable under this TDP shall be established under the Trust's Individual Review Process only. Trust Claims of individuals exposed in Canada who were residents in Canada when such claims were filed shall not be considered Foreign Claims hereunder and shall be eligible for liquidation under the Expedited Review Process. Accordingly, a "Foreign Claim" is a Trust Claim with respect to which the claimant's exposure to an asbestos-containing product for which Flintkote has legal responsibility occurred outside of the United States and its Territories and Possessions, and outside of the Provinces and Territories of Canada.

In reviewing Foreign Claims, the Trust shall take into account all relevant procedural and substantive legal rules to which the claims would be subject in the Claimant's Jurisdiction as defined in Section 5.3(b)(2) below (including by reference to appropriate written expert or other evidence from the Claimant's Jurisdiction). The Trust shall determine the validity and/or value of a Foreign Claim, including whether the claim has been paid, satisfied, settled, released, waived, or otherwise discharged. The Trust shall determine the liquidated value of valid Foreign Claims based on historical settlements and verdicts in the Claimant's Jurisdiction, the other

valuation factors set forth in Section 5.3(b)(2) below, and any matrices or methodologies developed pursuant to the provisions of this Section 5.3(b)(1).

For purposes of the Individual Review Process for Foreign Claims, the Trustees, with the consent of the TAC and the Future Claimants' Representative, may develop separate Medical/Exposure Criteria and standards, as well as separate requirements for physician and other professional qualifications, which shall be applicable to all Foreign Claims channeled to the Trust; provided, however, that such criteria, standards or requirements shall not effectuate substantive changes to the claims eligibility requirements under this TDP, but rather shall be made only for the purpose of adapting those requirements to the particular licensing provisions and/or medical customs or practices of the foreign country in question.

In taking into account the relevant procedural and substantive legal rules of a foreign jurisdiction, the Trust may use reliable sources and data to develop methodologies for the Trust's use in evaluating the validity of and valuing the Foreign Claims with respect to such foreign jurisdiction. The Trustees, with the consent of the TAC and the Future Claimants' Representative, may also establish a separate valuation matrix for any such Foreign Claims based on such sources and data. Any such Foreign Claims valuation matrix shall contain the "Scheduled Value," "Average Value," and "Maximum Value" amounts for the subject foreign country, and those amounts shall be the relevant amounts for any application of provisions in this TDP relating to caps or sequencing adjustment calculations for claims with respect to such country (e.g., Sections 5.4(a), 5.10(a), 7.5(b), and 7.7).

**5.3(b)(1)(A) Review of Medical/Exposure Criteria.** The Trust's Individual Review Process provides a claimant with an opportunity for individual consideration and evaluation of a Trust Claim that fails to meet the presumptive Medical/Exposure Criteria for



Disease Levels I–IV, and VI or VII. In such a case, the Trust shall either deny the claim, or, if the Trust is satisfied that the claimant has presented a claim that would be cognizable and valid in the applicable tort system, the Trust can offer the claimant a liquidated value amount up to the Scheduled Value for that Disease Level, unless the claim qualifies as an Extraordinary Claim as defined in Section 5.4(a) below, in which case its liquidated value cannot exceed the extraordinary maximum value for such a claim.

**5.3(b)(1)(B) Review of Liquidated Value.** Claimants holding claims involving Disease Levels III–VII shall also be eligible to seek Individual Review of the liquidated value of their claims, as well as of their medical/exposure evidence. The Individual Review Process is intended to result in payments equal to the full liquidated value for each claim multiplied by the applicable Payment Percentage; however, the liquidated value of any Trust Claim that undergoes Individual Review may be determined to be less than the Scheduled Value the claimant would have received under Expedited Review. Moreover, the liquidated value for a claim involving Disease Levels III–VII shall not exceed the Maximum Value for the relevant Disease Level set forth in Section 5.3(b)(3) below, unless the claim meets the requirements of an Extraordinary Claim described in Section 5.4(a) below, in which case its liquidated value cannot exceed the extraordinary maximum value set forth in that provision for such claims. Because the detailed examination and valuation process pursuant to Individual Review requires substantial time and effort, claimants electing to undergo the Individual Review Process may be paid the liquidated value of their Trust Claims later than would have been the case had the claimant elected the Expedited Review Process. Subject to the provisions of Section 5.8, the Trust shall devote reasonable resources to the review of all claims to ensure that there is a reasonable balance maintained in reviewing all classes of claims.

### **5.3(b)(2) Valuation Factors to Be Considered in Individual Review.**

The Trust will liquidate the value of each Trust Claim that undergoes Individual Review based on the historic liquidated values of other similarly situated claims in the applicable tort system for the same Disease Level. The Trust will thus take into consideration all of the factors that affect the severity of damages and values within the applicable tort system including, but not limited to credible evidence of (i) the degree to which the characteristics of a claim differ from the presumptive Medical/Exposure Criteria for the Disease Level in question; (ii) factors such as the claimant's age, disability, employment status, disruption of household, family or recreational activities, dependencies, special damages, and pain and suffering; (iii) whether the claimant's damages were (or were not) caused by asbestos exposure, including exposure to an asbestos-containing product for which Flintkote has legal responsibility prior to December 31, 1982 (for example, alternative causes, and the strength of documentation of injuries); (iv) the industry of exposure; (v) settlement and verdict histories in the Claimant's Jurisdiction for similarly situated claims; and (vi) settlement and verdict histories for the claimant's law firm for similarly situated claims. Where the claimant's law firm submits clear and convincing evidence to the Trust, and the Trustees determine, in their sole discretion, that the claimant's law firm, prior to the Petition Date, played a substantial role in the prosecution, trial and resolution of asbestos personal injury claims against Flintkote in the Claimant's Jurisdiction, such as actively participating in court appearances, discovery and trial of the subject cases (evidence will be required of all three phases: prosecution, trial and resolution for each law firm involved; necessary evidence will include evidence of active participation in the cases; and the mere referral of a case, without further involvement will not be viewed as having played a substantial role in the prosecution and resolution of a case), irrespective of whether a second law firm also was involved, the Trust shall

include such cases in the settlement and verdict histories for the claimant's law firm in the Claimant's Jurisdiction. If this occurs, the claimant's law firm shall certify, as required by the Trust, that it has provided all settlement and verdict history information for asbestos cases against Flintkote in which claimant's law firm, prior to the Petition Date, played a substantial role in the prosecution, trial and resolution of asbestos personal injury claims against Flintkote in the Claimant's Jurisdiction, as described above.

For these purposes, the "Claimant's Jurisdiction" is the jurisdiction in which the claim was filed (if at all) against Flintkote in the tort system prior to the Petition Date. If the claim was not filed against Flintkote in the tort system prior to the Petition Date, the claimant may elect as the Claimant's Jurisdiction either (i) the jurisdiction in which the claimant resides at the time of diagnosis or when the claim is filed with the Trust; or (ii) a jurisdiction in which the claimant experienced exposure to an asbestos-containing product for which Flintkote has legal responsibility.

With respect to the "Claimant's Jurisdiction" in the event a personal representative or authorized agent makes a claim under the TDP for wrongful death with respect to which the governing law of the Claimant's Jurisdiction could only be the Alabama Wrongful Death Statute, Article XVI, Section 26 of the Texas Constitution, or similar governing law that describes the claim as one for "exemplary" or "punitive" damages, the Claimant's Jurisdiction for such claim shall be the Commonwealth of Pennsylvania, and such claimant's damages shall be determined pursuant to the statutory and common laws of the Commonwealth of Pennsylvania without regard to its choice of law principles. The choice of law provision in Section 7.4 below applicable to any claim with respect to which, but for this choice of law provision, the applicable law of the Claimant's Jurisdiction pursuant to this Section 5.3(b)(2) is determined to be the

Alabama Wrongful Death Statute, Article XVI, Section 26 of the Texas Constitution, or similar governing law that describes the claim as one for “exemplary” or “punitive” damages, shall only govern the rights between the Trust and the claimant, and, to the extent the Trust seeks recovery from any entity that provided insurance coverage to Flintkote, the otherwise applicable state law shall govern.

**5.3(b)(3) Scheduled, Average, and Maximum Values.** The Scheduled, Average, and Maximum Values for domestic claims involving the Disease Levels compensable under this TDP are the following:

<b>Scheduled Disease</b>	<b>Scheduled Value</b>	<b>Average Value</b>	<b>Maximum Value</b>
Mesothelioma (Level VII)	\$184,000	\$210,000	\$450,000
Lung Cancer 1 (Level VI)	\$20,000	\$25,000	\$40,000
Lung Cancer 2 (Level V)	None	\$6,000	\$10,000
Other Cancer (Level IV)	\$4,500	\$6,000	\$10,000
Severe Asbestosis (Level III)	\$15,000	\$20,000	\$35,000
Asbestosis/Pleural Disease (Level II)	\$1,400	\$1,400	\$1,400
Asbestosis/Pleural Disease (Level I)	\$650	\$650	\$650

These Scheduled, Average, and Maximum Values shall apply to all domestic Asbestos Trust Voting Claims other than Pre-Petition Liquidated Trust Claims filed with the Trust on or before the Initial Claims Filing Date as provided in Section 5.1 above. Thereafter, the Trustees, with the consent of the TAC and the Future Claimants’ Representative, pursuant to Sections 6.7(b) and 7.7(b) of the Trust Agreement, may change these valuation amounts for good cause and consistent with other restrictions on the amendment power.

**5.4 Categorizing Claims as Extraordinary and/or Exigent Hardship.**

**5.4(a) Extraordinary Claims.** “Extraordinary Claim” means a Trust Claim that otherwise satisfies the Medical Criteria for Disease Levels III–VII, and that is held by a claimant whose exposure to asbestos (i) occurred predominately as the result of working in a manufacturing facility of Flintkote during a period in which Flintkote was manufacturing asbestos-containing products at that facility, or (ii) was at least 75% the result of exposure to an asbestos-containing product for which Flintkote has legal responsibility, and in either case there is little likelihood of a substantial recovery elsewhere. All such Extraordinary Claims shall be presented for Individual Review and, if valid, shall be entitled to an award of up to an extraordinary maximum value of five (5) times the Scheduled Value for claims qualifying for Disease Levels III, IV, VI, and VII, and five (5) times the Average Value for claims in Disease Level V, multiplied by the applicable Payment Percentage. The Trustees may ask that a holder of an Extraordinary Claim provide the Trust with evidence of all recoveries from other asbestos trusts and all asbestos-related recoveries from other defendants. If a claimant submits such evidence, the Trust shall preserve the confidentiality of the submission as provided in Section 6.5 below.

Any dispute as to Extraordinary Claim status shall be submitted to a special Extraordinary Claims Panel to be established by the Trustees with the consent of the TAC and the Future Claimants’ Representative. All decisions of the Extraordinary Claims Panel shall be final and not subject to any further administrative or judicial review. An Extraordinary Claim, following its liquidation, shall be placed in the Trust’s FIFO Payment Queue ahead of all other Trust Claims except Pre-Petition Liquidated Trust Claims and Exigent Hardship Claims, which shall be paid first in that order in said Queue, based on its date of liquidation and shall be subject to the Maximum Available Payment and Claims Payment Ratio described above.

**5.4(b) Exigent Hardship Claims.** At any time the Trust may liquidate and pay Trust Claims that qualify as Exigent Hardship Claims as defined below. Such claims may be considered separately no matter what the order of processing otherwise would have been under this TDP. An Exigent Hardship Claim, following its liquidation, shall be placed first in the FIFO Payment Queue ahead of all other liquidated Trust Claims except Pre-Petition Liquidated Trust Claims, and shall be subject to the Maximum Available Payment and Claims Payment Ratio described above. A Trust Claim qualifies for payment as an Exigent Hardship Claim if the claim meets the Medical/Exposure Criteria for Severe Asbestosis (Disease Level III) or an asbestos-related malignancy (Disease Levels IV–VII), and the Trust, in its sole discretion, determines (i) that the claimant needs financial assistance on an immediate basis based on the claimant’s expenses and all sources of available income, and (ii) that there is a causal connection between the claimant’s dire financial condition and the claimant’s asbestos-related disease.

**5.5 Secondary Exposure Claims.** Except with respect to Disease Level VII claims, if a claimant alleges an asbestos-related disease resulting solely from exposure to an occupationally exposed person, such as a family member, the claimant must seek Individual Review of his or her claim pursuant to Section 5.3(b) above. In such a case, the claimant must establish that the occupationally exposed person would have met the exposure requirements under this TDP for the claimant’s Disease Level that would have been applicable the occupationally exposed person filed a direct claim against the Trust. In addition, the claimant with secondary exposure must establish that he or she is suffering from one of the seven Disease Levels described in Section 5.3(a)(3) above or an asbestos-related disease otherwise compensable under the TDP, that his or her own exposure to the occupationally exposed person occurred within the same time frame as the occupationally exposed person was exposed to

asbestos products produced by Flintkote, and that such secondary exposure was a cause of the claimed disease. All other liquidation and payment rights and limitations under this TDP shall be applicable to such claims.

**5.6 Indirect Trust Claims.** Indirect Trust Claims asserted against the Trust shall be treated as presumptively valid and paid by the Trust subject to the applicable Payment Percentage if (a) such claim satisfied the requirements of the Bar Date for such claims established by the Bankruptcy Court, if applicable, and is not otherwise disallowed by Section 502(e) of the Code or subordinated under Section 509(c) of the Code, and (b) the holder of such claim (the “Indirect Claimant”) establishes to the satisfaction of the Trustees that (i) the Indirect Claimant has paid in full the existing liability and obligation of the Trust to the individual claimant to whom the Trust would otherwise have had a liability or obligation under these Procedures (the “Direct Claimant”), (ii) the Direct Claimant and the Indirect Claimant have forever and fully released the Trust from all liability to the Direct Claimant with respect to the Trust Claim satisfied by the Indirect Claimant, and (iii) the claim is not otherwise barred by a statute of limitations or repose or by other applicable law. In no event shall any Indirect Claimant have any rights against the Trust superior to the rights of the related Direct Claimant against the Trust, including any rights with respect to the timing, amount or manner of payment. In addition, no Indirect Claim may be liquidated and paid in an amount that exceeds what the Indirect Claimant has actually paid the related Direct Claimant.

To establish a presumptively valid Indirect Trust Claim, the Indirect Claimant’s aggregate liability for the Direct Claimant’s claim must also have been fixed, liquidated, and paid fully by the Indirect Claimant by settlement (with an appropriate full release in favor of the Trust) or a Final Order (as defined in the Plan) provided that such claim is valid under the

applicable state, federal, or foreign law. In any case where the Indirect Claimant has satisfied the claim of a Direct Claimant against the Trust under applicable law by way of a settlement, the Indirect Claimant shall obtain for the benefit of the Trust a release in form and substance satisfactory to the Trustees.

If an Indirect Claimant cannot meet the presumptive requirements set forth above, including the requirement that the Indirect Claimant provide the Trust with a full release of the Direct Claimant's claim, the Indirect Claimant may request that the Trust review the Indirect Trust Claim individually to determine whether the Indirect Claimant can establish under applicable state, federal, or foreign law that the Indirect Claimant has paid all or a portion of a liability or obligation that the Trust had to the Direct Claimant as of the Effective Date of this TDP. If the Indirect Claimant can show that it has paid all or a portion of such a liability or obligation, the Trust shall reimburse the Indirect Claimant the amount of the liability or obligation so paid, times the then applicable Payment Percentage. However, in no event shall such reimbursement to the Indirect Claimant be greater than the amount to which the Direct Claimant would have otherwise been entitled. Further, the liquidated value of any Indirect Trust Claim paid by the Trust to an Indirect Claimant shall be treated as an offset to or reduction of the full liquidated value of any Trust Claim that might be subsequently asserted by the Direct Claimant against the Trust.

Any dispute between the Trust and an Indirect Claimant over whether the Indirect Claimant has a right to reimbursement for any amount paid to a Direct Claimant shall be subject to the ADR Procedures provided in Section 5.10(a) below. If such dispute is not resolved by said ADR Procedures, the Indirect Claimant may litigate the dispute in the tort system pursuant to Sections 5.11 and 7.6 below.



The Trustees may develop and approve a separate proof of claim form for Indirect Trust Claims. Indirect Trust Claims that have not been disallowed, discharged, or otherwise resolved by prior order of the Bankruptcy Court shall be processed in accordance with procedures to be developed and implemented by the Trustees, consistent with the provisions of this Section 5.6, which procedures (a) shall determine the validity, allowability and enforceability of such claims; and (b) shall otherwise provide the same liquidation and payment procedures and rights to the holders of such claims as the Trust would have afforded the holders of the underlying valid Trust Claims. Nothing in this TDP is intended to preclude a trust to which asbestos-related liabilities are channeled from asserting an Indirect Trust Claim against the Trust subject to the requirements set forth herein.

## **5.7 Evidentiary Requirements.**

### **5.7(a) Medical Evidence.**

**5.7(a)(1) In General.** All diagnoses of a Disease Level shall be accompanied by either (i) a statement by the physician providing the diagnosis that at least ten (10) years have elapsed between the date of first exposure to asbestos or asbestos-containing products and the diagnosis, or (ii) a history of the claimant's exposure sufficient to establish a 10-year latency period. A finding by a physician after the Effective Date that a claimant's disease is "consistent with" or "compatible with" asbestosis will not alone be treated by the Trust as a diagnosis.<sup>11</sup> For all Trust Claims, including Foreign Claims, all evidence submitted to the Trust must be in English.

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<sup>11</sup> All diagnoses of Asbestosis/Pleural Disease (Disease Levels I and II) not based on pathology shall be presumed to be based on findings of bilateral asbestosis or pleural disease, and all diagnoses of Mesothelioma (Disease Level VII) shall be presumed to be based on findings that the disease involves a malignancy. However, the Trust may refute such presumptions.

**5.7(a)(1)(A) Disease Levels I–III.** Except for asbestos claims filed against Flintkote or another defendant in the tort system prior to the Petition Date, all diagnoses of a nonmalignant asbestos-related disease (Disease Levels I–III) shall be based in the case of a claimant who was living at the time the claim was filed, upon a physical examination of the claimant by the physician providing the diagnosis of the asbestos-related disease. All living claimants must provide (i) for Disease Levels I and II, evidence of Bilateral Asbestos-Related Nonmalignant Disease (as defined in footnote 7 above), (ii) for Disease Level III, an ILO reading of 2/1 or greater or pathological evidence of asbestosis, and (iii) for Disease Levels II and III, pulmonary function testing.<sup>12</sup>

In the case of a claimant who was deceased at the time the claim was filed, all diagnoses of a nonmalignant asbestos-related disease (Disease Levels I–III) shall be based upon either (i) a physical examination of the claimant by the physician providing the diagnosis of the asbestos-related disease, or (ii) pathological evidence of the nonmalignant asbestos-related disease, or (iii) in the case of Disease Levels I and II, evidence of Bilateral Asbestos-Related Nonmalignant Disease (as defined in footnote 7 above), and for Disease Level III, either an ILO reading of 2/1 or greater or pathological evidence of asbestosis; or (iv) for either Disease Level II or III, pulmonary function testing.

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<sup>12</sup> “Pulmonary function testing” or “PFT” shall mean testing that is in material compliance with the quality criteria established by the American Thoracic Society (“ATS”) and is performed on equipment which is in material compliance with ATS standards for technical quality and calibration. PFT performed in a hospital accredited by the JCAHO, or performed, reviewed or supervised by a board certified pulmonologist or other Qualified Physician shall be presumed to comply with ATS standards, and the claimant may submit a summary report of the testing. If the PFT was not performed in a JCAHO accredited hospital, or performed, reviewed or supervised by a board certified pulmonologist or other Qualified Physician, the claimant must submit the full report of the testing (as opposed to a summary report); provided, however, that if the PFT was conducted prior to the Effective Date of the Plan and the full PFT report is not available, the claimant must submit a declaration signed by a Qualified Physician or other party who is qualified to make a certification regarding a PFT in the form provided by the Trust, certifying that the PFT was conducted in material compliance with ATS standards.

**5.7(a)(1)(B) Disease Levels IV–VII.** All diagnoses of an asbestos-related malignancy (Disease Levels IV–VII) shall be based upon either (i) a physical examination of the claimant by the physician providing the diagnosis of the asbestos-related disease, (ii) a diagnosis of such a malignant Disease Level by a board-certified pathologist, or (iii) a pathology report prepared at or on behalf of a hospital accredited by the Joint Commission on Accreditation of Healthcare Organizations (“JCAHO”).

**5.7(a)(1)(C) Exception to the Exception for Certain Pre-Petition Claims.** If the holder of a Trust Claim that was filed against Flintkote or another defendant in the tort system prior to the Petition Date has available a report of a diagnosing physician engaged by the holder or his or her law firm who conducted a physical examination of the holder as described in Section 5.7(a)(1)(A), or if the holder has filed such medical evidence and/or a diagnosis of the asbestos-related disease by a physician not engaged by the holder or his or her law firm who conducted a physical examination of the claimant with another asbestos-related personal injury settlement trust that requires such evidence, without regard to whether the holder or the law firm engaged the diagnosing physician, the holder shall provide such medical evidence and/or diagnosis to the Trust notwithstanding the exception in Section 5.7(a)(1)(A).

**5.7(a)(2) Credibility of Medical Evidence.** Before making any payment to a claimant, the Trust must have reasonable confidence that the medical evidence provided in support of the claim is credible and consistent with recognized medical standards. The Trust may require the submission of X-rays, CT scans, detailed results of pulmonary function tests, laboratory tests, tissue samples, results of medical examinations or reviews of other medical evidence, and may require that medical evidence submitted comply with

recognized medical standards regarding equipment, testing methods, and procedures to assure that such evidence is reliable. Medical evidence that is (i) of a kind shown to have been received in evidence by a state or federal, or foreign judge at trial, (ii) consistent with evidence submitted to Flintkote to settle for payment of similar disease cases prior to Flintkote's bankruptcy, or (iii) a diagnosis by a physician shown to have previously qualified as a medical expert with respect to the asbestos-related disease in question before a state or federal judge, is presumptively reliable, although the Trust may seek to rebut the presumption. Notwithstanding the foregoing or any other provision of these TDP, any medical evidence submitted by a physician or entity that the Trust has determined, after consulting with the TAC and the FCR, to be unreliable shall not be acceptable as medical evidence in support of any Trust Claim.

In addition, except for Foreign Claims, claimants who otherwise meet the requirements of this TDP for payment of a Trust Claim shall be paid irrespective of the results of any litigation at any time between the claimant and any other defendant in the applicable tort system. However, any relevant evidence submitted in a proceeding in the applicable tort system involving another defendant, other than any findings of fact, a verdict, or a judgment, may be introduced by either the claimant or the Trust in any Individual Review proceeding conducted pursuant to Section 5.3(b) above or any Extraordinary Claim proceeding conducted pursuant to Section 5.4(a) above.

#### **5.7(b) Exposure Evidence.**

**5.7(b)(1) In General.** As set forth in Section 5.3(a)(3) above, to qualify for any Disease Level, the claimant must demonstrate a minimum exposure to an asbestos-containing product manufactured or distributed by Flintkote. Claims based on conspiracy theories that involve no exposure to an asbestos-containing product produced by Flintkote are not compensable under this TDP. To meet the presumptive exposure requirements of Expedited

Review set forth in Section 5.3(a)(3) above, the claimant must show (i) for all Disease Levels, Flintkote Exposure as defined in Section 5.7(b)(3) below prior to December 31, 1982; (ii) for Asbestos/Pleural Disease Level I, six (6) months Flintkote Exposure prior to December 31, 1982, plus five (5) years cumulative occupational asbestos exposure; and (iii) for Asbestosis/Pleural Disease (Disease Level II), Severe Asbestosis (Disease Level III), Other Cancer (Disease Level IV) or Lung Cancer 1 (Disease Level VI), six (6) months Flintkote Exposure prior to December 31, 1982, plus Significant Occupational Exposure as defined in Section 5.7(b)(2) below. If the claimant cannot meet the relevant presumptive exposure requirements for a Disease Level eligible for Expedited Review, the claimant may seek Individual Review pursuant to Section 5.3(b) above of his or her claim based on exposure to an asbestos-containing product for which Flintkote has legal responsibility.

**5.7(b)(2) Significant Occupational Exposure.** “Significant Occupational Exposure” means employment for a cumulative period of at least five (5) years, with a minimum of two (2) years prior to December 31, 1982 in an industry and an occupation in which the claimant (a) handled raw asbestos fibers on a regular basis; (b) fabricated asbestos-containing products so that the claimant in the fabrication process was exposed on a regular basis to raw asbestos fibers; (c) altered, repaired or otherwise worked with an asbestos-containing product such that the claimant was exposed on a regular basis to asbestos fibers; or (d) was employed in an industry and occupation such that the claimant worked on a regular basis in close proximity to workers engaged in the activities described in (a), (b), and/or (c).

**5.7(b)(3) Flintkote Exposure.** “Flintkote Exposure” means meaningful and credible exposure, which occurred prior to December 31, 1982, to asbestos or asbestos-containing products supplied, specified, manufactured, installed, maintained, or

repaired by Flintkote and/or any entity, including a Flintkote contracting unit, for which Flintkote has legal responsibility. Meaningful and credible exposure evidence may be established by an affidavit or sworn statement of the claimant, by an affidavit or sworn statement of a co-worker, or by an affidavit or sworn statement of a family member in the case of a deceased claimant (providing the Trust finds such evidence reasonably reliable), by invoices, employment, construction or similar records, interrogatory answers, sworn work histories, and depositions, or by other credible evidence. The specific exposure information required by the Trust to process a claim under either Expedited or Individual Review shall be set forth on the proof of claim form to be used by the Trust. The Trust can also require submission of other or additional evidence of exposure when it deems such to be necessary.

Evidence submitted to establish proof of exposure to Flintkote products is for the sole benefit of the Trust, not third parties or defendants in the tort system. The Trust has no need for, and therefore claimants are not required to furnish the Trust with evidence of, exposure to specific asbestos products other than those for which Flintkote has legal responsibility, except to the extent such evidence is required elsewhere in this TDP. Similarly, failure to identify Flintkote products in the claimant's underlying tort action, or to other bankruptcy trusts, does not preclude the claimant from recovering from the Trust, provided the claimant otherwise satisfies the medical and exposure requirements of this TDP.

**5.8 Claims Audit Program.** The Trust with the consent of the TAC and the Future Claimants' Representative may develop methods for auditing the reliability of medical evidence, including additional reading of X-rays, CT scans and verification of pulmonary function tests, as well as the reliability of evidence of exposure to asbestos, including exposure to asbestos-containing products manufactured or distributed by Flintkote prior to December 31, 1982. In the

event that the Trust reasonably determines that any individual or entity has engaged in a pattern or practice of providing unreliable medical or exposure evidence to the Trust, it may decline to accept additional evidence from such provider in the future.

Further, in the event that an audit reveals that fraudulent information has been provided to the Trust, the Trust may penalize any claimant or claimant's attorney by disallowing the Trust Claim and/or by other means including, but not limited to, requiring the source of the fraudulent information to pay the costs associated with the audit and any future audit or audits, reordering the priority of payment of all affected claimants' Trust Claims, raising the level of scrutiny of additional information submitted from the same source or sources, refusing to accept additional evidence from the same source or sources, seeking the prosecution of the claimant or claimant's attorney for presenting a fraudulent claim in violation of 18 U.S.C. § 152, and seeking sanctions from the Bankruptcy Court.

**5.9 Second Disease (Malignancy) Claims.** Notwithstanding the provisions of Section 2.1 above that a claimant may not assert more than one Trust Claim hereunder with respect to a specific injured party, the holder of a Trust Claim involving a nonmalignant asbestos-related disease (Disease Levels I–III) may file a new Trust Claim against the Trust for a malignant disease (Disease Levels IV–VII) that is subsequently diagnosed. Any additional payments to which such claimant may be entitled with respect to such malignant asbestos-related disease shall not be reduced by the amount paid for the nonmalignant asbestos-related disease, provided that the malignant disease had not been diagnosed at the time the claimant was paid with respect to his or her original claim involving the nonmalignant disease. The provisions hereof shall also apply with respect to claimants who were paid by Flintkote for nonmalignant asbestos-related diseases prior to the formation of the Trust.

## **5.10 Arbitration.**

**5.10(a) Establishment of ADR Procedures.** The Trust, with the consent of the TAC and the Future Claimants' Representative, shall institute binding and non-binding arbitration procedures in accordance with the ADR Procedures to be established by the Trustees, with the consent of the TAC and the FCR, for resolving disputes concerning whether a Pre-Petition settlement agreement with Flintkote is binding and judicially enforceable in the absence of a Final Order of the Bankruptcy Court determining the issue, whether the Trust's outright rejection or denial of a claim was proper, or whether the claimant's medical condition or exposure history meets the requirements of this TDP for purposes of categorizing a claim involving Disease Levels I–IV, VI, and VII. Binding and non-binding arbitration shall also be available for resolving disputes over the liquidated value of a claim involving Disease Levels III–VII as well as disputes over Flintkote's share of the unpaid portion of a Pre-Petition Liquidated Trust Claim described in Section 5.2 above and disputes over the validity of an Indirect Trust Claim.

In all arbitrations, the arbitrator shall consider the same medical and exposure evidentiary requirements that are set forth in Section 5.7 above. In the case of an arbitration involving the liquidated value of a claim involving Disease Levels III–VII, the arbitrator shall consider the same valuation factors that are set forth in Section 5.3(b)(2) above. In order to facilitate the Individual Review Process with respect to such claims, the Trust may from time to time develop valuation methodologies and/or matrices taking account of the valuation factors that are set forth in Section 5.3(b)(2) above that enable the Trust to efficiently make initial liquidated value offers on these claims in the Individual Review setting. With respect to all claims except Foreign Claims, these valuation methodologies and/or matrices are often referred



to as the Individual Review model. Except as provided below for arbitrations involving Foreign Claims, the Trust shall neither offer into evidence or describe any such methodologies and/or matrices, or assert that any information generated by the methodologies and/or matrices has any evidentiary relevance or should be used by the arbitrator in determining the presumed correct liquidated value in the arbitration. The underlying data that was used to create the methodologies and/or matrices may be relevant and may be made available to the arbitrator but only if provided to the claimant or his or her counsel at least ten (10) days prior to the arbitration proceeding.

In arbitrations involving Foreign Claims, the Trust may introduce into evidence its matrices and/or methodologies developed pursuant to Section 5.3(b)(1) above for evaluating and valuing such Foreign Claims. The arbitrator is to assign a value to a valid Foreign Claim that is consistent with the value such claim would receive in the tort system in the Claimant's Jurisdiction.

In all arbitrations, the arbitrator shall consider evidence presented by the Trust, including written expert or other evidence regarding the validity of a Foreign Claim, including evidence regarding whether the claim has been paid, satisfied, settled, released, waived, or otherwise discharged under the law and procedure of the Claimant's Jurisdiction, but only if provided to the claimant or his or her counsel at least ten (10) days prior to the arbitration hearing.

With respect to all claims eligible for arbitration, the claimant, but not the Trust, may elect either non-binding or binding arbitration. The ADR Procedures may be modified by the Trust with the consent of the TAC and the Future Claimants' Representative. Such amendments may include adoption of mediation procedures as well as establishment of an Extraordinary Claims Panel to review such claims pursuant to Section 5.4(a) above.

**5.10(b) Claims Eligible for Arbitration.** In order to be eligible for arbitration, the claimant must first complete the Individual Review Process set forth in Section 5.3(b) above with respect to the disputed issue, as well as the other preliminary steps to arbitration set forth in the ADR Procedures<sup>13</sup> with respect to the disputed issue. Individual Review will be treated as completed for these purposes when the claim has been individually reviewed by the Trust, the Trust has made an offer on the claim, the claimant has rejected the liquidated value resulting from the Individual Review, and the claimant has notified the Trust of the rejection in writing. Individual Review will also be treated as completed if the Trust has rejected the claim.

**5.10(c) Limitations on and Payment of Arbitration Awards.** In the case of a non-Extraordinary Claim involving Disease Levels III–VII, the arbitrator shall not return an award in excess of the Maximum Value for the appropriate Disease Level as set forth in Section 5.3(b)(3) above, and for an Extraordinary Claim involving one of those Disease Levels, the arbitrator shall not return an award greater than the maximum extraordinary value for such a claim as set forth in Section 5.4(a) above. For claims involving Disease Levels I and II, the arbitrator shall not award more than the Scheduled Value for such claims. A claimant who submits to arbitration and who accepts the arbitral award will receive payment in the same manner as one who accepts the Trust’s original valuation of the claim.

**5.11 Litigation.** Claimants who elect non-binding arbitration and then reject their arbitral awards retain the right to institute a lawsuit in the tort system against the Trust pursuant to Section 7.6 below. However, a claimant shall be eligible for payment of a judgment for monetary damages obtained in the tort system from the Trust’s available cash only as provided in Section 7.7 below.

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<sup>13</sup> To the extent there is any ambiguity or conflict between any provision of this TDP and the ADR Procedures, the provisions of this TDP shall control.

## SECTION VI

### Claims Materials

**6.1 Claims Materials.** The Trust shall prepare suitable and efficient claims materials (“Claims Materials”) for all Trust Claims, and shall provide such Claims Materials upon a written request for such materials to the Trust. The proof of claim form to be submitted to the Trust shall require the claimant to (i) assert the highest Disease Level for which the claim qualifies at the time of filing and shall include a certification by the claimant or his or her attorney sufficient to meet the requirements of Rule 11(b) of the Federal Rules of Civil Procedure, and (ii) provide sufficient information for the Trust to determine whether the claim resulted from exposure for which the Flintkote Company, Flintkote Mines Limited, or both the Flintkote Company and Flintkote Mines Limited have legal responsibility. In developing its claim filing procedures, the Trust shall make every reasonable effort to provide claimants with the opportunity to utilize currently available technology at their discretion, including filing claims and supporting documentation over the internet and electronically by disk or CD-rom. The proof of claim form to be used by the Trust shall be developed by the Trust and submitted to the TAC and the Future Claimants’ Representative for approval; it may be changed by the Trust with the consent of the TAC and the Future Claimants’ Representative.

**6.2 Content of Claims Materials.** The Claims Materials shall include a copy of this TDP, such instructions as the Trustees shall approve, and a detailed proof of claim form. If feasible, the forms used by the Trust to obtain claims information shall be the same or substantially similar to those used by other asbestos claims resolution organizations. If requested by the claimant, the Trust shall accept information provided electronically. The claimant may, but will not be required to, provide the Trust with evidence of recovery from other asbestos defendants and claims resolution organizations, except that the Trust may require a claimant

holding a Foreign Claim to provide it with such evidence of recovery or other information that such claimant would be required to provide pursuant to the substantive law, rules of procedure, or practices in the tort system in the Claimant's Jurisdiction, including pre- and post-verdict rules, so as to enable the Trust to (1) determine whether the claim would be valid and cognizable in the tort system in the Claimant's Jurisdiction, (2) comply with the provisions of Section 5.3(b)(1) hereof, and (3) determine Flintkote's several share of liability for the claimant's unpaid damages.

**6.3 Withdrawal or Deferral of Claims.** A claimant can withdraw a Trust Claim at any time upon written notice to the Trust and file another such claim subsequently without affecting the status of the claim for statute of limitations or repose purposes, but any such claim filed after withdrawal shall be given a place in the FIFO Processing Queue based on the date of such subsequent filing. A claimant can also request that the processing of his or her Trust Claim by the Trust be deferred for a period not to exceed three (3) years without affecting the status of the claim for statute of limitations purposes, in which case the claimant shall also retain his or her original place in the FIFO Processing Queue. During the period of such deferral, a sequencing adjustment on such claimant's Trust Claim as provided in Section 7.5 below shall not accrue and payment thereof shall be deemed waived by the claimant. Except for Trust Claims held by representatives of deceased or incompetent claimants for which court or probate approval of the Trust's offer is required, or a Trust Claim for which deferral status has been granted, a claim will be deemed to have been withdrawn if the claimant neither accepts, rejects, nor initiates arbitration within six (6) months of the Trust's written offer of payment or rejection of the claim. Upon written request and good cause, the Trust may extend either the deferral or withdrawal period for an additional six (6) month period.

**6.4 Filing Requirements and Fees.** The Trustees shall have the discretion to determine, with the consent of the TAC and the Future Claimants' Representative, (a) whether a claimant must have previously filed an asbestos-related personal injury claim in the tort system to be eligible to file the claim with the Trust, and (b) whether a filing fee should be required for any Trust Claims.

**6.5 Confidentiality of Claimants' Submissions.** All submissions to the Trust by a holder of a Trust Claim or a proof of claim form and materials related thereto shall be treated as made in the course of settlement discussions between the holder and the Trust and intended by the parties to be confidential and to be protected by all applicable state and federal privileges, including, but not limited to, those directly applicable to settlement discussions. The Trust will preserve the confidentiality of such claimant submissions, and shall disclose the contents thereof only, with the permission of the holder, to another trust established for the benefit of asbestos personal injury claimants pursuant to section 524(g) and/or section 105 of the Bankruptcy Code or other applicable law, to such other persons as authorized by the holder, or in response to a valid subpoena of such materials issued by the Bankruptcy Court, a Delaware State Court, the United States District Court for the District of Delaware or any other court or body that may issue a valid subpoena on the Trust. Furthermore, the Trust shall provide counsel for the holder a copy of any such subpoena immediately upon being served. The Trust shall on its own initiative or upon request of the claimant in question take all necessary and appropriate steps to preserve said privileges before the Bankruptcy Court, a Delaware State Court, the United States District Court for the District of Delaware or any other similar body that may issue a valid subpoena on the Trust and before those courts having appellate jurisdiction related thereto. Notwithstanding anything in the foregoing to the contrary, with the consent of the TAC and the

Future Claimants' Representative, the Trust may, in specific limited instances, disclose information, documents or other materials reasonably necessary in the Trust's judgment to preserve, litigate, resolve, or settle coverage, or to comply with an applicable obligation under an insurance policy or settlement agreement within the Asbestos Insurance Policies or the Asbestos Insurance Settlement Agreements; provided, however, that the Trust shall take any and all steps reasonably feasible in its judgment to preserve the further confidentiality of such information, documents, and materials, and prior to the disclosure of such information, documents or materials to a third party, the Trust shall receive from such third party a written agreement of confidentiality that (a) ensures that the information, documents, and materials provided by the Trust shall be used solely by the receiving party for the purpose stated in the agreement, and (b) prohibits any other use or further dissemination of the information, documents, and materials by the third party.

## **SECTION VII**

### **General Guidelines for Liquidating and Paying Claims**

**7.1 Showing Required.** To establish a valid Trust Claim, a claimant must meet the requirements set forth in this TDP. The Trust may require the submission of X-rays, CT scans, laboratory tests, medical examinations or reviews, other medical evidence, or any other evidence to support or verify the Trust Claim, and may further require that medical evidence submitted comply with recognized medical standards regarding equipment, testing methods, and procedures to assure that such evidence is reliable.

Nothing in this TDP shall prohibit the Trust at any time from challenging the validity of a claim under the provisions of this TDP and/or whether a claim has been paid, satisfied, settled, released, waived, or otherwise discharged; provided, however, that as provided in Section 5.9,

the Trust shall not assert a prior release for a nonmalignant disease as a defense in the event a claimant later develops a malignant disease.

**7.2 Costs Considered.** Notwithstanding any provisions of this TDP to the contrary, the Trustees shall always give appropriate consideration to the cost of investigating and uncovering invalid Trust Claims so that the payment of valid Trust Claims is not further impaired by such processes with respect to issues related to the validity of the medical evidence supporting a Trust Claim. The Trustees shall also have the latitude to make judgments regarding the amount of transaction costs to be expended by the Trust so that valid Trust Claims are not unduly further impaired by the costs of additional investigation. Nothing herein shall prevent the Trustees, in appropriate circumstances, from contesting the validity of any claim against the Trust whatever the costs, or declining to accept medical evidence from sources that the Trustees have determined to be unreliable pursuant to the Claims Audit Program described in Section 5.8 above.

**7.3 Discretion to Vary the Order and Amounts of Payments in Event of Limited Liquidity.** Consistent with the provisions hereof and subject to the FIFO Processing and Payment Queues, the Maximum Annual Payment, the Maximum Available Payment and the Claims Payment Ratio requirements set forth above, the Trustees shall proceed as quickly as possible to liquidate valid Trust Claims, and shall make payments to holders of such claims in accordance with this TDP promptly as funds become available and as claims are liquidated, while maintaining sufficient resources to pay future valid claims in substantially the same manner.

Because the Trust's income and liabilities over time remain uncertain, and decisions about payments must be based on estimates that cannot be done precisely, such decisions may

have to be revised in light of experiences over time, and there can be no guarantee of any specific level of payment to claimants. However, the Trustees shall use their best efforts to treat similar claims in substantially the same manner, consistent with their duties as Trustees, the purposes of the Trust, the established allocation of funds to claims in Categories A and B, and the practical limitations imposed by the inability to predict the future with precision.

In the event that the Trust faces temporary periods of limited liquidity, the Trustees may, with the consent of the TAC and the Future Claimants' Representative, (a) suspend the normal order of payment, (b) temporarily limit or suspend payments altogether, (c) offer a Reduced Payment Option as described in Section 2.5 above, and/or (d) commence making payments on an installment basis.

**7.4 Punitive Damages.** Except as provided below for claims asserted under the Alabama Wrongful Death Statute, Article XVI, Section 26 of the Texas Constitution, or similar governing law that describes the claim as one for “exemplary” or “punitive” damages, in determining the value of any liquidated or unliquidated Trust Claim, punitive or exemplary damages, i.e., damages other than compensatory damages, shall not be considered or allowed, notwithstanding their availability in the tort system. Similarly, no punitive or exemplary damages shall be payable with respect to any claim litigated against the Trust in the tort system pursuant to Sections 5.11 above and 7.6 below. The only damages that may be awarded pursuant to this TDP to claimants who are deceased and whose personal representatives pursue their claims only under the Alabama Wrongful Death Statute, Article XVI, Section 26 of the Texas Constitution, or similar governing law that describes the claim as one for “exemplary” or “punitive” damages, shall be compensatory damages determined pursuant to the statutory and common law of the Commonwealth of Pennsylvania, without regard to its choice of law principles. The choice of



law provision in this Section 7.4 applicable to any claim with respect to which, but for this choice of law provision, the applicable law of the Claimant's Jurisdiction pursuant to Section 5.3(b)(2) is determined to be the Alabama Wrongful Death Statute, Article XVI, Section 26 of the Texas Constitution, or similar governing law that describes the claim as one for "exemplary" or "punitive" damages, shall only govern the rights between the Trust and the claimant including, but not limited to, suits in the tort system pursuant to Section 7.6 below, and to the extent the Trust seeks recovery from any entity that provided insurance to Flintkote, the otherwise applicable state law shall govern.

#### **7.5 Sequencing Adjustment.**

**7.5(a) In General.** Subject to the limitations set forth below, a sequencing adjustment shall be paid on all Trust Claims with respect to which the claimant has had to wait a year or more for payment, provided, however, that no claimant shall receive a sequencing adjustment for a period in excess of seven (7) years. The sequencing adjustment factor for each year shall be the coupon issue yield equivalent (as determined by the Secretary of the Treasury) of the average accepted auction price for the first auction of 5-year Treasury Notes occurring in such year.

**7.5(b) Unliquidated Trust Claims.** A sequencing adjustment shall be payable on the Scheduled Value of any unliquidated Trust Claim that meets the requirements of Disease Levels I-IV, VI, and VII, whether the claim is liquidated under Expedited Review, Individual Review, or by arbitration. No sequencing adjustment shall be paid on any claim liquidated in the tort system pursuant to Sections 5.11 above and 7.6 below. The sequencing adjustment on an unliquidated Trust Claim that meets the requirements of Disease Level V shall be based on the Average Value of such a claim. Sequencing adjustments on all such unliquidated claims shall be

measured from the date of payment back to the earliest of the date that is one year after the date on which (a) the claim was filed against Flintkote prior to the Petition Date, (b) the claim was filed against another defendant in the tort system on or after the Petition Date, but before the Effective Date, or (c) the claim was filed with the Trust after the Effective Date.

**7.5(c) Liquidated Pre-Petition Trust Claims.** A sequencing adjustment shall also be payable on the liquidated value of all Pre-Petition Liquidated Trust Claims described in Section 5.2(a) above. In the case of Pre-Petition Liquidated Trust Claims liquidated by verdict or judgment, the sequencing adjustment shall be measured from the date of payment back to the date that is one year after the date that the verdict or judgment was entered. In the case of Pre-Petition Liquidated Trust Claims liquidated by a binding, judicially enforceable settlement, the sequencing adjustment shall be measured from the date of payment back to the date that is one year after the Petition Date.

**7.6 Suits in the Tort System.** If the holder of a disputed claim disagrees with the Trust's determination regarding the Disease Level of the claim, the claimant's exposure or medical history, the validity of the claim under the provisions of this TDP, or the liquidated value of the claim, and if the holder has first submitted the claim to non-binding arbitration as provided in Section 5.10 above, the holder may file a lawsuit in the Claimant's Jurisdiction as defined in Section 5.3(b)(2) above. Any such lawsuit must be filed by the claimant in his or her own right and name and not as a member or representative of a class, and no such lawsuit may be consolidated with any other lawsuit. All defenses (including, with respect to the Trust, all defenses which could have been asserted by Flintkote) shall be available to both sides at trial; however, the Trust may waive any defense and/or concede any issue of fact or law. If the claimant was alive at the time the initial pre-petition complaint was filed or on the date the proof

of claim form was filed with the Trust, the case will be treated as a personal injury case with all personal injury damages to be considered even if the claimant has died during the pendency of the claim.

**7.7 Payment of Judgments for Money Damages.** If and when a claimant obtains a judgment in the tort system, the claim shall be placed in the FIFO Payment Queue based on the date on which the judgment became final. Thereafter, the claimant shall receive from the Trust an initial payment (subject to the applicable Payment Percentage, the Maximum Annual Payment, the Maximum Available Payment, and the Claims Payment Ratio provisions set forth above) of an amount equal to 100% of the greater of (i) the Trust's last offer to the claimant or (ii) the award that the claimant declined in non-binding arbitration; provided, however, that in no event shall such payment amount exceed the amount of the judgment obtained in the tort system. The claimant shall receive the balance of the judgment, if any, in five (5) equal installments in years six (6) through ten (10) following the year of the initial payment (also subject to the applicable Payment Percentage, the Maximum Annual Payment, the Maximum Available Payment, and the Claims Payment Ratio provisions set forth above in effect on the date of the payment of the subject installment).

In the case of non-Extraordinary Claims involving Disease Levels III–VII, the total amounts paid with respect to such claims shall not exceed the Maximum Values for such Disease Levels set forth in Section 5.3(b)(3) above. In the case of Extraordinary Claims, the total amounts paid with respect to such claims shall not exceed the extraordinary maximum value for such claims set forth in Section 5.4(a) above. In the case of claims involving Disease Levels I and II, the total amounts paid with respect to such claims shall not exceed the Scheduled Value of such claims. Under no circumstances shall either a sequencing adjustment be paid pursuant to

Section 7.5 above or interest be paid under any statute on any judgments obtained in the tort system pursuant to Sections 5.11 and 7.6 above.

**7.8 Releases.** The Trustees shall have the discretion to determine the form and substance of the releases to be provided to the Trust in order to maximize recovery for claimants against other tortfeasors without increasing the risk or amount of claims for indemnification or contribution from the Trust. As a condition to making any payment to a claimant, the Trust shall obtain a general, partial, or limited release as appropriate in accordance with the applicable state, federal, foreign, or other law. If allowed by applicable law, the endorsing of a check or draft for payment by or on behalf of a claimant may, in the discretion of the Trust, constitute such a release.

**7.9 Third-Party Services.** Nothing in this TDP shall preclude the Trust from contracting with another asbestos claims resolution organization to provide services to the Trust so long as decisions about the categorization and liquidated value of Trust Claims are based on the relevant provisions of this TDP, including the Disease Levels, Scheduled Values, Average Values, Maximum Values, and Medical/Exposure Criteria set forth above.

**7.10 Trust Disclosure of Information.** Periodically, but not less often than once a year, the Trust shall make available to claimants and other interested parties, the number of claims by Disease Levels that have been resolved both by the Individual Review Process and by arbitration as well as by litigation in the tort system, indicating the amounts of the awards and the averages of the awards by jurisdiction.

## **SECTION VIII**

### **Miscellaneous**

**8.1 Amendments.** Except as otherwise provided herein, the Trustees may amend, modify, delete, or add to any provisions of this TDP (including, without limitation, amendments

to conform this TDP to advances in scientific or medical knowledge or other changes in circumstances), provided they first obtain the consent of the TAC and the Future Claimants' Representative pursuant to the Consent Process set forth in Sections 6.7(b) and 7.7(b) of the Trust Agreement, except that the right to amend the Claims Payment Ratio is governed by the restrictions in Section 2.5 above, and the right to adjust the Payment Percentage is governed by Section 4.2 above. Nothing herein is intended to preclude the TAC or the Future Claimants' Representative from proposing to the Trustees, in writing, amendments to this TDP. Any amendment proposed by the TAC or the Future Claimants' Representative shall remain subject to Section 8.3 of the Trust Agreement.

**8.2 Severability.** Should any provision contained in this TDP be determined to be unenforceable, such determination shall in no way limit or affect the enforceability and operative effect of any and all other provisions of this TDP. Should any provision contained in this TDP be determined to be inconsistent with or contrary to Flintkote obligations to any insurance company providing insurance coverage to Flintkote in respect of claims for personal injury based on exposure to asbestos-containing products manufactured or produced by Flintkote, the Trust with the consent of the TAC and the Future Claimants' Representative, may amend this TDP and/or the Trust Agreement to make the provisions of either or both documents consistent with the duties and obligations of Flintkote to said insurance company.

**8.3 Governing Law.** Except for purposes of determining the liquidated value of any Trust Claim, administration of this TDP shall be governed by, and construed in accordance with, the laws of the State of Delaware. The law governing the liquidation of Trust Claims in the case of Individual Review, arbitration or litigation in the tort system shall be the law of the Claimant's Jurisdiction as described in Section 5.3(b)(2) above.

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