

STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

BEFORE THE COURT-APPOINTED REFEREE IN THE LIQUIDATION OF THE  
HOME INSURANCE COMPANY DISPUTED CLAIMS DOCKET

Claimant: Century Indemnity Company  
Proof of Claim Nos.: AMBC 465096  
AMBC 464386  
INTL 277878  
AMBC 465074  
Proceeding: 2005-HICIL-14

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**MOTION TO INTERVENE AND PARTICIPATE FILED ON BEHALF OF METEX  
MFG. CORPORATION, DEBTOR-IN-POSSESSION AND MEMORANDUM OF FACT  
AND LAW IN SUPPORT THEREOF**

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| CENTURY INDEMNITY COMPANY,<br><br>Claimant,<br><br>v.<br><br>ROGER A. SEVIGNY, INSURANCE<br>COMMISSIONER OF THE STATE OF NEW<br>HAMPSHIRE, AS LIQUIDATOR OF THE<br>HOME INSURANCE COMPANY,<br><br>Respondent. | Proceeding No. 2005-HICIL-14 |
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**MOTION TO INTERVENE AND PARTICIPATE**

Metex Mfg. Corporation, debtor-in-possession (the “Debtor” or “Metex”), by and through its undersigned counsel, hereby moves to intervene and participate in the above-captioned disputed claim proceeding. In support of this Motion, the Debtor states as follows:

1. The Debtor seeks leave to intervene and participate in this disputed claim proceeding for the purpose of protecting its rights under certain insurance policies (the “Policies”) issued by The Home Insurance Company (“The Home”) which are at issue in this proceeding. For the reasons set forth herein and in the Memorandum of Fact and Law filed in support hereof (the “Memorandum”), the Debtor’s interest in the Policies and the proceeds thereof may be directly and negatively affected by the outcome of this proceeding. Moreover, the Debtor’s Motion is timely. Accordingly, the Debtor has a right to intervene and participate in this proceeding.

2. The Debtor wishes to intervene in this disputed claim proceeding only on a going forward basis, and does not seek to alter or undo any actions that have already been

taken by the Referee or the current parties hereto, or to substantially delay this proceeding. Additionally, the Debtor does not intend to seek discovery, but rather merely seeks an opportunity to review the submissions of the parties in unredacted form (subject to the confidentiality order entered herein) and to be heard with respect to its rights implicated in this proceeding.

3. As the Referee is aware, this disputed claim proceeding involves an alleged \$5.5 million contribution claim and right to set-off asserted by Century Indemnity Company (as successor to CCI Insurance Company, as successor to Insurance Company of North America) (herein“Century”) against Century’s obligations to The Home. Century contends that it is entitled to that remedy based upon its prior payment of Kentile asbestos personal injury claims (as defined in the Memorandum). Its contribution claim and right to set-off have been disputed by the Insurance Commissioner of the State of New Hampshire, as liquidator of The Home (the “Liquidator”).

4. In June 2004, Metex timely filed a proof of claim in The Home liquidation, pursuant to which it seeks recovery under the Policies for losses sustained from payments made by Metex or on its behalf on account of Kentile asbestos personal injury claims.

5. Metex is currently a debtor and debtor-in-possession in a bankruptcy case pending before the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”), docketed as Case No. 12-14554 (BRL) (the “Bankruptcy Case”).

6. As the policyholder, the Policies and the proceeds thereof are property of the Debtor’s bankruptcy estate. *See MacArthur v. Johns-Manville Corp.*, 837 F.2d 89, 92-93 (2d Cir. 1988) (holding insurance policies and proceeds thereof constitute property of the estate); *In re Quigley*, 676 F.3d 45, 53 (2d Cir. 2012) (same).

7. In connection with the Bankruptcy Case and directly related to the Policies at issue here, the Liquidator, Debtor, and the New York Liquidation Bureau (the “NYLB”), an entity acting as Ancillary Receiver for The Home in the State of New York, entered into a proposed settlement agreement (the “Proposed NYLB Settlement”) which provides for, *inter alia*, full exhaustion of the coverage under Policies in exchange for payment of the remaining limits (\$10,963,852.62) of the Policies to the Debtor’s bankruptcy estate.<sup>1</sup> Pursuant to the terms of the Proposed NYLB Settlement, any recovery by Century herein, whether by contribution, set-off or otherwise, will diminish the Debtor’s recovery under the Policies, dollar for dollar. *See* Proposed NYLB Settlement, section I.RR, a copy of which is attached hereto as **Exhibit A**.

8. Accordingly, the Debtor, its estate, and the Debtor’s creditors, *i.e.*, individuals with Kentile asbestos personal injury claims, may be injured as a result of this disputed claim proceeding. The Debtor seeks leave to intervene to protect the value of assets of the estate in discharge of its duty to collect, protect and preserve assets of the estate in accordance with section 704(a)(1) of the Bankruptcy Code. *See* 11 U.S.C. §§ 704(a)(1), 1107(a).

9. Because any recovery by Century in this proceeding would diminish the value of property of the Debtor’s estate (*i.e.*, the Policies and proceeds thereof, including any payments due under the Proposed NYLB Settlement) on a dollar-for-dollar basis, Century’s actions in this proceeding contravene the automatic stay provided under section 362(a) of the Bankruptcy Code. *See* 11 U.S.C. §362(a)(3).

10. Although this disputed claim proceeding may be subject to the automatic stay, the Debtor has obtained authority from the Bankruptcy Court to seek leave to intervene and participate herein because the Debtor believes that this is the appropriate venue to adjudicate

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<sup>1</sup> Although the settlement is fully executed, the settlement agreement requires bankruptcy court approval to become effective.

Century's contribution claim, provided the Debtor has a full opportunity to be heard. Pursuant to the order authorizing the Debtor to seek leave to intervene, the issue of whether the automatic stay applies to this proceeding has been expressly preserved by the Bankruptcy Court.<sup>2</sup>

11. Recognizing the Debtor's right to recover under The Home Policies and a potential conflict with the automatic stay provided under the Bankruptcy Code, the Liquidator filed a position paper on May 13, 2013 supporting the Debtor's participation in the disputed claim proceeding. Century filed a response the same day in which it concedes that should the Debtor's request to intervene be denied, this proceeding may be stayed by the Bankruptcy Court. Century Letter of May 13, 2012 at 3. Such an outcome is not in the interest of orderly and efficient proceedings in this matter.

12. Pursuant to the Restated and Revised Order Establishing Procedures Regarding Claims Filed With The Home Insurance Company In Liquidation (the "Liquidation Procedures") adopted in The Home liquidation and applicable here, entities "directly affected" by a disputed claim proceeding may intervene and participate in such proceeding. *See* Liquidation Procedures, § 9(b).<sup>3</sup>

13. The Liquidation Procedures further provide that a disputed claim proceeding shall be conducted "according to the rules of the law or equity, as the case may be, pursuant to RSA 519:10, and shall be governed by the New Hampshire Superior Court Rules and the New Hampshire Rules of Evidence." Liquidation Procedures, § 10(b).

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<sup>2</sup> Nothing contained herein shall constitute a waiver of the Debtor's right to seek imposition of the automatic stay, which right is expressly reserved.

<sup>3</sup> Section 9(b) provides that a party must seek leave to intervene within thirty days of receiving notice of the disputed claims proceeding; however, upon information and belief, Metex did not receive notice of these proceedings from the Liquidation Clerk as required under R.S.A. 402-C:41 or Liquidation Procedure § 9.

14. Superior Court Rule 139 provides, in pertinent part, “Any person shown to be interested may become a party to any proceeding in equity on his petition briefly setting forth his relation to the cause; or, upon petition of any party, such person may be made a party by order of court notifying him to appear therein.” N.H. Super. Ct. R. 139. “The right of a party to intervene in pending litigation in this state has been rather freely allowed as a matter of practice.” *Lamarche v. McCarthy*, 158 N.H. 197, 200 (2008) (citations omitted). “A trial court should grant a motion to intervene if the party seeking to intervene has a right involved in the trial and a direct and apparent interest therein.” *Id.*

15. As set forth herein and in the Memorandum, the Debtor will be “directly affected” by the resolution of this disputed claim proceeding because any recovery obtained by Century on account of its contribution claim will diminish the Debtor’s recovery against The Home Policies, including without limitation, recovery under the Proposed NYLB Settlement.

16. The Liquidator assents to this Motion. The Debtor sought Century’s assent with respect to this Motion, explaining the limited basis upon which it intends to intervene. Century requested that it be permitted to review the Motion, as filed, before providing its position.

17. In further support of this Motion, the Debtor submits the accompanying Memorandum of Fact and Law filed in support hereof setting forth the basis upon which it seeks intervene and participate in this proceeding.

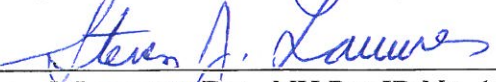
WHEREFORE, the Debtor respectfully requests that this Court enter an order:

- (i) Granting the Debtor leave to intervene and participate in the above-captioned disputed claims proceeding; and
- (ii) Such further relief as the Court deems just and appropriate.

Dated: July 10, 2013

Respectfully submitted,

RATH, YOUNG & PIGNATELLI, P.C.

By: 

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# **EXHIBIT A**



## SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release is made and entered into as of the Execution Date by and among Metex Mfg. Corporation (hereinafter referred to as "Metex"), a debtor and debtor-in-possession under the Bankruptcy Code, Roger A. Sevigny, Insurance Commissioner of the State of New Hampshire, as Liquidator (hereinafter referred to as the "Liquidator") of The Home Insurance Company (hereinafter referred to as "Home"), and the Superintendent of Financial Services of the State of New York as Administrator of the New York Property/Casualty Insurance Security Fund (hereinafter referred to as the "Security Fund") and as Ancillary Receiver of Home (hereinafter referred to as the "Ancillary Receiver"), in each case by his agent, the Acting Special Deputy Superintendent (hereinafter Security Fund and Ancillary Receiver are collectively referred to as the "NYLB"), with respect to the Insurance Policies (as defined below).

### Recitals

WHEREAS, until the mid-1990s, Kentile Floors, Inc. ("Kentile") was a manufacturer of various types of composite floor tile for residential and commercial use;

WHEREAS, Kentile used asbestos for a time as one of the components in certain of its products;

WHEREAS, beginning in the 1970s, Kentile was named a defendant in a number of lawsuits asserting claims for personal injury or wrongful death resulting from exposure to Kentile asbestos containing products;

WHEREAS, during the 1970s and 1980s Kentile experienced financial difficulties and had to close certain of its plants;

WHEREAS, as a consequence of its deteriorating financial condition and an increasing number of asbestos personal injury claims, on November 20, 1992 ("Petition Date"), Kentile filed a petition under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York as Case No. 92-B-46466 (BRL);

WHEREAS, on the Petition Date, Kentile was the subject of a number of claims alleging personal injury or wrongful death resulting from exposure to Kentile's asbestos-containing floor tile products;

WHEREAS, on December 15, 1998 (the "Confirmation Date"), Kentile confirmed a plan of reorganization in its Chapter 11 case ("Kentile's Chapter 11 Plan");

WHEREAS, under Kentile's Chapter 11 Plan, Kentile changed its name to KF Real Estate Holding Corporation ("KF Corp.");

WHEREAS, shortly after the Confirmation Date, Metex Corporation merged with and into KF Corp. and KF Corp., as the surviving entity, changed its name to "Metex Mfg. Corporation;"

WHEREAS, after the Confirmation Date, Kentile continued to be named as a defendant in thousands of new Asbestos-Related Claims (as defined below) and continues to be named, and may in the future be named, in such claims;

WHEREAS, on the date hereof, Kentile has outstanding against it approximately 28,000 Asbestos-Related Claims;

WHEREAS, Home issued, or is alleged to have issued, certain Insurance Policies to Kentile;

WHEREAS, Home was declared insolvent and ordered liquidated and the Liquidator was appointed by order of liquidation issued by the Superior Court for Merrimack County, New

Hampshire (hereinafter referred to as the “Liquidation Court”) on June 13, 2003 in *In the Matter of the Liquidation of The Home Ins. Co.*, No. 03-E-0106 (hereafter referred to as the “Home Liquidation”);

WHEREAS, the Ancillary Receiver was appointed by order of the Supreme Court of the State of New York, County of New York (hereinafter referred to as the “Ancillary Receivership Court”) on September 24, 2003 in *In the Matter of the Ancillary Receivership of The Home Ins. Co.*, Index No. 402671/2003;

WHEREAS, Metex, Other Insurers, and holders of certain Asbestos PI Claims have submitted Claims to the NYLB and/or in the Home Liquidation under Insurance Policies issued by Home;

WHEREAS, the number and value of asbestos-related claims against Metex made or anticipated to be made against the Security Fund with respect to the Insurance Policies will exhaust the aggregate limit of insurance coverage provided for by the Insurance Policies identified on Exhibit B;

WHEREAS, Century Indemnity Company (as successor to CCI Insurance Company, as successor to Insurance Company of North America, on its own behalf and as successor to Indemnity Insurance Company of North America) (“Century Indemnity”), ACE Property & Casualty Company (*f/k/a* CIGNA Property and Casualty Company *f/k/a* Aetna Insurance Company), and Westchester Fire Insurance Company (hereafter collectively referred to as “Century Indemnity Parties”) entered into a settlement agreement with Metex pursuant to which the Century Indemnity Parties reserved and did not assign to the Asbestos PI Trust certain Claims against the Home, Liquidator and NYLB;

WHEREAS, Century Indemnity submitted a Claim in the Home Liquidation in the approximate amount of \$5.5 million for Home's purported pro rata share of defense and indemnity in connection with Asbestos PI Claims between 2003 and 2010, which Claim was denied by the Liquidator (hereafter this Claim, including any potential future or amended Claim asserted by Century Indemnity and any Claims by the Century Indemnity Parties are referred to as the "Century Indemnity Claim"). Century Indemnity is pursuing allowance of the Century Indemnity Claim by the Liquidation Court, which Claim is opposed by Liquidator, and Century Indemnity takes the position that the limits of the Insurance Policies have been impaired in the amount of the Century Indemnity Claim;

WHEREAS, the Security Fund previously paid \$14,016,147.38 to certain claimants, including Liberty Mutual Insurance Company, a certain Other Insurer, and certain holders of Asbestos Related Claims, in connection with Claims asserted against the Insurance Policies and pursuant to orders entered by the Ancillary Receivership Court, which are identified in Exhibit A attached hereto. Included in these payments was a payment in respect of Century Indemnity in the amount of \$399,949.26. The Security Fund will also pay an additional \$408,849.50 to certain claimants in connection with Claims asserted against the Insurance Policies pursuant to a December 4, 2012 order of the Ancillary Receivership Court (upon the Bankruptcy Court's approval of a stipulation to be filed by Metex in its Chapter 11 Case regarding such payment). In addition, other Asbestos PI Claims remain pending against the Security Fund;

WHEREAS, beginning in the mid-2000's, a number of disputes arose among Kentile's Other Insurers (as defined below) and Metex regarding, among other things, the proper allocation of defense costs and indemnity, and the available limits of coverage under the various policies. The parties were unable to resolve these disputes through negotiation, and in 2008 one

of the Other Insurers initiated an insurance-coverage action against Metex and the Other Insurers in the New York Supreme Court captioned *National Fire Insurance Company of Hartford, et al., v. Travelers Casualty and Surety Company, et al*, Index No. 105522/2008 (the “Coverage Action”). The Liquidator was named as a defendant in the Coverage Action but was dismissed. Neither the Ancillary Receiver nor the Security Fund is a party to the Coverage Action;

WHEREAS, the Coverage Action directly impacts the ability of Kentile’s asbestos claimants to recover under Kentile’s 1998 Plan. Although the Coverage Action remains pending, it was stayed by the parties in mid-2012 to allow a consensual resolution and settlements of coverage disputes and, as an integral part thereof, to allow solicitation of a Metex prepackaged plan of reorganization dated June 29, 2012, which was attached as Exhibit 1 to the Disclosure Statement with Respect to the Prepackaged Plan of Reorganization of Metex Mfg. Corporation under Chapter 11 of the Bankruptcy Code dated June 29, 2012 (the “Prepackaged Plan”);

WHEREAS, the Prepackaged Plan was created through a series of negotiations by Metex with each of the solvent Kentile Insurers, the three law firms that represented the largest number of asbestos personal injury claimants against Kentile in the tort system (the “Prepetition Asbestos Claimants’ Committee”), and a representative of future claimants (the “Prepetition Future Claimants’ Representative”);

WHEREAS, central to the Prepackaged Plan were settlement agreements between Metex (entered into with the consent and participation of the Prepetition Asbestos Claimants’ Committee and the Prepetition Future Claimants’ Representative) and the eight solvent Other Insurers (the “Insurance Settlement Agreements”), which, had the Prepackaged Plan been approved, would have resulted in excess of \$165 million being contributed by those Other

Insurers to a section 524(g) trust for the benefit of current and future holders of Kentile asbestos claims;

WHEREAS, on June 29, 2012 Metex began solicitation of its Prepackaged Plan;

WHEREAS, more than 84% of those voting on the Prepackaged Plan cast votes in support, only 66.15% in amount of the claims voted in favor by the voting deadline. Accordingly, the Prepackaged Plan could not be confirmed;<sup>1</sup>

WHEREAS, Metex subsequently determined it was in its best interest to file a chapter 11 case in order to (i) continue the stay of the Coverage Action and preserve the Insurance Settlement Agreements, and (ii) seek confirmation of a plan in order to fund a 524(g) Trust (the "524(g) Trust") with the proceeds of the Insurance Settlement Agreements and an assignment of Metex's rights to other unresolved insurance assets ("Insurance Rights"); and

WHEREAS, Metex, NYLB and the Liquidator, subject to the terms and conditions of this Agreement, now wish fully and finally to compromise and resolve all Claims by providing for NYLB's, Home's and Liquidator's participation in Metex's chapter 11 case, as more fully set forth herein.

NOW, THEREFORE, intending to be legally bound, the Parties hereby agree as follows:

I. Purposes

The purposes of this Agreement are: (a) subject to implementation of the Plan described below, to resolve all Claims between Metex and Home, NYLB and Liquidator, including Asbestos-Related Claims and Coverage Claims, (b) for Metex to consummate the Plan described below, (c) for payment of the Settlement Amount by the Security Fund to the Asbestos PI Trust to be made as specified below, (d) for all Asbestos PI Claims (as defined in the Plan) to be

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<sup>1</sup> After the voting deadline of August 28, 2012, Metex received additional votes which, if counted, met the two-thirds in amount standard of section 1126(c), thus making the Prepackaged Plan confirmable.

channeled to the Asbestos PI Trust, and (e) for Home, NYLB, and Liquidator to become Asbestos Protected Parties, Settling Asbestos Insurance Entities, and Settling Asbestos Insurance Protected Parties as defined under the Plan and to receive the protections of the 524(g) Channeling Injunction, the 105 Injunction, and the 363 Injunction and to be released from all Claims relating to or arising from the Insurance Policies in accordance with the terms and conditions set forth in this Agreement, pursuant to the Plan and Confirmation Order.

## II. Definitions

The following definitions will apply to the listed terms wherever those terms appear throughout the Agreement. Each defined term stated in a singular form shall include the plural form; each defined term stated in plural form shall include the singular form; and each defined term stated in the masculine form or in the feminine form or in the neuter form shall include all others. The word "include" means "include but are not limited to;" the word "includes" means "includes but is not limited to;" and the word "including" means "including but not limited to."

A. "Agreement" means this Settlement Agreement and Mutual Release.

B. "Approval Order" means a final non-appealable order approving the Agreement in every respect and providing for the issuance of the 363 Injunction in favor of the Insurers, in substantially the form of the order attached hereto as Exhibit "E".

C. "Asbestos PI Claim", except as otherwise expressly stated herein, means each of the following: (a) a Metex Asbestos PI Claim; (b) a Derivative Liability Asbestos PI Claim; (c) an Indirect Asbestos PI Claim; (d) a Qualified Asbestos PI Claim (as defined in the Plan); and (e) a Direct Action Claim. Asbestos PI Claims shall not include Asbestos Property Damage Claims.

D. "Asbestos PI Trust" means a trust established pursuant to 11 U.S.C. §524(g), in accordance with the terms of the Plan and consistent with the terms of this Agreement.

E. "Asbestos Property Damage Claim" means any Claim or portion thereof against, or any debt, liability, or obligation of, Metex, whether now existing or hereafter arising, whether in the nature of or sounding in tort, or under contract, warranty, or any other theory of law, equity, or admiralty for, arising out of, or resulting from, or attributable to directly or indirectly the presence of asbestos in or on any property, including the cost of inspecting, maintaining, encapsulating, repairing, decontaminating, removing, replacing or disposing of asbestos or asbestos-containing products in buildings, other structures or other property arising from the installation in, presence in, or removal from buildings or other structures of asbestos or asbestos-containing products installed, manufactured, sold, supplied, produced, distributed, released or marketed by Metex, or for which Metex is allegedly liable, including all related Claims, debts, obligations, or liabilities for compensatory damages (such as proximate, consequential, general and special damages) and punitive damages, and any crossclaims, contribution claims, subrogation claims, reimbursement claims, indemnity claims, and other similar derivative Claims against, or debt, liability of obligation of Metex. Asbestos Property Damage Claims shall not include Asbestos PI Claims.

F. "Asbestos Protected Parties" means those Persons identified in the Plan as protected by the 524(g) Channeling Injunction, including Home, NYLB, and Liquidator.

G. "Asbestos-Related Claims" means Asbestos PI Claims and Asbestos Property Damage Claims. The term "Asbestos-Related Claims" also includes any Claim made by a spouse, child, domestic partner, or other relative of a Person on whose behalf, or by whose estate, an Asbestos PI Claim is brought and which arises out of that Asbestos PI Claim or independently as a result of secondary exposure to asbestos relating to or resulting from Metex's products or operations. Notwithstanding any of the foregoing, the term "Asbestos Related



Claims" does not include Claims for workers' compensation under any state or federal law solely to the extent that such Claims are covered by workers' compensation insurance.

H. "Bankruptcy Court" means the United States Bankruptcy Court for the Southern District of New York.

I. "Business Day" means any day on which commercial banks are required to be open for business in New York, New York.

J. "Chapter 11 Case" means the Chapter 11 bankruptcy reorganization case that was filed by Metex in the Bankruptcy Court on November 9, 2012.

K. "Claim" means any and all present and future claims (including "claim" as defined in Section 101 (5) of the Bankruptcy Code), complaints, petitions, cross-complaints, counterclaims, asserted rights, demands (including "demand" as defined in Section 524(g)(5) of the Bankruptcy Code), requests, suits, lawsuits, subpoenas, administrative proceedings, actions, rights of action, causes of action, or choses in action, executions, liens, offsets, costs, expenses (including court costs and attorneys' fees), judgments, orders, indemnity and/or defense obligations, whether actual or potential, claimed or suspected, fixed or contingent, asserted or unasserted, direct or indirect, whether presently known or unknown, whether asserted in law, equity, admiralty, tort, contract or otherwise, whether obtained by subrogation, assignment, or otherwise, and seeking any form of relief, including compensatory, punitive, extra-contractual, statutory, fines, penalties, enforcement, declaratory judgment, injunctive relief, medical or environmental monitoring, investigation, assessment, remediation, and on account of any alleged injury, including, bodily injury, personal injury, disease, sickness, illness, death, fear of future disease or injury, shock, mental injury or anguish and emotional distress, or any alleged property damage, loss of use of property, diminution of value of property, or damage to natural resources.

Without limiting the foregoing, "Claim" also includes any claim alleging bad faith, failure to act in good faith, a violation of the covenant of good faith and fair dealing, and/or a violation of a statute, regulation, or code, including statutes relating to unfair claims handling or settlement practices or any other similar type of alleged misconduct or omission. For the avoidance of doubt, present claims include claims that have been asserted in the past which have not been fully and finally resolved.

L. "Committee" means the official committee of unsecured creditors that has been appointed in the Chapter 11 Case.

M. "Conditional Payment" means any payment made for an Asbestos-Related Claim pursuant to Section 1395y(b)(2)(B) of the MSPA, as defined below.

N. "Confirmation Order" means, as the context requires, the order or orders by the District Court confirming the Plan under Section 1129 of the Bankruptcy Code or affirming an order of the Bankruptcy Court confirming the Plan under Section 1129 of the Bankruptcy Code, which shall contain, among other things, the 524(g) Channeling Injunction and 105 Injunction.

O. "Court Approval" means the occurrence of all of the following events: (i) the entry by the Bankruptcy Court of the Approval Order; and (ii) the entry by the Bankruptcy Court and affirmance by the District Court, of order(s): (a) confirming the Plan, and any amendments thereto approved by Insurers; (b) providing that this Agreement is binding upon the Asbestos PI Trust and all other parties-in-interest; (c) providing that, upon the effective date of the Plan, Home, NYLB and Liquidator are Settling Asbestos Insurance Entities, Settling Asbestos Insurance Protected Parties and Asbestos Protected Parties under the Plan, which shall be entitled to the protections of the 524(g) Channeling Injunction and the 105 Injunction; (d) issuing the 524(g) Channeling Injunction and the 105 Injunction; (e) incorporating the 363 Injunction, and

(f) renaming the NYLB Escrow Account to omit any reference to or obligation by NYLB with regard to such Escrow Account, and (iii) the final resolution of any and all appeals of the order(s) identified in (i) and (ii) above, the expiration of all appeal periods, and the foregoing order(s) becoming final and non-appealable.

P. "Coverage Claims" means any and all present and future disputes, lawsuits, controversies, Claims, demands, or rights, directly or indirectly, arising from, based upon, attributable to, or derived from the Insurance Policies; and Insurers' alleged breach of any duties to Metex, including the duty to act in good faith. "Coverage Claims" does not include disputes arising under or with respect to the interpretation, construction or enforcement of this Agreement.

Q. "Derivative Liability Asbestos PI Claim" means any Claim or portion thereof against, or any debt, liability, or obligation of, Kentile, Metex, or a Metex Related Party (as defined in the Plan), based upon a legal or equitable theory of liability in the nature of veil piercing, alter ego, successor liability, fraudulent transfer, or conspiracy, upon which Kentile, Metex, or a Metex Related Party (as defined in the Plan) is liable, or is allegedly liable, arising out of, resulting from, or attributable to directly or indirectly, death, bodily injury, sickness, disease, or any other actual or alleged personal injury, physical, emotional or otherwise, to persons, caused, or allegedly caused, in whole or in part, directly or indirectly, by the presence of, exposure to, alleged failure to warn about, or breach of warranty regarding asbestos, including asbestos-containing products or materials engineered, designed, marketed, manufactured, fabricated, constructed, sold, supplied, produced, installed, maintained, serviced, specified, selected, repaired, removed, replaced, released, distributed, or in any way used by Kentile, Metex or any Person for whose products or operations Kentile or Metex has liability or

is alleged to have liability, but only to the extent arising, directly or indirectly, from acts, omissions, business, or operations of Kentile or Metex including all related Claims, debts, obligations, or liabilities for compensatory damages (such as loss of consortium, medical monitoring, personal or bodily injury, wrongful death, survivorship, proximate, consequential, general, and special damages). For purposes of this definition, "veil piercing, alter ego, successor liability, fraudulent transfer, or conspiracy" claims shall include fraudulent transfer or fraudulent conveyance claims under applicable state or federal law, denuding the corporation claims, single business enterprise claims, claims that Kentile or Metex was the predecessor, mere instrumentality, agent or alter ego of a Metex Related Party, trust fund claims, claims that a Metex Related Party conspired with Kentile or Metex, and any causes of action against a Metex Related Party that belong to the debtor or debtor in possession in the Chapter 11 Case, whether or not included in the foregoing list.

R. "Direct Action Claim" means any Claim or portion thereof brought directly against any Insurers by a Person other than Metex, directly or indirectly, arising from, based upon, attributable to, or derived from the activities, products, conduct or work of Kentile or Metex, or any other Person for whose products or operations Kentile or Metex has liability but only to the extent of such liability, or any insurance contract that is, or may in the future be, asserted to provide coverage for any of the aforementioned Claims, whether arising by contract, in tort or under the laws of any jurisdiction (including any statute that gives a third party a direct cause of action against an insurer), including any action for contribution, indemnification, subrogation or similar relief by an insurer against any Insurers.

S. "District Court" means the United States District Court for the Southern District of New York.

T. "Effective Date" means the first date upon which all of the following have occurred: (i) the Execution Date has occurred; (ii) Court Approval has been obtained; (iii) Other Court Approval has been obtained, and (iv) the NYLB Escrow Account is renamed to omit any reference to or obligation by the NYLB with regard to such Escrow Account.

U. "Environmental Claim" means any Claim (contingent or otherwise, arising under statute or common law, at law or in equity, and including liability for response costs or natural resource damages, fines or penalties) or any investigatory, remedial, or corrective obligation arising under any applicable federal, statute, local or foreign statute, or regulation or similar requirement having the force and effect of law, or judicial or administrative order or determination, or common law, concerning public health or safety, workplace health and safety, or pollution or protection of the environment (including all those pertaining to the presence, use, production, generation, handling, transportation, treatment, storage, disposal, distribution, labeling, testing, processing, discharge, release, threatened release, control or cleanup of any hazardous materials, substances or wastes, chemical substances or mixtures, pesticides, pollutants, contaminants, toxic chemicals, petroleum products or byproducts, polychlorinated biphenyls, noise or radiation).

V. "Execution Date" means the first day upon which the Agreement shall have been duly authorized and executed by each of the Parties or by its duly authorized undersigned counsel and delivered to each of the Parties.

W. "Extracontractual Claim" means any Claim alleging bad faith, failure to act in good faith, a violation of the covenant of good faith and fair dealing, and/or violation of a statute, regulation, or code, including statutes relating to unfair claims handling or settlement practices or any other similar type of alleged misconduct or omissions.

X. "FCR" means Lawrence Fitzpatrick, in his capacity as the Bankruptcy Court appointee pursuant to Section 524(g)(4)(B)(i) of the Bankruptcy Code, designated legal representative for the purpose of protecting, the rights of Persons who might assert "demands" as defined in Section 524(g)(5) of the Bankruptcy Code.

Y. "524(g) Channeling Injunction" means an injunction in substantially the form attached hereto as Exhibit C.

Z. "Governmental Unit" means "governmental unit" as defined by 11 U.S.C. § 101(27).

AA. "Indirect Asbestos PI Claim" means all cross-claims, contribution claims, subrogation claims, reimbursement claims, indemnity claims, and other similar derivative Claims or portions thereof against, or any debt, liability, or obligation of, Kentile or Metex or any Insurers, whether or not any such Claim, debt, liability or obligation is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured, whether or not the facts of or legal bases therefore are known or unknown, and whether in the nature of or sounding in tort, or under contract, warranty, guarantee, contribution, joint and several liability, subrogation, reimbursement, or indemnity, or any other theory of law, equity, or admiralty for, arising out of, resulting from, or attributable to directly or indirectly, death, bodily injury, sickness, disease, or any other actual or alleged personal injury, physical, emotional or otherwise, to persons caused, or allegedly caused, in whole or in part, directly or indirectly, by the presence of, exposure to, alleged failure to warn about, or breach of warranty regarding asbestos, including without limitation asbestos-containing products or materials engineered, designed, marketed, manufactured, fabricated, constructed, sold, supplied, produced, installed, maintained, serviced, specified, selected, repaired, removed,

replaced, released, distributed, or in any way used by Kentile or Metex or any Person for whose products or operations Kentile or Metex has liability or is alleged to have liability, but only to the extent arising, directly or indirectly from acts, omissions, business or operations of Kentile or Metex (including the acts, omissions, business or operations of any other Person for whose products or operations Kentile or Metex has liability, but only to the extent of Kentile's or Metex's liability for such acts, omissions, business, or operations) including all related Claims, debts, obligations, or liabilities for compensatory damages (such as loss of consortium, medical monitoring, personal or bodily injury, wrongful death, survivorship, proximate, consequential, general, and special damages). Notwithstanding the foregoing, a Claim, Demand, allegation, debt, liability or obligation shall only be an Indirect Asbestos PI Claim, to the extent of Kentile's or Metex's liability for that Claim, debt, liability or obligation.

BB. "Insurance Policies" means all insurance policies (including any known and unknown comprehensive general liability policy, general liability policy, excess liability policy, automobile policy, first-party property policy, wrap-up policy, site-specific policy or project specific policy, whether such policy is primary, umbrella, excess, or otherwise, whether domestic or foreign, and regardless of the policy territory covered, whether issued to Metex or otherwise) that were issued or allegedly issued by Insurers to any Person prior to the Execution Date under which Metex is or allegedly may be insured or entitled to any rights or benefits, including each alleged insurance policy identified on the schedule attached to this Agreement as Exhibit B. With respect to insurance policies issued by Insurers under which the legal entity known as "Metex Corporation" or "Metex Mfg. Corporation" is a named insured or additional insured, if any, the term "Insurance Policies" means only the insurance coverage provided under any such insurance policies for Claims directly or indirectly, arising from, based upon, attributable to, or derived

from the activities, conduct or work of the legal entity known as “Kentile Floors, Inc.” (as distinguished from the legal entity known as "Metex Corporation" or "Metex Mfg. Corporation") and the subsidiaries and affiliates of the legal entity known as Kentile Floors, Inc. The term "Insurance Policies" does not include policies or portions of policies, if any, that provide only workers compensation coverage.

CC. "Insurers" means collectively (i) NYLB and Liquidator, (ii) Home, (iii) Home's parents, direct and indirect subsidiaries, affiliates, divisions, holding companies, merged companies, acquired companies (including City Insurance Company) solely in their capacities as such; and (iv) any and all of each of the NYLB's, Liquidator's and Home's present and former officers, directors, shareholders, members, agents, employees, representatives, attorneys, predecessors-in-interest, successors-in-interest, and assigns, if any, solely in their capacities as such.

DD. "Kentile" means Kentile Floors, Inc., together with all of its various predecessors and successors in interest including the debtor-in-possession and the reorganized debtor in the Chapter 11 bankruptcy case captioned *In re Kentile Floors, Inc.*, No. 92-B-46466 (Bankr. S.D.N.Y.) (BRL).

EE. "Metex" means (i) Metex Mfg. Corporation, the debtor and debtor-in-possession in the Chapter 11 bankruptcy case captioned *In re Metex Mfg. Corporation*, No. 12-14554 (Bankr. S.D.N.Y.), (ii) Kentile, and (iii) to the fullest extent of Metex's right, power and authority to bind them, each of its and their present and former officers, directors, shareholders, members, agents, employees, parents, direct and indirect subsidiaries, affiliates, divisions, holding companies, merged companies, acquired companies, representatives, attorneys, predecessors-in -



interest, successors-in-interest, including Reorganized Metex as defined in the Plan, executors, administrators, and assigns, if any, each solely in its capacity as such.

FF. "Metex Asbestos PI Claim" means any Claim or portion thereof against, or any debt, liability, or obligation of, Metex or any Insurers, whether now existing or hereafter arising, whether in the nature of or sounding in tort, or under contract, warranty, or any other theory of law, equity, or admiralty for, arising out of, resulting from, or attributable to directly or indirectly, death, bodily injury, sickness, disease, or any other actual or alleged personal injury, physical, emotional or otherwise, to persons, caused, or allegedly caused, in whole or in part, directly or indirectly, by the presence of, exposure to, alleged failure to warn about, or breach of warranty regarding asbestos, including, without limitation, asbestos containing products or materials engineered, designed, marketed, manufactured, fabricated, constructed, sold, supplied, produced, installed, maintained, serviced, specified, selected, repaired, removed, replaced, released, distributed, or in any other way used by Metex or any other Person for whose products or operations Metex has liability or is alleged to have liability, but only to the extent arising, directly or indirectly, from acts, omissions, business, or operations of Metex (including the acts, omissions, business, or operations of any other Person for whose products or operations Metex has liability, but only to the extent of Metex's liability for such acts, omissions, business, or operations) including all related Claims, debts, obligations, or liabilities for compensatory damages (such as loss of consortium, medical monitoring, personal or bodily injury, wrongful death, survivorship, proximate, consequential, general, and special damages). Notwithstanding the foregoing, a Claim, debt, liability or obligation shall only be a Metex Asbestos PI Claim to the extent of Metex's liability for that Claim, debt, liability or obligation.

GG. "MSPA" means Medicare Secondary Payer Act, codified at 42 U.S.C. §1395y, and the regulations promulgated thereunder, found at 42 C.F.R. §411.1 *et. seq.*

HH. "NYLB Escrow Account" means the escrow account that was created pursuant to the Insurance Settlement Agreements between Metex and certain Other Insurers, and established as a qualified settlement fund by order of the Bankruptcy Court on December 5, 2012.

II. "Other Court Approval" means entry of final, non-appealable, and non-reviewable orders approving this Agreement in every material respect (as reasonably determined by NYLB and Liquidator) by (i) the Ancillary Receivership Court and (ii) the Liquidation Court.

JJ. "Other Insurers" means all insurers of Metex (other than Insurers as defined in definition "CC" above) which issued insurance policies under which Metex is, or allegedly may be, insured for Asbestos-Related Claims. "Other Insurers" includes, but is not limited to: Allianz Global Risk US Insurance Company; Federal Insurance Company; Fireman's Fund Insurance Company; Hartford Accident and Indemnity Company; Century Indemnity Company (as successor to CCI Insurance Company, as successor to Insurance Company of North America, on its own behalf and as successor to Indemnity Insurance Company of North America), ACE Property & Casualty Company (f/k/a CIGNA Property and Casualty Company f/k/a Aetna Insurance Company) and Westchester Fire Insurance Company; Liberty Mutual Insurance Company; American Home Assurance Company, Granite State Insurance Company, National Union Fire Insurance Company of Pittsburgh, PA. and National Fire Insurance Company of Hartford.

KK. "Parties" means Metex, NYLB, Home, and Liquidator, collectively. A "Party" means any of the Parties as indicated by the context.

LL. "Person" means an individual, a corporation, a partnership, a joint venture, an association, a trust, any other entity or organization, and any federal, state or local government or any governmental or quasi-governmental body or political subdivision or any agency, department, board or instrumentality thereof, including a Governmental Unit.

MM. "Plan" means the plan of reorganization to be filed by Metex which shall be substantially similar to the Prepackaged Plan and shall contain the 105 Injunction and the 524(g) Injunction and shall expressly incorporate the terms and conditions of this Agreement. The Plan's definition of "Asbestos PI Claim" shall be substantially similar to the definition of that term in the Prepackaged Plan.

NN. "Plan Disapproval" means a final court order denying confirmation of the Plan that is not subject to appeal.

OO. "Property Damage Claims" means any and all Claims or portions of Claims that may be asserted against Metex, alleging property damage, loss of use of property, diminution of value of property, and damage to natural resources, including Claims alleging property damage from asbestos.

PP. "Requisite Votes" means votes in favor of the Plan that are no fewer than two thirds (2/3) of the dollar value of Asbestos PI Claims (as defined in the Plan) that have voted on the Plan and seventy-five (75%) percent in number of holders of Asbestos PI Claims (as defined in the Plan) who have voted on the Plan.

QQ. "Releasors" means Kentile, Metex, their bankruptcy estates, any trust created pursuant to a plan of reorganization of Metex for the purpose of resolving, liquidating, and (if entitled to payment) paying Asbestos-Related Claims, together with their respective present and former officers, directors, shareholders, members, agents, employees, parents, direct and indirect

subsidiaries, affiliates, divisions, holding companies, merged companies, acquired companies, representatives, attorneys, predecessors in interest, successors in-interest, executives, administrators, and assigns.

RR. "Settlement Amount" means the remaining policy limit (hereafter referred to as the "Remaining Policy Limit") which is \$10,983,852.62 (the \$25,000,000 aggregate limit of the Insurance Policies less the \$14,016,147.38 in payments to date by the Security Fund in connection with Asbestos-Related Claims) less (i) all other payments by the Security Fund in respect to Asbestos-Related Claims that are paid by the NYLB prior to the Effective Date, including the \$408,849.50 to be paid pursuant to the December 4, 2012 order of the Ancillary Receivership Court (which will be the subject of a stipulation to be filed in the Chapter 11 Case), and (ii) the final allowed amount of the Century Indemnity Claim, if any, as reflected in a final court order. For avoidance of doubt, the Remaining Policy Limit shall never exceed the aggregate limit of \$25 million less (i) all payments in respect to Asbestos-Related Claims made by the Security Fund prior to the Effective Date and (ii) the final allowed amount of the Century Indemnity Claim.

SS. "Settlement Payee" means the Asbestos PI Trust.

TT. "105 Injunction" means a policy injunction substantially in the form attached hereto as Exhibit D.

UU. "363 Injunction" means an injunction in the form contained in paragraph 12 of the Approval Order attached hereto as Exhibit E.

### III. Payments

#### A. Payments By Security Fund

1. Security Fund shall pay the Settlement Amount as follows:

a. Within thirty (30) days after written notice to the NYLB and the Liquidator of the Effective Date by Metex and/or the Asbestos PI Trust, Security Fund shall pay \$4 million of the Settlement Amount (“Initial Payment”) to the Settlement Payee, subject to the Remaining Policy Limit. Such payment shall be made either (i) by check delivered by overnight delivery service at the address as directed by the Settlement Payee, or (ii) by wire transfer pursuant to instructions as directed by the Settlement Payee.

b. Within 30 days of written notice by Metex and/or the Asbestos PI Trust to the NYLB and the Liquidator of the occurrence of both: (1) final determination of the allowed amount of the Century Indemnity Claim pursuant to a final, non-appealable court order and (2) the first anniversary of the Effective Date, Security Fund shall pay to the Settlement Payee the Remaining Policy Limit, if any, less the Initial Payment. Such payment, if any, shall be made by either (i) by check delivered by overnight delivery service at the address as directed by the Settlement Payee, or (ii) by wire transfer pursuant to instructions as directed by the Settlement Payee.

2. Security Fund is not acting as a volunteer in paying the Settlement Amount or any portion thereof, and payment of the Settlement Amount by Security Fund reflects potential liabilities and obligations to Metex for amounts Security Fund will be obligated to pay on account of certain Claims.

3. For the avoidance of doubt, Security Fund will have no obligation to pay any portion of the Settlement Amount prior to the Effective Date.

B. NYLB Escrow Account

1. Metex agrees that no portion of the Settlement Amount shall be paid into the NYLB Escrow Account and that neither NYLB, nor Home, nor Liquidator, has any obligation with regard to the NYLB Escrow Account – payment or otherwise. Metex further acknowledges that NYLB has never received any direction by Metex or Other Insurers to pay any amounts into the NYLB Escrow Account, and NYLB has never paid any amounts to the NYLB Escrow Account.

2. No later than the Effective Date, the NYLB Escrow Account shall be renamed the “Security Escrow” to reflect the fact that (i) NYLB has never paid or funded any portion of the NYLB Escrow Account, (ii) NYLB has no obligations or responsibilities with regard to the NYLB Escrow Account, and (iii) no portion of the Settlement Amount shall be paid to the NYLB Escrow Account.

IV. Releases

A. Release of Insurers by Releasers

Immediately upon the Effective Date, in consideration of the promises contained in this Agreement as well as the release by Insurers, Releasers hereby fully release and forever discharge Insurers from and against any and all Claims under the Insurance Policies, including Asbestos-Related Claims, Property Damage Claims, Environmental Claims, Extracontractual Claims, and Coverage Claims. The Insurance Policies are null and void and of no further force or effect and any and all coverage otherwise available under the Insurance Policies is completely and totally bought back and exhausted. Insurers shall have no further duties or obligations under

or pursuant to the Insurance Policies, or otherwise, for, based upon, arising out of, related in any way to, or concerning any claims against Releasors. Releasors further agree and covenant that they shall not commence or continue in any manner any action or other proceeding of any kind with respect to any such Claims described herein against Insurers.

This Release shall in no way prevent or restrict Metex or Insurers from enforcing any rights under this Agreement.

B. Release by Insurers of Metex

Immediately upon the Effective Date, in consideration of the promises contained in this Agreement as well as the release by Releasors, NYLB, for themselves, and the Liquidator, for himself and for Home, hereby fully release and forever discharge Metex from and against any and all Claims under the Insurance Policies, including Asbestos-Related Claims, Property Damage Claims, Asbestos Property Damage Claims, Environmental Claims and Coverage Claims. This Release shall in no way prevent or restrict (a) Metex or Insurers from enforcing any rights under this Agreement, (b) Insurers' rights, Claims and defenses in respect to the Century Indemnity Claim or (c) NYLB from pursuing existing or future Claims in the Home Liquidation in connection any and all payments made in respect to Asbestos Related Claims, including payments made pursuant to this Agreement.

C. Release by Other Insurers

If Metex and/or the Asbestos PI Trust conclude settlements with any Other Insurer(s) after the date hereof, a condition of such settlement will be that such Other Insurer provides a release of Insurers of and from any and all Claims released in this Agreement. However, Insurers acknowledge that Century Indemnity previously entered into a settlement with Metex

which permits Century Indemnity to pursue its rights, if any, to allowance and payment of the Century Indemnity Claim in the Home Liquidation.

D. Covenant Not to Sue

In the event any Claim against Insurers by any Other Insurer is or has been transferred or assigned to Metex, Reorganized Metex and/or the Asbestos PI Trust pursuant to a settlement with such Other Insurer, confirmation of the Plan, or otherwise, Metex, Reorganized Metex and the Asbestos PI Trust hereby agree and covenant that they shall not commence or continue in any manner any action or other proceeding of any kind with respect to any such Claim against Insurers. Metex represents that it has not asserted any Claim against Insurers in the Coverage Action, and Metex, Reorganized Metex and the Asbestos PI Trust agree and covenant that they shall not assert any Claim against Insurers in the Coverage Action. Metex further represents that with the exception of the Century Indemnity Claim, the Other Insurers have assigned to the Asbestos PI Trust all of their rights and Claims against Insurers arising from Asbestos PI Claims (as defined in the Plan) pursuant to their Insurance Settlement Agreements.

E. Judgment Reduction

1. In the event any matter brought by Metex and/or the Asbestos PI Trust against any Other Insurer proceeds to an adjudication on the merits, whether in court or another tribunal with jurisdiction, which determines that Metex or the Asbestos PI Trust, or any of them, would have been entitled to coverage from Insurers under one or more Insurance Policies for certain amounts and the recovery Metex or the Asbestos PI Trust obtains against such Other Insurer includes amounts actually attributed or clearly attributable to Insurers, Metex agrees that neither Metex nor the Asbestos PI Trust will seek to obtain payment from such Other Insurer of



any sum that represents Insurers' attributed or allocated share of any defense or indemnity obligation (if any) owed to Metex or the Asbestos PI Trust.

2. In the event Metex or the Asbestos PI Trust obtains a judgment or binding arbitration award against any Other Insurer in any insurance coverage proceeding and any such Other Insurer obtains a judgment or binding arbitration award against Insurers in the same or another proceeding based upon a Claim released pursuant to this Agreement, then Metex and/or the Asbestos PI Trust will cause Insurers not to be subjected to liability for the judgment or binding arbitration award against it by reducing such judgment or binding arbitration award against the Other Insurer by subtracting from such judgment or award the share of the judgment or award, if any, which is actually attributed or clearly attributable to Insurers. To ensure that such a reduction is accomplished, Insurers shall be entitled to assert this Subsection of this Agreement as a defense in any action against them for any such portion of the judgment or binding arbitration award, and shall be entitled to have the court or appropriate tribunal issue such orders as are necessary to effectuate the deduction to protect Insurers from any liability for the judgment or binding arbitration award.

3. The Plan shall provide that, if any Other Insurer asserts that it has a Claim for contribution, indemnity, subrogation, or other relief against Insurers arising out of or based on any Claim that is channeled to the Asbestos PI Trust, such Other Insurers' Claim may be asserted as a defense against the Asbestos PI Trust in any action, the Asbestos PI Trust shall assert all rights of Insurers in response thereto, and, to the extent that such Claim against Insurers is determined to be valid by the court presiding over such action, the liability of such Other Insurer to the Asbestos PI Trust shall be reduced by the value of such Other Insurer's Claim as so determined against Insurers.

F. Consultation with Counsel

Each of the Parties has reviewed and consulted with counsel regarding the provisions of California Civil Code Section 1542, and each of the Parties agrees not to assert the provisions of California Civil Code Section 1542, or any similar law, against any other Party for the purpose of attempting to invalidate the release of any Claims that said Party did not know of or suspect at the time of the execution of this Agreement. Each of the Parties expressly understands and agrees to the release of all Claims described herein, whether known or unknown.

V. Representations and Warranties of the Parties

Unless indicated otherwise, each of the Parties or their representatives, as applicable, separately represents and warrants as follows:

A. Subject to the entry of the Approval Order, Metex represents that it has the requisite right, power and authority to enter into this Agreement and to perform the obligations imposed on it by this Agreement on its own behalf and on behalf of Kentile and each of the other Persons within the definition of Metex.

B. Subject to approval of this Agreement by the Liquidation Court and the Ancillary Receivership Court, NYLB and the Liquidator represent that they have the requisite right, power and authority to enter into this Agreement and to perform the obligations imposed on them by this Agreement.

C. Certain Asbestos PI Claims have been filed or asserted against Home in the Home Liquidation and against the NYLB. After the Effective Date, the Liquidator and NYLB will deny such Asbestos PI Claims in reliance upon the 524(g) Channeling Injunction, the 105 Injunction and/or the 363 Injunction, and Metex and NYLB and Liquidator agree that if any Asbestos PI Claim (as defined in the Plan) continues to be asserted against Insurers, Metex or the

Asbestos PI Trust will cooperate reasonably to establish that the 524(g) Channeling Injunction, the 105 Injunction and/or the 363 Injunction enjoins such Claim as to Insurers, and to enforce such Injunctions for the protection of Insurers. For avoidance of doubt, Metex acknowledges that Century Indemnity's prosecution of the Century Indemnity Claim shall not be barred after the Effective Date and Insurers acknowledge that Metex and Asbestos PI Trust shall have no obligation to undertake any actions to enforce the Injunctions with regard to Century Indemnity's prosecution of the Century Indemnity Claim in the Home Liquidation.

D. This Agreement has been thoroughly negotiated and analyzed by each Party's counsel and has been executed and delivered in good faith, pursuant to arms'-length negotiations, and for value and valuable consideration.

E. Each Party has expressly authorized its undersigned representative to execute this Agreement on the Party's behalf as its duly authorized agent, and the Person signing this Agreement on behalf of each Party represents and warrants that that Person is so authorized.

VI. Effectiveness of Agreement

A. This Agreement shall become effective and binding upon the Effective Date.

B. On Liquidator's or NYLB's request, Metex shall take such further action as reasonably necessary so that Coverage Claims and Direct Action Claims against Insurers are stayed during the pendency of the Chapter 11 Case. This Subsection B shall be effective and binding upon the Parties upon the Execution Date. For avoidance of doubt, Metex shall have no obligation to undertake any such actions with regard to Century Indemnity's prosecution of the Century Indemnity Claim in the Home Liquidation.

VII. The Plan

A. The Plan Process

1. Provided the Plan is consistent with the terms of this Agreement, Metex has not breached any of its obligations under this Agreement, the Plan and Confirmation Order do not materially alter or adversely affect the interests of Insurers under this Agreement, Metex does not seek to amend the Plan or any documents related to the Plan which amendment is materially inconsistent with this Agreement, and Metex does not undertake any other action that adversely affects the interests of Insurers under this Agreement or is materially inconsistent with the Plan, NYLB and Liquidator hereby agree not to oppose Metex's Plan.

2. Notwithstanding anything to the contrary contained in this Agreement or the Approval Order, if the terms of the Plan (including definitions therein) filed in the Chapter 11 Case, or any amendments thereto, are changed without the Insurers' consent in such a way that the Asbestos PI Trust may not be established and/or the injunctive protections provided to Insurers by the confirmed plan are materially narrower in scope than the injunctive protections that would have been provided by the terms of the Prepackaged Plan, NYLB or the Liquidator may, at their option, rescind this Agreement, in which case this Agreement shall be null and void.

3. Except upon the occurrence of one or more of the events set forth in Section VIII of the Agreement as a basis for giving notice that the Agreement shall become null, void and without effect, or upon the consent of Metex, NYLB and Liquidator shall not seek to lift the automatic stay for any purpose during the Chapter 11 Case, except that the Liquidator or NYLB may seek to lift the automatic stay (or determine its application) as to the Century Indemnity Claim in the Liquidation Court and Metex agrees it shall assent to a request to lift the

automatic stay for this purpose conditioned upon Metex being permitted to intervene in the proceeding concerning the Century Indemnity Claim.

B. Provisions Relating to the Plan

In addition to the items set forth in Sections IV.A-E, the following elements shall be included in the Plan:

1. The Plan shall contain the 524(g) Channeling Injunction and the 105 Injunction, which pursuant to the Approval Order shall not impair, enjoin or otherwise apply to (i) any claims that NYLB has asserted or may assert in the future in the Home Liquidation and (ii) any defenses or setoffs to the Century Indemnity Claim that may be asserted by Liquidator in the Home Liquidation. The Asbestos PI Trust will be a "qualified settlement fund" within the meaning of Section 468B of the Internal Revenue Code and regulations issued pursuant to that section.

2. Except as otherwise provided in this Agreement, Liquidator and NYLB shall assign to the Asbestos PI Trust all of their rights and Claims against Metex's Other Insurers arising from Asbestos PI Claims (as defined in the Plan), including contribution rights arising from payments for indemnity, attorneys' fees and expenses, or otherwise, against Other Insurers and the Asbestos PI Trust may, in its sole discretion, prosecute such Claims. For avoidance of doubt, NYLB does not assign to the Asbestos PI Trust, and expressly retains (a) any and all rights, Claims, and proceeds relating to Claims that NYLB has asserted or may assert in the Home Liquidation and (b) all rights, Claims and defenses in respect to the Century Indemnity Claim. Liquidator does not assign Liquidator's or Home's rights, Claims, or defenses which are all reserved under this Agreement with regard to the Century Indemnity Claim, including the right to recover from Century Indemnity for the time value of the amounts held by Century

Indemnity as setoffs pursuant to the Century Indemnity Claim as determined in the Liquidation Court. Metex's Claims against Other Insurers arising from Asbestos PI Claims (as defined in the Plan) shall be assigned to the Asbestos PI Trust and may be prosecuted by the Asbestos PI Trust in its sole discretion. The Plan and the Asbestos PI Trust Agreement shall contain such terms as are necessary or appropriate to preserve Metex's rights and the rights of the Asbestos PI Trust and its beneficiaries against Other Insurers.

3. The Plan's trust distribution procedures shall be agreed to by the FCR and the Committee, and shall reasonably assure that the Asbestos PI Trust will value, and be in a financial position to pay, Asbestos PI Claims (as defined in the Plan) in substantially the same manner.

4. The Plan and/or its Asbestos PI Trust agreement shall provide, with respect to any Conditional Payment made to any holder of an Asbestos PI Claim (as defined in the Plan) the language in substantially the form of Exhibit F.

5. The Plan and/or Confirmation Order shall provide that the Asbestos PI Trust is bound by the Plan and this Agreement and that the Asbestos PI Trust shall indemnify Asbestos Protected Parties from any liability or alleged liability arising out of, or resulting from, or attributable to, an Asbestos PI Claim (as defined in the Plan), after the Effective Date.

6. The Plan shall provide for damages, injunctive relief, attorneys' fees, costs and expenses in favor of Insurers against the Asbestos PI Trust in the event of injury or loss suffered by Insurers as a result of a violation or breach of the requirements of the Plan by the Asbestos PI Trust.

7. The Plan shall require that the Confirmation Order contains a provision reaffirming the Approval Order.

8. The only impaired class in the Plan shall be Asbestos PI Claims (as defined in the Plan). Neither the holders of Claims other than Asbestos PI Claims (as defined in the Plan) nor holders of interests in Metex shall be impaired by the Plan.

C. Metex, NYLB and Liquidator expressly acknowledge and agree that any breach of their respective obligations under Section VII.B is not adequately compensable by monetary damages, and therefore, that such obligations are subject to the remedy of specific performance by order of the Bankruptcy Court.

VIII. Rights and Obligations of Parties in the Event of Plan Disapproval or Other Termination Event

In the event of Plan Disapproval, or in the event that the Chapter 11 Case is dismissed or converted to a case under Chapter 7 of the Bankruptcy Code prior to the Effective Date, the Bankruptcy Court confirms a plan other than the Plan that provides for materially different and lesser protections to the Insurers than required under this Agreement or the Plan contemplated under this Agreement, the Approval Order and the Confirmation Order do not become final and non-appealable, or entry by the Bankruptcy Court or District Court of an order that provides that Insurers are not entitled to the benefits of the 524(g) Channeling Injunction, 105 Injunction, and 363 Injunction, this Agreement shall become null, void, and without effect, Insurers shall have no obligation to pay the Settlement Amount, and none of the parties shall be bound by the Approval Order.

IX. Cooperation

Metex and NYLB, and Liquidator will each use commercially reasonable efforts to obtain the outcomes sought by this Agreement, including Court Approval and Other Court Approval. Metex, NYLB and Liquidator each agrees to take such steps and to execute such

documents as may be reasonably necessary or proper to effectuate the purpose and intent of this Agreement and to preserve its validity and enforceability. In the event that any action or proceeding of any type whatsoever is commenced or prosecuted by any Person not a Party hereto to invalidate, interpret, or prevent the validation, enforcement, or carrying out of all or any of the provisions of this Agreement, Metex, NYLB and Liquidator mutually agree, represent, warrant, and covenant to cooperate fully in opposing such action or proceeding.

X. Entire Agreement

This Agreement constitutes a single integrated written contract that expresses the entire agreement and understanding among the Parties with respect to matters that are the subject of this Agreement. Except as otherwise expressly provided, this Agreement supersedes all prior communications, settlements, and understandings among the Parties and their representatives regarding the matters addressed by this Agreement. Except as explicitly set forth in this Agreement, there are no representations, warranties, promises, or inducements, whether oral, written, expressed, or implied, that in any way affect or condition the validity of this Agreement or alter or supplement its terms. Any statements, promises, or inducements, whether made by any Party or any agents of any Party, that are not contained in this Agreement shall not be valid or binding.

XI. No Admissions

A. This Agreement represents a compromise of disputed Claims and shall not be construed as an admission by any Party of any liability, duties, rights or obligations arising under the Insurance Policies. Except as necessary to enforce any undertakings set forth in this Agreement, nothing contained in this Agreement is or shall be deemed to be an admission: (i) by or on behalf of NYLB, Home or Liquidator that Metex was or is entitled to any insurance



coverage with respect to Asbestos-Related Claims and/or any other Claims, or as to the validity of any of the coverage positions that have been or could have been asserted by Metex, including in the Coverage Action and/or Coverage Claims; or (ii) by Metex as to the validity of any of the coverage positions or defenses to coverage that have been or could have been asserted by Insurers with respect to Asbestos-Related Claims and/or any other Claims, including in the Coverage Action and/or Coverage Claims.

B. By entering into this Agreement, the Parties have not waived nor shall be deemed to have waived any right, obligation, privilege, defense or position they may have asserted or might assert in connection with any Claim, matter, Person or insurance policy outside the scope of this Agreement. No Person, other than the Parties hereto and, after the "Effective Date" of the Plan, the Asbestos PI Trust, shall have any legally enforceable rights or benefits under this Agreement.

C. The Parties agree that no part of this Agreement may be used in any proceeding as evidence of the respective rights, duties or obligations of the Parties under the Insurance Policies. All actions taken and statements made by persons or their representatives relating to this Agreement, including its negotiation, development and implementation, shall relate to this Agreement only and shall be without prejudice or value as precedents, and shall not be taken as a standard by which other matters may be judged. This Agreement and the negotiations and communications related thereto, shall not be offered or used in any court or other proceeding to create, prove or interpret any obligations of the Parties under the Insurance Policies, or as evidence of any right or duty or breach of any right or duty owed or allegedly owed by any Party to any other Party or other person or entity under the Insurance Policies. Any evidence of the terms of this Agreement or negotiations or discussions associated with this Agreement shall be

inadmissible in any action or proceeding for purposes of establishing any rights, duties, or obligations of the Parties, except in (i) an action or proceeding to enforce the terms of this Agreement, (ii) any possible action or proceeding between Insurers and any of their reinsurers or retrocessionaires, or (iii) as otherwise provided herein.

## XII. Construction

This Agreement was negotiated among the parties hereto at arms' length and in good faith, with each signatory receiving advice from independent legal counsel. It is the intent of the signatories that no part of this Agreement be construed against any of the parties hereto because of the identity of the drafter or the fact that Insurers or any other Person within the definition of Insurers is an insurance company or other entity. It is agreed among the signatories hereto that this is not an insurance contract and that no special rules of construction apply to this Agreement, including the doctrine of *contra proferentem*.

## XIII. Headings

Titles and captions contained in the Agreement are inserted only as a matter of convenience and are for reference purposes only. Such titles and captions in no way are intended to define, limit, expand or describe the scope of this Agreement, nor the intent of any provision thereof.

## XIV. Execution and Delivery

This Agreement may be executed in counterpart originals, all of which, when so executed and taken together, shall be deemed an original and all of which shall constitute one and the same instrument. Each counterpart may be delivered by facsimile or email (as a .pdf attachment), and a faxed or emailed signature shall have the same force and effect as an original signature.

XV. No Waiver

Neither the waiver by a Party hereto of a breach of or a default under any of the provisions of this Agreement, nor the failure of a Party, on one or more occasions, to enforce any of the provisions of this Agreement or to exercise any right or privilege hereunder shall thereafter be construed as a waiver of any subsequent breach or default of a similar nature, or as a waiver of any such provisions, rights, or privileges hereunder.

XVI. No Modification

No change or modification of this Agreement shall be valid unless made in writing and signed by the Parties or their respective counsel and, after the "Effective Date" of the Plan, the Asbestos PI Trust.

XVII. Governing Law

This Agreement shall be governed by, and shall be construed in accordance with, the substantive laws of the State of New York without regard to its choice of law rules.

XVIII. Notices

Unless another Person is designated, in writing, for receipt of notices hereunder, notices to the respective Parties shall be sent to the following Persons by pre-paid overnight delivery or by e-mail (as a .pdf attachment):

FOR METEX

Metex Mfg. Corporation, Debtor-in-Possession  
9 Park Place  
Great Neck, NY 11021  
Attention: Tony Miceli  
tm@unitedcapitalcorp.net

With a copy to:

Paul E. Breene, Esquire  
Reed Smith LLP  
599 Lexington Avenue  
New York, NY 10022  
pbreene@reedsmith.com

and

Paul M. Singer, Esquire  
Reed Smith LLP  
225 Fifth Avenue  
Pittsburgh, P A 15222  
psinger@reedsmith.com

FOR LIQUIDATOR

The Home Insurance Company in Liquidation  
61 Broadway, 6<sup>th</sup> Floor  
New York, New York 10006  
Attention: Thomas W. Kober, Chief Claims Officer  
tom.kober@homeinsco.com

With copies to:

J. Christopher Marshall, Esquire  
Civil Bureau  
New Hampshire Department of Justice  
33 Capitol Street  
Concord, New Hampshire 03301-6397  
christopher.marshall@doj.nh.gov

and

J. David Leslie, Esquire  
Rackemann, Sawyer & Brewster;  
160 Federal St.  
Boston, MA 02110  
dleslie@rackemann.com

FOR NYLB

New York Liquidation Bureau  
110 William Street  
New York, NY 10038  
Attn.: Director, Claims Division  
erussell@nylb.org

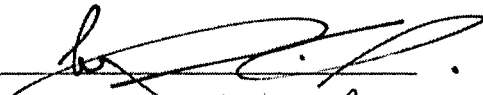
and

New York Liquidation Bureau  
110 William Street  
New York, NY 10038  
Attn.: General Counsel  
jpkelly@nylb.org

IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized representatives.

METEX

(as defined in Section II.EE)

By:   
Name: ANTHONY J. MICELI  
Title: PRESIDENT  
Date: 5-9-13

ROGER A. SEVIGNY, INSURANCE COMMISSIONER OF THE STATE OF NEW  
HAMPSHIRE, AS LIQUIDATOR OF THE HOME INSURANCE COMPANY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

THE SUPERINTENDENT OF FINANCIAL SERVICES OF THE STATE OF NEW YORK AS  
ADMINISTRATOR OF THE NEW YORK PROPERTY/CASUALTY SECURITY  
FUND AND AS ANCILLARY RECEIVER OF THE HOME INSURANCE COMPANY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

METEX

(as defined in Section II.EE)

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

ROGER A. SEVIGNY, INSURANCE COMMISSIONER OF THE STATE OF NEW  
HAMPSHIRE, AS LIQUIDATOR OF THE HOME INSURANCE COMPANY

By: Thomas W. Kober

Name: Thomas W. Kober

Title: Chief Claims Officer

Date: May 6, 2013

THE SUPERINTENDENT OF FINANCIAL SERVICES OF THE STATE OF NEW YORK AS  
ADMINISTRATOR OF THE NEW YORK PROPERTY/CASUALTY SECURITY  
FUND AND AS ANCILLARY RECEIVER OF THE HOME INSURANCE COMPANY

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

METEX

(as defined in Section II.EE)

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

ROGER A. SEVIGNY, INSURANCE COMMISSIONER OF THE STATE OF NEW  
HAMPSHIRE, AS LIQUIDATOR OF THE HOME INSURANCE COMPANY

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

THE SUPERINTENDENT OF FINANCIAL SERVICES OF THE STATE OF NEW YORK AS  
ADMINISTRATOR OF THE NEW YORK PROPERTY/CASUALTY SECURITY  
FUND AND AS ANCILLARY RECEIVER OF THE HOME INSURANCE COMPANY

By: 

Name: Michael J. Casey

SDF  
5/7/13

Title: Acting Special Deputy Superintendent

Date: May 7, 2013

## Exhibit A

Court Order 159 - \$2,449,940.28 paid directly to Liberty Mutual on August 23, 2011

Court Order 164 - \$676,268.98 paid directly to Liberty Mutual on October 28, 2011

Court Order 165 - \$1,520,531.83 paid directly to Liberty Mutual on February 8, 2012

Court Order 166 - \$349,867.50 paid directly to the McGivney & Kluger escrow account on June 22, 2012

Court Order 170 - \$621,131.50 paid directly to the McGivney & Kluger escrow account on July 27, 2012

Court Order 172 - \$991,602.15 paid directly to the McGivney & Kluger escrow account on July 6, 2012

Court Order 174 - \$1,003,173.50 paid directly to the McGivney & Kluger escrow account on June 22, 2012

Court Order 175 - \$942,939.00 paid directly to the McGivney & Kluger escrow account on July 6, 2012

Court Order 178 - \$5,460,692.64 paid directly to the McGivney & Kluger escrow account

Total paid to date - \$14,016,147.38

Amount expected to be paid:

Court Order 181 - \$408,849.50 to be paid directly to the McGivney & Kluger escrow account, per order of Ancillary Receivership Court and stipulation approved by the Bankruptcy Court if paid prior to approval of the settlement agreement by the Bankruptcy Court.



**Exhibit B**

Insurance Policies

| Alleged Insurance Policies with Kentile Floors, Inc. |                    |                       |
|--|--------------------|-----------------------|
| Issuing Company                                      | Alleged Policy No. | Alleged Policy Period |
| Home Insurance Company                               | HEC – 9345894      | 1/1/77 – 1/1/78       |
| Home Insurance Company                               | HEC – 9655432      | 1/1/78 – 1/1/79       |
| Home Insurance Company                               | HEC – 9802011      | 1/1/79 – 1/1/80       |
| Home Insurance Company                               | HEC – 9834671      | 1/1/80 – 1/1/81       |
| Home Insurance Company                               | HEC – 9911128      | 1/1/81 – 1/1/82       |

## Exhibit C

### 11.4 Asbestos PI Channeling Injunction.

*In order to supplement the injunctive effect of the Discharge Injunction in Article 11.2 and pursuant to § 524(g) of the Bankruptcy Code, the Confirmation Order shall provide for the following Asbestos PI Channeling Injunction to take effect as of the Effective Date:*

(a) Terms.

*To preserve and promote the settlements contemplated by and provided for in the Plan and to supplement, where necessary, the injunctive effect of the discharge both provided by §§ 1141 and 524(a) of the Bankruptcy Code and as described in Articles 11.1 and 11.2 of the Plan and pursuant to the exercise of the equitable jurisdiction and power of the Bankruptcy Court and the District Court under § 524(g) of the Bankruptcy Code, all Entities which have held or asserted, which hold or assert, or which may in the future hold or assert an Asbestos PI Claim against the Asbestos Protected Parties (or any of them) shall be permanently stayed, restrained, and enjoined from taking any action for the purpose of directly or indirectly collecting, recovering, or receiving payments, satisfaction, or recovery with respect to any Asbestos PI Claim, including, but not limited to:*

(i) *Commencing or continuing in any manner any action or other proceeding of any kind with respect to any Asbestos PI Claim against any of the Asbestos Protected Parties, or against the property of any Asbestos Protected Party with respect to any such Asbestos PI Claim;*

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

(iii) *Creating, perfecting, or enforcing any Lien of any kind against any Asbestos Protected Party or the property of any Asbestos Protected Party with respect to any Asbestos PI Claim;*

(iv) *Except as otherwise specifically provided in the Plan, asserting or accomplishing any setoff, right of subrogation, indemnity, contribution, or recoupment of any kind against any obligation due any Asbestos Protected*

*Party or against the property of any Asbestos Protected Party with respect to any Asbestos PI Claim; and*

*(v) Taking any act, in any manner, in any place whatsoever, against any of the Asbestos Protected Parties or their property, that does not conform to, or comply with, the provisions of the Plan Documents pertaining to an Asbestos PI Claim.*

#### **11.5 Limitations of Asbestos PI Channeling Injunction.**

*The releases set forth in the Plan and the injunction set forth in Article 11. 4 above shall not enjoin:*

*(a) the rights of Entities to the treatment accorded to them under Articles III and IV of the Plan above, as applicable, including the rights of Entities with Asbestos PI Claims to assert such Claims or Demands against the Asbestos PI Trust in accordance with the Asbestos PI Trust Distribution Procedures;*

*(b) the rights of Entities to assert any Claim, debt, obligation, or liability for payment of Asbestos PI Trust Expenses against the Asbestos PI Trust; and*

*(c) the rights of the Reorganized Metex or the Asbestos PI Trust to take any action with respect to any and all of the Asbestos Insurance Policies, subject to the terms of any applicable Insurance Settlement Agreement. [Note: “the Reorganized Metex” are how the words appear in the pre-pack Plan]*

## Exhibit D

### POLICY INJUNCTION

**11.6 Asbestos Insurance Policy Injunction.** *In order to give further effect to the Insurance Settlement Agreements which are a significant part of the Plan, the Confirmation Order shall contain an injunction, pursuant to section 105(a) of the Bankruptcy Code, permanently and forever prohibiting and enjoining the commencement, conduct, or continuation of any Claim (including any Claim under California Insurance Code § 11580 or its subdivisions or similar statutes in any jurisdiction), Demand, action or cause of action, whether known or unknown, present or future, the employment of process or any act to collect, recover from, or offset any Claim or Demand, known or unknown, present or future, against any Settling Asbestos Insurance Protected Party based on, arising from, or attributable to, in any way, an Asbestos Insurance Policy or Other Insurance Policy insuring Kentile or Metex, but such injunction pursuant to section 105(a) of the Bankruptcy Code shall not affect or modify the rights of persons insured under policies of insurance except to the extent released in an Insurance Settlement Agreement approved by the Bankruptcy Court. The protection of the foregoing injunction includes but is not limited to:*

*(a) any and all Claims that are based in whole or in part on the insurance relationship between the Settling Asbestos Insurance Protected Party and Kentile or Metex arising from, attributable to, in any way, or under an Asbestos Insurance Policy or Other Insurance Policy, whether arising from statute, common law, or otherwise, including, but not limited to, any such Claim that is:*

- (i) based on the defense, handling, settlement, trial, or appeal of a Claim against Kentile or Metex,*
- (ii) based directly or indirectly on allegedly suppressed or inappropriate settlement values or the alleged failure to assert Claims due to the conduct of any of a Settling Asbestos Insurance Protected Party, Kentile or Metex or their respective counsel, with respect to Claims against Kentile or Metex,*

(iii) *alleging conspiracy or concert of action between any of Kentile or Metex and any Settling Asbestos Insurance Protected Party to suppress the knowledge of the hazards of asbestos,*

(iv) *alleging failure to disclose facts or information concerning asbestos learned or acquired as a result of the insurance relationship between a Settling Asbestos Insurance Protected Party and Kentile or Metex,*

(v) *based on, arising from, or attributable to, in any way, any surveys or loss prevention and control activities undertaken or not undertaken, or allegedly undertaken or allegedly not undertaken with respect to Kentile or Metex by a Settling Asbestos Insurance Protected Party, or*

(vi) *alleging misconduct or wrongdoing of any kind whatsoever by a Settling Asbestos Insurance Protected Party based on, arising from, or attributable to, in any way, an Asbestos PI Claim, or an Asbestos Insurance Policy or Other Insurance Policy; and*

(b) *any and all Claims that are based in whole or in part on any alleged breach by a Settling Asbestos Insurance Protected Party of the duty of good faith and fair dealing, unfair claims practices, unfair trade practices, bad faith, violations of any statute, regulation or code (except violations of any criminal law that has resulted in a criminal charge), or any other type of extra-contractual liability based on, arising from, or attributable to, in any way, an Asbestos PI Claim or an Asbestos Insurance Policy or Other Insurance Policy.*

**Exhibit E**

Approval Order

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

|                              |  |   |                         |
|------------------------------|--|---|-------------------------|
| <hr/>                        |  | ) |                         |
| In re:                       |  | ) |                         |
| METEX MFG. CORPORATION       |  | ) | Chapter 11              |
| (f/k/a Kentile Floors, Inc.) |  | ) |                         |
|                              |  | ) | Case No. 12-14554 (BRL) |
| the Debtor.                  |  | ) |                         |
| <hr/>                        |  | ) |                         |

**ORDER APPROVING SETTLEMENT AGREEMENT AND MUTUAL RELEASE BETWEEN METEX AND ROGER A. SEVIGNY, INSURANCE COMMISSIONER OF THE STATE OF NEW HAMPSHIRE, AS LIQUIDATOR OF THE HOME INSURANCE COMPANY, AND THE SUPERINTENDENT OF FINANCIAL SERVICES OF THE STATE OF NEW YORK AS ADMINISTRATOR OF THE NEW YORK PROPERTY/CASUALTY INSURANCE SECURITY FUND AND AS ANCILLARY RECEIVER FOR THE HOME INSURANCE COMPANY**

Having heard and considered the Debtor’s Motion (the “Motion”, Dkt. No. \_\_\_)<sup>1</sup> for an Order: (i) approving the Settlement Agreement and Mutual Release between Metex Mfg. Corporation f/k/a Kentile Floors, Inc. (“Metex” or “Debtor”), Roger A. Sevigny, Insurance Commissioner of the State of New Hampshire, as Liquidator (“Liquidator”) of The Home Insurance Company (“Home”), and the Superintendent of Financial Services of the State of New York as Administrator of the New York Property/Casualty Insurance Security Fund and as Ancillary Receiver of Home, in each case by his agent, the Acting Special Deputy Superintendent (collectively, “NYLB”) (NYLB, Home and Liquidator are collectively referred to as the “Insurers”), a copy of which is attached as Exhibit \_\_ to the Motion (the “Settlement Agreement”); (ii) approving the assumption of the Settlement Agreement; (iii) approving the sale

<sup>1</sup> Capitalized Terms as used herein, unless otherwise noted, are used as defined in the Motion and the Settlement Agreement.

free and clear of certain Insurance Policies to Insurers; and (iv) for other relief, any objection(s) to the Motion, and any evidence and argument submitted in support of or in opposition to the Motion; and after due deliberation and sufficient cause appearing therefor; the Court hereby makes the following findings of fact and conclusions of law.

**I. FINDINGS OF FACT**

IT IS HEREBY FOUND AND DETERMINED THAT:

A. Due and adequate notice of the Motion, the hearing on the Motion, and of the opportunity to object to, and be heard regarding, the Motion and the relief requested therein was given by mailing a copy of the Motion and notice of the hearing on the Motion to: (1) counsel for the Committee; (2) counsel for the FCR; (3) counsel who, as of the date of the filing of the Motion, were known to the Debtor to have represented persons who asserted Asbestos PI Claims (as defined in the Plan) against the Debtor; (4) all other persons and entities that, as of the date the Motion was filed, had filed a notice of appearance or other demand for service of process in the Bankruptcy Case; (5) counsel to the Debtor's Other Insurers; and (6) the United States Trustee. In addition, further due and adequate notice of the Motion and of the hearing on the Motion was provided by the Debtor's having published notice of the Motion and of the hearing on the Motion at least 21 days before the hearing, at least once in each of the following publications: USA Today National Edition; The Chicago Tribune; The New York Times; and The Los Angeles Times.

B. The notice that has been given of the Settlement Agreement, the Motion, the hearing on the Motion, and of the opportunity to object to, and be heard regarding, the Motion and the relief requested therein is sufficient to bind (1) the Committee; (2) all parties-in-interest; (3) the FCR and all future claimants whose interests are represented by the FCR; (4) all other persons and entities who, as of the date the Motion was filed, had filed a notice of appearance or

other demand for service of process in the Bankruptcy Case; (5) the Debtor's Other Insurers; (6) persons who asserted Asbestos PI Claims (as defined in the Plan) against the Debtor who, as of the date the Motion was filed, were represented by counsel to whom the Debtor mailed notice of the Motion and the hearing on the Motion; and (7) all persons who were properly notified by the Debtor's publication of notice as described in paragraph A of this Order. Notice of the relief requested by the Motion has been provided by means reasonably calculated to reach all interested persons; and reasonably conveys all the required information to inform all those Persons affected by this Order, and a reasonable time for a response and an opportunity to object to the relief requested was afforded to all interested parties. No other or further notice of the Motion or of this Order is necessary.

C. The Court has jurisdiction to consider the Motion and to grant the relief requested therein pursuant to 28 U.S.C. § 1334, and this Motion presents a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A), (N) and (O).

D. This Order and each of its Findings and Conclusions are and shall be binding upon (1) Debtor and its successors and assigns including, but not limited to, Reorganized Metex and the Asbestos PI Trust, as if they had been parties to the Settlement Agreement as of the Execution Date; (2) the Committee; (3) all parties-in-interest; (4) the FCR and all future claimants whose interests are represented by the FCR; (5) all other persons and entities who, as of the date the Motion was filed, had filed a notice of appearance or other demand for service of process in the Bankruptcy Case; (6) the Debtor's Other Insurers; (7) persons who asserted Asbestos PI Claims (as defined in the Plan) against the Debtor who, as of the date the Motion was filed, were represented by counsel to whom the Debtor mailed notice of the Motion and the hearing on the Motion; and (8) all persons with knowledge of the Chapter 11 Case.



E. The Settlement Agreement is the product of extensive arms'-length, good faith negotiations by and between Metex and Insurers. The relief requested in the Motion is in the best interests of the Debtor, Debtor's estate and its creditors. The Debtor has demonstrated sound business reasons for the settlement embodied in the Settlement Agreement, and the sale of the Insurance Policies to Insurers pursuant to the terms of the Settlement Agreement.

F. The Insurance Policies are being sold to and transferred to Insurers free and clear of all claims and interests in the Insurance Policies held by any Person and free and clear of all claims by any Person that could give rise to a claim for defense, indemnity, or insurance coverage under the Insurance Policies, including Asbestos Related Claims.

G. Insurers are bona fide, good-faith purchasers of the Insurance Policies under Section 363(m) of the Bankruptcy Code. Neither the Debtor, Insurers, nor any of their representatives, have engaged in any conduct that would (i) cause or permit the Settlement Agreement, or the sale of the Insurance Policies contemplated therein, to be avoided under Section 363(n) of the Bankruptcy Code; (ii) cause or permit any amounts, costs, attorneys' fees, expenses, or punitive damages to be recovered under Section 363(n) of the Bankruptcy Code; or (iii) prevent the application of Section 363(m) of the Bankruptcy Code.

H. Debtor may sell the Insurance Policies free and clear of interests under section 363(f) of the Bankruptcy Code because one or more of the criteria set forth in Sections 363(f)(1) (5) of the Bankruptcy Code have been satisfied. Without limiting the generality of the foregoing, those holders of interests in the Insurance Policies who did not object, or who withdrew their objections, to the Motion or the relief requested therein are deemed to have consented pursuant to Section 363(f)(2) of the Bankruptcy Code, and each holder of an interest in the Insurance

Policies can be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest as contemplated by Section 363(f)(5) of the Bankruptcy Code.

I. To the extent that the holders of present and future Claims have any interest in the Insurance Policies that is entitled to adequate protection, such interests are adequately protected as required by Section 363(e) of the Bankruptcy Code and in no circumstance will any such interest be satisfied by Insurers.

J. In light of the uncertainty regarding the outcome of the Coverage Action, as well as the complexity of that action, the expense of continuing litigation, and uncertainty regarding the timing of recovery and collection in the Coverage Action even if it were to be resolved in Metex's favor, the payments and other benefits received under this Settlement Agreement by the Debtor and, when formed, the Asbestos PI Trust, constitute a fair and reasonable settlement of the claims released and settled by the Debtor against Insurers.

K. Insurers are purchasing the Insurance Policies pursuant to the Settlement Agreement and this Order, and are not purchasing any other assets of the Debtor's bankruptcy estate. Neither Home, the NYLB, the Liquidator nor any related entities shall have any responsibility or liability with respect to any of the Debtor's other assets or for any liability of, or claims against, the Debtor.

L. The transfer of the Insurance Policies pursuant to the Settlement Agreement does not and will not subject or expose Insurers to any liability, claim, cause of action or remedy by reason of such transfer under (a) the laws of the United States, any state, territory, or possession thereof or the District of Columbia, based on, in whole or in part, directly or indirectly, including, without limitation, any theory of tort, creditors' rights, equity, antitrust, environmental, successor or transferee liability, labor law, de facto merger, or substantial

continuity, or (b) any employment contract, understanding or agreement, including, without limitation, collective bargaining agreements, employee pension plans, or employee welfare or benefit plans.

M. A sale of the Insurance Policies other than one free and clear of claims and interests, if possible at all, would impact adversely on the Debtor's bankruptcy estate and would be of substantially less benefit to the Debtor, the creditors, and the estate. Insurers would not purchase the Insurance Policies, and pay the Settlement Amount, were the sale not free and clear of any and all claims and interests.

N. The Settlement Amount and other benefits conveyed under the Settlement Agreement to the Debtor constitute valuable and fair consideration and reasonably equivalent value for the benefits received by Insurers under the Settlement Agreement.

O. The FCR has expressly consented to entry of this Order on behalf of Persons who might assert "demands" as defined Section 524(g)(5) of the Bankruptcy Code. The Committee has also expressly consented to entry of this Order.

P. The relief sought in the Motion is in the best interests of the Debtor, its estate, and its creditors.

Q. Pursuant to sections 105 and 363 of the Bankruptcy Code, the sale of the Insurance Policies to Insurers free and clear of any and all claims and interests is permitted. Moreover, the entry of an injunction permanently enjoining the prosecution, continuation or commencement of any claim of any Person against Insurers based upon, arising out of, derived from or in any way attributable to the Insurance Policies, including without limitation extra-contractual claims, is proper and ensures that no such claim can be asserted against Insurers. Debtors, the Liquidator, and the NYLB have agreed that injunction is a necessary prerequisite for

their agreeing to the terms and conditions of the Settlement Agreement, and Insurers would not consummate the sale of the Insurance Policies in the absence of such an injunction from this Court. The injunction and releases set forth in the Settlement Agreement and this Order are necessary and appropriate to effect the settlement and the free and clear sale of the Insurance Policies and avoid irreparable harm for which Insurers would have no adequate remedy at law.

R. The legal and factual bases set forth in the Motion and at the hearing on the Motion establish just cause for granting the relief sought in the Motion.

S. To the extent any finding of fact stating herein is actually a conclusion of law, it is adopted as such.

## **II. CONCLUSIONS OF LAW AND ORDER**

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED in its entirety, and all objections to the Motion that have not been withdrawn, waived, or settled, and all reservations of rights included in such objections, are overruled.

2. The Settlement Agreement and its terms are approved in all respects.

3. The terms of the Settlement Agreement are approved in their entirety, and the Settlement Agreement and this Order shall be binding upon the Debtor, Insurers, all Persons holding interests in the Insurance Policies and/or claims by or against the Debtor or the Debtor's bankruptcy estate, all Other Insurers of the Debtor, all other named insureds under the Insurance Policies, any other Persons claiming rights under the Insurance Policies, and all other parties in interest, together with each of their respective successors and assigns. The sale of the Insurance Policies by the Debtor to Insurers constitutes a legal, valid, and effective transfer of the Insurance Policies and subject to the terms of the Settlement Agreement vests Insurers with all right, title, and interest in and to the Insurance Policies free and clear of all such claims and

interests of all Persons pursuant to Section 363(f) of the Bankruptcy Code, including Asbestos Related Claims.

4. Upon the effective date of any plan of reorganization confirmed in this case, the Settlement Agreement shall be binding on Reorganized Metex as defined in the Plan and the Asbestos PI Trust, as if Reorganized Metex and the Asbestos PI Trust had been parties to the Settlement Agreement as of the Execution Date.

5. The Debtor is authorized to execute any other documentation and perform such other ministerial tasks as may be necessary or appropriate to effectuate the Settlement Agreement, and the Debtor specifically agrees that it shall not assert that the 524(g) Injunction and 105 Injunction applies to any claims that the NYLB has asserted or may assert in the Home Liquidation or any rights, setoffs, defenses or claims that Insurers have asserted or may assert with respect to the Century Indemnity Claim.

6. The releases contained in Section IV of the Settlement Agreement are approved, and each of the releasors is authorized to release the releasees pursuant to the terms of the Settlement Agreement.

7. As set forth in the Settlement Agreement, as of the Effective Date, (a) any and all obligations whatsoever of Insurers to the Releasors arising under or relating to the Insurance Policies shall be terminated; (b) any further claims or requests for coverage under any and all coverages of the Insurance Policies that might be made by the Releasors shall be barred; (c) any and all obligations whatsoever of Insurers to the Releasors based on, arising from, or attributable in any way to Asbestos-Related Claims or based on, arising from or attributable in any way to the Insurance Policies shall be released; and (d) any Asbestos PI Claims (as defined in the Plan)

or requests for coverage with respect to Asbestos PI Claims (as defined in the Plan) under any and all coverages of the Insurance Policies that might be made by the Releasers shall be barred.

8. As set forth in the Settlement Agreement, actual receipt by the Settlement Payee of the initial payment by Insurers in accordance with the Settlement Agreement, shall constitute a purchase by Insurers of any and all rights and interests of the Debtor and any other persons in the Insurance Policies, free and clear of any liens, claims and/or interests, within the meaning of Sections 363(b)(1) and (f) of the Bankruptcy Code, including Asbestos Related Claims, to the fullest extent permissible under the Bankruptcy Code and any other applicable law. Accordingly, without the need for any further action, all rights, title and interest in the Insurance Policies shall be deemed to have been sold, conveyed, assigned, transferred, and delivered to Insurers upon the Initial Payment by Insurers.

9. Insurers are “good faith” purchasers of the Insurance Policies within the meaning of Section 363(m) of the Bankruptcy Code and shall have the protections of that section with respect to the Insurance Policies and all other property of the estate purchased by Insurers pursuant to the Settlement Agreement. Accordingly, the reversal or modification on appeal of the authorization to consummate the sale of the Insurance Policies and the transactions contemplated by the Settlement Agreement shall not affect the validity of the sale of the Insurance Policies to Insurers, unless such authorization is duly stayed pending such appeal.

10. This Order shall not limit or preclude the entry or effectiveness of the injunction(s) that may be granted in connection with, or as part of, any order confirming the Plan, including, without limitation, any injunction that may be provided to Insurers with respect to rights of contribution, subrogation, reimbursement, indemnification, or similar claim that any

Other Insurer(s) may have or may in the future have against Insurers, provided that the NYLB shall not be enjoined from asserting claims in the Home Liquidation.

11. Pursuant to Section 363(b) of the Bankruptcy Code, Debtor, the Liquidator, and the NYLB are each hereby authorized to take all actions and execute all documents and instruments that Debtor, the Liquidator, and the NYLB deem necessary or appropriate to implement and effectuate the transactions contemplated by the Settlement Agreement. Pursuant to Sections 105(a) and 363(f) of the Bankruptcy Code and subject to the consummation of the sale of the Insurance Policies as provided under the Settlement Agreement, the Insurance Policies shall be and hereby are transferred to Insurers, free and clear of any and all claims and interests of all Persons with any interest in, to and with respect to the Insurance Policies, whether arising prior to, during or subsequent to this Chapter 11 Case or imposed by agreement, understanding, law, equity or otherwise, including Asbestos Related Claims (provided, however, nothing in this Order shall affect the rights of the Debtor and Insurers under the Settlement Agreement). Any and all interests that the Court determines are entitled to protection under Section 363(e) of the Bankruptcy Code shall attach to the proceeds of sale with the same validity, priority, force, and effect as such interests had in the Insurance Policies prior to the entry of this Order, subject to the terms and conditions of the Plan confirmed for the Debtor.

12. Pursuant to Sections 105(a) and 363 of the Bankruptcy Code, all Persons who or that have held or asserted, who or that hold or assert, or who or that may in the future hold or assert any claim or interest of any kind or nature against any Insurer based upon, arising out of, derived from or attributable in any way to any Insurance Policy and/or any Claim thereunder, shall be and hereby are permanently barred, stayed, restrained and enjoined from commencing, or otherwise proceeding or taking any action against Insurers or any other person or entity for the

purpose of directly or indirectly collecting, recovering or receiving payments from Insurers to recover with respect to any such claim or interest.

13. This Order shall not afford any relief between the Parties greater than that described in the Settlement Agreement or otherwise inconsistent with that described in the Settlement Agreement, and this Order shall not affect the Century Indemnity Claim that is asserted in the Home Liquidation nor any Claims that the NYLB has asserted or may assert in the Home Liquidation. The 524(g) Channeling Injunction and the 105 Injunction shall not affect the Century Indemnity Claim that is asserted in the Home Liquidation nor any Claims that the NYLB has asserted or may assert in the Home Liquidation, and nothing in the Plan or Confirmation Order shall have such an effect or allow any person to assert that the Injunctions have such an effect.

14. This Order shall be effective and enforceable immediately upon entry and its provisions shall be self-executing and shall not be stayed under Bankruptcy Rule 6004(h).

15. This Court shall retain exclusive jurisdiction to decide any dispute arising under or related to, or any action brought to enforce the terms of, the Settlement Agreement and this Order.

16. To the extent any conclusion of law stated herein is actually a finding of fact, it is adopted as such.

New York, New York

Dated: \_\_\_\_\_

\_\_\_\_\_  
The Honorable Burton R. Lifland  
United States Bankruptcy Judge



## **Exhibit F**

### MEDICARE LANGUAGE

#### **4.12 Medicare Obligations.**

(a) It is the position of the parties to this Trust Agreement that the Asbestos Protected Parties will have no reporting obligations in respect of their contributions to the Asbestos PI Trust, or in respect of any payments, settlements, resolutions, awards, or other claim liquidations by the Asbestos PI Trust, under the reporting provisions of 42 U.S.C. §1395y *et seq.* or any other similar statute or regulation, and any related rules, regulations, or guidance issued in connection therewith or relating thereto (“MPSA”), including Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (P. L. 110-173), or any other similar statute or regulation, and any related rules, regulations, or guidance issued in connection therewith or relating thereto (“MMSEA”). Unless and until there is definitive regulatory, legislative, or judicial authority (as embodied in a final non-appealable decision from the United States Court of Appeals for the Second Circuit or the United States Supreme Court), or a letter from the Secretary of Health and Human Services confirming that the Asbestos Protected Parties have no reporting obligations under MMSEA with respect to any settlements, payments, or other awards made by the Asbestos PI Trust or with respect to contributions the Asbestos Protected Parties have made or will make to the Asbestos PI Trust, the Asbestos PI Trust shall, at its sole expense, in connection with the implementation of the Plan, act as a reporting agent for the Asbestos Protected Parties, and shall timely submit all reports that would be required to be made by any of the Asbestos Protected Parties under MMSEA on account of any claims settled, resolved, paid, or otherwise liquidated by the Asbestos PI Trust or with respect to contributions to the Asbestos PI Trust, including, but not limited to, reports that would be required if the Asbestos Insurance

Policies or the Insurance Settlement Agreements were determined to be “applicable plans” for purposes of MMSEA, or the Asbestos Protected Parties were otherwise found to have MMSEA reporting requirements. The Asbestos PI Trust, in its role as reporting agent for the Asbestos Protected Parties, shall follow all applicable guidance published by the Centers for Medicare & Medicaid Services of the United States Department of Health and Human Services and/or any other agent or successor entity charged with responsibility for monitoring, assessing, or receiving reports made under MMSEA (collectively, “CMS”) to determine whether or not, and, if so, how, to report to CMS pursuant to MMSEA.

(b) As long as the Asbestos PI Trust is required to act as a reporting agent for any Asbestos Protected Parties pursuant to the provisions of Section 4.12(a) above, the Asbestos PI Trust shall, within ten (10) business days following the end of each calendar quarter, provide a written certification to the party designated in writing by each Asbestos Protected Party for which the Asbestos PI Trust is required to act as reporting agent, confirming that all reports to CMS required by Section 4.12(a) above have been submitted in a timely fashion, and identifying (i) any reports that were rejected or otherwise identified as noncompliant by CMS, along with the basis for such rejection or noncompliance, and (ii) any payments to Medicare benefits recipients or Medicare-eligible beneficiaries that the Asbestos PI Trust did not report to CMS.

(c) With respect to any reports rejected or otherwise identified as noncompliant by CMS, the Asbestos PI Trust shall, upon request by an Asbestos Protected Party for which the Asbestos PI Trust is required to act as a reporting agent, promptly provide copies of the original reports submitted to CMS, as well as any response received from CMS with respect to such reports; *provided, however*, that the Asbestos PI Trust may redact from such copies the names, Social Security numbers other than the last four digits, health insurance claim

numbers, taxpayer identification numbers, employer identification numbers, mailing addresses, telephone numbers, and dates of birth of the injured parties, claimants, guardians, conservators and/or other personal representatives, as applicable. With respect to any such reports, the Asbestos PI Trust shall reasonably undertake to remedy any issues of noncompliance identified by CMS and resubmit such reports to CMS, and, upon request by an Asbestos Protected Party, provide such Asbestos Protected Party with copies of such resubmissions; *provided, however*, that the Asbestos PI Trust may redact from such copies the names, Social Security numbers other than the last four digits, health insurance claim numbers, taxpayer identification numbers, employer identification numbers, mailing addresses, telephone numbers, and dates of birth of the injured parties, claimants, guardians, conservators and/or other personal representatives, as applicable. In the event the Asbestos PI Trust is unable to remedy any issues of noncompliance, the provisions of Section 4.12(g) below shall apply.

(d) As long as the Asbestos PI Trust is required to act as a reporting agent for an Asbestos Protected Party pursuant to Section 4.12(a) above, with respect to each claim of a Medicare benefits recipient or Medicare-eligible beneficiary that was paid by the Asbestos PI Trust and not reported to CMS, the Asbestos PI Trust shall, upon request by such Asbestos Protected Party, promptly provide the claimant's name, last four digits of the claimant's Social Security number, the year of the claimant's birth, the claimants' asbestos-related disease, and any other information that may be necessary in the reasonable judgment of such Asbestos Protected Party to satisfy its obligations, if any, under MMSEA, as well as the basis for the Asbestos PI Trust's failure to report the payment. In the event the Asbestos Protected Party informs the Asbestos PI Trust that it disagrees with the Asbestos PI Trust's decision not to report a claim paid by the Asbestos PI Trust, the Asbestos PI Trust shall promptly report the payment to CMS.

All documentation relied upon by the Asbestos PI Trust in making a determination that a payment did not have to be reported to CMS shall be maintained for a minimum of six years following such determination. The Asbestos Protected Parties shall keep any information and documents received from the Asbestos PI Trust pursuant to this Section 4.12(d) confidential and shall not use such information for any purpose other than meeting obligations under MSPA and/or MMSEA.

(e) As long as the Asbestos PI Trust is required to act as a reporting agent for any Asbestos Protected Party pursuant to Section 4.12(a) above, the Asbestos PI Trust shall make the reports and provide the certifications required by Section 4.12(a) and (b) above until such time as the Asbestos Protected Party shall determine, in its reasonable judgment, that it has no further legal obligation under MMSEA or otherwise to report any settlements, resolutions, payments, or liquidation determinations made by the Asbestos PI Trust or contributions to the Asbestos PI Trust. Furthermore, following any permitted cessation of reporting, or if reporting has not previously commenced due to the satisfaction of one or more of the conditions set forth in Section 4.12(a) above, and if the Asbestos Protected Party reasonably determines, based on subsequent legislative, administrative, regulatory, or judicial developments, that reporting is required, then the Asbestos PI Trust shall promptly perform its obligations under Section 4.12(a) and (b) above.

(f) Section 4.12(a) above is intended to be purely prophylactic in nature, and does not imply, and shall not constitute an admission, that any Asbestos Protected Party, Asbestos Insurance Policy or Insurance Settlement Agreement is, in fact, an “applicable plan” within the meaning of MMSEA, or that any Asbestos Protected Party has a legal obligation to

report any actions undertaken by the Asbestos PI Trust or contributions to the Asbestos PI Trust under MMSEA or any other statute or regulation.

(g) In the event that CMS concludes that reporting done by the Asbestos PI Trust in accordance with Section 4.12(a) above is or may be deficient in any way, and has not been corrected to the satisfaction of CMS in a timely manner, or if CMS communicates to the Asbestos PI Trust or any of the Asbestos Protected Parties a concern with respect to the sufficiency or timeliness of such reporting, or there appears to an Asbestos Protected Party a reasonable basis for a concern with respect to the sufficiency or timeliness of such reporting or non-reporting based upon the information received pursuant to Section 4.12(b), (c) or (d) above, or other credible information, then each Asbestos Protected Party shall have the right to submit its own reports to CMS under MMSEA, and the Asbestos PI Trust shall provide to any Asbestos Protected Party that elects to file its own reports such information as the electing Asbestos Protected Party may require in order to comply with MMSEA, including, without limitation, the full reports filed by the Asbestos PI Trust pursuant to Section 4.12(a) above without any redactions. Such Asbestos Protected Party shall keep any information it receives from the Asbestos PI Trust pursuant to this Section 4.12(g) confidential and shall not use such information for any purpose other than meeting obligations under MPSA and/or MMSEA.

(h) Notwithstanding any other provision hereof, if the Asbestos PI Trust is required to act as a reporting agent for any of the Asbestos Protected Parties pursuant to the provisions contained herein, then such Asbestos Protected Parties shall take all steps necessary and appropriate as required by CMS to permit any reports contemplated by this Section 4.12 to be filed. Furthermore, until an Asbestos Protected Party provides the Asbestos PI Trust with any necessary information regarding that Asbestos Protected Party's identifying information that may

be required by CMS' s Coordination of Benefits Contractor to effectuate reporting, the Asbestos PI Trust shall have no obligation to report under Section 4.12(a) above with respect to any such entity that has not provided such information and the Asbestos PI Trust shall have no indemnification obligation under Subsection (j) of this Section 4.12 to such Asbestos Protected Party for any penalty, interest, or sanction that may arise solely on account of the Asbestos Protected Party's failure to timely provide such information to the Asbestos PI Trust in response to a timely request by the Asbestos PI Trust for such information.

(i) The Trustee shall obtain prior to remittance of funds to claimants' counsel or to the claimant, if pro se, in respect of any Asbestos PI Claim a certification from the claimant to be paid that said claimant has or will provide for the payment and/or resolution of any obligations owing or potentially owing under MSPA in connection with, or relating to, such Asbestos PI Claim and that the Asbestos Protected Parties also are beneficiaries of such certification. The Asbestos PI Trust shall provide a quarterly certification of its compliance with the terms of the immediately preceding sentence to the party designated in writing by each Asbestos Protected Party for which the Asbestos PI Trust is required to act as reporting agent, and shall permit reasonable audits by such Asbestos Protected Parties, no more often than quarterly, to confirm the Asbestos PI Trust's compliance with this Section 4.12(i) during which Asbestos Protected Parties may request copies of claimant certifications. For the avoidance of doubt, the Asbestos PI Trust shall be obligated to comply with the requirements of this Section 4.12(i) regardless of whether an Asbestos Protected Party elects to file its own reports under MMSEA pursuant to Section 4.12(g) above. The Asbestos Protected Parties shall keep any information and documents received from the Asbestos PI Trust pursuant to this Section 4.12(i)

confidential and shall not use such information for any purpose other than meeting obligations under MSPA and/or MMSEA.

(j) The Asbestos PI Trust shall indemnify an Asbestos Protected Party with respect to any Claim against such Asbestos Protected Party in respect of Medicare claims reporting and payment obligations in connection with Asbestos PI Claims, including any obligations owing or potentially owing under MMSEA or MSPA issued in connection therewith, or relating thereto and any penalty, interest, or sanction. The foregoing indemnification obligation of the Asbestos PI Trust is a direct obligation of the Asbestos PI Trust and is not subject to application of any payment percentage or other reduction.