



UNITED STATES BANKRUPTCY COURT

DISTRICT OF VERMONT

IN RE:	)	
RUTLAND FIRE CLAY COMPANY,	)	
d/b/a Rutland Products	)	Case No. 99-11390-cab
RUTLAND, INC.	)	Case No. 99-11391-cab
d/b/a Rutland Products,	)	<i>Jointly Administered</i>
d/b/a Rutland Inc. of Illinois	)	Chapter 11 proceeding
	)	
Debtors in Possession.	)	

#277-1

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**FIRST AMENDED JOINT PLAN OF REORGANIZATION  
OF RUTLAND FIRE CLAY COMPANY AND  
RUTLAND, INC.  
October 13, 2000**

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**US BANKRUPTCY COURT**  
**DISTRICT OF VERMONT**

Prepared and Submitted by:  
Rutland Fire Clay Company and  
Rutland, Inc.  
Debtors in Possession

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October 13, 2000**

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Rutland Fire Clay Company and Rutland, Inc., Debtors and Debtors in Possession (hereinafter "Rutland" or the "Company"), in the above-captioned jointly administered Chapter 11 cases, proposes the following First Amended Plan of Reorganization pursuant to section 1121 (a) of title 11 of the United States Code.

**ARTICLE I - DEFINITIONS**

*1.1 Defined Terms.* As used herein, the following terms have the respective meanings specified below, unless the context otherwise requires.

(1) "*Administrative Expense Claim*" means: (i) any cost or expense of administration of the Chapter 11 Case allowed under section 503(b) of the Bankruptcy Code, including, without

limitation, any actual and necessary expense of preserving the Debtors' estate, Cure Claims, Fee Claims; and (ii) any fees or charges assessed against the Debtors' estate under section 1930 of chapter 123 of title 28 of the United States Code.

(2) *"Allowed"* means:

(i) with respect to any Claim, other than an Administrative Expense Claim or an Asbestos-Related Personal Injury Claim proof of which was filed within the applicable period of limitation fixed in accordance with Bankruptcy Rule 3003(c)(3) by the Bankruptcy Court, (a) as to which no objection to the allowance thereof has been interposed within the applicable period of limitation fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules or a Final Order of the Bankruptcy Court, such Claim to the extent asserted in the proof of such Claim, or (b) as to which an objection has been interposed, such Claim to the extent that it has been allowed in whole or in part by a Final Order of the Bankruptcy Court;

(ii) with respect to any Claim, other than an Administrative Expense Claim or an Asbestos-Related Personal Injury Claim as to which no proof of claim was filed within the applicable period of limitation fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or a Final Order of the Bankruptcy Court, such Claim to the extent that it has been listed by the Debtors in their Schedules as liquidated in amount and not disputed or contingent;

(iii) with respect to any Claim that is asserted to constitute an Administrative

Expense Claim (a) that represents an actual or necessary expense of preserving the estate or operating the business of the Debtors, any such Claim to the extent that the Debtors, with the consent of the Committee and the Legal Representative and, after the Effective Date, New Rutland, with the consent of the Asbestos Trust, determines it to constitute an Administrative Expense Claim, (b) other than with respect to a Claim of a professional person employed under sections 105, 327 or 1103 of the Bankruptcy Code that is required to apply to the Bankruptcy Court for the allowance of compensation and reimbursement of expenses pursuant to section 330 of the Bankruptcy Code, that the Debtors and the Committee or, after the Effective Date, New Rutland and the Asbestos Trust, do not believe constitutes an Administrative Expense Claim, any such Claim to the extent it is allowed in whole or in part by a Final Order of the Bankruptcy Court and only to the extent that such allowed portion is deemed, pursuant to a Final Order of the Bankruptcy Court, to constitute a cost or expense of administration under sections 503(b) and 507(a)(1) of the Bankruptcy Code, or (c) that represents a Claim of a professional person employed under sections 105, 327 or 1103 of the Bankruptcy Code that is required to apply to the Bankruptcy Court for the allowance of compensation and reimbursement of expenses pursuant to section 330 of the Bankruptcy Code, such Claim to the extent it is allowed by a Final Order of the Bankruptcy Court under sections 105 or 330 of the Bankruptcy Code;

(iv) with respect to any Asbestos-Related Claim, such Claim to the extent that it is allowed in accordance with the procedures established pursuant to the Asbestos Trust Documents, including the Asbestos-Related Claims Resolution and Distribution Procedures implemented in accordance therewith;



(v) with respect to any Common Stock Interest, such Interest to the extent that it is listed on (A) the list of equity security holders filed pursuant to Bankruptcy Rule 1007(a)(3) or (B) to the extent such holder shall be identified on the transfer records of the Debtors as of the Record Date.

(3) "*Allowed Amount*" means the lesser of (a) the dollar amount of an Allowed Claim or amount of an Allowed Interest and (b) the Estimated Amount of such Claim. Unless otherwise specified herein or by Final Order of the Bankruptcy Court, the Allowed Amount of an Allowed Claim shall not include interest accruing on such Allowed Claim from and after the Petition Date.

(4) "*Amended and Restated By-laws*" means the amended and restated by-laws of New Rutland, and as may be amended from time to time according to its terms.

(5) "*Amended and Restated Certificate of Incorporation*" means the amended and restated certificate of incorporation of New Rutland, and as may be amended from time to time according to its terms.

(6) "*Asbestos Claimant*" means any Entity holding an Asbestos-Related Claim.

(7) "*Asbestos In Buildings Claims*" means those Claims against the Debtors, whether in the nature of or sounding in tort, contract, warranty or any other theory of law, equity or admiralty for, relating to or arising by reason of, directly or indirectly, damages arising from the presence in

buildings or other structures of asbestos or asbestos containing products manufactured, sold, supplied, produced, distributed, or in any way marketed by Rutland or any of its current or former subsidiaries or affiliates (or another person, firm, corporation or other Entity for which the Debtors are or may be liable), including but not limited to abatement costs, diminution of value, environmental damage, economic loss and all Claims, debts, obligations or liabilities for compensatory damages (such as proximate, consequential, general or special) and punitive damages.

(8) *"Asbestos-Related Building Contribution Claims"* means those claims for contribution, reimbursement, indemnity or subrogation (as those terms may be defined pursuant to the law of the relevant jurisdiction) that are: (a) held by Entities (i) who have been or may be defendants or respondents in an action or proceeding seeking damages for Asbestos In Buildings Claims or (ii) seeking reimbursement or payment of settlements paid by or on behalf of codefendants or litigation or defense costs, including without limitation legal fees, incurred in connection with litigation involving Asbestos In Buildings Claims; and (b) asserted against the Debtors for (i) reimbursement of all or any portion of any damages any such Entity has paid or may pay to the Entity asserting such Asbestos In Buildings Claims or (ii) reimbursement of related litigation or defense costs.

(9) *"Asbestos-Related Claims"* means Asbestos-Related Personal Injury Claims, Asbestos In Buildings Claims, Asbestos Related Personal Injury Contribution Claims and Asbestos-Related Building Contribution Claims.

(10) *"Asbestos-Related Claims Resolution and Distribution Procedures"* means those disputed claims resolution and distribution procedures to be implemented by the Trustee pursuant to the terms and conditions of this Plan and the Asbestos Trust Documents, to liquidate, determine and administer claims of and distributions to Asbestos Claimants and Future Claimants, substantially in the form attached hereto as Exhibit 3 and 4 to the Disclosure Statement and as may be amended from time to time according to its terms.

(11) *"Asbestos-Related Personal Injury Claim"* means those Claims against the Debtors, whether in the nature of or sounding in tort, contract, warranty or any other theory of law, equity or admiralty for, relating to or arising by reason of, directly or indirectly, physical, emotional or other personal injuries or other damages caused, or allegedly caused, directly or indirectly, by the presence of, or exposure to, asbestos or asbestos-containing products manufactured, sold, supplied, produced, distributed or in any way marketed and arising or allegedly arising, directly or indirectly, from acts or omissions of Rutland or any of its current or former subsidiaries or affiliates (or another person, firm, corporation or other Entity for or with which Rutland is or may be liable), including but not limited to all Claims, debts, obligations or liabilities for compensatory damages (such as loss of consortium, wrongful death, survivorship, proximate, consequential, general and special damages) and punitive damages.

(12) *"Asbestos-Related Personal Injury Contribution Claims"* means those Claims for contribution, reimbursement, indemnity or subrogation (as those terms may be defined pursuant to the law of the relevant jurisdiction) that are: (a) held by Entities (i) who have been or may be

defendants or respondents in an action or proceeding seeking damages for Asbestos-Related Personal Injury Claims or (ii) seeking reimbursement or payment of settlements paid by or on behalf of co-defendants or litigation or defense costs, including without limitation legal fees, incurred in connection with litigation involving Asbestos-Related Personal Injury Claims; and (b) asserted against the Debtors for (i) reimbursement of all or any portion of any damages any such Entity has paid or may pay to the Entities asserting such Asbestos-Related Personal Injury Claims or (ii) reimbursement of related litigation or defense costs.

(13) *"Asbestos Trust"* means the Rutland Fire Clay Asbestos Trust established pursuant to the Asbestos Trust Agreement in accordance with the terms of Section 8.1 hereof.

(14) *"Asbestos Trust Agreement"* means the agreement between the Debtors, as Trustors, and the Trustees establishing the Asbestos Trust and all exhibits thereto, substantially in the form attached hereto as Exhibit 2 to the Disclosure Statement and as may be amended from time to time according to its terms.

(15) *"Asbestos Trust Distribution"* means (i) all excess cash of New Rutland, (ii) (A) all insurance policies issued by any insurance carrier for or in favor of Rutland providing insurance coverage for Asbestos Related Claims and (B) all payments received from, and all rights and agreements to payment from any insurance company with respect to Asbestos Related Claims, (iii) Causes of Action, (iv) the Asbestos Trust Equity Distribution, and (v) all Rights to Payment.

(16) *"Asbestos Trust Documents"* means the documents establishing and governing the terms and conditions for the operation and administration of the Asbestos Trust including, but not limited to, the Asbestos Trust Agreement, the Asbestos Related Claims Resolution and Distribution Procedures and all exhibits to each such document, substantially in the forms attached hereto as Exhibits 3 and 4 to the Disclosure Statement and as such documents may be amended from time to time according to their terms.

(17) *"Asbestos Trust Equity Distribution"* 100% of the stock and equity interests of New Rutland.

(18) *"Available Cash"* means all Cash on hand and held in bank accounts of the Debtors (except Cash held in escrow accounts or in trust pursuant to a written agreement or order of a court or the Bankruptcy Court) as of the Effective Date.

(19) *"Ballot"* means the form, distributed together with the Disclosure Statement, to holders of Claims or Interests in classes that are impaired and entitled to vote on this Plan, other than to holders of Class 4 and Class 5 Claims, for the purpose of indicating acceptance or rejection of this Plan.

(20) *"Bankruptcy Code"* means title 11 of the United States Code, as amended from time to time.

(21) *"Bankruptcy Court"* means the United States District Court for the District of Vermont, having jurisdiction over the Chapter 11 Case and, to the extent of any reference made pursuant to section 157 of title 28 of the United States Code, the unit of such District Court constituted as the United States Bankruptcy Court for the District of Vermont pursuant to section 151 of title 28 of the United States Code.

(22) *"Bankruptcy Rules"* means the Federal Rules of Bankruptcy Procedure, as amended from time to time, together with the local rules adopted by the Bankruptcy Court, as amended from time to time.

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

(24) *"Cash"* means cash, cash equivalents and other readily marketable securities or instruments, including, without limitation, readily marketable direct obligations of the United States of America, certificates of deposit issued by banks and commercial paper of any entity, including interest accrued or earned thereon.

(25) *"Causes of Action"* means any and all of the Debtors' actions, claims, rights, suits and causes of action (and all rights relating thereto, including any tolling agreements), whether known or unknown, in law, equity or otherwise, including, without limitation: (i) the Debtor's claims arising pursuant to sections 510, 542, 543, 544, 545, 547, 548, 549, 550, 551, 552 and 553 of the

Bankruptcy Code, and state, non-bankruptcy federal and other applicable law; (ii) all rights and claims for or against any insurance carriers who issued insurance policies in favor of the Debtors; and (iii) the Rights to Payment.

(26) "*Certificate of Merger*" means the Certificate of Merger referred to in Section 9.I hereof.

(27) "*Chapter 11 Case*" means the jointly administered bankruptcy cases bearing Case Numbers 99-11390-cab and 99-11391-cab, concerning the Debtors.

(28) "*Claim*" means a claim, as that term is defined in section 101(5) of the Bankruptcy Code, against the Debtors.

(29) "*Class 4 Special Ballot*" or "*Class 5 Special Ballot*" means the form, distributed together with the Disclosure Statement, to holders of Class 4A and 4B Claims (Asbestos Related Claims) or Class 5 Claims (Settled Claims), for the purpose of indicating acceptance or rejection of this Plan.

(30) "*Co-Defendant Actions*" means any claims or causes of action that the either or both of the Debtors have or may have against actual or potential co-defendants arising from or relating to any prior, pending or threatened asbestos-related litigation or settlement.

(31) "*Committee*" means the official Asbestos Tort Claimants Committee appointed in these Chapter 11 Cases by the United States Trustee for the Northern Districts of New York and of Vermont on October 25, 1999, as the membership of such committee may be amended from time to time.

(32) "*Common Stock Interest*" means any equity interest in the Debtors represented by shares of Old Common Stock and any Claim against the Debtors arising from rescission of a purchase or sale of a security of the Debtors or of an affiliate of the Debtors, for damages arising from the purchase or sale of such a security, or for reimbursement or contribution allowed under section 502 of the Bankruptcy Code on account of such a Claim.

(33) "*Compensation Estimate*" means a written good faith estimate, to be served on the Debtors' counsel on or before October 13, 2000, of the anticipated amount of professional compensation and reimbursement of expenses to be requested for any period prior to the Effective Date, including, without limitation, any compensation for substantial contribution in the Chapter 11 Case and for any fees or premiums in addition to normal hourly charges or quoted fees.

(34) "*Confirmation Date*" means the date upon which the Confirmation Order shall be first entered on the docket maintained by the Clerk of the Bankruptcy Court or the District Court.

(35) "*Confirmation Order*" means the order of the Bankruptcy Court and/or the District Court confirming this Plan.



(36) "*Consultant*" means Tontine Key LLC (and where applicable shall include the principal member of Tontine Key LLC, Sylvester F. Minter, III), and any successors thereto.

(37) "*Cure Claim*" means a Claim by a party to an executory contract or unexpired lease of the Debtors for the costs of curing any defaults under any such contract or lease that is to be assumed and assigned by the Debtors pursuant to section 365(b) of the Bankruptcy Code.

(38) "*Debtors*" means Rutland Fire Clay Company, a Vermont corporation, and Rutland, Inc., an Illinois corporation.

(39) "*Demand*" or "*Demands*" means a demand for payment, present or future, that was not an Asbestos-Related Claim during the Chapter 11 Case, arises out of the same or similar conduct or events that gave rise to the Asbestos-Related Claims, and is to be paid by the Asbestos Trust.

(40) "*Disclosure Statement*" means the Disclosure Statement describing this Plan prepared in accordance with section 1125 of the Bankruptcy Code and approved by order of the Bankruptcy Court, as the same may be amended or modified from time to time.

(41) "*Disputed*" means, with respect to any Claim or Interest, other than an Asbestos In Building Claim or an Asbestos-Related Personal Injury Claim, any Claim or Interest that is not an Allowed Claim or Allowed Interest.

(42) "*Disputed Claims Reserve*" has the meaning set forth in Section 15.5(a) hereof.

(43) "*District Court*" means the United States District Court for the District of Vermont.

(44) "*Effective Date*" means the date which is the first Business Day on which all conditions to the effectiveness of this Plan, and as further set forth in Section 11.2 hereof, all have been satisfied or waived.

(45) "*Entity*" means any individual, corporation, partnership, joint venture, association, joint stock company, limited liability company, estate, entity, trust, trustee, unincorporated organization, government, governmental unit (as defined in section 101(27) of the Bankruptcy Code), agency or political subdivision thereof, the United States Trustee or any other entity; provided, however, for purposes of the Permanent Channeling Injunction as defined in Section 1.1(64) hereof and made applicable by Section 16.2 hereof, the definition of "Entity" shall not include the United States Trustee.

(46) "*ERISA*" means the Employee Retirement Income Security Act of 1974, as amended from time to time.

(47) "*Estimated Amount*" means the dollar amount of an unliquidated Claim, disputed Claim or contingent Claim as estimated pursuant to section 502(c) of the Bankruptcy Code.

(48) "*Fee Claim*" means any Administrative Claim resulting from the rendering of professional services and related disbursements under sections 503(b)(2)-(4) of the Bankruptcy Code.

(49) "*Excess Cash*" means all of the income of New Rutland less an amount of operating capital sufficient to maintain successful business operations.

(50) "*Final Order*" means an order, ruling or judgment that is: (a) no longer subject to review, reversal, modification or amendment by appeal or writ of certiorari, under applicable Court rules or statutes; and (b) not subject to any stay or injunction against its effectiveness or enforcement.

(51) "*Future Claimant*" means any Entity who is or becomes the holder of a Demand.

(52) "*General Unsecured Claim*" means any Claim that is not an Administrative Expense Claim, a Tax Claim, a Priority Claim, a Secured Claim, a Settled Claim, an Asbestos-Related Claim, or a Demand, but includes any portion of a Secured Claim that exceeds the value of the property securing such Claim.

(53) "*Institutional Trustee*" shall mean the Wilmington Trust Company, or any successor successor thereto, which shall be qualified to do business in the State of Delaware such that when acting as a Trustee of the Asbestos Trust, the Trust shall constitute a business trust under Chapter

38 of Title 12 of the Delaware Code, 12 Del. Code, Section 3801, et. seq.

(54) *"Insurance Actions"* means claims, causes of action and rights to payment of the Debtors against or from various insurers or insurance guaranty funds, including, without limitation, those claims asserted by Rutland.

(55) *"Insurance Carrier or Surety Settlement Order"* means an order which has become a Final Order authorizing and approving a settlement of and payment to Rutland or the Asbestos Trust by an Insurance Carrier or Surety for Rutland's claims for insurance coverage and liability payments of or related to any Asbestos Related Claims with respect to which such Insurance Carrier or Surety has issued any insurance policies on behalf of or for the benefit of Rutland.

(56) *"Interest"* means any Common Stock Interest.

(57) *"Legal Representative"* means Richard Levy, Jr., Esq., appointed by Order of the Bankruptcy Court docketed October 27, 1999 as the official Legal Representative of Future Claimants, and any successor thereto.

(58) *"Merger"* means the merger of Rutland Inc. with and into the Debtor, Rutland Fire Clay Company on the Effective Date pursuant to the Certificate of Merger.

(59) *"New Common Stock"* means the shares of common stock of New Rutland.

(60) *"New Rutland"* means the reorganized Debtors, which shall be known as Rutland Fire Clay Company, as the renamed surviving entity of the Merger.

(61) *"Old Common Stock"* means the shares of common stock of the Debtors, par value \$ 50.00 per share authorized or issued for Rutland Fire Clay company and \$1.00 per share authorized or issued for Rutland, Inc. before the Petition Date.

(62) *"PBGC"* means the Pension Benefit Guaranty Corporation.

(63) *"Pension Plan"* means the retirement plan of Rutland, dated January 1, 1976, which merged the five then existing Rutland pension plans and, as such, covers the employees of Rutland.

(64) *"Permanent Channeling Injunction"* means an order or orders of the Bankruptcy Court or the District Court (which may be the Confirmation Order), issued pursuant to Section 524(g) of the Bankruptcy Code, permanently and forever staying, restraining, and enjoining an Entity from taking any action for the purpose of, directly or indirectly, collecting, recovering, or receiving payment of, on, or with respect to any Asbestos-Related Claim or Demand (other than actions brought to enforce any right or obligation under the Plan, any Exhibits to the Plan, or any other agreement or instrument between the Debtors or New Rutland and the Asbestos Trust, which actions shall be in conformity and compliance with the provisions hereof), including:

(a) commencing, conducting, or continuing in any manner, directly or indirectly,

any suit, action, or other proceeding (including, without express or implied limitation, any thereof in a judicial, arbitral, administrative, or other forum) against or affecting any Protected Party or any property or interests in property of any Protected Party;

(b) enforcing, levying, attaching (including, without express or implied limitation, any prejudgment attachment), collecting, or otherwise recovering by any means or in any manner, whether directly or indirectly, any judgment, award, decree, or other order against any Protected Party or any property or interests in property of any Protected Party;

(c) creating, perfecting, or otherwise enforcing in any manner, directly or indirectly, any encumbrance against any Protected Party or any property or interests in property of any Protected Party;

(d) setting off, seeking reimbursement of, contribution from, or subrogation against, or otherwise recouping in any manner, directly or indirectly, any amount against any liability owed to any Protected Party or any property or interests in property of any Protected Party;  
and

(e) proceeding in any manner in any place with regard to any matter that is subject to resolution pursuant to the Asbestos Trust, except in conformity and compliance therewith.

(65) "*Petition Date*" means October 13, 1999.

(66) "*Plan*" means this Plan of Reorganization of the Debtors which supersedes any prior plan of reorganization filed by the Debtors, as the same may be amended or modified from time to time.

(67) "*Plan Estimates*" means the aggregate amount of all payments to be set aside (i) in the Disputed Claims Reserve and (ii) on account of all Compensation Estimates.

(68) "*Plan Payments*" means those payments to be made by the Debtors pursuant to the terms of this Plan to holders of Allowed Administrative Expense Claims, Allowed Tax Claims, Allowed Priority Claims, Allowed Secured Claims and Allowed General Unsecured Claims.

(69) "*Priority Claim*" means any Claim, other than any Administrative Expense Claim or any Tax Claim, which is entitled to priority in right of payment pursuant to section 507(a) of the Bankruptcy Code.

(70) "*Protected Party*" means any of the following parties:

(a) the Debtors, the Reorganized Debtors, and any of its pre and post-Confirmation Date officers, directors, stockholders, agents, employees, members, representatives, advisors, financial advisors, accountants and attorneys;

(b) the Asbestos Trust, and any of its Trustees, officers, directors, agents,

employees, representatives, advisors, financial advisors, administrators, accountants and attorneys and the TAC, and any of its agents, employees, representatives, advisors and attorneys;

(c) the Legal Representative, the Consultant, and their agents, employees, members, equity owners, representatives, advisors and attorneys;

(d) the members of the Asbestos Tort Claimants' Committee and their agents, employees, representatives, advisors and attorneys;

(e) any Entity that, pursuant to the Plan or after the Effective Date, becomes a direct or indirect transferee of, or successor to, any assets of the Debtors, the Reorganized Debtors, or the Asbestos Trust (but only to the extent that liability is asserted to exist by reason of becoming such a transferee or successor);

(f) any Entity that, pursuant to the Plan or after the Effective Date, makes a loan to the Reorganized Debtors or the Asbestos Trust or to a successor to, or transferee of, any assets of the Debtors, the Reorganized Debtors, or the Asbestos Trust (but only to the extent that liability is asserted to exist by reason of such Entity becoming such a lender or to the extent any pledge of assets made in connection with such a loan is sought to be upset or impaired); or

(g) any Entity to the extent he, she, or it is alleged to be directly or indirectly liable for the conduct of, Claims against, or Demands on the Debtors, the Reorganized Debtors, or



the Asbestos Trust on account of Asbestos Bodily Injury Claims or Asbestos Property Damage Claims by reason of one or more of the following:

- (i) such Entity's ownership of a financial interest in the Debtors or the Reorganized Debtors, or predecessor in interest of the Debtors or the Reorganized Debtors;
- (ii) such Entity's involvement in the management of the Debtors or the Reorganized Debtors or any predecessor in interest of the Debtors or the Reorganized Debtors;
- (iii) such Entity's service as an officer, director, or employee of the Debtors, the Reorganized Debtors, or related parties;
- (iv) such Entity's provision of insurance to the Debtors, the Reorganized Debtors or related parties with respect to Asbestos Related Claims; provided, however, that in the event such entity denies coverage or alleges that any provision of this Plan voids such coverage then as to such entity the Permanent Channeling Injunction shall not apply and such Entity shall not be a "Protected Party" unless and until it is the specifically named beneficiary of an Insurance Carrier or Surety Settlement Order; or

(v) such Entity's involvement in a transaction changing the corporate structure, or in a loan or other financial transaction affecting the financial condition, of the Debtors, the Reorganized Debtors, or any of the related parties, including, but not limited to:

(a) involvement in providing financing (debt or equity), or advice to an Entity involved in such transacting; or

(b) acquiring or selling a financial interest in an Entity as part of such transaction.

*provided, however*, that notwithstanding this or any other provision of this Plan to the contrary, except as set forth in Section 1.1(70) an Entity's "Protected Party" status shall not preclude the Asbestos Trust from pursuing claims against any insurance carrier or surety that issued, or is alleged to have issued, a policy or policies of insurance to, or on behalf of, or for the benefit of Rutland.

(71) "*Record Date*" means 5:00 p.m. (Eastern Standard Time) on the day that the Confirmation Order is entered, or such other date and time as may be designated in the Confirmation Order.

(72) "*Released Party*" means each of the Debtors, New Rutland and the Asbestos Trust

or any of their respective successors or assigns, and each of their present and former directors and officers, former or extinguished shareholders, the Committee, its members and representatives, the Legal Representative, the Consultant, and to the extent that any insurance carrier qualifies as a Protected Party under Section 1.1 (70)(g)(iv) hereof, the insurance carriers and sureties of the Debtors in such insurance carriers' and sureties' capacities as such, and each of the professionals retained by Order of the Bankruptcy Court by each of the Debtors, New Rutland, the Asbestos Trust, the Committee, the Legal Representative and the Consultant; *provided, however*, that notwithstanding this or any Provision of this Plan to the contrary, an Entity's "Released Party" status shall not preclude the Asbestos Trust (or if applicable New Rutland) from pursuing claims against any insurance carrier or surety that issued, or is alleged to have issued, a policy or policies of insurance to, on behalf of, or for the benefit of, Rutland unless such Insurance Carrier or Surety is specifically named as a beneficiary of an Insurance Carrier or Surety Settlement Order.

(73) "*Reorganized Debtor*" means Rutland Fire Clay Company, the surviving company as a result of the Merger with Rutland Inc., as same shall exist on and after the Effective Date.

(74) "*Rights to Payment*" means the rights of either or both Debtors to receive payments or distributions on account of any claim, including but not limited to, tax refunds for taxable years prior to the Effective Date.

(75) "*Rutland*" when used in this plan shall refer to both Rutland Fire Clay Company and Rutland, Inc., and means the jointly administered Debtors.

(76) “*Schedules*” means the schedules of assets and liabilities and statements of financial affairs filed by the Debtors in accordance with section 521 of the Bankruptcy Code and Bankruptcy Rule 1007, as such schedules and statements may be amended or supplemented from time to time in accordance with the Bankruptcy Code and the Bankruptcy Rules; *provided, however*, that the Schedules shall not be amended after November 1, 1999 without the consent of the Committee and the Legal Representative unless by motion on notice to the Committee and the Legal Representative.

(77) “*Secured Claim*” means any Claim, secured by a valid and unavoidable lien on or security interest in property of the Debtors pursuant to section 506(a) of the Bankruptcy Code, but only to the extent of the value as of the Confirmation Date of such lien or security interest as determined by Final Order of the Bankruptcy Court or as agreed to by the Debtors and the holder of such Claim.

(78) “*Settled Claim*” means any Asbestos Bodily Injury Claim asserted against Rutland prior to the Petition Date and with respect to which (a) Fireman’s Fund Insurance Company (“Fireman’s Fund”) defended Rutland with respect to an Asbestos Bodily Injury Claim, (b) (i) counsel to the Asbestos Bodily Injury Claimant and insurance defense counsel for Rutland with the approval of the Fireman’s Fund, or (ii) Rutland’s corporate counsel, had reached a complete agreement, orally or in writing, to settle the claim, and (c) Fireman’s Fund had, in some but not all instances, issued a check in payment of such settlement, the proceeds of which payment had not been irrevocably negotiated or the proceeds thereof collected by on behalf of the Asbestos Bodily Injury Claimant prior to the Petition Date.

(79) *"Stock Dividends"* means all Cash dividends Rutland paid to holders of Old Common Stock during the years preceding October 13, 1999.

(80) *"Tax Claim"* means a Claim of a governmental unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

(81) *"TAC"* means the Trust Advisory Committee whose duties and responsibilities are set forth in Section 8.9 hereof and in the Asbestos Trust. The initial members of the TAC shall be Nancy Worth Davis, Sanders McNew and Mary Skelnik, or in the event any of them decline to serve prior to the Confirmation Hearing, such different persons as the Committee shall identify at the Confirmation Hearing.

(82) *"Trustee"* means the individual, or limited liability entity through which such individual shall act as trustee, initially selected to act as trustee pursuant to the terms of the Asbestos Trust Documents to administer the Asbestos Trust, and any successors thereto. Only when the plural form of "Trustees" is utilized will it include an Institutional Trustee as that term is defined in the Asbestos Trust Agreement.

(83) *"Ultimately Allowed Claim" or "Ultimately Allowed Interest"* means any Disputed Claim or Disputed Interest to the extent that it becomes an Allowed Claim or Allowed Interest in accordance with Article XV of this Plan.

(84) "*Voting Procedures Order*" means the order of the Bankruptcy Court entitled "Order Approving Disclosure Statement and Establishing Solicitation and Voting Procedures for Class 4 Claims with Respect to the Debtors' Plan of Reorganization and Approving Plan Summary and Service Thereof" dated October 13, 2000, approving and authorizing the voting procedures to be employed in this Chapter 11 Case, including the Class 4 Special Ballots and the Class 5 Special Ballots, and approving the Disclosure Statement and the provision of the Plan Summary to Class 4 Claimants in lieu of the Plan.

1.2 *Other Terms.* The words "herein," "hereof," "hereto," "hereunder," and others of similar import refer to this Plan as a whole and not to any particular section, subsection or clause contained in this Plan, unless the context requires otherwise. Any term used in this Plan that is not defined herein but that is defined in the Bankruptcy Code shall have the meaning assigned to that term in the Bankruptcy Code. In addition, the rules of construction contained in section 102 of the Bankruptcy Code apply to the construction of this Plan.

## **ARTICLE II - PROVISION FOR TREATMENT OF ADMINISTRATIVE EXPENSE CLAIMS**

2.1 *Administrative Expense Claims.* Each holder of an Administrative Expense Claim that the Debtors, with the consent of the Committee and the Legal Representative or, after the Effective Date, New Rutland with the consent of the Asbestos Trust, do not dispute or which has been allowed by the Bankruptcy Court, shall be paid in full, in Cash, on or as soon as practicable after the Effective Date; *provided, however,* that Allowed Administrative Expense Claims representing obligations

incurred by the Debtors in the ordinary course of business during the Chapter 11 Case (other than Fee Claims) shall be paid in full by the Debtors or performed by New Rutland as the case may be, when due in the ordinary course of business and in accordance with the terms and conditions of the particular agreements governing such obligations, if any; *provided, further, however,* that Administrative Expense Claims representing compensation or reimbursement of expenses awarded by the Bankruptcy Court pursuant to sections 503(b)(2), 503(b)(3) or 503(b)(4) of the Bankruptcy Code shall be reserved for by Rutland in full, in Cash, in such amounts equal to the Compensation Estimates and paid by New Rutland on the date upon which the Bankruptcy Court enters an order allowing such Administrative Expense Claim and, to the extent that such reserve is insufficient to satisfy an Allowed Fee Claim, the deficiency shall be paid by the Asbestos Trust; *provided, however,* that the Debtors shall also reserve sufficient funds to satisfy any and all Administrative Expense Claims that may become Ultimately Allowed Administrative Expenses Claims.

### **ARTICLE III - PROVISION FOR TREATMENT OF TAX CLAIMS**

3.1 *Tax Claims.* Each holder of an Allowed Tax Claim shall be paid the full amount of its Allowed Tax Claim, in Cash, on or as soon as practicable after the Effective Date.

### **ARTICLE IV - PROVISION FOR TREATMENT OF DEMANDS**

4.1 *Demands.* On the Effective Date, Demands shall be fully satisfied as against the Debtors by virtue of the distribution of the Asbestos Trust Distribution to the Asbestos Trust for the benefit

of all holders of Asbestos-Related Claims and of Demands pursuant to the terms and conditions of the Asbestos Trust Documents. Each holder of a Demand shall have its Demand permanently channeled to the Asbestos Trust and such Demand shall be assertable exclusively against the Asbestos Trust in accordance with the provisions set forth in the Asbestos Trust Documents. In order to conserve the assets of the Asbestos Trust, holders of Asbestos-Related Claims and Demands are, subject to the Asbestos-Related Claims Resolution and Distribution Procedures, enjoined from filing future litigation against Rutland, or the Asbestos Trust, may not proceed in any manner against the Asbestos Trust or Rutland in any state or federal court, and are required to pursue their claims or Demands against the Asbestos Trust solely as provided in the Asbestos Claims Procedures.

## **ARTICLE V - CLASSIFICATION OF CLAIMS AND INTERESTS**

*5.0 Classification.* Pursuant to section 1122 of the Bankruptcy Code, set forth below is a designation of classes of Claims against and Interests in the Debtors. A Claim or Interest is classified in a particular class only to the extent that the Claim or Interest qualifies within the description of the class and is classified in a different class to the extent the Claim or Interest qualifies within the description of that different class. In accordance with sections 1123(a)(1) and 524(g)(5) of the Bankruptcy Code, Administrative Expense Claims, Tax Claims and Demands are not classified.

*5.1 Priority Claims.*



*Class 1.* Class 1 consists of all Allowed Priority Claims.

*5.2 Secured Claims.*

*Class 2.* Class 2 consists of all Allowed Secured Claims, each of which will be within a separate subclass with each subclass to be deemed a separate Class for all purposes.

*5.3 Unsecured Claims.*

*Class 3.* Class 3 consists of all Allowed General Unsecured Claims except Asbestos-Related Claims.

*Class 4.* Class 4 consists of the following Asbestos-Related Claims:

*Class 4A-* Asbestos-Related Personal Injury Claims and Asbestos-Related Personal Injury Contribution Claims.

*Class 4B-* Asbestos In Buildings Claims and Asbestos-Related Building Contribution Claims.

*Class 5.* Class 5 consists of all Settled Claims.

*Class 6.* Class 6 consists of all allowed PBGC claims, as filed or scheduled.

#### *5.4 Interests.*

*Class 7.* Class 7 consists of all Allowed Common Stock Interests in the Debtors.

### **ARTICLE VI - IDENTIFICATION OF CLASSES OF CLAIMS AND INTERESTS NOT IMPAIRED AND IMPAIRED BY THIS PLAN**

*6.1 Classes of Claims and Interests Not Impaired by this Plan.* Priority Claims (Class 1), Secured Claims (Class 2), General Unsecured Claims (excluding Asbestos Related Claims and Settled Claims) (Class 3) and the PBGC Claim (Class 6) are not impaired by this Plan. Pursuant to section 1126(f) of the Bankruptcy Code, the holders of such Claims are conclusively presumed to have accepted this Plan, and the votes of such holders shall not be solicited.

*6.2 Classes of Claims and Interests Impaired by this Plan and Entitled to Vote.* Asbestos-Related Personal Injury Claims and Asbestos-Related Personal Injury Contribution Claims (Class 4A), Asbestos In Buildings Claims and Asbestos-Related Building Contribution Claims (Class 4B) and Settled Claims (Class 5), are impaired by this Plan and the holders of such Claims and Interests are entitled to vote to accept or reject this Plan.

*6.3 Deemed Rejection of Common Stock Interests.* Common Stock Interests (Class 7) are

impaired by this Plan. Pursuant to section 1126(g) of the Bankruptcy Code, the holders of such Interests are deemed to have rejected this Plan, and the votes of such holders shall not be solicited.

## **ARTICLE VII - PROVISIONS FOR TREATMENT OF CLAIMS AND INTERESTS**

### **Priority Claims**

*7.1 Priority Claims.* (Class 1). Class 1 Claims are not impaired. On the Effective Date, each holder of an Allowed Priority Claim shall receive the full amount of its Allowed Priority Claim, together with interest at the federal judgment rate from the Petition Date, in Cash.

### **Secured Claims**

*7.2 Secured Claims.* (Class 2). Class 2 Claims are not impaired. With respect to each Allowed Secured Claim, at the sole option of the Debtors, (a) the legal, equitable and contractual rights of such holder of an Allowed Secured Claim shall remain unaltered, and the holder of such Allowed Secured Claim shall retain its respective lien or liens which will not be altered or impaired; (b) the holder of such Allowed Secured Claim shall receive the full amount of its Allowed Secured Claim in cash on the Effective Date; (c) the Debtors shall have released to the holder of such Allowed Secured Claim the collateral securing such Claim; or (d) the Debtors shall provide such other treatment that will render the Allowed Secured Claim unimpaired pursuant to section 1124 of

the Bankruptcy Code.

## **Unsecured Claims**

*7.3 General Unsecured Claims. (Class 3).* Class 3 Claims are not impaired. Class 3 claims shall be paid as soon as practicable after the Effective Date 100% of the allowed claims plus interest from the Petition Date at the federal judgment rate to the date of payment.

*7.4 Asbestos-Related Claims. (Class 4).* Class 4 Claims are impaired. On the Effective Date, Asbestos-Related Claims shall be fully satisfied and discharged as against the Debtors by virtue of the distribution of the Asbestos Trust Distribution to the Asbestos Trust for the benefit of all holders of Asbestos-Related Claims and Demands pursuant to the terms and conditions of the Asbestos Trust Documents. Each holder of an Asbestos-Related Claim shall have its Claim channeled to the Asbestos Trust and such Claim shall be assertable exclusively against the Asbestos Trust in accordance with the procedures of the Asbestos Trust Documents. In order to conserve the assets of the Asbestos Trust, holders of Asbestos-Related Claims and Demands, subject to the Asbestos Trust Documents, are enjoined from filing future litigation against Rutland, or the Asbestos Trust, may not proceed in any manner against the Asbestos Trust or Rutland in any state or federal court, except with the prior written consent of the Asbestos Trust, and are required to pursue their claims or Demands against the Asbestos Trust solely as provided in the Asbestos Claims Procedures.

*7.5 Settled Claims (Class 5).* Class 5 Claims are impaired. Each Settled Claim shall be entitled

to receive not less than 10% of its Allowed Claim and up to 100% of its Allowed Claim, without interest. Allowed Class 5 Claims shall be paid as follows: (a) a pro rata distribution of up to 100% of the Allowed Claim from proceeds of a settlement with Fireman's Fund to the extent that a settlement of such claims shall hereafter be reached and consummated with Fireman's Fund, but (b) in any event, if not paid pursuant to an approved settlement with Fireman's Fund, not less than 10% of the Allowed Claim shall be paid by New Rutland, with such payment to be funded from from the first profits of New Rutland for the fiscal years ending on and after November 30, 2001, with distribution to be made within 30 days after the availability of such profits.

*7.6 PBGC Claim (Class 6).* The Class 6 Claim is not impaired. Any and all liabilities of the Debtors under or pursuant to 29 U.S.C. Sections 1082 and 1362 or 26 U.S.C. Section 412 shall not be affected or impaired by this Plan and shall not be released or discharged. Nor shall the PBGC be enjoined by this Plan from enforcing the rights and claims of the Rutland Fire Clay Company and Rutland, Inc. Pension Plan. No provision of the plan of reorganization, the confirmation order, or § 1141 of the Bankruptcy Code shall discharge, release, or relieve the Debtors or any other party from liability with respect to the Pension Plan under any law, governmental policy, or regulatory provision. Neither PBGC nor the Pension Plan shall be enjoined from enforcing such liability as a result of the plan of reorganization's provisions for satisfaction, release and discharge of claims.

## **Interests**

*7.7 Common Stock Interests. (Class 7).* Class 7 Common Stock Interests are impaired. On the

Effective Date, all Interests shall be canceled, annulled or extinguished, and the holders thereof shall not be entitled to receive or retain any property or distribution pursuant to this Plan.

## **ARTICLE VIII - THE ASBESTOS TRUST**

*8.1 Creation of the Asbestos Trust.* On the Effective Date, the Asbestos Trust shall be created and established, pursuant to the terms of the Asbestos Trust Documents, as a designated settlement fund or a qualified settlement fund, within the meaning of section 468B of the Internal Revenue Code and the regulations issued by the Internal Revenue Service pursuant to said statute.

*8.2 Transfer of Property to the Asbestos Trust.* On the Effective Date, the Debtors shall transfer, or cause to be transferred, to the Asbestos Trust the Asbestos Trust Distribution, Pursuant to the Plan, the Asbestos Trust shall succeed to and be entitled to enforce all rights Rutland previously had under any insurance policies for coverage of Asbestos Related Claims.

*8.3 Assumption of Liabilities By the Asbestos Trust.* In consideration of the property transferred to the Asbestos Trust pursuant to Section 8.2 hereof and in furtherance of the purpose of the Asbestos Trust (as set forth in Section 1.2 of the Asbestos Trust Agreement, this Plan and section 524(g)(2)(B)(i) of the Bankruptcy Code), the Asbestos Trust will assume all liability and responsibility for all Asbestos-Related Claims and Demands within the meaning of Section 524(g)

of the Bankruptcy Code. Rutland and, subject to Section 13.9 hereof, New Rutland shall have no financial or other responsibilities for or in connection with such Asbestos-Related Claims and Demands.

*8.4 Appointment of Trustees.* The Asbestos Trust shall be managed by one independent Trustee (the "Managing Trustee"). The initial Managing Trustee shall be Sylvester F. Minter, III except if for any reason he shall fail to accept the Trust and actually commence service, then if before the Effective Date, the Managing Trustee shall be selected by the Committee and the Legal Representative. In addition, there shall be an Institutional Trustee appointed on the Effective Date in accordance with the Asbestos Trust Agreement. The Managing Trustee shall be a person or entity who has no affiliation with the Debtors, except that he or an entity in which he is a member may have acted as Consultant to the Debtors in these Chapter 11 Cases, is not a holder of Asbestos-Related Claims or Demands, and does not and has not personally represented, in connection with an Asbestos-Related Claim or Demand, any Entity who asserts or who has asserted an Asbestos-Related Claim or Demand. The Trustee shall serve until the earlier of such person's death, resignation or removal. All successor Trustees shall be appointed in accordance with the terms and conditions contained in the Asbestos Trust Agreement. The Trustee shall be deemed to be (and the Confirmation Order shall provide that such Trustee is) a "party in interest" within the meaning of section 1109(b) of the Bankruptcy Code.

*8.5 Purpose and Goals of the Asbestos Trust.* The purposes of the Asbestos Trust are: (i) to assume any and all liabilities of the Debtors and their successors in interest and the Protected Parties

with respect to any and all Asbestos-Related Claims and Demands within the meaning of section 524(g) of the Bankruptcy Code; (ii) to use the assets and income of the Asbestos Trust to pay holders of Asbestos-Related Claims and Demands in accordance with the Asbestos Trust Agreement and the Asbestos-Related Claims Resolution and Distribution Procedures; and (iii) to otherwise comply in all respects with the requirements of a trust set forth in section 524(g)(2)(B)(I) of the Bankruptcy Code through the provisions of the Asbestos Trust Agreement and the Asbestos-Related Claims Resolution and Distribution Procedures.

*8.6 Compensation to and Indemnification of the Trustees.* The Trustees shall receive compensation for their services, and shall be indemnified, in accordance with the terms of the Asbestos Trust Agreement.

*8.7 Retention of Professionals and Employees.* The Asbestos Trust and the Trustee thereof may retain the services of attorneys, accountants, valuation experts, employees and other agents necessary to assist and advise the Trustee in the performance of his duties in accordance with the terms and provisions of the Asbestos Trust Documents.

*8.8 Asbestos Trust Deemed a Successor to Committee in Pending Matters.* On the Effective Date, the Asbestos Trust shall be deemed the successor to the Committee with respect to any then pending motions, contested matters, adversary proceedings or appeals to which the Committee was a party.



*8.9 Trust Advisory Committee.* The Trust Advisory Committee ("TAC") shall consult with and advise the Trustees. Members of the Committee and their representatives are eligible to serve as members of the TAC. The TAC shall have such other duties and authority as set forth in the Asbestos Trust Documents. The fees and expenses of the TAC shall be paid by the Asbestos Trust and the Asbestos Trust shall indemnify the TAC in accordance with the terms of the Asbestos Trust Documents. In addition, the TAC may retain the services of attorneys, accountants, valuation experts and other professionals necessary to the performance of its duties. The TAC shall be deemed to be (and the Confirmation Order shall provide that the TAC is) a "party in interest" within the meaning of section 1109(b) of the Bankruptcy Code.

*8.10 Preservation of Rights and Defenses.*

(a) The Asbestos Trust shall have, with respect to each Asbestos-Related Claim or Demand, among other things, all defenses whatsoever under bankruptcy and non-bankruptcy law (including but not limited to all defenses under section 502 of the Bankruptcy Code), affirmative defenses, rights of setoff and recoupment, counterclaims and rights of contribution, reimbursement, subrogation and indemnity (i) that the Debtors would have had under applicable law if (x) the Chapter 11 Cases had not occurred and (y) the holder of such Asbestos-Related Claim or Demand had asserted such Asbestos-Related Claim or Demand by initiating civil litigation against the Debtors, and (ii) that the Debtors now have or ever had, except as waived by the Asbestos-Related Claims Resolution and Distribution Procedures.

8.11 *Asbestos-Related Claims Resolution and Distribution Procedures.* The Asbestos Trust shall implement the Asbestos-Related Claims Resolution and Distribution Procedures in accordance with the terms of the Asbestos Trust Documents.

## **ARTICLE IX - DESCRIPTION OF THE OPERATION OF NEW RUTLAND**

9.1 *Creation of Merged Rutland.* On the Effective Date or as soon thereafter as is practicable, Rutland Inc. will merge with and into Rutland Fire Clay Company. The Certificate of Merger shall be filed with the Secretary of State of the State of Vermont and the State of Illinois on the Effective Date. Pursuant to the Merger, all of the issued and outstanding capital stock of Rutland Inc. shall be canceled and Rutland Inc. shall be merged with and into the Rutland Fire Clay Company. At the option of the Debtors, upon the Effective Date, Rutland, Inc. may first reissue its stock to the Rutland Fire Clay Company. Asbestos Trust before effectuating the Merger. The surviving corporation of the Merger shall be named Rutland Fire Clay Co. The authorized capital stock of New Rutland shall be as set forth in its Articles of Incorporation and shall be distributed as provided for elsewhere herein.

9.2 *Management of Rutland.* On and after the Effective Date, the management, control and operation of New Rutland will become the general responsibility of the Board of Directors of Rutland. Upon consummation of the Plan, the Amended and Restated Certificate of Incorporation

and the Amended and Restated By-laws of New Rutland will provide that the Board of Directors of New Rutland on the Effective Date shall consist of three (3) directors, who shall be Sylvester F. Minter, III, the designated Managing Trustee of the Asbestos Trust, Thomas P. Martin and Mary Danforth, current employees of the Debtors. If for any reason Mr. Minter shall fail to assume such position, the Committee, or if the Committee has ceased to be constituted, the TAC shall designate a person to serve in place of Sylvester F. Minter, III. After the Effective Date the shareholder of New Rutland may increase the number of directors.

*9.3 Indemnification.* The Amended and Restated Certificate of Incorporation and Amended and Restated By-laws of New Rutland shall provide on the Effective Date for indemnification of Rutland and New Rutland's directors and officers to the fullest extent permitted by applicable law now or hereafter in effect.

*9.4 Permanent Channeling Injunction.* Rutland and New Rutland shall have the benefits of the Permanent Channeling Injunction, as more fully set forth in Article XVI hereof.

## **ARTICLE X - ACCEPTANCE OR REJECTION OF THIS PLAN**

*10.1 Each Impaired Class Entitled to Vote Separately.* Except as otherwise provided by this Plan, the holders of Claims in each impaired class of Claims shall be entitled to vote separately as a class to accept or reject this Plan. Class 7 Interests are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code.

*10.2 Estimation of Class 4 Claims for Voting Purposes.* Pursuant to the Voting Procedures Order, the Claims of holders of Class 4A and 4B Claims shall be Allowed, for voting purposes only, on the terms and conditions specified therein.

*10.3 Acceptance by Impaired Classes of Claims.* Pursuant to section 1126(c) of the Bankruptcy Code, an impaired class of Claims, including without limitation Class 4 Claims and Class 5 Claims, shall have accepted the Plan if (1) the holders (other than Claims held by any holder designated pursuant to section 1126(e) of the Bankruptcy Code) of at least two-thirds (2/3) in dollar amount of the Allowed Claims actually voting in such class have voted to accept this Plan and (2) more than one-half (½) in number (other than Claims held by any holder designated pursuant to section 1126(e) of the Bankruptcy Code) of such Allowed Claims actually voting in such class have voted to accept this Plan. In order for the Court to enter the Permanent Channeling Injunction, 75% of those persons holding Asbestos-Related Claims voting on the Plan must accept the Plan.

*10.4 Acceptance by Impaired Class of interests.* Pursuant to section 1126(d) of the Bankruptcy Code, an impaired class of Interests shall have accepted this Plan if the holders (other than Interests held by any holder designated pursuant to section 1126(e) of the Bankruptcy Code) of at least two-thirds (2/3) in amount of the Allowed Interests actually voting in such class have voted to accept this Plan.

*10.5 Presumed Acceptance of Plan.* Classes 1, 2, 3 and 6 are unimpaired under this Plan and, therefore, are conclusively presumed to have accepted this Plan pursuant to section 1126(f) of the

Bankruptcy Code.

*10.6 Cramdown.* Class 7 Interests are deemed to have rejected the Plan. Accordingly, the Debtors shall invoke cramdown with respect to such class pursuant to section 1129(b) of the Bankruptcy Code.

## **ARTICLE XI - CONDITIONS PRECEDENT**

*11.1 Conditions to Confirmation.* The following conditions must occur and be satisfied, or be waived, on or before the Confirmation Date:

(a) The Confirmation Order shall have been signed by the Bankruptcy Court and duly entered on the docket maintained for these Chapter 11 Cases by the Clerk of the Bankruptcy Court, in form and substance reasonably acceptable to the Debtors, the Committee and the Legal Representative;

(b) The Voting Procedures Order shall have been signed by the Bankruptcy Court and duly entered on the docket maintained for these Chapter 11 Cases by the Clerk of the Bankruptcy Court, in form and substance reasonably acceptable to the Debtors, the Committee and the Legal Representative, and such Voting Procedures Order shall have become a Final Order;

(c) The Bankruptcy Court and/or the District Court shall have signed an Order or Orders,

which may be the Confirmation Order, approving the Asbestos Trust Documents, including the Asbestos-Related Claims Resolution and Distribution Procedures, and such Order or Orders shall have been duly entered on the docket maintained by the Clerk of the Bankruptcy Court and/or the District Court, in form and substance reasonably acceptable to the Debtors, the Committee and the Legal Representative;

(d) (i) The District Court shall have signed an Order, which may be the Confirmation Order, establishing the Permanent Channeling Injunction, and (ii) either the Bankruptcy Court or the District Court shall have signed an Order, which may be the Confirmation Order, establishing the injunction set forth in Section 16.1; and such Order or Orders shall have been duly entered on the docket maintained by the Clerk of District Court or the Clerk of the Bankruptcy Court, as the case may be, in form and substance reasonably acceptable to the Debtors, the Committee and the Legal Representative;

(f) All Causes of Action shall be preserved and provision shall have been made to transfer the Causes of Action to the Asbestos Trust for prosecution by the Asbestos Trust; and

(g) The District Court shall have made the following findings, each of which shall be contained in the Confirmation Order:

(i) The Permanent Channeling Injunction is to be implemented in connection with the Asbestos Trust.

- (ii) At the time of the order for relief, Rutland had been named as a defendant in personal injury, wrongful death, and property damage actions seeking recovery for damages allegedly caused by the presence of, or exposure to, asbestos and asbestos-containing products.
- (iii) The Asbestos Trust, as of the Effective Date, will assume the liabilities of the Debtors with respect to Asbestos-Related Claims and Demands within the meaning of section 524(g) of the Bankruptcy Code.
- (iv) The Asbestos Trust is to be funded in whole or in part by 100% of the equity interests of the Debtors and by the obligation of the Debtors, by the transfer of the Asbestos Trust Distribution and the obligation to make future payments, including dividends.
- (v) The Asbestos Trust is to own all of the voting shares of New Rutland.
- (vi) The Asbestos Trust shall have its assets or income to pay for its operating expenses and to pay Asbestos-Related Claims and Demands.
- (vii) The Debtors are likely to be subject to substantial Demands for payment arising out of the same or similar conduct or events that gave rise to the Asbestos-Related Claims and Demands that are addressed by the Permanent

Channeling Injunction.

- (viii) The actual amounts, numbers and timing of the Demands cannot be determined.
- (ix) Pursuit of such Demands outside the procedures prescribed by the Plan is likely to threaten the Plan's purpose to deal equitably with Asbestos-Related Claims and future Demands.
- (x) The terms of the Permanent Channeling Injunction, including any provisions barring actions against the Protected Parties, pursuant to section 524(g)(4)(A) of the Bankruptcy Code, are set forth in the Plan and in the Disclosure Statement.
- (xi) The Plan establishes, in Classes 4A and B thereof, separate classes of Asbestos-Related Claims to be addressed by the Asbestos Trust.
- (xii) The holders of Class 4 Claims, voting as a class, have voted, by at least 75 percent (75%) of those voting, in favor of the Plan.
- (xiii) Pursuant to court orders or otherwise, the Asbestos Trust will operate through mechanisms such as structured, periodic, or supplemental payments, *pro rata*



distributions, matrices, or periodic review of estimates of the numbers and values of present Asbestos-Related Claims and Demands, or other comparable mechanisms, that provide reasonable assurance that the Asbestos Trust will value, and be in a financial position to pay, Asbestos Related Claims and Demands that involve similar Claims in substantially the same manner.

- (xiv) The Legal Representative was duly appointed pursuant to section 524(g) of the Bankruptcy Code as part of the proceedings leading to issuance of the Permanent Channeling Injunction, for the purpose of protecting the rights of Entities that hold, or that might subsequently assert, Demands that are bound by the Permanent Channeling Injunction and transferred to the Asbestos Trust.
- (xv) Identifying each Protected Party is fair and equitable with respect to Entities that might subsequently assert Demands against any such Protected Party, in light of the benefits provided, or to be provided, to the Asbestos Trust by or on behalf of the Debtors and any such Protected Party.

*11.2 Conditions to Effectiveness of Plan.* The following conditions must occur and be satisfied, or waived, on or before the Effective Date or the Plan shall not become effective:

- (a) There shall not be any stay in effect with respect to the Confirmation Order and, if

separate, the Order establishing the Permanent Channeling Injunction;

(b) The Confirmation Order and, if separate, the Order establishing the Permanent Channeling Injunction, shall, to the extent required by Section 524(g) of the Bankruptcy Code, have been issued or affirmed by the District Court, shall have become a Final Order or Final Orders, and shall have been duly entered on the docket of the Clerk of the Bankruptcy Court and/or District Court, as the case may be;

(c) The Confirmation Order and the Permanent Channeling Injunction shall be in full force and effect;

(d) The Trustees of the Asbestos Trust and the TAC shall have been selected in accordance with the terms of the Asbestos Trust Agreement;

(e) All Trustees of the Asbestos Trust and Rutland shall have executed the Asbestos Trust Agreement;

(f) The Certificate of Merger shall have been filed with the Office of the Secretary of State of the State of Vermont.

*11.3 Waiver of Conditions.* None of the conditions contained in Sections 11.1 and Section 11.2 hereof may be waived, in whole or in part, except jointly by the Debtors, the Committee and the Legal Representative, in a writing to be filed with the Bankruptcy Court, without any further notice to any Entity other than as may be required by the Bankruptcy Court, without leave or order of the Bankruptcy Court or any other formal action.

## **ARTICLE XII - TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED**

## LEASES

*12.1 Assumption/Rejection.* Pursuant to section 1123(b)(2) of the Bankruptcy Code, all executory contracts and unexpired leases of the Debtors that have not already been assumed or rejected shall be deemed assumed as of the Effective Date unless there is then pending before the Bankruptcy Court a motion for the rejection of such executory contract and/or unexpired lease. If such a motion is then pending, the contract(s) or lease(s) that are the subject of such motion(s) shall be assumed or rejected as and when determined by such motion(s). Pursuant to this Plan the Debtors assume its executory contracts and/or unexpired leases with the following Entities: Cupola-Rococo; AT&T Wireless Services; PCS, Inc.; and Pallet Pro's, Inc.; SoVerNet, Inc.; Macola Software; Sterling Commerce; CityScape Jacksonville; Nova Electronics Data, Inc; GTE Network Services; Network Solutions; Ikon Office Solutions; Bell South; Pitney Bowes; Geoge Alarm Co., Inc.; Sam's Mowing; Mr. Delos G. Pollard; and AT&T.

*12.2 Claims Based on Assumption or Rejection of Executory Contracts or Unexpired Leases.* An Allowed Claim arising from the assumption or rejection of an executory contract or an unexpired lease shall be classified and treated as a Class 3 Claim. All proofs of claim with respect to Claims arising from the assumption or rejection, pursuant to this Article XII, of executory contracts or unexpired leases must be filed with the Bankruptcy Court on or before the later to occur of: (i) thirty (30) days after the date of entry of an order of the Bankruptcy Court approving such assumption or rejection, or if assumption is pursuant to this Plan, 30 days after the Confirmation Date, or (ii) thirty (30) days after service of notice of such rejection, if such rejection occurs by expiration of time fixed

by the Bankruptcy Court, or such Claims shall be forever barred against the Debtors and their estates and the assets and properties of New Rutland and the Asbestos Trust. Any Entity that fails to file proof of its Claim arising from such assumption or rejection within the period set forth above shall be forever barred from asserting a Claim against the Debtors, New Rutland or the Asbestos Trust, any of their respective affiliates or the property or interests in property of the Debtors, New Rutland or the Asbestos Trust, or any of their respective affiliates.

### **ARTICLE XIII - IMPLEMENTATION OF THIS PLAN**

*13.1 Vesting of Property.* Except as otherwise provided by this Plan, in accordance with sections 1123(a)(5) and 1141 of the Bankruptcy Code, on the Effective Date, title to property of the Debtors shall pass to New Rutland free and clear of all Claims, Demands, Interests, liens and encumbrances, (excluding the Class 2 liens) including, without limitation, all Asbestos-Related Claims and Demands . Also, on the Effective Date, title to the Asbestos Trust Distribution shall pass to the Asbestos Trust free and clear of all Claims, Interests, liens and encumbrances, except liabilities relating to Asbestos-Related Claims and Demands.

*13.2 Abandonment of Certain Property.*

On the Effective Date the Debtors abandon all rights, claims and interest, if any, in and to a total of \$39,689.00, plus interest accrued thereon, if any, funds deposited in a CNA Trust Account for Rutland claims, the corpus of which shall be paid over to counsel for claimants (for the benefit of

such claimants) whose claims were settled pursuant to a certain letter agreement of Rutland's defense counsel Siemon, Huckabay, Bodary, Padilla, Morganti & Bowerman, dated September 9, 1997, in connection with the Saginaw Asbestos Foundry cases.

*13.3 Cancellation of Securities, Notes or Other Instruments; Release of Liens.*

(a) As of the Effective Date, all Interests, notes or other instruments evidencing a Claim, Demand or Interest shall be canceled and rendered void and each of the transfer books maintained for any such Claim, Demand, Interest, note or other instrument shall be closed.

(b) Except for the right to receive the distributions or retention of lien, if any, provided for by the Plan, the holder of a Claim, Demand, Interest, note or other instrument shall have no rights against the Debtors arising from or relating to such Claim, Demand, Interest, note or other instrument on and after the Effective Date.

*13.4 Certificate of Incorporation and By-laws.* The certificate of incorporation and the by-laws of Rutland shall be superseded, amended and restated, and as so amended and restated shall, as of the Effective Date, be in full force and effect. On the Effective Date the surviving corporation shall be a Vermont corporation.

*13.5 Corporate Authority.* The entry of the Confirmation Order shall constitute a direction and authorization to and of the Debtors, New Rutland and the Asbestos Trust to take or cause to be taken

any corporate action necessary or appropriate to consummate the provisions of this Plan, including without limitation, the adoption of the Amended and Restated Certificate of Incorporation and the Amended and Restated By-laws or similar constituent documents for New Rutland, the selection of directors and officers of New Rutland, the distribution of Cash and the issuance and distribution of the New Common Stock, the adoption, execution, delivery and implementation of all contracts, instruments, releases and other agreements relating to this Plan, and all such actions taken or caused to be taken shall be deemed authorized and approved in all respects without any further action by the stockholders or directors of the Debtors or New Rutland.

*13.6 Retiree Benefits.* New Rutland, as the contributing sponsor within the meaning of ERISA, will continue and maintain the Pension Plan. New Rutland will comply with all funding and other requirements of ERISA. Unless and until the Pension Plan has been terminated, the Debtors and New Rutland will have no debt due the Pension Plan or the PBGC, and, accordingly, any liabilities due the PBGC for any unfunded benefits liabilities shall not be affected in any way by this reorganization, including the discharge. If the Pension Plan has not been terminated prior to the Confirmation Date, any Claim by the Pension Plan or the PBGC shall be treated as arising after the Confirmation Date. Upon the Effective Date, any Claim that the PBGC has, or may have asserted, shall be deemed to have been withdrawn. Notwithstanding the foregoing, after the Effective Date New Rutland may terminate its pension plan(s) at any time in accordance with and subject to applicable law.

*13.7 Term of Existing Injunctions or Stays.* Unless otherwise provided in the Plan, all

injunctions or stays in effect on the Confirmation Date pursuant to sections 105(a) or 362(a) of the Bankruptcy Code or otherwise shall remain in full force and effect until the Effective Date.

*13.8 Payment of Certain Costs.* New Rutland, may retain professionals to facilitate the distribution of Cash and other property pursuant to the Plan, to prosecute objections to Claims and Interests, and to take all further action necessary to complete the Chapter 11 Cases and obtain entry of a Final Order and Decree closing the Debtors' Estates. New Rutland shall be responsible for the payment of the fees and expenses of such professionals and also all post-confirmation fees and expenses of the Committee and its professionals, and of the Legal Representative and his professionals, if any, until their authority is terminated under the Plan, such payments to be made within thirty (30) days of the submission to both New Rutland and the Asbestos Trust by such persons of reasonably detailed invoices. New Rutland or the Asbestos Trust may object to the payment of such invoices within ten days of their submission; *provided, however,* that New Rutland shall remain obligated to pay the undisputed portion of each such invoice within thirty (30) days from the date of submission. The resolution of the disputed portion of any such invoice, if not otherwise resolved by an agreement among such person, New Rutland and the Asbestos Trust shall be subject to the exclusive jurisdiction of the Bankruptcy Court.

*13.9 Certain Property to be Held in Trust by New Rutland.* If and to the extent that any property of the Debtors under applicable law or any contractual provision cannot be effectively transferred and assigned to the Asbestos Trust, or such transfer or assignment shall in any manner impair, adversely affect or threaten to impair such property or its value, or if New Rutland shall

receive any such property (and any proceeds thereof), then such transfer or assignment shall be void *ab initio*, and New Rutland shall notify the Asbestos Trust immediately of such matter, shall retain such property in trust for the benefit of the Asbestos Trust, and shall take all reasonable actions to hold and retain such property in trust for the benefit of the Asbestos Trust and promptly upon receipt thereof take such actions as are necessary to perfect such trust, such as in the event the property is in the form of cash, check or negotiable instruments, deposit same in a trust account so named for the sole benefit of the Asbestos Trust and, following such notice, shall take only such actions with respect to such property (and proceeds thereof) as the Managing Trustee reasonably may direct in writing.

#### **ARTICLE XIV - PROVISIONS GOVERNING DISTRIBUTIONS**

*14.1 Time of Distributions Under this Plan.* Notwithstanding any other provisions of this Plan, payments and distributions on account of Allowed Claims and Demands, and the transfer of the Asbestos Trust Distribution set forth in Section 8.2 hereof, shall be made by the Rutland on the Effective Date or as soon thereafter as is reasonably practicable (but in no event later than ten (10) Business Days after the Effective Date).

*14.2 Settlement Regarding Distributions.* Notwithstanding any other provisions contained herein, distributions to holders of Allowed Claims and Demands shall be as specified in this Plan, unless such holder agrees to accept less favorable treatment by settlement or otherwise.



*14.3 Distributions to Asbestos Trust.* Any and all distributions to be made to the Asbestos Trust pursuant to the terms of this Plan shall be made to the Managing Trustee (as defined in the Asbestos Trust) of the Asbestos Trust for the benefit of holders of Asbestos-Related Claims and Demands, all in accordance with applicable law, including without limitation, the laws governing trusts.

*14.4 Distribution to Holders of Asbestos-Related Claims.* All distributions to holders of Asbestos-Related Claims shall be made pursuant to the Asbestos Trust Agreement.

*14.5 Record Date.* As of the close of business on the Record Date the transfer ledger of Old Common Stock shall be closed, and there shall be no further changes in the holders of record thereof.

*14.6 Manner of Payments Under This Plan.* Solely for the purposes of making distributions pursuant to the Plan, on the Effective Date, unless waived in writing by the affected creditor, the Plan Payments shall be maintained by New Rutland in separate interest bearing accounts. Any Cash payment to be made pursuant to the terms of this Plan may be made by a check or wire transfer or as otherwise required or provided in applicable agreements.

*14.7 Rounding Cash.* Whenever any payment of a fraction of a cent would otherwise be called for, the actual payment shall reflect a rounding of such fraction to the nearest whole cent, with one-half cent being rounded up to the nearest whole cent.

*14.8 Undeliverable Distributions; Unclaimed Property.*

(a) If Rutland is unable to make payment or distribution to the holder of an Allowed Claim (excluding all Asbestos-Related Claims) under this Plan for lack of a current address for the holder or otherwise, Rutland will file with the Bankruptcy Court the name, if known, and last known address of the holder and the reason for inability to make payment. If, after the passage of 60 days after such filing and after any additional effort to locate the holder that the Bankruptcy Court may direct, the payment or distribution still cannot be made, the payment or distribution and any further payment or distribution to the holder shall be treated as unclaimed property in accordance with Section 14.8(b) hereof.

(b) If any distribution of property remains unclaimed for a period of six (6) months after it has been delivered in accordance with this Plan to the holder entitled thereto, such holder shall be deemed to have forfeited the holder's rights in or to such property, whereupon all right, title and interest in and to such unclaimed property shall immediately and irrevocably vest in the Asbestos Trust.

*14.9 Transmittal of Distributed Property, and Notices.* Except as otherwise provided in this Plan and except as otherwise may be agreed to by the Debtors or New Rutland and the holder of a particular Claim or Interest, any property or notice to which such holder shall become entitled pursuant to the provisions of this Plan, shall be delivered to such holder by regular mail, postage prepaid, in an envelope addressed to such holder as he or she or his or her authorized agent may direct in a request filed, on or before the Effective Date, with the Bankruptcy Court (or filed, after

the Effective Date, with New Rutland), but if no such request is filed, to the address shown in the Schedules or to such holder's counsel known to the Debtors, or, if a different address is stated in a proof of claim duly filed, to such address. In all cases where delivery or distribution is effectuated by mail, the date of delivery or distribution shall be the date of mailing. Property delivered in accordance with this Section 14.9 will be deemed delivered to the holder regardless of whether such property is actually received by such holder,

*14.10 Full and Final Satisfaction.* Except as otherwise provided by this Plan, all payments and other distributions made pursuant to the terms and conditions of this Plan shall be in full and final satisfaction, settlement, release and, to the extent permitted by applicable law, discharge of all Claims, Demands and Interests.

*14.11 No Distribution in Excess of Allowed Amount of Claim.* Notwithstanding anything to the contrary herein, no holder of an Allowed Claim shall receive on account of such Claim any distribution (of a value set forth herein or in the Disclosure Statement) in excess of the Allowed Amount of such Claim and interest, to the extent provided by this Plan, due and payable from and after the Petition Date pursuant to the terms of this Plan or any order of the Bankruptcy Court which has become a Final Order.

*14.12 Withholding Taxes.* Any federal, state or local withholding taxes or other amounts required to be withheld under any applicable law shall be deducted from any payments or other distributions hereunder or otherwise. All holders of Claims shall be required to provide information

to effectuate the withholding of such taxes.

*14.13 Payment Dates.* Whenever any payment or other distribution to be made of the distributions pursuant to the terms of this Plan is due on a day other than a Business Day, such payment or distribution will instead be made on the next Business Day and shall be deemed to have been completed as of the required date.

*14.14 Set-offs.* For purposes of determining the Allowed Amount of each Claim on which a distribution shall be made, the Debtors or Rutland, as the case may be, may, but shall not be required to, set off against any Claim, any claims of any nature whatsoever the Debtors may have against the claimant, but neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtors or Rutland of any such claim the Debtors may have against any such claimant.

## **ARTICLE XV - PROCEDURE FOR RESOLVING DISPUTED CLAIMS AND DISPUTED INTERESTS**

*15.1 Applicability.* The procedure set forth in this Article XV for resolving Disputed Claims shall apply to all Claims other than Asbestos In Buildings Claims and Asbestos-Related Personal Injury Claims.

*15.2 Objections to and Estimation and Resolution of Claims and Interests.* An objection to the allowance of a Claim or Interest, or any motion pursuant to section 502(c) of the Bankruptcy Code to estimate any Claim, shall be in writing and must be filed with the Clerk of the Bankruptcy Court by the Debtors, the Committee, the Legal Representative, or the Asbestos Trust (each, an "Objecting Party"), as the case may be, on or before one hundred eighty(180) days following the Effective Date, or such later date as the Bankruptcy Court may fix; *provided, however,* that any party in interest may object to an application for allowance of compensation and reimbursement of expenses of professionals under section 330 of the Bankruptcy Code; *provided, further, however,* that objections to Asbestos-Related Claims (other than Asbestos Related Building Contribution Claims and Asbestos-Related Personal Injury Contribution Claims) shall be addressed exclusively by the Asbestos Trust.

*15.3 Procedure.* The Objecting Party shall litigate the merits of each Disputed Claim and each Disputed Interest until determined by a Final Order and shall litigate the amount at which a Disputed Claim or Interest shall be estimated; *provided, however,* that subject to the approval of the Bankruptcy Court, the Objecting Party may compromise and settle any objection to any Claim or Interest; and provided further, that after the Effective Date an objection to claim may be withdrawn by the Asbestos Trust on its own initiative or by the Debtors with the consent of the Asbestos Trust.

*15.4 Payments and Distributions With Respect to Ultimately Allowed Claims.* Payments or other distributions shall be made on account of a Disputed Claim within thirty (30) days after the date that such Disputed Claim becomes an Ultimately Allowed Claim. Holders of Disputed Claims

that become Ultimately Allowed Claims shall be bound, obligated and governed in all respects by the provisions of this Plan. Upon disallowance of a Disputed Claim, the consideration reserved for such Claim (together with interest accrued thereon) shall vest with the Asbestos Trust in accordance with Section 15.5(b) of this Plan.

*15.5 Reserves for Disputed Claims.*

(a) On or as soon as practicable after the Effective Date, New Rutland shall reserve for the account of each holder of a Disputed Claim, (i) that property which would otherwise be distributable to such holder on such date in accordance with this Plan were such Disputed Claim an Allowed Claim, as applicable, on such date or (ii) such other property as such holder and New Rutland may agree. If applicable, New Rutland shall place property reserved pursuant to this Section 15.5 in an interest bearing escrow fund (which need not be segregated, but for which separate book entries shall be kept by New Rutland) for each class to be established and maintained by New Rutland pending resolution of such Disputed Claims. Cash held in any reserve established for Disputed Claims (the "Disputed Claims Reserve") shall be invested in a manner consistent with the requirements of section 345 of the Bankruptcy Code or any order of the Bankruptcy Court.

(b) Any Disputed Claims Reserve shall be terminated by New Rutland once all distributions and other dispositions of Cash required hereunder have been made in accordance with the terms of this Plan. To the extent that any Cash or other property remains in a Disputed Claims Reserve established pending the resolution of Disputed Administrative Expense Claims, Disputed Tax Claims or Disputed Class 1, 2 or 3 Claims (including any interest accrued thereon), and such

reserve has been terminated in accordance with this Section 15.5(b), such Cash or other property shall immediately and irrevocably vest in the Asbestos Trust which shall thereafter be empowered to take whatever steps may be reasonably necessary to exercise control over such Cash or other property.

*15.6 Funding of Objections Process.* On and after the Effective Date, New Rutland will pay the fees and expenses of the professionals retained by New Rutland and/or each Objecting Party, with the reasonable consent of the Asbestos Trust and the Legal Representative, that are associated with the filing and prosecution of objections to Claims within 30 days after the submission of a reasonably detailed invoice to New Rutland and the Trustee setting forth such fees and expenses. Within ten (10) days after the submission of an invoice, either New Rutland or the Asbestos Trust may object to all or part of such invoice; *provided, however,* that New Rutland shall be obligated to pay the undisputed portion of such invoice within thirty (30) days of its submission. In the event that the parties cannot resolve any dispute with respect to the invoice within thirty (30) days after its submission, either New Rutland, the Asbestos Trust or the affected professional may apply to the Bankruptcy Court for resolution of the matter.

## **ARTICLE XVI - EFFECTS OF PLAN CONFIRMATION**

### *16.1 Discharge, Releases and Injunction.*

- (a) Except as otherwise specifically provided by this Plan and the Asbestos Trust

Documents,

(i) the distributions and rights that are provided in this Plan shall be in complete satisfaction, release and, to the extent permitted by applicable law, discharge of (A) all Claims and Demands against, liabilities of, liens on, obligations of and Interests in the Debtors, New Rutland or the Asbestos Trust or the assets and properties of the Debtors, New Rutland or the Asbestos Trust, whether known or unknown, and (B) all causes of action, whether known or unknown, either directly or derivatively through the Debtors or New Rutland, against the Released Parties based on the same subject matter as any Claim, Demand or Interest, in each case, regardless of whether a proof of Claim or Interest was filed, whether or not Allowed, and whether or not the holder of such Claim or Interest has voted on this Plan, or based on any act or omission, transaction or other activity or security, instrument or other agreement of any kind or nature occurring, arising or existing prior to the Effective Date that was or could have been the subject of any Claim, Demand or Interest, in each case, regardless of whether a proof of Claim or Interest was filed, whether or not Allowed and whether or not the holder of such Claim or Interest has voted on this plan.

(ii) Furthermore, but in no way limiting the generality of the foregoing, except as otherwise specifically provided in this Plan, any Entity accepting any distributions or rights pursuant to this Plan shall be presumed conclusively to have released the Released Parties to the extent provided in the Plan from any cause of action based on the same subject matter as the Claim, Demand or Interest on which the distribution or right is received to the full extent permitted by applicable law.

(iii) The satisfactions, releases and discharges set forth in this Section 16.1 shall also act as an injunction against any Entity commencing or continuing any action, employment of process



or act to collect, offset, affect or recover any Claim, Demand, Interest or cause of action satisfied, released or discharged hereunder.

(b) Notwithstanding Section 16.1 (a) or any other provision of this Plan to the contrary, the release and injunction set forth in Section 16.1(a) shall not serve to release or enjoin claims by the Asbestos Trust against any insurance carrier or surety that issued, or is alleged to have issued, a policy or policies of insurance to, or on behalf of, Rutland unless such insurance carrier or surety is specifically named as a beneficiary of or a party to an Insurance Carrier or Surety Settlement Order.

*16.2 Permanent Channeling Injunction.* On and after the Effective Date, the Protected Parties to the extent provided therein shall have the benefits and protections of the Permanent Channeling Injunction.

*16.3 No Release of Causes of Action.*

(a) Notwithstanding any other provision of this Plan, pursuant to section 1123(b)(3) of the Bankruptcy Code, the Asbestos Trust (as a representative of the Debtors's estate) shall obtain title to and have the exclusive right to and may commence, enforce, prosecute, manage and/or settle against any Entity all Causes of Action of the Debtors, that arose before the Effective Date, including all Causes of Action of a trustee and Debtors-in-possession under the Bankruptcy Code and any and all claims and causes of action arising under federal, state or other applicable law; *provided, however,* that the Estate will not commence, and the Asbestos Trust shall not obtain the right to

commence, any avoidance or recovery actions against Thomas Martin, Janet P. Martin or John B. Martin, and former or extinguished shareholders.

*16.4 Exculpation.* Except as otherwise provided in the Plan, none of the Released Parties (excluding any insurance carriers) shall have or incur any liability to any Entity for any act or omission in connection with or arising out of the formulation, preparation, dissemination, prosecution, confirmation, consummation, discussion, implementation or administration of this Plan, the Disclosure Statement, any contract, release, or other agreement or document created or entered into, the property to be distributed under the Plan, or any other action taken or omitted to be taken in connection with these Chapter 11 Cases or this Plan, to and including the Effective Date, except for gross negligence, fraud or willful misconduct, and in all respects shall be entitled to rely upon the good faith and informed advice of counsel with respect to their duties and responsibilities under the Plan.

*16.5 Termination of Protected Party Status and Protection of Permanent Channeling Injunction.* Notwithstanding anything to the contrary in this Plan, in the event that any Entity providing insurance to the Debtors with respect to Asbestos-Related Claims hereafter denies coverage or alleges that any provision of this Plan voids, excuses or excludes such coverage in whole or in part, then, in addition to such Entity no longer being a Protected Party, holders of Asbestos-Related Personal Injury Claims and Asbestos In Building Claims, with the Trustee's prior written consent, may commence legal action against or relating to such Entity and, to the extent necessary or required by applicable non-bankruptcy law, New Rutland and/or the Asbestos Trust, to recover

for their injuries and losses solely to the extent of any available insurance coverage issued by such Entity and not from any other property or assets of New Rutland.

## **ARTICLE XVII - MISCELLANEOUS PROVISIONS**

*17.1 Retention of Jurisdiction.* The business and assets of the Debtors shall remain subject to the jurisdiction of the Bankruptcy Court until the Effective Date. From and after the Effective Date, except as otherwise provided by law, the Bankruptcy Court shall retain and have exclusive jurisdiction over New Rutland and the Chapter 11 Cases for the purpose of determining all disputes and other issues presented by or arising under this Plan including, without limitation, the following matters:

(a) to allow, disallow, estimate, liquidate or determine any Claim against or Interest in the Debtors and to enter or enforce any order requiring the filing of any such Claim or Interest before a particular date, and to resolve any and all disputes relating to any Claim or Interest, except in each case an Asbestos-Related Personal Injury Claim or an Asbestos In Buildings Claim.

(b) to determine requests for payment of Claims entitled to priority under section 507(a)(1) of the Bankruptcy Code, including any and all interim and final applications for compensation for professional services rendered and disbursements incurred in connection therewith;

(c) to resolve any and all controversies and disputes regarding the interpretation and enforcement as may be necessary to effectuate the consummation and full and complete implementation of this Plan;

(d) to resolve any and all controversies and disputes regarding the implementation or interpretation of the Asbestos Trust and related matters, including, without limitation, the settlement of accounts, the resolution of disputes between the TAC and the Trustees, and the termination of the Asbestos Trust, as those matters are provided for in paragraphs 2.2(f), 5.1(c) and 6.2(a)(iii), respectively, of the Asbestos Trust Agreement, but excluding all matters related to the Permanent Channeling Injunction, as set forth in Section 16.2 hereof,

(e) to enter orders in aid of the execution of this Plan, and releases provided for in this Plan, including, without limitation, appropriate orders (which may include contempt or other sanctions) to protect the Debtors, its affiliates and other Entities from actions prohibited under Article XVII of this Plan;

(f) to remedy any defect or omission or reconcile any inconsistency in the Confirmation Order;

(g) to determine any and all applications, motions, adversary proceedings and contested matters pending on the Effective Date and arising under, arising in or related to the Chapter 11 Case or this Plan, including any remands of appeals that may be pending on the Effective Date;

(h) to enforce the provisions of this Plan relating to the distributions to be made hereunder;

(i) to resolve any action brought to avoid or otherwise determine the validity, extent, enforceability, priority and perfection of any lien or other encumbrance on any property of the Debtors;

(j) to determine any and all pending applications for the rejection or disaffirmance of executory contracts or leases, and to hear and determine, and if need be to liquidate, any and all Claims arising therefrom;

(k) to resolve any disputes concerning any reserve established for Disputed Claims or the administration thereof;

(l) to resolve any disputes concerning any release of non -Debtors hereunder or the injunction against acts, employment of process or actions against such non-Debtors arising hereunder;

(m) to resolve any disputes concerning whether a Entity had sufficient notice of the Chapter 11 Case, any applicable Claims bar date, the hearing on the approval of the Disclosure Statement as containing adequate information, and the hearing on the confirmation of this Plan for the purpose of determining whether a Claim, Demand or Interest is satisfied, released or discharged

hereunder or for any other purpose;

(n) to determine such other matters as may be set forth in the Confirmation Order or that may arise in connection with the implementation of this Plan;

(o) to resolve any disputes regarding any invoice submitted to New Rutland by a professional for fees and/or expenses associated with the prosecution or settlement of objections to Claims or Interests; and

(p) to enter a final decree closing the Chapter 11 Case.

*17.2 Jurisdiction as to the Permanent Channeling Injunction.* The District Court shall retain jurisdiction over any proceeding that involves the validity, application, construction, or modification of the Permanent Channeling Injunction.

*17.3 Binding Effect of Plan.* The provisions of this Plan and the rights, benefits and obligations of any Entity named or referred to in this Plan, including without limitation New Rutland, any holder of a Claim, Demand or Interest and the Asbestos Trust, shall be binding upon, and will inure to the benefit of, such Entity's heirs, executors, trustees, administrators, successors, assigns, agents, officers and directors.

*17.4 Withdrawal of this Plan.* The Debtors reserve the right, upon the written consent of the

Committee, to revoke and withdraw this Plan as the plan of reorganization for the Debtors' Chapter 11 Cases, at any time prior to the entry of the Confirmation Order or, if the conditions set forth in Section 11.2 hereof cannot be satisfied for any reason after the Confirmation Date, at any time up to the Effective Date. If the Debtors revoke or withdraws this Plan or if the Confirmation Date or Effective Date does not occur, then this Plan shall be deemed null and void.

*17.5 Modification of this Plan.* Prior to the entry of the Confirmation Order, the Debtors reserve the right, upon the written consent of the Committee and the Legal Representative, and in accordance with the Bankruptcy Code, to amend or modify this Plan, and after the entry of the Confirmation Order, the Debtors may, upon the written consent of the Committee and the Legal Representative, upon order of the Court, amend or modify this Plan in accordance with section 1127(b) of the Bankruptcy Code, or remedy any defect or omission or reconcile any inconsistency in this Plan in such manner as may be necessary to carry out the purpose and intent of this Plan.

*17.6 Transfer of Documents.* On the Effective Date, or as soon thereafter as reasonably practicable, the Debtors or New Rutland, as the case may be, shall transfer copies or make available to the Asbestos Trust any and all records of New Rutland requested by the Asbestos Trust.

*17.7 Cooperation.* The Debtors, New Rutland and the Asbestos Trust shall cooperate with each other and provide each other with reasonable assistance in connection with the performance of this Plan and the Asbestos Trust Documents.

*17.8 Transfer of all Privileges.* All privileges which the Debtors are entitled to assert,

including but not limited to attorney/client and work product privileges, shall be transferred on the Effective Date to the Asbestos Trust. The Asbestos Trust, in its sole and absolute discretion, may assert any applicable privileges or use, disclose or waive any applicable privileges of the Debtors with respect to any information or documents received or obtained pursuant to this Section 17.8. In addition, New Rutland shall make available to the Asbestos Trust any persons then employed by New Rutland as a director, officer, employee, professional, agent or representative, at reasonable times and on a reasonable basis, at the cost and expense of the Asbestos Trust, to assist the Asbestos Trust in the performance of its duties, including the prosecution of the Causes of Action. The Debtors shall be deemed to have authorized the Asbestos Trust, at the Asbestos Trust's cost and expense, for itself and in the name of the Debtors, to the extent permitted by law (or with the consent of the person(s) in question), to obtain from any of the Debtors' current and former attorneys, special counsel, ordinary course professionals, accountants, advisors, professionals, officers, directors, employees, representatives or agents and insurance carriers any and all information and documents which the Debtors would be entitled or permitted to obtain; *provided, however*, that in the event legal action is required to obtain such information or documents, or any cost or expense shall be incurred in connection therewith, the Asbestos Trust shall take such action, either in its name, or, if required, in the name of the Debtors, and the Asbestos Trust shall bear all legal fees, costs and expenses related thereto.

*17.9 Confidentiality.* The Asbestos Trust shall not be obligated or required to disclose to New Rutland any information, documents or professional advice it receives or obtains relating or referring to the Causes of Action.



*17.10 Tax Provision.* The issuance, transfer or exchange of a security, or the making, delivery or recording of a deed or other instrument of transfer under this Plan shall constitute the issuance, transfer or exchange of a security or the making or delivery of an instrument of transfer within the meaning of section 1146(c) of the Bankruptcy Code, and shall not be taxed either to the Debtors' estate, as seller, or to the transferee or recipient thereof under any law imposing a stamp tax or similar tax.

*17.11 Payment of Fees of United States Trustee.* All fees due and payable to the United States Trustee as required by 28 U.S.C. §1930(a)(6) shall be paid by the Debtors as and when due.

*17.12 Notices.* All notices or requests to the Debtors in connection with this Plan shall be in writing and will be deemed to have been given when received by first class mail, postage prepaid or by overnight courier addressed to:

- (i) Rutland Fire Clay Co, and Rutland, Inc.  
PO Box 340  
Rutland VT 05702-0340  
Attn: Tom Martin

with a copy to:

- Raymond J. Obuchowski, Esq.  
Obuchowski Law Office  
PO Box 60, Route 107  
Bethel, VT 05032  
(802) 234-6244
- (ii) John J. Preefer, Esq.  
630 Third Avenue, 17<sup>th</sup> Floor  
New York New York 10017  
(212) 661-1900
- (iii) Richard Levy, Jr., Esq.

Legal Representative of Future Claimants  
c/o Freeman Forrest & Levy LLP  
415 Madison Avenue  
New York, New York 10017  
(212) 980-4050

- (iv) Sylvester F. Minter, Trustee  
Rutland Asbestos Trust  
144 Broomsedge Lane  
Kiawah Island, S.C. 29455  
(843) 768-3759

- (v) To the TAC:

Nancy Worth Davis, Esq.  
Ness, Motley, Loadholt Richardson & Poole  
P.O. Box 1792  
Mount Pleasant, S.C. 29465

Mary Skelnik, Esq.  
Baron & Budd  
3102 Oaklawn  
Suite 1100  
Dallas, TX 75219

Sanders McNew, Esq.  
Weitz & Luxenberg, P.C.  
180 Maiden Lane  
New York, NY 11038

All notices and requests to Entities holding any Claim or Interest in any class shall be sent to them at their last known address or to the last known address of their attorney of record who has filed a notice of appearance in these Chapter 11 Cases. The parties listed above, or any successors thereto, and any such holder of a Claim or Interest may designate in writing any other address for purposes of this Section 17.12, which designation will be effective upon receipt.

*17.13 Dissolution and Termination of Authority.* On the later of (a) the Effective Date, (b) the

date of a Final Order denying any timely filed motion or proceeding to revoke, modify or set aside the Confirmation Order and (c) the date of consummation of a settlement of insurance coverage with Fireman's Fund, the Committee shall be dissolved, and the members of the Committee and their counsel and representatives, the Legal Representative, the Consultant and their respective professionals, and the Debtors' legal and financial advisors, shall thereupon be released and discharged of and from all further duties, responsibilities and obligations, if any, related to, arising from and in connection with services rendered in their respective capacities in the Chapter 11 Cases. The discharge of the Committee and the Legal Representative shall not abrogate the obligations of New Rutland to pay any fees and expenses of the Committee, the Legal Representative and their professionals, if any, through the date of discharge.

*17.14 Headings.* The headings used in this Plan are inserted for convenience only and neither constitute a portion of this Plan nor in any manner affect the provisions of this Plan.

*17.15 Severability.* At the Debtors' sole discretion, any provision of the Plan, the Confirmation Order, the Permanent Channeling Injunction, or any of the Exhibits to the Plan that is prohibited, unenforceable, or invalid shall, as to any jurisdiction in which such provision is prohibited, unenforceable, or invalidated, be ineffective to the extent of such prohibition, unenforceability, or invalidation without invalidating the remaining provisions of the Plan, the Confirmation Order, the Permanent Channeling Injunction, and the Exhibits to the Plan or affecting the validity or enforceability of such provision in any other jurisdiction.


*17.16 Entire Agreement.* This Plan and the Exhibits hereto constitute and contain the entire

agreement of the parties with respect to the subject matter hereof and, upon the Effective Date, collectively supersede any and all prior negotiations, correspondence, understandings and agreements regarding the subject matter hereof.

DATED at Rutland, Vermont: October 13, 2000.

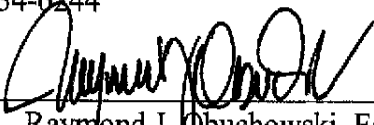
RUTLAND FIRE CLAY COMPANY and  
RUTLAND, INC.

By:

  
Thomas Martin, President,  
duly authorized agent

OBUCHOWSKI LAW OFFICE  
Counsel to Debtors in Possession  
PO Box 60, Route 107  
Bethel, Vermont 05032  
(802)234-6244

By:

  
Raymond J. Obuchowski, Esq.  
Bar ID# 000502389  
Jennifer Emens-Butler, Esq.  
Bar ID# 000845663