

Nov 07 2025

S.C. SUPREME COURT

**SOUTH CAROLINA ASBESTOS VICTIMS COMPENSATION QSF LLC  
OPERATING AGREEMENT**

This SOUTH CAROLINA ASBESTOS VICTIMS COMPENSATION QSF LLC OPERATING AGREEMENT (the “**Operating Agreement**”) for the establishment and operation of a settlement fund, including any and all sub-funds, is declared to be effective (the “**Effective Date**”) upon approval by a court of competent jurisdiction (the “**Court**”) which shall retain and have continuing jurisdiction over the Fund. This Operating Agreement is entered into by Peter D. Protopapas in his capacity as the court-appointed South Carolina Receiver for Cape PLC, now known as Cape Intermediate Holdings Ltd., as successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.) (the “**Receiver**”) as the sole Member and the Manager (the “**Manager**”) of the limited liability company now established under the law of the State of South Carolina known as “South Carolina Asbestos Victims Compensation QSF, LLC” (the “**Fund**”).

**WITNESSETH:**

**WHEREAS**, in settlement of certain disputes, Anglo American US Holdings Inc., (“**Transferor**”) (as further identified on Schedule 1 herein) and the Receiver, acting pursuant to his authority and solely in such capacity, have entered into a Confidential Master Settlement Agreement (the “**Settlement Agreement**”) which has or shall be approved by a court of competent jurisdiction and which will resolve all disputes in South Carolina among the Receiver, the Transferor and its affiliates including Anglo American plc, De Beers plc, De Beers UK Ltd., De Beers Consolidated Mines (Pty) Ltd., De Beers Centenary AG, Anglo American Crop Nutrients (USA), LLC, De Beers Jewellers Limited, De Beers Jewellers (US), Inc., Element Six US Corporation, Element Six Technologies US Corporation, Forevermark US, Inc., Platinum Guild International (U.S.A.) Jewelry, Inc., and Lightbox Jewelry Inc. (collectively, “**Anglo American-De Beers Entities**”). **WHEREAS**, the Transferor, as set forth on Schedule 1 to this Operating Agreement, including all subsequent transferors, have agreed to be Transferors pursuant to Section 468B of the Internal Revenue Code;

**WHEREAS**, this Fund, together with all other additional proceeds or other assets that may become available to the Receiver (“**Other Assets**”), will be responsible for resolving Cape Asbestos Suits (as defined below), to the extent that such Other Assets have not paid or reimbursed such costs and expenses, but only to such extent, and to meet administrative costs and expenses of this Fund, including without limitation tax and investment fees and expenses;

**WHEREAS**, this Fund is excess of all such Other Assets;

**WHEREAS**, this Fund, including any and all Sub-Funds, are intended to qualify as a “Settlement Fund” within the meaning of Section 1.468B-1 of the Treasury Regulations promulgated under Section 468B of the Internal Revenue Code of 1986, as amended;

**WHEREAS**, the parties to this Operating Agreement acknowledge and agree that the funds and other assets and things of value transferred to the Fund and all earnings thereon or additions thereto are to be held, administered and distributed in accordance with the following provisions;

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties hereto, it is agreed as follows:

## **Article I**

### **General Fund Provisions**

1.1 **Name of Fund.** This Fund shall be known as and properly referred to as the **South Carolina Asbestos Victims Compensation QSF LLC (“the Fund”)**.

1.2 **Fund Purposes.** The purposes of this Fund shall be (i) to provide funds which may be used to resolve South Carolina claims, actions, suits, losses, rights, damages, costs, fees, expenses, obligations, liabilities, and causes of action of every character, nature (whether sounding in tort, contract, warranty, or any other theory of law, or equity), kind or description whatsoever, known or unknown, past, present, or future, foreseen or unforeseen, and suspected or unsuspected, arising out of, or relating to, injuries arising from alleged exposure to Cape Asbestos Products (as defined in the Settlement Agreement), that are brought in South Carolina by any person or entity (whether it is an asbestos claimant, an asbestos trust, or others) (“**Cape Asbestos Suits**”); (ii) to provide funds to be used to pay the legal fees of the Receiver and lawyers engaged by the Receiver; (iii) to provide funds to be used to pay any settlement or to satisfy any final judgment or award entered against the Receiver in connection with any claims, causes of action, demands, proceedings, or investigations (whether threatened, pending, or future) asserted against the Receiver in his capacity as the Receiver; (iv) to provide advances to pay for legal fees and settlement costs of Cape PLC, now known as Cape Intermediate Holdings Ltd., as successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.) (“**Cape**”) pending reimbursement or indemnification by other responsible third parties; (v) to secure certain future potential contingent obligations pursuant to the terms of the Settlement Agreement, which terms are expressly incorporated herein by reference; (vi) to pay for administrative and management costs as provided for herein; and (vii) to do all things necessary or appropriate in connection with the foregoing.

1.3 **Distributions and Advances; Other Assets.** Distributions from the Fund shall be made to meet Fund purposes, in the discretion of the Manager, or to meet any legal obligation of the Fund. Advances from the Fund may be made, in lieu of a distribution, when one or more parties are responsible for meeting fees, expenses, demands, costs or liabilities properly payable by the Fund. The determination to make a distribution or an advance may be made in the discretion of the Manager. Distributions or advances to pay for or fund Cape Asbestos Suits may be made at any time, pursuant to Article 1.2 (iv) of this Operating Agreement. Payments from the Fund for Cape Asbestos Suits may be made at any time to supplement other available assets that have been used to fund Cape Asbestos Suits or have been deposited in the Fund. Advances from the Fund shall be evidenced by a promissory note in the form attached as: Schedule 2. All advances shall be recorded as receivables. The Manager may in the future adopt certain standards for distributions or advances to meet the costs of Cape Asbestos Suits.

1.4 **Fund is Irrevocable.** This Fund is irrevocable and may not be revoked, amended and modified, in whole or in part; *provided, however*, notwithstanding the foregoing to the contrary (i) the Manager of this Fund shall have the exclusive power and authority to petition the court that retains jurisdiction over the Fund to reform this Fund, in whole or in part, to the extent said court determines it necessary or reasonable in order for this Fund or the Manager to function or be used to serve the Fund purposes set forth herein and to serve and meet the needs of the parties hereto, and (ii) upon written agreement of each of the parties hereto and without approval of the court, the Fund instrument may be amended to accomplish one or more of the purposes of the Fund as set

forth herein, to maintain the Fund's qualification as a Qualified Settlement Fund as set forth below or to transfer the Fund to a successor escrow fund, trust or other entity designated by the parties hereto which will carry out the purposes of this Fund. Notwithstanding the provisions of this Section 1.4, neither the Fund nor the Manager of the Fund may amend the terms of the Operating Agreement to the detriment of the Transferor or to otherwise make the Fund or the Operating Agreement inconsistent with the terms and conditions of the Settlement Agreement.

1.5 Separate and Independent Fund. This Fund shall at all times be held and remain as a separate and independent fund.

1.6 Duration of Fund. This Fund shall remain in existence from the date of its creation until December 31, 2055, or until such earlier date as the Fund is exhausted or the court which has kept jurisdiction over the Fund has approved a distribution of the Fund as set forth in Section 3.4 below (the "**Termination Date**").

1.7 Situs of Fund. This Fund shall have as its situs Columbia, South Carolina; *provided, however*, that in the event the Manager deems it in the best interest of the Fund and the potential distributees of funds hereunder, the Manager may establish some or all of the Fund assets and/or the situs of the Fund in any other state or judicial district within the continental United States.

1.8 Definitions. All terms shall have the meanings set forth in the Settlement Agreement or in this Operating Agreement, and any governing instrument applicable to its Managers.

1.9 The Settlement Agreement. All provisions of the Settlement Agreement are incorporated herein, and, to the maximum extent permitted by law, the Fund and the Fund Manager agree to be bound by the terms and conditions of the Settlement Agreement.

1.10 Sub-Funds. This Fund shall have the authority to create and maintain separate Sub-Funds which shall be separate and independent funds, in accordance with any documentary requirements establishing such Sub-Funds, but subject at all times to the general terms of this Operating Agreement and any and all orders establishing the Fund and retaining jurisdiction over this Fund or modifying the terms of such order or of this Operating Agreement. The Manager of the Fund may form one or more Sub-Funds at any time, in his discretion, or as required by any pertinent document, including (without limitation) Sub-Funds that are designated for a specific liability or settlement, Sub-Funds that may secure or provide for the satisfaction of a specific obligation, contingent or otherwise, and Sub-Funds securing any obligation to a Transferor.

## **Article II** **Deposits**

2.1 Deposit. The Transferor shall fund the Fund with the "Settlement Sum," as defined by its Settlement Agreement.

2.2 Maintenance of Funds. The funds deposited by the Transferor shall be invested and maintained as provided for by Article V of this Operating Agreement.

### **Article III** **Funding, Distributions and Advances**

3.1 Limitation on Distributions and Advances. No funding shall be made into this Fund and no distribution or advance may be made from the Fund until and unless (i) an order is received from a court of competent jurisdiction approving the Fund as part of the Settlement Agreement; and (ii) the foregoing court has retained continuing jurisdiction over this Fund. The foregoing conditions are referred to in this Article III as the “**Conditions Precedent.**”

3.2 Distributions or Advances for Cape Asbestos Suits. The Manager may make distributions to pay for the costs and expenses of meeting Cape Asbestos Suit obligations to the extent there is no other responsive asset or responsible party for meeting such expenses. Claimants shall serve Cape Asbestos Suits on Cape Intermediate Holdings Ltd. in England, but the Manager has discretion to waive such requirement. To the extent such expenses are the responsibility of third parties, the Manager may advance funds to pay for the costs and expenses of defending against and paying otherwise unreimbursed expenses associated with the defense and settlement of Cape Asbestos Suits (“**Asbestos Claim Expenses**”), pending reimbursement of such asbestos claim expenses by otherwise responsible parties. Such advances will be repaid upon receipt of such funds from responsible parties, and, pending receipt of such reimbursements, shall bear and cumulate interest at the rate of four percent (4.00%) simple interest per annum. To the extent funds are not received from third parties to pay for the Asbestos Claim Expenses subject of such advances on or prior to the Date of Termination of the Fund, then the obligation to repay such advances shall be canceled and voided *ab initio*. Any and all advances shall be documented by one or more promissory notes in the form annexed as Schedule 2 to this Operating Agreement.

3.3 Distributions. When permitted to do so, the Manager shall make distributions to pay Asbestos Claim Expenses as follows:

(a). The Manager shall make distributions hereunder solely with respect to qualifying liabilities as defined in Section 1.468B-1(c) of the Treasury Regulations;

(b). Prior to making any such distribution, the Receiver shall present Required Documentation (as defined herein) to substantiate that qualifying expenditures have been paid or incurred;

(c). Required Documentation shall consist of a declaration under penalty of perjury signed by the Receiver to the effect that qualifying expenditures have been incurred (the “**Declaration**”) in the form annexed at Schedule 3, together with copies of any relevant invoices; and

(d). Receipt of the Declaration and invoices by the Receiver shall constitute conclusive proof that claim expenditures have been paid or incurred. Receipt of the signed Declaration and invoices shall relieve the Manager of any duties or obligations of any kind or nature to verify that expenditures were paid or incurred.

3.4 Distribution Upon Expiration of Term of Fund. In the event this Fund shall be in existence at the expiration of approximately thirty (30) years from the date of its creation, *i.e.*,

December 31, 2055, this Fund shall terminate and the Manager shall, within a reasonable time thereafter and, after paying all accrued administrative expenses, taxes and other obligations of the Fund, distribute the remaining income and principal of this Fund to the extent of its unreimbursed or incurred Asbestos Claim Expenses as provided for herein, distribute all Sub-Funds as required pursuant to documents establishing such Sub-Funds, and, if there is any remaining income and principal of this Fund, to a qualified Section 501(c)(3) organization or organizations which have been organized and operated exclusively for charitable or educational purposes as designated in writing by the Manager from the approved organizations listed in Schedule 4 to this Operating Agreement.

#### **Article IV** **Manager**

4.1 Initial Manager. The Receiver is hereby appointed and named as the Manager of this Fund, and such appointment shall become effective upon the acceptance of such responsibilities by execution of this Operating Agreement. The Receiver in his capacity as Manager may form a legal entity, including a corporation, partnership, trust, limited liability company, or limited partnership, to act as the Manager so long as the Receiver has control, voting or otherwise, over the entity.

4.2 Successor Managers. All successor Managers of this Fund shall be appointed by the Receiver or the successor receivers of Cape, subject at all times to approval by the court, if and to the extent required.

4.3 Resignation and Removal. Subject to the Receiver Order, including any amended or supplemental Receiver Order, a Manager of this Fund may resign at any time upon ten (10) days written advance notice to each of the parties hereto, or may be removed by the court by petition of an interested party. Each resigned or removed Manager shall execute all documents and do all acts necessary to vest title of the Fund in the successor Manager. No successor Manager shall be personally responsible for any act or failure to act of a predecessor Manager.

4.4 Fees and Expenses of Manager. The Manager shall be entitled to reasonable compensation for the performance of his duties as Manager. The Manager is entitled to pay reasonable fees and expenses of other parties the Manager employs or retains to assist the Manager with the administration of this Fund, including but not limited to attorneys, accountants, and such other agents and consultants as the Manager, in his sole discretion, deems appropriate to accomplish the purposes of this Fund, *provided, however*, employment and payment of such parties' fees and expenses by the Manager shall not diminish the compensation of the Manager. Such compensation, fees and expenses shall be paid currently and be a proper expense of the income or principal or both of the Fund.

4.5 Indemnification. The Manager shall not be liable, except for his own gross negligence or willful misconduct and, except with respect to claims based on such gross negligence or willful misconduct that are successfully asserted against the Manager. Except as provided in the preceding sentence, this Fund shall and hereby agrees to indemnify and hold harmless the Manager (and any successor Manager) from and against any and all losses, liabilities, claims, actions, damages and expenses, including reasonable attorneys' fees and disbursements, arising

out of and in connection with this Fund. In addition, this Fund shall and hereby agrees to indemnify and hold harmless the Receiver (and any successor Receiver) from and against any and all losses, liabilities, claims, actions, damages and expenses, including reasonable attorneys' fees and disbursements, arising out of and in connection with the Receiver in his capacity as the Receiver or Manager.

4.6 In no event shall the Manager be liable for indirect, punitive, special or consequential damages.

## **Article V** **Investment of Fund**

5.1 **General Intent.** It is the purpose and intent of this Fund to maximize the amount of the Fund, including investment income, available to provide a source of funds for Asbestos Claim Expenses.

## **Article VI** **Fund Administration, Record Keeping and Accountings**

6.1 **Fund Administration.** This Fund shall be administered by the Manager under the supervision of the Court. The Manager may administer this Fund and the assets of this Fund without prior or subsequent court approval or orders for actions consistent with the Court's Orders. Nothing herein shall prevent the Manager hereof, in the Manager's sole discretion, from seeking and receiving a declaratory judgment from the Court when the Manager deems same appropriate in connection with any matter involving the administration of the Fund. Further, to the extent any of the provisions of this Operating Agreement is incomplete or unclear, there is a change in applicable law, including tax laws, or there is a change in circumstances that frustrates the intent and purpose of this Fund, or is detrimental to Cape, the Manager, in the sole discretion of the Manager, is authorized and empowered to have the Court, upon notice to all parties hereto, reform this Operating Agreement.

6.2 **Fund Accounting.** The Fund shall prepare no less often than annually a detailed Fund accounting setting forth all receipts and disbursements to or from this Fund, as well as the beginning and ending inventory of Fund assets, in accordance with the Manager's generally provided fiduciary accountings. Given the nature of this Fund, it is specifically directed that the Manager shall not be obligated to prepare its accounting reflecting transactions of this Fund as both income or principal receipts and disbursements, and instead, may account for the receipts and disbursements of this Fund without differentiation as to income or principal transactions. In this respect, the Manager is specifically authorized and directed not to account for the transactions applicable to this Fund under or in accordance with any applicable state statutes generally known as the Principal and Income Acts.

6.3 **Report To The Court.** The Manager shall periodically report to the Court the Fund activities. Any Manager serving hereunder after the service of Peter D. Protopapas, shall be obligated to file a bond to secure the faithful performance of his duties hereunder. The cost of such bond shall be paid by the Fund as a necessary expense thereof.

**Article VII**  
**Powers of Manager**

7.1 **General Powers.** Except as otherwise specifically provided herein, the initial Manager named herein, as well as all successor Managers of this Fund, shall have full power and authority to administer this Fund and the assets contained herein, which powers and authority shall include all the powers and authority set forth herein as well as all other powers and authority conferred by applicable law. The initial Manager and all Successor Managers shall have the power and authority to name agents and to designate functions and responsibilities to such agents, subject at all times to the powers and supervision of the Manager and to the provisions of this Fund.

**Article VIII**  
**Tax Matters – Internal Revenue Code § 468B Qualified Settlement Fund**

8.1 The Manager shall take all actions which are consistent with classification of the Fund as a Qualified Settlement Fund within the meaning of Treasury Regulations Sections 1.468B-1, *et seq.*, such that all transfers to the Fund by any Transferor will be excludable from the gross income of the Fund.

8.2 Upon establishment of the Fund and in accordance with Treasury Regulations Section 1.468B-2(k)(4), the Manager shall apply for an Employer Identification Number or shall have previously obtained for the Manager pursuant to Internal Revenue Service Form SS-4.

8.3 If applicable, the Manager and all applicable Transferors, or any Transferor as the case may be, shall fully cooperate in filing a relation-back election under Treasury Regulations Section 1.468B-1(j)(2) to treat the Fund as coming into existence as a qualified settlement fund as of the earliest possible date.

8.4 In accordance with Treasury Regulations Section 1.468B-2(k)(1), the Manager shall cause to be filed, on behalf of the Fund, all required federal, state and local tax returns. Each Transferor shall supply to the Manager and to the United States Internal Revenue Service the statement described in the Treasury Regulations no later than February 15 of the year following the calendar year in which such Transferor makes a transfer to the Fund.

8.5 In accordance with Treasury Regulations Section 1.468B-2(j), the taxable year of the Fund shall be the calendar year and the Fund shall use an accrual method of accounting, within the meaning of Treasury Regulations Section 446(c).

8.6 Anything in this Operating Agreement to the contrary notwithstanding, the Manager shall take all such actions as he deems necessary to comply with applicable laws to assure that the Fund will be treated as a Qualified Settlement Fund under Code Section 468B and the Treasury Regulations promulgated thereunder. Further, the Manager may amend, either in whole or in part, any administrative provision of this Operating Agreement which causes unanticipated tax consequences or liabilities inconsistent with the foregoing, or conform to the administrative provisions of this Operating Agreement Fund to the requirements of taxing authorities or tax counsel to the Fund.

**Article IX**  
**Miscellaneous Provisions**

9.1 Notices. In the event any entity hereto shall desire or be required to give notice to any other party hereto, then such notice shall be in writing addressed to the party who is to receive such notice and deposited in the United States mail with postage prepaid and sent registered or certified mail, return receipt requested, to the following addresses:

If to the Receiver: Peter D. Protopapas  
Receiver, Cape PLC, now known as Cape Intermediate Holdings Ltd., as successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.)  
Rikard & Protopapas, LLC  
2110 N. Beltline Boulevard  
Columbia, South Carolina 29204  
Phone: 803.978.6111  
Email: [pdp@rplegalgroup.com](mailto:pdp@rplegalgroup.com)

with a copy to: John T. Lay, Jr.  
Gallivan White Boyd  
1201 Main Street, Suite 1200  
Columbia, South Carolina 29201  
E-mail: [jlay@GWBlawfirm.com](mailto:jlay@GWBlawfirm.com)

If to South Carolina Asbestos Victims Compensation QSF LLC: Peter D. Protopapas  
Receiver, Cape PLC, now known as Cape Intermediate Holdings Ltd., as successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.)  
Rikard & Protopapas, LLC  
2110 N. Beltline Boulevard  
Columbia, South Carolina 29204  
Phone: 803.978.6111  
Email: [pdp@rplegalgroup.com](mailto:pdp@rplegalgroup.com)

with a copy to Jonathan M. Robinson  
Smith Robinson  
3200 Devine Street  
Columbia, SC 29205  
E-mail: [jon.robinson@smithrobinsonlaw.com](mailto:jon.robinson@smithrobinsonlaw.com)

If to Anglo American US Holdings Inc. c/o Corporation Service Company  
112 S. French Street, Suite 105A  
Wilmington, Delaware 19801

with copy to: Company Secretary

17 Charterhouse Street  
London, EC1N 6RA, UK  
E-mail: [cosecadmin@angloamerican.com](mailto:cosecadmin@angloamerican.com)

with copy to: Scott S. Balber  
Benjamin C. Rubinstein  
Herbert Smith Freehills Kramer New York LLP  
1177 Avenue of the Americas  
New York, New York 10036  
Phone: 212-715-9100  
E-mail: [scott.balber@hsfkramer.com](mailto:scott.balber@hsfkramer.com)  
[benjamin.rubinstein@hsfkramer.com](mailto:benjamin.rubinstein@hsfkramer.com)

with copy to: James H. Elliott, Jr.  
Richardson Plowden & Robinson, P.A.  
235 Magrath Darby Blvd., Ste. 100  
Mt. Pleasant, SC 29464  
Phone: 843.805.6550  
Email: [jelliott@richardsonplowden.com](mailto:jelliott@richardsonplowden.com)

In the event any entity hereto desires to change the address to which its notices shall be sent, or in the event any entity shall relocate or change its address, such party shall immediately provide notice as herein provided to each of the other entities hereto. In addition, this section shall be amended to include information for any additional Transferor.

Notices shall be deemed received for all purposes related to this Operating Agreement five (5) business days after the mailing of such notice as herein provided, whether or not an entity to whom a notice is sent accepts delivery of such notice or for any other reason fails to receive such notice. It shall be the responsibility of each entity to keep informed all the other entities as to their current address. Further, each successor or substitute to an entity listed herein shall be bound by the terms of these notice provisions the same as if such successor or substitute entity was an initial entity to this Operating Agreement.

9.2 Binding Effect. This Operating Agreement shall be binding upon each of the parties hereto, and each party's successor, and assign (to the extent permitted under this Operating Agreement).

9.3 Paragraph Captions and Severability of Provisions. The captions for each of the paragraphs are for convenience only and are not intended to have any specific meaning. Each of the provisions of this Operating Agreement is separate and severable, and if a provision of this Operating Agreement is determined by the court to be unenforceable, the remaining provisions of this Operating Agreement shall remain in full force and effect.

9.4 Applicable Law. This Fund and the Operating Agreement shall be governed and interpreted in accordance with the internal law of the State of South Carolina, except as respects tax matters, which shall be governed by federal law, specifically the Internal Revenue Code.

**IN WITNESS WHEREOF**, this Operating Agreement has been signed and sealed by the parties hereto to be effective and irrevocable on the day and year first above-written.

Receiver of Cape PLC, now known as Cape Intermediate Holdings Ltd., as successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.)

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

Name: Peter D. Protopapas

Title: Receiver

Date: October \_\_, 2025

*Accepted and agreed:*

MANAGER and MEMBER

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

Name: Peter D. Protopapas

Title: Manager and Sole Member

Date: October \_\_, 2025

**Schedule 1 to Operating Agreement**

**Name and Addresses of Transferor:**

**Amount Transferred**

Escrow Account of Herbert Smith Freehills  
Kramer New York LLP, on behalf of Anglo  
American US Holdings Inc.

Settlement Sum as defined in the Settlement  
Agreement

**Schedule 2 to Operating Agreement**

**[FORM OF PROMISSORY NOTE FOR ADVANCES FOR ASBESTOS CLAIM EXPENSES]**

\$ \_\_\_\_\_

\_\_\_\_\_ Date

For value received, \_\_\_\_\_ (“**Maker**”), promises to pay to the South Carolina Asbestos Victims Compensation QSF, LLC (“**Payee**”), in lawful money of the United States of America, the principal sum of \_\_\_\_\_ Dollars (US \$ \_\_\_\_\_), together with interest in arrears on the unpaid principal balance at an annual rate equal to four percent (4.0%) simple interest, in the manner provided below. Interest shall be calculated on the basis of a year of 365 or 366 days, as applicable, and charged for the actual number of days elapsed.

This Note has been executed and delivered pursuant to and in accordance with the terms and conditions of the South Carolina Asbestos Victims Compensation QSF, LLC Operating Agreement (the “**Agreement**”) and is subject to the terms and conditions of the Agreement, which are, by this reference, incorporated herein and made a part hereof. Capitalized terms used in this Note without definition shall have the respective meanings set forth in the Agreement.

1. Payments.

1.1 Principal and Interest. The principal amount of this Note and all accrued but unpaid interest shall be payable concurrently with the receipt of reimbursement from a third party (including liability insurers) by Maker with respect to Asbestos Claim Expenses (as defined in Section 3.2 of the Agreement). Such payment shall be made on a dollar-for-dollar basis to the extent of such third-party reimbursements, and any remaining unpaid principal and interest shall be repaid concurrently with the receipt of additional reimbursements from third parties with respect to Asbestos Claim Expenses. To the extent such third party reimbursements are not received for Asbestos Claim Expenses with respect to which funds have been advanced pursuant to the terms of this Note within thirty (30) years from the effective date of the Agreement, Maker’s obligation to repay any sums pursuant to this Note shall be canceled and voided *ab initio*.

1.2 Manner of Payment. All payments of principal and interest on this Note shall be made by check at Columbia, South Carolina or at such other place in the United States of America as Payee shall designate to Maker in writing or by wire transfer of immediately available funds to an account designated by Payee in writing. If any payment of principal or interest on this Note is due on a day which is not a Business Day, such payment shall be due on the next succeeding Business Day, and such extension of time shall be taken into account in calculating the amount of interest payable under this Note. “Business Day” means any day other than a Saturday, Sunday or legal holiday in the State of South Carolina.

1.3 Prepayment. Maker may, without premium or penalty, at any time and from time to time, prepay all or any portion of the outstanding principal balance due under this Note, provided that each such prepayment is accompanied by accrued interest on the amount of principal prepaid calculated to the date of such prepayment.

2. Defaults.

2.1 Events of Default. The occurrence of any one or more of the following events with respect to Maker shall constitute an event of default hereunder (“**Event of Default**”):

(a). If Maker shall fail to pay when due any payment of principal or interest on this Note and such failure continues for fifteen (15) days after Payee notifies Maker therein writing.

(b). If, pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors (a “**Bankruptcy Law**”), Maker shall (i) commence a voluntary case or proceeding; (ii) consent to the entry of an order for relief against it in an involuntary case; (iii) consent to the appointment of a trustee, receiver, assignee, liquidator or similar official; (iv) make an assignment for the benefit of its creditors; or (v) admit in writing its inability to pay its debts as they become due.

(c). If a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that (i) is for relief against Maker in an involuntary case, (ii) appoints a trustee, receiver, assignee, liquidator or similar official for Maker or substantially all of Maker’s properties, or (iii) orders the liquidation of Maker, and in each case the order or decree is not dismissed within 120 days.

(d). Notice by Maker. Maker shall notify Payee in writing within five days after the occurrence of any Event of Default of which Maker acquires knowledge.

2.2 Remedies. Upon the occurrence of an Event of Default hereunder (unless all Events of Default have been cured or waived by Payee), Payee may, at its option (i) by written notice to Maker, declare the entire unpaid principal balance of this Note, together with all accrued interest thereon, immediately due and payable regardless of any prior forbearance, and (ii) exercise any and all rights and remedies available to it under applicable law, including, without limitation, the right to collect from Maker all sums due under this Note. Maker shall pay all reasonable costs and expenses incurred by or on behalf of Payee in connection with Payee’s exercise of any or all of its rights and remedies under this Note, including, without limitation, reasonable attorneys’ fees.

3. Miscellaneous.

3.1 Waiver. The rights and remedies of Payee under this Note shall be cumulative and not alternative. No waiver by Payee of any right or remedy under this Note shall be effective unless in a writing signed by Payee. Neither the failure nor any delay in exercising any right, power or privilege under this Note will operate as a waiver of such right, power or privilege and no single or partial exercise of any such right, power or privilege by Payee will preclude any other or further exercise of such right, power or privilege by Payee. To the

maximum extent permitted by applicable law, (a) no claim or right of Payee arising out of this Note can be discharged by Payee, in whole or in part, by a waiver or renunciation of the claim or right unless in a writing signed by Payee; (b) no waiver that may be given by Payee will be applicable except in the specific instance for which it is given, and (c) no notice to or demand on Maker will be deemed to be a waiver of any obligation of Maker or of the right of Payee to take further action without notice or demand as provided in this Note. Maker hereby waives presentment, demand, protest and notice of dishonor and protest.

3.2 Notices. Any notice required or permitted to be given hereunder shall be given in accordance with the Operating Agreement.

3.3 Severability. If any provision in this Note is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Note will remain in full force and effect. Any provision of this Note held invalid and unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

3.4 Governing Law. This Note will be governed by the law of the State of South Carolina without regard to conflict of laws principles.

3.5 Parties in Interest. This Note shall bind Maker and its successors and assigns. This Note shall not be assigned or transferred by Payee without the express prior written consent of Maker, except by will or, in default thereof, by operation of law.

3.6 Section Headings, Construction. The headings of Sections in this Note are provided for convenience only and will not affect its construction or interpretation. All references to “**Section**” or “**Sections**” refer to the corresponding Section or Sections of this Note unless otherwise specified.

All words used in this Note will be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the words “hereof” and “hereunder” and similar references refer to this Note in its entirety and not to any specific section or subsection hereof.

IN WITNESS WHEREOF, Maker has executed and delivered this Note as of this date first stated above.

\_\_\_\_\_

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

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

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

**Schedule 3 to Operating Agreement**

**[DECLARATION CONCERNING ASBESTOS CLAIM EXPENSES]**

I, \_\_\_\_\_, hereby certify that the Receiver for Cape PLC, now known as Cape Intermediate Holdings Ltd., as successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.), has incurred Asbestos Claim Expenses in the amount of \$ \_\_\_\_\_, consisting of the following:

<u>Payee</u>	<u>Amount</u>
_____	_____
_____	_____
_____	_____
_____	_____

Copies of invoices for the expenditures, all of which have been paid in full, shall be maintained at the corporate headquarters and are available for inspection by representatives of the Receiver/Manager during regular business hours upon reasonable notice.

**Receiver for Cape PLC, now known as Cape Intermediate Holdings Ltd., as successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.)**

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

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

**Schedule 4 to Operating Agreement**

The residuary beneficiaries are as follows:

College of Charleston  
Clemson University  
University of South Carolina

The Manager reserves the right to add or substitute other universities to the list provided above and to determine the final allocation of the funds to each residuary beneficiary at any time on or before the termination of the South Carolina Asbestos Victims Compensation QSF LLC as provided for by Sections 1.6 and 3.4 of the Operating Agreement.