

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

Post-Effective Amendment No. 1 to

FORM F-4

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

**JAMES HARDIE INDUSTRIES SE
(FORMERLY JAMES HARDIE INDUSTRIES N.V.)**

(Exact name of registrant as specified in its charter)

The Netherlands
(State or other jurisdiction of
incorporation or organization)

3272
(Primary Standard Industrial
Classification Code Number)

Not Applicable
(I.R.S. Employer Identification
No.)

**Atrium, 8th floor
Strawinskylaan 3077
1077 ZX Amsterdam, The Netherlands
+31 20 301 2980 (Telephone) +31 20 404 2544 (Facsimile)**
(Address, including zip code and telephone number, including area code of registrant's principal executive offices)

**CT Corporation System
111 Eighth Avenue
New York, New York 10011
(212) 894-8940**
(Name, address, including zip code, and telephone number, including area code, of agent for service)

**Copies to:
Michael E. Gizang
Skadden, Arps, Slate, Meagher & Flom LLP
Four Times Square
New York, New York 10036-6522
(212) 735-3000**

Approximate date of commencement of proposed sale to the public: As soon as practicable after this registration statement becomes effective and all other conditions to the consummation of the transactions described in the prospectus therein have been satisfied or waived.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act of 1933, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering:

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering:

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered ⁽¹⁾	Amount to be Registered	Proposed Maximum Offering Price Per Unit	Proposed Maximum Aggregate Offering Price ⁽³⁾	Amount of Registration Fee ⁽⁴⁾⁽⁵⁾
James Hardie Industries SE Ordinary Shares	102,000,000 ⁽²⁾	\$3.21	\$327,205,851	\$18,258

- (1) American depository shares issuable on deposit of securities representing James Hardie Industries SE ordinary shares registered hereby have been registered pursuant to a separate Registration Statement on Form F-6.
- (2) Based on (i) the estimated number of James Hardie Industries N.V. ordinary shares beneficially held by securityholders resident in the United States of America, and (ii) the one-to-one basis on which each James Hardie Industries N.V. ordinary share will be transformed into a James Hardie Industries SE ordinary share.
- (3) The proposed maximum aggregate offering price of all of the James Hardie Industries SE shares registered in connection with the Proposal is \$327,205,851. Pursuant to Rules 457(f)(1) and 457(c) under the Securities Act and solely for the purpose of calculating the registration fee, the proposed maximum aggregate offering price is equal to the aggregate market value of the approximate number of James Hardie Industries N.V. ordinary shares to be transformed in the Proposal (calculated as set forth in note (2) above) based upon a market value of \$3.21 per James Hardie Industries N.V. ordinary share, the average of the high and low sale prices per James Hardie Industries N.V. CUFS on the ASX Limited on June 19, 2009 and converted to United States dollars based on the Federal Reserve Bank of New York foreign exchange rate for Australian dollars on June 19, 2009.
- (4) Calculated by multiplying 0.00005580 by the proposed maximum aggregate offering price.
- (5) Previously paid.

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EXPLANATORY NOTE

This Post-Effective Amendment No. 1 to our registration statement on Form F-4 (Registration No. 333-160177) (the “Registration Statement”), as initially filed with the Securities and Exchange Commission on June 23, 2009, amended on June 25, 2009, July 10, 2009, July 15, 2009, July 17, 2009 and July 20, 2009, and declared effective on July 20, 2009, is being filed solely for the purpose of (a) reflecting that, pursuant to registrant’s transformation from a public limited liability corporation registered in The Netherlands (*Naamloze Vennootschap* (NV)) to a European Company (*Societas Europaea* (SE)) registered in The Netherlands, registrant changed its name from James Hardie Industries N.V. to James Hardie Industries SE and (b) to provide certain exhibits.

PART II
INFORMATION NOT REQUIRED IN THE PROSPECTUS

Indemnification of Directors and Officers

Our articles of association provide in article 28 that we shall generally indemnify any person who is or was a director or one of our employees, officers or agents, or who at our request has become a director, officer or agent of another entity or a trust, and suffers any loss as a result of any action in connection with their service to us, provided they acted in good faith in carrying out their duties and in a manner they reasonably believed to be in our interest. This indemnification generally will not be available if the person seeking indemnification acted with gross negligence or willful misconduct in the performance of such person's duties to us. A court in which an action is brought may, however, determine that indemnification is appropriate nevertheless.

In addition, our articles of association provide that shareholders may approve a resolution at a general meeting of shareholders to fully discharge the members of our Managing Board, Supervisory Board and Joint Board from liability towards us in respect of the exercise of their duties during the financial year covered by the annual accounts subject to certain exceptions under Dutch law, including exceptions relating to the liability of members of our Managing Board, Supervisory Board and Joint Board upon bankruptcy or insolvency of a company. Under Dutch law, this discharge is not absolute and would not be effective as to any matters not disclosed in or apparent from our annual accounts or not otherwise disclosed to our shareholders, and is subject to general reasonableness and fairness. Our shareholders have not approved such a resolution at this time.

Following Stage 1, Dutch SE will retain the same indemnity provisions in its articles of association, however these will not apply to the Joint Board, which will be eliminated after completion of Stage 1 of the Proposal.

Following Stage 2, Irish SE's articles of association will provide for indemnification of any person who is or was a director, company secretary, employee or person deemed by Irish SE's board to be an agent of Irish SE, who suffers any cost, loss or expense as a result of any action in connection with the discharge of their duties to Irish SE, provided they acted in good faith in carrying out their duties and in a manner they reasonably believed to be in Irish SE's interest. This indemnification will generally not be available if the person seeking indemnification acted in a manner that could be characterised as negligent, default, breach of duty or breach of trust in performing their duties. However, under Irish company law, this indemnity only binds Irish SE to indemnify a current or former director or company secretary where judgment is given in any civil or criminal action in favour of such director or company secretary, or where a court grants relief because the director or company secretary acted honestly and reasonably and ought fairly to be excused. The articles of association of Irish SE apply the same limitations to other indemnitees who are not current or former directors or the company secretary of Irish SE.

Indemnity Agreements

We have provided Deeds of Access, Insurance and Indemnity (which we refer to as an Indemnity Deed) governed by Dutch law to our directors and senior employees and our subsidiary, James Hardie Building Products Inc., has provided Indemnity Agreements governed by Nevada law (which we refer to as an Indemnity Agreement) to directors, officers and certain employees of us, James Hardie Building Products Inc. or their affiliates. These Indemnity Deeds and Indemnity Agreements are consistent with our articles of association and relevant laws.

The terms of the Indemnity Deeds require us, to the maximum extent permitted by law, to unconditionally and irrevocably indemnify a director in relation to the director serving or having served as a director of us or one of our subsidiaries or another entity at our request or the request of one of our subsidiaries to the extent permitted by Dutch law from and against all claims, liabilities (including liability for negligence), civil penalties being pecuniary penalties imposed by legislation, legal costs actually and reasonably incurred (not limited to taxed costs), net wage or withholding taxes, social security premiums or other Dutch or foreign taxes as a result of indemnification, as well as reasonable legal costs actually incurred in good faith by the director in obtaining legal advice regarding issues arising from an Indemnity Deed or making a claim or in relation to being a witness to any type of proceedings,

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mediation or other form of dispute resolution. This indemnity is limited to the extent that it is not available to a director where a Dutch court has established in a final, non-appealable decision that the director (1) acted with willful misconduct, (2) acted with intentional recklessness, (3) was seriously imputable or (4) did not act in good faith, unless otherwise provided for by Dutch law or the boards provide otherwise based on standards of reasonableness and fairness.

The Indemnity Deeds require us, upon a request by a director, to make payment of amounts payable within 30 days of the incurrence of the liability or the date the amount is due and payable, whichever is shorter, and the director undertakes to repay the amounts paid to them if it is ultimately determined that he or she is not entitled to indemnification for such amounts or if such amounts exceed what we are permitted to pay under the Indemnity Deed or if he or she receives payment under an insurance contract in respect of those liabilities. To the extent that a director also receives payment under an indemnity from one of our subsidiaries, the director is not entitled to claim under the Dutch law Indemnity Deed.

Under the Indemnity Deeds a director has the right to access our company books and those of our subsidiaries in relation to any act or omission in relation to the director acting in that capacity for us, our subsidiaries or another entity at our request or at the request of our subsidiaries.

Following Stage 1, the Dutch law-governed Indemnity Deeds will continue to be in effect.

The Indemnity Agreements provide that James Hardie Building Products Inc. shall hold harmless and indemnify a director, officer or employee of us, James Hardie Building Products Inc., or their affiliates to the maximum extent allowed by Nevada law against any expenses, liabilities and losses (including, without limitation, investigation expenses, expert witnesses' and attorneys' fees and expenses, judgments, penalties, fines, amounts paid or to be paid in settlement, any interest, assessments, or other charges imposed thereon and any federal, state, local or foreign taxes imposed as a result of actual or deemed receipt of any payment) actually and reasonably incurred by the director, officer or employee (net of any insurance proceeds or other amounts received by the indemnitee as compensation for such expenses, liabilities or losses) in connection with any actual or threatened action, suit or proceeding, whether civil, criminal, administrative or investigative or in arbitration, to which the director, officer or employee is a party or participant or is threatened to be made a party or participant (a) based upon, arising from, relating to or by reason of the fact that the director, officer or employee was or is a director, officer or employee of us or of James Hardie Building Products Inc., or is or was serving at our request or the request of James Hardie Building Products Inc., as a director, officer, partner, member, manager, trustee, fiduciary, employee or agent of another corporation or entity, or (b) arising from or relating to any action or omission to act taken by the director, officer or employee in any of the capacities described above. However, the director, officer or employee will only be indemnified in connection with a proceeding initiated by him or her (other than a proceeding to enforce his or her rights under the indemnity agreement) if the proceeding was authorised by a two-thirds vote of the board of directors of James Hardie Building Products Inc.

By the terms of the Indemnity Agreements, its benefits are not available if there is a judgment or other final adjudication, after all appeals and all time for appeals has expired, which is adverse to the director, officer or employee and which establishes (a) his or her acts were committed in bad faith, or were the result of active and deliberate dishonesty or willful fraud or illegality, and were material to the cause of action so adjudicated; (b) that he or she in fact personally gained a financial profit or other advantage to which he or she was not legally entitled, (c) that indemnification of the director, officer or employee is prohibited by applicable law, (d) in respect of any remuneration paid to the director, officer or employee if such remuneration was in violation of law or (e) that such indemnification is not lawful and James Hardie Building Products Inc. and the director, officer or employee have been advised that the US Securities and Exchange Commission believes that the indemnification for liabilities arising under the US federal securities laws is against public policy and is, therefore, unenforceable and claims for indemnification should be submitted to the appropriate court for adjudication. In addition, the benefits are not available for any claim made against the director, officer or employee for an accounting of profits made from the purchase or sale by the director, officer or employee of our securities within the meaning of Section 16(b) of the US Securities Exchange Act of 1934 or analogous provisions of any applicable law.

The Indemnity Agreements require James Hardie Building Products Inc., upon request by the director, officer or employee, to make payment within 30 days of amounts payable under the Indemnity Agreements as expended or

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incurred in advance of indemnification, provided, however, that the director, officer or employee undertakes to repay the amounts if it is ultimately determined that he or she is not entitled to indemnification for such amounts.

The Indemnity Agreements will continue in effect following implementation of Stage 1 and Stage 2.

Following Stage 2, Irish SE will provide Indemnity Deeds to Irish SE directors, the company secretary and certain senior employees generally consistent with the existing Dutch law-governed Indemnity Deeds, but which will be subject to Irish law. The current Dutch law-governed Indemnity Deeds extend protection to directors beyond that permitted for Irish companies under Irish company law. Irish law contains a restriction on the indemnity that an Irish public company, and therefore an Irish SE, can give its current and former directors and company secretary. Irish law renders void any provision in an Irish company's articles of association or other contract that would exempt from liability or provide any current or former director or company secretary with an indemnity for negligence, default, breach of duty or breach of trust. In addition, under Irish company law, this indemnity only binds Irish SE to indemnify a current or former director or company secretary where judgment is given in any civil or criminal action in favour of such director or company secretary, or where a court grants relief because the director or company secretary acted honestly and reasonably and ought fairly to be excused. The articles of association of Irish SE apply the same limitations to other indemnitees who are not current or former directors or the company secretary of Irish SE. This limitation on the matters for which director may be indemnified is broader than is currently permitted under the Dutch law-governed Indemnity Deeds.

The directors will still be allowed to claim advances for costs as permitted under the Irish law-governed Indemnity Deeds. However, in the event a final determination is made against a current or former director or company secretary or, if no determination is made at all, an Irish Court would interpret the scope of the indemnity contained in the Indemnity Deed such that Irish SE could require the current or former director or company secretary to repay an advance in the circumstances required under Irish law outlined above.

As required by the terms of the Indemnity Deeds and the Indemnity Agreements, we and James Hardie Building Products Inc. maintain director and officers insurance policies under which such persons would be insured against liabilities resulting from their service to us.

Exhibits and Financial Statement Schedules

See Exhibit Index attached hereto and incorporated herein by reference.

Undertakings

(a) In accordance with Item 512 of Regulation S-K, the undersigned registrant hereby undertakes:

- (1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:
 - (i) To include any prospectus required by section 10(a)(3) of the Securities Act of 1933;
 - (ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) (§230.424(b) of this chapter) if, in the aggregate, the changes in volume and price represent no more than 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement.

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- (iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;
- (2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
- (3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.
- (4) To file a post-effective amendment to the registration statement to include any financial statements required by “Item 8.A. of Form 20-F (17 CFR §249.220f)” at the start of any delayed offering or throughout a continuous offering.
- (5) That, for the purpose of determining liability of the registrant under the Securities Act of 1933 to any purchaser in the initial distribution of the securities, the undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:
 - (i) Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424 (17 CFR §230.424);
 - (ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;
 - (iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and
 - (iv) Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.
- (6) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant’s annual report pursuant to section 13(a) or section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan’s annual report pursuant to section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
- (7) That prior to any public reoffering of the securities registered hereunder through use of a prospectus which is a part of this registration statement, by any person or party who is deemed to be an underwriter within the meaning of Rule 145(c), the issuer undertakes that such reoffering prospectus will contain the information called for by the applicable registration form with respect to reofferings by persons who may be deemed underwriters, in addition to the information called for by the other Items of the applicable form.
- (8) That every prospectus (i) that is filed pursuant to paragraph (a)(7) immediately preceding, or (ii) that purports to meet the requirements of section 10(a)(3) of the Securities Act of 1933 and is used in connection with an offering of securities subject to Rule 415, will be filed as a part of an

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amendment to the registration statement and will not be used until such amendment is effective, and that, for purposes of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

- (b) The undersigned registrant hereby undertakes: (i) to respond to requests for information that is incorporated by reference into the prospectus pursuant to Items 4, 10(b), 11, or 13 of this Form, within one business day of receipt of such request, and to send the incorporated documents by first class mail or other equally prompt means; and (ii) to arrange or provide for a facility in the US to respond to such requests. The undertaking in sub-paragraph (i) above includes information contained in documents filed after the effective date of the registration statement through the date of responding to the request.
- (c) The undersigned registrant hereby undertakes to supply by means of a post-effective amendment all information concerning a transaction and the company being acquired involved therein, that was not the subject of and included in the registration statement when it became effective.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the below registrant has duly caused this amendment to the registration statement to be signed on its behalf by the undersigned, thereunto duly authorised, in Amsterdam, The Netherlands, on this 19th day of February 2010.

JAMES HARDIE INDUSTRIES SE

By: /s/ Russell Chenu
Russell Chenu
Managing Board Director
and Chief Financial Officer

Pursuant to the requirements of the Securities Act of 1933, this amendment to the registration statement has been signed below by the following persons in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Louis Gries</u> Louis Gries	Chief Executive Officer and Managing Board Director	February 19, 2010
<u>/s/ Russell Chenu</u> Russell Chenu	Chief Financial Officer, Principal Accounting Officer/Controller and Managing Board Director	February 19, 2010
<u>*</u> Michael N. Hammes	Chairman and Supervisory Board Director	February 19, 2010
<u>*</u> Donald McGauchie AO	Deputy Chairman and Supervisory Board Director	February 19, 2010
<u>*</u> Brian Anderson	Supervisory Board Director	February 19, 2010
<u>*</u> David Harrison	Supervisory Board Director	February 19, 2010
<u>*</u> Rudy van der Meer	Supervisory Board Director	February 19, 2010
<u>*</u> James Osborne	Supervisory Board Director	February 19, 2010
<u>/s/ David Dilger</u> David Dilger	Supervisory Board Director	February 19, 2010
<u>*</u> Robert E. Cox	Managing Board Director	February 19, 2010

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*By: /s/ Paul Bokota
Paul Bokota
Attorney-in-fact

Authorised Representative in the United States

/s/ Paul Bokota
Paul Bokota
Deputy General Counsel
James Hardie Building Products Inc.

EXHIBIT INDEX

<u>Exhibit Number</u>	<u>Description</u>
2.1*	Draft Terms of Merger and Explanatory Notes and Annexes
3.1*	Form of Articles of Association of James Hardie Industries SE, a European Company registered in The Netherlands (which form Annex B to the Terms of Merger)
3.2*	Form of Memorandum and Articles of Association of James Hardie Industries SE, A European Company registered in Ireland
4.1*	Form of Deposit Agreement to be entered into between James Hardie Industries SE and The Bank of New York Mellon, as depositary
4.2	Form of Amended and Restated Common Terms Deed Poll dated October 6, 2009 among James Hardie International Finance B.V., James Hardie Building Products, Inc. James Hardie International Finance Limited and James Hardie Industries N.V.
4.3	Form of Amended and Restated Common Terms Deed Poll dated December 21, 2009 among James Hardie International Finance Limited, James Hardie Building Products, Inc. and James Hardie Industries SE
4.4	Form of Term Facility Agreement between James Hardie International Finance B.V. and Financier (incorporated herein by reference to Exhibit 2.23 to James Hardie's Annual Report on Form 20-F for the year ended March 31, 2005, filed on July 7, 2005)
4.5	Form of Term Facility Agreement — Occurrence of Extension Event among James Hardie International Finance B.V., James Hardie Building Products, Inc. and Financier (incorporated herein by reference to Exhibit 2.9 to James Hardie's Annual Report on Form 20-F for the year ended March 31, 2007, filed on July 6, 2007)
4.6	Form of 3 Year Term (Bullet) Facility Agreement dated February 21, 2008 among James Hardie International Finance B.V., James Hardie Building Products, Inc. and Financier (incorporated herein by reference to Exhibit 2.6 to James Hardie's Annual Report on Form 20-F for the year ended March 31, 2008, filed on July 8, 2008)
4.7	Form of 5 Year Term (Bullet) Facility Agreement dated February 21, 2008 among James Hardie International Finance B.V., James Hardie Building Products, Inc. and Financier (incorporated herein by reference to Exhibit 2.7 to James Hardie's Annual Report on Form 20-F for the year ended March 31, 2008, filed on July 8, 2008)
4.8	Form of Guarantee Deed between James Hardie Industries N.V. and Financier (incorporated herein by reference to Exhibit 2.25 to James Hardie's Annual Report on Form 20-F for the year ended March 31, 2005, filed on July 7, 2005)

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Exhibit Number	Description
4.9*	Form of Lender Deeds of Confirmation between James Hardie International Finance B.V., James Hardie Building Products, Inc., James Hardie Industries N.V. and Financier
4.10*	Form of Amending Deed AET Guarantee Trust Deed between James Hardie Industries N.V. and AET Structured Finance Services Pty Limited
4.11*	Form of Amending Deed to the Performing Subsidiary Undertaking and Guarantee Trust Deed between James Hardie 117 Pty Limited and AET Structured Finance Services Pty Limited
4.12	Form of Term Facility agreement between James Hardie International Finance Limited and Financier
5.1*	Opinion of Diederik Jan Ex, Senior Legal Counsel to James Hardie Industries N.V., regarding validity of the James Hardie Industries SE securities being registered
8.1*	Opinion of PricewaterhouseCoopers LLP regarding certain Australian tax matters
8.2*	Opinion of Skadden, Arps, Slate, Meagher & Flom LLP regarding certain US federal income tax matters
8.3*	Opinion of Skadden, Arps, Slate, Meagher & Flom LLP regarding certain US federal income tax matters
8.4*	Opinion of PricewaterhouseCoopers Belastingadviseurs N.V. regarding certain Dutch tax matters
8.5*	Opinion of PricewaterhouseCoopers Belastingadviseurs N.V. regarding certain Dutch tax matters
8.6*	Opinion of PricewaterhouseCoopers regarding certain Irish tax matters
8.7*	Opinion of PricewaterhouseCoopers regarding certain Irish tax matters
8.8*	Opinion of PricewaterhouseCoopers LLP regarding certain UK tax matters
8.9*	Opinion of PricewaterhouseCoopers LLP regarding certain UK tax matters
10.1	Amended and Restated James Hardie Industries N.V. 2001 Equity Incentive Plan (incorporated herein by reference to Exhibit 4.1 to James Hardie's Annual Report on Form 20-F for the year ended March 31, 2005, filed on July 7, 2005)
10.2*	Executive Incentive Plan 2009
10.3	Supervisory Board Share Plan 2006 (incorporated herein by reference to Exhibit 4.4 to James Hardie's Annual Report on Form 20-F for the year ended March 31, 2006, filed on September 29, 2006)
10.4	James Hardie Industries N.V. Long Term Incentive Plan 2006 (incorporated herein by reference to Exhibit 4.6 to James Hardie's registration statement on Form S-8 (Registration No. 333-161482), filed on August 21, 2009)
10.5	2005 Managing Board Transitional Stock Option Plan (incorporated herein by reference to Exhibit 4.6 to James Hardie's Annual Report on Form 20-F for the year ended March 31, 2006, filed on September 29, 2006)

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<u>Exhibit Number</u>	<u>Description</u>
10.6	Form of Joint and Several Indemnity Agreement among James Hardie N.V., James Hardie (USA) Inc. and certain former executive officers and Managing Board directors thereto (incorporated herein by reference to Exhibit 4.15 to James Hardie's Annual Report on Form 20-F for the year ended March 31, 2005, filed on July 7, 2005)
10.7	Form of Joint and Several Indemnity Agreement among James Hardie Industries N.V., James Hardie Inc. and certain former Supervisory Board and Managing Board directors thereto (incorporated herein by reference to Exhibit 4.16 to James Hardie's Annual Report on Form 20-F for the year ended March 31, 2005, filed on July 7, 2005)
10.8	Form of Deed of Access, Insurance and Indemnity between James Hardie Industries N.V. and Supervisory Board directors and Managing Board directors (incorporated herein by reference to Exhibit 4.9 to James Hardie's Annual Report on Form 20-F for the year ended March 31, 2008, filed on July 8, 2008)
10.9*	Form of Indemnity Agreement between James Hardie Building Products, Inc. and Supervisory Board directors, Managing Board directors and certain executive officers (incorporated herein by reference to Exhibit 4.10 to James Hardie's Annual Report on Form 20-F for the year ended March 31, 2008, filed on July 8, 2008)
10.10*	Form of Irish law-governed Deed of Access, Insurance and Indemnity between James Hardie Industries SE, a European Company registered in Ireland, and its directors, company secretary and certain senior employees
10.11*	Surrender of Freehold Lease among Brookfield Multiplex Carole Park Landowner Pty Limited (f/k/a Multiplex Carole Park Landowner Pty Limited); James Hardie Australia Pty Limited and James Hardie Industries N.V. dated October 18, 2007 re Cobalt & Silica Street, Carole Park, Queensland, Australia
10.12*	Lease between Brookfield Multiplex Carole Park Landowner Pty Limited (f/k/a Multiplex Carole Park Landowner Pty Limited) and James Hardie Australia Pty Limited dated October 18, 2007 re Cobalt & Silica Street, Carole Park, Queensland, Australia
10.13	Variation of Lease dated March 23, 2004, among Brookfield Multiplex Carole Park Landowner Pty Limited (f/k/a Multiplex Carole Park Landowner Pty Limited) as successor in interest to Amaca Pty Limited (f/k/a/ James Hardie & Coy Pty Limited), James Hardie Australia Pty Limited and James Hardie Industries N.V. re premises at the corner of Colquhoun & Devon Streets, Rosehill, New South Wales, Australia (incorporated herein by reference to Exhibit 4.21 to James Hardie's Annual Report on Form 20-F for the year ended March 31, 2004, filed on November 22, 2004)
10.14*	Lease dated April 3, 2009, between Welshpool Landowner Pty and James Hardie Australia Pty Limited re premises at Rutland Avenue, Welshpool, Western Australia, Australia
10.15	Lease Amendment dated March 23, 2004, among Brookfield Multiplex Carole Park Landowner Pty Limited (f/k/a Multiplex Carole Park Landowner Pty Limited) as successor in interest to Amaca Pty Limited (f/k/a/ James Hardie & Coy Pty Limited), James Hardie Australia Pty Limited and James Hardie Industries N.V. re premises at 46 Randle Road, Meeandah, Queensland, Australia (incorporated herein by reference to Exhibit 4.23 to James Hardie's Annual Report on Form 20-F for the year ended March 31, 2004, filed on November 22, 2004)

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Exhibit Number	Description
10.16	Lease Agreement dated March 23, 2004 among Location Group Limited as successor in interest to Studorp Limited, James Hardie New Zealand Limited and James Hardie Industries N.V. re premises at the corner of O'Rorke and Station Roads, Penrose, Auckland, New Zealand (incorporated herein by reference to Exhibit 4.24 to James Hardie's Annual Report on Form 20-F for the year ended March 31, 2004, filed on November 22, 2004)
10.17	Lease Agreement dated March 23, 2004 among Location Group Limited as successor in interest to Studorp Limited, James Hardie New Zealand Limited and James Hardie Industries N.V. re premises at 44-74 O'Rorke Road, Penrose, Auckland, New Zealand (incorporated herein by reference to Exhibit 4.25 to James Hardie's Annual Report on Form 20-F for the year ended March 31, 2004, filed on November 22, 2004)
10.18	Ownership transfer related to corner of O'Rorke and Station Roads, Penrose, Auckland, New Zealand and 44-74 O'Rorke Road, Penrose, Auckland, New Zealand effective June 30, 2005 (incorporated herein by reference to Exhibit 4.17 to James Hardie's Annual Report on Form 20-F for the year ended March 31, 2006, filed on September 29, 2006)
10.19	Industrial Building Lease Agreement, effective October 6, 2000, between James Hardie Building Products, Inc. and Fortra Fiber-Cement L.L.C., re premises at Waxahachie, Ellis County, Texas (incorporated herein by reference to Exhibit 4.25 to James Hardie's Annual Report on Form 20-F for the year ended March 31, 2005, filed on July 7, 2005)
10.20	Asset Purchase Agreement by and between James Hardie Building Products, Inc. and Cemplank, Inc., dated as of December 12, 2001 (incorporated herein by reference to Exhibit 4.26 to James Hardie's Annual Report on Form 20-F for the year ended March 31, 2005, filed on July 7, 2005)
10.21	Amended and Restated Stock Purchase Agreement dated March 12, 2002, between BPB U.S. Holdings, Inc. and James Hardie Inc. (incorporated herein by reference to Exhibit 4.27 to James Hardie's Annual Report on Form 20-F for the year ended March 31, 2005, filed on July 7, 2005)
10.22	Amended and Restated Final Funding Agreement dated November 21, 2006 (incorporated herein by reference to Exhibit 99.4 to James Hardie's report on Form 6-K, filed on January 5, 2007)
10.23	Amended FFA Amendment dated August 6, 2007 (incorporated herein by reference to Exhibit 4.22 to James Hardie's Annual Report on Form 20-F for the year ended March 31, 2008, filed on July 8, 2008)
10.24	Amended FFA Amendment dated November 8, 2007 (incorporated herein by reference to Exhibit 4.23 to James Hardie's Annual Report on Form 20-F for the year ended March 31, 2008, filed on July 8, 2008)
10.25	Amended FFA Amendment dated June 11, 2008 (incorporated herein by reference to Exhibit 4.24 to James Hardie's Annual Report on Form 20-F for the year ended March 31, 2008, filed on July 8, 2008)
10.26	Address for Service of Notice on Trustee dated June 13, 2008 (incorporated herein by reference to Exhibit 4.25 to James Hardie's Annual Report on Form 20-F for the year ended March 31, 2008, filed on July 8, 2008)
10.27*	Amended FFA Amendment dated July 17, 2008

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<u>Exhibit Number</u>	<u>Description</u>
10.28	Asbestos Injuries Compensation Fund Amended and Restated Trust Deed by and between James Hardie Industries N.V. and Asbestos Injuries Compensation Fund Limited dated December 14, 2006 (incorporated herein by reference to Exhibit 4.22 to James Hardie's Annual Report on Form 20-F for the year ended March 31, 2007, filed on July 6, 2007)
10.29	Deed Poll dated June 11, 2008 — amendment of the Asbestos Injuries Compensation Fund Amended and Restated Trust Deed (incorporated herein by reference to Exhibit 4.27 to James Hardie's Annual Report on Form 20-F for the year ended March 31, 2008, filed on July 8, 2008)
10.30	Deed of Release by and among James Hardie Industries N.V., Australian Council of Trade Unions, Unions New South Wales, and Bernard Douglas Banton dated December 21, 2005 (incorporated herein by reference to Exhibit 4.23 to James Hardie's Annual Report on Form 20-F for the year ended March 31, 2006, filed on September 29, 2006)
10.31*	Form of Amending Agreement (Parent Guarantee) by and among Asbestos Injuries Compensation Fund Limited, The State of New South Wales, and James Hardie Industries N.V.
10.32	Deed of Release by and between James Hardie Industries N.V. and The State of New South Wales dated June 22, 2006 (incorporated herein by reference to Exhibit 4.25 to James Hardie's Annual Report on Form 20-F for the year ended March 31, 2006, filed on September 29, 2006)
10.33	Second Irrevocable Power of Attorney by and between Asbestos Injuries Compensation Fund Limited and The State of New South Wales dated December 14, 2006 (incorporated herein by reference to Exhibit 4.26 to James Hardie's Annual Report on Form 20-F for the year ended March 31, 2007, filed on July 6, 2007)
10.34	Deed of Accession by and among Asbestos Injuries Compensation Fund Limited, James Hardie Industries N.V., James Hardie 117 Pty Limited, and The State of New South Wales dated December 14, 2006 (incorporated herein by reference to Exhibit 4.27 to James Hardie's Annual Report on Form 20-F for the year ended March 31, 2007, filed on July 6, 2007)
10.35*	Form of Amending Deed (Intercreditor Deed) between The State of New South Wales, James Hardie Industries N.V., Asbestos Injuries Compensation Fund Limited and AET Structured Finance Services Pty Limited
10.36*	Form of Amending Deed (Performing Subsidiary Intercreditor Deed) between The State of New South Wales, James Hardie 117 Pty Limited, Asbestos Injuries Compensation Fund Limited and AET Structured Finance Services Pty Limited
10.37*	Deed of Confirmation dated June 23, 2009 between James Hardie Industries N.V, James Hardie 117 Pty Limited, the State of New South Wales and Asbestos Injuries Compensation Fund Limited in its capacity as trustee of the Asbestos Injuries Compensation Fund
10.38	Agreement on the Involvement of Employees dated February 10, 2010 between James Hardie Industries N.V., JH CBM plc, James Hardie International Holdings N.V., JHIHCBM and the Special Negotiating Bodies
21*	List of significant subsidiaries of James Hardie Industries N.V.
23.1	Consent of PricewaterhouseCoopers LLP, independent registered public accounting firms
23.2	Consent of Ernst & Young LLP, independent registered public accounting firms

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<u>Exhibit Number</u>	<u>Description</u>
23.3*	Consent of Diederik Jan Ex, Senior Legal Counsel to James Hardie Industries N.V. (included in the opinion filed as Exhibit 5.1 to this Registration Statement)
23.4*	Consent of PricewaterhouseCoopers LLP (included in the opinion filed as Exhibit 8.1 to this Registration Statement)
23.5*	Consent of Skadden, Arps, Slate, Meagher & Flom LLP (included in the opinion filed as Exhibit 8.2 to this Registration Statement)
23.6*	Consent of Skadden, Arps, Slate, Meagher & Flom LLP (included in the opinion filed as Exhibit 8.3 to this Registration Statement)
23.7*	Consent of PricewaterhouseCoopers Belastingadviseurs N.V. (included in the opinion filed as Exhibit 8.4 to this Registration Statement)
23.8*	Consent of PricewaterhouseCoopers Belastingadviseurs N.V. (included in the opinion filed as Exhibit 8.5 to this Registration Statement)
23.9*	Consent of PricewaterhouseCoopers (included in the opinion filed as Exhibit 8.6 to this Registration Statement)
23.10**	Consent of PricewaterhouseCoopers (included in the opinion filed as Exhibit 8.7 to this Registration Statement)
23.11*	Consent of PricewaterhouseCoopers LLP (included in the opinion filed as Exhibit 8.8 to this Registration Statement)
23.12*	Consent of PricewaterhouseCoopers LLP (included in the opinion filed as Exhibit 8.9 to this Registration Statement)
24.1*	Power of Attorney of Directors of James Hardie
99.1*	Direction Form (included as Annex B to the Explanatory Memorandum)
99.2*	Question Form (included as Annex C to the Explanatory Memorandum)
99.3*	Excerpts of the ASTC Settlement Rules as of March 31, 2009
99.4*	Subdivision B, Division 3 of Part 7.2 of the Corporations Act 2001 as of January 1, 2009
99.5	ASIC Class Order 02/311, dated March 11, 2002 (incorporated herein by reference to Exhibit 99.3 to James Hardie's Annual Report on Form 20-F for the year ended March 31, 2005, filed on July 7, 2005)
99.6	ASIC Modification, dated March 7, 2002 (incorporated herein by reference to Exhibit 99.4 to James Hardie's Annual Report on Form 20-F for the year ended March 31, 2005, filed on July 7, 2005)
99.7	ASIC Class Order 04/166, dated February 26, 2004 (incorporated herein by reference to Exhibit 99.5 to James Hardie's Annual Report on Form 20-F for the year ended March 31, 2006, filed on September 29, 2006)

* Previously filed.

MALLESONS STEPHEN JAQUES

James Hardie — Common
Terms Deed Poll

Amended and restated on 6 October 2009

James Hardie International Finance B.V. (“**JHIF**”)
James Hardie International Finance Limited (“**JHIFL**”)
James Hardie Building Products, Inc. (“**JHBP**”)
James Hardie Industries N.V. (“**Guarantor**”)

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Details

Interpretation – Definitions are in clause 1.

Parties **JHIF, JHIFL, JHBP** and the **Guarantor**, each as described below.

JHIF	Name	James Hardie International Finance B.V.
	Corporate seat	Amsterdam
	Registered Number	34108775
	Address	8th Floor, Atrium, Unit 08 Strawinskylaan 3077 1077 ZX Amsterdam The Netherlands
	Fax	+ 31 20 404 2544
	Attention	Treasurer
JHIFL	Name	James Hardie International Finance Limited
	Corporate seat	Dublin
	Registration Number	471702
	Address	Arthur Cox Building Earlsfort Terrace Dublin 2 Ireland
	Fax	+353 1 618 0618
	Attention	Bradwell Limited, Company Secretary
JHBP	Name	James Hardie Building Products, Inc.
	Incorporated in	Nevada
	Address	Suite 100 26300 La Alameda Mission Viejo CA 92691 United States of America
	Fax	+ 1 949 348 4534

	Attention	Company Secretary
Guarantor	Name	James Hardie Industries N.V.
	Corporate seat	Amsterdam
	Registered Number	34106455
	ABN	49 097 829 895
	Address	8th Floor, Atrium, Unit 08 Strawinskylaan 3077 1077 ZX Amsterdam The Netherlands
	Fax	+ 31 20 404 2544
	Attention	Managing Director and Company Secretary
In favour of:	Each Creditor as defined in this amended and restated deed.	
Date of deed	See Signing page	
Recitals	<p>A This amended and restated deed amends and restates the “James Hardie — Common Terms Deed Poll” dated 15 June 2005 as amended by the “CTDP Amendment Deed and New Borrower Deed Poll” dated 12 January 2006 and as further amended and restated on 20 February 2008 (together, the “Previous Deeds”).</p> <p>B The amendment and restatement of the Previous Deeds does not affect the nomination of any Person as a Creditor nor the nomination of any document as a Facility Agreement or Transaction Document prior to the execution of this amended and restated deed.</p> <p>C The accession of JHIFL as a Borrower is evidenced by its execution of this deed.</p>	

James Hardie — Common Terms Deed Poll

General terms

1 Interpretation

1.1 Definitions

These meanings apply unless the contrary intention appears:

A\$, AUD or Australian Dollars means the lawful currency of Australia.

AFFA means the document entitled “Amended & Restated Final Funding Agreement in respect of the provision of long term funding for compensation arrangements for certain victims of Asbestos-related diseases in Australia” dated 21 November 2006 between the Guarantor, James Hardie 117 Pty Limited (formerly known as LGTDD Pty Limited), the State of New South Wales and the Asbestos Injuries Compensation Fund Limited in its capacity as trustee of the Asbestos Injuries Compensation Fund.

Amended and Restated Trust Deed means the Asbestos Injuries Compensation Fund Amended and Restated Trust Deed dated 14 December 2006 between the Guarantor and Asbestos Injuries Compensation Fund Limited.

Asbestos Injuries Compensation Fund has the meaning given to it in the Amended and Restated Trust Deed.

ASX means the stock exchange operated by ASX Limited.

ASX CNW Announcement means any release of information by the Guarantor through the ASX concerning any event or circumstance affecting the financial position of the Group in a manner which would affect the calculation of Consolidated Net Worth and which sets out specific details of the balance sheet impact of such event or circumstance.

ASX CNW Announcement Date means the date on which an ASX CNW Announcement is made.

Authorisation means:

- (a) any consent, registration, filing, agreement, notarisation, certificate, licence, approval, permit, authority or exemption from, by or with a Government Agency; and
- (b) any consent or authorisation regarded as given by a Government Agency due to the expiration of the period specified by a statute within which the Government Agency should have acted if it wished to proscribe or limit anything already lodged, registered or notified under that statute.

Authorised Officer means:

- (a) in the case of a Creditor, a director or secretary of the Creditor, or an officer of that party whose title contains the word “director”, “chief”, “head”, “president”, “vice-president”, “executive” or “manager”, or a person performing the functions of any of them, or any other person appointed by the Creditor as an Authorised Officer for the purposes of a Transaction Document; and
- (b) in the case of an Obligor, a person appointed by the Obligor and notified to the Creditor as an Authorised Officer for the purposes of a Transaction Document, and whose specimen signature is provided with such notification to the Creditor.

Beneficiary Nomination Letter means, in relation to a Creditor, the “Beneficiary Nomination Letter” (as that term is defined in the Guarantee Trust Deed) for that Creditor and one or more Facility Agreements for that Creditor.

Borrower means each of JHIF, JHIFL, JHBP and any new borrower under clause 14.1 (“New Borrowers”) individually but not jointly. It excludes any person released pursuant to clause 14.2 (“Release of Borrowers”).

Break Costs means the actual costs and losses which a Creditor certifies (with reasonable details) that it has suffered or incurred by reason of:

- (a) the liquidation or re-employment of deposits or other funds acquired or contracted for by the Creditor to fund or maintain financial accommodation under a Facility; or
- (b) the termination or reversing of any agreement or arrangement entered into by the Creditor to hedge, fix or limit its effective cost of funding in relation to a Facility, but excluding any loss of margin.

Business Day means a weekday (not being a public holiday) on which:

- (a) in respect of a day on which the interest rate under a Facility Agreement is required to be determined and for the purposes of giving drawdown notices and selection notices under a Facility Agreement, banks are open for general banking business in London;
- (b) for the purposes of making or receiving any payments in US Dollars, banks are open for general banking business in London, New York and Sydney;
- (c) for the purpose of making or receiving any payments in another currency, banks are open for general banking business in such place or places specified in a relevant Facility Agreement; and
- (d) for all other purposes, banks are open for general banking business in Sydney, Dublin and (until the Irish Registration Date) Amsterdam and any other place specified in a relevant Facility Agreement.

Capital Lease means, at any time, a lease with respect to which the lessee is required concurrently to recognise the acquisition of an asset and the incurrence of a liability in accordance with GAAP.

Capital Lease Obligation means, with respect to any Group Member (other than an Excluded Entity) and a Capital Lease, the amount of the obligation of such Group Member as the lessee under such Capital Lease which would, in accordance with GAAP, appear as a liability on a balance sheet of such Group Member.

Change of Control means the Guarantor becoming a Subsidiary (as defined in the Corporations Act) of another person.

Charitable Fund has the meaning given to it in the AFFA.

Compensation Provision means, at any time, the aggregate amount (without double counting) of provisions made by the Group at that time in accordance with GAAP for asbestos related liabilities (including, without limitation, obligations to fund or pay compensation pursuant to the AFFA).

Consolidated Funded Capitalisation means, at any time, the sum of Consolidated Net Worth and Consolidated Funded Debt at that time.

Consolidated Funded Debt means, as of any date of determination, the total of all Funded Debt of the Group outstanding on that date, after eliminating:

- (a) all Funded Debt (if any) of the Excluded Entities; and
- (b) all offsetting debits and credits between any Group Members (excluding the Excluded Entities) and all other items required to be eliminated in the course of the preparation of consolidated financial statements of the Group in accordance with GAAP.

Consolidated Net Worth means, at any date of determination, the sum of:

- (a) the par value (or value stated in the books of the Group) of the capital stock (but excluding treasury stock and capital stock subscribed and unissued) of the Group; and
- (b) the amount of the paid-in capital and retained earnings of the Group,
plus the Compensation Provision on that date (and eliminating all other consequential balance sheet impacts relating to the Compensation Provision), in each case as such amounts would be shown on the consolidated balance sheet of the Group prepared:
- (c) as if the Excluded Entities were not Subsidiaries of the Guarantor (to the intent that the assets, liabilities and other balance sheet items of all Excluded Entities shall be excluded in calculating Consolidated Net Worth); and
- (d) in accordance with GAAP,

on the most recent Reporting Date or, where applicable, on the most recent ASX CNW Announcement Date, to the extent such amounts have been adjusted to reflect the content of any ASX CNW Announcement which post-dates such balance sheet.

Consolidated Permitted External Financial Indebtedness means, as of any date of determination, the total of all Permitted External Financial Indebtedness of the Group outstanding on that date, after eliminating all offsetting debits and credits between any Group Members (excluding the Excluded Entities) and all other items required to be eliminated in the course of the preparation of consolidated financial statements of the Group in accordance with GAAP.

Controller has the meaning it has in the Corporations Act.

Corporations Act means the *Corporation Act 2001* of Australia.

Costs means costs, fees, disbursements, charges and expenses, including, without limitation where an Obligor is liable to pay or reimburse the Costs, those incurred in connection with advisers and, unless an Event of Default is subsisting, only for an amount and on a basis previously agreed to in writing by the Obligor.

Creditor means each party nominated as a “Creditor” under a Facility Nomination Letter (and includes in the case of any syndicated facility, the facility agent) and, if there are more than one, means each of them individually but not jointly. It does not include any Group Member.

Deed of Release means a deed poll in the form of schedule 5 (“Form of Deed of Release”).

Default Rate means, in respect of a Transaction Document, the rate of interest specified in that document as payable on any amount not paid under the document on the due date for payment.

Details means the section of this amended and restated deed headed “Details”.

Directive means:

- (a) a law; or
- (b) a treaty, official directive, regulation, request, guideline or policy (whether or not having the force of law) with which responsible financiers generally comply in carrying on their business.

Due Currency means, in respect of any payment to be made under a Transaction Document, the currency in which that payment is due.

EBIT means the operating profit of the Group, on a consolidated basis, before adjustments for:

- (a) significant, extraordinary, abnormal or exceptional items;

- (b) items recognised in connection with the Special Commission of Inquiry into Medical Research and Compensation Foundation and other related expenses; and
- (c) income tax,

but after:

- (d) adding back Net Interest Charges and all items referred to in paragraphs (a) to (c) of the definition of “Net Interest Charges” that were deducted in deriving the operating profit figure of the Group; and
- (e) eliminating all income, expense and other profit and loss statement impact of the Excluded Entities,

determined in each case by reference to the latest audited consolidated financial statements of the Group delivered under clause 9.6(b). It excludes any earnings from any Project Activities if these are derived from Project Vehicles or Project Property over which there exist Security Interests (unless such earnings have actually been received in cash by an Obligor).

Environmental Laws means any and all applicable statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licences, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any materials into the environment, including those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

Event of Default means an Event of Default set out in clause 10.1 (“Events of Default”).

Exchange Act means the Securities Exchange Act 1934 of the United States of America.

Excluded Entity means the Fund and each of the following entities:

- (a) Amaba Pty Limited (ACN 000 387 342);
 - (b) Amaca Pty Limited (ACN 000 035 512);
 - (c) ABN 60 Pty Limited (ACN 000 009 263); and
 - (d) Marlew Mining Pty Limited (formerly known as Asbestos Mines Pty Limited) (ACN 000 049 650),
- and any other entity agreed in writing by the Guarantor and each Creditor (or, in the case of a syndicated facility, the facility agent).

Excluded Tax means:

- (a) a Tax imposed by any jurisdiction on or assessed against a Creditor as a consequence of the Creditor being a resident of or organised in or doing business in that jurisdiction, but not any Tax:
 - (i) that is calculated on or by reference to the gross amount of a payment derived under a Transaction Document or another document referred to in a Transaction Document (without the allowance of a deduction);
 - (ii) that is imposed as a result of the Creditor being considered a resident or organised or doing business in that jurisdiction solely as a result of it being a party to a Transaction Document or a transaction contemplated by a Transaction Document; or
- (b) in relation to any payment by an Obligor resident or incorporated in the United States of America ("**US Obligor**"), any Tax payable by reason of the Creditor not being in receipt of such payment through, or such payment not being attributable to, a branch or lending office in the United States of America or by reason of the payment not being considered effectively connected income of a trade or business conducted within the United States of America by such branch or lending office (including, without limitation, any withholding tax payable under the laws of the United States of America in respect of interest due from a US Obligor under a Facility Agreement);
- (c) a Tax which would not be required to be deducted by an Obligor if, before the Obligor makes a relevant payment, the relevant Creditor provided the Obligor with written confirmation as to any of its name, address, registration number, country of residence for tax purposes (including whether the relevant Creditor carries on a trade or business in the Obligor's country of residence and/or incorporation through a branch or agency in connection with which the relevant Creditor receives the relevant payment) or similar details or any relevant tax exemption or similar details; or
- (d) in relation to any payment by an Irish Obligor, any Tax imposed by Ireland by reason of the Creditor to which the payment is made not being an Irish Qualifying Creditor.

Facility means any facility under a Facility Agreement.

Facility Agreement means each agreement to which a Creditor (together with any other persons) and a Borrower are party, which is nominated as a "Facility Agreement" in a Facility Nomination Letter.

Facility Nomination Letter means a letter substantially in the form set out in schedule 2 ("Facility Nomination Letter") to this deed prior to amendment and restatement or in the form set out in schedule 2 ("Facility Nomination Letter") to this amended and restated deed, in either case in favour of a person (not being a Group Member) providing financial accommodation to a Borrower (or any agent or trustee on that person's behalf).

Financial Indebtedness means, with respect to any Group Member, without double counting:

- (a) its liabilities for borrowed money (including all liabilities in respect of letters of credit (excluding letters of credit and performance guarantees posted in respect of payment of accounts payable arising in the ordinary course of business) or instruments serving a similar function issued or accepted for its account by banks and other financial institutions);
- (b) its liabilities for the deferred purchase price (for more than 90 days) of property acquired by such Group Member (excluding accounts payable arising in the ordinary course of business);
- (c) its Capital Lease Obligations;
- (d) all Preferred Stock of Subsidiaries (excluding the Excluded Entities) of such Group Member which is not owned by such Group Member or a Wholly Owned Subsidiary of such Group Member; and
- (e) any Guarantee of such Group Member with respect to liabilities of a type described in any of paragraphs (a) to (d) of this definition.

Financial Year means each year ending on 31 March.

Financier Nomination Letter means, in relation to a Creditor, the “Financier Nomination Letter” (as that term is defined in the Intercreditor Deed) for that Creditor and one or more Facility Agreements for that Creditor.

Free Cash Flow has the meaning given to that term in the AFFA.

Fund means Asbestos Injuries Compensation Fund Limited as trustee for the Asbestos Injuries Compensation Fund .

Fund Guarantee has the meaning given to it in the Guarantee Trust Deed.

Funded Debt means, at any time, with respect to any Group Member (other than an Excluded Entity), all drawn and outstanding Financial Indebtedness (other than Non-Recourse Debt) of such Group Member owing to any person outside the Group (other than an Excluded Entity) at that time.

GAAP means generally accepted accounting principles as in effect from time to time in the United States of America.

Government Agency means any government or any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity having jurisdiction over, or in relation to the affairs of, a Group Member and, for the avoidance of doubt, includes, without limitation, the Australian Taxation Office, the US Internal Revenue Service, the Dutch tax authorities and the Irish Revenue Commissioners, in each case to the extent applicable.

Group means the Guarantor and its Subsidiaries and **Group Member** means any one of them.

Guarantee means any guarantee, suretyship, letter of credit, or any other obligation (whatever called and of whatever nature):

- (a) to provide funds (whether by the advance or payment of money, the purchase of or subscription for shares or other securities, the purchase of assets or services, or otherwise) for the payment or discharge of;
- (b) to indemnify any person against the consequences of default in the payment of; or
- (c) to be responsible for,

any debt or monetary liability of another person or the assumption of any responsibility or obligation in respect of the insolvency or the financial condition of any other person.

Guarantee and Subordination Documents means:

- (a) the Guarantee Trust Deed;
- (b) the Intercreditor Deed;
- (c) each Beneficiary Nomination Letter; and
- (d) each Financier Nomination Letter.

Guarantee Trust Deed means the deed entitled "Guarantee Trust Deed" dated 19 December 2006 between the Guarantor and AET Structured Finance Services Pty Limited.

Guarantor means the person so described in the Details.

Indirect Tax means any goods and services tax, consumption tax, value added tax or any tax of a similar nature.

Intercreditor Deed means the deed so entitled dated 19 December 2006 between the State of New South Wales, the Guarantor, Asbestos Injuries Compensation Fund Limited in its capacity as trustee for the Charitable Fund and AET Structured Finance Services Pty Limited as amended by the letter dated 19 December 2006 between the same parties.

Irish Obligor means an Obligor resident or incorporated in Ireland.

Irish Qualifying Creditor means in respect of an Irish Obligor, a Creditor which at the time the payment is made, is beneficially entitled to the interest payable to that Creditor in respect of an advance under a Facility and is:

- (a) an entity which is, pursuant to Section 9 of the Central Bank Act, 1971 of Ireland, licensed to carry on banking business in Ireland and whose Facility office is located in Ireland and which is recognised by the Revenue Commissioners of Ireland as carrying on a bona fide

banking business in Ireland for the purposes of Section 246(3)(a) of the Taxes Consolidation Act 1997 of Ireland (“TCA”) in circumstances where the payments are made from Ireland and which is regarded by the Revenue Commissioners of Ireland as having made the advance for the purposes of Section 246(3)(a) TCA;

- (b) an authorised credit institution under the terms of the European Union Consolidation Directive (Directive 2000/12/EC) that has duly established a branch in Ireland or has made all necessary notifications to its home state competent authorities required thereunder in relation to its intention to carry on banking business in Ireland and which is recognised by the Revenue Commissioners of Ireland as carrying on a bona fide banking business in Ireland for the purposes of Section 246(3)(a) TCA and has its Facility office located in Ireland in circumstances where the payments are made from Ireland and which is regarded by the Revenue Commissioners of Ireland as having made the advance for the purposes of Section 246(3)(a) TCA;
- (c) a company (within the meaning of Section 246(1) TCA) which is resident in a country with which Ireland has a double taxation treaty or resident in a member state of the European Communities (other than Ireland) where residence is determined under the tax laws of the relevant country or Member State (together a “Relevant Territory”), provided that such company does not provide its commitment through or in connection with a branch or agency in Ireland, and where the company has provided written confirmation of the foregoing to the Irish Obligor before the Irish Obligor makes a relevant payment;
- (d) a US company, where such company has provided written confirmation to the Irish Obligor that it is incorporated in the US and subject to tax in the US on its worldwide income provided that such company does not provide its commitment through or in connection with a branch or agency in Ireland; or
- (e) a Creditor which is entitled under a double taxation agreement between the jurisdiction in which such Creditor is resident for Tax purposes and Ireland, subject to the completion of any necessary procedural formalities, to receive all payments from the Irish Obligor without a tax deduction, where such Creditor has applied for and the relevant Irish Obligor has obtained authorisation from the Revenue Commissioners of Ireland to make payments without deduction of Irish tax, and where such authorisation remains in force and effect.

Irish Registration Date means the date on which the Guarantor is registered by the Registrar of Companies of Ireland as having its registered office in Ireland.

JHBP Financial Reports means the non-public financial or equivalent reports prepared in respect of JHBP (or separate reports prepared for each division of JHBP) for the purpose of preparing consolidated financial

statements of the Group, the form and content of which is at the discretion of the Obligors.

JHIF Financial Report means the non-public financial or equivalent reports prepared in respect of JHIF (or separate reports prepared for each division of JHIF) for the purpose of preparing consolidated financial statements of the Group, the form and content of which is at the discretion of the Obligors.

JHIFL Financial Report means the non-public financial or equivalent reports prepared in respect of JHIFL for the purpose of preparing consolidated financial statements of the Group, the form and content of which is at the discretion of the Obligors.

JHT Undertaking means the deed poll dated on or about 25 September 2009 given by James Hardie Technology Limited in favour of the Creditors.

Majority Creditor means:

- (a) in relation to a syndicated or capital markets facility, the Creditors who form a “majority” (howsoever described) as defined under that Facility or all such Creditors, to the extent so required under that facility; and
- (b) in relation to a bilateral facility, the Creditor under that facility.

Material Adverse Effect means a material adverse effect on:

- (a) the ability of each Borrower to perform its obligations to pay Outstanding Moneys when the same are due or within any applicable grace period;
- (b) the ability of the Guarantor to perform its obligations under the Guarantee Trust Deed in favour of the Creditor when the same are due or within any applicable grace period; or
- (c) the validity or enforceability of the Transaction Documents.

Material Subsidiary means any Subsidiary of the Guarantor (other than an Excluded Entity) whose total assets at the time of determination (consolidated in the case of a Subsidiary which itself has one or more Subsidiaries) represent not less than 15% of Consolidated Net Worth at that time.

Net Interest Charges for a period means all interest and amounts in the nature of interest or of similar effect to interest, paid or payable by the Group (excluding the Excluded Entities), on a consolidated basis, less interest income received by or arising to the Group (excluding the Excluded Entities), on a consolidated basis, in the same period for which such Net Interest Charges are being determined, in each case by reference to the financial statements referred to in clause 9.6. It excludes:

- (a) any swap break or reset costs incurred and paid as part of any termination of any hedging or facility;

- (b) any break costs, early redemption premium, make-whole payments, liquidated damages or other penalties (howsoever described) incurred and paid in connection with the prepayment of any facility;
- (c) capitalising interest under any agreement for the provision of Financial Indebtedness to a Group Member which is in the nature of:
 - (i) a construction facility to fund capital expenditure to be undertaken by a Group Member (but only while that capitalising interest is not payable under the terms of that agreement); or
 - (ii) a capital-indexed or zero coupon debt instrument which contractually allows the capitalisation of interest;
- (d) establishment, arrangement, underwriting and other fees payable once only on the initial provision of financial accommodation; and
- (e) all interest and amounts in the nature of interest, and any other amounts of the kind referred to in paragraphs (a) to (d) above, relating to:
 - (i) Subordinated Debt;
 - (ii) hybrid capital;
 - (iii) Non-Recourse Debt; or
 - (iv) a loan under which financial accommodation is provided from one Group Member (not being an Excluded Entity) to another Group Member (not being an Excluded Entity).

New Borrower means a person who executes a New Borrower Deed Poll in accordance with clause 14.1 (“New Borrowers”).

New Borrower Deed Poll means each deed poll entered into by a New Borrower substantially in the form set out in schedule 3 (“Form of New Borrower Deed Poll”).

Non-Australian Obligor means an Obligor which is not resident or incorporated in Australia.

Non-Recourse Debt means any Project Debt if, and for so long as:

- (a) the person to whom the Project Debt is owed does not have recourse (whether by way of execution, set-off or otherwise) to a Group Member or its assets for the payment or repayment of the Project Debt other than to assets which the Security Interest (“**Project Securities**”) securing that Project Debt are permitted to extend to under paragraph (h) of the definition of Permitted Security Interest (that person, and any agent or trustee on that person’s behalf, being a “**Non-Recourse Financier**”);

- (b) the Non-Recourse Financier may not seek to wind up or place into administration, or pursue or make a claim in the winding up or administration of, any other Group Member to recover or to be repaid that Project Debt;
- (c) the Non-Recourse Financier cannot obtain specific performance or a similar remedy with respect to any obligation of another Group Member to pay or repay that Project Debt; and
- (d) the Non-Recourse Financier and any receiver, receiver and manager, agent or attorney appointed under the Project Securities, may not incur a liability on behalf of, or for the account of, a Group Member which liability itself is not subject to the above paragraphs as if references to Project Debt in those paragraphs included that liability.

For the avoidance of doubt, if Project Debt is incurred or owed by a Group Member which is not a Project Vehicle, then the tests in paragraphs (b) and (c) above must also be satisfied in respect of that Group Member in order for the Project Debt to qualify as Non-Recourse Debt.

Obligor means:

- (a) a Borrower; or
- (b) the Guarantor.

Obligors' Agent means JHIF or another Borrower:

- (a) appointed by all the Borrowers and the Guarantor as Obligors' Agent;
- (b) which has accepted such appointment; and
- (c) whose appointment has been notified to all Creditors.

Outstanding Moneys means all debts and monetary liabilities of each Obligor to a Creditor under or in relation to any Transaction Document and in any capacity, irrespective of whether the debts or liabilities:

- (a) are present or future;
- (b) are actual, prospective, contingent or otherwise;
- (c) are at any time ascertained or unascertained;
- (d) are owed or incurred by, or on account of, that Obligor alone or severally or jointly with any other person;
- (e) are owed to or incurred for the account of that Creditor alone or severally or jointly with any other person;
- (f) are owed or incurred as principal, interest, fees, charges, taxes, duties or other imposts, damages (whether for breach of contract or tort or incurred on any other ground), losses, costs or expenses, or on any other account; or

(g) comprise any combination of the above.

Permitted External Financial Indebtedness means Financial Indebtedness of a Group Member (other than an Obligor or an Excluded Entity) owing to any person outside the Group under or in connection with:

- (a) a working capital facility;
- (b) a transactional banking facility;
- (c) a Capital Lease;
- (d) Non-Recourse Debt;
- (e) a “soft loan” or other form of financial accommodation given to a Group Member by a Government Agency in connection with capital works or expansion plans undertaken by that Group Member or any other Group Member; or
- (f) any financial accommodation which, in the opinion of the Guarantor, it is preferable for the relevant Group Member to raise from external sources (rather than by an intra-Group borrowing) for reasons based on economic advantage, administrative convenience and/or legal, structural, political and/or tax considerations.

Permitted Security Interest means:

- (a) a Security Interest created by operation of law or otherwise to secure taxes, assessments or other governmental charges which are not more than 90 days overdue or are being contested in good faith;
- (b) a Security Interest which a Group Member is required to create by any applicable law or is required or considers it necessary or expedient to create in order to obtain, maintain or renew any Authorisation;
- (c) a Security Interest created by operation of law or otherwise in favour of a landlord, carrier, warehouseman, mechanic, materialman or other supplier (including rights by way of reservation or retention of title to property) or other similar Security Interest, in each case, incurred in the ordinary course of business for sums which are not more than 90 days overdue or are being contested in good faith;
- (d) a Security Interest incurred, or deposits made, in the ordinary course of business:
 - (i) in connection with workers’ compensation, unemployment insurance and other types of social security, employment or retirement benefits; or
 - (ii) to secure (or to obtain letters of credit that secure) the performance of tenders, statutory obligations, surety bonds, appeal bonds, bids, leases (other than Capital Leases), performance bonds, purchase, construction or sales contracts and other similar obligations,

in each case not incurred or made:

- (A) in connection with the borrowing of money, the obtaining of advances or credit or payment of the deferred purchase price of property; nor
- (B) to secure obligations due under the AFFA or any Related Agreement (as defined in the AFFA);
- (e) a Security Interest in respect of a judgment debt of a Group Member, provided that the judgment is discharged or execution of it is stayed (permanently or pending appeal) within 90 days of entry thereof or adequate reserves have been provided for it;
- (f) leases or subleases granted to others, easements, rights-of-way, restrictions and other similar charges or encumbrances, in each case incidental to, and not interfering with, the ordinary conduct of the business of the Group;
- (g) a Security Interest on property or assets of a Group Member (not being an Excluded Entity) securing Financial Indebtedness owing to another Group Member (not being an Excluded Entity);
- (h) a Security Interest existing or created under or in respect of Non-Recourse Debt facilities where the party holding any such Security Interest has security over Project Property or Project Vehicles only but no right of recourse to an Obligor or any Obligor's other assets;
- (i) a Security Interest created on any asset or group of associated assets acquired by a Group Member or developed by a Group Member after 15 June 2005:
 - (i) for the sole purpose of financing or refinancing that acquisition or development; and
 - (ii) securing principal moneys not exceeding one hundred per cent (100%) of the cost of that acquisition or development;
- (j) a Security Interest existing at the time of acquisition on any asset acquired by a Group Member after 15 June 2005 and not created in contemplation of the acquisition, provided that there is no increase in the amount of the principal moneys secured by that Security Interest;
- (k) a Security Interest existing on property of a person immediately prior to its being consolidated with or merged into a Group Member or its becoming a Group Member (by becoming a Subsidiary of the Guarantor), provided that the Security Interest was not created in contemplation of the consolidation, merger or acquisition and there is no increase in the amount of the principal moneys secured by that Security Interest;

- (l) any Security Interest existing at 15 June 2005 provided there is no increase in the amount of the principal moneys secured by that Security Interest;
- (m) a Security Interest replacing, renewing, extending or refunding any Security Interest permitted by paragraph (i), (j), (k), (l) or (m), provided that:
 - (i) the principal moneys secured by such Security Interest immediately prior to such replacement, renewal, extension or refunding is not increased or the maturity thereof reduced; and
 - (ii) the Security Interest is not extended to any other property;
- (n) a Security Interest created with the prior written consent of each Majority Creditor (or in the case of a syndicated facility, an agent or trustee acting on the instructions of the relevant Majority Creditor);
- (o) a Security Interest created by a Group Member over its interest in a joint venture to secure:
 - (i) its obligations under the joint venture to any other party to the joint venture; or
 - (ii) its obligations, or the obligations of the joint venture, or the obligations of any entity formed for the purpose of the joint venture, under any agreement (including an agreement relating to financial accommodation) entered into for the purposes of the joint venture; or
- (p) any Security Interest created pursuant to the general conditions of a bank operating in the Netherlands based on the general conditions drawn up by the Netherlands Bankers' Association (Nederlandse Vereniging van Banken) and the Consumers Union (Consumentenbond),

provided the aggregate amount of Financial Indebtedness of the Group (excluding intra-Group transactions and Financial Indebtedness of the Excluded Entities) secured by all such Permitted Security Interests granted in favour of persons outside the Group may not exceed 10% of the total assets of the Group (excluding the Excluded Entities) at any time.

PMP means a professional market party as defined in the Act on the Financial Supervision (Wet op het financieel toezicht) which includes (among others):

- (a) legal entities which are authorised or regulated to operate in the financial markets, including: credit institutions, investment firms, other authorised or regulated financial institutions, insurance companies, collective investment schemes and their management companies, pension funds and their management companies,

commodity dealers, as well as entities not so authorised or regulated whose corporate purpose is solely to invest in securities;

- (b) national or regional public bodies, central banks, international or supranational financial organizations;
- (c) enterprises:
 - (i) having a net shareholders' equity totalling €10,000,000 or more preceding the making available of the repayable funds; and
 - (ii) which have been active on the financial markets at least twice a month, on average, during two consecutive years preceding the making available of the repayable funds; and
- (d) a person or company from which redeemable funds will be obtained through a debt instrument or a private contract, if the nominal value of the debt instrument or the claim under the private contract is at least €50,000 (or the equivalent in another currency), or the debt instrument or the claim under the private contract is acquired for a total consideration of at least €50,000 (or the equivalent in another currency).

This definition of "PMP" will only apply for so long as JHIF is an Obligor.

Potential Event of Default means an event or condition the occurrence or existence of which would, with the lapse of time or the giving of notice or both, become an Event of Default.

Preferred Stock means any class of capital stock of a corporation that is preferred over any other class of capital stock of such corporation as to payment of dividends or the payment of any amount upon liquidation or dissolution of the corporation.

Previous Deeds has the meaning given to it in the Recitals to this amended and restated deed.

Project Activity means the acquisition, development, construction, extension, expansion or improvement of any asset.

Project Debt means with respect to a project or development:

- (a) Financial Indebtedness in relation to the acquisition and/or cost of Project Activities;
- (b) Financial Indebtedness incurred before or at the time of carrying out Project Activities solely for the purpose of financing or refinancing the acquisition and/or cost of the Project Activities;
- (c) any Financial Indebtedness incurred solely to refinance any Financial Indebtedness referred to above or incurred under any successive refinancing;

- (d) any liabilities under hedging transactions entered into in connection with any Financial Indebtedness referred to above or any Project Activity;
 - (e) interest or amounts in the nature of interest, charges, fees, costs of any nature (including break costs or costs arising from changes in law), duties, expenses, currency indemnities, withholding taxes, indirect taxes and other similar indebtedness (however described) which, in any case, is or are incurred or payable in connection with any of the above; or
 - (f) any guarantee or indemnity securing payment or repayment of any of the above amounts (but not any other Financial Indebtedness),
- but does not include any Financial Indebtedness which is used to refinance any assets owned by an Obligor as at 15 June 2005.

Project Property means a Group Member's assets used or predominantly used in, or generated by, any Project Activities for a project or development including:

- (a) assets forming part of or connected with or derived from that project or development; and
- (b) proceeds derived from other Project Property relating to that project or development.

Project Vehicle means an entity, which is established for the purposes of, and confines its business operations solely to, owning or producing Project Property, carrying out Project Activities and incurring Project Debt.

Related Entity has the meaning given in the Corporations Act.

Release Request means a letter in the form of schedule 4 ("Form of Release Request").

Relevant Entity means an Obligor or a Material Subsidiary.

Reporting Date means each 31 March, 30 June, 30 September and 31 December in any year.

Security Interest means any mortgage, pledge, lien or charge or any security or preferential interest or arrangement of any kind or any other right of, or arrangement with, any creditor to have its claims satisfied in priority to other creditors with, or from the proceeds of, any asset. This definition:

- (a) includes any retention of title agreements arising other than in the ordinary course of business; and
- (b) excludes any right of set-off, right to combine accounts, or other similar right or arrangement arising in the ordinary course of business or by operation of law.

Subordinated Debt means any Financial Indebtedness of any Group Member (other than an Excluded Entity) which is subordinated to the Facilities on terms which each Creditor (or under a syndicated facility, an agent or trustee acting on the instructions of the Majority Creditor) has confirmed are acceptable to it (such confirmation not to be unreasonably withheld or delayed).

Subsidiary in relation to a corporation means a subsidiary of the corporation for the purposes of the Corporations Act.

Tax means any present or future tax (including Indirect Taxes), levy, impost, duty, charge, fee, deduction, compulsory loan or withholding or any income, stamp or transaction duty, tax or charge, in the nature of tax whatsoever called (except if imposed on, or calculated having regard to, the net income of a Creditor) and whether imposed, levied, collected, withheld or assessed by any Government Agency and includes, but is not limited to, any penalty, fine, charge, fee, interest or other amount payable in connection with failure to pay or delay in paying the same.

Termination Date in respect to a Facility Agreement, means the termination date, maturity date, final repayment date, final redemption date or other final payment date (howsoever described) of a Facility as defined in the relevant Facility Agreement.

Transaction Document means each of:

- (a) this amended and restated deed;
- (b) each Facility Agreement;
- (c) each Facility Nomination Letter;
- (d) each New Borrower Deed Poll;
- (e) each Deed of Release;
- (f) the Guarantee and Subordination Documents;
- (g) the JHT Undertaking;
- (h) any other document agreed to be a Transaction Document by the Guarantor and a Creditor; and
- (i) any document entered into for the purpose of amending or novating any of the above.

US\$, USD or US Dollars means the lawful currency of the United States of America.

Wholly Owned Subsidiary has the meaning given in section 9 of the Corporations Act.

1.2 References to certain general terms

Unless the contrary intention appears, a reference in a Transaction Document to:

- (a) a group of persons is a reference to any two or more of them jointly and to each of them individually;
- (b) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them individually;
- (c) an agreement, representation or warranty by two or more persons binds them individually only;
- (d) anything (including an amount) is a reference to the whole and each part of it (but nothing in this clause 1.2(d) implies that performance of part of an obligation constitutes performance of the obligation);
- (e) a document (including this amended and restated deed) includes any variation, supplement to, novation or replacement of it;
- (f) law includes (without limitation) common law, principles of equity, and laws made by any legislative body of any jurisdiction (and references to any statute, regulation or by-law include any modification or re-enactment of or any provision substituted for, and all statutory and subordinate instruments issued under such statute, regulation or by-law or such provision);
- (g) an accounting term is a reference to that term as it is used in GAAP;
- (h) the word “person” includes an individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated association and any Government Agency;
- (i) a particular person includes a reference to the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (j) the words “including”, “for example” or “such as” when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
- (k) other parts of speech and grammatical forms of a word or phrase defined in this amended and restated deed have a corresponding meaning;
- (l) an agreement includes an undertaking, deed, agreement or legally enforceable arrangement or understanding whether or not in writing;
- (m) a reference to a document includes any agreement in writing, or any certificate, notice, instrument or other document of any kind;

- (n) a reference to a body, other than a party to, or a beneficiary of, a Transaction Document (including an institute, association or authority) whether statutory or not:
 - (i) that ceases to exist; or
 - (ii) whose powers or functions are transferred to another body,is a reference to the body that replaces it or any body that substantially succeeds to its powers or functions;
- (o) “continuing” or “subsisting”, in relation to an Event of Default or Potential Event of Default, means an Event of Default or Potential Event of Default (as the case may be) that has not been waived in writing or remedied.

1.3 Numbers

In a Transaction Document, the singular includes the plural and vice versa.

1.4 Headings

In a Transaction Document, headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of the Transaction Document.

1.5 Conflict

- (a) Subject to paragraph (b), even if any other Transaction Document is not expressly made subject to this amended and restated deed and despite the time and date of its execution, where a conflict arises between the provisions of this amended and restated deed and any other Transaction Document, the provisions of this amended and restated deed shall prevail unless the relevant provision in the other Transaction Document includes words substantially to the effect of “Despite the terms of the Common Terms Deed Poll”.
- (b) Where a conflict arises between the provisions of this amended and restated deed on the one hand and the Guarantee and Subordination Documents on the other hand, the provisions of the Guarantee and Subordination Documents shall prevail to the extent of the inconsistency.

1.6 Shareholder ratification

Each Obligor which is a shareholder of another company (a “**Relevant Company**”) which is, or is to become, an Obligor, ratifies and approves in its capacity as a shareholder of that Relevant Company, the execution and performance by each such Relevant Company of each Transaction Document to which it is a party.

1.7 Borrowers severally liable only

Notwithstanding any other provision of this or any other Transaction Document, no Borrower is liable under the Transaction Documents for any obligation of another Borrower (including, without limitation, any obligation to indemnify a Creditor).

Part 1 Creditors and Facilities

2 Creditors and Facilities

2.1 Creditors and Facilities

This amended and restated deed is for the benefit of, and is enforceable by, each Creditor from time to time even though it is not a party to, or is not in existence at the time of execution and delivery of this amended and restated deed, in relation to the Facility under which that Creditor is entitled and each Transaction Document under which that Creditor has benefits or obligations.

The benefit and obligations of this amended and restated deed may be extended to any other person (and such person shall become a Creditor) in relation to any other document (and such document shall become a Facility Agreement), by the Obligors' Agent signing and delivering to that Creditor (or, in the case of a syndicated facility, the facility agent) a Facility Nomination Letter and the Creditor countersigning such Facility Nomination Letter.

Each Obligor irrevocably authorises the Obligors' Agent to sign and deliver any Facility Nomination Letter and acknowledges and confirms that the provisions of this amended and restated deed which are for the benefit of the Creditors will extend to the Facility Agreement so nominated in that Facility Nomination Letter.

2.2 Removal of benefit for particular Creditor

This amended and restated deed ceases to be for the benefit of, and enforceable by, a Creditor if at any time:

- (a) all Outstanding Moneys owing to that Creditor have been fully and finally paid;
- (b) that Creditor is not committed to providing further financial accommodation to a Borrower pursuant to any Facility; and
- (c) this is confirmed in writing by the Creditor. If requested by an Obligor, a Creditor will promptly confirm in writing that this amended and restated deed has ceased to be for the benefit of, and enforceable by, that Creditor.

3 Conditions precedent

3.1 Conditions to first drawdown

A Creditor's obligation to make available the first drawdown under a Facility Agreement entered into on the same date as, or after, the amendment and restatement of this amended and restated deed is subject to the following conditions precedent:

- (a) the Creditor (or, in the case of a syndicated facility, the facility agent) has received each of the following items in form and substance satisfactory to the Creditor or the facility agent (as the case may be):
 - (i) **(verification certificate)** a certificate in relation to each Obligor given by a director of the relevant Obligor substantially in the form of schedule 1 ("Verification Certificate") with the attachments referred to therein;
 - (ii) **(legal opinions)** closing legal opinions in respect of this amended and restated deed, the Facility Agreement and the Guarantee and Subordination Documents from:
 - (A) for so long as JHIF is an Obligor, Loyens & Loeff N.V., Netherlands legal advisers to JHIF;
 - (B) prior to the Irish Registration Date, Loyens & Loeff N.V., Netherlands legal advisers to the Guarantor;
 - (C) after the Irish Registration Date, Arthur Cox, Irish legal advisers to the Guarantor;
 - (D) Arthur Cox, Irish legal advisers to JHIFL;
 - (E) McDonald Carano & Wilson, United States of America legal advisers to JHBP;
 - (F) Mallesons Stephen Jaques, Australian legal advisers to the Obligors; and
 - (G) if a new Borrower is party to a Facility Agreement, legal advisers to the new Borrower of recognised standing and acceptable to the Creditor;
 - (iii) **(executed documents)** to the extent not previously provided to the Creditor under this amended and restated deed:
 - (A) an original counterpart or certified copy of this amended and restated deed;

- (B) original counterparts of the Facility Agreement; and
- (C) a Facility Nomination Letter, if required by the Facility Agreement;
- (D) certified copy of the Guarantee Trust Deed;
- (E) a Beneficiary Nomination Letter, if required by the Facility Agreement;
- (F) a certified copy of the Intercreditor Deed; and
- (G) a Financier Nomination Letter, if required by the Facility Agreement,

executed by all relevant Obligors; and

- (iv) **(fees)** evidence of instructions issued by the Obligors' Agent to pay all fees and expenses which are due under the Facility Agreement on or before the first drawdown; and
- (b) **(know your customer)** if, in relation to the relevant Facility, a Creditor is required to comply with any know your customer checks and the information necessary is not already available to it and to the extent not previously provided to the Creditor under this amended and restated deed or under any other agreement, such documentation and other evidence as is reasonably requested to enable the Creditor to so comply, each in form and substance satisfactory to the Creditor (acting reasonably);
- (c) **(representations true)** the representations and warranties by each Obligor in clause 8.1 of this amended and restated deed are true as at the date of the first drawdown notice and on the date of the first drawdown; and
- (d) **(no default)** no Event of Default or Potential Event of Default subsists at the date of the first drawdown notice or on the date of the first drawdown or will result from the provision of the requested financial accommodation.

3.2 Conditions to subsequent drawdowns

The Creditor need not provide any financial accommodation subsequent to the first drawdown under a Facility Agreement unless:

- (a) **(representations true)** the representations and warranties by each Obligor in clause 8.1 of this amended and restated deed (other than clause 8.1(d)(ii)) are true as at the date of the drawdown notice and on the drawdown date, as though they had been made at that date in respect of the facts and circumstances then subsisting; and
- (b) **(no default)** no Event of Default or Potential Event of Default subsists at the date of the drawdown notice or on the drawdown date

or will result from the provision of the requested financial accommodation.

4 Payments

4.1 Manner of payment

Each Obligor agrees to make payments (including by way of reimbursement) under each Transaction Document:

- (a) on the due date (or, if that is not a Business Day, on the next Business Day unless that day falls in the following month or after the Termination Date for the relevant Facility, in which case, on the previous Business Day);
- (b) at the time which is customary at the time for settlement of transactions in the relevant currency in the place for payment (if any) specified in the relevant Facility Agreement;
- (c) in the Due Currency in immediately available funds;
- (d) in full without set-off or counterclaim, and without any deduction in respect of Taxes unless prohibited by law; and
- (e) to the applicable Creditor (or, in the case of a Creditor under a syndicated facility, the facility agent on its behalf) by making payment to the account nominated by the Creditor or by payment as the Creditor otherwise directs.

If a Creditor directs an Obligor to pay a particular party or in a particular manner, the Obligor is taken to have satisfied its obligation to the Creditor by paying in accordance with the direction.

An Obligor satisfies a payment obligation only when the Creditor (or, in the case of a Creditor under a syndicated facility, the facility agent on its behalf) or the person to whom it has directed payment actually receives the amount.

4.2 Currency of payment

Each Obligor waives any right it has in any jurisdiction to pay an amount other than in Due Currency. However, if a Creditor receives an amount in a currency other than the Due Currency:

- (a) it may convert the amount received into the Due Currency (even though it may be necessary to convert through a third currency to do so) on the day and at such rates (including spot rate, same day value rate or value tomorrow rate) as it reasonably considers appropriate. It may deduct its usual Costs in connection with the conversion; and
- (b) the Obligor satisfies its obligation to pay in the Due Currency only to the extent of the amount of the Due Currency obtained from the conversion after deducting the Costs of the conversion. Any surplus amount will be paid promptly by that Creditor to the relevant Obligor.

5 Withholding tax

5.1 Payments by Obligor

If a law requires an Obligor to deduct or withhold an amount in respect of Taxes (other than Indirect Taxes) in respect of a payment under any Transaction Document such that a Creditor (“**Indemnified Party**”) would not actually receive on the due date the full amount provided for under the Transaction Document, then:

- (a) the Obligor agrees to deduct the amount for such Taxes and any further deduction applicable to any further payment due under paragraph (c) below;
- (b) the Obligor agrees to pay an amount equal to the amount deducted or withheld to the relevant authority in accordance with applicable law; and
- (c) unless the Tax is an Excluded Tax, the amount payable is increased so that, after making the deduction or withholding and further deductions or withholdings applicable to additional amounts payable under this clause 5.1(c), the Indemnified Party is entitled to receive (at the time the payment is due) the amount it would have received if no deductions or withholdings had been required.

5.2 Payments by a facility agent to Creditors

If a law requires a facility agent under a syndicated facility to deduct or withhold an amount in respect of Taxes (other than Indirect Taxes) in respect of a payment by the facility agent to a Creditor under a syndicated facility such that the Creditor would not actually receive on the due date the full amount provided for under the syndicated facility, then:

- (a) the facility agent must deduct or withhold the amount for such Taxes and any further deduction or withholding applicable to any further payment due under paragraph (c) below;
- (b) the facility agent must pay an amount equal to the amount deducted or withheld to the relevant authority in accordance with applicable law and promptly give the original receipts to the relevant Borrower;
- (c) unless the Tax is an Excluded Tax, the amount payable is increased so that, after making the deduction or withholding and further deductions or withholdings applicable to additional amounts payable under this clause 5.2(c), the Creditor is entitled to receive (at the time the payment is due) the amount it would have received if no deductions or withholdings had been required; and
- (d) unless the Tax is an Excluded Tax, the relevant Borrower must pay to the facility agent an amount equal to any deduction or withholding which the facility agent is required to make under this clause 5.2.

5.3 Tax credit

If and to the extent that any Creditor is able in its opinion to apply for or otherwise take advantage of any offsetting tax credit, tax rebate or other similar tax benefit out of or in conjunction with any deduction or withholding which gives rise to an obligation on any Obligor to pay any additional amount pursuant to clause 5.1 or 5.2(d), that Creditor shall:

- (a) give notice thereof to the Obligors' Agent and take steps to obtain that credit, rebate or benefit; and
- (b) to the extent that in its opinion it can do so without prejudice to the retention of the credit, rebate or benefit, and upon receipt thereof, reimburse to the Obligor such amount of the credit, rebate or benefit as that Creditor shall, in its opinion (acting reasonably), have determined to be attributable to the deduction or withholding. In complying with this clause, no Creditor need disclose to any Obligor information about their tax affairs or order them in a particular way.

5.4 Early repayment or redemption

Without limiting the other provisions of this clause 5, if a Borrower is required to pay any amount to a Creditor or facility agent under a syndicated facility under this clause 5, that Borrower may elect to repay or redeem early all of that Creditor's outstandings under the applicable Facility which is affected by the event or events referred to in clause 5.1 or 5.2.

6 Increased costs

6.1 Compensation

The relevant Borrower agrees to compensate a Creditor on 30 days written notice if the Creditor determines that:

- (a) a Directive, or change in Directive, in either case applying for the first time after the date of the relevant Facility Agreement;
- (b) a change in a Directive's interpretation or administration by an authority after the date of the relevant Facility Agreement; or
- (c) compliance by the Creditor or any of its Related Entities with any such Directive, changed Directive or changed interpretation or administration, directly or indirectly:
 - (i) increases the effective cost to that Creditor of making, funding or maintaining the relevant Facility or its proportion of the Facility; or
 - (ii) reduces any amount paid or payable to, or received or receivable by, that Creditor or the effective return to that Creditor in connection with the relevant Facility.

In this clause 6.1, a reference to a Directive does not include a Directive imposing or changing the basis of a Tax on the overall net income of the Creditor.

Compensation need not be in the form of a lump sum and may be demanded as a series of payments.

A notice under this clause may not claim compensation for an increase or reduction suffered more than 180 days before the date of the notice, except to the extent that the event or circumstance giving rise to the increased cost or reduction is that a Directive is applied retrospectively and the notice was given by the Creditor no later than 120 days after it became aware of that event or circumstance and was able to quantify the amount for which it is entitled to be compensated under this clause 6.1.

Any demand under this clause 6.1 is to be made to the Obligors' Agent by the Creditor (except in the case of a Creditor under a syndicated facility, in which case demand must be made by the facility agent).

6.2 Substantiating costs

If a Creditor (or a facility agent on its behalf) makes a demand under clause 6.1 ("Compensation"), it must provide the relevant Borrower with reasonably detailed calculations showing how the amount demanded has been ascertained. However, nothing in this clause 6.2 obliges the Creditor to provide details of its business or tax affairs which it considers in good faith to be confidential.

6.3 Procedure for claim

- (a) In the absence of manifest error, and subject to clause 6.2 ("Substantiating costs"), a certificate by a Creditor is sufficient evidence of the amount of the compensation payable by the relevant Borrower to the Creditor under clause 6.1 ("Compensation").
- (b) In determining the amount of the compensation payable under clause 6.1 ("Compensation"), the Creditor may use averaging and attribution methods commonly used by the Creditor or any other method it reasonably considers appropriate to determine the amount.

6.4 Possible minimisation

- (a) The Creditor agrees:
 - (i) to use reasonable endeavours to mitigate the effects of those events or circumstances giving rise to the increased cost or reduction in any payment or return for which the Creditor (or a facility agent on its behalf) claims compensation under clause 6.1 ("Compensation"); and
 - (ii) at the request of the Obligors' Agent, to consider the transfer or assignment of its rights and obligations under this amended and restated deed and the other relevant Transaction

Documents to which it is a party to another bank or financial institution at par.

(b) Subject to clause 6.4(a)(i), the relevant Borrower agrees to compensate the Creditor whether or not the increase or the reduction could have been avoided.

7 Illegality

7.1 Creditor's right to suspend or cancel

This clause 7 applies if a Creditor determines in good faith that:

- (a) a change in a Directive;
- (b) a change in the interpretation or administration of a Directive by an authority; or
- (c) a Directive,

makes it (or will make it) illegal in practice for the Creditor to fund, provide, or continue to fund or provide, financial accommodation under any Transaction Document. In these circumstances, the Creditor by giving a notice to the Obligors' Agent, may suspend or cancel some or all of the Creditor's obligations under the relevant Transaction Document as indicated in the notice.

7.2 Extent and duration

The suspension or cancellation:

- (a) must apply only to the extent necessary to avoid the illegality; and
- (b) in the case of suspension, may continue only for so long as the illegality continues.

7.3 Notice requiring early repayment or redemption

If the illegality relates to an amount outstanding to a Creditor, the Creditor (or, in the case of a syndicated facility, the facility agent), by giving a notice to the Obligors' Agent, may require early repayment or redemption of all or part of the affected outstandings and interest accrued on that part. The relevant Borrower in respect of which the Creditor has made a determination under clause 7.1 agrees to repay or redeem the amount specified no later than the date the illegality arises.

7.4 Creditor to seek alternative funding method

The affected Creditor (at no cost to an Obligor) during the period of 90 days after the notice pursuant to clause 7.1 agrees to use reasonable endeavours to make that part of the facility affected by the illegality available by alternative means (including changing its lending office to another then existing lending

office or making the financial accommodation available through a Related Entity of the Creditor).

8 Representations and warranties

8.1 Representations and warranties

Each Obligor (but in the case of a Borrower only from the date that it becomes a Borrower) represents and warrants (except in relation to matters disclosed to the Creditors and accepted in writing by the Creditors) that:

- (a) **(status)** it is a corporation duly incorporated and validly existing under the laws of its place of incorporation;
- (b) **(corporate authorisation, documents binding)** each Transaction Document to which it is a party has been duly authorized by all necessary corporate action on the part of the Obligor and constitutes a legal, valid and binding obligation of the Obligor enforceable against the Obligor in accordance with its terms, except as such enforceability may be limited by:
 - (i) applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally; and
 - (ii) general principles of law (regardless of whether such enforceability is considered in a proceeding in equity or at law);
- (c) **(compliance with laws)** the execution, delivery and performance of the Transaction Documents to which it is a party will not:
 - (i) contravene its constitution;
 - (ii) result in the creation of any Security Interest (other than any Permitted Security Interest) in respect of any property of the Obligor or any of its Subsidiaries (excluding the Excluded Entities);
 - (iii) contravene in any material respect any law to which the Obligor or any of its Subsidiaries (excluding the Excluded Entities) is subject or by which the Obligor or any of its Subsidiaries (excluding the Excluded Entities) or any of their respective properties may be bound;
 - (iv) conflict with or result in a breach in any material respect of any of the terms, conditions or provisions of any order, judgment, decree, or ruling of any court, arbitrator or Government Agency applicable to the Obligor or any of its Subsidiaries (excluding the Excluded Entities); and

- (v) result in the acceleration or cancellation of any agreement or obligation in respect of Financial Indebtedness of any Group Member (excluding the Excluded Entities);
- (d) **(disclosure)**
 - (i) all information given to the Creditors by it or with its authority was, when given, true and correct in all material respects; and
 - (ii) the most recent Form 20-F filed by the Guarantor with the United States Securities and Exchange Commission was prepared and filed in accordance with the applicable requirements of US securities laws;
- (e) **(Group financial statements)**
 - (i) the most recent financial statements of the Group (including in each case the related schedules and notes) fairly present in all material respects the consolidated financial position of the Group as at the end of the financial period to which they relate and have been prepared in accordance with GAAP consistently applied throughout the periods involved, except as set forth in the notes thereto (subject, in the case of an interim financial statements, to normal year-end adjustments); and
 - (ii) since the date of delivery of those statements, there has been no change in the financial condition, operations, business or prospects of the Group (excluding the Excluded Entities), except changes that individually or in the aggregate do not or are not likely to have a Material Adverse Effect;
- (f) **(Borrower financial statements)**
 - (i) for so long as JHIF is an Obligor:
 - (A) the most recent financial statements of JHIF provided in accordance with clause 9.6(c)(i)(C) (including in each case the related schedules and notes) fairly present in all material respects the consolidated financial position of JHIF as at the end of the financial period to which they relate and have been prepared in accordance with generally accepted accounting principles as in effect from time to time in the Netherlands consistently applied throughout the periods involved, except as set forth in the notes thereto (subject, in the case of an interim financial statements, to normal year-end adjustments); and
 - (B) since the date of delivery of those statements, there has been no change in the financial condition, operations, business or prospects of JHIF, except changes that

individually or in the aggregate do not or are not likely to have a Material Adverse Effect;

(ii) for so long as JHIFL is an Obligor:

(A) the most recent financial statements of JHIFL provided in accordance with clause 9.6(c)(ii)(C) (including in

each case the related schedules and notes) fairly present in all material respects the consolidated financial position of JHIFL as at the end of the financial period to which they relate and have been prepared in accordance with generally accepted accounting principles as in effect from time to time in the Republic of Ireland consistently applied throughout the periods involved, except as set forth in the notes thereto (subject, in the case of an interim financial statements, to normal year-end adjustments); and

(B) since the date of delivery of those statements, there has been no change in the financial condition, operations, business or prospects of JHIFL, except changes that individually or in the aggregate do not or are not likely to have a Material Adverse Effect;

- (g) **(Authorisations)** all Authorisations necessary in connection with the execution, delivery or performance by the Obligor of the Transaction Documents to which it is a party have been obtained and are in full force and effect;
- (h) **(litigation)** except as disclosed in the most recent financial statements of the Group, in an announcement by the Guarantor through the ASX or under clause 9.6(f) of this amended and restated deed, no litigation, arbitration, administrative proceeding or other procedure for the resolution of disputes is currently taking place or pending against any Group Member (excluding the Excluded Entities) or any Group Member's assets (excluding the Excluded Entities' assets) which has or is likely to have a Material Adverse Effect;
- (i) **(Security Interests)** no Security Interest exists over any Group Member's assets (excluding the Excluded Entities' assets) which is not permitted by clause 9.3;
- (j) **(environmental matters)** each Group Member (excluding the Excluded Entities) has complied with all applicable Environmental Laws and the terms and conditions of any Authorisation issued pursuant to an Environmental Law, except where a failure to comply does not or is not likely to have a Material Adverse Effect;
- (k) **(no immunity)** neither it nor any of its assets has any immunity from jurisdiction, suit, execution, attachment or other legal process in any jurisdiction in which its assets are located or it carries on business;

- (l) **(not a trustee)** it does not enter into any Transaction Document as trustee;
- (m) **(ranking)** its obligations under the Transaction Documents rank at least pari passu with all of its other unsecured and unsubordinated obligations, other than those mandatorily preferred by law;
- (n) **(default under law)** no member of the Group (excluding the Excluded Entities) is in breach of any law, Authorisation, agreement or obligation binding upon it or its assets which has or is likely to have a Material Adverse Effect; and
- (o) **(holding company)** in the case of the Guarantor only, at the date of this amended and restated deed, the Guarantor has no material liabilities other than:
 - (i) creditors, provisions and indemnities incidental to its activities as a holding company without a material operating business,
 - (ii) liabilities under this amended and restated deed and the Guarantee and Subordination Documents;
 - (iii) liabilities to the Fund, the Charitable Fund and the State of New South Wales under the AFFA (and Related Agreements, as defined in the AFFA), including the Fund Guarantee;
 - (iv) liabilities in relation to taxation; and
 - (v) liabilities to shareholders in their capacity as such not prohibited under the AFFA.

8.2 When representations and warranties made

Each representation and warranty is made in favour of a Creditor on the date of execution of its Facility Agreement and is not repeated unless specified in that Facility Agreement or in clause 3.2(a).

8.3 Reliance on representations and warranties

Each Obligor acknowledges that the Creditors have entered into the Transaction Documents in reliance on the representations and warranties in this clause.

9 Undertakings

9.1 Application

All undertakings set out in this clause 9 apply to a Facility Agreement unless the Majority Creditor (or under a syndicated facility, an agent or trustee acting on the instructions of the Majority Creditor) under that Facility Agreement consents in writing.

9.2 General undertakings

Each Obligor undertakes to each Creditor as follows:

- (a) **(nature of business)** it will not (and will not permit any of its Subsidiaries (excluding the Excluded Entities) to) engage in any business if, as a result, the general nature of the business, taken on a consolidated basis, which would then be engaged in by the Group would be substantially changed from the general nature of the business engaged in by the Group on the date of the relevant Facility Agreement;
- (b) **(compliance with laws)** it will comply (and will procure that its Subsidiaries (excluding the Excluded Entities) comply) with all applicable laws (including, without limitation, all Environmental Laws and the terms and conditions of any Authorisation required under an Environmental Law) in all material respects where non-compliance has or is likely to have a Material Adverse Effect;
- (c) **(ranking)** it will ensure that its obligations to the Creditor under the Transaction Documents rank and will continue to rank at least pari passu with all of its other unsecured and unsubordinated obligations, other than those mandatorily preferred by law;
- (d) **(Financial Indebtedness of Group Members)** in the case of the Guarantor only, and without limiting clauses 9.4(d) or 9.4(e), it will ensure that each Group Member (excluding the Excluded Entities) that is not an Obligor does not incur any Financial Indebtedness owing to any person outside the Group that is not Permitted External Financial Indebtedness;
- (e) **(holding company status)** in the case of the Guarantor only, it will have no material liabilities other than those described in clause 8.1(o);
- (f) **(AFFA)** in the case of the Guarantor only, it will not (without the prior written consent of each relevant Creditor (or under a syndicated facility, an agent or trustee acting on the instructions of the Majority Creditor), such consent not to be unreasonably withheld or delayed) vary, or agree to vary, in any material adverse respect the AFFA and
- (g) **(JHT ownership)** in the case of JHIFL only, it will not (without the prior written consent of each relevant Creditor (or under a syndicated facility, an agent or trustee acting on the instructions of the Majority Creditor), such consent not to be unreasonably withheld or delayed) cease to own 100% of the issued capital of James Hardie Technology Limited.

9.3 Negative Pledge

Each Obligor undertakes to each Creditor that it will not, and will not permit any of its Subsidiaries (excluding the Excluded Entities) to, create or allow to exist a Security Interest over any of its assets, other than a Permitted Security Interest.

9.4 Financial undertakings

- (a) **(Consolidated Net Worth)** The Guarantor must ensure that Consolidated Net Worth is not less than US\$320 million on each Reporting Date and, where applicable, on each ASX CNW Announcement Date.
- (b) **(EBIT)** The Guarantor will ensure that EBIT will not be less than 2.5 times Net Interest Charges for the 12 month period ending on each Reporting Date.
- (c) **(compensation funding)** The Guarantor will ensure that no more than 35% of its Free Cash Flow in any given Financial Year is contributed to the Fund on the payment dates under the AFFA in the next following Financial Year.
- (d) **(Funded Debt)** The Guarantor will ensure that the ratio of Consolidated Funded Debt to Consolidated Funded Capitalisation does not exceed 65% at any time.
- (e) **(Permitted External Financial Indebtedness)** The Guarantor will ensure that the ratio of Consolidated Permitted External Financial Indebtedness to Consolidated Funded Capitalisation does not exceed 15% at any time.

9.5 GAAP

The financial undertakings in clause 9.4 have been drafted such that compliance with them is based on GAAP . If:

- (a) a Borrower's or Guarantor's accountants or auditors advise at any time that any change to GAAP occurring after 15 June 2005 materially and adversely alters the effect of any such provision (or any related definition) and the Obligors' Agent so notifies the Creditor; or
- (b) the Creditor gives written notice to the Obligors' Agent referring specifically to this clause 9.5 and giving details of a change to GAAP occurring after 15 June 2005 which in the Creditor's opinion (acting reasonably) materially and adversely alters the effect of any such provision (or any related definition),
then:
 - (c) the Creditor and the Guarantor must negotiate in good faith to amend such provision so that they have an effect comparable to that at the date of this amended and restated deed; and
 - (d) until such time as the amendments referred to in clause 9.5(c) are agreed, compliance with the relevant provision (and related definitions) will be determined by reference to GAAP.

9.6 Reporting undertakings

The Guarantor shall deliver to each Creditor (or, in the case of a syndicated facility, the facility agent) the following:

- (a) **(quarterly Group statements)** within 60 days after the end of each quarterly fiscal period in each fiscal year of the Guarantor (other than the last quarterly fiscal period of each such fiscal year) a copy of:
- (i) a consolidated balance sheet of the Group as at the end of such quarter; and
 - (ii) consolidated statements of income, changes in shareholders' equity and cash flows of the Group, for such quarter and (in the case of the second and third quarters) for the portion of the fiscal year ending with such quarter,

setting forth in each case in comparative form the figures for the corresponding periods in the previous fiscal year, all in reasonable detail, prepared in accordance with GAAP applicable to quarterly financial statements generally, and certified by the chief financial officer, treasurer or principal accounting officer of the Group as fairly presenting, in all material respects, the financial position of the companies being reported on and their results of operations and cash flows, subject to changes resulting from year-end adjustments, provided that delivery within the time period specified above of copies of the Guarantor's Quarterly Report on Form 10-Q prepared in compliance with the requirements applicable thereto and filed with the United States Securities and Exchange Commission shall be deemed to satisfy the requirements of this clause 9.6(a);

- (b) **(annual Group statements)** within 105 days after the end of the fiscal year of the Guarantor a copy of:

- (i) a consolidated balance sheet of the Group, as at the end of such year; and
- (ii) consolidated statements of income, changes in shareholders' equity and cash flows of the Group, for such year,

setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail, prepared in accordance with GAAP, and accompanied by an opinion thereon of independent certified public accountants of recognised national standing, which opinion shall state that such financial statements present fairly, in all material respects, the financial position of the companies being reported upon and their results of operations and cash flows and have been prepared in conformity with GAAP, and that the examination of such accountants in connection with such financial statements has been made in accordance with generally accepted auditing standards, and that such audit provides a reasonable basis for such opinion in the circumstances, provided that the delivery within the time period specified above of the Guarantor's Annual Report on Form 10-K for such fiscal year (together with the Guarantor's annual report to

shareholders, if any, prepared pursuant to Rule 14a-3 under the Exchange Act) prepared in accordance with the requirements applicable thereto and filed with the United States Securities and Exchange Commission shall be deemed to satisfy the requirements of this clause 9.6(b);

(c) **(Borrower statements and reports)**

(i) for so long as JHIF is an Obligor:

- (A) at the same time at which each financial statement or report is delivered pursuant to clause 9.6(a) (**“Consolidated Quarterly Statement”**) and for as long as the JHIF Financial Reports are prepared as a matter of general internal accounting practice of the Obligors, a copy of the JHIF Financial Reports for the year to date as at the end of the quarterly fiscal period to which the Consolidated Quarterly Statement relates;
- (B) at the same time at which each financial statement or report is delivered pursuant to clause 9.6(b) (**“Consolidated Annual Statement”**) and for as long as the JHIF Financial Reports are prepared as a matter of general internal accounting practice of the Obligors, a copy of the JHIF Financial Reports for the fiscal year to which the Consolidated Annual Statement relates;
- (C) within 180 days after the end of the fiscal year of JHIF a copy of:
 - (1) the balance sheet of JHIF, as at the end of such year; and
 - (2) a statement of income, changes in shareholders’ equity and cash flows of JHIF, for such year,

setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail, prepared in accordance with generally accepted accounting principles as in effect from time to time in the Netherlands, and accompanied by an opinion thereon of independent certified public accountants of recognised national standing in the Netherlands, which opinion shall state that such financial statements present fairly, in all material respects, the financial position of JHIF and its results of operations and cash flows and have been prepared in conformity with generally accepted accounting principles as in effect from time to time in the Netherlands, and that the examination of such accountants in connection with such financial statements has been made in accordance with generally accepted auditing standards in the

Netherlands, and that such audit provides a reasonable basis for such opinion in the circumstances;

(ii) for so long as JHIFL is an Obligor:

- (A) at the same time at which each financial statement or report is delivered pursuant to clause 9.6(a) ("**Consolidated Quarterly Statement**") and for as long as the JHIFL Financial Reports are prepared as a matter of general internal accounting practice of the Obligors, a copy of the JHIFL Financial Reports for the year to date as at the end of the quarterly fiscal period to which the Consolidated Quarterly Statement relates;
- (B) at the same time at which each financial statement or report is delivered pursuant to clause 9.6(b) ("**Consolidated Annual Statement**") and for as long as the JHIFL Financial Reports are prepared as a matter of general internal accounting practice of the Obligors, a copy of the JHIFL Financial Reports for the fiscal year to which the Consolidated Annual Statement relates;
- (C) within 180 days after the end of the fiscal year of JHIFL a copy of:
 - (1) the balance sheet of JHIFL, as at the end of such year; and
 - (2) a statement of income, changes in shareholders' equity and cash flows of JHIFL, for such year,

setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail, prepared in accordance with generally accepted accounting principles as in effect from time to time in the Republic of Ireland, and accompanied by an opinion thereon of independent certified public accountants of recognised national standing in the Republic of Ireland, which opinion shall state that such financial statements present fairly, in all material respects, the financial position of JHIFL and its results of operations and cash flows and have been prepared in conformity with generally accepted accounting principles as in effect from time to time in the Republic of Ireland, and that the examination of such accountants in connection with such financial statements has been made in accordance with generally accepted auditing standards in the Republic of Ireland, and that such audit provides a reasonable basis for such opinion in the circumstances;

- (iii) for so long as JHBP is an Obligor:
 - (A) at the same time at which each Consolidated Quarterly Statement is delivered pursuant to clause 9.6(a) and for as long as the JHBP Financial Reports are prepared as a matter of general internal accounting practice of the Obligors, a copy of the JHBP Financial Reports for the year to date as at the end of the quarterly fiscal period to which the Consolidated Quarterly Statement relates; and
 - (B) at the same time at which each Consolidated Annual Statement is delivered pursuant to clause 9.6(b) and for as long as the JHBP Financial Reports are prepared as a matter of general internal accounting practice of the Obligors, a copy of the JHBP Financial Reports for the fiscal year to which the Consolidated Annual Statement relates;
- (d) **(SEC and other reports)** promptly upon their becoming available, one copy of:
 - (i) to the extent not already provided under clauses 9.6(a), 9.6(b) or 9.6(c), each financial statement, report, notice or proxy statement sent by a Group Member (other than an Excluded Entity) to public securities holders generally; and
 - (ii) each regular or periodic report, each registration statement (without exhibits, except as expressly requested by the Creditor or facility agent as the case may be), and each prospectus and all amendments thereto filed by a Group Member (other than an Excluded Entity) with the United States Securities and Exchange Commission and all announcements made by the Guarantor through ASX and press releases and other statements made available generally by any Group Member (other than an Excluded Entity) to the public concerning developments that are material;
- (e) **(Notice of Event of Default or Potential Event of Default)** promptly upon becoming aware of it, written notice to each Creditor (or, in the case of a syndicated facility, the facility agent) of:
 - (i) the existence of any Event of Default or Potential Event of Default; and
 - (ii) the occurrence of any event which has or is likely to have a Material Adverse Effect;
- (f) **(litigation)** to the extent not disclosed in a document provided under clauses 9.6(a), 9.6(b), 9.6(c), 9.6(d) or 9.6(e), notice in writing and in reasonable detail of any litigation, arbitration, administrative proceeding or other procedure for the resolution of disputes commenced, taking place, pending or to its knowledge, threatened

against any Group Member (other than an Excluded Entity) or any Group Member's assets (other than an Excluded Entity's assets) which has or is likely to have a Material Adverse Effect; and

- (g) **(requested information)** such other information relating to the business, operations and condition (financial or otherwise) of the Group (excluding the Excluded Entities) as from time to time may be reasonably requested by a Creditor (but excluding any information which the Guarantor is bound by an obligation of confidentiality not to disclose).

9.7 Officer's certificate

Each set of consolidated financial statements delivered pursuant to clause 9.6(a) or 9.6(b) shall be accompanied by:

- (a) a supplementary set of financial statements for the Group (excluding the Excluded Entities), showing adjustments made to the consolidated financial statements to eliminate the impact of the Excluded Entities; and
- (b) a certificate of the chief financial officer, treasurer or principal accounting officer of the Group setting forth the information (including reasonably detailed calculations) required in order to establish whether the Guarantor was in compliance with the relevant requirements of clause 9.4 and the amount of after-tax income of James Hardie Technology Limited that is required to be distributed pursuant to the JHT Undertaking.

10 Events of default

10.1 Events of Default

Each of the following is an Event of Default:

- (a) **(non-payment of principal)** a Borrower fails to pay an amount of principal payable by it under a Facility Agreement when due and does not remedy that failure within 2 Business Days after that amount becomes due and payable;
- (b) **(non-payment of other amounts)** a Borrower fails to pay any amount, other than an amount described in paragraph (a), payable by it under a Facility Agreement and does not remedy that failure within 3 Business Days after that amount becomes due and payable;
- (c) **(financial undertakings)**
 - (i) there is at any time a breach of any financial undertaking in clause 9.4 and, in the case of a breach of clause 9.4(d) or 9.4(e), the breach is not cured within 10 Business Days of the Guarantor receiving written notice from a Creditor (or, in the case of a syndicated facility, the facility agent) requiring such remedy; or

- (ii) the Guarantor fails to deliver a certificate as required by clause 9.7(b) within 7 days of receipt of written notice from a Creditor of failure to provide such certificate;
- (d) **(other default)**
 - (i) any Obligor defaults in the performance of or compliance with any material obligation contained in a Transaction Document (other than those referred to in clause 10.1(a), 10.1(b) or 10.1(c)); and
 - (ii) the default is not waived or, if capable of remedy, the default is not remedied within 21 days of the Obligor receiving written notice from a Creditor (or, in the case of a syndicated facility, the facility agent) referring specifically to this clause 10.1(d) and requiring such remedy;
- (e) **(AFFA)** the Group Member primarily liable to make funding payments to the Fund under the AFFA defaults in the performance of, or compliance with, its obligation to make any such payment when due or within any applicable grace period and such default is not cured by that Group Member or the Guarantor within 3 Business Days;
- (f) **(misrepresentation)**
 - (i) any representation or warranty made or deemed to be made by an Obligor in a Transaction Document proves to have been inaccurate in any material respect when made or deemed to be repeated; and
 - (ii) the misrepresentation or breach of warranty is not waived or, if capable of remedy, the matter giving rise to the misrepresentation or breach of warranty is not remedied within 21 days of the Obligor becoming aware that the representation or warranty was inaccurate when made or deemed to have been repeated;
- (g) **(cross-default)**
 - (i) an Obligor is in default in the payment of any Financial Indebtedness that is outstanding in an aggregate principal amount of at least US\$20,000,000 (or its equivalent in another currency) beyond any period of grace provided with respect thereto and such Financial Indebtedness is not paid within 3 Business Days; or
 - (ii) any Financial Indebtedness of an Obligor exceeding US\$20,000,000 (or its equivalent in another currency) has become, or has been declared, due and payable before its stated maturity and such Financial Indebtedness is not paid within 3 Business Days.

- (h) **(insolvency)** a Relevant Entity:
- (i) is generally not paying, or admits in writing its inability to pay, its debts as they become due;
 - (ii) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganisation or arrangement or any other petition in bankruptcy, for liquidation or to take advantage of any bankruptcy, insolvency, reorganization, moratorium or other similar law of any jurisdiction (for the avoidance of doubt, this includes, in respect of a person established under Dutch law, a filing of a petition by it with any court in the Netherlands in relation to its bankruptcy (*faillissement*) or suspension of payments (*surseance van betaling*) and, in respect of a person established under Irish law, a filing of a petition with any court in the Republic of Ireland in relation to its liquidation, the bringing forward of a scheme of arrangement or the appointment of an examiner);
 - (iii) makes an assignment for the benefit of its creditors;
 - (iv) consents to the appointment of a custodian, receiver, receiver and manager, trustee or other officer with similar powers with respect to it or with respect to any substantial part of its property;
 - (v) consents to the appointment of an administrator;
 - (vi) is adjudicated as insolvent or to be liquidated; or
 - (vii) takes corporate action for the purpose of any of the foregoing.
- (i) **(receiver)**
- (i) A court or Government Agency of competent jurisdiction enters an order appointing, without consent by a Relevant Entity, a custodian, receiver, receiver and manager, trustee or other officer with similar powers with respect to the Relevant Entity or with respect to any substantial part of its property, or constituting an order for relief or approving a petition for relief or reorganisation or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction, or ordering the dissolution, winding-up or liquidation of the Relevant Entity, or any such petition shall be filed against the Relevant Entity (other than a frivolous or vexatious petition) and such petition is not dismissed or cancelled within 30 days (and for the avoidance of doubt, this includes, in respect of a person established under Dutch law, appointment by a court of a trustee (*curator*) in relation to its bankruptcy or appointment by a court of a receiver (*bewindvoerder*) in relation to its provisional suspension of payments and, in respect of a

person established under Irish law, appointment by a court of an examiner); or

- (ii) an administrator of the Relevant Entity is appointed; or
 - (iii) a receiver, receiver and manager, administrative receiver or similar officer is appointed to all or any substantial part of the assets of a Relevant Entity in respect of Financial Indebtedness that has been due and payable for at least 5 Business Days in an aggregate principal amount of at least US\$20,000,000 (or its equivalent in another currency) and that officer is not removed within 7 days of his appointment;
- (j) **(judgment)** a final judgment or judgments for the payment of money aggregating in excess of US\$20,000,000 (or its equivalent in another currency) are rendered against a Relevant Entity and such judgments are not, within 45 days after entry thereof, bonded, discharged or stayed pending appeal, or are not discharged within 45 days after the expiration of such stay;
- (k) **(vitiation of documents)**
- (i) any material provision of a Transaction Document ceases for any reason to be in full force and effect or becomes void, voidable or unenforceable;
 - (ii) any law suspends, varies, terminates or excuses performance by an Obligor of any of its material obligations under a Transaction Document or purports to do any of the same;
 - (iii) it becomes impossible or unlawful for an Obligor to perform any of its material obligations under a Transaction Document or for the Creditors to exercise all or any of their rights, powers and remedies under a Transaction Document; or
 - (iv) an Obligor alleges that a Transaction Document has been affected as described in this paragraph;
- (l) **(ownership of Borrower)** any Borrower ceases to be directly or indirectly fully owned and controlled by the Guarantor;
- (m) **(Authorisation)** any Authorisation necessary in connection with the execution, delivery or performance by an Obligor of the Transaction Documents, or the validity or enforceability of the Transaction Documents, is not granted or ceases to be in full force and effect for any reason or is modified or amended in a manner which, in the reasonable opinion of all Creditors, would have a Material Adverse Effect; or
- (n) **(material change)** a change occurs in the financial condition of the Group (as a whole, but excluding the Excluded Entities) which has a Material Adverse Effect.

10.2 Consequences of default

If an Event of Default is continuing, a Creditor (or, in the case of a syndicated facility, an agent or trustee acting on the instructions of the Majority Creditor) may declare at any time by notice to the Obligors' Agent that:

- (a) an amount equal to all or any part of the Outstanding Moneys payable to the Creditor (or, in the case of a syndicated facility, the facility agent) is:
 - (i) payable on demand; or
 - (ii) immediately due for payment;
- (b) the obligations of the Creditor specified in the notice are terminated and cancelled.

A Creditor (or, in the case of a syndicated facility, the facility agent) may make either or both of these declarations. The making of either of them gives immediate effect to its provisions.

11 Review events

If, at any time after the date of a Facility Agreement and for any reason, whether or not within the control of the Obligors:

- (a) a Change of Control occurs;
- (b) the securities of the Guarantor are suspended from quotation by ASX for more than 10 Business Days or the Guarantor is removed from the Official List of ASX; or
- (c) provisions made by the Group in accordance with GAAP for asbestos related liabilities (if any) not arising in connection with the AFFA exceed 15% of Consolidated Net Worth at that time (with Consolidated Net Worth for this purpose calculated by adding back all such asbestos related liabilities under this paragraph (c), ignoring the 15% cap),

then the Guarantor must notify each Creditor (or, in the case of a syndicated facility, the facility agent) in writing of the occurrence of the event as soon as reasonably practicable. A Creditor may, by notice to any Borrower (with a reasonably detailed explanation of the reasons for its election to discontinue funding that Borrower) within 60 days of the date of receipt of notice from the Guarantor:

- (d) cancel its commitment to provide financial accommodation under the relevant Facility Agreement with immediate effect; and/or
- (e) declare the moneys borrowed under the relevant Facility Agreement to be, and the borrowed moneys will be, due and payable on a date no earlier than 90 days from the date of the Creditor's notice.

12 Costs and indemnities

12.1 What the Borrower agrees to pay

Each relevant Borrower agrees to pay a Creditor promptly on demand to the Obligors' Agent from that Creditor (except in the case of a Creditor under a syndicated facility, in which case demand must be made by the facility agent):

- (a) the reasonable Costs of each Creditor in connection with:
 - (i) the registration of any Transaction Document; and
 - (ii) giving and considering consents, waivers, variations, discharges and releases requested by the relevant Borrower, the Guarantor or the Obligors' Agent;
- (b) the Costs of each Creditor in exercising, enforcing or preserving rights in connection with a Transaction Document; and
- (c) Taxes and fees (including registration fees) (other than Excluded Taxes) and fines and penalties in respect of fees paid in connection with any Transaction Document or a payment or receipt or any other transaction contemplated by any Transaction Document. However, the relevant Borrower need not pay a fine or penalty in connection with Taxes or fees to the extent that it has lodged with the relevant Creditor sufficient cleared funds for the relevant Creditor to be able to pay the Taxes or fees by the due date.

This clause 12.1 shall not apply to any amounts, which have otherwise been paid or compensated for under a Transaction Document.

12.2 Indemnity

Each relevant Borrower indemnifies each Creditor against any claim, action, damage, loss, liability, cost, charge, expense, outgoing and payment of Break Costs which that Creditor pays, suffers, incurs or is liable for in connection with:

- (a) any failure by the relevant Borrower to draw down financial accommodation requested by it under a Transaction Document for any reason except default of a Creditor;
- (b) financial accommodation under a Transaction Document being repaid, discharged or made payable other than at its maturity, an interest payment date or other due date applicable to it;
- (c) any failure to prepay any part of the amount outstanding to a Creditor in accordance with a prepayment notice given under a Facility;
- (d) a Creditor acting in connection with a Transaction Document in good faith on fax or telephone instructions which have no apparent irregularity on their face, purport to originate from the offices of an Obligor or to be given by an Authorised Officer of an Obligor which,

in the case of fax instructions, are signed and such signature accords with a current specimen signature of an Authorised Officer in the possession of the Creditor;

- (e) an Event of Default or Potential Event of Default;
- (f) a Creditor exercising or attempting to exercise a right or remedy in connection with a Transaction Document after an Event of Default; or
- (g) any indemnity a Creditor gives a Controller or administrator of the Obligor.

Each Borrower agrees to pay amounts due under this indemnity on demand to the Obligors' Agent from the applicable Creditor (except in the case of a Creditor under a syndicated facility, in which case demand must be made by, and payment must be made to the facility agent).

12.3 Currency conversion on judgment debt

If a judgment, order or proof of debt for an amount in connection with a Transaction Document is expressed in a currency other than that in which the amount is due under the Transaction Document, then the relevant Borrower indemnifies each Creditor against:

- (a) any difference arising from converting the other currency if the rate of exchange used by the Creditor under clause 4.2 ("Currency of payment") for converting currency when it receives a payment in the other currency is less favourable to the Creditor than the rate of exchange used for the purpose of the judgment, order or acceptance of proof of debt; and
- (b) the Costs of conversion.

Each Borrower agrees to pay amounts due under this indemnity to a Creditor on demand from that Creditor (except in the case of a Creditor under the syndicated facility, in which case demand must be made by the facility agent).

12.4 Indirect Taxes

- (a) All payments to be made by an Obligor under or in connection with any Transaction Document have been calculated without regard to Indirect Tax. If all or part of any such payment is the consideration for a taxable supply or chargeable with Indirect Tax then, when the Obligor makes the payment:
 - (i) it must pay to the Creditor an additional amount equal to that payment (or part) multiplied by the appropriate rate of Indirect Tax; and
 - (ii) the Creditor will promptly provide to the Obligor a tax invoice complying with the relevant law relating to that Indirect Tax.

- (b) Where a Transaction Document requires an Obligor to reimburse a Creditor for any costs or expenses, that Obligor shall also at the same time pay and indemnify that Creditor against all Indirect Tax incurred by that Creditor in respect of the costs or expenses save to the extent that that Creditor is entitled to repayment or credit in respect of the Indirect Tax. The Creditor will promptly provide to the Obligor a tax invoice complying with the relevant law relating to that Indirect Tax.

13 Interest on overdue amounts

13.1 Obligation to pay

If an Obligor does not pay any amount under any Transaction Document (including an amount of interest payable under this clause 13.1 on the due date for payment, that Obligor must pay interest on that amount at the Default Rate. The interest accrues daily from (and including) the due date to (but excluding) the date of actual payment and is calculated on actual days elapsed and either a 360 or 365 day year, whichever is the length of time customarily adopted for such calculations for the currency in which the relevant amount is denominated.

The relevant Obligor must pay interest under this clause to the relevant Creditor.

13.2 Compounding

Interest payable under clause 13.1 (“Obligation to pay”), which is not paid when due for payment, may be added to the overdue amounts by the relevant Creditor on the last Business Day of each calendar month. Interest is payable on the increased overdue amount at the Default Rate in the manner set out in clause 13.1 (“Obligation to pay”).

13.3 Interest following judgment

If a liability becomes merged in a judgment, the relevant Obligor must pay interest on the amount of that liability as an independent obligation. This interest:

- (a) accrues daily from (and including) the date the liability becomes due for payment both before and after the judgment up to (but excluding) the date the liability is paid; and
- (b) is calculated at the judgment rate or the Default Rate (whichever is higher).

The relevant Obligor must pay interest under this clause 13 to the relevant Creditor on demand from the relevant Creditor.

Part 3 General

14 Change of Borrowers

14.1 New Borrowers

A Wholly Owned Subsidiary of the Guarantor may, with the consent of each relevant Creditor, become a party to this amended and restated deed as a Borrower (after the date of this amended and restated deed) by:

- (a) signing and delivering to each relevant Creditor (or, in the case of a syndicated facility, the facility agent) a deed poll substantially in the form of schedule 3 ("Form of New Borrower Deed Poll"); and
- (b) doing any other thing the relevant Creditors reasonably request to ensure the enforceability of that company's obligations as a Borrower and, if requested, agrees to provide an opinion in form and substance satisfactory to the relevant Creditors from legal advisers of recognised standing acceptable to the relevant Creditors in that company's place of incorporation confirming such enforceability.

The Guarantor will confirm in writing to each relevant Creditor that the Guarantee Trust Deed applies to the borrowings of the new Borrower under the relevant Facility Agreements.

14.2 Release of Borrowers

- (a) The Guarantor may request that a Borrower cease to be a Borrower by giving to each relevant Creditor (or, in the case of a syndicated facility, the facility agent) a duly completed Release Request executed by an Authorised Officer of the Guarantor and the Borrower that is, subject to the remaining provisions of this clause, to cease being a Borrower.
- (b) On giving a Release Request to the Creditor (or, in the case of a syndicated facility, the facility agent) pursuant to clause 14.2(a), the Guarantor and the Borrower identified in that Release Request represent and warrant to the Creditor that no Event of Default or Potential Event of Default is outstanding or would result from the release of that Borrower from its obligations under this amended and restated deed.
- (c) The Creditor (or, in the case of a syndicated facility, the facility agent) must, as soon as reasonably practicable after receiving a Release Request, execute a Deed of Release releasing the Borrower identified in the Release Request from its obligations under this amended and restated deed if, and only if:
 - (i) no amount due and payable to that Creditor by that Borrower under this amended and restated deed remains outstanding and unpaid; and

- (ii) that Creditor is not committed to providing further financial accommodation to that Borrower pursuant to any Facility.
- (d) The Borrower identified in the Release Request will cease to be a Borrower when the Creditor (or, in the case of a syndicated facility, the facility agent) executes a Deed of Release in respect of that Borrower.

15 Dealing with interests

15.1 Dealings by Obligor

An Obligor may only assign or otherwise deal with its rights or obligations under any Transaction Document with the consent of each Creditor.

15.2 Dealings by Creditors

A Creditor may assign, transfer, sub-participate or otherwise deal with all or any of its rights or obligations under a Transaction Document at any time if:

- (a) the Obligors' Agent has given its prior consent, which consent shall not be unreasonably withheld;
- (b) in respect of any Dutch Borrower, the assignment, transfer, sub-participation or other dealing is to or with a PMP; and
- (c) in the case of a transfer of obligations, the transfer is effected by a novation in form and substance reasonably satisfactory to the relevant Borrower.

15.3 Change in lending office

A Creditor may change its lending office if it first notifies and consults with the Obligors' Agent. If this occurs, clause 15.5 will apply.

15.4 Securitisation permitted

- (a) Subject to clause 15.4(b), a Creditor may, without having to obtain the consent of or notify any Obligor, assign, transfer, sub-participate or otherwise deal with all or any part of its rights and benefits under any Transaction Document to a trustee of a trust, company or other entity which in each case is established for the purposes of securitisation and, to the extent required for the Dutch Borrower to comply with the Banking Act on the Financial Supervision is a PMP.
- (b) Notwithstanding any assignment, transfer, sub-participation or other dealing by that Creditor under clause 15.4(a):
 - (i) that Creditor remains bound by, and must continue to perform all its obligations under the Transaction Documents;
 - (ii) that Creditor is the only person entitled to exercise any power, and no assignee, transferee, sub-participant or other person

who obtains an interest in any of the rights or benefits of that Creditor under the Transaction Documents pursuant to clause 15.4(a) may do so; and

- (iii) any amount payable by the Obligors to that Creditor under any Transaction Document will, if paid by an Obligor to that Creditor, operate as an effective discharge of the Obligor's obligation to make that payment.

(c) Nothing done by a Creditor under this clause 15.4 will affect any Obligor's rights under any Transaction Documents.

15.5 No increased costs

Despite anything to the contrary in this amended and restated deed or the Transaction Documents, if a Creditor changes its lending office or transfers, assigns, novates or otherwise deals with its rights or obligations under the Transaction Documents, then no Obligor will be required to pay:

- (a) any net increase in the total amount of fees, Taxes, costs, expenses or charges which arises as a consequence of the change in lending office, transfer, assignment, novation or other dealing; or
- (b) any fees, Taxes, costs, expenses or charges in respect of the change in lending office, transfer, assignment, novation or other dealing.

A substitution will be regarded as a transfer for the purposes of this clause 15.5.

15.6 Professional Market Party (PMP)

For so long as JHIF is an Obligor, the Obligors acknowledge that unless the Creditors are notified in writing by the Obligors' Agent of a change in the meaning of "PMP" as defined in the Act on the Financial Supervision, the Creditors will rely on, and will not independently investigate, the definition of PMP set out in this amended and restated deed for the purpose of complying with the requirements of clause 15.2(b) and 15.4(a).

16 Obligors' Agent

16.1 Obligors' Agent as agent of the Obligors

Each Obligor (other than the Obligors' Agent):

- (a) irrevocably authorises the Obligors' Agent to act on its behalf as its agent in relation to the Transaction Documents, including:
 - (i) to give and receive as agent on its behalf all notices and instructions (including drawdown notices);
 - (ii) to sign on its behalf all documents in connection with the Transaction Documents (including amendments and

variations of any Transaction Documents, and to execute any new Transaction Documents); and

(iii) to take such other action as may be necessary or desirable under or in connection with the Transaction Documents; and

(b) confirms that it will be bound by any action taken by the Obligors' Agent under or in connection with the Transaction Documents.

16.2 Acts of Obligors' Agent

(a) The respective liabilities of each of the Obligors under the Transaction Documents shall not be in any way affected by:

(i) any actual or purported irregularity in any act done or failure to act by the Obligors' Agent;

(ii) the Obligors' Agent acting (or purporting to act) in any respect outside any authority conferred upon it by any Obligor; or

(iii) any actual or purported failure by or inability of the Obligors' Agent to inform any Obligor of receipt by it of any notification under the Transaction Documents.

(b) In the event of any conflict between any notices or other communications of the Obligors' Agent and any other Obligor, those of the Obligors' Agent shall prevail.

17 Notices

17.1 Form

Unless expressly stated otherwise in a Transaction Document, all notices, certificates, consents, approvals, waivers and other communications in connection with that Transaction Document ("**Notices**") must be in writing, signed by an Authorised Officer of the sender and marked for attention as set out or referred to in the Details of this amended and restated deed or another Transaction Document or, if the recipient has notified otherwise, marked for attention in the way last notified.

17.2 Delivery

Notices must be:

(a) delivered to the address set out or referred to in this amended and restated deed or as set out as the recipient's relevant address in another Transaction Document; or

(b) sent by prepaid post (airmail, if appropriate) to the address set out or referred to in the Details or as set out as the recipient's address in another Transaction Document; or

(c) sent by fax to the fax number set out or referred to in the Details or as set out as the recipient's relevant fax number in another Transaction Document. However, if the intended recipient has notified a changed postal address or changed fax number, then the communication must be to that address or number.

17.3 When effective

Notices take effect from the time they are received unless a later time is specified in them.

17.4 Receipt — postal

If sent by post, Notices are taken to be received three Business Days after posting (or five Business Days after posting if sent across national boundaries).

17.5 Receipt — fax

If sent by fax, Notices are taken to be received at the time shown in the transmission report as the time that the whole fax was sent.

17.6 Receipt — general

Despite clauses 17.4 ("Receipt — postal") and 17.5 ("Receipt — fax"), if Notices are received after 5:00pm in the place of receipt or on a non-Business Day, they are taken to be received at 9:00am on the next Business Day.

17.7 Notices to or from facility agent

A Notice to or from a facility agent appointed under a syndicated facility constitutes sufficient notice to or from the Creditors under that Facility Agreement for the purposes of this amended and restated deed.

17.8 Waiver of notice period

The Majority Creditor may waive a period of notice required to be given by an Obligor under any Transaction Document.

18 General

18.1 Consents

Each Obligor agrees to comply with all conditions in any consent a Creditor gives in connection with a Transaction Document if the Obligor relies on that consent in performing its obligations under the Transaction Documents.

18.2 Certificates

A Creditor may give an Obligor a certificate about an amount payable or other matter in connection with a Transaction Document. Subject to any applicable provision of the Transaction Documents specifying the form or

content of the certificate (including clause 6.2 of this amended and restated deed), the certificate is sufficient evidence of the amount or matter, unless it is proved to be incorrect.

18.3 Set-off

At any time after a declaration is made under clause 10.2 of this amended and restated deed, the Creditor making the declaration (or on whose behalf a declaration was made by a facility agent for a syndicate of financiers) may set off any amount due for payment by the Creditor to an Obligor against any amount due for payment by the Obligor to the Creditor under the Transaction Document.

18.4 Discretion in exercising rights

A Creditor may exercise a right or remedy or give or refuse its consent under a Transaction Document in any way it considers appropriate (including by imposing conditions).

18.5 Partial exercising of rights

If a Creditor does not exercise a right or remedy under a Transaction Document fully or at a given time, the Creditor may still exercise it later.

18.6 No liability for loss

No Creditor is liable for loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising, a right or remedy under a Transaction Document.

18.7 Conflict of interest

A Creditor's rights and remedies under any Transaction Document may be exercised even if this involves a conflict of duty or the Creditor has a personal interest in their exercise.

18.8 Remedies cumulative

The rights and remedies of a Creditor under any Transaction Document are in addition to other rights and remedies given by law independently of the Transaction Document.

18.9 Indemnities

Any indemnity in a Transaction Document is a continuing obligation, independent of each Obligor's other obligations under that Transaction Document and continues after the Transaction Document ends. It is not necessary for a Creditor to incur expense or make payment before enforcing a right of indemnity under a Transaction Document.

18.10 Rights and obligations are unaffected

Rights given to a Creditor under a Transaction Document and each Obligor's liabilities under it are not affected by anything which might otherwise affect them at law.

18.11 Inconsistent law

To the extent permitted by law, each Transaction Document prevails to the extent it is inconsistent with any law.

18.12 Supervening legislation

Any present or future legislation which operates to vary the obligations of any Obligor in connection with a Transaction Document with the result that a Creditor's rights, powers or remedies are adversely affected (including by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

18.13 Variation

A provision of a Transaction Document, or right created under it, may not be varied except in writing signed by the party or parties to be bound (whether directly or through a properly authorised agent or attorney). A provision of this amended and restated deed may only be amended by agreement between the Obligors and each relevant Creditor.

18.14 Waiver

A provision of this amended and restated deed or right created under it may not be waived except in writing by the party granting the waiver.

18.15 Confidentiality

No Obligor or Creditor may disclose information provided by any party to a Transaction Document that is not publicly available (including the existence of or contents of any Transaction Document) except:

- (a) to any person in connection with an exercise of rights or (subject to compliance with clause 15 a dealing with rights or obligations under a Transaction Document (including when a Creditor consults other Creditors after an Event of Default or in connection with preparatory steps such as negotiating with any potential assignee or potential sub-participant or other person who is considering contracting with the Creditor in connection with a Transaction Document);
- (b) on a confidential basis, to officers, employees, legal and other advisers and auditors of any Obligor or Creditor;
- (c) on a confidential basis, to any party to a Transaction Document or any Related Entity of any party to a Transaction Document;
- (d) with the consent of the party who provided the information (such consent not to be unreasonably withheld); or

- (e) as required by any law or stock exchange or any Governmental Agency (including for Australian, US, Irish and Dutch tax authorities, in each case to the extent applicable).

Each Obligor and Creditor is taken to consent to disclosures made in accordance with this clause 18.15.

18.15A Creditor's compliance with law

Each Obligor consents to a Creditor obtaining, verifying, recording and/or disclosing to any Government Agency all information concerning that Obligor, the Transaction Documents and the transactions contemplated thereunder which the Creditor is required by the law of any country (including, without limitation, laws relating to money laundering and/or the financing of terrorism) to obtain, verify, record and/or disclose. The Obligors agree to provide all information to the Creditor that the Creditor reasonably requires to comply with any such law.

18.16 No responsibility for other's obligations

If a Creditor does not comply with its obligations under a Transaction Document, this does not relieve any other Creditor or an Obligor of any of their respective obligations. No party is responsible for the obligations of another party.

18.17 Further steps

Each Obligor agrees to do anything a Creditor reasonably asks (such as obtaining consents, signing and producing documents and getting documents completed and signed):

- (a) to bind the Obligor and any other person intended to be bound under a Transaction Document;
- (b) to enable a Creditor to register any power of attorney or any Transaction Document; or
- (c) to show whether the Obligor is complying with this amended and restated deed.

18.18 Counterparts

A Transaction Document may consist of a number of copies, each signed by one or more parties to the document. If so, the signed copies are treated as making up the one document.

18.19 Governing law

Each Transaction Document is governed by the law in force in New South Wales. Each Obligor submits to the non-exclusive jurisdiction of the courts of that place.

18.20 Serving documents

Subject to clause 18.21 (“Process Agent”) and without preventing any other method of service, any document in a court action may be served on a party by being delivered to or left at that party’s address for service of notices under clause 17 (“Notices”).

18.21 Process Agent

Each Non-Australian Obligor appoints James Hardie Australia Pty Limited (ABN 12 084 635 558) of Level 3, 22 Pitt Street, Sydney NSW 2000 (Attention: The Company Secretary) as its agent for service of process to receive any document in connection with the Transaction Documents. If for any reason James Hardie Australia Pty Limited (ABN 12 084 635 558) ceases to be able to act as process agent for the Non-Australian Obligor, the Non-Australian Obligor must promptly appoint another person in New South Wales to act as its process agent and must promptly notify each Creditor (or, in the case of a syndicated facility, the facility agent) of that appointment.

18.22 Each Creditor’s consent to this amended and restated deed

The terms of this amended and restated deed will take effect (and prevail over the terms of the Previous Deeds) as between the Obligors and a Creditor only after that Creditor has provided its written consent to the Obligors in respect of this amended and restated deed and until that time the Previous Deeds will apply as between the Obligors and that Creditor.

Subject to the above paragraph, the Previous Deeds remain in full force and effect.

EXECUTED as a deed poll

© Mallesons Stephen Jaques
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James Hardie — Common Terms Deed Poll



[name]
[address]
Tel [insert]
Fax [insert]

To: [Name of financier]

US\$ [•] Facility Agreement dated [•] 20## between [Name of Borrower] and [Name of financier] (“Facility Agreement”)

I [name] am a director of [James Hardie International Finance B.V. (with corporate seat in Amsterdam) / James Hardie International Finance Limited (with a registered office in Dublin) / James Hardie Industries N.V. (with corporate seat in Amsterdam) / James Hardie Building Products, Inc. (incorporated in Delaware)] (“**Company**”). I refer to the Facility Agreement. Definitions in the Facility Agreement apply in this Certificate.

I CERTIFY as follows:

1 Attached to this Certificate is a complete and up to date copy of:

- (a) the constituent documents of the Company; and
- (b) a written resolution of the board of directors of the Company and power of attorney in the name of the Company, evidencing resolutions of the board of directors of the Company approving execution of those of the following documents to which the Company is expressed to be a party, appointing attorneys for that purpose and appointing Authorised Officers of the Company for the purposes of those documents:
 - (i) the Facility Agreement;
 - (ii) the Common Terms Deed Poll; and
 - (iii) any Beneficiary Nomination Letter, Facility Nomination Letter or Financier Nomination Letter in relation to the Facility Agreement.

Those resolutions and that power of attorney have not been amended, modified or revoked and are in full force and effect.

2 Set out below are specimen signatures of the Authorised Officers of the Company.

Authorised Officers#

Name	Position	Signature
*	*	<hr/>
*	*	<hr/>
*	*	<hr/>

One of the Authorised Officers must be the chief financial officer, treasurer or principal accounting officer of the Group (see clause 9.7 of the Common Terms Deed Poll).

DATED 2008

Name:

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James Hardie — Common Terms Deed Poll

James Hardie — Common Terms Deed Poll

Schedule 2 — Facility Nomination Letter
(clause 2.1)



James Hardie

**James Hardie International
Finance B.V.**

Atrium, Unit 08
Strawinskylaan 3077
1077 ZX Amsterdam
The Netherlands

Tel +31 20 3012980
Fax +31 20 4042544

To: [*Creditor*]

[*Date*]

James Hardie — Common Terms Deed Poll — Facility Nomination Letter

We refer to the James Hardie — Common Terms Deed Poll as amended and restated on [•] 2009 (“CTDP”).

For the purposes of the CTDP, on and from the date of this letter:

1. we nominate [each of] the following agreement[s] as a Facility Agreement:

Name: [•]

Date: [•]

Parties: [•]

[*repeat as necessary*]

2. the agreement, and each document named or referred to as a [“Financing Document”] in such agreement, is a Transaction Document for the purposes of the CTDP; and
3. we nominate you as a “Creditor” pursuant to that Facility Agreement.

Please confirm your acceptance of the above nomination, and the benefit and obligations of the CTDP, by signing and returning the attached copy of this letter.

Clauses 1 (“Interpretation”) and 18.19 (“Governing law”) of the CTDP described above apply to this letter as they were fully set out in this letter.

For and on behalf of

James Hardie International Finance B.V. as Obligors’ Agent

(with corporate seat in Amsterdam)

Authorised Officer: [*Name*]

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James Hardie — Common Terms Deed Poll

We accept and agree to the above nomination. We accept the benefit and obligations of the CTDP, and we agree to be bound by the terms of that deed.

* If JHIF is an Obligor, add the following sentence: We confirm that we are *[insert relevant category of PMP, eg, a company from which redeemable funds will be obtained in an amount of at least EUR 50,000 (or the equivalent in another currency)]* and accordingly we are a PMP within the meaning of the CTDP. In making this representation, we rely on, and have not independently investigated, the definition of PMP set out in the CTDP.

For and on behalf of ***[Insert name of Creditor]***

by its Authorised Officer

Name:

Title:

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James Hardie — Common Terms Deed Poll

James Hardie — Common Terms Deed Poll

Schedule 3 — Form of New Borrower Deed Poll
(clause 14.1)

Deed Poll

New Borrower *[Insert name and ABN/ACN or other registration number]*

of: *[Insert address]*

Fax no:

Attention:

CTDP James Hardie — Common Terms Deed Poll as amended and restated on [] 2009

BY THIS DEED POLL the New Borrower described above, for the benefit of each Creditor under the CTDP described above:

- (a) irrevocably agrees that from the date of this deed poll it is a Borrower under the CTDP;
- (b) irrevocably agrees to comply with and be bound by all current and future obligations of a Borrower or an Obligor under the CTDP or any other Transaction Document to which it is a party;
- (c) acknowledges having read a copy of the CTDP before signing this deed poll;
- (d) gives, as at the date of this deed poll, all representations and warranties on the part of a Borrower or an Obligor contained in the CTDP; and
- (e) acknowledges receiving valuable consideration for this deed poll.

Clauses 1 (“Interpretation”) and 18.19 (“Governing law”) of the CTDP described above apply to this deed poll as if they were fully set out in this deed poll.

DATED *[Insert Date]*

EXECUTED as a deed poll

[Insert execution clause for New Borrower and, if it is a Dutch company, its corporate seat]

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James Hardie — Common Terms Deed Poll

James Hardie — Common Terms Deed Poll

Schedule 4 — Form of Release Request
(clause 14.2)

[Date]

To: [Each relevant Creditor]

James Hardie — Common Terms Deed Poll — Release Request

We refer to the deed entitled James Hardie — Common Terms Deed Poll as amended and restated on [•] 2009 (“CTDP”).

(a) **Release request**

We request each of you release [Insert name of retiring Borrower] (“Retiring Borrower”) from all liability under the CTDP pursuant to the attached Deed of Release.

(b) **Representation and warranty**

We represent and warrant that no Event of Default or Potential Event of Default is continuing or will result from the release of the Retiring Borrower.

Clause 1 of the CTDP applies to this Release Request as if it was fully set out in this Release Request.

For and on behalf of
James Hardie Industries N.V.
(with corporate seat in Amsterdam)

For and on behalf of
[Insert the **name of the retiring Borrower** and, if it is a Dutch company, its
corporate seat]

Authorised Officer: [Name]

Authorised Officer: [Name]

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James Hardie — Common Terms Deed Poll

James Hardie — Common Terms Deed Poll

Signing page

DATED: 2009

SIGNED, SEALED AND DELIVERED by)

and)

as attorneys for JAMES HARDIE INTERNATIONAL FINANCE B.V. under power of attorney dated)

in the presence of:)

Signature of witness)

Name of witness (block letters))

SIGNED, SEALED AND DELIVERED by)

and)

as attorneys for JAMES HARDIE INTERNATIONAL FINANCE LIMITED under power of attorney dated)

in the presence of:)

Signature of witness)

Name of witness (block letters))

By executing this amended and restated deed each attorney states that the attorney has received no notice of revocation of the power of attorney

By executing this amended and restated deed each attorney states that the attorney has received no notice of revocation of the power of attorney

**SIGNED, SEALED AND
DELIVERED** by

and

as attorneys for **JAMES HARDIE
BUILDING PRODUCTS, INC.**
under power of attorney dated

in the presence of:

Signature of witness

Name of witness (block letters)

**SIGNED, SEALED AND
DELIVERED** by

and

as attorneys for **JAMES HARDIE
INDUSTRIES N.V.** under power of
attorney dated

in the presence of:

Signature of witness

Name of witness (block letters)

By executing this amended and
restated deed each attorney states that
the attorney has received no notice of
revocation of the power of attorney

By executing this amended and
restated deed each attorney states that
the attorney has received no notice of
revocation of the power of attorney

MALLESONS STEPHEN JAQUES

James Hardie — Common Terms Deed Poll

Amended and restated on 21 December 2009

James Hardie International Finance Limited (“**JHIFL**”)

James Hardie Building Products, Inc. (“**JHBP**”)

James Hardie Industries N.V. (“**Guarantor**”)

Mallesons Stephen Jaques

Level 61

Governor Phillip Tower

1 Farrer Place

Sydney NSW 2000

Australia

T +61 2 9296 2000

F +61 2 9296 3999

DX 113 Sydney

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Ref: GNH:YYC

James Hardie — Common Terms Deed Poll

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James Hardie — Common Terms Deed Poll

Details

Interpretation – Definitions are in clause 1.

Parties	JHIFL, JHBP and the Guarantor , each as described below.	
JHIFL	Name	James Hardie International Finance Limited
	Corporate seat	Dublin
	Registration Number	471702
	Address	Europa House Second Floor Harcourt Centre Harcourt Street Dublin 2 Ireland
	Fax	+ 353 1 479 1128
	Attention	Treasurer
	JHBP	Name
Incorporated in		Nevada
Address		Suite 100 26300 La Alameda Mission Viejo CA 92691 United States of America
Fax		+ 1 949 348 4534
Attention		Company Secretary
Guarantor		Name
	Corporate seat	Amsterdam
	Registered Number	34106455
	ABN	49 097 829 895
	Address	8th Floor, Atrium, Unit 08 Strawinskylaan 3077 1077 ZX Amsterdam The Netherlands

Fax + 31 20 404 2544

Attention Managing Director and Company Secretary

In favour of: Each Creditor as defined in this amended and restated deed.

Date of deed See Signing page

Recitals

- A This amended and restated deed amends and restates the “James Hardie — Common Terms Deed Poll” dated 15 June 2005 as amended by the “CTDP Amendment Deed and New Borrower Deed Poll” dated 12 January 2006 and as further amended and restated on 20 February 2008 and 6 October 2009 (together, the “**Previous Deeds**”).
- B The amendment and restatement of the Previous Deeds does not affect the nomination of any Person as a Creditor nor the nomination of any document as a Facility Agreement or Transaction Document prior to the execution of this amended and restated deed.
- C The amendment and restatement of the Previous Deeds only applies to a Financier which has agreed to the changes made to the Previous Deeds by the amendment and restatement..

James Hardie — Common Terms Deed Poll

General terms

1 Interpretation

1.1 Definitions

These meanings apply unless the contrary intention appears:

A\$, AUD or Australian Dollars means the lawful currency of Australia.

AFFA means the document entitled “Amended & Restated Final Funding Agreement in respect of the provision of long term funding for compensation arrangements for certain victims of Asbestos-related diseases in Australia” dated 21 November 2006 between the Guarantor, James Hardie 117 Pty Limited (formerly known as LGTDD Pty Limited), the State of New South Wales and the Asbestos Injuries Compensation Fund Limited in its capacity as trustee of the Asbestos Injuries Compensation Fund.

Amended and Restated Trust Deed means the Asbestos Injuries Compensation Fund Amended and Restated Trust Deed dated 14 December 2006 between the Guarantor and Asbestos Injuries Compensation Fund Limited.

Asbestos Injuries Compensation Fund has the meaning given to it in the Amended and Restated Trust Deed.

ASX means the stock exchange operated by ASX Limited.

ASX CNW Announcement means any release of information by the Guarantor through the ASX concerning any event or circumstance affecting the financial position of the Group in a manner which would affect the calculation of Consolidated Net Worth and which sets out specific details of the balance sheet impact of such event or circumstance.

ASX CNW Announcement Date means the date on which an ASX CNW Announcement is made.

Authorisation means:

- (a) any consent, registration, filing, agreement, notarisation, certificate, licence, approval, permit, authority or exemption from, by or with a Government Agency; and
- (b) any consent or authorisation regarded as given by a Government Agency due to the expiration of the period specified by a statute within which the Government Agency should have acted if it wished to proscribe or limit anything already lodged, registered or notified under that statute.

Authorised Officer means:

- (a) in the case of a Creditor, a director or secretary of the Creditor, or an officer of that party whose title contains the word “director”, “chief”, “head”, “president”, “vice-president”, “executive” or “manager”, or a person performing the functions of any of them, or any other person appointed by the Creditor as an Authorised Officer for the purposes of a Transaction Document; and
- (b) in the case of an Obligor, a person appointed by the Obligor and notified to the Creditor as an Authorised Officer for the purposes of a Transaction Document, and whose specimen signature is provided with such notification to the Creditor.

Beneficiary Nomination Letter means, in relation to a Creditor, the “Beneficiary Nomination Letter” (as that term is defined in the Guarantee Trust Deed) for that Creditor and one or more Facility Agreements for that Creditor.

Borrower means each of JHIFL, JHBP and any new borrower under clause 14.1 (“New Borrowers”) individually but not jointly. It excludes any person released pursuant to clause 14.2 (“Release of Borrowers”).

Break Costs means the actual costs and losses which a Creditor certifies (with reasonable details) that it has suffered or incurred by reason of:

- (a) the liquidation or re-employment of deposits or other funds acquired or contracted for by the Creditor to fund or maintain financial accommodation under a Facility; or
- (b) the termination or reversing of any agreement or arrangement entered into by the Creditor to hedge, fix or limit its effective cost of funding in relation to a Facility, but excluding any loss of margin.

Business Day means a weekday (not being a public holiday) on which:

- (a) in respect of a day on which the interest rate under a Facility Agreement is required to be determined and for the purposes of giving drawdown notices and selection notices under a Facility Agreement, banks are open for general banking business in London;
- (b) for the purposes of making or receiving any payments in US Dollars, banks are open for general banking business in London, New York and Sydney;
- (c) for the purpose of making or receiving any payments in another currency, banks are open for general banking business in such place or places specified in a relevant Facility Agreement; and
- (d) for all other purposes, banks are open for general banking business in Sydney, Dublin and (until the Irish Registration Date) Amsterdam and any other place specified in a relevant Facility Agreement.

Capital Lease means, at any time, a lease with respect to which the lessee is required concurrently to recognise the acquisition of an asset and the incurrence of a liability in accordance with GAAP.

Capital Lease Obligation means, with respect to any Group Member (other than an Excluded Entity) and a Capital Lease, the amount of the obligation of such Group Member as the lessee under such Capital Lease which would, in accordance with GAAP, appear as a liability on a balance sheet of such Group Member.

Change of Control means the Guarantor becoming a Subsidiary (as defined in the Corporations Act) of another person.

Charitable Fund has the meaning given to it in the AFFA.

Compensation Provision means, at any time, the aggregate amount (without double counting) of provisions made by the Group at that time in accordance with GAAP for asbestos related liabilities (including, without limitation, obligations to fund or pay compensation pursuant to the AFFA).

Consolidated Funded Capitalisation means, at any time, the sum of Consolidated Net Worth and Consolidated Funded Debt at that time.

Consolidated Funded Debt means, as of any date of determination, the total of all Funded Debt of the Group outstanding on that date, after eliminating:

- (a) all Funded Debt (if any) of the Excluded Entities; and
- (b) all offsetting debits and credits between any Group Members (excluding the Excluded Entities) and all other items required to be eliminated in the course of the preparation of consolidated financial statements of the Group in accordance with GAAP.

Consolidated Net Worth means, at any date of determination, the sum of:

- (a) the par value (or value stated in the books of the Group) of the capital stock (but excluding treasury stock and capital stock subscribed and unissued) of the Group; and
- (b) the amount of the paid-in capital and retained earnings of the Group,

plus the Compensation Provision on that date (and eliminating all other consequential balance sheet impacts relating to the Compensation Provision), in each case as such amounts would be shown on the consolidated balance sheet of the Group prepared:

- (i) as if the Excluded Entities were not Subsidiaries of the Guarantor (to the intent that the assets, liabilities and other balance sheet items of all Excluded Entities shall be excluded in calculating Consolidated Net Worth); and
- (ii) in accordance with GAAP,

but excluding all consequential balance sheet and other accounting impacts of any settlement or any court ruling of the "ATO – 1999 Disputed Amended Assessment" (as described in the financial statements of the Group and provided that the amount does not exceed the US Dollar equivalent of A\$445 million (calculated on the basis of the USD / AUD exchange rate quoted by the Reserve Bank of Australia on the date the consequential balance sheet and other

accounting impacts are recognised) plus accrued interest since 30 September 2009),

in each case, on:

- (A) the most recent Reporting Date; or
- (B) where applicable, on the most recent ASX CNW Announcement Date, to the extent such amounts have been adjusted to reflect the content of any ASX CNW Announcement which post-dates such balance sheet.

Consolidated Permitted External Financial Indebtedness means, as of any date of determination, the total of all Permitted External Financial Indebtedness of the Group outstanding on that date, after eliminating all offsetting debits and credits between any Group Members (excluding the Excluded Entities) and all other items required to be eliminated in the course of the preparation of consolidated financial statements of the Group in accordance with GAAP.

Controller has the meaning it has in the Corporations Act.

Corporations Act means the *Corporation Act 2001* of Australia.

Costs means costs, fees, disbursements, charges and expenses, including, without limitation where an Obligor is liable to pay or reimburse the Costs, those incurred in connection with advisers and, unless an Event of Default is subsisting, only for an amount and on a basis previously agreed to in writing by the Obligor.

Creditor means each party nominated as a “Creditor” under a Facility Nomination Letter (and includes in the case of any syndicated facility, the facility agent) and, if there are more than one, means each of them individually but not jointly. It does not include any Group Member.

Deed of Release means a deed poll in the form of schedule 5 (“Form of Deed of Release”).

Default Rate means, in respect of a Transaction Document, the rate of interest specified in that document as payable on any amount not paid under the document on the due date for payment.

Details means the section of this amended and restated deed headed “Details”.

Directive means:

- (a) a law; or
- (b) a treaty, official directive, regulation, request, guideline or policy (whether or not having the force of law) with which responsible financiers generally comply in carrying on their business.

Due Currency means, in respect of any payment to be made under a Transaction Document, the currency in which that payment is due.

EBIT means the operating profit of the Group, on a consolidated basis, before adjustments for:

- (a) significant, extraordinary, abnormal or exceptional items;
- (b) items recognised in connection with the Special Commission of Inquiry into Medical Research and Compensation Foundation and other related expenses; and
- (c) income tax,

but after:

- (d) adding back Net Interest Charges and all items referred to in paragraphs (a) to (c) of the definition of “Net Interest Charges” that were deducted in deriving the operating profit figure of the Group; and
- (e) eliminating all income, expense and other profit and loss statement impact of the Excluded Entities,

determined in each case by reference to the latest audited consolidated financial statements of the Group delivered under clause 9.6(b). It excludes any earnings from any Project Activities if these are derived from Project Vehicles or Project Property over which there exist Security Interests (unless such earnings have actually been received in cash by an Obligor).

Environmental Laws means any and all applicable statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licences, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any materials into the environment, including those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

Event of Default means an Event of Default set out in clause 10.1 (“Events of Default”).

Exchange Act means the Securities Exchange Act 1934 of the United States of America.

Excluded Entity means the Fund (and Asbestos Injuries Compensation Fund Limited in its personal capacity) and each of the following entities:

- (a) Amaba Pty Limited (ACN 000 387 342);
- (b) Amaca Pty Limited (ACN 000 035 512);
- (c) ABN 60 Pty Limited (ACN 000 009 263); and
- (d) Marlew Mining Pty Limited (formerly known as Asbestos Mines Pty Limited) (ACN 000 049 650),

and any other entity agreed in writing by the Guarantor and each Creditor (or, in the case of a syndicated facility, the facility agent).

Excluded Tax means:

- (a) a Tax imposed by any jurisdiction on or assessed against a Creditor as a consequence of the Creditor being a resident of or organised in or doing business in that jurisdiction, but not any Tax:

- (i) that is calculated on or by reference to the gross amount of a payment derived under a Transaction Document or another document referred to in a Transaction Document (without the allowance of a deduction);
 - (ii) that is imposed as a result of the Creditor being considered a resident or organised or doing business in that jurisdiction solely as a result of it being a party to a Transaction Document or a transaction contemplated by a Transaction Document; or
- (b) in relation to any payment by an Obligor resident or incorporated in the United States of America ("**US Obligor**"), any Tax payable by reason of the Creditor not being in receipt of such payment through, or such payment not being attributable to, a branch or lending office in the United States of America or by reason of the payment not being considered effectively connected income of a trade or business conducted within the United States of America by such branch or lending office (including, without limitation, any withholding tax payable under the laws of the United States of America in respect of interest due from a US Obligor under a Facility Agreement);
- (c) a Tax which would not be required to be deducted by an Obligor if, before the Obligor makes a relevant payment, the relevant Creditor provided the Obligor with written confirmation as to any of its name, address, registration number, country of residence for tax purposes (including whether the relevant Creditor carries on a trade or business in the Obligor's country of residence and/or incorporation through a branch or agency in connection with which the relevant Creditor receives the relevant payment) or similar details or any relevant tax exemption or similar details; or
- (d) in relation to any payment by an Irish Obligor, any Tax imposed by Ireland by reason of the Creditor to which the payment is made not being an Irish Qualifying Creditor.

Facility means any facility under a Facility Agreement.

Facility Agreement means each agreement to which a Creditor (together with any other persons) and a Borrower are party, which is nominated as a "Facility Agreement" in a Facility Nomination Letter.

Facility Nomination Letter means a letter substantially in the form set out in schedule 2 ("Facility Nomination Letter") to this deed prior to amendment and restatement or in the form set out in schedule 2 ("Facility Nomination Letter") to this amended and restated deed, in either case in favour of a person (not being a Group Member) providing financial accommodation to a Borrower (or any agent or trustee on that person's behalf).

Financial Indebtedness means, with respect to any Group Member, without double counting:

- (a) its liabilities for borrowed money (including all liabilities in respect of letters of credit (excluding letters of credit and performance guarantees posted in respect of payment of accounts payable arising in the ordinary

- course of business) or instruments serving a similar function issued or accepted for its account by banks and other financial institutions);
- (b) its liabilities for the deferred purchase price (for more than 90 days) of property acquired by such Group Member (excluding accounts payable arising in the ordinary course of business);
 - (c) its Capital Lease Obligations;
 - (d) all Preferred Stock of Subsidiaries (excluding the Excluded Entities) of such Group Member which is not owned by such Group Member or a Wholly Owned Subsidiary of such Group Member; and
 - (e) any Guarantee of such Group Member with respect to liabilities of a type described in any of paragraphs (a) to (d) of this definition.

Financial Year means each year ending on 31 March.

Financier Nomination Letter means, in relation to a Creditor, the “Financier Nomination Letter” (as that term is defined in the Intercreditor Deed) for that Creditor and one or more Facility Agreements for that Creditor.

Free Cash Flow has the meaning given to that term in the AFFA.

Fund means Asbestos Injuries Compensation Fund Limited as trustee for the Asbestos Injuries Compensation Fund.

Fund Guarantee has the meaning given to it in the Guarantee Trust Deed.

Funded Debt means, at any time, with respect to any Group Member (other than an Excluded Entity), all drawn and outstanding Financial Indebtedness (other than Non-Recourse Debt) of such Group Member owing to any person outside the Group (other than an Excluded Entity) at that time.

GAAP means generally accepted accounting principles as in effect from time to time in the United States of America.

Government Agency means any government or any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity having jurisdiction over, or in relation to the affairs of, a Group Member and, for the avoidance of doubt, includes, without limitation, the Australian Taxation Office, the US Internal Revenue Service, the Dutch tax authorities and the Irish Revenue Commissioners, in each case to the extent applicable.

Group means the Guarantor and its Subsidiaries and **Group Member** means any one of them.

Guarantee means any guarantee, suretyship, letter of credit, or any other obligation (whatever called and of whatever nature):

- (a) to provide funds (whether by the advance or payment of money, the purchase of or subscription for shares or other securities, the purchase of assets or services, or otherwise) for the payment or discharge of;

(b) to indemnify any person against the consequences of default in the payment of; or

(c) to be responsible for,

any debt or monetary liability of another person or the assumption of any responsibility or obligation in respect of the insolvency or the financial condition of any other person.

Guarantee and Subordination Documents means:

(a) the Guarantee Trust Deed;

(b) the Intercreditor Deed;

(c) each Beneficiary Nomination Letter; and

(d) each Financier Nomination Letter.

Guarantee Trust Deed means the deed entitled “Guarantee Trust Deed” dated 19 December 2006 between the Guarantor and AET Structured Finance Services Pty Limited.

Guarantor means the person so described in the Details.

Guarantor Financial Reports means the non-public financial or equivalent reports prepared in respect of the Guarantor (or separate reports prepared for each division of the Guarantor) for the purpose of preparing consolidated financial statements of the Group, the form and content of which is at the discretion of the Guarantor.

Indirect Tax means any goods and services tax, consumption tax, value added tax or any tax of a similar nature.

Intercreditor Deed means the deed so entitled dated 19 December 2006 between the State of New South Wales, the Guarantor, Asbestos Injuries Compensation Fund Limited in its capacity as trustee for the Charitable Fund and AET Structured Finance Services Pty Limited as amended by the letter dated 19 December 2006 between the same parties.

Irish Obligor means an Obligor resident or incorporated in Ireland.

Irish Qualifying Creditor means in respect of an Irish Obligor, a Creditor which at the time the payment is made, is beneficially entitled to the interest payable to that Creditor in respect of an advance under a Facility and is:

- (a) an entity which is, pursuant to Section 9 of the Central Bank Act, 1971 of Ireland, licensed to carry on banking business in Ireland and whose Facility office is located in Ireland and which is recognised by the Revenue Commissioners of Ireland as carrying on a bona fide banking business in Ireland for the purposes of Section 246(3)(a) of the Taxes Consolidation Act 1997 of Ireland (“TCA”) in circumstances where the payments are made from Ireland and which is regarded by the Revenue Commissioners of Ireland as having made the advance for the purposes of Section 246(3)(a) TCA;

- (b) an authorised credit institution under the terms of the European Union Consolidation Directive (Directive 2000/12/EC) that has duly established a branch in Ireland or has made all necessary notifications to its home state competent authorities required thereunder in relation to its intention to carry on banking business in Ireland and which is recognised by the Revenue Commissioners of Ireland as carrying on a bona fide banking business in Ireland for the purposes of Section 246(3)(a) TCA and has its Facility office located in Ireland in circumstances where the payments are made from Ireland and which is regarded by the Revenue Commissioners of Ireland as having made the advance for the purposes of Section 246(3)(a) TCA;
- (c) a company (within the meaning of Section 246(1) TCA) which is resident in a country with which Ireland has a double taxation treaty or resident in a member state of the European Communities (other than Ireland) where residence is determined under the tax laws of the relevant country or Member State (together a “Relevant Territory”), provided that such company does not provide its commitment through or in connection with a branch or agency in Ireland, and where the company has provided written confirmation of the foregoing to the Irish Obligor before the Irish Obligor makes a relevant payment;
- (d) a US company, where such company has provided written confirmation to the Irish Obligor that it is incorporated in the US and subject to tax in the US on its worldwide income provided that such company does not provide its commitment through or in connection with a branch or agency in Ireland; or
- (e) a Creditor which is entitled under a double taxation agreement between the jurisdiction in which such Creditor is resident for Tax purposes and Ireland, subject to the completion of any necessary procedural formalities, to receive all payments from the Irish Obligor without a tax deduction, where such Creditor has applied for and the relevant Irish Obligor has obtained authorisation from the Revenue Commissioners of Ireland to make payments without deduction of Irish tax, and where such authorisation remains in force and effect.

Irish Registration Date means the date on which the Guarantor is registered by the Registrar of Companies of Ireland as having its registered office in Ireland.

JHBP Financial Reports means the non-public financial or equivalent reports prepared in respect of JHBP (or separate reports prepared for each division of JHBP) for the purpose of preparing consolidated financial statements of the Group, the form and content of which is at the discretion of the Obligors.

JHIFL Financial Report means the non-public financial or equivalent reports prepared in respect of JHIFL for the purpose of preparing consolidated financial statements of the Group, the form and content of which is at the discretion of the Obligors.

JHT Undertaking means the deed poll dated on or about 25 September 2009 given by James Hardie Technology Limited in favour of the Creditors.

Majority Creditor means:

- (a) in relation to a syndicated or capital markets facility, the Creditors who form a “majority” (howsoever described) as defined under that Facility or all such Creditors, to the extent so required under that facility; and
- (b) in relation to a bilateral facility, the Creditor under that facility.

Material Adverse Effect means a material adverse effect on:

- (a) the ability of each Borrower to perform its obligations to pay Outstanding Moneys when the same are due or within any applicable grace period;
- (b) the ability of the Guarantor to perform its obligations under the Guarantee Trust Deed in favour of the Creditor when the same are due or within any applicable grace period; or
- (c) the validity or enforceability of the Transaction Documents.

Material Subsidiary means any Subsidiary of the Guarantor (other than an Excluded Entity) whose total assets at the time of determination (consolidated in the case of a Subsidiary which itself has one or more Subsidiaries) represent not less than 15% of Consolidated Net Worth at that time.

Net Interest Charges for a period means all interest and amounts in the nature of interest or of similar effect to interest, paid or payable by the Group (excluding the Excluded Entities), on a consolidated basis, less interest income received by or arising to the Group (excluding the Excluded Entities), on a consolidated basis, in the same period for which such Net Interest Charges are being determined, in each case by reference to the financial statements referred to in clause 9.6. It excludes:

- (a) any swap break or reset costs incurred and paid as part of any termination of any hedging or facility;
- (b) any break costs, early redemption premium, make-whole payments, liquidated damages or other penalties (howsoever described) incurred and paid in connection with the prepayment of any facility;
- (c) capitalising interest under any agreement for the provision of Financial Indebtedness to a Group Member which is in the nature of:
 - (i) a construction facility to fund capital expenditure to be undertaken by a Group Member (but only while that capitalising interest is not payable under the terms of that agreement); or
 - (ii) a capital-indexed or zero coupon debt instrument which contractually allows the capitalisation of interest;
- (d) establishment, arrangement, underwriting and other fees payable once only on the initial provision of financial accommodation; and
- (e) all interest and amounts in the nature of interest, and any other amounts of the kind referred to in paragraphs (a) to (d) above, relating to:

- (i) Subordinated Debt;
- (ii) hybrid capital;
- (iii) Non-Recourse Debt; or
- (iv) a loan under which financial accommodation is provided from one Group Member (not being an Excluded Entity) to another Group Member (not being an Excluded Entity).

New Borrower means a person who executes a New Borrower Deed Poll in accordance with clause 14.1 (“New Borrowers”).

New Borrower Deed Poll means each deed poll entered into by a New Borrower substantially in the form set out in schedule 3 (“Form of New Borrower Deed Poll”).

Non-Australian Obligor means an Obligor which is not resident or incorporated in Australia.

Non-Recourse Debt means any Project Debt if, and for so long as:

- (a) the person to whom the Project Debt is owed does not have recourse (whether by way of execution, set-off or otherwise) to a Group Member or its assets for the payment or repayment of the Project Debt other than to assets which the Security Interest (“**Project Securities**”) securing that Project Debt are permitted to extend to under paragraph (h) of the definition of Permitted Security Interest (that person, and any agent or trustee on that person’s behalf, being a “**Non-Recourse Financier**”);
- (b) the Non-Recourse Financier may not seek to wind up or place into administration, or pursue or make a claim in the winding up or administration of, any other Group Member to recover or to be repaid that Project Debt;
- (c) the Non-Recourse Financier cannot obtain specific performance or a similar remedy with respect to any obligation of another Group Member to pay or repay that Project Debt; and
- (d) the Non-Recourse Financier and any receiver, receiver and manager, agent or attorney appointed under the Project Securities, may not incur a liability on behalf of, or for the account of, a Group Member which liability itself is not subject to the above paragraphs as if references to Project Debt in those paragraphs included that liability.

For the avoidance of doubt, if Project Debt is incurred or owed by a Group Member which is not a Project Vehicle, then the tests in paragraphs (b) and (c) above must also be satisfied in respect of that Group Member in order for the Project Debt to qualify as Non-Recourse Debt.

Obligor means:

- (a) a Borrower; or
- (b) the Guarantor.

Obligors' Agent means JHIFL or another Borrower:

- (a) appointed by all the Borrowers and the Guarantor as Obligors' Agent;
- (b) which has accepted such appointment; and
- (c) whose appointment has been notified to all Creditors.

Outstanding Moneys means all debts and monetary liabilities of each Obligor to a Creditor under or in relation to any Transaction Document and in any capacity, irrespective of whether the debts or liabilities:

- (a) are present or future;
- (b) are actual, prospective, contingent or otherwise;
- (c) are at any time ascertained or unascertained;
- (d) are owed or incurred by, or on account of, that Obligor alone or severally or jointly with any other person;
- (e) are owed to or incurred for the account of that Creditor alone or severally or jointly with any other person;
- (f) are owed or incurred as principal, interest, fees, charges, taxes, duties or other imposts, damages (whether for breach of contract or tort or incurred on any other ground), losses, costs or expenses, or on any other account; or
- (g) comprise any combination of the above.

Permitted Disposal means:

- (a) a disposal in the ordinary course of business;
- (b) a disposal of assets in exchange for other assets comparable or superior as to type, value and quality;
- (c) a disposal of obsolete assets or assets no longer required for the purpose of the relevant Group Member's business or operations;
- (d) the payment of cash for any asset acquired in the ordinary course of business;
- (e) the investment of funds which are not immediately required in the relevant Group Member's business in accordance with the Group's established money market treasury policies or the realisation of such investments;
- (f) the sale of assets for cash which is applied in or towards the purchase of assets comparable or superior as to type, value and quality within 6 months or used to reduce the Financial Indebtedness of any Obligor;
- (g) the application of the proceeds of an issue of securities (whether debt or equity) for the purpose stated in the prospectus or other offering document relating to that issue;

- (h) a disposal comprised in or which occurs as part of any forward sale, stock loan or repurchase transaction;
- (i) a disposal constituted by, or arising as a result of, any Permitted Security Interest or any Permitted External Financial Indebtedness;
- (j) a disposal by a Group Member to another Group Member;
- (k) all other disposals where the aggregate net proceeds of such other disposals in any 12 month period does not exceed 10% of total assets as shown in the balance sheet on the most recent Reporting Date; and
- (l) a disposal not falling within paragraphs (a) to (k) above which has the prior written consent of each Majority Creditor (or in the case of a syndicated facility, an agent or trustee acting on the instructions of the relevant Majority Creditor).

Permitted External Financial Indebtedness means Financial Indebtedness of a Group Member (other than an Obligor or an Excluded Entity) owing to any person outside the Group under or in connection with:

- (a) a working capital facility;
- (b) a transactional banking facility;
- (c) a Capital Lease;
- (d) Non-Recourse Debt;
- (e) a “soft loan” or other form of financial accommodation given to a Group Member by a Government Agency in connection with capital works or expansion plans undertaken by that Group Member or any other Group Member; or
- (f) any financial accommodation which, in the opinion of the Guarantor, it is preferable for the relevant Group Member to raise from external sources (rather than by an intra-Group borrowing) for reasons based on economic advantage, administrative convenience and/or legal, structural, political and/or tax considerations.

Permitted Security Interest means:

- (a) a Security Interest created by operation of law or otherwise to secure taxes, assessments or other governmental charges which are not more than 90 days overdue or are being contested in good faith;
- (b) a Security Interest which a Group Member is required to create by any applicable law or is required or considers it necessary or expedient to create in order to obtain, maintain or renew any Authorisation;
- (c) a Security Interest created by operation of law or otherwise in favour of a landlord, carrier, warehouseman, mechanic, materialman or other supplier (including rights by way of reservation or retention of title to property) or other similar Security Interest, in each case, incurred in the ordinary course of business for sums which are not more than 90 days overdue or are being contested in good faith;

- (d) a Security Interest incurred, or deposits made, in the ordinary course of business:
 - (i) in connection with workers' compensation, unemployment insurance and other types of social security, employment or retirement benefits; or
 - (ii) to secure (or to obtain letters of credit that secure) the performance of tenders, statutory obligations, surety bonds, appeal bonds, bids, leases (other than Capital Leases), performance bonds, purchase, construction or sales contracts and other similar obligations,in each case not incurred or made:
 - (A) in connection with the borrowing of money, the obtaining of advances or credit or payment of the deferred purchase price of property; nor
 - (B) to secure obligations due under the AFFA or any Related Agreement (as defined in the AFFA);
- (e) a Security Interest in respect of a judgment debt of a Group Member, provided that the judgment is discharged or execution of it is stayed (permanently or pending appeal) within 90 days of entry thereof or adequate reserves have been provided for it;
- (f) leases or subleases granted to others, easements, rights-of-way, restrictions and other similar charges or encumbrances, in each case incidental to, and not interfering with, the ordinary conduct of the business of the Group;
- (g) a Security Interest on property or assets of a Group Member (not being an Excluded Entity) securing Financial Indebtedness owing to another Group Member (not being an Excluded Entity);
- (h) a Security Interest existing or created under or in respect of Non-Recourse Debt facilities where the party holding any such Security Interest has security over Project Property or Project Vehicles only but no right of recourse to an Obligor or any Obligor's other assets;
- (i) a Security Interest created on any asset or group of associated assets acquired by a Group Member or developed by a Group Member after 15 June 2005:
 - (i) for the sole purpose of financing or refinancing that acquisition or development; and
 - (ii) securing principal moneys not exceeding one hundred per cent (100%) of the cost of that acquisition or development;
- (j) a Security Interest existing at the time of acquisition on any asset acquired by a Group Member after 15 June 2005 and not created in contemplation of the acquisition, provided that there is no increase in the amount of the principal moneys secured by that Security Interest;

- (k) a Security Interest existing on property of a person immediately prior to its being consolidated with or merged into a Group Member or its becoming a Group Member (by becoming a Subsidiary of the Guarantor), provided that the Security Interest was not created in contemplation of the consolidation, merger or acquisition and there is no increase in the amount of the principal moneys secured by that Security Interest;
- (l) any Security Interest existing at 15 June 2005 provided there is no increase in the amount of the principal moneys secured by that Security Interest;
- (m) a Security Interest replacing, renewing, extending or refunding any Security Interest permitted by paragraph (i), (j), (k), (l) or (m), provided that:
 - (i) the principal moneys secured by such Security Interest immediately prior to such replacement, renewal, extension or refunding is not increased or the maturity thereof reduced; and
 - (ii) the Security Interest is not extended to any other property;
- (n) a Security Interest created with the prior written consent of each Majority Creditor (or in the case of a syndicated facility, an agent or trustee acting on the instructions of the relevant Majority Creditor);
- (o) a Security Interest created by a Group Member over its interest in a joint venture to secure:
 - (i) its obligations under the joint venture to any other party to the joint venture; or
 - (ii) its obligations, or the obligations of the joint venture, or the obligations of any entity formed for the purpose of the joint venture, under any agreement (including an agreement relating to financial accommodation) entered into for the purposes of the joint venture; or
- (p) any Security Interest created pursuant to the general conditions of a bank operating in the Netherlands based on the general conditions drawn up by the Netherlands Bankers' Association (Nederlandse Vereniging van Banken) and the Consumers Union (Consumentenbond),

provided the aggregate amount of Financial Indebtedness of the Group (excluding intra-Group transactions and Financial Indebtedness of the Excluded Entities) secured by all such Permitted Security Interests granted in favour of persons outside the Group may not exceed 10% of the total assets of the Group (excluding the Excluded Entities) at any time.

Potential Event of Default means an event or condition the occurrence or existence of which would, with the lapse of time or the giving of notice or both, become an Event of Default.

Preferred Stock means any class of capital stock of a corporation that is preferred over any other class of capital stock of such corporation as to

payment of dividends or the payment of any amount upon liquidation or dissolution of the corporation.

Previous Deeds has the meaning given to it in the Recitals to this amended and restated deed.

Project Activity means the acquisition, development, construction, extension, expansion or improvement of any asset.

Project Debt means with respect to a project or development:

- (a) Financial Indebtedness in relation to the acquisition and/or cost of Project Activities;
- (b) Financial Indebtedness incurred before or at the time of carrying out Project Activities solely for the purpose of financing or refinancing the acquisition and/or cost of the Project Activities;
- (c) any Financial Indebtedness incurred solely to refinance any Financial Indebtedness referred to above or incurred under any successive refinancing;
- (d) any liabilities under hedging transactions entered into in connection with any Financial Indebtedness referred to above or any Project Activity;
- (e) interest or amounts in the nature of interest, charges, fees, costs of any nature (including break costs or costs arising from changes in law), duties, expenses, currency indemnities, withholding taxes, indirect taxes and other similar indebtedness (however described) which, in any case, is or are incurred or payable in connection with any of the above; or
- (f) any guarantee or indemnity securing payment or repayment of any of the above amounts (but not any other Financial Indebtedness),

but does not include any Financial Indebtedness which is used to refinance any assets owned by an Obligor as at 15 June 2005.

Project Property means a Group Member's assets used or predominantly used in, or generated by, any Project Activities for a project or development including:

- (a) assets forming part of or connected with or derived from that project or development; and
- (b) proceeds derived from other Project Property relating to that project or development.

Project Vehicle means an entity, which is established for the purposes of, and confines its business operations solely to, owning or producing Project Property, carrying out Project Activities and incurring Project Debt.

Related Entity has the meaning given in the Corporations Act.

Release Request means a letter in the form of schedule 4 ("Form of Release Request").

Relevant Entity means an Obligor or a Material Subsidiary.

Reporting Date means each 31 March, 30 June, 30 September and 31 December in any year.

Security Interest means any mortgage, pledge, lien or charge or any security or preferential interest or arrangement of any kind or any other right of, or arrangement with, any creditor to have its claims satisfied in priority to other creditors with, or from the proceeds of, any asset. This definition:

- (a) includes any retention of title agreements arising other than in the ordinary course of business; and
- (b) excludes any right of set-off, right to combine accounts, or other similar right or arrangement arising in the ordinary course of business or by operation of law.

Subordinated Debt means any Financial Indebtedness of any Group Member (other than an Excluded Entity) which is subordinated to the Facilities on terms which each Creditor (or under a syndicated facility, an agent or trustee acting on the instructions of the Majority Creditor) has confirmed are acceptable to it (such confirmation not to be unreasonably withheld or delayed).

Subsidiary in relation to a corporation means a subsidiary of the corporation for the purposes of the Corporations Act.

Tax means any present or future tax (including Indirect Taxes), levy, impost, duty, charge, fee, deduction, compulsory loan or withholding or any income, stamp or transaction duty, tax or charge, in the nature of tax whatsoever called (except if imposed on, or calculated having regard to, the net income of a Creditor) and whether imposed, levied, collected, withheld or assessed by any Government Agency and includes, but is not limited to, any penalty, fine, charge, fee, interest or other amount payable in connection with failure to pay or delay in paying the same.

Termination Date in respect to a Facility Agreement, means the termination date, maturity date, final repayment date, final redemption date or other final payment date (howsoever described) of a Facility as defined in the relevant Facility Agreement.

Transaction Document means each of:

- (a) this amended and restated deed;
- (b) each Facility Agreement;
- (c) each Facility Nomination Letter;
- (d) each New Borrower Deed Poll;
- (e) each Deed of Release;
- (f) the Guarantee and Subordination Documents;
- (g) the JHT Undertaking;

- (h) any other document agreed to be a Transaction Document by the Guarantor and a Creditor; and
- (i) any document entered into for the purpose of amending or novating any of the above.

US\$, USD or US Dollars means the lawful currency of the United States of America.

Wholly Owned Subsidiary has the meaning given in section 9 of the Corporations Act.

1.2 References to certain general terms

Unless the contrary intention appears, a reference in a Transaction Document to:

- (a) a group of persons is a reference to any two or more of them jointly and to each of them individually;
- (b) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them individually;
- (c) an agreement, representation or warranty by two or more persons binds them individually only;
- (d) anything (including an amount) is a reference to the whole and each part of it (but nothing in this clause 1.2(d) implies that performance of part of an obligation constitutes performance of the obligation);
- (e) a document (including this amended and restated deed) includes any variation, supplement to, novation or replacement of it;
- (f) law includes (without limitation) common law, principles of equity, and laws made by any legislative body of any jurisdiction (and references to any statute, regulation or by-law include any modification or re-enactment of or any provision substituted for, and all statutory and subordinate instruments issued under such statute, regulation or by-law or such provision);
- (g) an accounting term is a reference to that term as it is used in GAAP;
- (h) the word “person” includes an individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated association and any Government Agency;
- (i) a particular person includes a reference to the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (j) the words “including”, “for example” or “such as” when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
- (k) other parts of speech and grammatical forms of a word or phrase defined in this amended and restated deed have a corresponding meaning;

- (l) an agreement includes an undertaking, deed, agreement or legally enforceable arrangement or understanding whether or not in writing;
- (m) a reference to a document includes any agreement in writing, or any certificate, notice, instrument or other document of any kind;
- (n) a reference to a body, other than a party to, or a beneficiary of, a Transaction Document (including an institute, association or authority) whether statutory or not:
 - (i) that ceases to exist; or
 - (ii) whose powers or functions are transferred to another body,is a reference to the body that replaces it or any body that substantially succeeds to its powers or functions;
- (o) “continuing” or “subsisting”, in relation to an Event of Default or Potential Event of Default, means an Event of Default or Potential Event of Default (as the case may be) that has not been waived in writing or remedied.

1.3 Numbers

In a Transaction Document, the singular includes the plural and vice versa.

1.4 Headings

In a Transaction Document, headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of the Transaction Document.

1.5 Conflict

- (a) Subject to paragraph (b), even if any other Transaction Document is not expressly made subject to this amended and restated deed and despite the time and date of its execution, where a conflict arises between the provisions of this amended and restated deed and any other Transaction Document, the provisions of this amended and restated deed shall prevail unless the relevant provision in the other Transaction Document includes words substantially to the effect of “Despite the terms of the Common Terms Deed Poll”.
- (b) Where a conflict arises between the provisions of this amended and restated deed on the one hand and the Guarantee and Subordination Documents on the other hand, the provisions of the Guarantee and Subordination Documents shall prevail to the extent of the inconsistency.

1.6 Shareholder ratification

Each Obligor which is a shareholder of another company (a “**Relevant Company**”) which is, or is to become, an Obligor, ratifies and approves in its capacity as a shareholder of that Relevant Company, the execution and performance by each such Relevant Company of each Transaction Document to which it is a party.

1.7 Borrowers severally liable only

Notwithstanding any other provision of this or any other Transaction Document, no Borrower is liable under the Transaction Documents for any obligation of another Borrower (including, without limitation, any obligation to indemnify a Creditor).

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James Hardie — Common Terms Deed Poll

Part 1 Creditors and Facilities

2 Creditors and Facilities

2.1 Creditors and Facilities

This amended and restated deed is for the benefit of, and is enforceable by, each Creditor from time to time even though it is not a party to, or is not in existence at the time of execution and delivery of this amended and restated deed, in relation to the Facility under which that Creditor is entitled and each Transaction Document under which that Creditor has benefits or obligations.

The benefit and obligations of this amended and restated deed may be extended to any other person (and such person shall become a Creditor) in relation to any other document (and such document shall become a Facility Agreement), by the Obligors' Agent signing and delivering to that Creditor (or, in the case of a syndicated facility, the facility agent) a Facility Nomination Letter and the Creditor countersigning such Facility Nomination Letter.

Each Obligor irrevocably authorises the Obligors' Agent to sign and deliver any Facility Nomination Letter and acknowledges and confirms that the provisions of this amended and restated deed which are for the benefit of the Creditors will extend to the Facility Agreement so nominated in that Facility Nomination Letter.

2.2 Removal of benefit for particular Creditor

This amended and restated deed ceases to be for the benefit of, and enforceable by, a Creditor if at any time:

- (a) all Outstanding Moneys owing to that Creditor have been fully and finally paid;
- (b) that Creditor is not committed to providing further financial accommodation to a Borrower pursuant to any Facility; and
- (c) this is confirmed in writing by the Creditor. If requested by an Obligor, a Creditor will promptly confirm in writing that this amended and restated deed has ceased to be for the benefit of, and enforceable by, that Creditor.

Part 2 Standard terms — all Facilities

3 Conditions precedent

3.1 Conditions to first drawdown

A Creditor's obligation to make available the first drawdown under a Facility Agreement entered into on the same date as, or after, the amendment and restatement of this amended and restated deed is subject to the following conditions precedent:

- (a) the Creditor (or, in the case of a syndicated facility, the facility agent) has received each of the following items in form and substance satisfactory to the Creditor or the facility agent (as the case may be):
 - (i) (**verification certificate**) a certificate in relation to each Obligor given by a director of the relevant Obligor substantially in the form of schedule 1 ("Verification Certificate") with the attachments referred to therein;
 - (ii) (**legal opinions**) closing legal opinions in respect of this amended and restated deed, the Facility Agreement and the Guarantee and Subordination Documents from:
 - (A) prior to the Irish Registration Date, Loyens & Loeff N.V., Netherlands legal advisers to the Guarantor;
 - (B) after the Irish Registration Date, Arthur Cox, Irish legal advisers to the Guarantor;
 - (C) Arthur Cox, Irish legal advisers to JHIFL;
 - (D) McDonald Carano & Wilson, United States of America legal advisers to JHBP;
 - (E) Mallesons Stephen Jaques, Australian legal advisers to the Obligors; and
 - (F) if a new Borrower is party to a Facility Agreement, legal advisers to the new Borrower of recognised standing and acceptable to the Creditor;
 - (iii) (**executed documents**) to the extent not previously provided to the Creditor under this amended and restated deed:
 - (A) an original counterpart or certified copy of this amended and restated deed;
 - (B) original counterparts of the Facility Agreement; and
 - (C) a Facility Nomination Letter, if required by the Facility Agreement;

- (D) certified copy of the Guarantee Trust Deed;
 - (E) a Beneficiary Nomination Letter, if required by the Facility Agreement;
 - (F) a certified copy of the Intercreditor Deed; and
 - (G) a Financier Nomination Letter, if required by the Facility Agreement,
- executed by all relevant Obligor; and

(iv) **(fees)** evidence of instructions issued by the Obligor's Agent to pay all fees and expenses which are due under the Facility Agreement on or before the first drawdown; and

- (b) **(know your customer)** if, in relation to the relevant Facility, a Creditor is required to comply with any know your customer checks and the information necessary is not already available to it and to the extent not previously provided to the Creditor under this amended and restated deed or under any other agreement, such documentation and other evidence as is reasonably requested to enable the Creditor to so comply, each in form and substance satisfactory to the Creditor (acting reasonably);
- (c) **(representations true)** the representations and warranties by each Obligor in clause 8.1 of this amended and restated deed are true as at the date of the first drawdown notice and on the date of the first drawdown; and
- (d) **(no default)** no Event of Default or Potential Event of Default subsists at the date of the first drawdown notice or on the date of the first drawdown or will result from the provision of the requested financial accommodation.

3.2 Conditions to subsequent drawdowns

The Creditor need not provide any financial accommodation subsequent to the first drawdown under a Facility Agreement unless:

- (a) **(representations true)** the representations and warranties by each Obligor in clause 8.1 of this amended and restated deed (other than clause 8.1(d)(ii)) are true as at the date of the drawdown notice and on the drawdown date, as though they had been made at that date in respect of the facts and circumstances then subsisting; and
- (b) **(no default)** no Event of Default or Potential Event of Default subsists at the date of the drawdown notice or on the drawdown date or will result from the provision of the requested financial accommodation.

4 Payments

4.1 Manner of payment

Each Obligor agrees to make payments (including by way of reimbursement) under each Transaction Document:

- (a) on the due date (or, if that is not a Business Day, on the next Business Day unless that day falls in the following month or after the Termination Date for the relevant Facility, in which case, on the previous Business Day);
- (b) at the time which is customary at the time for settlement of transactions in the relevant currency in the place for payment (if any) specified in the relevant Facility Agreement;
- (c) in the Due Currency in immediately available funds;
- (d) in full without set-off or counterclaim, and without any deduction in respect of Taxes unless prohibited by law; and
- (e) to the applicable Creditor (or, in the case of a Creditor under a syndicated facility, the facility agent on its behalf) by making payment to the account nominated by the Creditor or by payment as the Creditor otherwise directs.

If a Creditor directs an Obligor to pay a particular party or in a particular manner, the Obligor is taken to have satisfied its obligation to the Creditor by paying in accordance with the direction.

An Obligor satisfies a payment obligation only when the Creditor (or, in the case of a Creditor under a syndicated facility, the facility agent on its behalf) or the person to whom it has directed payment actually receives the amount.

4.2 Currency of payment

Each Obligor waives any right it has in any jurisdiction to pay an amount other than in Due Currency. However, if a Creditor receives an amount in a currency other than the Due Currency:

- (a) it may convert the amount received into the Due Currency (even though it may be necessary to convert through a third currency to do so) on the day and at such rates (including spot rate, same day value rate or value tomorrow rate) as it reasonably considers appropriate. It may deduct its usual Costs in connection with the conversion; and
- (b) the Obligor satisfies its obligation to pay in the Due Currency only to the extent of the amount of the Due Currency obtained from the conversion after deducting the Costs of the conversion. Any surplus amount will be paid promptly by that Creditor to the relevant Obligor.

5 Withholding tax

5.1 Payments by Obligor

If a law requires an Obligor to deduct or withhold an amount in respect of Taxes (other than Indirect Taxes) in respect of a payment under any Transaction Document such that a Creditor (“**Indemnified Party**”) would not actually receive on the due date the full amount provided for under the Transaction Document, then:

- (a) the Obligor agrees to deduct the amount for such Taxes and any further deduction applicable to any further payment due under paragraph (c) below;
- (b) the Obligor agrees to pay an amount equal to the amount deducted or withheld to the relevant authority in accordance with applicable law; and
- (c) unless the Tax is an Excluded Tax, the amount payable is increased so that, after making the deduction or withholding and further deductions or withholdings applicable to additional amounts payable under this clause 5.1(c), the Indemnified Party is entitled to receive (at the time the payment is due) the amount it would have received if no deductions or withholdings had been required.

5.2 Payments by a facility agent to Creditors

If a law requires a facility agent under a syndicated facility to deduct or withhold an amount in respect of Taxes (other than Indirect Taxes) in respect of a payment by the facility agent to a Creditor under a syndicated facility such that the Creditor would not actually receive on the due date the full amount provided for under the syndicated facility, then:

- (a) the facility agent must deduct or withhold the amount for such Taxes and any further deduction or withholding applicable to any further payment due under paragraph (c) below;
- (b) the facility agent must pay an amount equal to the amount deducted or withheld to the relevant authority in accordance with applicable law and promptly give the original receipts to the relevant Borrower;
- (c) unless the Tax is an Excluded Tax, the amount payable is increased so that, after making the deduction or withholding and further deductions or withholdings applicable to additional amounts payable under this clause 5.2(c), the Creditor is entitled to receive (at the time the payment is due) the amount it would have received if no deductions or withholdings had been required; and
- (d) unless the Tax is an Excluded Tax, the relevant Borrower must pay to the facility agent an amount equal to any deduction or withholding which the facility agent is required to make under this clause 5.2.

5.3 Tax credit

If and to the extent that any Creditor is able in its opinion to apply for or otherwise take advantage of any offsetting tax credit, tax rebate or other similar tax benefit out of or in conjunction with any deduction or withholding which gives rise to an obligation on any Obligor to pay any additional amount pursuant to clause 5.1 or 5.2(d), that Creditor shall:

- (a) give notice thereof to the Obligors' Agent and take steps to obtain that credit, rebate or benefit; and
- (b) to the extent that in its opinion it can do so without prejudice to the retention of the credit, rebate or benefit, and upon receipt thereof, reimburse to the Obligor such amount of the credit, rebate or benefit as

that Creditor shall, in its opinion (acting reasonably), have determined to be attributable to the deduction or withholding. In complying with this clause, no Creditor need disclose to any Obligor information about their tax affairs or order them in a particular way.

5.4 Early repayment or redemption

Without limiting the other provisions of this clause 5, if a Borrower is required to pay any amount to a Creditor or facility agent under a syndicated facility under this clause 5, that Borrower may elect to repay or redeem early all of that Creditor's outstandings under the applicable Facility which is affected by the event or events referred to in clause 5.1 or 5.2.

6 Increased costs

6.1 Compensation

The relevant Borrower agrees to compensate a Creditor on 30 days written notice if the Creditor determines that:

- (a) a Directive, or change in Directive, in either case applying for the first time after the date of the relevant Facility Agreement;
- (b) a change in a Directive's interpretation or administration by an authority after the date of the relevant Facility Agreement; or
- (c) compliance by the Creditor or any of its Related Entities with any such Directive, changed Directive or changed interpretation or administration,

directly or indirectly:

- (i) increases the effective cost to that Creditor of making, funding or maintaining the relevant Facility or its proportion of the Facility; or
- (ii) reduces any amount paid or payable to, or received or receivable by, that Creditor or the effective return to that Creditor in connection with the relevant Facility.

In this clause 6.1, a reference to a Directive does not include a Directive imposing or changing the basis of a Tax on the overall net income of the Creditor.

Compensation need not be in the form of a lump sum and may be demanded as a series of payments.

A notice under this clause may not claim compensation for an increase or reduction suffered more than 180 days before the date of the notice, except to the extent that the event or circumstance giving rise to the increased cost or reduction is that a Directive is applied retrospectively and the notice was given by the Creditor no later than 120 days after it became aware of that event or circumstance and was able to quantify the amount for which it is entitled to be compensated under this clause 6.1.

Any demand under this clause 6.1 is to be made to the Obligors' Agent by the Creditor (except in the case of a Creditor under a syndicated facility, in which case demand must be made by the facility agent).

6.2 Substantiating costs

If a Creditor (or a facility agent on its behalf) makes a demand under clause 6.1 ("Compensation"), it must provide the relevant Borrower with reasonably detailed calculations showing how the amount demanded has been ascertained. However, nothing in this clause 6.2 obliges the Creditor to provide details of its business or tax affairs which it considers in good faith to be confidential.

6.3 Procedure for claim

- (a) In the absence of manifest error, and subject to clause 6.2 ("Substantiating costs"), a certificate by a Creditor is sufficient evidence of the amount of the compensation payable by the relevant Borrower to the Creditor under clause 6.1 ("Compensation").
- (b) In determining the amount of the compensation payable under clause 6.1 ("Compensation"), the Creditor may use averaging and attribution methods commonly used by the Creditor or any other method it reasonably considers appropriate to determine the amount.

6.4 Possible minimisation

- (a) The Creditor agrees:
 - (i) to use reasonable endeavours to mitigate the effects of those events or circumstances giving rise to the increased cost or reduction in any payment or return for which the Creditor (or a facility agent on its behalf) claims compensation under clause 6.1 ("Compensation"); and
 - (ii) at the request of the Obligors' Agent, to consider the transfer or assignment of its rights and obligations under this amended and restated deed and the other relevant Transaction Documents to which it is a party to another bank or financial institution at par.
- (b) Subject to clause 6.4(a)(i), the relevant Borrower agrees to compensate the Creditor whether or not the increase or the reduction could have been avoided.

7 Illegality

7.1 Creditor's right to suspend or cancel

This clause 7 applies if a Creditor determines in good faith that:

- (a) a change in a Directive;
- (b) a change in the interpretation or administration of a Directive by an authority; or
- (c) a Directive,

makes it (or will make it) illegal in practice for the Creditor to fund, provide, or continue to fund or provide, financial accommodation under any Transaction Document. In these circumstances, the Creditor by giving a notice to the Obligors' Agent, may suspend or cancel some or all of the Creditor's obligations under the relevant Transaction Document as indicated in the notice.

7.2 Extent and duration

The suspension or cancellation:

- (a) must apply only to the extent necessary to avoid the illegality; and
- (b) in the case of suspension, may continue only for so long as the illegality continues.

7.3 Notice requiring early repayment or redemption

If the illegality relates to an amount outstanding to a Creditor, the Creditor (or, in the case of a syndicated facility, the facility agent), by giving a notice to the Obligors' Agent, may require early repayment or redemption of all or part of the affected outstandings and interest accrued on that part. The relevant Borrower in respect of which the Creditor has made a determination under clause 7.1 agrees to repay or redeem the amount specified no later than the date the illegality arises.

7.4 Creditor to seek alternative funding method

The affected Creditor (at no cost to an Obligor) during the period of 90 days after the notice pursuant to clause 7.1 agrees to use reasonable endeavours to make that part of the facility affected by the illegality available by alternative means (including changing its lending office to another then existing lending office or making the financial accommodation available through a Related Entity of the Creditor).

8 Representations and warranties

8.1 Representations and warranties

Each Obligor (but in the case of a Borrower only from the date that it becomes a Borrower) represents and warrants (except in relation to matters disclosed to the Creditors and accepted in writing by the Creditors) that:

- (a) **(status)** it is a corporation duly incorporated and validly existing under the laws of its place of incorporation;
- (b) **(corporate authorisation, documents binding)** each Transaction Document to which it is a party has been duly authorized by all necessary corporate action on the part of the Obligor and constitutes a legal, valid and binding obligation of the Obligor enforceable against the Obligor in accordance with its terms, except as such enforceability may be limited by:
 - (i) applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally; and

- (ii) general principles of law (regardless of whether such enforceability is considered in a proceeding in equity or at law);
- (c) **(compliance with laws)** the execution, delivery and performance of the Transaction Documents to which it is a party will not:
 - (i) contravene its constitution;
 - (ii) result in the creation of any Security Interest (other than any Permitted Security Interest) in respect of any property of the Obligor or any of its Subsidiaries (excluding the Excluded Entities);
 - (iii) contravene in any material respect any law to which the Obligor or any of its Subsidiaries (excluding the Excluded Entities) is subject or by which the Obligor or any of its Subsidiaries (excluding the Excluded Entities) or any of their respective properties may be bound;
 - (iv) conflict with or result in a breach in any material respect of any of the terms, conditions or provisions of any order, judgment, decree, or ruling of any court, arbitrator or Government Agency applicable to the Obligor or any of its Subsidiaries (excluding the Excluded Entities); and
 - (v) result in the acceleration or cancellation of any agreement or obligation in respect of Financial Indebtedness of any Group Member (excluding the Excluded Entities);
- (d) **(disclosure)**
 - (i) all information given to the Creditors by it or with its authority was, when given, true and correct in all material respects; and
 - (ii) the most recent Form 20-F filed by the Guarantor with the United States Securities and Exchange Commission was prepared and filed in accordance with the applicable requirements of US securities laws;
- (e) **(Group financial statements)**
 - (i) the most recent financial statements of the Group (including in each case the related schedules and notes) fairly present in all material respects the consolidated financial position of the Group as at the end of the financial period to which they relate and have been prepared in accordance with GAAP consistently applied throughout the periods involved, except as set forth in the notes thereto (subject, in the case of an interim financial statements, to normal year-end adjustments); and
 - (ii) since the date of delivery of those statements, there has been no change in the financial condition, operations, business or prospects of the Group (excluding the Excluded Entities), except changes that individually or in the aggregate do not or are not likely to have a Material Adverse Effect;

- (f) **(Borrower financial statements)**
- (i) for so long as JHIFL is an Obligor:
 - (A) the most recent financial statements of JHIFL provided in accordance with clause 9.6(c)(i)(C) (including in each case the related schedules and notes) fairly present in all material respects the consolidated financial position of JHIFL as at the end of the financial period to which they relate and have been prepared in accordance with generally accepted accounting principles as in effect from time to time in the Republic of Ireland consistently applied throughout the periods involved, except as set forth in the notes thereto (subject, in the case of an interim financial statements, to normal year-end adjustments); and
 - (B) since the date of delivery of those statements, there has been no change in the financial condition, operations, business or prospects of JHIFL, except changes that individually or in the aggregate do not or are not likely to have a Material Adverse Effect;
 - (g) **(Authorisations)** all Authorisations necessary in connection with the execution, delivery or performance by the Obligor of the Transaction Documents to which it is a party have been obtained and are in full force and effect;
 - (h) **(litigation)** except as disclosed in the most recent financial statements of the Group, in an announcement by the Guarantor through the ASX or under clause 9.6(f) of this amended and restated deed, no litigation, arbitration, administrative proceeding or other procedure for the resolution of disputes is currently taking place or pending against any Group Member (excluding the Excluded Entities) or any Group Member's assets (excluding the Excluded Entities' assets) which has or is likely to have a Material Adverse Effect;
 - (i) **(Security Interests)** no Security Interest exists over any Group Member's assets (excluding the Excluded Entities' assets) which is not permitted by clause 9.3;
 - (j) **(environmental matters)** each Group Member (excluding the Excluded Entities) has complied with all applicable Environmental Laws and the terms and conditions of any Authorisation issued pursuant to an Environmental Law, except where a failure to comply does not or is not likely to have a Material Adverse Effect;
 - (k) **(no immunity)** neither it nor any of its assets has any immunity from jurisdiction, suit, execution, attachment or other legal process in any jurisdiction in which its assets are located or it carries on business;
 - (l) **(not a trustee)** it does not enter into any Transaction Document as trustee;

- (m) **(ranking)** its obligations under the Transaction Documents rank at least pari passu with all of its other unsecured and unsubordinated obligations, other than those mandatorily preferred by law;
- (n) **(default under law)** no member of the Group (excluding the Excluded Entities) is in breach of any law, Authorisation, agreement or obligation binding upon it or its assets which has or is likely to have a Material Adverse Effect; and
- (o) **(holding company)** in the case of the Guarantor only, at the date of this amended and restated deed, the Guarantor has no material liabilities other than:
 - (i) creditors, provisions and indemnities incidental to its activities as a holding company without a material operating business,
 - (ii) liabilities under this amended and restated deed and the Guarantee and Subordination Documents;
 - (iii) liabilities to the Fund, the Charitable Fund and the State of New South Wales under the AFFA (and Related Agreements, as defined in the AFFA), including the Fund Guarantee;
 - (iv) liabilities in relation to taxation; and
 - (v) liabilities to shareholders in their capacity as such not prohibited under the AFFA.

8.2 When representations and warranties made

Each representation and warranty is made in favour of a Creditor on the date of execution of its Facility Agreement and is not repeated unless specified in that Facility Agreement or in clause 3.2(a).

8.3 Reliance on representations and warranties

Each Obligor acknowledges that the Creditors have entered into the Transaction Documents in reliance on the representations and warranties in this clause.

9 Undertakings

9.1 Application

All undertakings set out in this clause 9 apply to a Facility Agreement unless the Majority Creditor (or under a syndicated facility, an agent or trustee acting on the instructions of the Majority Creditor) under that Facility Agreement consents in writing.

9.2 General undertakings

Each Obligor undertakes to each Creditor as follows:

- (a) **(nature of business)** it will not (and will not permit any of its Subsidiaries (excluding the Excluded Entities) to) engage in any business if, as a result, the general nature of the business, taken on a consolidated

basis, which would then be engaged in by the Group would be substantially changed from the general nature of the business engaged in by the Group on the date of the relevant Facility Agreement;

- (b) **(compliance with laws)** it will comply (and will procure that its Subsidiaries (excluding the Excluded Entities) comply) with all applicable laws (including, without limitation, all Environmental Laws and the terms and conditions of any Authorisation required under an Environmental Law) in all material respects where non-compliance has or is likely to have a Material Adverse Effect;
- (c) **(ranking)** it will ensure that its obligations to the Creditor under the Transaction Documents rank and will continue to rank at least pari passu with all of its other unsecured and unsubordinated obligations, other than those mandatorily preferred by law;
- (d) **(Financial Indebtedness of Group Members)** in the case of the Guarantor only, and without limiting clauses 9.4(d) or 9.4(e), it will ensure that each Group Member (excluding the Excluded Entities) that is not an Obligor does not incur any Financial Indebtedness owing to any person outside the Group that is not Permitted External Financial Indebtedness;
- (e) **(holding company status)** in the case of the Guarantor only, it will have no material liabilities other than those described in clause 8.1(o);
- (f) **(AFFA)** in the case of the Guarantor only, it will not (without the prior written consent of each relevant Creditor (or under a syndicated facility, an agent or trustee acting on the instructions of the Majority Creditor), such consent not to be unreasonably withheld or delayed) vary, or agree to vary, in any material adverse respect the AFFA and
- (g) **(JHT ownership)** in the case of JHIFL only, it will not (without the prior written consent of each relevant Creditor (or under a syndicated facility, an agent or trustee acting on the instructions of the Majority Creditor), such consent not to be unreasonably withheld or delayed) cease to own 100% of the issued capital of James Hardie Technology Limited.

9.3 Negative Pledge and disposals

Each Obligor undertakes to each Creditor that it will not, and will not permit any of its Subsidiaries (excluding the Excluded Entities):

- (a) to, create or allow to exist a Security Interest over any of its assets, other than a Permitted Security Interest; nor
- (b) to, dispose of any assets other than a Permitted Disposal.

9.4 Financial undertakings

- (a) **(Consolidated Net Worth)** The Guarantor must ensure that Consolidated Net Worth on each Reporting Date and, where applicable, on each ASX CNW Announcement Date is not less than the greater of:

- (i) US\$420 million; and
- (ii) 75% of Consolidated Net Worth as at the preceding 31 March.
- (b) **(EBIT)** The Guarantor will ensure that EBIT will not be less than 3.25 times Net Interest Charges for the 12 month period ending on each Reporting Date.
- (c) **(compensation funding)** The Guarantor will ensure that no more than 35% of its Free Cash Flow in any given Financial Year is contributed to the Fund on the payment dates under the AFFA in the next following Financial Year. For avoidance of doubt, if the Guarantor elects to make instalment payments to the Fund pursuant to clause 9.7(a)(i) of the AFFA, the 35% cap does not include any interest payable under clause 9.7(b) of the AFFA.
- (d) **(Funded Debt)** The Guarantor will ensure that the ratio of Consolidated Funded Debt to Consolidated Funded Capitalisation does not exceed 55% at any time.
- (e) **(Permitted External Financial Indebtedness)** The Guarantor will ensure that the ratio of Consolidated Permitted External Financial Indebtedness to Consolidated Funded Capitalisation does not exceed 10% at any time.

9.5 GAAP

The financial undertakings in clause 9.4 have been drafted such that compliance with them is based on GAAP . If:

- (a) a Borrower's or Guarantor's accountants or auditors advise at any time that any change to GAAP occurring after 15 June 2005 materially and adversely alters the effect of any such provision (or any related definition) and the Obligors' Agent so notifies the Creditor; or
- (b) the Creditor gives written notice to the Obligors' Agent referring specifically to this clause 9.5 and giving details of a change to GAAP occurring after 15 June 2005 which in the Creditor's opinion (acting reasonably) materially and adversely alters the effect of any such provision (or any related definition),

then:

- (c) the Creditor and the Guarantor must negotiate in good faith to amend such provision so that they have an effect comparable to that at the date of this amended and restated deed; and
- (d) until such time as the amendments referred to in clause 9.5(c) are agreed, compliance with the relevant provision (and related definitions) will be determined by reference to GAAP.

9.6 Reporting undertakings

The Guarantor shall deliver to each Creditor (or, in the case of a syndicated facility, the facility agent) the following:

- (a) **(quarterly Group statements)** within 60 days after the end of each quarterly fiscal period in each fiscal year of the Guarantor (other than the last quarterly fiscal period of each such fiscal year) a copy of:
- (i) a consolidated balance sheet of the Group as at the end of such quarter; and
 - (ii) consolidated statements of income, changes in shareholders' equity and cash flows of the Group, for such quarter and (in the case of the second and third quarters) for the portion of the fiscal year ending with such quarter,

setting forth in each case in comparative form the figures for the corresponding periods in the previous fiscal year, all in reasonable detail, prepared in accordance with GAAP applicable to quarterly financial statements generally, and certified by the chief financial officer, treasurer or principal accounting officer of the Group as fairly presenting, in all material respects, the financial position of the companies being reported on and their results of operations and cash flows, subject to changes resulting from year-end adjustments, provided that delivery within the time period specified above of copies of the Guarantor's Quarterly Report on Form 10-Q prepared in compliance with the requirements applicable thereto and filed with the United States Securities and Exchange Commission shall be deemed to satisfy the requirements of this clause 9.6(a);

- (b) **(annual Group statements)** within 105 days after the end of the fiscal year of the Guarantor a copy of:
- (i) a consolidated balance sheet of the Group, as at the end of such year; and
 - (ii) consolidated statements of income, changes in shareholders' equity and cash flows of the Group, for such year,

setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail, prepared in accordance with GAAP, and accompanied by an opinion thereon of independent certified public accountants of recognised national standing, which opinion shall state that such financial statements present fairly, in all material respects, the financial position of the companies being reported upon and their results of operations and cash flows and have been prepared in conformity with GAAP, and that the examination of such accountants in connection with such financial statements has been made in accordance with generally accepted auditing standards, and that such audit provides a reasonable basis for such opinion in the circumstances, provided that the delivery within the time period specified above of the Guarantor's Annual Report on Form 10-K for such fiscal year (together with the Guarantor's annual report to shareholders, if any, prepared pursuant to Rule 14a-3 under the Exchange Act) prepared in accordance with the requirements applicable thereto and filed with the United States Securities and Exchange Commission shall be deemed to satisfy the requirements of this clause 9.6(b);

(c) **(Borrower and Guarantor statements and reports)**

(i) for so long as JHIFL is an Obligor:

(A) at the same time at which each financial statement or report is delivered pursuant to clause 9.6(a) (**“Consolidated Quarterly Statement”**) and for as long as the JHIFL Financial Reports are prepared as a matter of general internal accounting practice of the Obligors, a copy of the JHIFL Financial Reports for the year to date as at the end of the quarterly fiscal period to which the Consolidated Quarterly Statement relates;

(B) at the same time at which each financial statement or report is delivered pursuant to clause 9.6(b) (**“Consolidated Annual Statement”**) and for as long as the JHIFL Financial Reports are prepared as a matter of general internal accounting practice of the Obligors, a copy of the JHIFL Financial Reports for the fiscal year to which the Consolidated Annual Statement relates;

(C) within 180 days after the end of the fiscal year of JHIFL a copy of:

(1) the balance sheet of JHIFL, as at the end of such year; and

(2) a statement of income, changes in shareholders' equity and cash flows of JHIFL, for such year,

setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail, prepared in accordance with generally accepted accounting principles as in effect from time to time in the Republic of Ireland, and accompanied by an opinion thereon of independent certified public accountants of recognised national standing in the Republic of Ireland, which opinion shall state that such financial statements present fairly, in all material respects, the financial position of JHIFL and its results of operations and cash flows and have been prepared in conformity with generally accepted accounting principles as in effect from time to time in the Republic of Ireland, and that the examination of such accountants in connection with such financial statements has been made in accordance with generally accepted auditing standards in the Republic of Ireland, and that such audit provides a reasonable basis for such opinion in the circumstances;

(ii) for so long as JHBP is an Obligor:

(A) at the same time at which each Consolidated Quarterly Statement is delivered pursuant to clause 9.6(a) and for as long as the JHBP Financial Reports are prepared as a matter of general internal accounting practice of the

Obligors, a copy of the JHBP Financial Reports for the year to date as at the end of the quarterly fiscal period to which the Consolidated Quarterly Statement relates; and

- (B) at the same time at which each Consolidated Annual Statement is delivered pursuant to clause 9.6(b) and for as long as the JHBP Financial Reports are prepared as a matter of general internal accounting practice of the Obligors, a copy of the JHBP Financial Reports for the fiscal year to which the Consolidated Annual Statement relates;
- (iii) for so long as there is a Guarantor:
 - (A) at the same time at which each Consolidated Quarterly Statement is delivered pursuant to clause 9.6(a) and for as long as the Guarantor Financial Reports are prepared as a matter of general internal accounting practice of the Guarantor, a copy of the Guarantor Financial Reports for the year to date as at the end of the quarterly fiscal period to which the Consolidated Quarterly Statement relates; and
 - (B) at the same time at which each Consolidated Annual Statement is delivered pursuant to clause 9.6(b) and for as long as the Guarantor Financial Reports are prepared as a matter of general internal accounting practice of the Guarantor, a copy of the Guarantor Financial Reports for the fiscal year to which the Consolidated Annual Statement relates;
- (d) **(SEC and other reports)** promptly upon their becoming available, one copy of:
 - (i) to the extent not already provided under clauses 9.6(a), 9.6(b) or 9.6(c), each financial statement, report, notice or proxy statement sent by a Group Member (other than an Excluded Entity) to public securities holders generally; and
 - (ii) each regular or periodic report, each registration statement (without exhibits, except as expressly requested by the Creditor or facility agent as the case may be), and each prospectus and all amendments thereto filed by a Group Member (other than an Excluded Entity) with the United States Securities and Exchange Commission and all announcements made by the Guarantor through ASX and press releases and other statements made available generally by any Group Member (other than an Excluded Entity) to the public concerning developments that are material;
- (e) **(Notice of Event of Default or Potential Event of Default)** promptly upon becoming aware of it, written notice to each Creditor (or, in the case of a syndicated facility, the facility agent) of:

- (i) the existence of any Event of Default or Potential Event of Default; and
- (ii) the occurrence of any event which has or is likely to have a Material Adverse Effect;
- (f) **(litigation)** to the extent not disclosed in a document provided under clauses 9.6(a), 9.6(b), 9.6(c), 9.6(d) or 9.6(e), notice in writing and in reasonable detail of any litigation, arbitration, administrative proceeding or other procedure for the resolution of disputes commenced, taking place, pending or to its knowledge, threatened against any Group Member (other than an Excluded Entity) or any Group Member's assets (other than an Excluded Entity's assets) which has or is likely to have a Material Adverse Effect; and
- (g) **(requested information)** such other information relating to the business, operations and condition (financial or otherwise) of the Group (excluding the Excluded Entities) as from time to time may be reasonably requested by a Creditor (but excluding any information which the Guarantor is bound by an obligation of confidentiality not to disclose).

9.7 Officer's certificate

Each set of consolidated financial statements delivered pursuant to clause 9.6(a) or 9.6(b) shall be accompanied by:

- (a) a supplementary set of financial statements for the Group (excluding the Excluded Entities), showing adjustments made to the consolidated financial statements to eliminate the impact of the Excluded Entities; and
- (b) a certificate of the chief financial officer, treasurer or principal accounting officer of the Group setting forth the information (including reasonably detailed calculations) required in order to establish whether the Guarantor was in compliance with the relevant requirements of clause 9.4 and the amount of after-tax income of James Hardie Technology Limited that is required to be distributed pursuant to the JHT Undertaking.

10 Events of default

10.1 Events of Default

Each of the following is an Event of Default:

- (a) **(non-payment of principal)** a Borrower fails to pay an amount of principal payable by it under a Facility Agreement when due and does not remedy that failure within 2 Business Days after that amount becomes due and payable;
- (b) **(non-payment of other amounts)** a Borrower fails to pay any amount, other than an amount described in paragraph (a), payable by it under a Facility Agreement and does not remedy that failure within 3 Business Days after that amount becomes due and payable;

- (c) **(financial undertakings)**
 - (i) there is at any time a breach of any financial undertaking in clause 9.4 and, in the case of a breach of clause 9.4(d) or 9.4(e), the breach is not cured within 10 Business Days of the Guarantor receiving written notice from a Creditor (or, in the case of a syndicated facility, the facility agent) requiring such remedy; or
 - (ii) the Guarantor fails to deliver a certificate as required by clause 9.7(b) within 7 days of receipt of written notice from a Creditor of failure to provide such certificate;
- (d) **(other default)**
 - (i) any Obligor defaults in the performance of or compliance with any material obligation contained in a Transaction Document (other than those referred to in clause 10.1(a), 10.1(b) or 10.1(c)); and
 - (ii) the default is not waived or, if capable of remedy, the default is not remedied within 21 days of the Obligor receiving written notice from a Creditor (or, in the case of a syndicated facility, the facility agent) referring specifically to this clause 10.1(d) and requiring such remedy;
- (e) **(AFFA)** the Group Member primarily liable to make funding payments to the Fund under the AFFA defaults in the performance of, or compliance with, its obligation to make any such payment when due or within any applicable grace period and such default is not cured by that Group Member or the Guarantor within 3 Business Days;
- (f) **(misrepresentation)**
 - (i) any representation or warranty made or deemed to be made by an Obligor in a Transaction Document proves to have been inaccurate in any material respect when made or deemed to be repeated; and
 - (ii) the misrepresentation or breach of warranty is not waived or, if capable of remedy, the matter giving rise to the misrepresentation or breach of warranty is not remedied within 21 days of the Obligor becoming aware that the representation or warranty was inaccurate when made or deemed to have been repeated;
- (g) **(cross-default)**
 - (i) an Obligor is in default in the payment of any Financial Indebtedness that is outstanding in an aggregate principal amount of at least US\$20,000,000 (or its equivalent in another currency) beyond any period of grace provided with respect thereto and such Financial Indebtedness is not paid within 3 Business Days; or

- (ii) any Financial Indebtedness of an Obligor exceeding US\$20,000,000 (or its equivalent in another currency) has become, or has been declared, due and payable before its stated maturity and such Financial Indebtedness is not paid within 3 Business Days.
- (h) **(insolvency)** a Relevant Entity:
- (i) is generally not paying, or admits in writing its inability to pay, its debts as they become due;
 - (ii) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganisation or arrangement or any other petition in bankruptcy, for liquidation or to take advantage of any bankruptcy, insolvency, reorganization, moratorium or other similar law of any jurisdiction (for the avoidance of doubt, this includes, in respect of a person established under Dutch law, a filing of a petition by it with any court in the Netherlands in relation to its bankruptcy (*faillissement*) or suspension of payments (*surseance van betaling*) and, in respect of a person established under Irish law, a filing of a petition with any court in the Republic of Ireland in relation to its liquidation, the bringing forward of a scheme of arrangement or the appointment of an examiner);
 - (iii) makes an assignment for the benefit of its creditors;
 - (iv) consents to the appointment of a custodian, receiver, receiver and manager, trustee or other officer with similar powers with respect to it or with respect to any substantial part of its property;
 - (v) consents to the appointment of an administrator;
 - (vi) is adjudicated as insolvent or to be liquidated; or
 - (vii) takes corporate action for the purpose of any of the foregoing.
- (i) **(receiver)**
- (i) A court or Government Agency of competent jurisdiction enters an order appointing, without consent by a Relevant Entity, a custodian, receiver, receiver and manager, trustee or other officer with similar powers with respect to the Relevant Entity or with respect to any substantial part of its property, or constituting an order for relief or approving a petition for relief or reorganisation or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction, or ordering the dissolution, winding-up or liquidation of the Relevant Entity, or any such petition shall be filed against the Relevant Entity (other than a frivolous or vexatious petition) and such petition is not dismissed or cancelled within 30 days (and for the avoidance of doubt, this includes, in respect of a person established under Dutch law, appointment by a court of a trustee (*curator*) in relation to its

bankruptcy or appointment by a court of a receiver (*bewindvoerder*) in relation to its provisional suspension of payments and, in respect of a person established under Irish law, appointment by a court of an examiner); or

- (ii) an administrator of the Relevant Entity is appointed; or
- (iii) a receiver, receiver and manager, administrative receiver or similar officer is appointed to all or any substantial part of the assets of a Relevant Entity in respect of Financial Indebtedness that has been due and payable for at least 5 Business Days in an aggregate principal amount of at least US\$20,000,000 (or its equivalent in another currency) and that officer is not removed within 7 days of his appointment;
- (j) **(judgment)** a final judgment or judgments for the payment of money aggregating in excess of US\$20,000,000 (or its equivalent in another currency) are rendered against a Relevant Entity and such judgments are not, within 45 days after entry thereof, bonded, discharged or stayed pending appeal, or are not discharged within 45 days after the expiration of such stay;
- (k) **(vitiation of documents)**
 - (i) any material provision of a Transaction Document ceases for any reason to be in full force and effect or becomes void, voidable or unenforceable;
 - (ii) any law suspends, varies, terminates or excuses performance by an Obligor of any of its material obligations under a Transaction Document or purports to do any of the same;
 - (iii) it becomes impossible or unlawful for an Obligor to perform any of its material obligations under a Transaction Document or for the Creditors to exercise all or any of their rights, powers and remedies under a Transaction Document; or
 - (iv) an Obligor alleges that a Transaction Document has been affected as described in this paragraph;
- (l) **(ownership of Borrower)** any Borrower ceases to be directly or indirectly fully owned and controlled by the Guarantor;
- (m) **(Authorisation)** any Authorisation necessary in connection with the execution, delivery or performance by an Obligor of the Transaction Documents, or the validity or enforceability of the Transaction Documents, is not granted or ceases to be in full force and effect for any reason or is modified or amended in a manner which, in the reasonable opinion of all Creditors, would have a Material Adverse Effect; or
- (n) **(material change)** a change occurs in the financial condition of the Group (as a whole, but excluding the Excluded Entities) which has a Material Adverse Effect.

10.2 Consequences of default

If an Event of Default is continuing, a Creditor (or, in the case of a syndicated facility, an agent or trustee acting on the instructions of the Majority Creditor) may declare at any time by notice to the Obligors' Agent that:

- (a) an amount equal to all or any part of the Outstanding Moneys payable to the Creditor (or, in the case of a syndicated facility, the facility agent) is:
 - (i) payable on demand; or
 - (ii) immediately due for payment;
- (b) the obligations of the Creditor specified in the notice are terminated and cancelled.

A Creditor (or, in the case of a syndicated facility, the facility agent) may make either or both of these declarations. The making of either of them gives immediate effect to its provisions.

11 Review events

If, at any time after the date of a Facility Agreement and for any reason, whether or not within the control of the Obligors:

- (a) a Change of Control occurs;
- (b) the securities of the Guarantor are suspended from quotation by ASX for more than 10 Business Days or the Guarantor is removed from the Official List of ASX; or
- (c) provisions made by the Group in accordance with GAAP for asbestos related liabilities (if any) not arising in connection with the AFFA exceed 15% of Consolidated Net Worth at that time (with Consolidated Net Worth for this purpose calculated by adding back all such asbestos related liabilities under this paragraph (c), ignoring the 15% cap),

then the Guarantor must notify each Creditor (or, in the case of a syndicated facility, the facility agent) in writing of the occurrence of the event as soon as reasonably practicable. A Creditor may, by notice to any Borrower (with a reasonably detailed explanation of the reasons for its election to discontinue funding that Borrower) within 60 days of the date of receipt of notice from the Guarantor:

- (d) cancel its commitment to provide financial accommodation under the relevant Facility Agreement with immediate effect; and/or
- (e) declare the moneys borrowed under the relevant Facility Agreement to be, and the borrowed moneys will be, due and payable on a date no earlier than 90 days from the date of the Creditor's notice.

12 Costs and indemnities

12.1 What the Borrower agrees to pay

Each relevant Borrower agrees to pay a Creditor promptly on demand to the Obligors' Agent from that Creditor (except in the case of a Creditor under a syndicated facility, in which case demand must be made by the facility agent):

- (a) the reasonable Costs of each Creditor in connection with:
 - (i) the registration of any Transaction Document; and
 - (ii) giving and considering consents, waivers, variations, discharges and releases requested by the relevant Borrower, the Guarantor or the Obligors' Agent;
- (b) the Costs of each Creditor in exercising, enforcing or preserving rights in connection with a Transaction Document; and
- (c) Taxes and fees (including registration fees) (other than Excluded Taxes) and fines and penalties in respect of fees paid in connection with any Transaction Document or a payment or receipt or any other transaction contemplated by any Transaction Document. However, the relevant Borrower need not pay a fine or penalty in connection with Taxes or fees to the extent that it has lodged with the relevant Creditor sufficient cleared funds for the relevant Creditor to be able to pay the Taxes or fees by the due date.

This clause 12.1 shall not apply to any amounts, which have otherwise been paid or compensated for under a Transaction Document.

12.2 Indemnity

Each relevant Borrower indemnifies each Creditor against any claim, action, damage, loss, liability, cost, charge, expense, outgoing and payment of Break Costs which that Creditor pays, suffers, incurs or is liable for in connection with:

- (a) any failure by the relevant Borrower to draw down financial accommodation requested by it under a Transaction Document for any reason except default of a Creditor;
- (b) financial accommodation under a Transaction Document being repaid, discharged or made payable other than at its maturity, an interest payment date or other due date applicable to it;
- (c) any failure to prepay any part of the amount outstanding to a Creditor in accordance with a prepayment notice given under a Facility;
- (d) a Creditor acting in connection with a Transaction Document in good faith on fax or telephone instructions which have no apparent irregularity on their face, purport to originate from the offices of an Obligor or to be given by an Authorised Officer of an Obligor which, in the case of fax instructions, are signed and such signature accords with a current specimen signature of an Authorised Officer in the possession of the Creditor;

- (e) an Event of Default or Potential Event of Default;
- (f) a Creditor exercising or attempting to exercise a right or remedy in connection with a Transaction Document after an Event of Default; or
- (g) any indemnity a Creditor gives a Controller or administrator of the Obligor.

Each Borrower agrees to pay amounts due under this indemnity on demand to the Obligors' Agent from the applicable Creditor (except in the case of a Creditor under a syndicated facility, in which case demand must be made by, and payment must be made to the facility agent).

12.3 Currency conversion on judgment debt

If a judgment, order or proof of debt for an amount in connection with a Transaction Document is expressed in a currency other than that in which the amount is due under the Transaction Document, then the relevant Borrower indemnifies each Creditor against:

- (a) any difference arising from converting the other currency if the rate of exchange used by the Creditor under clause 4.2 ("Currency of payment") for converting currency when it receives a payment in the other currency is less favourable to the Creditor than the rate of exchange used for the purpose of the judgment, order or acceptance of proof of debt; and
- (b) the Costs of conversion.

Each Borrower agrees to pay amounts due under this indemnity to a Creditor on demand from that Creditor (except in the case of a Creditor under the syndicated facility, in which case demand must be made by the facility agent).

12.4 Indirect Taxes

- (a) All payments to be made by an Obligor under or in connection with any Transaction Document have been calculated without regard to Indirect Tax. If all or part of any such payment is the consideration for a taxable supply or chargeable with Indirect Tax then, when the Obligor makes the payment:
 - (i) it must pay to the Creditor an additional amount equal to that payment (or part) multiplied by the appropriate rate of Indirect Tax; and
 - (ii) the Creditor will promptly provide to the Obligor a tax invoice complying with the relevant law relating to that Indirect Tax.
- (b) Where a Transaction Document requires an Obligor to reimburse a Creditor for any costs or expenses, that Obligor shall also at the same time pay and indemnify that Creditor against all Indirect Tax incurred by that Creditor in respect of the costs or expenses save to the extent that that Creditor is entitled to repayment or credit in respect of the Indirect Tax. The Creditor will promptly provide to the Obligor a tax invoice complying with the relevant law relating to that Indirect Tax.

13 Interest on overdue amounts

13.1 Obligation to pay

If an Obligor does not pay any amount under any Transaction Document (including an amount of interest payable under this clause 13.1 on the due date for payment, that Obligor must pay interest on that amount at the Default Rate. The interest accrues daily from (and including) the due date to (but excluding) the date of actual payment and is calculated on actual days elapsed and either a 360 or 365 day year, whichever is the length of time customarily adopted for such calculations for the currency in which the relevant amount is denominated.

The relevant Obligor must pay interest under this clause to the relevant Creditor.

13.2 Compounding

Interest payable under clause 13.1 (“Obligation to pay”), which is not paid when due for payment, may be added to the overdue amounts by the relevant Creditor on the last Business Day of each calendar month. Interest is payable on the increased overdue amount at the Default Rate in the manner set out in clause 13.1 (“Obligation to pay”).

13.3 Interest following judgment

If a liability becomes merged in a judgment, the relevant Obligor must pay interest on the amount of that liability as an independent obligation. This interest:

- (a) accrues daily from (and including) the date the liability becomes due for payment both before and after the judgment up to (but excluding) the date the liability is paid; and
- (b) is calculated at the judgment rate or the Default Rate (whichever is higher).

The relevant Obligor must pay interest under this clause 13 to the relevant Creditor on demand from the relevant Creditor.

Part 3 General

14 Change of Borrowers

14.1 New Borrowers

A Wholly Owned Subsidiary of the Guarantor may, with the consent of each relevant Creditor, become a party to this amended and restated deed as a Borrower (after the date of this amended and restated deed) by:

- (a) signing and delivering to each relevant Creditor (or, in the case of a syndicated facility, the facility agent) a deed poll substantially in the form of schedule 3 ("Form of New Borrower Deed Poll"); and
- (b) doing any other thing the relevant Creditors reasonably request to ensure the enforceability of that company's obligations as a Borrower and, if requested, agrees to provide an opinion in form and substance satisfactory to the relevant Creditors from legal advisers of recognised standing acceptable to the relevant Creditors in that company's place of incorporation confirming such enforceability.

The Guarantor will confirm in writing to each relevant Creditor that the Guarantee Trust Deed applies to the borrowings of the new Borrower under the relevant Facility Agreements.

14.2 Release of Borrowers

- (a) The Guarantor may request that a Borrower cease to be a Borrower by giving to each relevant Creditor (or, in the case of a syndicated facility, the facility agent) a duly completed Release Request executed by an Authorised Officer of the Guarantor and the Borrower that is, subject to the remaining provisions of this clause, to cease being a Borrower.
- (b) On giving a Release Request to the Creditor (or, in the case of a syndicated facility, the facility agent) pursuant to clause 14.2(a), the Guarantor and the Borrower identified in that Release Request represent and warrant to the Creditor that no Event of Default or Potential Event of Default is outstanding or would result from the release of that Borrower from its obligations under this amended and restated deed.
- (c) The Creditor (or, in the case of a syndicated facility, the facility agent) must, as soon as reasonably practicable after receiving a Release Request, execute a Deed of Release releasing the Borrower identified in the Release Request from its obligations under this amended and restated deed if, and only if:
 - (i) no amount due and payable to that Creditor by that Borrower under this amended and restated deed remains outstanding and unpaid; and
 - (ii) that Creditor is not committed to providing further financial accommodation to that Borrower pursuant to any Facility.

- (d) The Borrower identified in the Release Request will cease to be a Borrower when the Creditor (or, in the case of a syndicated facility, the facility agent) executes a Deed of Release in respect of that Borrower.

15 Dealing with interests

15.1 Dealings by Obligors

An Obligor may only assign or otherwise deal with its rights or obligations under any Transaction Document with the consent of each Creditor.

15.2 Dealings by Creditors

A Creditor may assign, transfer, sub-participate or otherwise deal with all or any of its rights or obligations under a Transaction Document at any time if:

- (a) the Obligors' Agent has given its prior consent, which consent shall not be unreasonably withheld; and
- (b) in the case of a transfer of obligations, the transfer is effected by a novation in form and substance reasonably satisfactory to the relevant Borrower.

15.3 Change in lending office

A Creditor may change its lending office if it first notifies and consults with the Obligors' Agent. If this occurs, clause 15.5 will apply.

15.4 Securitisation permitted

- (a) Subject to clause 15.4(b), a Creditor may, without having to obtain the consent of or notify any Obligor, assign, transfer, sub-participate or otherwise deal with all or any part of its rights and benefits under any Transaction Document to a trustee of a trust, company or other entity which in each case is established for the purposes of securitisation.
- (b) Notwithstanding any assignment, transfer, sub-participation or other dealing by that Creditor under clause 15.4(a):
 - (i) that Creditor remains bound by, and must continue to perform all its obligations under the Transaction Documents;
 - (ii) that Creditor is the only person entitled to exercise any power, and no assignee, transferee, sub-participant or other person who obtains an interest in any of the rights or benefits of that Creditor under the Transaction Documents pursuant to clause 15.4(a) may do so; and
 - (iii) any amount payable by the Obligors to that Creditor under any Transaction Document will, if paid by an Obligor to that Creditor, operate as an effective discharge of the Obligor's obligation to make that payment.
- (c) Nothing done by a Creditor under this clause 15.4 will affect any Obligor's rights under any Transaction Documents.

15.5 No increased costs

Despite anything to the contrary in this amended and restated deed or the Transaction Documents, if a Creditor changes its lending office or transfers, assigns, novates or otherwise deals with its rights or obligations under the Transaction Documents, then no Obligor will be required to pay:

- (a) any net increase in the total amount of fees, Taxes, costs, expenses or charges which arises as a consequence of the change in lending office, transfer, assignment, novation or other dealing; or
- (b) any fees, Taxes, costs, expenses or charges in respect of the change in lending office, transfer, assignment, novation or other dealing.

A substitution will be regarded as a transfer for the purposes of this clause 15.5.

16 Obligors' Agent

16.1 Obligors' Agent as agent of the Obligors

Each Obligor (other than the Obligors' Agent):

- (a) irrevocably authorises the Obligors' Agent to act on its behalf as its agent in relation to the Transaction Documents, including:
 - (i) to give and receive as agent on its behalf all notices and instructions (including drawdown notices);
 - (ii) to sign on its behalf all documents in connection with the Transaction Documents (including amendments and variations of any Transaction Documents, and to execute any new Transaction Documents); and
 - (iii) to take such other action as may be necessary or desirable under or in connection with the Transaction Documents; and
- (b) confirms that it will be bound by any action taken by the Obligors' Agent under or in connection with the Transaction Documents.

16.2 Acts of Obligors' Agent

- (a) The respective liabilities of each of the Obligors under the Transaction Documents shall not be in any way affected by:
 - (i) any actual or purported irregularity in any act done or failure to act by the Obligors' Agent;
 - (ii) the Obligors' Agent acting (or purporting to act) in any respect outside any authority conferred upon it by any Obligor; or
 - (iii) any actual or purported failure by or inability of the Obligors' Agent to inform any Obligor of receipt by it of any notification under the Transaction Documents.

- (b) In the event of any conflict between any notices or other communications of the Obligors' Agent and any other Obligor, those of the Obligors' Agent shall prevail.

17 Notices

17.1 Form

Unless expressly stated otherwise in a Transaction Document, all notices, certificates, consents, approvals, waivers and other communications in connection with that Transaction Document ("Notices") must be in writing, signed by an Authorised Officer of the sender and marked for attention as set out or referred to in the Details of this amended and restated deed or another Transaction Document or, if the recipient has notified otherwise, marked for attention in the way last notified.

17.2 Delivery

Notices must be:

- (a) delivered to the address set out or referred to in this amended and restated deed or as set out as the recipient's relevant address in another Transaction Document; or
- (b) sent by prepaid post (airmail, if appropriate) to the address set out or referred to in the Details or as set out as the recipient's address in another Transaction Document; or
- (c) sent by fax to the fax number set out or referred to in the Details or as set out as the recipient's relevant fax number in another Transaction Document.

However, if the intended recipient has notified a changed postal address or changed fax number, then the communication must be to that address or number.

17.3 When effective

Notices take effect from the time they are received unless a later time is specified in them.

17.4 Receipt — postal

If sent by post, Notices are taken to be received three Business Days after posting (or five Business Days after posting if sent across national boundaries).

17.5 Receipt — fax

If sent by fax, Notices are taken to be received at the time shown in the transmission report as the time that the whole fax was sent.

17.6 Receipt — general

Despite clauses 17.4 ("Receipt — postal") and 17.5 ("Receipt — fax"), if Notices are received after 5:00pm in the place of receipt or on a non-Business Day, they are taken to be received at 9:00am on the next Business Day.

17.7 Notices to or from facility agent

A Notice to or from a facility agent appointed under a syndicated facility constitutes sufficient notice to or from the Creditors under that Facility Agreement for the purposes of this amended and restated deed.

17.8 Waiver of notice period

The Majority Creditor may waive a period of notice required to be given by an Obligor under any Transaction Document.

18 General

18.1 Consents

Each Obligor agrees to comply with all conditions in any consent a Creditor gives in connection with a Transaction Document if the Obligor relies on that consent in performing its obligations under the Transaction Documents.

18.2 Certificates

A Creditor may give an Obligor a certificate about an amount payable or other matter in connection with a Transaction Document. Subject to any applicable provision of the Transaction Documents specifying the form or content of the certificate (including clause 6.2 of this amended and restated deed), the certificate is sufficient evidence of the amount or matter, unless it is proved to be incorrect.

18.3 Set-off

At any time after a declaration is made under clause 10.2 of this amended and restated deed, the Creditor making the declaration (or on whose behalf a declaration was made by a facility agent for a syndicate of financiers) may set off any amount due for payment by the Creditor to an Obligor against any amount due for payment by the Obligor to the Creditor under the Transaction Document.

18.4 Discretion in exercising rights

A Creditor may exercise a right or remedy or give or refuse its consent under a Transaction Document in any way it considers appropriate (including by imposing conditions).

18.5 Partial exercising of rights

If a Creditor does not exercise a right or remedy under a Transaction Document fully or at a given time, the Creditor may still exercise it later.

18.6 No liability for loss

No Creditor is liable for loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising, a right or remedy under a Transaction Document.

18.7 Conflict of interest

A Creditor's rights and remedies under any Transaction Document may be exercised even if this involves a conflict of duty or the Creditor has a personal interest in their exercise.

18.8 Remedies cumulative

The rights and remedies of a Creditor under any Transaction Document are in addition to other rights and remedies given by law independently of the Transaction Document.

18.9 Indemnities

Any indemnity in a Transaction Document is a continuing obligation, independent of each Obligor's other obligations under that Transaction Document and continues after the Transaction Document ends. It is not necessary for a Creditor to incur expense or make payment before enforcing a right of indemnity under a Transaction Document.

18.10 Rights and obligations are unaffected

Rights given to a Creditor under a Transaction Document and each Obligor's liabilities under it are not affected by anything which might otherwise affect them at law.

18.11 Inconsistent law

To the extent permitted by law, each Transaction Document prevails to the extent it is inconsistent with any law.

18.12 Supervening legislation

Any present or future legislation which operates to vary the obligations of any Obligor in connection with a Transaction Document with the result that a Creditor's rights, powers or remedies are adversely affected (including by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

18.13 Variation

A provision of a Transaction Document, or right created under it, may not be varied except in writing signed by the party or parties to be bound (whether directly or through a properly authorised agent or attorney). A provision of this amended and restated deed may only be amended by agreement between the Obligors and each relevant Creditor.

18.14 Waiver

A provision of this amended and restated deed or right created under it may not be waived except in writing by the party granting the waiver.

18.15 Confidentiality

No Obligor or Creditor may disclose information provided by any party to a Transaction Document that is not publicly available (including the existence of or contents of any Transaction Document) except:

- (a) to any person in connection with an exercise of rights or (subject to compliance with clause 15 a dealing with rights or obligations under a Transaction Document (including when a Creditor consults other Creditors after an Event of Default or in connection with preparatory steps such as negotiating with any potential assignee or potential sub-participant or other person who is considering contracting with the Creditor in connection with a Transaction Document));
- (b) on a confidential basis, to officers, employees, legal and other advisers and auditors of any Obligor or Creditor;
- (c) on a confidential basis, to any party to a Transaction Document or any Related Entity of any party to a Transaction Document;
- (d) with the consent of the party who provided the information (such consent not to be unreasonably withheld); or
- (e) as required by any law or stock exchange or any Governmental Agency (including for Australian, US, Irish and Dutch tax authorities, in each case to the extent applicable).

Each Obligor and Creditor is taken to consent to disclosures made in accordance with this clause 18.15.

18.15A Creditor's compliance with law

Each Obligor consents to a Creditor obtaining, verifying, recording and/or disclosing to any Government Agency all information concerning that Obligor, the Transaction Documents and the transactions contemplated thereunder which the Creditor is required by the law of any country (including, without limitation, laws relating to money laundering and/or the financing of terrorism) to obtain, verify, record and/or disclose. The Obligors agree to provide all information to the Creditor that the Creditor reasonably requires to comply with any such law.

18.16 No responsibility for other's obligations

If a Creditor does not comply with its obligations under a Transaction Document, this does not relieve any other Creditor or an Obligor of any of their respective obligations. No party is responsible for the obligations of another party.

18.17 Further steps

Each Obligor agrees to do anything a Creditor reasonably asks (such as obtaining consents, signing and producing documents and getting documents completed and signed):

- (a) to bind the Obligor and any other person intended to be bound under a Transaction Document;
- (b) to enable a Creditor to register any power of attorney or any Transaction Document; or

(c) to show whether the Obligor is complying with this amended and restated deed.

18.18 Counterparts

A Transaction Document may consist of a number of copies, each signed by one or more parties to the document. If so, the signed copies are treated as making up the one document.

18.19 Governing law

Each Transaction Document is governed by the law in force in New South Wales. Each Obligor submits to the non-exclusive jurisdiction of the courts of that place.

18.20 Serving documents

Subject to clause 18.21 (“Process Agent”) and without preventing any other method of service, any document in a court action may be served on a party by being delivered to or left at that party’s address for service of notices under clause 17 (“Notices”).

18.21 Process Agent

Each Non-Australian Obligor appoints James Hardie Australia Pty Limited (ABN 12 084 635 558) of Level 3, 22 Pitt Street, Sydney NSW 2000 (Attention: The Company Secretary) as its agent for service of process to receive any document in connection with the Transaction Documents. If for any reason James Hardie Australia Pty Limited (ABN 12 084 635 558) ceases to be able to act as process agent for the Non-Australian Obligor, the Non-Australian Obligor must promptly appoint another person in New South Wales to act as its process agent and must promptly notify each Creditor (or, in the case of a syndicated facility, the facility agent) of that appointment.

18.22 Each Creditor’s consent to this amended and restated deed

The terms of this amended and restated deed will take effect (and prevail over the terms of the Previous Deeds) as between the Obligors and a Creditor only after that Creditor has provided its written consent to the Obligors in respect of this amended and restated deed and until that time the Previous Deeds will apply as between the Obligors and that Creditor.

Subject to the above paragraph, the Previous Deeds remain in full force and effect.

EXECUTED as a deed poll

© Mallesons Stephen Jaques
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James Hardie — Common Terms Deed Poll



[name]
[address]
Tel [insert]
Fax [insert]

To: [Name of financier]

US\$[*] Facility Agreement dated [*] 20## between [Name of Borrower] and [Name of financier]
(“Facility Agreement”)

I [name] am a director of [James Hardie International Finance Limited (with a registered office in Dublin) / James Hardie Industries N.V. (with corporate seat in Amsterdam) / James Hardie Building Products, Inc. (incorporated in Delaware)] (“Company”). I refer to the Facility Agreement. Definitions in the Facility Agreement apply in this Certificate.

I CERTIFY as follows:

1 Attached to this Certificate is a complete and up to date copy of:

- (a) the constituent documents of the Company; and
- (b) a written resolution of the board of directors of the Company and power of attorney in the name of the Company, evidencing resolutions of the board of directors of the Company approving execution of those of the following documents to which the Company is expressed to be a party, appointing attorneys for that purpose and appointing Authorised Officers of the Company for the purposes of those documents:
 - (i) the Facility Agreement;
 - (ii) the Common Terms Deed Poll; and
 - (iii) any Beneficiary Nomination Letter, Facility Nomination Letter or Financier Nomination Letter in relation to the Facility Agreement.

Those resolutions and that power of attorney have not been amended, modified or revoked and are in full force and effect.

2 Set out below are specimen signatures of the Authorised Officers of the Company.

Authorised Officers#

Name	Position	Signature
*	*	<hr/>
*	*	<hr/>
*	*	<hr/>

One of the Authorised Officers must be the chief financial officer, treasurer or principal accounting officer of the Group (see clause 9.7 of the Common Terms Deed Poll).

DATED 200

Name:

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10137271_8

James Hardie — Common Terms Deed Poll

James hardie — Common Terms Deed Poll

Schedule 2 — Facility Nomination Letter (clause 2.1)



James Hardie International Finance Limited

Europa House
Second Floor
Harcourt Centre
Harcourt Street
Dublin 2
Ireland

Tel [insert]
Fax +35 1 479 1128

[Date]

To: [Creditor]

James Hardie — Common Terms Deed Poll — Facility Nomination Letter

We refer to the James Hardie — Common Terms Deed Poll as amended and restated on [•] 2009 (“CTDP”).

For the purposes of the CTDP, on and from the date of this letter:

1. we nominate [each of] the following agreement[s] as a Facility Agreement:

Name: [•]

Date: [•]

Parties: [•]

[repeat as necessary]

2. the agreement, and each document named or referred to as a [“Financing Document”] in such agreement, is a Transaction Document for the purposes of the CTDP; and

3. we nominate you as a “Creditor” pursuant to that Facility Agreement.

Please confirm your acceptance of the above nomination, and the benefit and obligations of the CTDP, by signing and returning the attached copy of this letter.

Clauses 1 (“Interpretation”) and 18.19 (“Governing law”) of the CTDP described above apply to this letter as they were fully set out in this letter.

For and on behalf of

James Hardie International Finance Limited as Obligors’ Agent

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James Hardie — Common Terms Deed Poll

Authorised Officer: [*Name*]

We accept and agree to the above nomination. We accept the benefit and obligations of the CTDP, and we agree to be bound by the terms of that deed.

For and on behalf of [*Insert name of Creditor*]

by its Authorised Officer

Name:

Title:

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James Hardie — Common Terms Deed Poll

James Hardie — Common Terms Deed Poll

Schedule 3 — Form of New Borrower Deed Poll (clause 14.1)

Deed Poll

New Borrower *[Insert name and ABN/ACN or other registration number]*

of: *[Insert address]*

Fax no:

Attention:

CTDP James Hardie — Common Terms Deed Poll as amended and restated on [] 2009

BY THIS DEED POLL the New Borrower described above, for the benefit of each Creditor under the CTDP described above:

- (a) irrevocably agrees that from the date of this deed poll it is a Borrower under the CTDP;
- (b) irrevocably agrees to comply with and be bound by all current and future obligations of a Borrower or an Obligor under the CTDP or any other Transaction Document to which it is a party;
- (c) acknowledges having read a copy of the CTDP before signing this deed poll;
- (d) gives, as at the date of this deed poll, all representations and warranties on the part of a Borrower or an Obligor contained in the CTDP; and
- (e) acknowledges receiving valuable consideration for this deed poll.

Clauses 1 (“Interpretation”) and 18.19 (“Governing law”) of the CTDP described above apply to this deed poll as if they were fully set out in this deed poll.

DATED *[Insert Date]*

EXECUTED as a deed poll

[Insert execution clause for New Borrower]

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James Hardie — Common Terms Deed Poll

James Hardie — Common Terms Deed Poll

Schedule 4 — Form of Release Request (clause 14.2)

[Date]

To: [Each relevant Creditor]

James Hardie — Common Terms Deed Poll — Release Request

We refer to the deed entitled James Hardie — Common Terms Deed Poll as amended and restated on [•] 2009 (“CTDP”).

(a) **Release request**

We request each of you release [Insert name of retiring Borrower] (“Retiring Borrower”) from all liability under the CTDP pursuant to the attached Deed of Release.

(b) **Representation and warranty**

We represent and warrant that no Event of Default or Potential Event of Default is continuing or will result from the release of the Retiring Borrower.

Clause 1 of the CTDP applies to this Release Request as if it was fully set out in this Release Request.

For and on behalf of
James Hardie Industries N.V.
(with corporate seat in Amsterdam)

For and on behalf of
[Insert the *name of the retiring Borrower*]

Authorised Officer: [Name]

Authorised Officer: [Name]

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James Hardie — Common Terms Deed Poll

James Hardie — Common Terms Deed Poll

Schedule 5 — Form of Deed of Release (clause 14.2)

Deed of Release

Parties **The Creditor, the Retiring Borrower and the Obligors' Agent**, as described below.

Creditor *[Insert name and ABN/ACN or other registration number of a relevant Creditor]*

Retiring Borrower *[Insert name and ABN/ACN or other registration number]*

Obligors' Agent [] on behalf of each Obligor other than the Retiring Borrower.

CTDP James Hardie — Common Terms Deed Poll as amended and restated on [] 2009.

The Creditor releases the Retiring Borrower described above from all liability under the CTDP described above, with effect from [*insert date or "the date of this deed"*].

Nothing in this deed affects the obligations of the Retiring Borrower described above other than under the CTDP.

Each Obligor (other than the Retiring Borrower) consents to this release and agrees that nothing in this deed affects its obligations to the Creditor or the Creditor's rights in respect of the Obligors (other than the Retiring Borrower) under a Transaction Document.

Clauses 1 ("Interpretation") and 18.19 ("Governing law") of the CTDP described above apply to this deed as if they were fully set out in this deed.

DATED *[Insert date]*

EXECUTED as a deed

[Insert execution clauses for (1) each Creditor, (2) the Obligors' Agent (and its corporate seat) on behalf of each Obligor other than the Retiring Borrower, and (3) the Retiring Borrower]

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James Hardie — Common Terms Deed Poll

James Hardie — Common Terms Deed Poll

Signing page

DATED: 2009

**SIGNED, SEALED AND
DELIVERED** by)

and)

as attorneys for **JAMES HARDIE INTERNATIONAL FINANCE
LIMITED** under power of)

attorney dated)

in the presence of:)

Signature of witness)

Name of witness (block letters))

By executing this amended and restated
deed each attorney states that the
attorney has received no notice of
revocation of the power of attorney

MALLESONS STEPHEN JAQUES

James Hardie — Term Facility Agreement

Dated 2009

James Hardie International Finance Limited (“**Borrower**” and “**Obligors’ Agent**”)

[•] (“**Financier**”)

Mallesons Stephen Jaques

Level 61

Governor Phillip Tower

1 Farrer Place

Sydney NSW 2000

Australia

T +61 2 9296 2000

F +61 2 9296 3999

DX 113 Sydney

www.mallesons.com

James Hardie — Term Facility Agreement

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Ó Malleons Stephen Jaques 10065177_4	James Hardie — Term Facility Agreement

James Hardie — Term Facility Agreement

Details

Interpretation – Definitions are in clause 1.

Parties **Borrower, Obligors' Agent** and **Financier**, each as described below.

Borrower and Obligors' Agent	Name	James Hardie International Finance Limited
	Corporate seat	Ireland
	Registered Number	471702
	Address	[Arthur Cox Building Earlsfort Terrace Dublin 2 Ireland]
Financier	Fax	[+353 1 618 0618]
	Attention Name	[Bradwell Limited, Company Secretary] [•]
	ABN	[•]
	Address	[•]
	Fax	[•]
Facility	Attention Description	[•] Revolving US\$ cash advance facility.
	Facility Limit	US\$ [•]
	Maturity Date	The [•] anniversary of the date of this agreement.
	Currency	US\$
	Interest Rate	For an Interest Period, means LIBOR plus the Margin.
Margin	[•]	

Interest Periods	Subject to clause 4.2 (“Selection of Interest Period”), 1, 2, 3 or 6 months, or such other period as agreed between the Borrower and Financier.
Purpose	For general corporate purposes of the Group, including, without limitation: <ul style="list-style-type: none"> • to fund the Group’s working capital requirements; • to refinance existing Financial Indebtedness and pay related transaction costs; • to fund or reimburse against capital expenditure costs and payments to the Fund by any Group member; and/or • to fund distributions or other capital payments (if any).
Fees (also see clause 8)	Approval Fee [•]% of the Facility Limit, payable on the terms set out in clause 8.1 (“Approval Fee”).
	Commitment fee [•]% per annum of the applicable Margin calculated on the daily balance of the Undrawn Facility Limit. It accrues and is payable on the terms set out in clause 8.2 (“Commitment Fee”).
Date of agreement	See Signing page

Ó Malleons Stephen Jaques
10065177_4

James Hardie — Term Facility Agreement

James Hardie — Term Facility Agreement

General terms

1 Definitions

1.1 Definitions

Amount Owing means the total of all amounts which are then due for payment, or which will or may become due for payment, in connection with any Financing Document (including transactions in connection with them) to the Financier.

Availability Period means the period commencing on the date of this agreement and ending on the Maturity Date or, if earlier, the date on which the Facility Limit is cancelled in full.

Borrower means the person so described in the Details.

Common Terms Deed Poll means the deed poll entitled “James Hardie — Common Terms Deed Poll” entered into by the Borrower and the Guarantor as amended and restated on or about [•] 2009.

Default Rate means the applicable Interest Rate at the time plus 2% per annum. For the purpose of this definition, the Interest accrues daily from (and including) the due date to (but excluding) the date of actual payment and is calculated on actual days elapsed and a year of 360 days as if the overdue amount is a cash advance with Interest Periods of 30 days (or another period chosen from time to time by the Financier) with the first Interest Period starting on and including the due date.

Details means the section of this agreement headed “Details”.

Drawdown Date means the Business Day on which a drawdown of the Facility is or is to be made but does not include a rollover of a Drawing on the last day of an Interest Period.

Drawdown Notice means a completed notice in writing, substantially in the form of, and containing the information and representations and warranties set out in, schedule 1 (“Drawdown Notice”) and signed by an Authorised Officer of the Borrower.

Drawing means the outstanding principal amount of a drawdown made under the Facility.

Facility means the facility made available under this agreement.

Facility Limit means the amount set out as such in the Details, as reduced by the total of all cancellations under this agreement.

Fee Payment Date means each 31 March, 30 June, 30 September and 31 December after the date of this agreement.

Financier means the person so described in the Details.

Financing Document means each of:

- (a) this agreement;
- (b) the Common Terms Deed Poll;
- (c) the Guarantee and Subordination Documents;
- (d) each Drawdown Notice;
- (e) each Selection Notice;
- (f) any other document which the Borrower and the Financier agree to be a Financing Document; and
- (g) any document entered into for the purpose of amending or novating any of the above.

Interest Payment Date means, in respect of an Interest Period, the last day of that Interest Period.

Interest Period means each period selected in accordance with clause 4.2 (“Selection of Interest Period”).

Interest Rate means, subject to clause 4.6 (“Market disruption”), the interest rate set out in the Details.

LIBOR means, in relation to any Drawing:

- (a) the applicable British Bankers’ Association Interest Settlement Rate for US\$ and the relevant period displayed on the appropriate page of the Reuters screen (but if the agreed page is replaced or service ceases to be available, the Financier may specify another page or service displaying the appropriate rate after consultation with the Borrower) (“**Screen Rate**”); or
- (b) (if no Screen Rate is available for US\$ and the Interest Period of that Drawing) the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Financier at its request quoted by the principal London offices of at least three leading international banks chosen by the Financier in consultation with the Borrower to other leading banks in the London interbank market,

as of 11:00am (London time) on the day two Business Days before the first day of an Interest Period for which the interest rate is to be determined for the offering of deposits in US\$ and for a period comparable to the Interest Period for that Drawing.

Margin means on any day, the margin set out in the Details.

Market Disruption Event means:

- (a) at or about noon on the day two Business Days before the first day of an Interest Period for which the interest rate is to be determined, by reason of circumstances affecting the London interbank market for US\$, the “LIBOR” component of the Interest Rate cannot be determined; or
- (b) before close of business in London on the day two Business Days before the first day of an Interest Period for which the interest rate is to be determined, the Financier determines that the cost to it of obtaining matching deposits in the London interbank market would be in excess of LIBOR.

Maturity Date means the maturity date for the Facility as set out in the Details, but if that is not a Business Day, then the preceding Business Day.

Selection Notice means a notice under clause 4.2(b) (“Selection of Interest Period”), to be substantially in the form of schedule 2 (“Selection Notice”).

Undrawn Facility Limit means the Facility Limit less the aggregate of all Drawings outstanding.

1.2 Interaction with the Common Terms Deed Poll

- (a) The Borrower acknowledges that:
 - (i) the Financier is a Creditor; and
 - (ii) this agreement is a Facility Agreement,for the purposes of the Common Terms Deed Poll.
- (b) On execution of this agreement, the provisions of the Common Terms Deed Poll (subject to paragraph (d) below) are incorporated into this agreement to the intent and effect that any such provision for the benefit of a Creditor or the Borrower (as defined in the Common Terms Deed Poll) may be enforced by the Financier or the Borrower to the same extent as if the Financier was a party to the Common Terms Deed Poll.
- (c) A term which has a defined meaning (including by reference to another document) in the Common Terms Deed Poll has the same meaning when used in this agreement unless it is expressly defined in this agreement, in which case the meaning in this agreement prevails.
- (d) Where a conflict arises between a provision of the Common Terms Deed Poll and this agreement, the Common Terms Deed Poll will prevail unless the provision in this agreement includes words substantially to the effect of “Despite the terms of the Common Terms Deed Poll”, in which case the relevant provision of this agreement prevails.

2 The Facility and Facility Limit

2.1 Financier to fund

The Financier agrees to provide to the Borrower the financial accommodation requested by the Obligors' Agent under this agreement.

2.2 Maximum accommodation

The financial accommodation to be provided under this agreement must not exceed the Facility Limit.

3 Using the Facility

3.1 Drawing down

The Borrower need not use the Facility. However, if the Borrower wants to use the Facility, it may do so by one or more drawdowns.

3.2 Requesting a drawdown

- (a) If the Borrower wants a drawdown, the Obligors' Agent must provide a written Drawdown Notice to the Financier by 11:00am (London time) at least 2 Business Days prior to the requested Drawdown Date (or such later time as the Financier may agree).
- (b) The minimum amount of a Drawing is the lesser of:
 - (i) US\$1,000,000; and
 - (ii) the Undrawn Facility Limit.
- (c) Unless the Drawing is for the Undrawn Facility Limit, the Drawing must be in integral multiples of \$500,000.

3.3 Effect of a Drawdown Notice

A Drawdown Notice is effective when the Financier actually receives it in legible form. An effective Drawdown Notice is irrevocable.

3.4 Conditions to first drawdown

The Borrower agrees not to request the first drawdown, and a Financier is not obliged to provide the first drawdown, unless:

- (a) all the conditions precedent listed in clause 3 ("Conditions precedent") of the Common Terms Deed Poll have been either satisfied or waived in accordance with that agreement; and
- (b) a completed Facility Nomination Letter nominating this agreement as a Facility Agreement has been received by the Financier.

3.5 Conditions to all drawdowns

In addition to the conditions precedent in clause 3 (“Conditions precedent”) of the Common Terms Deed Poll, the Financier need not provide any financial accommodation on a Drawdown Date unless it is satisfied that:

- (a) the Drawdown Date is a Business Day during the Availability Period for the Facility;
- (b) the amount of the Drawing equals or exceeds the minimum drawdown amount set out in clause 3.2(b) (“Requesting a drawdown”);
- (c) after the Drawing has been made, the sum of all outstanding Drawings will not exceed the Facility Limit;
- (d) the Financier has received a Drawdown Notice in respect of the requested drawdown in accordance with clause 3.2 (“Requesting a drawdown”); and
- (e) the proposed Drawing is for one or more of the purposes set out in the Details.

3.6 Benefit of conditions

Each condition to a drawdown is for the sole benefit of the Financier and may only be waived by the Financier.

3.7 Currency and timing of drawdowns

The Financier agrees to make each drawdown available to the account specified in the relevant Drawdown Notice in immediately available US\$ funds by 2:00pm (London time) on the relevant Drawdown Date.

4 Interest

4.1 Interest charges

The Borrower must pay interest on each Drawing for each of its Interest Periods at the applicable Interest Rate. Interest:

- (a) accrues daily from and including the first day of an Interest Period to but excluding the last day of the Interest Period; and
- (b) is payable in arrears on each relevant Interest Payment Date; and
- (c) is calculated on actual days elapsed and a year of 360 days.

4.2 Selection of Interest Period

An Interest Period for a Drawing is:

- (a) for the first Interest Period, the period specified in the Drawdown Notice for that Drawing; and

- (b) for each subsequent Interest Period, a period notified in a Selection Notice given by the Borrower to the Financier on the Business Day before the last day of the current Interest Period. However, in each case, the specified period must be one that is set out in the Details. If the Obligors' Agent does not give correct notice, the subsequent Interest Period is the same length as the Interest Period which immediately precedes it (or it is the period until the Maturity Date, if that is shorter than the preceding Interest Period).

4.3 When Interest Periods begin and end

- (a) An Interest Period for a Drawing begins:
 - (i) for the first Interest Period, on its Drawdown Date; and
 - (ii) for each subsequent Interest Period, on the day when the preceding Interest Period for the Drawing ends.
- (b) An Interest Period which would otherwise end on a day which is not a Business Day ends on the next Business Day (unless that day falls in the following month, in which case the Interest Period ends on the previous Business Day). However, an Interest Period which would otherwise end after the Maturity Date ends on the Maturity Date.
- (c) If an Interest Period of one or a number of months commences on a date in a month for which there is no corresponding date in the month in which the Interest Period is to end, it will end on the last Business Day of the latter month.

4.4 Limit on Interest Periods

In selecting Interest Periods under clause 4.2 ("Selection of Interest Period"), the Obligors' Agent must ensure that there are no more than 5 different Interest Periods at any one time.

4.5 Notification of interest

Interest on a Drawing is payable in immediately available funds.

The Financier will notify the Obligors' Agent of the interest rates determined under this agreement as soon as they are ascertained. Failure to do so will not affect the obligations of the Borrower in any way.

4.6 Market disruption

If a Market Disruption Event occurs in relation to a Drawing for any Interest Period, then the Interest Rate on that Drawing for the Interest Period shall be the rate per annum which is the sum of:

- (a) the Margin; and
- (b) the rate notified by the Financier as soon as practicable and in any event before interest is due to be paid in respect of that Interest Period, to be that which expresses as a percentage rate per annum the

cost to the Financier of funding its participation in that Drawing from whatever source it may reasonably select.

4.7 Alternative basis of interest or funding

- (a) If a Market Disruption Event occurs and the Financier or the Borrower so requires, the Financier and the Borrower shall enter into negotiations (for a period of not more than thirty days) with a view to agreeing a substitute basis for determining the rate of interest.
- (b) Any alternative basis agreed pursuant to paragraph (a) above shall, with the prior consent of the Financier and the Borrower, be binding on each of them.

5 Repaying and prepaying

5.1 Repayment

The Borrower agrees to repay the total of the Drawings and all interest and other amounts (including default interest) which have accrued or which are otherwise payable (but unpaid) in respect of this agreement on the Maturity Date.

5.2 Prepayment

The Borrower may prepay all or part of a Drawing as follows:

- (a) if only part of a Drawing is prepaid, it must be at least US\$1,000,000 and a whole multiple of US\$500,000, or such lesser amount as may be agreed by the Financier (at its discretion) from time to time; and
- (b) the Borrower must also pay all accrued (but unpaid) interest on that Drawing; and
- (c) the Obligors' Agent must notify the proposed prepayment in writing to the Financier at least 10 Business Days prior to the date of the requested prepayment (as at close of business Sydney time) (once given, a notice of prepayment is irrevocable and the Borrower is obliged to prepay in accordance with the notice).

If the prepayment is made on an Interest Payment Date for the Drawing to be prepaid, no Break Costs are payable. However, if the Borrower prepays on a day other than the Interest Payment Date for the Drawing to be prepaid and the Financier incurs any Break Costs as a result of such prepayment, then the Borrower will be liable for Break Costs (if any) under clause 12 ("Costs and indemnities") of the Common Terms Deed Poll.

5.3 Prepayment and the Facility Limit

The Facility Limit is not reduced by amounts prepaid under clause 5.2 ("Prepayment").

6 Payments

6.1 Payment by direction

If the Financier directs the Borrower to pay a particular party or in a particular manner, the Borrower is taken to have satisfied its obligation to the Financier by paying in accordance with the direction.

6.2 Amount Owing

Subject to the provisions of any Financing Document, the Borrower agrees to repay the Amount Owing on the Maturity Date under this agreement.

6.3 Application of payments — pre-default

Prior to an Event of Default, the Financier will apply amounts paid by the Borrower in accordance with the terms of the Financing Documents.

6.4 Application of payments — post-default

If an Event of Default subsists, the Financier may apply amounts paid by the Borrower towards satisfaction of the Borrower's obligations under the Financing Documents in the manner it sees fit, unless the Financing Documents expressly provide otherwise. This appropriation overrides any purported appropriation by the Borrower or any other person.

7 Cancellation

The Borrower may cancel the Undrawn Facility Limit in whole or in part at any time during the Availability Period by notifying the Financier in writing at least 2 Business Days prior to the date the cancellation is to take effect. A partial cancellation must be at least US\$1,000,000, unless the Financier agrees otherwise. Once given, the notice is irrevocable. The Facility Limit is reduced by the amount of any cancellation.

The Facility Limit is automatically cancelled at 5:30pm (London time) on the last day of the Availability Period.

8 Fees

8.1 Approval Fee

The Borrower agrees to pay on execution of this agreement, an Approval Fee as set out in the Details.

8.2 Commitment fee

The Borrower agrees to pay in arrears on each Fee Payment Date, on any cancellation date described below and on the Maturity Date, the accrued but unpaid commitment fee as set out in the Details.

If the Borrower cancels any of the Undrawn Facility Limit, it also agrees to pay on the cancellation date, the commitment fee in respect of the cancelled

amount from (but excluding) the last Fee Payment Date up to and including the cancellation date.

The commitment fee is calculated on actual days elapsed using a 360 day year.

9 Interest on overdue amounts

This clause applies despite the provisions of the Common Terms Deed Poll.

9.1 Obligation to pay

If the Borrower does not pay any amount under or in respect of this agreement (including an amount of interest payable under this clause 9.1) on the due date for payment, the Borrower must pay interest on that amount at the Default Rate. The interest accrues daily from (and including) the due date to (but excluding) the date of actual payment and is calculated on actual days elapsed and a year of 360 days.

The Borrower must pay interest under this clause to the Financier on demand from the Financier on the last Business Day of each calendar month.

9.2 Compounding

Interest payable under clause 9.1 (“Obligation to pay”) which is not paid when due for payment may be added to the overdue amount by the Financier on the last Business Day of each calendar month. Interest is payable on the increased overdue amount at the Default Rate in the manner set out in clause 9.1 (“Obligation to pay”).

9.3 Interest following judgment

If a liability becomes merged in a judgment, the Borrower must pay interest on the amount of that liability as an independent obligation. This interest:

- (a) accrues daily from (and including) the date the liability becomes due for payment both before and after the judgment up to (but excluding) the date the liability is paid; and
- (b) is calculated at the judgment rate or the Default Rate (whichever is higher).

The Borrower must pay interest under this clause to the Financier on demand from the Financier.

10 Money Laundering

The Borrower agrees that the Financier may delay, block, or refuse to make any payment if the Financier believes on reasonable grounds that making that payment will breach any law in Australia or any other country where such payment is to be made, and the Financier will incur no liability to the Borrower if it does so.

The Borrower must provide all information to the Financier that the Financier reasonably requires to comply with any law in Australia or any other country. The Borrower agrees the Financier may disclose information which it provides to the Financier where required by any law in Australia or any other country.

Unless the Borrower has disclosed that it is acting in a trustee capacity or on behalf of another party, the Borrower warrants that it is acting on its own behalf in applying for and using any of the Financier's products or services.

The Borrower declares and undertakes to the Financier that the payment of monies by the Financier in accordance with any written instructions given by the Borrower will not breach any law in Australia or any other country where such money is to be paid.

11 Governing law

This agreement is governed by the law in force in New South Wales and the Borrower submits to the non-exclusive jurisdiction of the courts of that place.

EXECUTED as an agreement.

Ó Mallesons Stephen Jaques
10065177_4

James Hardie — Term Facility Agreement

James Hardie — Term Facility Agreement

Schedule 1 — Drawdown Notice (clause 3)

To: []

Attention: []

Fax: []

[Date]

Drawdown Notice — James Hardie — Term Facility Agreement dated [] 2009 between James Hardie International Finance Limited (“Borrower” and “Obligors’ Agent”) and [] (“Financier”) (“Facility Agreement”)

Under clause 3.2 (“Requesting a drawdown”) of the Facility Agreement, the Obligors’ Agent gives notice as follows. ¹

The Borrower wants to borrow under the Facility.

- The requested Drawdown Date is [].²
- The amount of the proposed drawdown is US\$[].
- The requested first Interest Period is [].
- The proposed drawdown is to be paid to:

Account number: []

Account name: []

Bank: []

Branch: []

Branch identifying number (Fedwire, BSB, etc): []

Representations and Warranties

The Borrower represents and warrants that:

[for the first Drawdown only]: the representations and warranties in clause 8 (“Representations and warranties”) of the Common Terms Deed Poll are correct and not misleading on the date of this notice and that each will be correct and not misleading on the Drawdown Date.

[for any subsequent Drawdown]: those representations and warranties listed in clause 3.2(a) (“Conditions to subsequent drawdowns”) of the Common Terms Deed Poll as required to be true on the date of each drawdown notice, are correct and not misleading on the date of this notice and that each will be correct and not misleading on the Drawdown Date.

No Event of Default or Potential Event of Default subsists at the date of this notice or will result from the provision of the requested utilisation.

Ó Mallesons Stephen Jaques
10065177_4

James Hardie — Term Facility Agreement

Clause 1 ("Definitions") of the Facility Agreement applies to this notice as if it was fully set out in this notice.

[Name of person] being
an Authorised Officer of
James Hardie International Finance Limited
as Obligors' Agent (with corporate seat in Ireland)

Instructions for completion

- 1 All items must be completed.
- 2 Must be a Business Day within the Availability Period.

Ó Mallesons Stephen Jaques
10065177_4

James Hardie — Term Facility Agreement

James Hardie — Term Facility Agreement

Schedule 2 — Selection Notice (clause 4.2)

To: []

Attention: []

Fax: []

[Date]

Selection Notice — James Hardie — Term Facility Agreement dated [] 2009 between James Hardie International Finance Limited (“Borrower” and “Obligors’ Agent”) and [] (“Financier”) (“Facility Agreement”)

Terms defined in the Facility Agreement have the same meaning when used in this notice.

This is an irrevocable notice under clause 4.2 (“Selection of Interest Period”) of the Facility Agreement.

Under clause 4.2 (“Selection of Interest Period”) of the Facility Agreement, the Obligors’ Agent gives notice as follows:

The current Interest Period is due to end on [].

The Interest Period following the current Interest Period is to be a period of [] 1.

[Name of person] being
an Authorised Officer of
James Hardie International Finance Limited
as Obligors’ Agent (with corporate seat in Ireland)

Instructions for completion

1 To be an Interest Period set out in the Details

Ó Mallesons Stephen Jaques
10065177_4

James Hardie — Term Facility Agreement

James Hardie — Term Facility Agreement

Signing page

DATED: 2009

Borrower and Obligors' Agent

SIGNED by)
)
and)
)
as attorneys for **JAMES HARDIE**)
INTERNATIONAL FINANCE)
LIMITED under power of attorney)
dated)

in the presence of:)

_____)
Signature of witness)

_____)
Name of witness (block letters))

Financier

SIGNED by)
)
as attorney for **[FINANCIER]** under)
power of attorney dated)
in the presence of:)

_____)
Signature of witness)

_____)
Name of witness (block letters))

By executing this agreement each
attorney states that the attorney has

received no notice of revocation of
the power of attorney

By executing this agreement the
attorney states that the attorney has
received no notice of revocation of
the power of attorney

AGREEMENT ON THE INVOLVEMENT OF EMPLOYEES

Between

**James Hardie Industries N.V.
and JHCBM plc
(the “Participating Companies I”)**

AND

**James Hardie International Holdings N.V.
and JHIHCBM plc
(the “Participating Companies II”)**

and

**the Special Negotiating Bodies
(as SNBs)**

DATED 10 FEBRUARY 2010

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AGREEMENT ON THE INVOLVEMENT OF EMPLOYEES

THE PARTIES:

- (1) **James Hardie Industries N.V.**, a public limited liability company (*naamloze vennootschap*), formed under the law of the Netherlands, with its registered office at Strawinskyiaan 3077 (1077 ZX) Amsterdam, the Netherlands (“**James Hardie Industries**”); and
- (2) **JHCBM plc**, a public company limited by shares, formed under the law of Ireland, with registered number 471542 and having its registered office at Arthur Cox Building, Earlsfort Terrace, Dublin 2, Ireland;

James Hardie Industries and JHCBM plc., hereinafter are also jointly referred to as the “**Participating Companies I**”.

- (3) **James Hardie International Holdings N.V.**, a limited liability company (*naamloze vennootschap*), formed under the law of the Netherlands, with its registered office at Strawinskyiaan 3077 (1077 ZX) Amsterdam, the Netherlands (“**James Hardie International Holdings**”); and
- (4) **JHIHCBM plc**, a public company limited by shares, formed under the law of Ireland, with registered number 471543 and having its registered office at Arthur Cox Building, Earlsfort Terrace, Dublin 2 Ireland;

James Hardie International Holdings and JHIHCBM plc., hereinafter are also jointly referred to as the “**Participating Companies II**”,

and

- (5) **The Special Negotiating Body I**, the body established by the Participating Companies I in conformity with the applicable legal procedures in all Member States involved to negotiate with the Participating Companies I regarding the arrangement for the Involvement of Employees within the Participating Companies (the “**SNB I**”); and
- (6) **The Special Negotiating Body II**, the body established by the Participating Companies II in conformity with the applicable legal procedures in all Member States involved to negotiate with the Participating Companies II regarding the arrangement for the Involvement of Employees within the Participating Companies (the “**SNB II**”).

SNB I and SNB II, are hereinafter also jointly referred to as the ‘**SNBs**’. The Participating Companies I and the Participating Companies II, are hereinafter also jointly referred to as the ‘‘**Participating Companies**’’. Each of the parties referred to under (1) up to and including (6) above, are hereinafter also individually referred to as a ‘**Party**’ and jointly referred to as the ‘‘**Parties**’’.

WHEREAS:

- (A) Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (the ‘**Regulation**’), enables the formation of a European public limited liability company (or *Societas Europaea*) (‘**SE**’). This Regulation entered into force in the European Economic Area (‘**EEA**’) on 8 October 2004.
- (B) Council Directive 2001/86/EC of 8 October 2001 supplementing the Regulation (the ‘**Directive**’), was implemented in the Netherlands by the *Act on the involvement of employees with European legal persons* on 17 March 2005 (the ‘**AIE**’).
- (C) The Participating Companies I intend to form an SE by means of a merger by acquisition pursuant to Article 17(2)(a) of the Regulation. This SE will upon its registration have its registered office in the Netherlands.
- (D) The Participating Companies II intend to form an SE by means of a merger by acquisition pursuant to Article 17(2)(a) of the Regulation. This SE will upon its registration have its registered office in the Netherlands.
- (E) James Hardie Industries, its concerned subsidiaries and concerned establishments have employees in several member states of the EEA, being Denmark, France, Ireland, United Kingdom and the Netherlands.
- (F) James Hardie International Holdings, its concerned subsidiaries and concerned establishments have employees in several member states of the EEA, being Denmark, France, Ireland, United Kingdom and the Netherlands.
- (G) As part of the requirements for registration of the merger and simultaneous formation of the SE, the Participating Companies I have complied with all formalities and requirements in respect of the involvement of the employees as prescribed by the Regulation and the AIE, and have subsequently established SNB I in order to enter into negotiations with an aim to reach an agreement with regard to the Involvement of Employees in the SE.
- (H) As part of the requirements for registration of the merger and simultaneous formation of the SE, the Participating Companies II, have complied with all formalities and requirements in respect of the involvement of the employees as prescribed by the

Regulation and the AIE, and have subsequently established SNB II in order to enter into negotiations with an aim to reach an agreement with regard to the Involvement of Employees in the SE.

- (I) None of the Participating Companies has any participation rights, as defined in article 1 below, in place at the time of the merger and formation of the SEs.
- (J) Each of James Hardie Industries and James Hardie International Holdings will be the acquiring company in the envisaged mergers referred to under (C) and (D) and will as a result of the respective mergers each take the form of an SE.
- (K) James Hardie Industries currently is and, after the completion of the mergers referred to above, will remain the owner of 100% of the shares in the capital of James Hardie International Holdings.
- (L) James Hardie International Holdings is a 100% subsidiary of James Hardie Industries, and is one of the concerned subsidiaries of James Hardie Industries. The concerned subsidiaries of James Hardie International Holdings are also concerned subsidiaries of James Hardie Industries. Therefore, the Parties have decided to negotiate collectively with an aim to reach one agreement with regard to the involvement of the employees of James Hardie Industries, its concerned subsidiaries including James Hardie International Holdings and the concerned subsidiaries thereof, and its concerned establishments including those of James Hardie International Holdings.
- (M) Subsequently, the Parties have negotiated and reached an agreement regarding the involvement of the employees as referred to under (L), which the Parties wish to confirm in writing in the present document.

THEREFORE IT IS HEREBY AGREED as follows:

1. Definitions and Interpretation

- 1.1. Unless the context otherwise requires, the words and expressions used in this Agreement shall have the meanings set out in this article 1.
- 1.2. References in this Agreement to Recitals, Clauses, Paragraphs and Articles are to recitals, clauses, paragraphs and articles in this Agreement. The Recitals to this Agreement shall be deemed to form part of this Agreement.
- 1.3. Headings are inserted for convenience only and shall not affect the construction of this Agreement.

- 1.4. **“Agreement”**: This agreement on the involvement of employees as agreed on the date set forth above among the Parties.
- 1.5. **“Consultation”**: means the establishment of dialogue and exchange of views between the body representative of the employees, if any, and/or the employees’ representatives and the competent organ of the SE, at a time, in a manner and with a content which allows the employees’ representatives, on the basis of information provided, to express an opinion on measures envisaged by the competent organ which may be taken into account in the decision-making process within the SE.
- 1.6. **“EU Employees”**: means:
- a. with regard to persons working in the Netherlands: persons employed, under a contract of employment, by James Hardie Industries SE or James Hardie International Holdings SE or a subsidiary or establishment of James Hardie Industries SE or James Hardie International Holdings SE;
 - b. with regard to persons working in other Member States: persons employed by James Hardie Industries SE or James Hardie International Holdings SE or a subsidiary or establishment of James Hardie Industries SE or James Hardie International Holdings SE in other Member States, under a contract of employment as defined under the laws of the Member State concerned.
- A list of the current EU Employees has been reviewed by the Parties and will be retained by the Human Resources department of James Hardie Industries.
- 1.7. **“Information”**: means the informing of the body representative of the EU employees, if any, and/or employees’ representatives by the SEs on questions which concern the SEs itself in the Member States and any of its subsidiaries or establishments situated in another Member State or which exceed the powers of the decision-making organs in a single Member State at a time, in a manner and with a content which allows the employees’ representatives to undertake an in-depth assessment of the possible impact and, where appropriate, prepare consultations with the SEs.
- 1.8. **“Involvement of Employees”**: means any mechanism under this Agreement, including Information and Consultation, through which EU Employees may consult on decisions to be taken within the SEs.
- 1.9. **“Member States”**: means a Member State of the European Union or any other state which is a party to the Agreement on the European Economic Area.
- 1.10. **“Other Group Employees”**: means persons, other than EU Employees, working on a full time basis for James Hardie Industries SE or James Hardie International Holdings SE or a subsidiary or establishment of James Hardie Industries SE or James Hardie International Holdings SE in states other than Member States. As of the date of this

Agreement, the SEs have Other Group Employees principally in Australia, Canada, New Zealand, the Philippines, and the United States of America.

- 1.11. **“Participation Rights”**: means the influence of the body representative of the employees if any, and/or the employees’ representatives in the affairs of a company by way of: (i) the right to elect or appoint some of the members of the company’s supervisory or administrative organ, or (ii) the right to recommend and/or oppose the appointment of some or all of the members of the company’s supervisory or administrative organ.
- 1.12. **“SEs”**: means James Hardie Industries SE and James Hardie International Holdings SE, severally.
- 1.13. **“SNB”**: means a Special Negotiating Body.

2. Scope of the Agreement

- 2.1. Material matters and topics which relate to the SEs themselves in the Member States, or to one or more of their subsidiaries or establishments in another Member State, or which exceed the powers of the decision-making organs in an individual Member State, fall within the scope of the Agreement. The matters and topics are hereafter described in article 3.D.

3. The procedure for the Involvement of Employees

- 3.1. Parties have agreed to set up an information and consultation procedure as described hereafter.

3.A. General

Annual call for interest EU Employees

- 3.2. Once a year, during the second quarter of the SEs’ fiscal year, the SEs will send out, to all EU Employees, an invitation for a meeting regarding the matters and topics as described above under article 2.1 and below under article 3.D that have occurred during the previous year or are planned to occur. This invitation will contain a detailed agenda of the matters and topics that have been or will be subject to the Information and Consultation procedure. EU Employees who react to this call and express interest in the Information and Consultation to the SEs (**“Interested Employees”**) will be invited to receive further Information and have the opportunity to be consulted.
- 3.3. The SEs shall inform the Interested Employees about which EU Employees are the Interested Employees, and shall allow the Interested Employees to exercise their rights as set out in article 5 below.

- 3.4. The Interested Employees may be requested to enter into a confidentiality agreement, which may be via an internet portal, before being informed and consulted. Notification shall be given – where possible prior to a given matter being discussed – of the ground(s) for the request for confidentiality, what information provided in written form or by word of mouth is to be covered by the confidentiality requirement, how long this requirement will apply, and whether there are any persons who are not subject to the confidentiality requirement. Information and Consultation shall take place on the basis of a written report drawn up by the SEs, relating to the matters and topics as described above under article 2.1 and below under article 3.D, including a detailed agenda of the matters and topics that are subject to the Information and Consultation procedure. This report shall contain material information, including an executive summary of the different matters and topics, and may refer to other sources of information attached (including internet links) to the report for further and more detailed information. If the SEs so determine, this report will be accessible only to the Interested Employees who have entered into a confidentiality agreement. Information for Interested Employees shall take place by e-mail, video conference, conference telephone call or equivalent subsequently developed technologies (with the medium for Information and/or Consultation to be at the sole discretion of the SEs). Upon the request of at least one member of the Interested Employees or at the discretion of the SE's, however, the SEs shall convene a meeting with the Interested Employees to discuss the matters and topics that are subject to the Information and Consultation procedure. The SEs shall determine whether this meeting is held in person, telephonically via video conference or equivalent subsequently developed technologies and may at the discretion of the SEs be held concurrently with the meeting with the Other Group Employees contemplated under article 3.5. The SEs shall rotate the time for the meetings among the Central European, Central US, and Asia Pacific time zones.

Annual call — Other Group Employees

- 3.5. Once a year, during the second quarter of the SEs fiscal year, the SEs will send out, to all Other Group Employees, an invitation for a meeting regarding the matters and topics as described below under article 3.6 that have occurred during the fiscal year or may have been determined to occur within the next fiscal year. This invitation will contain a detailed agenda of the matters and topics.
- 3.6. The matters and topics referred to in article 3.5 may relate to material changes and/or developments related to: the structure of the SEs, their economic and financial situation, the probable development of the business and of production and sales, the situation and probable trend of material capital expenditure, fundamental organizational changes, the introduction of new working and manufacturing methods, mergers, relocation of production operations, retrenchments or closures of companies, establishments or important parts thereof, the current status of, the developments in and the probable trend of the employment situation, and mass dismissal.

- 3.7. Other Group Employees may be requested to enter into a confidentiality agreement, which may be available via an internet portal, before receiving the information. Further information may be provided through a written report drawn up by the SEs, relating to the matters and topics as described above under article 3.6. This report may contain relevant information as determined by the SEs, including an executive summary of the different matters and topics, and may refer to other sources of information attached (including internet links) to the report for further and more detailed information. If the SEs so determine, this report will be accessible only to the Other Group Employees who have entered into a confidentiality agreement. The SEs shall convene a meeting with the Other Group Employees to discuss the information covering the relevant matters and topics. The SEs shall determine in their sole discretion whether this meeting is held in person, telephonically, via video conference or equivalent subsequently developed technologies. The SEs shall rotate the time for the meetings among the Central European, Central US, and Asia Pacific time zones.
- 3.8. The Parties acknowledge that the Other Group Employees do not fall within the scope of the Regulation, the Directive nor the AIE. The provisions of articles 3.5 – 3.7 may be modified with respect to content, format and timing by the SEs from time to time in their reasonable discretion. The Parties acknowledge that the SEs, through their subsidiaries, have conducted meetings in the past with the employees similar to the meetings described in articles 3.5 – 3.7 and presently intend to conduct the meetings described in articles 3.5 – 3.7 for at least three years from the date of this Agreement after which the SEs shall seek the views of the Other Group Employees about the continuation and parameters for such meetings taking into account the experience with the involvement of the Other Group Employees during the 3-year period.

Information and Consultation per occurrence

- 3.9. If during the current year a matter and topic as described above under article 2.1 and below under article 3.D occurs and has not been dealt with in accordance with the procedure described above under the articles 3.2 – 3.4, the SEs will send out an invitation for interest for Information and Consultation to all EU Employees. This invitation will contain a detailed agenda of the matters and topics that will be subject to the Information and Consultation procedure. EU Employees who react to this invitation and express an interest to the SEs will be considered as Interested Employees and will be invited to receive further Information and have the opportunity to be consulted.
- 3.10. The SEs shall inform the Interested Employees about which EU Employees are the Interested Employees, and shall allow the Interested Employees to exercise their rights as set out in article 5 below.
- 3.11. The Interested Employees may be requested to enter into a confidentiality agreement, which may be via an internet portal, before being informed and consulted. Notification shall be given – where possible prior to a given matter being discussed – of the ground(s)

for the request for confidentiality, what information provided in written form or by word of mouth is to be covered by the confidentiality requirement, how long this requirement will apply, and whether there are any persons who are not subject to the confidentiality requirement. Information and Consultation shall take place on the basis of a written report drawn up by the SEs, relating to the matters and topics as described above under article 2.1 and below under article 3.D, including a detailed agenda of the matters and topics that are subject to the Information and Consultation procedure. This report shall contain material information, including an executive summary of the different matters and topics, and may refer to other sources of information attached (including internet links) to the report for further and more detailed information. If the SEs so determine, this report will be accessible only to the Interested Employees who have entered into a confidentiality agreement. Information and Consultation shall take place by e-mail, video conference, conference telephone call or equivalent subsequently developed technologies (with the medium for Information and/or Consultation to be at the sole discretion of the SEs). Upon the request of at least one member of the Interested Employees, however, the SEs shall convene a meeting with the Interested Employees to discuss the matters and topics that are subject to the Information and Consultation procedure. The SEs shall determine whether this meeting is held in person, telephonically, via video conference or equivalent subsequently developed technologies.

3.B. Information procedure

- 3.12. Information to the Interested Employees regarding the material matters and topics as described above under article 2.1 and below under article 3.D shall be provided by the SEs at a time, in a manner and with a content which allows the Interested Employees to undertake a thorough assessment of the possible impact and to prepare for timely consultations with the SEs.
- 3.13. The SEs shall not be required to provide information where the SEs reasonably determine that this would seriously impair or adversely affect the functioning of the SEs or their subsidiaries and establishments. The SEs may impose such confidentiality requirements on the Interested Employees regarding the provision of information as the SEs may reasonably determine. Interested Employees shall comply with the confidentiality requirements. Notification shall be given – where possible prior to a given matter being discussed – of the ground(s) for the request of confidentiality, what information provided in written form or by word of mouth is to be covered by the confidentiality requirement, how long this requirement will apply, and whether there are any persons who are not subject to the confidentiality requirement.

3.C. Consultation procedure

- 3.14. The SEs shall consult with the Interested Employees at a time, in a manner and with a content which allows the Interested Employees, on the basis of information provided, to

express an opinion on measures envisaged by the SEs which will be taken into account in the decision-making process within the SEs.

- 3.15. Due to the nature of the business conducted by the SEs and the regulatory obligations with which the SEs have to comply, a reasonable but swift turnaround time of rendering any opinions by the Interested Employees on measures envisaged by the SEs is necessary. The opinion of the Interested Employees must be provided within the reasonable timeframe set by the SEs for that particular matter or topic. The minimum timeframe for the SEs to receive the Interested Employees' opinions is 5 days, although the SEs will seek to provide a standard timeframe of 15 days. In exceptional situations where business circumstances require the SEs to act in fewer than 5 days, then the timeframe provided to the Interested Employees can be less than 5 days. In these circumstances, the SEs must provide an explanation to the Interested Employees why the timeline is less than 5 days.

3.D. Topics regarding the Information and Consultation procedure

- 3.16. Information and Consultation shall relate in particular to material changes and/or developments related to: the structure of the SEs, their economic and financial situation, the probable development of the business and of production and sales, the situation and probable trend of material capital expenditure, fundamental organisational changes, the introduction of new working and manufacturing methods, mergers, relocation of production operations, retrenchments or closures of companies, establishments or important parts thereof, the current status of, the developments in and the probable trend of the employment situation, and mass dismissals. For the avoidance of doubt, the matters and topics referred to in article 3.16 and 3.17, are, for the purpose of the information and consultation procedure per occurrence (articles 3.9-3.11), not intended to include transactions or matters undertaken in the ordinary course of (day-to-day) business of the SEs and their subsidiaries. With regard to the annual information and consultation procedure (articles 3.2-3.4), the matters and topics referred to in article 3.16 and 3.17 shall include the aggregated results of transactions or matters undertaken in the ordinary course of (day-to-day) business of the SEs and their subsidiaries that have occurred during the previous fiscal year and are planned to occur.
- 3.17. The SEs shall notify the EU Employees as quickly as reasonably possible, in line with articles 3.9-3.11 above, about any unusual circumstances or proposed resolutions which significantly affect the employment status of a significant number of the Member State employees, particularly in the case of relocations, transfers, closures of companies or establishments or mass dismissals. Subsequently, the Consultation procedure as set out in article 3.C shall be followed. Where the competent organ of the SEs decides not to act in accordance with the opinion expressed by the Interested Employees in the Consultation procedure, the Interested Employees shall have the right to a further meeting with the competent organ of the SEs with a view to seeking agreement. In case of such a meeting,

those members of a representative body, if any, who represent EU Employees who are directly affected by the measures in question shall also have the right to take part in the meeting. This meeting may be in person if requested by the Interested Employees and the number of EU Employees attending can be limited, by the SEs, using reasonable discretion. This meeting shall take place at a time and in a manner to allow the meaningful Consultation to take place prior to the SEs' final decision. The final decision is at the sole discretion of the SEs.

- 3.18. The topics regarding the Information and Consultation procedure mentioned in 3.16 and 3.17 upon a change of the law governing this Agreement referred to in 11.1, will as per the date of said change, be material changes and/or developments with reference to the Standard Rules concerning Information and Consultation as prescribed by the law implementing the Directive in the Member State in which the statutory seat of the SE is located.

4. Participation

- 4.1 None of the Participating Companies has any Participation Rights in place at the time of the merger and formation of the SEs. Similarly, and in accordance with the Directive and the applicable standard rules, neither of the SEs will have any Participation Rights after the merger and formation of the SEs.

5. Rights of the Interested Employees

- 5.1. Subject to the confidentiality agreements with the Interested Employees in accordance with this Agreement, the Interested Employees shall have the right to inform the representative body, if any, of the EU Employees of the SEs and of their subsidiaries and establishments of the content and outcome of the Information and Consultation procedures, as well as the EU Employees.
- 5.2. The Interested Employees may be assisted by experts of their choice. The reasonable costs of these experts shall be borne by the SEs. The obligation to bear the costs incurred for experts called in by the Interested Employees shall, unless otherwise agreed by the SE, be limited to one expert per material topic. These experts cannot include friends and/or relatives of the Interested Employees or any other SE employee, and must be considered as an expert related to the agenda item as to which they are being consulted.
- 5.3. In so far as this is necessary for the fulfillment of their tasks, the Interested Employees shall be entitled to meet – at their discretion without any representative of the SEs being present — with each other during their normal working time.

- a. These meetings can only occur in the period between the receipt of the agenda from the SEs and the conclusion of the information and consultation process related to that agenda.
 - b. The duration of these meetings should be kept to a reasonable amount of time under the circumstances.
 - c. Only Interested Employees can attend these meetings.
- 5.4. The reasonable costs incurred by the Interested Employees with regard to the Information and Consultation procedures shall be borne by the SEs, which shall provide the Interested Employees with the financial and material resources reasonably needed to enable them to perform their duties in an appropriate manner. In particular, the SEs shall bear the cost of organizing meetings and providing, if reasonably necessary, interpretation facilities and the accommodation and travelling expenses of the Interested Employees. Accommodation and travel expenses should only be incurred when the SE requests an in person meeting with the Interested Employees or under the circumstances outlined in article 3.17 above.
- 5.5. The reasonable costs incurred by the Interested Employees for the fulfillment of their tasks under this Agreement, including with regard to possible litigation, shall be borne by the SEs, provided that the SEs are notified of these costs in advance, the SEs consent to bear them, and whereby such consent shall not be unreasonably withheld.
- 6. The date of entry into force of the Agreement and its duration**
- 6.1. The Agreement is effective for an indefinite period of time, counting from the day of signing unless a request as described hereafter under article 7.1 or article 8.2 is submitted to the SE. This Agreement shall end automatically if either one of the SEs ceases to be an SE in respect of that SE; the Agreement will remain in force for the other existing SE.
- 7. Employee representative body**
- 7.1. At the written request of one or more EU Employees to the Board of Directors of the SEs, or a resolution from the Board of Directors of the SEs, the SEs shall, in a reasonable timeframe, start the election procedures with respect to establishing a body representative of the EU Employees in accordance with the procedures and requirements set out in the legislation implementing the Directive, more particularly the Standard Rules pertaining thereto, in the Member State in which the statutory seat of the SEs is located. The SEs and the resulting SNB shall take such steps to negotiate in good faith in order to enter into an agreement on the involvement of EU Employees. That agreement is intended not to lower the existing terms of this Agreement, although the new agreement will apply to the body representative of EU Employees to be established and not apply to all (Interested) EU Employees. The Standard Rules of the Member State in which the statutory seat of the SEs is located, will supersede this Agreement and would apply if the resulting SNBs and SEs agree to those Standard Rules or in the instance the defined negotiation period, as

defined in the Standard Rules at the time, expires. The Parties acknowledge that this article 7.1 does not apply to the Other Group Employees.

8. The instances in which the Agreement must be renegotiated

- 8.1. Without prejudice to the legal provisions requiring renegotiation of this Agreement, if a representative body is established in accordance with article 7.1, then four years after its establishment, it shall examine whether to renegotiate for the conclusion of a new agreement within the meaning of articles 4 and 7 of the Directive or to continue to apply the Standard Rules applicable pursuant to article 7.1 above.
- 8.2. Upon the written request of either at least 10% of the EU Employees representing at least two Member States or a resolution from the board of directors of the SEs, the SEs shall establish an SNB in accordance with the applicable legal provisions, with an aim to renegotiate an agreement with regard to the involvement of the EU Employees within the meaning of the Directive, in which case if no agreement is reached, the SNB can opt for application of the Standard Rules concerning Information and Consultation as set out in the applicable legislation implementing the Directive in the Member State in which the statutory seat of the SEs is located.

9. Relation to national information, consultation and participation laws and regulations

- 9.1. This Agreement is without prejudice to any national or local rules or regulations on information, consultation and/or participation of EU Employees or representatives of the EU Employees.

10. Indemnification

- 10.1 The SEs and the Participating Companies shall, to the maximum extent allowed by law, defend and hold harmless any of their EU Employees, or former EU Employees, from any damages they may incur as a result of their negotiation of this Agreement or performance of any obligations under this Agreement. This includes indemnification of all reasonable legal costs incurred by the (former) EU Employees.

11. Governing Law; Jurisdiction and Remedies

- 11.1 This Agreement shall be governed by the laws of Member State in which the statutory seat of the SEs is located. Both parties submit to the jurisdiction of the Courts of the Member State in which the statutory seat of the SEs is located in connection with any dispute arising in connection with this Agreement. The SEs will not object to a dispute being heard by the Court of the Member State that would have jurisdiction if the (Interested) EU Employees were viewed for purposes of this article 11.1 as a body representative of the EU Employees, which means the SEs shall not object to the

(Interested) EU Employees being regarded in such litigation as if they were a body representative of the EU Employees.

11.2 In case of any dispute arising under this Agreement the EU Employees and the SEs shall have all rights and remedies available to them under applicable law.

IN WITNESS WHEREOF this Agreement has been executed as of the date first above written.

Participating Companies I and II:

for and on behalf of James Hardie Industries N.V.

/s/ Russell Chenu
Russell Chenu
Managing Director

/s/ Robert Cox
Robert Cox
Managing Director

for and on behalf of JHCBM plc

/s/ Diederik Ex
Diederik Ex
Director

/s/ Scott Barnett
Scott Barnett
Director

for and on behalf of James Hardie International Holdings N.V.

/s/ Russell Chenu
Russell Chenu
Managing Director

/s/ Robert Cox
Robert Cox
Managing Director

for and on behalf of JHIHCBM plc

/s/ Diederik Ex

Diederik Ex
Director

/s/ David Evans

David Evans
Director

/s/ Scott Barnett

Scott Barnett
Director

SNBs:

for and on behalf of the Special Negotiating Body I

By: /s/ Kevin Young

Title: Representative of SNB

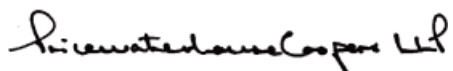
for and on behalf of the Special Negotiating Body II

By: /s/ Kevin Young

Title: Representative of SNB

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in this Registration Statement on Form F-4 of our report dated June 27, 2008 relating to the financial statements, which appears in James Hardie Industries SE's (formerly James Hardie Industries N.V) Annual Report on Form 20-F for the year ended March 31, 2009. We also consent to the reference to us under the heading "Experts" in such Registration Statement.

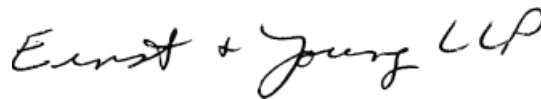
A handwritten signature in black ink that reads "PricewaterhouseCoopers LLP". The signature is written in a cursive, flowing style.

PricewaterhouseCoopers LLP
Los Angeles, California
February 16, 2010

Consent of Independent Registered Public Accounting Firm

We consent to the reference to our firm under the caption "Experts" in this Registration Statement (Form F-4) and related Explanatory Memorandum of James Hardie Industries SE (formerly James Hardie Industries N.V.) for the registration of 102,000,000 shares of James Hardie Industries SE Ordinary Shares and to the incorporation by reference therein of our reports dated June 19, 2009, with respect to the consolidated financial statements of James Hardie Industries N.V., and the effectiveness of internal control over financial reporting of James Hardie Industries N.V., included in its Annual Report (Form 20-F) for the year ended March 31, 2009, filed with the Securities and Exchange Commission.

/s/ Ernst & Young LLP
Orange County, California
February 16, 2010

Handwritten signature of Ernst & Young LLP in cursive script.