

**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

(Exact name of registrant as specified in its charter)

Republic of Ireland
(State or other jurisdiction of
incorporation or organization)

3272
(Primary Standard Industrial
Classification Code Number)

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

**Europa House
Second Floor, Harcourt Centre
Harcourt Street, Dublin 2
Republic of Ireland**
+353 1 411 6924 (Telephone) +353 1 479 1128 (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 this prospectus 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)	\$ 6.89	\$ 702,461,760	\$ 50,086

- (1) American depositary 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 SE ordinary shares beneficially held by securityholders resident in the United States of America, and (ii) the one-to-one basis on which each ordinary share of James Hardie Industries SE (as a European Company registered in The Netherlands) will be transformed into an ordinary share of James Hardie Industries SE (as a European Company registered in Ireland).
- (3) The proposed maximum aggregate offering price of all of the James Hardie Industries SE shares registered in connection with the Proposal is \$702,461,760. 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 SE ordinary shares to be transformed in the Proposal (calculated as set forth in note (2) above) based upon a market value of \$6.89 per James Hardie Industries SE ordinary share, the average of the high and low sale prices per James Hardie Industries SE CUFS on the Australian Securities Exchange on March 12, 2010 and converted to United States dollars based on the Federal Reserve Bank of New York foreign exchange rate for Australian dollars on March 12, 2010.
- (4) Calculated by multiplying 0.00007130 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. 333-165531), as initially filed with the Securities and Exchange Commission on March 17, 2010, amended on April 13, 2010, and declared effective on April 21, 2010, is being filed solely for the purpose of (a) reflecting that the registrant moved its corporate domicile from The Netherlands to the Republic of Ireland, 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 and Supervisory 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 and Supervisory 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 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

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arising from an Indemnity Deed or making a claim or in relation to being a witness to any type of proceedings, 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 incurrance 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.

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.

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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 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 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.
 - (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

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- (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 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 registration statement to be signed on its behalf by the undersigned, thereunto duly authorised, in Boston, Massachusetts, on this 17th day of June 2010.

JAMES HARDIE INDUSTRIES SE

By: /s/ Louis Gries
Louis Gries
Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1933, this 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 Director	June 17, 2010
<u>/s/ Russell Chenu</u> Russell Chenu	Chief Financial Officer, Principal Financial and Accounting Officer	June 17, 2010
<u>*</u> Michael N. Hammes	Chairman of the Board of Directors	June 17, 2010
<u>*</u> Donald McGauchie AO	Deputy Chairman of the Board of Directors	June 17, 2010
<u>*</u> Brian Anderson	Director	June 17, 2010
<u>*</u> David Harrison	Director	June 17, 2010
<u>*</u> Rudy van der Meer	Director	June 17, 2010
<u>*</u> James Osborne	Director	June 17, 2010
<u>*</u> David Dilger	Director	June 17, 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

Exhibit Number	Description
3.1*	Articles of Association of James Hardie Industries SE, a European Company registered in The Netherlands
3.2*	Form of Memorandum and Articles of Association of James Hardie Industries SE, a European Company registered in Ireland
4.1*	Deposit Agreement dated as of September 24, 2001, as amended and restated as of February 19, 2010, between James Hardie Industries SE and The Bank of New York Mellon, as depositary
4.2*	Form of Deposit Agreement to be entered into between James Hardie Industries SE and The Bank of New York Mellon, as depositary
4.3	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. (incorporated herein by reference to Exhibit 4.2 to James Hardie's Post-Effective Amendment No. 1 to its Registration Statement on Form F-4 (Registration No. 333-160177), filed on February 19, 2010)
4.4	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 N.V. (incorporated herein by reference to Exhibit 4.3 to James Hardie's Post-Effective Amendment No. 1 to its Registration Statement on Form F-4 (Registration No. 333-160177), filed on February 19, 2010)
4.5	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)
4.6	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)
4.7	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)
4.8	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)
4.9	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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<u>Exhibit Number</u>	<u>Description</u>
4.10	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 (incorporated herein by reference to Exhibit 4.11 to James Hardie's Registration Statement on Form F-4 (Registration No. 333-160177), filed on July 20, 2009)
4.11	Form of Novation Deed dated October 9, 2009 between James Hardie International Finance Limited, James Hardie International Finance B.V., James Hardie Building Products, Inc., James Hardie Industries N.V. and Financier
4.12	AET Guarantee Trust Deed dated December 19, 2006 between James Hardie Industries N.V. and AET Structured Finance Services Pty Limited
4.13	Form of Amending Deed AET Guarantee Trust Deed between James Hardie Industries N.V. and AET Structured Finance Services Pty Limited (incorporated herein by reference to Exhibit 4.12 to James Hardie's Registration Statement on Form F-4 (Registration No. 333-160177), filed on July 20, 2009)
4.14	Performing Subsidiary Undertaking and Guarantee Trust Deed dated December 19, 2006 between James Hardie 117 Pty Limited and AET Structured Finance Services Pty Limited
4.15	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 (incorporated herein by reference to Exhibit 4.13 to James Hardie's Registration Statement on Form F-4 (Registration No. 333-160177), filed on July 20, 2009)
4.16	Form of Term Facility Agreement between James Hardie International Finance Limited and Financier (incorporated herein by reference to Exhibit 4.12 to James Hardie's Post-Effective Amendment No. 1 to its Registration Statement on Form F-4 (Registration No. 333-160177), filed on February 19, 2010)
5.1*	Opinion of Arthur Cox, regarding validity of the James Hardie Industries SE securities being registered
5.2*	Opinion of Diederik Jan Ex, Senior Legal Counsel to James Hardie Industries SE, regarding validity of the James Hardie Industries SE securities
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 SE 2001 Equity Incentive Plan (incorporated herein by reference to Exhibit 4.2 to James Hardie's registration statement on Form S-8 (Registration No. 333-14036), filed on February 22, 2010)

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Exhibit Number	Description
10.2	Executive Incentive Plan 2009 (incorporated herein by reference to Exhibit 10.2 to James Hardie's Registration Statement on Form F-4 (Registration No. 333-160177), filed on July 20, 2009)
10.3	Amended and Restated James Hardie Industries SE Supervisory Board Share Plan 2006 (incorporated herein by reference to Exhibit 4.3 to James Hardie's registration statement on Form S-8 (Registration No. 333-153446), filed on February 22, 2010)
10.4	Amended and Restated James Hardie Industries SE Long Term Incentive Plan 2006 dated August 1, 2006 and amended on August 22, 2008 and August 21, 2009 (incorporated herein by reference to Exhibit 4.2 to James Hardie's registration statement on Form S-8 (Registration No. 333-161482), filed on February 22, 2010)
10.5	Amended and Restated James Hardie Industries SE Managing Board Transitional Stock Option Plan 2005 (incorporated herein by reference to Exhibit 4.2 to James Hardie's registration statement on Form S-8 (Registration No. 333-153446), filed on February 22, 2010)
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 (incorporated herein by reference to Exhibit 10.10 to James Hardie's Registration Statement on Form F-4 (Registration No. 333-160177), filed on July 20, 2009)

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Exhibit Number	Description
10.11	Lease between 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 (incorporated herein by reference to Exhibit 10.12 to James Hardie's Registration Statement on Form F-4 (Registration No. 333-160177), filed on July 20, 2009)
10.12	Variation of Lease dated March 23, 2004, among Brookfield Multiplex Rosehill Landowner Pty Limited (f/k/a Multiplex Rosehill 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)
10.13	Lease dated April 3, 2009, between Welshpool Landowner Pty and James Hardie Australia Pty Limited re premises at Rutland Avenue, Welshpool, Western Australia, Australia (incorporated herein by reference to Exhibit 10.14 to James Hardie's Registration Statement on Form F-4 (Registration No. 333-160177), filed on July 20, 2009)
10.14	Lease Amendment dated March 23, 2004, among Brookfield Multiplex Meeandah Landowner Pty Limited (f/k/a Multiplex Meeandah 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)
10.15	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)
10.16	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 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)
10.17	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)
10.18	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)
10.19	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)

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Exhibit Number	Description
10.20	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)
10.21	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)
10.22	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)
10.23	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)
10.24	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)
10.25	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)
10.26	Amended FFA Amendment dated July 17, 2008 (incorporated herein by reference to Exhibit 10.27 to James Hardie's Registration Statement on Form F-4 (Registration No. 333-160177), filed on July 20, 2009)
10.27	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)
10.28	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)
10.29	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)
10.30	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. (incorporated herein by reference to Exhibit 10.31 to James Hardie's Registration Statement on Form F-4 (Registration No. 333-160177), filed on July 20, 2009)
10.31	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)

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Exhibit Number	Description
10.32	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)
10.33	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)
10.34	Intercreditor Deed dated December 19, 2006 between The State of New South Wales, James Hardie Industries N.V., Asbestos Injuries Compensation Fund Limited and AET Structured Finance Services Pty Limited
10.35	Letter agreement dated March 21, 2007 amending 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 (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 (incorporated herein by reference to Exhibit 10.35 to James Hardie's Registration Statement on Form F-4 (Registration No. 333-160177), filed on July 20, 2009)
10.37	Performing Subsidiary Intercreditor Deed dated December 19, 2006 between The State of New South Wales, James Hardie 117 Pty Limited, Asbestos Injuries Compensation Fund Limited and AET Structured Finance Services Pty Limited
10.38	Letter agreement dated March 21, 2007 amending 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
10.39	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 (incorporated herein by reference to Exhibit 10.36 to James Hardie's Registration Statement on Form F-4 (Registration No. 333-160177), filed on July 20, 2009)
10.40	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 (incorporated herein by reference to Exhibit 10.37 to James Hardie's Registration Statement on Form F-4 (Registration No. 333-160177), filed on July 20, 2009)
10.41	Agreement on the Involvement of Employees dated February 10, 2010 between James Hardie Industries N.V., JHCBM plc, James Hardie International Holdings N.V., JHIHCBM and the Special Negotiating Bodies (incorporated herein by reference to Exhibit 10.38 to James Hardie's Post-Effective Amendment No. 1 to its Registration Statement on Form F-4 (Registration No. 333-160177), filed on February 19, 2010)
21	List of significant subsidiaries of James Hardie Industries SE
23.1	Consent of PricewaterhouseCoopers LLP, independent registered public accounting firm
23.2	Consent of Ernst & Young LLP, independent registered public accounting firm
23.3*	Consent of Arthur Cox (included in the opinion filed as Exhibit 5.1 to this Registration Statement)
23.4*	Consent of Diederik Jan Ex (included in the opinion filed as Exhibit 5.2 to this Registration Statement)
23.5*	Consent of PricewaterhouseCoopers LLP (included in the opinion filed as Exhibit 8.1 to this Registration Statement)
23.6*	Consent of Skadden, Arps, Slate, Meagher & Flom LLP (included in the opinion filed as Exhibit 8.2 to this Registration Statement)

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<u>Exhibit Number</u>	<u>Description</u>
23.7*	Consent of Skadden, Arps, Slate, Meagher & Flom LLP (included in the opinion filed as Exhibit 8.3 to this Registration Statement)
23.8*	Consent of PricewaterhouseCoopers Belastingadviseurs N.V. (included in the opinion filed as Exhibit 8.4 to this Registration Statement)
23.9*	Consent of PricewaterhouseCoopers Belastingadviseurs N.V. (included in the opinion filed as Exhibit 8.5 to this Registration Statement)
23.10*	Consent of PricewaterhouseCoopers (included in the opinion filed as Exhibit 8.6 to this Registration Statement)
23.11*	Consent of PricewaterhouseCoopers (included in the opinion filed as Exhibit 8.7 to this Registration Statement)
23.12*	Consent of PricewaterhouseCoopers LLP (included in the opinion filed as Exhibit 8.8 to this Registration Statement)
23.13*	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*	Voting Instruction Form (included as Annex A to the Explanatory Memorandum)
99.2*	Question Form (included as Annex B to the Explanatory Memorandum)
99.3	Excerpts of the ASTC Settlement Rules as of March 31, 2009 (incorporated herein by reference to Exhibit 99.3 to James Hardie's Registration Statement on Form F-4 (Registration No. 333-160177), filed on July 20, 2009)
99.4	Subdivision B, Division 3 of Part 7.2 of the Corporations Act 2001 as of January 1, 2009 (incorporated herein by reference to Exhibit 99.4 to James Hardie's Registration Statement on Form F-4 (Registration No. 333-160177), filed on July 20, 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

Novation Deed

Dated [•] 2009

James Hardie International Finance B.V. (“Outgoing Borrower”)

James Hardie International Finance Limited (“Incoming Borrower”)

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

[James Hardie Australia Pty Limited (ABN 12 084 635 558) (“JHA”)]

[•] (“Financier”)

James Hardie Industries N.V. (ABN 49 097 829 895) (“Guarantor”)

Mallesons Stephen Jaques

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Governor Phillip Tower

1 Farrer Place

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Novation Deed

Details

Interpretation — definitions are in clause 1.

Parties	Outgoing Borrower, Incoming Borrower, JHBP, Financier and Guarantor	
Outgoing Borrower	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
Incoming Borrower	Name	James Hardie International Finance Limited
	Company 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

JHA	Name	James Hardie Australia Pty Limited
	ABN	12 084 635 558
	Address	Level 3 22 Pitt Street Sydney NSW 2000 Australia
	Fax	+ 61 2 8274 5218
	Attention	Company Secretary]
Financier	Name	[•]
	ABN / Company No. (if applicable)	[•]
	Address	[•]
	Fax	[•]
	Attention	[•]
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
Recitals	A	The Outgoing Borrower, JHBP and the Financier are parties to the Transaction Documents.
	B	The Outgoing Borrower, the Incoming Borrower, JHBP and the Guarantor are parties to the Common Terms Deed Poll which is made for the benefit of, and enforceable by, each Creditor (as defined in the Common Terms Deed Poll).

- C** Pursuant to various Facility Nomination Letters, for the purposes of the Common Terms Deed Poll:
- (a) the Financier has been nominated as a “Creditor” in relation to each of the Transaction Documents; and
 - (b) each Facility Agreement has been nominated as a “Facility Agreement”.
- D** The Guarantor intends to transform its status to a *Societas Europaea* and subsequently to transfer its registered office and corporate domicile from The Netherlands to the Republic of Ireland (together, the “**Redomicile Transaction**”).
- E** As part of the Redomicile Transaction, the Outgoing Borrower intends to transfer all of rights and obligations under the Transaction Documents to the Incoming Borrower pursuant to this deed.
-

Date of the deed

See Signing Page

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Novation Deed
15 June 2010

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Novation Deed

General Terms

1 Interpretation

1.1 Definitions

The following meanings apply unless the contrary intention appears:

Common Terms Deed Poll means the deed poll named “James Hardie — Common Terms Deed Poll” as amended and restated on or about the date of this deed given by the Outgoing Borrower, the Incoming Borrower, JHBP and the Guarantor.

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

Deed of Confirmation means the Deed of Confirmation dated 23 June 2009 between the Outgoing Borrower, JHBP, the Guarantor and the Financier.

Effective Date means 4 September 2009 provided the Financier has confirmed receipt of the items described in clause 4.4 of the Deed of Confirmation.

Facility Nomination Letter means each “James Hardie — Common Terms Deed Poll — Facility Nomination Letter” between the Outgoing Borrower (as Obligors’ Agent) and the Financier.

Financier means the person so described in the Details.

JHISE means JHINV once it has transformed from its present corporate form as a Dutch NV (*Naamloze Vernootschap*) into an SE (*Societas Europaea*).

Transaction Documents means each document set out in Schedule 1 (“Transaction Documents”)

1.2 Definitions in Common Terms Deed Poll

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 deed unless it is expressly defined in this deed, in which case the meaning in this deed prevails.

1.3 Consideration

Each party to this deed acknowledges incurring obligations and giving rights under this deed for valuable consideration received from each other party.

1.4 Further assurances

Each party shall take all steps, execute all documents and do everything reasonably required by each other party to give effect to any of the transactions contemplated by this deed.

2 Novation

2.1 Novation

With effect on and from the Effective Date:

- (a) the Outgoing Borrower and the Financier have no further rights against each other or obligations to each other in connection with the Transaction Documents, and release each other from all claims, demands, costs and expenses arising in connection with the Transaction Documents;
- (b) the Incoming Borrower has the same rights against, and owes the same obligations to, the Financier in connection with the Transaction Documents and the Financier has the same rights against, and owes the same obligations to the Incoming Borrower in connection with the Transaction Documents, as if the Incoming Borrower had been named as a party to the Transaction Documents instead of the Outgoing Borrower from and including the date of each Transaction Document to which the Outgoing Borrower is a party.

(In this paragraph (b) a reference to the “same” rights or obligations is a reference to rights or obligations which are the same in nature and character as those rights or obligations rather than the same as to the person entitled to them or obliged to perform them);

- (c) each reference in the Transaction Documents to the Outgoing Borrower with a corporate seat in Amsterdam, The Netherlands will be read as a reference to the Incoming Borrower with a registered office in Dublin, the Republic of Ireland; and
- (d) each reference to the account details of the Outgoing Borrower is a reference to the account details for the Incoming Borrower, as notified by the Incoming Borrower to the Financier promptly following the Effective Date and otherwise from time to time; and
- (e) the address for service of notice of the Incoming Borrower for the purposes of the Transaction Documents is as specified in the Details.

2.2 JHBP rights and obligations unaffected

Notwithstanding anything in this deed, the rights and obligations as between JHBP and the Financier under the Transaction Documents remain unaffected by the release and assumption in clause 2.1.

2.3 [JHA rights and obligations unaffected

Notwithstanding anything in this deed, the rights and obligations as between JHA and the Financier under the Transaction Documents remain unaffected by the release and assumption in clause 2.1.]

2.4 Obligors' Agent

With effect on and from the Effective Date, for the purposes of the Common Terms Deed Poll:

- (a) the Outgoing Borrower ceases to be the “Obligors' Agent”;

- (b) the New Borrower is appointed as “Obligors’ Agent” by JHBP and the Guarantor and the New Borrower accepts that appointment; and
- (c) this deed serves as notification of the appointment to the Financier (as a Creditor under the Common Terms Deed Poll).

2.5 Consent and acknowledgement

Each party:

- (a) consents to the novation effected by this deed; and
- (b) acknowledges that nothing in this deed or any of the transactions contemplated by this deed constitutes:
 - (i) a breach of any term of the Transaction Documents;
 - (ii) an Event of Default under the Common Terms Deed Poll; or
 - (iii) any other event or circumstance which, with the giving of notice, lapse of time, or fulfilment of any condition, would cause the acceleration of any payment to be made under, or the termination or enforcement of any of the Facility Agreements.

3 Representations and Warranties

3.1 General representations and warranties

Each party represents and warrants to each other party that:

- (a) **(incorporation)** it is validly incorporated and has the power to carry on its business as it is now being conducted;
- (b) **(power)** it has the power to enter into and perform its obligations under this deed;
- (c) **(authority)** it has taken all action which is necessary to authorise the entry into and performance of its obligations under this deed; and
- (d) **(binding obligations)** this deed constitutes legal, valid and binding obligations, enforceable in accordance with their terms.

3.2 Representations and warranties from each Obligor

Each Obligor makes the representations and warranties contained in clause 8.1 (“Representations and warranties”) of the Common Terms Deed Poll on the Effective Date.

4 Governing Law

Clause 18.19 (“Governing law”) of the Common Terms Deed Poll applies to this deed as if fully set out in this deed poll

5 General

5.1 Costs

The parties agree to pay their own legal and other costs and expenses in connection with the negotiation, preparation, execution and completion of this deed and of other related documentation, except stamp duty.

5.2 Stamp duty

The Incoming Borrower agrees to pay all stamp duty (including fines and penalties) chargeable, payable or assessed in relation to this deed and any transaction contemplated by it.

5.3 Counterparts

This deed may be executed in counterparts. All counterparts when taken together constitute one document and the date on which the last counterpart is executed will be the date of the deed.

5.4 No merger

The representations, warranties and indemnities in this deed do not merge on the Effective Date.

5.5 Construction

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on this agreement or any part of it.

5.6 Entire agreement

This deed constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject.

5.7 Confidentiality

Clause 18.15 (“Confidentiality”) of the Common Terms Deed Poll applies to this deed as if it were fully set out in this deed and as if the New Borrower is a “Obligor” for the purposes of that clause.

5.8 Transaction Document

The parties agree that this deed is a Transaction Document for the purposes of the Common Terms Deed Poll.

EXECUTED as deed.

Novation Deed

Schedule 1 — Transaction Documents

Each of the following agreements are “Facility Agreements”:

[•]

and together with the following:

[(a) the Common Terms Deed Poll; and

(b) each Confirmation evidencing a Transaction (each term as defined in the ISDA Master Agreement noted above);]

are the “Transaction Documents”.

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Novation Deed
15 June 2010

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Novation Deed

Signing page

DATED: _____ 2009

[insert execution clauses]

MALLESONS STEPHEN JAQUES

James Hardie — Guarantee Trust Deed

Dated 19 December 2006

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

AET Structured Finance Services Pty Limited (“**Guarantee Trustee**”)

Mallesons Stephen Jaques

Level 60

Governor Phillip Tower

1 Farrer Place

Sydney NSW 2000

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Ref: GNH:YC:MJC

James Hardie — Guarantee Trust Deed

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James Hardie — Guarantee Trust Deed

Details

Interpretation — definitions are in clause 1.

Parties	Guarantor and Guarantee Trustee	
Guarantor	Name	James Hardie Industries N.V.
	Corporate seat	Amsterdam
	Registered Number	34106455
	ABN	49 097 829 895
	ARBN	097 829 895
	Address	Atrium, 8th Floor Strawinskylaan 3077 1077 ZX Amsterdam The Netherlands
	Fax	+ 31 20 404 2544
	Attention	Managing Director and Company Secretary
	Guarantee Trustee	Name
	ABN	12 106 424 088
	Address	80 Alfred Street Milsons Point NSW 2061
	Fax	02 9028 5942
	Attention	Corporate Trust
In favour of	Each Beneficiary as defined in this deed.	
Recitals	A JHIL was listed on the Australian Stock Exchange in 1951 and, by that time, the business then carried on by JHIL and its subsidiaries had been carried on in Australia, in one form or another and under the “James Hardie” name, for at least 60 years.	

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- B** Under plans of reorganisation and capital restructuring executed between 1998 and 2001, JHIL sold on arm's length terms substantially all of its business, operations and undertaking to the Guarantor and its subsidiaries with the result that the Guarantor became the ultimate holding company of the businesses formerly carried on or controlled by JHIL.
- C** The Guarantor is a company organised under the laws of the Netherlands and is listed on both the Australian Stock Exchange and the New York Stock Exchange (with the listing on the latter exchange via American Depositary Receipts or equivalent or replacement securities). At the date of this deed, the James Hardie Group carries on the business of manufacturing building products in the United States of America, Australia, New Zealand and the Philippines.
- D** On 21 December 2004, the Guarantor and others entered into the Heads of Agreement containing, among other things, a set of agreed principles on which the Performing Subsidiary will provide, and the Guarantor will guarantee the payment of, funding to the Charitable Fund on a long term basis of compensation for personal injury and death claims made in Australia against JHIL or certain former subsidiaries of JHIL arising from exposure to asbestos in Australia.
- E** The Heads of Agreement also provided that the obligations of the Guarantor to guarantee the payment of such funding to the Charitable Fund are to be subordinated to the obligations of the Guarantor to certain lenders to James Hardie Group Members.
- F** The principles contained in the Heads of Agreement were developed and set out in the Original Final Funding Agreement.
- G** On 8 June 2006 the Fund Trustee executed a Deed of Accession so as to become a party to the Original Final Funding Agreement.
- H** On 21 November 2006 the parties to the Original Final Funding Agreement (including the Fund Trustee) entered into the Final Funding Agreement, thereby amending and restating the Original Final Funding Agreement.
- I** On or about 14 December 2006 Asbestos Injuries Compensation Fund Limited entered into the Trust Deed and on or about 14 December 2006 in its capacity as trustee of the Discretionary Fund became a party to the Final Funding Agreement by executing a Deed of Accession.

J The Guarantor has guaranteed the obligations of the Performing Subsidiary under the Final Funding Agreement on and subject to the terms of the Fund Guarantee.

K The Guarantor wishes to provide separate guarantees under this deed to the providers from time to time of financial accommodation to the James Hardie Group.

L The Intercreditor Deed sets out certain arrangements in relation to, among other things, the rights of the Fund Trustee and the NSW Government in connection with the Fund Guarantee and the rights of the Guarantee Trustee and the Beneficiaries in connection with this deed which have been agreed between the parties to the Intercreditor Deed.

Date of deed See Signing page

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James Hardie — Guarantee Trust Deed
12 December 2006

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James Hardie — Guarantee Trust Deed

General terms

Part 1 Preliminary

1 Interpretation

1.1 Definitions

These meanings apply unless the contrary intention appears:

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

Audited Financial Statements has the meaning given to that term in the Intercreditor Deed.

Authorised Officer means:

- (a) in the case of the Guarantee Trustee or a Beneficiary, a director or secretary, or an officer 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 nominated by the Guarantee Trustee or the Beneficiary, as the case may be, as an Authorised Officer for the purposes of this deed;
- (b) in the case of the Guarantor, a person appointed by the Guarantor and notified to the Guarantee Trustee as an Authorised Officer for the purposes of this deed, and whose specimen signature is provided with such notification to the Guarantee Trustee.

Beneficiary means each person nominated as a “Beneficiary” in a Beneficiary Nomination Letter (including, in the case of any group of creditors, an agent or trustee acting on their behalf) and includes their successors and assigns, but excludes any person who has ceased to be a Beneficiary in accordance with clause 2.4.

Beneficiary Change Form means a form sent to the Guarantee Trustee in accordance with clause 9.1(b).

Beneficiary Nomination Letter means a letter substantially in the form set out in schedule 1(A) signed by the Guarantor, accepted by the relevant Beneficiary and confirmed by the Guarantee Trustee.

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

- (a) 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;

- (b) 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 the relevant Finance Document; and
- (c) for all other purposes, banks are open for general banking business in Amsterdam, Sydney and any other place or places specified in the relevant Finance Document.

Charitable Fund has the meaning given to that term in the Final Funding Agreement.

Compensation Debt has the meaning given to that term in the Intercreditor Deed.

Costs means costs, fees, disbursements, charges and expenses, including, without limitation, where the Guarantor is liable to pay or reimburse the Costs, those incurred in connection with advisers and, unless such Costs are incurred in connection with:

- (a) consideration of any action or claim (whether or not as part of, or preparatory to, any enforcement action) relating to a Finance Document, the Guarantor or the Guaranteed Money;
- (b) any costs or expenses relating to any advice described in clause 3(c);
- (c) the costs relating to any court application by the Guarantee Trustee under clause 5.2; or
- (d) the costs of an Independent Expert appointed under clause 8.3 of the Intercreditor Deed,

only for an amount and on a basis previously agreed to in writing by the Guarantor.

Debtor means, in respect of a Beneficiary at a particular time, the person or persons primarily liable to the Beneficiary at that time under the Finance Documents.

Deed of Accession has the meaning given to that term in the Final Funding Agreement.

Default Rate means LIBOR plus 2% per annum. For the purpose of this definition, the interest is calculated as if the overdue amount is a cash advance with interest periods beginning and ending on the first and last days respectively of each calendar month (and including both days), provided that the first interest period begins on and includes the due date.

Details means the section of this deed headed "Details".

Discretionary Fund has the meaning given to that term in the Final Funding Agreement.

Excluded Lender has the meaning given to that term in the Intercreditor Deed.

Excluded Tax means:

- (a) a Tax imposed by any jurisdiction on or assessed against a Beneficiary as a consequence of the Beneficiary 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 this deed or another document referred to in this deed (without the allowance of a deduction);
 - (ii) that is imposed as a result of the Beneficiary being considered a resident or organised or doing business in that jurisdiction solely as a result of it being a party to this deed or a transaction contemplated by this deed; or
- (b) a Tax which would not be required to be deducted by the Guarantor if, before the Guarantor makes a relevant payment, a relevant Beneficiary provided the Guarantor with any of its name, address, registration number or similar details or any relevant tax exemption or similar details.

Final Funding Agreement means the deed dated 21 November 2006 between the NSW Government, the Guarantor, the Performing Subsidiary and the Fund Trustee which amended and restated the Original Final Funding Agreement.

Finance Documents means, in relation to a Beneficiary, each agreement:

- (a) to which the Beneficiary (together with any other person) is a party or under which that Beneficiary has benefits or obligations; and
- (b) which is nominated as a "Finance Document" in a Beneficiary Nomination Letter.

Finance Money Debt has the meaning given to that term in the Intercreditor Deed.

Fund Trustee means Asbestos Injuries Compensation Fund Limited in its capacity as trustee of the Charitable Fund.

Fund Contribution has the meaning given to the term "JHINV Contribution" in the Final Funding Agreement.

Fund Guarantee means the instrument entitled "Parent Guarantee" dated 21 November 2006 between the Fund Trustee, the NSW Government and the Guarantor.

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 James Hardie Group Member and, for the avoidance of doubt, includes, without limitation, the Australian Taxation Office, the US Internal Revenue Service and the Dutch tax authorities.

Guarantee means the guarantees and indemnities given by the Guarantor under clause 10.

Guaranteed Money means all amounts that:

- (a) at any time;
- (b) for any reason or circumstance in connection with any agreement, transaction, instrument (whether or not negotiable), document, event, act, omission, matter or thing whatsoever;
- (c) whether at law or otherwise; and
- (d) whether or not of a type within the contemplation of the Guarantor or any other person at the date of this deed,

are payable, are owing but not currently payable, are contingently owing, or remain unpaid, by a Debtor to a Beneficiary under or in connection with the Finance Documents.

This definition applies:

- (i) irrespective of the capacity in which the Debtor or the Beneficiary became entitled to the amount concerned;
- (ii) irrespective of the capacity in which the Debtor or the Beneficiary became liable in respect of the amount concerned;
- (iii) whether the Debtor or the Beneficiary is liable as principal debtor, as surety or otherwise;
- (iv) whether the Debtor is liable alone, or together with another person;
- (v) even if the Debtor owes an amount or obligation to the Beneficiary because it was assigned to the Beneficiary, whether or not:
 - (A) the assignment was before, at the same time as, or after the date of this deed; or
 - (B) the Debtor consented to or was aware of the assignment; or
 - (C) the assigned obligation was secured;
- (vi) even if this deed was assigned to the Beneficiary, whether or not:
 - (A) the Debtor or the Guarantor consented to or was aware of the assignment; or
 - (B) any of the Guaranteed Money was previously unsecured; or

(vii) if the Guarantor is a trustee, whether or not it has a right of indemnity from the trust fund.

Guarantee Trust means the James Hardie Guarantee Trust established by clause 5.1(a) of this deed.

Guarantee Trustee means the person so described in the Details.

Guarantor means the person so described in the Details.

Heads of Agreement means the non-binding agreement entered into on 21 December 2004 between the Guarantor, the NSW Government, the Australian Council of Trade Unions, Unions New South Wales and a representative of certain asbestos victims groups.

Independent Valuer means:

- (a) any internationally recognised accountancy firm agreed to by the Guarantor and the Guarantee Trustee in writing; or
- (b) if the Guarantor and the Guarantee Trustee cannot agree on an internationally recognised accountancy firm, a person nominated by the President of the Institute of Chartered Accountants in Australia.

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

Insolvency Event means, in respect of a person, the occurrence in respect of that person of any event referred to in paragraphs (a) to (h) of the definition of “Insolvent” and, for the avoidance of doubt, includes a Winding Up.

Insolvency Official means a custodian, receiver, receiver and manager, trustee, liquidator, provisional liquidator, administrator or any other officer appointed in connection with the Insolvency of the Guarantor and includes, without limitation:

- (a) a receiver in bankruptcy (*curator*), an administrator (*bewindvoerder*);
- (b) a liquidator (*vereffenaar*) appointed in connection with a Winding Up under Dutch law; and
- (c) where the context so requires, a supervisory judge or a court of competent jurisdiction in respect of the Insolvency of the Guarantor.

A person is **Insolvent** if it:

- (a) admits in writing its inability to pay its debts as they become due (otherwise than as contemplated in clause 16.6 of the Final Funding Agreement);
- (b) was established under Dutch law and files a petition with any court in the Netherlands in relation to its bankruptcy (*faillissement*) or seeks an order for a suspension of payments (*surseance van betaling*);

- (c) files, or consents by answer or otherwise to the filing against it of, a petition for relief or insolvent reorganisation or insolvent arrangement or any other petition in bankruptcy, for liquidation or to take advantage of any bankruptcy, insolvency, insolvent reorganisation, insolvent moratorium or other similar law of any jurisdiction (including, without limitation, a filing by the person under Chapter 7 or Chapter 11 of the US Bankruptcy Code), provided that where the filing is a filing under Chapter 11 of that Code, the person:
- (i) is at the time of filing unable to pay its debts generally as and when they become due; or
 - (ii) in the case of the Guarantor, after it makes such a filing, fails to pay a Fund Contribution or other amount under the Fund Guarantee when such payment would (but for the moratorium granted as a result of that filing) have been due for 30 days after that due date,
- and also provided that, in such filing under Chapter 11 of that Code a person is Insolvent no later than the earliest date as of which creditors may vote on any matter or accept or reject a plan of reorganisation;
- (d) makes an assignment for the benefit of its creditors generally;
 - (e) consents to the appointment of a custodian (not being a nominee for the person), receiver, receiver and manager, trustee or other officer with similar powers with respect to it or with respect to a substantial part of its property;
 - (f) consents to the appointment of an insolvency administrator or such an insolvency administrator is appointed and that appointment is not terminated within 28 days;
 - (g) is adjudicated as insolvent or to be liquidated, in each case, by a court of competent jurisdiction;
 - (h) is subject to Winding Up,
- and **Insolvency** has a corresponding meaning.

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

JHIL means ABN 60 Pty Limited (ABN 60 000 009 263) (formerly known as James Hardie Industries Limited).

Intercreditor Deed means the deed so entitled between the Fund Trustee, the NSW Government, the Guarantor and the Guarantee Trustee dated on or about the date of this deed.

LIBOR means, in relation to any overdue amount:

- (a) the applicable British Bankers' Association Interest Settlement Rate for the currency in which the overdue amount is payable (**Due**

Currency) 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 Beneficiary to whom the overdue amount is owed may specify another page or service displaying the appropriate rate after consultation with the Guarantor) (“**Screen Rate**”); or

- (b) (if no Screen Rate is available for the Due Currency and the interest period of that overdue amount) the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Beneficiary to whom the overdue amount is owed at its request quoted by the principal London offices of at least three leading international banks chosen by the Beneficiary in consultation with the Guarantor to other leading international banks in the London interbank market, as of 11.00 am (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 the Due Currency and for a period comparable to the interest period for the overdue amount.

Liquidation means, in respect of any person, the liquidation of all or substantially all of its assets (other than, in the case of the Guarantor, where the acquirer of all or substantially all of such assets has by deed of accession become bound to observe all the obligations of the Guarantor under this deed and the Fund Guarantee and the other Related Agreements to which the Guarantor is a party) with the intention of distributing the proceeds to creditors or security holders, or a final order directing or requiring such liquidation is made or entered or deemed to have been made or entered by any court of competent jurisdiction.

Notice of Voting in Insolvency means a written notice from an Insolvency Official of any matter or matters in connection with the Insolvency (including, without limitation, the Winding Up) of the Guarantor and requiring or inviting the casting of votes by creditors of the Guarantor in relation to such matter or matters.

NSW Government means the State of New South Wales.

Original Final Funding Agreement means the legally binding agreement so entitled and entered into on 1 December 2005 between the Guarantor, the Performing Subsidiary and the NSW Government giving effect to the arrangements contemplated by the Heads of Agreement.

Performing Subsidiary means James Hardie 117 Pty Limited (formerly known as LGTDD Pty Limited) (ABN 30 116 110 948).

Proceeds has the meaning given to that term in the Intercreditor Deed.

Proportion means, in respect of a Beneficiary at any time, the Beneficiary’s proportion of the Finance Money Debt (including all Proceeds) divided by the total of all Finance Money Debt at that time, expressed as a percentage.

Recovered Money means all amounts paid to or recovered by the Guarantee Trustee in respect of the Finance Money Debt during an Insolvency of the Guarantor which has not yet been distributed under clause 17.

Register means the register to be established and maintained by the Guarantee Trustee under clause 9.

Related Agreement has the meaning given to that term in the Final Funding Agreement.

Related Entity has the meaning it has in the Corporations Act.

Relevant Documents means:

- (a) the Final Funding Agreement;
- (b) any Related Agreement; and
- (c) any Finance Document.

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.

Security Provider means a person (other than the Guarantor) who at any time is liable by guarantee, indemnity or otherwise alone or jointly, or jointly and individually, to pay or indemnify against non-payment of the Finance Money Debt.

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 Beneficiary) 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.

Trust Deed has the meaning given to that term in the Final Funding Agreement.

Trust Convention means the Convention on the Law applicable to Trusts and on their Recognition 1985.

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

Winding Up means, in respect of a person, the occurrence of any one or more of the following events in relation to that person:

- (a) a final court order is entered that it be wound up or declared bankrupt;
- (b) a liquidator (excluding a provisional liquidator) is appointed to it and the appointment is not subsequently terminated;
- (c) a court declaration of bankruptcy is made in relation to it and is not subsequently withdrawn, struck out or dismissed, vacated or reversed;
- (d) the dissolution of such person under Dutch law (*ontbinding*) or the law of any other jurisdiction;
- (e) the declaration of its bankruptcy under Dutch law (*faillissement*);
- (f) the Liquidation of that person;
- (g) a final order for relief occurs or is deemed to occur in relation to it under Chapter 7 or Chapter 11 of the US Bankruptcy Code which, when implemented, will result in the Liquidation of that person; and
- (h) any comparable action occurs under the law of any competent jurisdiction which has a substantially similar effect to any of the above paragraphs (a) to (g) of this definition,

and an order shall be deemed to be final when timely-commenced proceedings for review of such an order has been concluded without such order being subsequently dismissed, withdrawn, struck out, vacated or reversed, and the time for commencing any further proceeding for review of such order has expired.

1.2 References to certain general terms

Unless the contrary intention appears, a reference in this deed to:

- (a) a group of persons is a reference to any two or more of them collectively 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 collectively and each of them individually;
- (c) an agreement, representation or warranty by two or more persons binds them collectively and each of them individually but an agreement, representation or warranty by a Beneficiary binds the Beneficiary 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 deed) includes any variation 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) the word “person” includes an individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated association and any Government Agency;
- (h) a particular person includes a reference to the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (i) 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;
- (j) the Corporations Act is a reference to the Corporations Act 2001 of Australia; and
- (k) the words “to prove for”, “prove” and “right of proof”, when used in connection with a Winding Up or another Insolvency proceeding under Dutch law include, without limitation, “filing”, “filing for verification purposes” and “verification procedure”, as the context may require.

1.3 Number

The singular includes the plural and vice versa.

1.4 Headings

Headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this deed.

1.5 Trust Convention

It is the express intention of the parties to this deed that each trust constituted by this deed:

- (a) be recognised as a trust in accordance with the terms of this deed in any relevant jurisdiction;
- (b) qualify as a “trust” for the purpose of the Trust Convention; and
- (c) be recognised as a trust in accordance with the Trust Convention in any jurisdiction where the Trust Convention applies.

1.6 Guarantee Trustee's limitation of liability

- (a) A liability arising under or in connection with this deed is limited to and can be enforced against the Guarantee Trustee only to the extent to which it can be satisfied out of any property held by the Guarantee Trustee out of which the Guarantee Trustee is actually indemnified for the liability. This limitation of the Guarantee Trustee's liability applies despite any other provision of this deed and extends to all liabilities and obligations of the Guarantee Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this deed.
- (b) The parties (other than the Guarantee Trustee) may not sue the Guarantee Trustee in any capacity other than as trustee of the Guarantee Trust, including seeking the appointment of a receiver (except in relation to property of the Guarantee Trust), a liquidator, an administrator or any other similar person to the Guarantee Trustee or prove in any liquidation of or affecting the Guarantee Trustee (except in relation to the property of the Guarantee Trust).
- (c) The parties waive their rights and release the Guarantee Trustee from any personal liability in respect of any loss or damage which any of them may suffer as a consequence of a failure of the Guarantee Trustee to perform its obligations under this deed, which cannot be paid or satisfied out of any property of the Guarantee Trust held by the Guarantee Trustee.
- (d) The provisions of this clause 1.6 will not apply to any obligation or liability of the Guarantee Trustee to the extent to which such obligation or liability:
 - (i) arises as a result of the Guarantee Trustee's fraud, gross negligence or wilful misconduct; or
 - (ii) cannot be satisfied out of any property held by the Guarantee Trustee as a result of the Guarantee Trustee's fraud, gross negligence or wilful misconduct.
- (e) No act or omission of the Guarantee Trustee (including any related failure to satisfy its obligations or breach of representation or warranty under this deed) will be considered fraud, gross negligence or wilful misconduct of the Guarantee Trustee to the extent to which the act or omission was caused or contributed to by any failure of any party (other than the Guarantee Trustee) or any other person to fulfil its obligations relating to the Guarantee Trust or by any other act or omission of the parties (other than the Guarantee Trustee) or any other person having obligations relating to the Guarantee Trust.
- (f) Any fraud, gross negligence or wilful misconduct of an attorney, agent or delegate appointed by the Guarantee Trustee in accordance with this deed is not, and is not to be deemed to be, an act on behalf of the Guarantee Trustee for the purposes of this deed and does not create rights or obligations on any party to this deed nor expose the Guarantee Trustee to any personal liability provided that:

- (i) nothing in this paragraph (f) relieves the Guarantee Trustee from any liability to the extent of any fraud, gross negligence or wilful misconduct of the Guarantee Trustee in the selection, appointment, oversight or supervision of any such attorney, agent or delegate; and
- (ii) the Guarantee Trustee must, to the extent permitted by law, take all reasonable steps to recover compensation for any expenses, losses, liabilities, actions, proceedings or claims that are incurred by the Guarantee Trustee (or would have been incurred but for the operation of this clause 1.6(f)) as a direct or indirect consequence of the fraud, gross negligence or wilful misconduct of any attorney, agent or delegate appointed by the Guarantee Trustee from any such attorney, agent or delegate.

1.7 Guarantee Trustee's knowledge

The Guarantee Trustee will only be considered to have knowledge or awareness of, or notice of, any thing, or grounds to believe any thing, by virtue of the officers of the Guarantee Trustee having day to day responsibility for the administration of the Guarantee Trustee having actual knowledge, actual awareness or actual notice of that thing, or grounds or reason to believe that thing (and similar references will be interpreted in this way).

1.8 Reliance on notices

Where any notice is provided by any of the parties (other than the Guarantee Trustee) to the Guarantee Trustee and the notice has been executed by an Authorised Officer of that party then the Guarantee Trustee may assume that the notice has been properly prepared and considered by that party and the Guarantee Trustee is not required to investigate further.

1.9 Condition precedent

Notwithstanding any other provision of this deed, the provisions of, and the obligations of the parties under, this deed are subject to, and do not commence until, each of the conditions set out in clause 2.1 of the Final Funding Agreement have been satisfied or waived in writing by the parties to the Final Funding Agreement.

2 Consideration and benefit

2.1 Deed and deed poll

This deed takes effect as both:

- (a) a deed between the Guarantor and the Guarantee Trustee; and
- (b) a deed poll by the Guarantor and the Guarantee Trustee in favour of the Beneficiaries.

2.2 Benefit

- (a) Each Beneficiary has the benefit of, and is entitled to enforce, this deed in accordance with its terms even though it is not a party to, or is not in existence at the time of execution and delivery of, this deed.
- (b) Subject to the Intercreditor Deed and clause 2.2(c), the benefit and obligations of this deed may be extended to any other person (and such person shall become a Beneficiary) in relation to any other document (and such document shall become a Finance Document) under which liabilities are owed to such person where such liabilities are, or required to be, included in the James Hardie Group's financial statements or accompanying notes as debt or borrowings (including, without limitation, bank loans, letter of credit facilities, derivatives and debt capital markets issues which are, or are required to be so included or noted) of the Guarantor (or a James Hardie Group Member, the performance of whose obligations has been guaranteed by the Guarantor) by the Guarantor signing and delivering to that person (or an agent or trustee acting on behalf of that person) and the Guarantee Trustee, a Beneficiary Nomination Letter and the person (or an agent or trustee acting on behalf of that person) countersigning such Beneficiary Nomination Letter and delivering the countersigned Beneficiary Nomination Letter to the Guarantee Trustee.
- (c) An Excluded Lender cannot be a Beneficiary.

2.3 Consideration

Each party acknowledges incurring obligations and giving rights under this deed for valuable consideration received and to be received from, among others, each Beneficiary.

2.4 Ceasing to be a beneficiary

- (a) The Guarantor may request that a Beneficiary sign a consent confirming its cessation as a beneficiary of the Guarantee Trust if, at the time of the Guarantor's request:
 - (i) there is no Guaranteed Money in respect of that Beneficiary;
 - (ii) the Guarantor has no outstanding obligations to the Beneficiary under this deed; and
 - (iii) that Beneficiary has no further obligation to provide financial accommodation to the Debtor under the Finance Documents.
- (b) A Beneficiary may at any time notify the Guarantee Trustee in writing that the Beneficiary wishes to cease to be a beneficiary of the Guarantee Trust. Any such notice does not limit the Beneficiary's rights against the Guarantor other than its rights as a beneficiary of the Guarantee Trust.
- (c) The relevant Beneficiary undertakes to do all things necessary to give effect to the cessation of its being a beneficiary under clause 2.4(a) (if it is satisfied, acting reasonably, that clauses 2.4(a)(i), 2.4(a)(ii) and

2.4(a)(iii) are satisfied) or 2.4(b), including, without limitation, the execution of the consent referred to in clause 2.4(a) and the surrender of its Beneficiary Nomination Letter.

- (d) A Beneficiary ceases to be a beneficiary of the Guarantee Trust and thereupon ceases to have the benefit of the Guarantee:
 - (i) under clause 2.4(a), on receipt by the Guarantee Trustee of a signed consent;
 - (ii) under clause 2.4(b), on receipt by the Guarantee Trustee of notice from the Beneficiary.

Upon receipt of the relevant signed consent or notice, the Guarantee Trustee must remove the Beneficiary's name from the Register.

3 Inconsistency and advice

- (a) If any provision of the Final Funding Agreement, any Related Agreement (excluding this deed, the Intercreditor Deed or the Intercreditor Deed (Performing Subsidiary) attached as Annexure 7B to the Final Funding Agreement), any other Finance Document or the Fund Guarantee is inconsistent with this deed, this deed prevails to the extent of the inconsistency.
- (b) Each of the parties to this deed undertake to use all reasonable endeavours to procure that the Relevant Documents which are not executed as at the date of this deed are executed in a form that minimises the likelihood of any inconsistency.
- (c) In the event that the Guarantee Trustee may be required to exercise any discretion, judgement or issue a notice or determine a matter relating to this deed or any Relevant Document, the Guarantee Trustee will be entitled to seek such legal, accounting, tax or other advice as is reasonable in all the circumstances.

4 Termination

Without prejudice to the provisions of clause 8.5, upon the Guarantor delivering:

- (a) to the Guarantee Trustee:
 - (i) a written notice stating that the Final Funding Agreement and its Related Agreements have been terminated; and
 - (ii) legal opinions from lawyers practising in New South Wales and each other jurisdiction whose laws govern any such Related Agreement which collectively confirm that the Final Funding Agreement and its Related Agreements have ceased to be in full force and effect under their respective governing laws; and

(b) to each Beneficiary:

- (i) an original signed counterpart of a replacement guarantee substantially in the form set out in schedule 2 (“Form of replacement guarantee”); and
- (ii) legal opinions from lawyers practising in New South Wales and the Netherlands in respect of such replacement guarantee which confirm that such replacement guarantee constitutes a valid, binding and enforceable obligation of the Guarantor (subject to their customary assumptions and qualifications),

this deed is automatically terminated and, with respect to each Beneficiary, replaced by such replacement guarantee.

5 Guarantee Trust

5.1 Declaration of trust

The Guarantee Trustee:

- (a) declares that it holds the benefit of the Guarantee, each Relevant Document and any other document in connection with the Guarantee or any Relevant Document which contains provisions in favour of, or for the benefit of, the Guarantee Trustee or a Beneficiary (including, without limitation, all representations, warranties and undertakings made in favour of the Guarantee Trustee or any Beneficiary and any other rights, claims or entitlements of the Guarantee Trustee or a Beneficiary under the Guarantee or any Relevant Document) on separate trusts for each relevant Beneficiary in accordance with, and on the terms of, this deed; and
- (b) agrees to comply with the provisions of this deed which purport to bind it and to perform the duties and responsibilities of the Guarantee Trustee specified in this deed.

5.2 Duration

Each trust created pursuant to clause 5.1 commences on the date of the relevant Beneficiary Nomination Letter and terminates on the earlier of:

- (a) the date the relevant Beneficiary ceases to be a beneficiary in accordance with clause 2.4;
- (b) the date this deed is automatically terminated under clause 4;
- (c) the date on which the obligations of the Guarantor to pay the Guaranteed Money pursuant to this deed are fully discharged in accordance with this deed; and
- (d) the day before the eightieth anniversary of the date of this deed.

The termination of a trust created pursuant to clause 5.1 in accordance with this clause 5.2 does not affect any other trust created pursuant to clause 5.1. Any such other trust is preserved and continues in existence until terminated in accordance with this clause 5.2.

The Guarantee Trustee must use reasonable endeavours prior to the eightieth anniversary (if applicable) of the date of this deed to resettle the property then held on trust by the Guarantee Trustee in new trusts for the Beneficiaries on identical terms to those contained in this deed.

In the event that the Guarantee Trustee is unable to resettle the property of the Guarantee Trust then it will be entitled to seek directions from an appropriate

court regarding the settlement of new trusts for the Beneficiaries, as required under this clause 5.2.

5.3 Trust name

The trusts established under clause 5.1(a) shall be collectively known as the James Hardie Guarantee Trust.

6 Nature of Guarantee

6.1 Several nature of the Guarantee

The benefit of the Guarantee held by the Guarantee Trustee in accordance with, and on the terms of, this deed is held by the Guarantee Trustee on trust for the benefit of each Beneficiary severally with respect to the Guaranteed Money owing to the relevant Beneficiary.

6.2 Claims in Insolvency

Each Beneficiary is severally a creditor of the Guarantor in relation to the Guaranteed Money owing to the Beneficiary, but its rights under the Guarantee in an Insolvency of the Guarantor are subject to the terms of this deed and are to be exercised by the Guarantee Trustee on its behalf on the terms of this deed.

6.3 Demands prior to Insolvency

Prior to an Insolvency of the Guarantor, and subject to the terms of this deed, each Beneficiary individually may make a demand under the Guarantee with respect to the Guaranteed Money owing to that Beneficiary.

7 Guarantee Trustee

7.1 Appointment

The Guarantor appoints the Guarantee Trustee as the trustee for each Beneficiary in respect of the Guarantee, each Relevant Document and any other document in connection with the Guarantee or any Relevant Document which contains provisions in favour of, or for the benefit of, the Guarantee Trustee or a Beneficiary (including, without limitation, all representations, warranties and undertakings made in favour of the Guarantee Trustee or any Beneficiary and any other rights, claims or entitlements of the Guarantee Trustee or a Beneficiary under the Guarantee or any Relevant Document).

The Guarantee Trustee accepts that appointment on the terms and conditions of this deed.

7.2 Remuneration

(a) The Guarantor must pay the Guarantee Trustee the fee separately agreed by the Guarantor and the Guarantee Trustee (including without limitation fees in relation to the Guarantee Trustee's time and attendance on all matters in connection with the enforcement of

Beneficiaries' rights under this deed, the Guarantee Trust and each Relevant Document, as separately agreed by the Guarantor and the Guarantee Trustee).

(b) If the Guarantee Trustee is required at any time to undertake:

- (i) any duties in connection with the enforcement of Beneficiaries' rights under this deed, the Guarantee Trust and each Relevant Document; or
- (ii) any duties which are agreed by the Guarantor to be of an exceptional nature or otherwise outside the scope of the normal duties of the Guarantee Trustee,

then the Guarantee Trustee is entitled to such additional fees as may be agreed between the Guarantee Trustee and the Guarantor or, failing agreement, such fees as are determined by the Independent Valuer (acting as an expert and not as an arbitrator). The Independent Valuer's determination shall be conclusive and binding on the Guarantor and the Guarantee Trustee so far as permitted by law.

7.3 Power

In connection with the discharge of its duties and obligations under this deed, the Guarantee Trustee has all the powers of a natural person, but must exercise those powers subject to the provisions of this deed.

7.4 Specific responsibilities

The Guarantee Trustee agrees:

- (a) to notify the Beneficiaries of any change in the Guarantee Trustee's principal office and address for notices under this deed;
- (b) to maintain the Register in accordance with clause 9;
- (c) to diligently perform its obligations under the Intercreditor Deed;
- (d) in relation to each matter arising under or in connection with the Intercreditor Deed which requires the exercise of any right or discretion vested in the Financiers collectively (as therein defined) or the Guarantee Trustee (on behalf of the Financiers (as therein defined)) (including, without limitation, a request for consent or the waiver of a right), to:
 - (i) promptly send to each Beneficiary (at the address last notified by the Beneficiary) a notice which:
 - (A) notifies the Beneficiary of the details of the matter and the legal basis (by reference to the particular clause of the Intercreditor Deed) for the exercise of a right or discretion by the Financiers, or the Guarantee Trustee on their behalf, in relation to the matter; and

- (B) requests the Beneficiary to advise in writing, with such details as the Guarantee Trustee may request and within five Business Days of the date of the notice (or such shorter period as the Guarantee Trustee determines is reasonable having regard to all relevant circumstances):
 - (aa) the amount of its participation in the Finance Money Debt at that time; and
 - (ab) its instructions as to how the right or discretion should be exercised by the Guarantee Trustee in relation to the matter described in the notice; and
- (ii) notwithstanding the instructions of any individual Beneficiary, act in accordance with the instructions of the Beneficiaries whose aggregate participation in the Finance Money Debt (as advised by those Beneficiaries) represents more than 50% of the aggregate value of all Finance Money Debt (as advised by all Beneficiaries), provided that if any Beneficiary fails to respond to the Guarantee Trustee's notice within the time stated therein, the Guarantee Trustee may, in its discretion if it believes doing so is in the best interests of the Beneficiaries as a whole (without regard to the particular circumstances or interests of any individual Beneficiary), act in accordance with the instructions of the Beneficiaries who do respond within the stated time ("**Responding Beneficiaries**") and whose aggregate participation in the Finance Money Debt (as advised by those Responding Beneficiaries) represents more than 50% of the aggregate value of the Finance Money Debt of all Responding Beneficiaries;
- (e) upon receipt of written notice from the Guarantor or a Beneficiary of the commencement of any Insolvency of the Guarantor, to promptly send to each Beneficiary (at the address last notified by the Beneficiary) a notice which:
 - (i) states that the Guarantee Trustee has been so notified; and
 - (ii) requests the Beneficiary to advise in writing, with such details as the Guarantee Trustee may request and within five Business Days of the date of the notice (or such shorter period as the Guarantee Trustee determines is reasonable having regard to all relevant circumstances), the amount of its participation in the Finance Money Debt at that time; and
- (f) in any Insolvency of the Guarantor:
 - (i) to distribute all Notices of Voting in Insolvency, and to vote on any matter or matters the subject of a Notice of Voting in Insolvency, in accordance with clause 16.

- (ii) (if required for the purposes of any proceedings relating to, or in connection with, the Insolvency of the Guarantor) to separately prove for all amounts of Finance Money Debt notified by each Beneficiary in accordance with clause 7.4(e)(ii). For the avoidance of doubt, each Beneficiary expressly authorises the Guarantee Trustee to prove for all amounts of Finance Money Debt owing to it in the name of the Guarantee Trustee, in the name of the Guarantee Trustee as trustee for that Beneficiary or in the name of that Beneficiary;
- (iii) to distribute all Recovered Money in accordance with clause 17.

7.5 No other duties

- (a) The Guarantee Trustee has no duties or responsibilities except those expressly set out in this deed or which the Guarantee Trustee has otherwise agreed in writing that it will undertake.
- (b) Without limiting the generality of clause 7.5(a), the Guarantee Trustee has no obligation to keep itself informed, or to inform the Beneficiaries, about:
 - (i) the performance by any party of its obligations under this deed or any other agreement; or
 - (ii) the affairs, financial condition or business of any person.
- (c) Except in the case of manifest error, the Guarantee Trustee may rely upon any certification, notification or other written advice given to it in good faith as being conclusive on its face and is not obliged to make any inquiries as to the correctness of the contents of that certificate, notification or advice.
- (d) Each Beneficiary expressly authorises the Guarantee Trustee to act in accordance with the express terms of this deed, notwithstanding that in doing so the Guarantee Trustee may be in breach of any fiduciary or other duties owed by it to that Beneficiary.
- (e) Each Beneficiary expressly authorises the Guarantee Trustee to intermingle the Recovered Money prior to any distribution under clause 17 to the extent permitted by applicable law.
- (f) Each Beneficiary expressly waives any right or action it may have in law or equity against the Guarantee Trustee, arising from any action the Guarantee Trustee may take in accordance with clause 7.5(d) and 7.5(e).

7.6 Delegation

- (a) The Guarantee Trustee may employ agents and attorneys and may delegate any of its rights or obligations in the capacity as trustee under this deed without notifying any person of the delegation.

- (b) The Guarantee Trustee agrees to exercise reasonable care in selecting delegates and to supervise their actions.
- (c) The Guarantee Trustee is responsible for any loss arising due to the fraud, gross negligence or wilful misconduct of its delegate or gross or wilful breach by the delegate of their obligations where that delegate is a Related Entity to the Guarantee Trustee.
- (d) For the avoidance of doubt, in relation to each separate trust created pursuant to clause 5.1, the Guarantee Trustee may employ the same or separate agents and attorneys and may delegate any of its rights or obligations in the capacity as trustee under this deed to the same or separate persons to those agents, attorneys and delegates employed or appointed for any other trust created pursuant to clause 5.1.

7.7 Indemnity

- (a) The Guarantee Trustee and its officers and agents are entitled to be continually indemnified out of the Guarantee Trust in the same proportions specified in clause 7.7(c) against all expenses, losses, liabilities, actions, proceedings, claims and demands (whether actual, contingent, prospective or otherwise) that are incurred as a direct or indirect consequence of the execution of this deed or any Relevant Document or any act or omission by any person under this deed or any Relevant Document.
- (b) The indemnity in clause 7.7(a):
 - (i) is separate from any indemnity allowed by law;
 - (ii) survives the termination of this deed; and
 - (iii) does not extend to any expenses, losses, liabilities, actions, proceedings, claims and demands to the extent that they are attributable to:
 - (A) a failure by the Guarantee Trustee to properly perform its duties under this deed, any Relevant Document or under the Corporations Act 2001; or
 - (B) fraud, gross negligence or wilful misconduct on the part of the Guarantee Trustee or the officer or agent seeking to be indemnified under clause 7.7(a).
- (c) Each Beneficiary individually in accordance with its Proportion, indemnifies the Guarantee Trustee and its officers and agents against the non-receipt of a payment from the Guarantor and the Costs incurred by the Guarantee Trustee or relevant officer or agent in funding the amount not paid, if the Guarantee Trustee or relevant officer or agent:
 - (i) reasonably claims a payment from the Guarantor under clause 22.1; and

(ii) does not receive it within seven days after the claim is made.

Each Beneficiary agrees to pay amounts due under this indemnity to the Guarantee Trustee or relevant officer or agent on demand from the Guarantee Trustee or relevant officer or agent.

- (d) The Guarantor indemnifies each Beneficiary against any liability or loss arising from, and any Costs incurred in connection with, the Beneficiary making a payment under clause 7.7(c). The Guarantor agrees to pay amounts due under this indemnity on demand from the Beneficiaries.
- (e) Each payment to be made under this clause 7.7 must be made in Australian dollars.

7.8 Payment by Beneficiaries

If the Guarantee Trustee:

- (a) proposes to exercise a right arising in its capacity as trustee for the Beneficiaries under this deed or any Relevant Document or take any other action in that capacity; or
- (b) the Guarantee Trustee is directed to exercise a right or take any action in its capacity as trustee for the Beneficiaries under this deed or any Relevant Document,

and the Guarantee Trustee reasonably considers this could result in the Guarantor becoming obliged to pay an amount to the Guarantee Trustee under clause 22.1, then the Guarantee Trustee:

- (i) may request the Beneficiaries to pay to the Guarantee Trustee an amount at least equal to the amount the Guarantee Trustee reasonably determines would be the Guarantor's liability to the Guarantee Trustee; and
- (ii) need not act until the Beneficiaries do so.

Each Beneficiary agrees to fund under this clause 7.8 rateably in accordance with its Proportion.

7.9 Adjustments amongst Beneficiaries

- (a) If a Beneficiary (a "**Defaulting Beneficiary**") fails to pay any amount (a "**Default Amount**") to the Guarantee Trustee under clause 7.7(c) or 7.8, any other Beneficiary (a "**Funding Beneficiary**") acting alone or together with other Funding Beneficiaries may pay an amount equal to the Default Amount to the Guarantee Trustee.
- (b) If the Guarantee Trustee receives a payment made in accordance with clause 7.9(a), it must:

- (i) deduct an amount equal to the Default Amount from any payment it is obliged to make to the Defaulting Beneficiary; and
- (ii) pay an amount equal to each Funding Beneficiary's contribution to the Default Amount to that Funding Beneficiary.

8 Change of Guarantee Trustee

8.1 Retirement

The Guarantee Trustee may retire by giving the Guarantor and each Beneficiary at least 90 days' notice of its intention to do so and without being required to give any reasons for that retirement.

8.2 Removal

If the Guarantee Trustee breaches any material obligation under this deed and (if the breach is capable of remedy) does not correct the breach within 30 days, or if the Guarantee Trustee becomes Insolvent, the Guarantor may remove the Guarantee Trustee as guarantee trustee under this deed by giving the Guarantee Trustee at least 45 days' notice.

8.3 Permitted successors

Subject to the Intercreditor Deed, the successor guarantee trustee must be a reputable and experienced professional trustee company, bank or financial institution (or a Related Entity of any of them) nominated by the Guarantor.

8.4 When retirement or removal takes effect

The retirement or removal of the Guarantee Trustee takes effect when both of the requirements in paragraphs (a) and (b) have been met or if the circumstances in paragraph (c) apply:

- (a) a successor guarantee trustee has been appointed; and
- (b) the successor guarantee trustee, each other party to this deed and each person having the benefit of this deed (although not a party to it) have the same rights and obligations among themselves as they would have had if the successor guarantee trustee had been party to this deed at the date of its execution. The retiring or removed guarantee trustee and the Guarantor agree to sign documents (including a retirement and appointment document) and do anything else necessary or appropriate to give effect to this. Everything the retiring guarantee trustee is required to do under this clause is at the Guarantor's expense except that if the Guarantee Trustee has been removed, it is at its own expense; or
- (c) no successor guarantee trustee has been appointed or its appointment has not become effective within 60 days of the end of the relevant retirement or removal notice period applicable under this clause 8 but

the Guarantee Trustee has the approval of an appropriate court to cease acting as guarantee trustee under this deed.

8.5 Discharge of further obligations

When a successor guarantee trustee is appointed, the retiring or removed guarantee trustee is discharged from any further obligation under this deed. This discharge does not prejudice any accrued right or obligation.

8.6 Turnover

Each Beneficiary agrees for the benefit of the other Beneficiaries that if:

- (a) it receives or recovers an amount of Guaranteed Money; and
- (b) at the time of receipt or recovery of such amount, the Guarantee Trustee has retired or been removed and either a successor guarantee trustee has not been appointed or the successor guarantee trustee's appointment is not effective,

then, to the extent such amount exceeds that Beneficiary's Proportion of the Guaranteed Money (the "**Turnover Amount**"), it:

- (i) holds the Turnover Amount on trust for the other Beneficiaries; and
- (ii) agrees to pay the Turnover Amount to the other Beneficiaries rateably in accordance with their Proportions.

9 Register

9.1 Establishment and maintenance of Register

- (a) The Guarantee Trustee must establish and maintain the Register in accordance with this deed.
- (b) Each Beneficiary must give notice to the Guarantee Trustee within 10 Business Days (or, if the Guarantor is at that time Insolvent, 2 Business Days) of the date of any change to any of the details in clause 9.2 below such notice to be substantially in the form of the Beneficiary Change Notification set out in schedule 1(B).

9.2 Information required in Register

The Guarantee Trustee must enter the following information in the Register:

- (a) the name and address of each Beneficiary; and
- (b) in relation to each Beneficiary, a list of each Finance Document; and
- (c) in respect of each Finance Document, the date, the parties to it and the name of it; and
- (d) the date of each entry in the Register; and

(e) particulars of changes notified to the Guarantee Trustee of information recorded in the Register; and

(f) any other particulars as the Guarantee Trustee thinks fit.

9.3 No trust

No notice of any trust express or implied or constructive is to be entered in the Register regardless of whether it relates to or arises under this deed or any Relevant Document.

9.4 Register conclusive

The Register is conclusive evidence, in the absence of manifest error, of the matters recorded in it.

9.5 Update and correction of Register

The Guarantee Trustee agrees to:

(a) update the Register when it is notified of any change in any of the details recorded in respect of a Beneficiary or a Finance Document; and

(b) correct the Register if it becomes aware that any details in the Register are incorrect or incomplete.

9.6 Inspection of Register

The Guarantor and each Beneficiary may inspect the Register in respect of information that may be disclosed to it without breach by any party of any duty of confidentiality or any law, regulation or directive relating to privacy:

(a) on prior reasonable notice to the Guarantee Trustee; and

(b) between 9.30 am and 4.30 pm on any day on which business is generally carried on in the place where the Register is kept.

James Hardie — Guarantee Trust Deed

Part 3 Guarantee

10 Guarantee and indemnity

10.1 Guarantee

- (a) The Guarantor unconditionally and irrevocably guarantees in accordance with, and on the terms of this deed, and for the benefit of each Beneficiary and the Guarantee Trustee payment of the Guaranteed Money.
- (b) If the Debtor does not pay the Guaranteed Money on time and in accordance with the Finance Documents then, subject to clause 10.1(c), the Guarantor agrees to pay the Guaranteed Money to:
 - (i) prior to an Insolvency of the Guarantor, the relevant Beneficiary following a demand by that Beneficiary to the Guarantor; or
 - (ii) otherwise, the Guarantee Trustee following a demand by the relevant Beneficiary, or the Guarantee Trustee on behalf of that Beneficiary, to the Guarantor.
- (c) A demand on the Guarantor under this clause 10.1:
 - (i) may be made only if the Beneficiary has first made a demand on the Debtor and the demand is not satisfied within 2 Business Days;
 - (ii) may be made at any time and from time to time; and
 - (iii) must be made in writing in accordance with clause 26.

10.2 Indemnity

- (a) The Guarantor indemnifies in accordance with, and on the terms of this deed, each Beneficiary and the Guarantee Trustee against any liability or loss arising, and any Costs it suffers or incurs:
 - (i) if the Debtor does not, or is unable to, pay the Guaranteed Money in accordance with the Finance Documents; or
 - (ii) if an obligation the Debtor would otherwise have to pay the Guaranteed Money (or which would have been Guaranteed Money had it not been irrecoverable) is found to be unenforceable, void or voidable; or
 - (iii) if an obligation the Guarantor would otherwise have under clause 10.1 is found to be unenforceable; or
 - (iv) if the Beneficiary or the Guarantee Trustee is obliged, or agrees, to pay an amount to a trustee in bankruptcy or liquidator (of an Insolvent person) in connection with a

payment by the Guarantor or the Debtor. (For example, the Beneficiary may have to, or may agree to, pay interest on the amount); or

(v) if the Guarantor defaults under clause 10.1.

(b) Subject to clause 10.1(c), the Guarantor agrees to pay amounts due under this indemnity to:

(i) prior to an Insolvency of the Guarantor, the relevant Beneficiary following a demand by that Beneficiary to the Guarantor; or

(ii) otherwise, the Guarantee Trustee following a demand by the relevant Beneficiary, or the Guarantee Trustee on behalf of that Beneficiary, to the Guarantor.

(c) A demand on the Guarantor under this clause 10.1:

(i) may be made at any time and from time to time; and

(ii) must be made in writing in accordance with clause 26.

11 Interest

11.1 Obligation to pay interest

The Guarantor agrees to pay interest at the Default Rate on:

(a) any part of the Guaranteed Money which is due for payment but which is not otherwise incurring interest; and

(b) any amount payable by it under this deed (other than under clause 10.1) which is not paid on the due date for payment.

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 Guarantor agrees to pay interest under this clause on demand from the Beneficiary.

11.2 Compounding

Interest payable under clause 11.1 which is not paid when due for payment may be added to the overdue amount by the Beneficiary 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 11.1.

11.3 Interest following judgment

If a liability becomes merged in a judgment, the Guarantor agrees to 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 Guarantor agrees to pay interest under this clause on demand from the Beneficiary.

12 Extent of guarantee and indemnity

- (a) The Guarantee is a continuing obligation despite any intervening payment, settlement or other thing and extends to all of the Guaranteed Money.
- (b) Subject to compliance by the Beneficiary with clauses 10.1(c) and 26, the Guarantor waives any right it has of first requiring the Guarantee Trustee or the Beneficiary to commence proceedings or enforce any other right against the Debtor or any other person before claiming from the Guarantor under the Guarantee.

13 Rights of the Beneficiary are protected

Rights given to each Beneficiary under the Guarantee, and the Guarantor's liabilities under it, are not affected by any act or omission of the Beneficiary or any other person or by any act, other matter or thing whatsoever, whether negligent or not. For example, those rights and liabilities are not affected by:

- (a) any act or omission:
 - (i) varying or replacing any arrangement under which the Guaranteed Money is expressed to be owing, such as by increasing a facility limit or extending the term;
 - (ii) releasing or discharging the Debtor (including, without limitation, discharge by operation of law) or giving the Debtor a concession (such as more time to pay);
 - (iii) releasing any person who gives a guarantee or indemnity in connection with any of the Debtor's obligations;
 - (iv) releasing, losing the benefit of, or not obtaining any Security Interest or negotiable instrument;

- (v) by which the obligations of any person who guarantees any of the Debtor's obligations (including under the Guarantee) may not be enforceable;
- (vi) by which any person who was intended to guarantee any of the Debtor's obligations does not do so, or does not do so effectively;
- (vii) by which a person who is a co-surety or co-indemnifier for payment of the Guaranteed Money is discharged under an agreement or by operation of law;
- (viii) by which any Security Interest which could be registered is not registered,
or any other thing causing any prejudice (including, but not limited to, material prejudice) to any person;
- (b) a person dealing in any way with a Security Interest, guarantee, indemnity, judgment or negotiable instrument;
- (c) the death, mental or physical disability, incapacity or Insolvency or any legal limitation of any person including the Guarantor or the Debtor;
- (d) changes in the membership, name or business of any person;
- (e) the Debtor opening an account with any Beneficiary;
- (f) acquiescence or delay by any Beneficiary or any other person;
- (g) an assignment of rights or a novation in connection with the Guaranteed Money;
- (h) the acceptance of the repudiation of, or termination of, any Finance Document or any other document or agreement;
- (i) any payment to a Beneficiary, including any payment which at the payment date or at any time after the payment date is, in whole or in part, illegal, void, voidable, avoided or unenforceable.

This clause 13 applies regardless of whether the Guarantor is aware of, has consented to or is given notice of any act, omission, matter or thing referred to in this clause 13. This clause 13 does not limit the obligations of the Guarantor under this deed.

14 Guarantor's rights

14.1 Guarantor's rights are suspended

As long as there is any Guaranteed Money, the Guarantor may not, without the consent of each Beneficiary (or, in the case of a group or syndicate of Beneficiaries, an agent or trustee on their behalf):

- (a) reduce its liability under the Guarantee by claiming that it or the Debtor or any other person has a right of set-off or counterclaim against the Beneficiary; or
- (b) exercise any legal right to claim to be entitled to the benefit of another guarantee, indemnity or Security Interest that secures amounts including the Guaranteed Money or any other amount payable under the Guarantee (for example, the Guarantor may not try to enforce or require the enforcement of any Security Interest the Beneficiary has taken that secures amounts including the Guaranteed Money); or
- (c) claim an amount from the Debtor, or another guarantor of the Guaranteed Money, under a right of indemnity; or
- (d) claim an amount in the Insolvency of the Debtor or of another guarantor of the Guaranteed Money.

14.2 Guarantor's right of proof limited

The Guarantor agrees not to exercise in its capacity as a guarantor under this deed a right of proof after an event occurs relating to the Insolvency of the Debtor or another guarantor of the Guaranteed Money independently of an attorney appointed under clause 15.1.

15 Power of Attorney

15.1 Appointment

The Guarantor irrevocably appoints the Guarantee Trustee and each of its Authorised Officers individually as its attorney and agrees to formally approve all action taken by an attorney under clause 15.2.

15.2 Powers

Each attorney appointed under clause 15.1 may:

- (a) do anything which the Guarantor may lawfully do to exercise its right of proof after an Insolvency Event occurs in respect of the Debtor or any other guarantor of the Debtor's obligations. (These things may be done in the Guarantor's name or the attorney's name and they include signing and delivering documents, taking part in legal proceedings and receiving any dividend arising out of the right of proof); and
- (b) delegate its powers (including this power) and revoke a delegation; and
- (c) exercise its powers even if this involves a conflict of duty and even if it has a personal interest in doing so.

15.3 Application of insolvency dividends

The attorney need not account to the Guarantor for any dividend received on exercising the right of proof under clause 15.2(a) except to the extent that any dividend remains after each Beneficiary has received all of the Guaranteed Money and all other amounts payable under the Guarantee.

James Hardie — Guarantee Trust Deed

Part 4 Voting in Insolvency and Distribution of Recovered Money

16 Voting in Insolvency proceedings

16.1 Obtaining instructions

Upon receipt of a Notice of Voting in Insolvency, the Guarantee Trustee must promptly send to each Beneficiary (at the address last notified by the Beneficiary) a notice which:

- (a) encloses a copy of the Notice of Voting in Insolvency;
- (b) requests the Beneficiary to advise in writing, within five Business Days of the date of the notice (or such shorter period as the Guarantee Trustee determines is reasonable having regard to the terms of the Notice of Voting in Insolvency):
 - (i) its instructions as to how the Guarantee Trustee should vote on its behalf on each of the matters to be voted upon as described in the Notice of Voting in Insolvency;
 - (ii) any other information reasonably requested by the Guarantee Trustee to enable it to vote on behalf of the Beneficiary in accordance with the Notice of Voting in Insolvency; and
 - (iii) its instructions as to how the Guarantee Trustee should vote in respect of the Compensation Debt on each of the matters to be voted upon as described in the Notice of Voting in Insolvency.

16.2 Voting

The Guarantee Trustee will vote on any matter or matters the subject of a Notice of Voting in Insolvency:

- (a) on behalf of each Beneficiary (in respect of that Beneficiary's participation in the Finance Money Debt) which instructs the Guarantee Trustee in accordance with clause 16.1 — in accordance with those instructions; and
- (b) in respect of the Compensation Debt:
 - (i) if the Guarantee Trustee is required by the Intercreditor Deed to vote the Compensation Debt in the manner nominated by the NSW Government — in the manner so nominated;
 - (ii) if the Guarantee Trustee is not required by the Intercreditor Deed to vote the Compensation Debt in the manner nominated by the NSW Government — in accordance with the instructions (advised in accordance with clause 16.1(b)(iii)) of the Beneficiaries whose aggregate participation in the

Finance Money Debt (as advised by those Beneficiaries) represents more than 50% of the aggregate value of all Finance Money Debt (as advised by all Beneficiaries), provided that if any Beneficiary fails to respond to the Guarantee Trustee's notice within the time stated therein, the Guarantee Trustee may, in its discretion if it believes doing so is in the best interests of the Beneficiaries as a whole (without regard to the particular circumstances or interests of any individual Beneficiary), act in accordance with the instructions of the Beneficiaries who do respond within the stated time ("**Responding Beneficiaries**") and whose aggregate participation in the Finance Money Debt (as advised by those Responding Beneficiaries) represents more than 50% of the aggregate value of the Finance Money Debt of all Responding Beneficiaries.

For the avoidance of doubt, in relation to each separate trust created pursuant to clause 5.1, the Guarantee Trustee may employ or appoint the same or separate proxies, representatives, agents or attorneys to vote on any matter or matters the subject of a Notice of Voting in Insolvency to those proxies, representatives, agents or attorneys employed or appointed for any other trust created pursuant to clause 5.1.

17 Distribution of Recovered Money

17.1 How the Guarantee Trustee is to distribute

The Guarantee Trustee agrees to distribute all Recovered Money as follows:

- (a) first, to itself for its Costs (including but not limited to costs in connection with enforcement under the Intercreditor Deed) and other amounts due to it in its capacity as trustee of the Guarantee Trust; and
- (b) secondly, to the extent of any balance after payment of amounts due to the Guarantee Trustee under clause 17.1(a), to the Beneficiaries to satisfy the Finance Money Debt, so that each Beneficiary receives its Proportion of the Recovered Money;
- (c) thirdly, to the extent of any balance after repayment of the Finance Money Debt, to the Charitable Fund (or otherwise for the benefit of the Charitable Fund or the beneficiaries of the Charitable Fund) to satisfy the Compensation Debt; and
- (d) fourthly, to the extent of any balance after repayment of the Compensation Debt, to the Guarantor (for its own account).

To the extent Recovered Money has been received by the Guarantee Trustee after an Insolvency of the Guarantor, which Insolvency has led to a partial payment of the Finance Money Debt or Compensation Debt, the Finance Money Debt referred to in paragraph (b) above shall be calculated taking into account only that part of the Finance Money Debt which has been irrevocably admitted in the Insolvency.

17.2 Manner of distribution

The Guarantee Trustee agrees to distribute amounts to each Beneficiary promptly after receipt in immediately available funds, to an account nominated in writing by the Beneficiary.

17.3 Receipt by Beneficiary not through Guarantee Trustee

Each Beneficiary agrees to notify the Guarantee Trustee (after the date of the notice issued by the Guarantee Trustee under clause 7.4(e) of this deed) promptly of its receipt from the Guarantor (other than by payment through the Guarantee Trustee) of any amount of Finance Money Debt on or after the commencement of an Insolvency of the Guarantor (including, without limitation, a recovery by set-off (including under clause 27.4 of this deed) or banker's lien). The parties acknowledge that a receipt by way of set-off occurs at the time the Beneficiary applies the set-off in its books of account, irrespective of the time when the amount set off was deposited with that party.

17.4 Accounting to Guarantee Trustee

If a receipt referred to in clause 17.3 represents an amount which, had it been received by the Guarantee Trustee, would have been distributable not only to the Beneficiary who receives it but also to the other Beneficiaries, then the Beneficiary agrees to pay to the Guarantee Trustee promptly following receipt of the notice issued by the Guarantee Trustee under clause 7.4(e) of this deed an amount equivalent to the amount received within two Business Days of receiving it. The amount paid to the Guarantee Trustee is to be:

- (a) taken to have been received by the Guarantee Trustee and not by the Beneficiary who receives it (and the participation of that Beneficiary in the Finance Money Debt is taken not to have been reduced by that amount); and
- (b) distributed by the Guarantee Trustee to the parties entitled to it in accordance with clause 17.1.

17.5 Refund to Beneficiary

If a Beneficiary who receives a payment referred to in clause 17.3 is obliged to refund any part of it under laws relating to insolvency then, on request from the Beneficiary, each party to which any part of the payment was distributed must repay to the Beneficiary the proportion of the amount received by that party equal to the proportion of the payment received by the Beneficiary which the Beneficiary is obliged to refund.

17.6 Deemed Payment

An amount paid under clause 17.5 will be deemed to have been a payment for the account of the Guarantee Trustee and not to the relevant Beneficiary for its own account and to that extent the liability to the relevant Beneficiary will not be reduced by the amount received, other than to the extent of any distribution received by the relevant Beneficiary under clause 17.4(b).

James Hardie — Guarantee Trust Deed

Part 5 General provisions

18 Payments

18.1 Manner of payment by the Guarantor

- (a) The Guarantor agrees to make payments under the Guarantee:
 - (i) in full without set-off or counterclaim and without any deduction in respect of Taxes unless prohibited by law;
 - (ii) if the payment relates to the Guaranteed Money, in the currency in which the payment is due, and otherwise in US Dollars in immediately available funds; and
 - (iii) to the Guarantee Trustee by payment into the account nominated by the Guarantee Trustee, or by payment as the Guarantee Trustee otherwise directs.
- (b) If the Guarantee Trustee directs the Guarantor to pay a particular person or in a particular manner, the Guarantor is taken to have satisfied its obligation to the Guarantee Trustee by paying in accordance with the direction.

18.2 Direction to pay

The Guarantee Trustee directs that until the Guarantor becomes Insolvent or would become Insolvent by paying the Compensation Debt (whichever occurs first), the Guarantor make all payments due under the Guarantee to the Beneficiary entitled to such payments.

18.3 Currency of payment

The Guarantor waives any right it has in any jurisdiction to pay an amount other than in the currency in which it is due. However, if the Beneficiary receives an amount in a currency other than that in which it is due:

- (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 Guarantor 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.

19 Application of payments

19.1 Application of money

Subject to the Finance Documents, each Beneficiary may apply money paid by the Debtor, the Debtor's estate, the Guarantor or otherwise towards satisfaction of the Guaranteed Money and other money payable under this deed in the manner it sees fit.

19.2 Order of payment

Subject to the Finance Documents, each Beneficiary may use money received under this deed towards paying any part of the Guaranteed Money the Beneficiary chooses. This applies even if that part only falls due after the Beneficiary gives a notice of demand.

19.3 Suspense account

Subject to the Finance Documents, each Beneficiary may place in an interest bearing suspense account any payment it receives towards satisfaction of the Guaranteed Money (and any net interest on that payment after tax) for as long as it thinks prudent and need not apply the payment or net interest towards satisfying the Guaranteed Money or other money payable under this deed.

19.4 Remaining money

Each Beneficiary agrees to pay any money remaining after the Guaranteed Money is paid either to the Guarantor (which the Beneficiary may do by paying it into an account in the Guarantor's name) or to another person entitled to it. In doing so, it does not incur any liability to the Guarantor. The Beneficiary is not required to pay the Guarantor interest on any money remaining after the Guaranteed Money is paid.

19.5 Credit from date of receipt

The Guarantor is only credited with money from the date the Beneficiary actually receives it.

20 Withholding tax

20.1 Payments by Guarantor

If a law requires the Guarantor to deduct or withhold an amount in respect of Taxes (other than Indirect Taxes) in respect of a payment under this deed such that a Beneficiary ("**Indemnified Party**") would not actually receive on the due date the full amount provided for under this deed, then:

- (a) the Guarantor agrees to deduct the amount for such Taxes and any further deduction applicable to any further payment due under paragraph (c) below; and
- (b) the Guarantor 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 paragraph (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.

20.2 Tax credit

If and to the extent that any Beneficiary 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 the Guarantor to pay any additional amount pursuant to clause 20.1, that Beneficiary shall:

- (a) give notice thereof to the Guarantor 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 Guarantor such amount of the credit, rebate or benefit as that Beneficiary shall, in its opinion (acting reasonably), have determined to be attributable to the deduction or withholding. In complying with this clause, no Beneficiary need disclose to the Guarantor information about their tax affairs or order them in a particular way.

21 Indirect Taxes

- (a) All payments to be made by the Guarantor under or in connection with this deed 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 Guarantor makes the payment:
- (i) it must pay to the Beneficiary an additional amount equal to that payment (or part) multiplied by the appropriate rate of Indirect Tax; and
- (ii) the Beneficiary will promptly provide to the Guarantor a tax invoice complying with the relevant law relating to that Indirect Tax.
- (b) Where this deed requires the Guarantor to reimburse a Beneficiary for any Costs or expenses, the Guarantor shall also at the same time pay and indemnify that Beneficiary against all Indirect Tax incurred by that Beneficiary in respect of the Costs or expenses save to the extent that that Beneficiary is entitled to repayment or credit in respect of the Indirect Tax. The Beneficiary will promptly provide to the Guarantor a tax invoice complying with the relevant law relating to that Indirect Tax.

22 Costs

22.1 What the Guarantor agrees to pay

The Guarantor agrees to pay or reimburse the Guarantee Trustee and each Beneficiary on demand for:

- (a) its reasonable Costs in connection with:
 - (i) the registration of, and payment of Taxes on, this deed;
 - (ii) giving and considering consents, waivers and releases requested by the Guarantor in connection with this deed; and
 - (iii) any expenditure incurred in accordance with clause 3(c).
- (b) its Costs in exercising, enforcing or preserving rights against the Guarantor under this deed; and
- (c) Taxes and fees (including registration fees) and fines and penalties in respect of fees paid, or that the Guarantee Trustee or the Beneficiary reasonably believes are payable, in connection with this deed or a payment or receipt or any other transaction involving the Guarantor contemplated by this deed. However, the Guarantor need not pay a fine or penalty in connection with Taxes or fees to the extent that it has placed the Guarantee Trustee or the Beneficiary in sufficient cleared funds for the Guarantee Trustee or Beneficiary (as the case may be) to be able to pay the Taxes or fees by the due date.

22.2 Currency conversion on judgment debt

If a judgment, order or proof of debt for an amount payable by the Guarantor under this deed is expressed in a currency other than the currency in which the amount is due under this deed, then the Guarantor indemnifies the Beneficiary against:

- (a) any difference arising from converting the other currency if the rate of exchange used by the Beneficiary under clause 18.3 for converting currency when it receives a payment in the other currency is less favourable to the Beneficiary 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.

23 Reinstatement of rights

Under law relating to Insolvency Events, a person may claim that a transaction (including a payment) in connection with the Guarantee, the Guaranteed Money or the Finance Money Debt is void or voidable. If a claim is made and upheld, conceded or compromised, then to the extent to which the claim concerns a transaction in connection with the Guarantee or the Guaranteed Money:

- (a) the Beneficiary is immediately entitled as against the Guarantor to the rights in respect of the Guaranteed Money to which it was entitled immediately before the transaction; and
- (b) on request from the Beneficiary, the Guarantor agrees to do anything (including signing any document) reasonably required to restore to the Beneficiary the Guarantee and any Security Interest held by it from the Guarantor immediately before the transaction.

This clause applies whether or not the Beneficiary knew, or ought to have known, that the transaction would be void or voidable.

24 No merger

This deed does not merge with or adversely affect, and is not adversely affected by, any of the following:

- (a) any Security Interest, guarantee or other right or remedy to which a Beneficiary is entitled; or
- (b) a judgment which a Beneficiary obtains against the Guarantor, the Debtor or any other person in connection with the Guaranteed Money.

The Beneficiary may still exercise its rights under this deed as well as under the judgment, Security Interest or right or remedy.

25 Dealings

25.1 Dealings by the Guarantor with the Compensation Debt

Without the consent of each Beneficiary (or, in the case of a group or syndicate of Beneficiaries, an agent or trustee on their behalf), the Guarantor may not:

- (a) vary, amend or replace the Final Funding Agreement or the Fund Guarantee, or enter into an agreement having that effect;
- (b) during the Insolvency of the Guarantor, exercise any right of set-off in respect of the Compensation Debt (except as contemplated by clauses 4.3 and 6.2 of the Intercreditor Deed);
- (c) create or allow to exist any Security Interest or guarantee, indemnity or assurance against financial loss in respect of the Compensation Debt other than the Fund Guarantee or a guarantee provided in replacement for the Fund Guarantee in accordance with the Final Funding Agreement; or
- (d) enter into any arrangement, take any action or fail to do any thing, which results in the rights of the Fund Trustee and the NSW Government in connection with Compensation Debt not being subject to the arrangements set out in the Intercreditor Deed,

provided that such consent is not to be unreasonably withheld if such action is not adverse in any material respect to the interests of the Beneficiaries under the Intercreditor Deed.

25.2 Dealings by the Guarantor

The Guarantor may not assign or otherwise deal with its rights under this deed or allow any interest in it to arise or be varied, without the consent of each Beneficiary (or, in the case of a group or syndicate of Finance Beneficiaries, an agent or trustee on their behalf).

25.3 Dealings by Beneficiaries

Subject to the Finance Documents, a Beneficiary may assign or otherwise deal with its rights under this deed in any way it considers appropriate. If a Beneficiary does this, the Guarantor may not claim against any assignee (or any other person who has an interest in this deed) any right of set-off or other rights it has against the Beneficiary.

26 Notices

26.1 Form

Unless expressly stated otherwise in this deed, all demands, notices, certificates, consents, approvals, waivers and other communications in connection with this deed (“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 or, if the recipient has notified otherwise, then marked for attention in the way last notified.

26.2 Demand under Guarantee

Any demand made by a Beneficiary under the Guarantee must comply with the following requirements (in addition to those contained in clause 26.1):

- (a) clearly identify the Finance Document under which the Guaranteed Money is payable by the Debtor;
- (b) state the amount of the Guaranteed Money demanded and describe in reasonably adequate detail the nature of the unpaid obligation; and
- (c) state the date on which demand was made on the Debtor and certify that the Guaranteed Money remains unpaid at the date of the demand.

26.3 Delivery

Notices must be:

- (a) delivered to the address set out or referred to in the Details (or, in the case of a Beneficiary, the address identified in the Register); or
- (b) sent by prepaid post (airmail if appropriate) to the address set out or referred to in the Details (or, in the case of a Beneficiary, the address identified in the Register); or

(c) sent by fax to the fax number set out or referred to in the Details (or, in the case of a Beneficiary, the address identified in the Register).
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.

26.4 When effective

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

26.5 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).

26.6 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.

27 General

27.1 Consents

The Guarantor agrees to comply with all conditions in any consents given in connection with this deed if the Guarantor relies on that consent in performing its obligations under this deed.

27.2 Prompt performance

If this deed specifies when the Guarantor agrees to perform an obligation, it agrees to perform it by the time specified. The Guarantor agrees to perform all other obligations promptly.

27.3 Certificates

A Beneficiary may give the Guarantee Trustee or the Guarantor a certificate about an amount payable or other matter in connection with this deed or a Finance Document. The certificate is sufficient evidence of the amount or matter, unless it is proved to be incorrect.

27.4 Set-off

A Beneficiary may set off any amount due for payment by the Beneficiary to the Guarantor against any amount due for payment by the Guarantor to the Beneficiary under this deed. This does not restrict any right of insolvency set-off which may arise under Dutch law.

27.5 Discretion in exercising rights

A Beneficiary may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions), unless this deed expressly states otherwise.

27.6 Partial exercising of rights

If a Beneficiary does not exercise a right or remedy fully or at a given time, the Beneficiary may still exercise it later.

27.7 Indemnities

The indemnities in this deed are continuing obligations, independent of the Guarantor's other obligations under this deed and continue after this deed ends. It is not necessary for a Beneficiary to incur expense or make payment before enforcing a right of indemnity under this deed.

27.8 Inconsistent law

To the extent permitted by law, this deed prevails to the extent it is inconsistent with any law.

27.9 Supervening legislation

Any present or future legislation which operates to vary the obligations of the Guarantor in connection with this deed with the result that the Beneficiaries' 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.

27.10 Remedies cumulative

The rights and remedies of each Beneficiary under this deed are in addition to other rights and remedies given by law independently of this deed.

27.11 Time of the essence

Time is of the essence in this agreement in respect of an obligation of the Guarantor to pay money.

27.12 Variation and waiver

Unless this deed expressly states otherwise, a provision of this deed, or right created under it, may not be waived or varied except in writing signed by the party or parties to be bound and with the prior written consent of each Beneficiary (or, in the case of a group or syndicate of Beneficiaries, an agent or trustee on their behalf).

27.13 Confidentiality

No party to this deed, nor any Beneficiary, may disclose information provided by any party or Beneficiary that is not publicly available (including the existence of or contents of this deed or any Finance Document) except:

- (a) to any person in connection with an exercise of rights or (subject to compliance with clause 25) a dealing with rights or obligations under this deed (including when a Beneficiary consults other Beneficiaries 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 Beneficiary in connection with a Finance Document); or
- (b) to officers, employees, legal and other advisers and auditors of any party to this deed or any Beneficiary, provided the recipient agrees to act consistently with this clause 27.13; or
- (c) to any party to a Finance Document or any Related Entity of any party to a Finance Document, provided the recipient agrees to act consistently with this clause 27.13; or
- (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 Government Agency.

Each party to this deed and each Beneficiary is taken to consent to disclosures made in accordance with this clause 27.13.

27.14 Further steps

The Guarantor and each Beneficiary agrees to do anything reasonably required by the Guarantee Trustee (such as obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed):

- (a) to enable the Guarantee Trustee to perform its duties under this deed;
- (b) to enable the Beneficiaries or the Guarantee Trustee to exercise their respective rights in connection with this deed; and
- (c) (in the case of the Guarantor) to show whether it is complying with this deed.

27.15 Counterparts

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

27.16 Governing law

This deed is governed by the law in force in New South Wales. Each of the Guarantee Trustee, the Guarantor and the Beneficiaries submit to the non-exclusive jurisdiction of the courts of New South Wales.

27.17 Serving documents

Without preventing any other method of service, any document in a court action may be served on a party by being delivered or left at that party's address for service of notices under clause 26.3.

27.18 Process Agent

The Guarantor 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 this deed. 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 Guarantor, the Guarantor must promptly appoint another person in New South Wales to act as its process agent and must promptly notify the Guarantee Trustee and each Beneficiary of that appointment and the address and other contact details of the new process agent.

EXECUTED as a deed

James Hardie — Guarantee Trust Deed

Schedule 1(A) — Form of Beneficiary Nomination Letter (clause 1.9)

[Date]

To: [Beneficiary]

James Hardie — Guarantee Trust Deed — Beneficiary Nomination Letter

We refer to the James Hardie — Guarantee Trust Deed between James Hardie Industries N.V. (with corporate seat in Amsterdam) and AET Structured Finance Services Pty Limited (as Guarantee Trustee) dated [•] 2006 (“**Guarantee Trust Deed**”).

For the purposes of the Guarantee Trust Deed, on and from the date of this letter:

1. we nominate the following document as a Finance Document:
Name: [•]
Date: [•]
Parties: [•]
2. the agreement described above, and each document named or referred to as a [“Financing Document”] in that agreement, is a Finance Document for the purposes of the Guarantee Trust Deed; and
3. we nominate you as a “Beneficiary” in relation to that Finance Document.

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

Clauses 1 and 27.16 of the Guarantee Trust Deed apply to this letter as they were fully set out in this letter.

For and on behalf of
JAMES HARDIE INDUSTRIES N.V.

by its Authorised Officer
Name:
Title:

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

For and on behalf of
[Insert name of Beneficiary]

by its Authorised Officer
Name:
Title:

The Guarantee Trustee confirms that it holds the benefit of this nomination and the other documents described in clause 5.1(a) of the Guarantee Trust Deed on trust for the Beneficiary in accordance with the terms of the Guarantee Trust Deed.

For and on behalf of
AET STRUCTURED FINANCE SERVICES PTY LIMITED
as Guarantee Trustee

by its Authorised Officer
Name:
Title:

James Hardie — Guarantee Trust Deed

Schedule 1(B) — Form of Beneficiary Change Notification (clause 9.1(b))

[Date]

To: [Guarantee Trustee]

James Hardie — Guarantee Trust Deed — Beneficiary Nomination Letter

We refer to the James Hardie — Guarantee Trust Deed between James Hardie Industries N.V. (with corporate seat in Amsterdam) and AET Structured Finance Services Pty Limited (as Guarantee Trustee) dated [•] 2006 (“**Guarantee Trust Deed**”).

For the purposes of clause 9.1(b) of the Guarantee Trust Deed, we notify you that:

[insert amended details for the purposes of clause 9.2].

Clauses 1 and 27.16 of the Guarantee Trust Deed apply to this letter as they were fully set out in this letter.

For and on behalf of

[Insert name of Beneficiary]

by its Authorised Officer

Name:

Title:

James Hardie — Guarantee Trust Deed

Schedule 2 — Form of Replacement Guarantee (clause 4)

Interpretation — definitions are in clause 1.

Parties	Guarantor and Financier	
Guarantor	Name	James Hardie Industries N.V.
	Corporate seat	Amsterdam
	Registered Number	34106455
	ABN	49 097 829 895
	Address	Atrium, 8th Floor Strawinskylaan 3077 1077 ZX Amsterdam The Netherlands
	Fax	+ 31 20 404 2544
	Attention	Managing Director and Company Secretary
Financier	Name	[•]
	ABN	[•]
	Address	[•]
	Fax	[•]
	Attention	[•]
Date of deed	See Signing page	

1 Interpretation

1.1 Definitions

These meanings apply unless the contrary intention appears:

Authorised Officer means:

- (a) in the case of the Financier, a director or secretary, or an officer 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 nominated by the Financier as an Authorised Officer for the purposes of this deed; and
- (b) in the case of the Guarantor, a person appointed by the Guarantor and notified to the Financier as an Authorised Officer for the purposes of this deed, and whose specimen signature is provided with such notification to the Financier.

Business Day has the meaning given to that term in the Finance Documents.

Costs means costs, fees, disbursements, charges and expenses, including, without limitation, where the Guarantor is liable to pay or reimburse the Costs, those incurred in connection with advisers and, unless such Costs are incurred in connection with the enforcement of this deed against the Guarantor, only for an amount and on a basis previously agreed to in writing by the Guarantor.

Debtor means the person or persons primarily liable to the Financier under the Finance Documents.

Default Rate means LIBOR plus 2% per annum. For the purpose of this definition, the interest is calculated as if the overdue amount is a cash advance with interest periods beginning and ending on the first and last days respectively of each calendar month (and including both days), provided that the first interest period begins on and includes the due date.

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

Excluded Tax means:

- (a) a Tax imposed by any jurisdiction on or assessed against the Financier as a consequence of the Financier 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 this deed or another document

referred to in this deed (without the allowance of a deduction);

- (ii) that is imposed as a result of the Financier being considered a resident or organised or doing business in that jurisdiction solely as a result of it having the benefit of this deed or being a party to a transaction contemplated by this deed; or
- (b) a Tax which would not be required to be deducted by the Guarantor if, before the Guarantor makes a relevant payment, the Financier provided the Guarantor with any of its name, address, registration number or similar details or any relevant tax exemption or similar details.

Finance Documents means [insert details]

Financier means the person so described in the Details and includes its successors and assigns.

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 James Hardie Group Member and, for the avoidance of doubt, includes, without limitation, the Australian Taxation Office, the US Internal Revenue Service and the Dutch tax authorities.

Guaranteed Money means all amounts that:

- (a) at any time;
- (b) for any reason or circumstance in connection with any agreement, transaction, instrument (whether or not negotiable), document, event, act, omission, matter or thing whatsoever;
- (c) whether at law or otherwise; and
- (d) whether or not of a type within the contemplation of the Guarantor or the Financier at the date of this deed,

are payable, are owing but not currently payable, are contingently owing, or remain unpaid, by a Debtor to the Financier under or in connection with the Finance Documents.

This definition applies:

- (i) irrespective of the capacity in which the Debtor or the Financier became entitled to the amount concerned;
- (ii) irrespective of the capacity in which the Debtor or the Financier became liable in respect of the amount concerned;
- (iii) whether the Debtor or the Financier is liable as principal debtor, as surety or otherwise;

- (iv) whether the Debtor is liable alone, or together with another person;
- (v) even if the Debtor owes an amount or obligation to the Financier because it was assigned to the Financier, whether or not:
 - (A) the assignment was before, at the same time as, or after the date of this deed; or
 - (B) the Debtor consented to or was aware of the assignment; or
 - (C) the assigned obligation was secured;
- (vi) even if this deed was assigned to the Financier, whether or not:
 - (A) the Debtor or the Guarantor consented to or was aware of the assignment; or
 - (B) any of the Guaranteed Money was previously unsecured; or
- (vii) if the Guarantor is a trustee, whether or not it has a right of indemnity from the trust fund.

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.

Insolvency Event means, in respect of a person, the occurrence in respect of that person of any event referred to in paragraphs (a) to (h) of the definition of “Insolvent” and, for the avoidance of doubt, includes a Winding Up.

A company is **Insolvent** if it:

- (a) is generally not paying, or admits in writing its inability to pay, its debts as they become due;
- (b) 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, without limitation, 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*));
- (c) makes an assignment for the benefit of its creditors;

- (d) 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;
 - (e) consents to the appointment of an administrator;
 - (f) is adjudicated as insolvent or to be liquidated;
 - (g) is subject to Winding Up; or
 - (h) takes corporate action for the purpose of any of the foregoing,
- and **Insolvency** has a cognate meaning.

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

LIBOR means, in relation to any overdue amount:

- (a) the applicable British Bankers' Association Interest Settlement Rate for the currency in which the overdue amount is payable (**Due Currency**) 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 Guarantor) ("**Screen Rate**"); or
- (b) (if no Screen Rate is available for the Due Currency and the interest period of that overdue amount) 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 Guarantor to other leading international banks in the London interbank market,

as of 11.00 am (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 the Due Currency and for a period comparable to the interest period for the overdue amount.

Related Entity has the meaning it has in the Corporations Act.

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.

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 the Financier) 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.

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

Winding Up means, in respect of a company, the occurrence of any of the following:

- (a) an order is made that it be wound up;
- (b) appointment of a liquidator to it; or
- (c) appointment of a provisional liquidator to it and the provisional liquidator is required to admit all debts to proof or pay all debts capable of being admitted to proof proportionately.

In respect of a person that is established under Dutch law, **Winding Up** includes, without limitation, its dissolution (*ontbinding*), the declaration of its bankruptcy (*faillissement*) and the (provisional) granting of suspension of payments (*voorlopige surseance van betaling*) to it.

1.2 References to certain general terms

Unless the contrary intention appears, a reference in this deed to:

- (a) a group of persons is a reference to any two or more of them collectively 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 collectively and each of them individually;
- (c) an agreement, representation or warranty by two or more persons binds them collectively and each of them individually but an agreement, representation or warranty by the Financier binds the Financier 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 deed) includes any variation 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) the word “person” includes an individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated association and any Government Agency;
- (h) a particular person includes a reference to the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (i) 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;
- (j) the Corporations Act is a reference to the Corporations Act 2001 of Australia; and
- (k) the words “to prove for”, “prove” and “right of proof”, when used in connection with a Winding Up or another Insolvency proceeding under Dutch law include, without limitation, “filing”, “filing for verification purposes” and “verification procedure”, as the context may require.

1.3 Number

The singular includes the plural and vice versa.

1.4 Headings

Headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this deed.

2 Consideration

The Guarantor acknowledges incurring obligations and giving rights under this deed for valuable consideration received and to be received from the Financier.

3 Guarantee and indemnity

3.1 Guarantee

- (a) The Guarantor unconditionally and irrevocably guarantees payment to the Financier of the Guaranteed Money. If the Debtor does not pay the Guaranteed Money on time and in accordance with the Finance Documents then, subject to clause 3.1(b), the Guarantor agrees to pay the Guaranteed Money to the Financier on demand from the Financier.

- (b) A demand on the Guarantor under this guarantee:
 - (i) may be made only if the Financier has first made a demand on the Debtor and the demand is not satisfied within 2 Business Days;
 - (ii) may be made at any time and from time to time; and
 - (iii) must be made in writing in accordance with clause 17.

3.2 Indemnity

The Guarantor indemnifies the Financier against any liability or loss arising, and any Costs it suffers or incurs:

- (a) if the Debtor does not, or is unable to, pay the Guaranteed Money in accordance with the Finance Documents; or
- (b) if an obligation the Debtor would otherwise have to pay the Guaranteed Money (or which would have been Guaranteed Money had it not been irrecoverable) is found to be unenforceable, void or voidable; or
- (c) if an obligation the Guarantor would otherwise have under clause 3.1 is found to be unenforceable; or
- (d) if the Financier is obliged, or agrees, to pay an amount to a trustee in bankruptcy or liquidator (of an Insolvent person) in connection with a payment by the Guarantor or the Debtor. (For example, the Financier may have to, or may agree to, pay interest on the amount); or
- (e) if the Guarantor defaults under the guarantee.

The Guarantor agrees to pay amounts due under this indemnity on demand from the Financier.

4 Interest

4.1 Obligation to pay interest

The Guarantor agrees to pay interest at the Default Rate on:

- (a) any part of the Guaranteed Money which is due for payment but which is not otherwise incurring interest; and
- (b) any amount payable by it under this deed (other than under clause 3.1) which is not paid on the due date for payment.

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 Guarantor agrees to pay interest under this clause on demand from the Financier.

4.2 Compounding

Interest payable under clause 4.1 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 4.1.

4.3 Interest following judgment

If a liability becomes merged in a judgment, the Guarantor agrees to 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 Guarantor agrees to pay interest under this clause on demand from the Financier.

5 Extent of guarantee and indemnity

- (a) The guarantee in clause 3.1 is a continuing obligation despite any intervening payment, settlement or other thing and extends to all of the Guaranteed Money.
- (b) Subject to compliance by the Financier with clauses 3.1(b) and 17, the Guarantor waives any right it has of first requiring the Financier to commence proceedings or enforce any other right against the Debtor or any other person before claiming from the Guarantor under this guarantee and indemnity.

6 Rights of the Financier are protected

Rights given to the Financier under this guarantee and indemnity, and the Guarantor's liabilities under it, are not affected by any act or omission of the Financier or any other person or by any act, other matter or thing whatsoever, whether negligent or not. For example, those rights and liabilities are not affected by:

- (a) any act or omission:
 - (i) varying or replacing any arrangement under which the Guaranteed Money is expressed to be owing, such as by increasing a facility limit or extending the term;

- (ii) releasing or discharging the Debtor (including, without limitation, discharge by operation of law) or giving the Debtor a concession (such as more time to pay);
- (iii) releasing any person who gives a guarantee or indemnity in connection with any of the Debtor's obligations;
- (iv) releasing, losing the benefit of, or not obtaining any Security Interest or negotiable instrument;
- (v) by which the obligations of any person who guarantees any of the Debtor's obligations (including under this guarantee and indemnity) may not be enforceable;
- (vi) by which any person who was intended to guarantee any of the Debtor's obligations does not do so, or does not do so effectively;
- (vii) by which a person who is a co-surety or co-indemnifier for payment of the Guaranteed Money is discharged under an agreement or by operation of law;
- (viii) by which any Security Interest which could be registered is not registered, or any other thing causing any prejudice (including, but not limited to, material prejudice) to any person;
- (b) a person dealing in any way with a Security Interest, guarantee, indemnity, judgment or negotiable instrument;
- (c) the death, mental or physical disability, incapacity, Insolvency or any legal limitation of any person including the Guarantor or the Debtor;
- (d) changes in the membership, name or business of any person;
- (e) the Debtor opening an account with the Financier;
- (f) acquiescence or delay by the Financier or any other person;
- (g) an assignment of rights or a novation in connection with the Guaranteed Money;
- (h) the acceptance of the repudiation of, or termination of, any Finance Document or any other document or agreement;
- (i) any payment to the Financier, including any payment which at the payment date or at any time after the payment date is, in whole or in part, illegal, void, voidable, avoided or unenforceable.

This clause 6 applies regardless of whether the Guarantor is aware of, has consented to or is given notice of any act, omission, matter or thing referred to in this clause 6. This clause 6 does not limit the obligations of the Guarantor under this deed.

7 Guarantor's rights

7.1 Guarantor's rights are suspended

As long as there is any Guaranteed Money, the Guarantor may not, without the Financier's consent:

- (a) reduce its liability under this guarantee and indemnity by claiming that it or the Debtor or any other person has a right of set-off or counterclaim against the Financier; or
- (b) exercise any legal right to claim to be entitled to the benefit of another guarantee, indemnity or Security Interest that secures amounts including the Guaranteed Money or any other amount payable under this guarantee and indemnity (for example, the Guarantor may not try to enforce or require the enforcement of any Security Interest the Financier has taken that secures amounts including the Guaranteed Money); or
- (c) claim an amount from the Debtor, or another guarantor of the Guaranteed Money, under a right of indemnity; or
- (d) claim an amount in the Insolvency of the Debtor or of another guarantor of the Guaranteed Money.

7.2 Guarantor's right of proof limited

The Guarantor agrees not to exercise in its capacity as a guarantor under this deed a right of proof after an event occurs relating to the Insolvency of the Debtor or another guarantor of the Guaranteed Money independently of an attorney appointed under clause 8.1.

8 Power of Attorney

8.1 Appointment

The Guarantor irrevocably appoints the Financier and each of its Authorised Officers individually as its attorney and agrees to formally approve all action taken by an attorney under clause 8.2.

8.2 Powers

Each attorney appointed under clause 8.1 may:

- (a) do anything which the Guarantor may lawfully do to exercise its right of proof after an Insolvency Event occurs in respect of the Debtor or any other guarantor of the Debtor's obligations. (These things may be done in the Guarantor's name or the attorney's name and they include signing and delivering documents, taking part in legal proceedings and receiving any dividend arising out of the right of proof); and
- (b) delegate its powers (including this power) and revoke a delegation; and

(c) exercise its powers even if this involves a conflict of duty and even if it has a personal interest in doing so.

8.3 Application of insolvency dividends

The attorney need not account to the Guarantor for any dividend received on exercising the right of proof under clause 8.2(a) except to the extent that any dividend remains after the Financier has received all of the Guaranteed Money and all other amounts payable under this guarantee and indemnity.

9 Payments

9.1 Manner of payment

The Guarantor agrees to make payments under this guarantee and indemnity:

- (a) in full without set-off or counterclaim and without any deduction in respect of Taxes unless prohibited by law; and
- (b) if the payment relates to the Guaranteed Money, in the currency in which the payment is due, and otherwise in US Dollars in immediately available funds.

9.2 Currency of payment

The Guarantor waives any right it has in any jurisdiction to pay an amount other than in the currency in which it is due. However, if the Financier receives an amount in a currency other than that in which it is due:

- (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 Guarantor 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.

10 Application of payments

10.1 Application of money

The Financier may apply money paid by the Debtor, the Debtor's estate, the Guarantor or otherwise towards satisfaction of the Guaranteed Money and other money payable under this deed in the manner it sees fit.

10.2 Order of payment

The Financier may use money received under this deed towards paying any part of the Guaranteed Money the Financier chooses. This applies even if that part only falls due after the Financier gives a notice of demand.

10.3 Suspense account

The Financier may place in an interest bearing suspense account any payment it receives towards satisfaction of the Guaranteed Money (and any net interest on that payment after tax) for as long as it thinks prudent and need not apply the payment or net interest towards satisfying the Guaranteed Money or other money payable under this deed.

10.4 Remaining money

The Financier agrees to pay any money remaining after the Guaranteed Money is paid either to the Guarantor (which the Financier may do by paying it into an account in the Guarantor's name) or to another person entitled to it. In doing so, it does not incur any liability to the Guarantor. The Financier is not required to pay the Guarantor interest on any money remaining after the Guaranteed Money is paid.

10.5 Credit from date of receipt

The Guarantor is only credited with money from the date the Financier actually receives it.

11 Withholding tax

11.1 Payments by Guarantor

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

- (a) the Guarantor agrees to deduct the amount for such Taxes and any further deduction applicable to any further payment due under paragraph (c) below; and
- (b) the Guarantor 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 paragraph (c), the Financier 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.

11.2 Tax credit

If and to the extent that the Financier 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 the Guarantor to pay any additional amount pursuant to clause 11.1, the Financier shall:

- (a) give notice thereof to the Guarantor 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 Guarantor such amount of the credit, rebate or benefit as the Financier shall, in its opinion (acting reasonably), have determined to be attributable to the deduction or withholding. In complying with this clause, the Financier is not required to disclose to the Guarantor information about its tax affairs or order them in a particular way.

12 Indirect Taxes

- (a) All payments to be made by the Guarantor under or in connection with this deed 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 Guarantor makes the payment:
 - (i) it must pay to the Financier an additional amount equal to that payment (or part) multiplied by the appropriate rate of Indirect Tax; and
 - (ii) the Financier will promptly provide to the Guarantor a tax invoice complying with the relevant law relating to that Indirect Tax.
- (b) Where this deed requires the Guarantor to reimburse the Financier for any Costs or expenses, the Guarantor shall also at the same time pay and indemnify the Financier against all Indirect Tax incurred by the Financier in respect of the Costs or expenses save to the extent that the Financier is entitled to repayment or credit in respect of the Indirect Tax. The Financier will promptly provide to the Guarantor a tax invoice complying with the relevant law relating to that Indirect Tax.

13 Costs

13.1 What the Guarantor agrees to pay

The Guarantor agrees to pay or reimburse the Financier on demand for:

- (a) the Financier's reasonable Costs in connection with:
 - (i) the registration of, and payment of Taxes on, this deed; and
 - (ii) giving and considering consents, waivers and releases requested by the Guarantor in connection with this deed;
- (b) the Financier's Costs in exercising, enforcing or preserving rights against the Guarantor under this deed; and

- (c) Taxes and fees (including registration fees) and fines and penalties in respect of fees paid, or that the Financier reasonably believes are payable, in connection with this deed or a payment or receipt or any other transaction involving the Guarantor contemplated by this deed. However, the Guarantor need not pay a fine or penalty in connection with Taxes or fees to the extent that it has placed the Financier in sufficient cleared funds for the Financier to be able to pay the Taxes or fees by the due date.

13.2 Currency conversion on judgment debt

If a judgment, order or proof of debt for an amount payable by the Guarantor under this deed is expressed in a currency other than the currency in which the amount is due under this deed, then the Guarantor indemnifies the Financier against:

- (a) any difference arising from converting the other currency if the rate of exchange used by the Financier under clause 9.2 for converting currency when it receives a payment in the other currency is less favourable to the Financier 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.

14 Reinstatement of rights

Under law relating to Insolvency Events, a person may claim that a transaction (including a payment) in connection with this guarantee and indemnity or the Guaranteed Money is void or voidable. If a claim is made and upheld, conceded or compromised, then:

- (a) the Financier is immediately entitled as against the Guarantor to the rights in respect of the Guaranteed Money to which it was entitled immediately before the transaction; and
- (b) on request from the Financier, the Guarantor agrees to do anything (including signing any document) reasonably required to restore to the Financier the guarantee and indemnity and any Security Interest held by it from the Guarantor immediately before the transaction.

This clause applies whether or not the Financier knew, or ought to have known, that the transaction would be void or voidable.

15 No merger

This deed does not merge with or adversely affect, and is not adversely affected by, any of the following:

- (a) any Security Interest, guarantee or other right or remedy to which the Financier is entitled; or

(b) a judgment which the Financier obtains against the Guarantor, the Debtor or any other person in connection with the Guaranteed Money.
The Financier may still exercise its rights under this deed as well as under the judgment, Security Interest or right or remedy.

16 Dealings

16.1 Dealings by the Guarantor

The Guarantor may not assign or otherwise deal with its rights under this deed or allow any interest in it to arise or be varied, without the consent of the Financier.

16.2 Dealings by Financier

The Financier may assign or otherwise deal with its rights under this deed in any way it considers appropriate. If the Financier does this, the Guarantor may not claim against any assignee (or any other person who has an interest in this deed) any right of set-off or other rights it has against the Financier.

17 Notices

17.1 Form

Unless expressly stated otherwise in this deed, all demands, notices, certificates, consents, approvals, waivers and other communications in connection with this deed (“**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 or, if the recipient has notified otherwise, then marked for attention in the way last notified.

17.2 Demand under guarantee

Any demand made by the Financier under the guarantee and indemnity must comply with the following requirements (in addition to those contained in clause 17.1):

- (a) clearly identify the Finance Document under which the Guaranteed Money is payable by the Debtor;
- (b) state the amount of the Guaranteed Money demanded and describe in reasonably adequate detail the nature of the unpaid obligation; and
- (c) state the date on which demand was made on the Debtor and certify that the Guaranteed Money remains unpaid at the date of the demand.

17.3 Delivery

Notices must be:

- (a) delivered to the address set out or referred to in the Details; or

(b) sent by prepaid post (airmail if appropriate) to the address set out or referred to in the Details; or

(c) sent by fax to the fax number set out or referred to in the Details.

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.

17.4 When effective

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

17.5 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).

17.6 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.

18 General

18.1 Consents

The Guarantor agrees to comply with all conditions in any consents given in connection with this deed if the Guarantor relies on that consent in performing its obligations under this deed.

18.2 Prompt performance

If this deed specifies when the Guarantor agrees to perform an obligation, it agrees to perform it by the time specified. The Guarantor agrees to perform all other obligations promptly.

18.3 Certificates

The Financier may give the Guarantor a certificate about an amount payable or other matter in connection with this deed or a Finance Document. The certificate is sufficient evidence of the amount or matter, unless it is proved to be incorrect.

18.4 Set-off

The Financier may set off any amount due for payment by the Financier to the Guarantor against any amount due for payment by the Guarantor to the Financier under this deed. This does not restrict any right of insolvency set-off which may arise under Dutch law.

18.5 Discretion in exercising rights

The Financier may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions), unless this deed expressly states otherwise.

18.6 Partial exercising of rights

If the Financier does not exercise a right or remedy fully or at a given time, the Financier may still exercise it later.

18.7 Indemnities

The indemnities in this deed are continuing obligations, independent of the Guarantor's other obligations under this deed and continue after this deed ends. It is not necessary for the Financier to incur expense or make payment before enforcing a right of indemnity under this deed.

18.8 Inconsistent law

To the extent permitted by law, this deed prevails to the extent it is inconsistent with any law.

18.9 Supervening legislation

Any present or future legislation which operates to vary the obligations of the Guarantor in connection with this deed with the result that the Financier'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.

18.10 Remedies cumulative

The rights and remedies of the Financier under this deed are in addition to other rights and remedies given by law independently of this deed.

18.11 Time of the essence

Time is of the essence in this agreement in respect of an obligation of the Guarantor to pay money.

18.12 Variation and waiver

Unless this deed expressly states otherwise, a provision of this deed, or right created under it, may not be waived or varied except in writing signed by the Guarantor and the Financier.

18.13 Confidentiality

Neither the Guarantor nor the Financier may disclose information provided by one of them to the other that is not publicly available (including the existence of or contents of this deed or any Finance Document) except:

- (a) to any person in connection with an exercise of rights or (subject to compliance with clause 16) a dealing with rights or obligations under this deed (including when the Financier consults other lenders to any

member of the James Hardie Group 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 Financier in connection with a Finance Document); or

- (b) on a confidential basis, to officers, employees, legal and other advisers and auditors of the Guarantor or the Financier; or
- (c) on a confidential basis, to any party to a Finance Document or any Related Entity of any party to a Finance Document; or
- (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 Government Agency.

The Guarantor and the Financier are taken to consent to disclosures made in accordance with this clause 18.13.

18.14 Further steps

The Guarantor agrees to do anything reasonably required by the Financier (such as obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed):

- (a) to enable the Financier to exercise its rights in connection with this deed;
- (b) to show whether the Guarantor is complying with this deed.

18.15 Counterparts

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

18.16 Governing law

This deed is governed by the law in force in New South Wales. The Guarantor and the Financier submit to the non-exclusive jurisdiction of the courts of New South Wales.

18.17 Serving documents

Without preventing any other method of service any document in a court action may be served on the Guarantor or the Financier by being delivered or left at that person's address for service of notices under clause 17.3.

18.18 Process Agent

The Guarantor 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 this deed. 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 Guarantor, the Guarantor must promptly appoint another person in New South Wales to act as its process agent and must promptly notify the Financier of that appointment and the address and other contact details of the new process agent.

EXECUTED as a deed

[insert attestation clauses]

© Mallesons Stephen Jaques
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James Hardie — Guarantee Trust Deed
12 December 2006

James Hardie — Guarantee Trust Deed

Signing page

DATED: 19 December 2006

**SIGNED, SEALED AND
DELIVERED** by Meredith Hellicar)
and Russell Chenu as attorneys for)
JAMES HARDIE INDUSTRIES)
N.V. under power of attorney dated)

in the presence of:)
For M. Hellicar For R. Chenu)

/s/ Matthew Cunningham /s/ Benjamin Butterfield)
Signature of witness)

Matthew Cunningham Benjamin Butterfield)
Name of witness (block letters))

THE COMMON SEAL of **AET
STRUCTURED FINANCE
SERVICES PTY LIMITED** is duly)
affixed by authority of its Authorised)
Officers in the presence of:)

/s/ Stuart Howard
Signature of authorised person

Authorised Officer
Office held

Stuart Alexander Howard
Name of authorised person (block letters)

/s/ Meredith Hellicar

/s/ Russell Chenu

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

/s/ Yvonne Drake
Signature of authorised person

Authorised Officer
Office held

Yvonne Drake
Name of authorised person (block letters)

MALLESONS STEPHEN JAQUES

James Hardie - Performing Subsidiary Undertaking and Guarantee Trust Deed

Dated 19 December 2006

James Hardie 117 Pty Limited (formerly known as LGTDD Pty Limited) (**'Performing Subsidiary'**)
AET Structured Finance Services Pty Limited (**'Undertaking and Guarantee Trustee'**)

Mallesons Stephen Jaques

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DX 113 Sydney
www.mallesons.com
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James Hardie — Performing Subsidiary Undertaking and Guarantee Trust Deed

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James Hardie — Performing Subsidiary Undertaking and Guarantee Trust Deed

Details

Interpretation — definitions are in clause 1.

Parties	Performing Subsidiary and Undertaking and Guarantee Trustee	
Performing Subsidiary	Name	James Hardie 117 Pty Limited (formerly known as LGTDD Pty Limited)
	Incorporated in	Commonwealth of Australia
	ABN	30 116 110 948
	Address	Level 3 32 Pitt Street Sydney NSW 2000 Australia
	Fax	+ 612 8274 5218
	Attention	Managing Director and Company Secretary
Undertaking and Guarantee Trustee	Name	AET Structured Finance Services Pty Limited
	ABN	12 106 424 088
	Address	80 Alfred Street Milsons Point NSW 2061
	Fax	02 9028 5942
	Attention	Corporate Trust
In favour of	Each Beneficiary as defined in this deed.	
Recitals	A JHIL was listed on the Australian Stock Exchange in 1951 and, by that time, the business then carried on by JHIL and its subsidiaries had been carried on in Australia, in one form or another and under the “James Hardie” name, for at least 60 years.	
	B Under plans of reorganisation and capital restructuring executed between 1998 and 2001, JHIL sold on arm’s length terms substantially all of its business, operations and undertaking to JHINV and its subsidiaries with the result that JHINV became the ultimate holding company of the businesses formerly carried on or controlled by JHIL.	

- C** JHINV is a company organised under the laws of the Netherlands and is listed on both the Australian Stock Exchange and the New York Stock Exchange (with the listing on the latter exchange via American Depositary Receipts or equivalent or replacement securities). At the date of this deed, the James Hardie Group carries on the business of manufacturing building products in the United States of America, Australia, New Zealand and the Philippines.
- D** On 21 December 2004, JHINV and others entered into the Heads of Agreement containing, among other things, a set of agreed principles on which the Performing Subsidiary will provide, and JHINV will guarantee the payment of, funding to the Charitable Fund on a long term basis of compensation for personal injury and death claims made in Australia against JHIL or certain former subsidiaries of JHIL arising from exposure to asbestos in Australia.
- E** The Heads of Agreement also provided that the payment obligations of the Performing Subsidiary to the Charitable Fund are to be subordinated to the obligations of the Performing Subsidiary to certain lenders to it.
- F** The principles contained in the Heads of Agreement have been developed and set out in a legally binding and enforceable agreement known as the Original Final Funding Agreement.
- G** On 8 June 2006 the Fund Trustee executed a Deed of Accession so as to become a party to the Original Final Funding Agreement.
- H** On 21 November 2006 the parties to the Original Final Funding Agreement (including the Fund Trustee) entered into the Final Funding Agreement, thereby amending and restating the Original Final Funding Agreement.
- I** On or about 14 December 2006 Asbestos Injuries Compensation Fund Limited entered into the Trust Deed and on or about 14 December 2006 in its capacity as trustee of the Discretionary Fund became a party to the Final Funding Agreement by executing a Deed of Accession.
- J** The creditor of the Performing Subsidiary under the Final Funding Agreement is the Fund Trustee.
- K** The Performing Subsidiary wishes to provide separate guarantees under this deed to the providers from time to time of financial accommodation to the Controlled Entities of the Performing Subsidiary.

L The Intercreditor Deed sets out certain arrangements in relation to, among other things, the rights of the Fund Trustee and the NSW Government in connection with the Compensation Debt and the rights of the Undertaking and Guarantee Trustee and the Beneficiaries in connection with this deed which have been agreed between the parties to the Intercreditor Deed.

Date of deed See Signing page

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James Hardie — Performing Subsidiary Undertaking and Guarantee Trust Deed
12 December 2006

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James Hardie — Performing Subsidiary Undertaking and Guarantee Trust Deed

General terms

Part 1 Preliminary

1 Interpretation

1.1 Definitions

These meanings apply unless the contrary intention appears:

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

Audited Financial Statements has the meaning given to that term in the Intercreditor Deed.

Authorised Officer means:

- (a) in the case of the Undertaking and Guarantee Trustee or a Beneficiary, a director or secretary, or an officer 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 nominated by the Undertaking and Guarantee Trustee or the Beneficiary, as the case may be, as an Authorised Officer for the purposes of this deed;
- (b) in the case of the Performing Subsidiary, a person appointed by the Performing Subsidiary and notified to the Undertaking and Guarantee Trustee as an Authorised Officer for the purposes of this deed, and whose specimen signature is provided with such notification to the Undertaking and Guarantee Trustee.

Beneficiary means each person nominated as a “Beneficiary” in a Beneficiary Nomination Letter (including, in the case of any group of creditors, an agent or trustee acting on their behalf) and includes their successors and assigns, but excludes any person who has ceased to be a Beneficiary in accordance with clause 2.4 (“Ceasing to be a Beneficiary”).

Beneficiary Change Form means a form sent to the Undertaking and Guarantee Trustee in accordance with clause 9.1(b).

Beneficiary Nomination Letter means a letter substantially in the form set out in schedule 1(A) (“Beneficiary Nomination Letter”), signed by the Performing Subsidiary, accepted by the relevant Beneficiary and confirmed by the Undertaking and Guarantee Trustee.

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

- (a) 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;
- (b) 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 the relevant Finance Document; and
- (c) for all other purposes, banks are open for general banking business in Amsterdam, Sydney and any other place or places specified in the relevant Finance Document.

Charitable Fund has the meaning given to that term in the Final Funding Agreement.

Compensation Debt has the meaning given to the term "Compensation Debt (Performing Subsidiary)" in the Intercreditor Deed.

Controlled Entity means in respect of a Person, another Person in respect of which the first-mentioned Person is required to consolidate in its Audited Financial Statements but, in the case of the Performing Subsidiary, does not include any Liable Entity (as defined in the Final Funding Agreement) or the Fund Trustee. For the avoidance of doubt, the Performing Subsidiary is not a Controlled Entity of the Performing Subsidiary Group.

Costs means costs, fees, disbursements, charges and expenses, including, without limitation, where the Performing Subsidiary is liable to pay or reimburse the Costs, those incurred in connection with advisers and, unless such Costs are incurred in connection with:

- (a) consideration of any action or claim (whether or not as part of, or preparatory to, any enforcement action) relating to a Finance Document, the Performing Subsidiary or the Guaranteed Money;
 - (b) any costs or expenses relating to any advice described in clause 3(c);
 - (c) the costs relating to any court application by the Undertaking and Guarantee Trustee under clause 5.2; or
 - (d) the costs of an Independent Expert appointed under clause 8.3 of the Intercreditor Deed,
- only for an amount and on a basis previously agreed to in writing by the Performing Subsidiary.

Debtor means, in respect of a Beneficiary at a particular time, the person or persons primarily liable to the Beneficiary at that time under the Finance Documents.

Deed of Accession has the meaning given to that term in the Final Funding Agreement.

Default Rate means LIBOR plus 2% per annum. For the purpose of this definition, the interest is calculated as if the overdue amount is a cash advance with interest periods beginning and ending on the first and last days respectively of each calendar month (and including both days), provided that the first interest period begins on and includes the due date.

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

Discretionary Fund has the meaning given to that term in the Final Funding Agreement.

Excluded Lender has the meaning given to that term in the Intercreditor Deed.

Excluded Tax means:

- (a) a Tax imposed by any jurisdiction on or assessed against a Beneficiary as a consequence of the Beneficiary 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 this deed or another document referred to in this deed (without the allowance of a deduction);
 - (ii) that is imposed as a result of the Beneficiary being considered a resident or organised or doing business in that jurisdiction solely as a result of it being a party to this deed or a transaction contemplated by this deed; or
- (b) a Tax which would not be required to be deducted by the Performing Subsidiary if, before the Performing Subsidiary makes a relevant payment, a relevant Beneficiary provided the Performing Subsidiary with any of its name, address, registration number or similar details or any relevant tax exemption or similar details.

Final Funding Agreement means the deed dated 21 November 2006 between the NSW Government, JHINV, the Performing Subsidiary and the Fund Trustee which amended and restated the Original Final Funding Agreement.

Finance Documents means, in relation to a Beneficiary, each agreement:

- (a) to which the Performing Subsidiary and the Beneficiary (together with any other person) are a party or under which that Beneficiary has benefits or obligations; and
- (b) which is nominated as a “Finance Document” in a Beneficiary Nomination Letter.

Finance Money Debt has the meaning given to the term “Finance Money Debt (Performing Subsidiary)” in the Intercreditor Deed.

Fund Trustee means Asbestos Injuries Compensation Fund Limited in its capacity as trustee of the Charitable Fund.

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 Performing Subsidiary Group Member.

Guarantee means the guarantees and indemnities given by the Performing Subsidiary under clause 11 (“Guarantee and indemnity”).

Guaranteed Money means all amounts that:

- (a) at any time;
- (b) for any reason or circumstance in connection with any agreement, transaction, instrument (whether or not negotiable), document, event, act, omission, matter or thing whatsoever;
- (c) whether at law or otherwise; and
- (d) whether or not of a type within the contemplation of the Performing Subsidiary or any other person at the date of this deed,

are payable, are owing but not currently payable, are contingently owing, or remain unpaid, by a Debtor to a Beneficiary under or in connection with the Finance Documents.

This definition applies:

- (i) irrespective of the capacity in which the Debtor or the Beneficiary became entitled to the amount concerned;
- (ii) irrespective of the capacity in which the Debtor or the Beneficiary became liable in respect of the amount concerned;
- (iii) whether the Debtor or the Beneficiary is liable as principal debtor, as surety or otherwise;
- (iv) whether the Debtor is liable alone, or together with another person;
- (v) even if the Debtor owes an amount or obligation to the Beneficiary because it was assigned to the Beneficiary, whether or not:
 - (A) the assignment was before, at the same time as, or after the date of this deed; or
 - (B) the Debtor consented to or was aware of the assignment; or
 - (C) the assigned obligation was secured;

- (vi) even if this deed was assigned to the Beneficiary, whether or not:
 - (A) the Debtor or the Performing Subsidiary consented to or was aware of the assignment; or
 - (B) any of the Guaranteed Money was previously unsecured; or
- (vii) if the Performing Subsidiary is a trustee, whether or not it has a right of indemnity from the trust fund.

Heads of Agreement means the non-binding agreement entered into on 21 December 2004 between JHINV, the NSW Government, the Australian Council of Trade Unions, Unions New South Wales and a representative of certain asbestos victims groups.

Independent Valuer means:

- (a) any internationally recognised accountancy firm agreed to by the Performing Subsidiary and the Undertaking and Guarantee Trustee in writing; or
- (b) if the Performing Subsidiary and the Undertaking and Guarantee Trustee cannot agree on an internationally recognised accountancy firm, a person nominated by the President of the Institute of Chartered Accountants in Australia.

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

Insolvency Event means, in respect of a person, the occurrence in respect of that person of any event referred to in paragraphs (a) to (f) of the definition of “Insolvent” and, for the avoidance of doubt, includes a Winding Up.

Insolvency Official means a custodian, receiver, receiver and manager, trustee, liquidator, provisional liquidator, administrator or any other officer appointed in connection with the Insolvency of the Performing Subsidiary.

A person is **Insolvent** if it:

- (a) admits in writing its inability to pay its debts as they become due (otherwise than as contemplated in clause 16.6 of the Final Funding Agreement);
- (b) makes an assignment for the benefit of its creditors generally;
- (c) consents to the appointment of a custodian (not being a nominee for the person), receiver, receiver and manager, trustee or other officer with similar powers with respect to it or with respect to a substantial part of its property;

- (d) consents to the appointment of an insolvency administrator or such an insolvency administrator is appointed and that appointment is not terminated within 28 days;
- (e) is adjudicated as insolvent or to be liquidated, in each case, by a court of competent jurisdiction;
- (f) is subject to Winding Up,

and **Insolvency** has a corresponding meaning.

Intercreditor Deed means the deed entitled "Performing Subsidiary Intercreditor Deed" between the NSW Government, Asbestos Injuries Compensation Fund Limited (in its capacity as trustee of the Charitable Fund), the Performing Subsidiary and the Undertaking and Guarantee Trustee dated on or about the date of this deed.

James Hardie Group means JHINV and its Subsidiaries and **James Hardie Group Member** means any of them.

JHIL means ABN 60 Pty Limited (ABN 60 000 009 263) (formerly known as James Hardie Industries Limited).

JHINV means James Hardie Industries N.V. (ABN 49 097 829 895).

LIBOR means, in relation to any overdue amount:

- (a) the applicable British Bankers' Association Interest Settlement Rate for the currency in which the overdue amount is payable (**Due Currency**) 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 Beneficiary to whom the overdue amount is owed may specify another page or service displaying the appropriate rate after consultation with the Performing Subsidiary ("**Screen Rate**"); or
- (b) (if no Screen Rate is available for the Due Currency and the interest period of that overdue amount) the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Beneficiary to whom the overdue amount is owed at its request quoted by the principal London offices of at least three leading international banks chosen by the Beneficiary in consultation with the Performing Subsidiary to other leading international banks in the London interbank market,

as of 11.00 am (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 the Due Currency and for a period comparable to the interest period for the overdue amount.

Liquidation means, in respect of any person, the liquidation of all or substantially all of its assets (other than, in the case of the Performing Subsidiary, where the acquirer of all or substantially all of such assets has by

deed of accession become bound to observe all the obligations of the Performing Subsidiary under this deed and the other Related Agreements to which the Performing Subsidiary is a party) with the intention of distributing the proceeds to creditors or security holders, or a final order directing or requiring such liquidation is made or entered or deemed to have been made or entered by any court of competent jurisdiction.

Notice of Voting in Insolvency means a written notice from an Insolvency Official of any matter or matters in connection with the Insolvency (including, without limitation, the Winding Up) of the Performing Subsidiary and requiring or inviting the casting of votes by creditors of the Performing Subsidiary in relation to such matter or matters.

NSW Government means the State of New South Wales.

Original Final Funding Agreement means the legally binding agreement so entitled and entered into on 1 December 2005 between the JHINV, the Performing Subsidiary and the NSW Government giving effect to the arrangements contemplated by the Heads of Agreement.

Performing Subsidiary means the person so described in the Details.

Performing Subsidiary Group means the Performing Subsidiary and its Controlled Entities and **Performing Subsidiary Group Member** means any of them.

Person includes any general partnership, limited partnership, corporation, limited liability company, joint venture, trust, business trust, governmental agency, co-operative, association, individual or other entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such a Person as the context may require.

Proceeds has the meaning given to that term in the Intercreditor Deed.

Proportion means, in respect of a Beneficiary at any time, the Beneficiary's proportion of the Finance Money Debt (including all Proceeds) divided by the total of all Finance Money Debt at that time, expressed as a percentage.

Recovered Money means all amounts paid to or recovered by the Undertaking and Guarantee Trustee in respect of the Finance Money Debt during an Insolvency of the Performing Subsidiary which has not yet been distributed under clause 18 ("Distribution of Recovered Money").

Register means the register to be established and maintained by the Undertaking and Guarantee Trustee under clause 9 ("Register").

Related Agreement has the meaning given to that term in the Final Funding Agreement.

Related Entity has the meaning it has in the Corporations Act.

Relevant Documents means:

- (a) the Final Funding Agreement;

(b) any Related Agreement; and

(c) any Finance Document.

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.

Security Provider means a person (other than the Performing Subsidiary) who at any time is liable by guarantee, indemnity or otherwise alone or jointly, or jointly and individually, to pay or indemnify against non-payment of the Finance Money Debt.

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 Beneficiary) 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.

Trust means the Performing Subsidiary Undertaking and Guarantee Trust established by clause 5.1(a) ("Declaration of Trust") of this deed.

Trust Deed has the meaning given to that term in the Final Funding Agreement.

Undertaking means the undertaking given by the Performing Subsidiary under clause 10(a) ("Undertaking").

Undertaking and Guarantee Trustee means the person so described in the Details.

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

Winding Up means, in respect of a person, the occurrence of any one or more of the following events in relation to that person:

(a) a final court order is entered that it be wound up or declared bankrupt;

- (b) a liquidator (excluding a provisional liquidator) is appointed to it and the appointment is not subsequently terminated;
- (c) a court declaration of bankruptcy is made in relation to it and is not subsequently withdrawn, struck out or dismissed, vacated or reversed;
- (d) the Liquidation of that person; and
- (e) any comparable action occurs under the law of any competent jurisdiction which has a substantially similar effect to any of the above paragraphs (a) to (g) of this definition,

and an order shall be deemed to be final when timely-commenced proceedings for review of such an order has been concluded without such order being subsequently dismissed, withdrawn, struck out, vacated or reversed, and the time for commencing any further proceeding for review of such order has expired.

1.2 References to certain general terms

Unless the contrary intention appears, a reference in this deed to:

- (a) a group of persons is a reference to any two or more of them collectively 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 collectively and each of them individually;
- (c) an agreement, representation or warranty by two or more persons binds them collectively and each of them individually but an agreement, representation or warranty by a Beneficiary binds the Beneficiary 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 deed) includes any variation 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) the word "person" includes an individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated association and any Government Agency;

- (h) a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (i) 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; and
- (j) the Corporations Act is a reference to the Corporations Act 2001 of Australia.

1.3 Number

The singular includes the plural and vice versa.

1.4 Headings

Headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this deed.

1.5 Undertaking and Guarantee Trustee's limitation of liability

- (a) A liability arising under or in connection with this deed is limited to and can be enforced against the Undertaking and Guarantee Trustee only to the extent to which it can be satisfied out of any property held by the Undertaking and Guarantee Trustee out of which the Undertaking and Guarantee Trustee is actually indemnified for the liability. This limitation of the Undertaking and Guarantee Trustee's liability applies despite any other provision of this deed and extends to all liabilities and obligations of the Undertaking and Guarantee Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this deed.
- (b) The parties (other than the Undertaking and Guarantee Trustee) may not sue the Undertaking and Guarantee Trustee in any capacity other than as trustee of the Trust, including seeking the appointment of a receiver (except in relation to property of the Trust), a liquidator, an administrator or any other similar person to the Undertaking and Guarantee Trustee or prove in any liquidation of or affecting the Undertaking and Guarantee Trustee (except in relation to the property of the Trust).
- (c) The parties waive their rights and release the Undertaking and Guarantee Trustee from any personal liability in respect of any loss or damage which any of them may suffer as a consequence of a failure of the Undertaking and Guarantee Trustee to perform its obligations under this deed, which cannot be paid or satisfied out of any property of the Trust held by the Undertaking and Guarantee Trustee.
- (d) The provisions of this clause 1.5 will not apply to any obligation or liability of the Undertaking and Guarantee Trustee to the extent to which such obligation or liability:

- (i) arises as a result of the Undertaking and Guarantee Trustee's fraud, gross negligence or wilful misconduct; or
 - (ii) cannot be satisfied out of any property held by the Undertaking and Guarantee Trustee as a result of the Undertaking and Guarantee Trustee's fraud, gross negligence or wilful misconduct.
- (e) No act or omission of the Undertaking and Guarantee Trustee (including any related failure to satisfy its obligations or breach of representation or warranty under this deed) will be considered fraud, gross negligence or wilful misconduct of the Undertaking and Guarantee Trustee to the extent to which the act or omission was caused or contributed to by any failure of any party (other than the Undertaking and Guarantee Trustee) or any other person to fulfil its obligations relating to the Trust or by any other act or omission of the parties (other than the Undertaking and Guarantee Trustee) or any other person having obligations relating to the Undertaking and Guarantee Trust.
- (f) Any fraud, gross negligence or wilful misconduct of an attorney, agent or delegate appointed by the Undertaking and Guarantee Trustee in accordance with this deed is not, and is not to be deemed to be, an act on behalf of the Undertaking and Guarantee Trustee for the purposes of this deed and does not create rights or obligations on any party to this deed nor expose the Undertaking and Guarantee Trustee to any personal liability provided that:
- (i) nothing in this clause 1.5(f) relieves the Undertaking and Guarantee Trustee from any liability to the extent of any fraud, gross negligence or wilful misconduct of the Undertaking and Guarantee Trustee in the selection, appointment, oversight or supervision of any such attorney, agent or delegate; and
 - (ii) the Undertaking and Guarantee Trustee must, to the extent permitted by law, take all reasonable steps to recover compensation for any expenses, losses, liabilities, actions, proceedings or claims that are incurred by the Undertaking and Guarantee Trustee (or would have been incurred but for the operation of this clause 1.5(f)) as a direct or indirect consequence of the fraud, gross negligence or wilful misconduct of any attorney, agent or delegate appointed by the Undertaking and Guarantee Trustee from any such attorney, agent or delegate..

1.6 Undertaking and Guarantee Trustee's knowledge

The Undertaking and Guarantee Trustee will only be considered to have knowledge or awareness of, or notice of, any thing, or grounds to believe any thing, by virtue of the officers of the Undertaking and Guarantee Trustee having day to day responsibility for the administration of the Undertaking and Guarantee Trustee having actual knowledge, actual awareness or actual

notice of that thing, or grounds or reason to believe that thing (and similar references will be interpreted in this way).

1.7 Reliance on notices

Where any notice is provided by any of the parties (other than the Undertaking and Guarantee Trustee) to the Undertaking and Guarantee Trustee and the notice has been executed by an Authorised Officer of that party then the Undertaking and Guarantee Trustee may assume that the notice has been properly prepared and considered by that party and the Undertaking and Guarantee Trustee is not required to investigate further.

1.8 Condition precedent

Notwithstanding any other provision of this deed, the provisions of, and the obligations of the parties under, this deed are subject to, and do not commence until, each of the conditions set out in clause 2.1 of the Final Funding Agreement have been satisfied or waived in writing by the parties to the Final Funding Agreement.

2 Consideration and benefit

2.1 Deed and deed poll

This deed takes effect as both:

- (a) a deed between the Performing Subsidiary and the Undertaking and Guarantee Trustee; and
- (b) a deed poll by the Performing Subsidiary and the Undertaking and Guarantee Trustee in favour of the Beneficiaries.

2.2 Benefit

- (a) Each Beneficiary has the benefit of, and is entitled to enforce, this deed in accordance with its terms even though it is not a party to, or is not in existence at the time of execution and delivery of, this deed.
- (b) Subject to the Intercreditor Deed and clause 2.2(c), the benefit and obligations of this deed may be extended to any other person (and such person shall become a Beneficiary) in relation to any other document (and such document shall become a Finance Document) under which liabilities are owed to such person where such liabilities are, or required to be, included in the James Hardie Group's financial statements or accompanying notes as debt or borrowings (including, without limitation, bank loans, letter of credit facilities, derivatives and debt capital markets issues which are, or are required to be so included or noted) of the Performing Subsidiary (or a Performing Subsidiary Group Member, the performance of whose obligations has been guaranteed by the Performing Subsidiary) by the Performing Subsidiary signing and delivering to that person (or an agent or trustee acting on behalf of that person) and Undertaking and Guarantee Trustee, a Beneficiary Nomination Letter and the person

or an agent or trustee acting on behalf of that person countersigning such Beneficiary Nomination Letter and delivering the countersigned Beneficiary Nomination Letter to the Undertaking and Guarantee Trustee.

- (c) An Excluded Lender cannot be a Beneficiary.

2.3 Consideration

Each party acknowledges incurring obligations and giving rights under this deed for valuable consideration received and to be received from, among others, each Beneficiary.

2.4 Ceasing to be a beneficiary

- (a) The Performing Subsidiary may request that a Beneficiary sign a consent confirming its cessation as a beneficiary of the Trust if, at the time of the Performing Subsidiary's request:
 - (i) there is no Guaranteed Money in respect of that Beneficiary;
 - (ii) the Performing Subsidiary has no outstanding obligations to the Beneficiary under this deed; and
 - (iii) that Beneficiary has no further obligation to provide financial accommodation to the Debtor under the Finance Documents.
- (b) A Beneficiary may at any time notify the Undertaking and Guarantee Trustee in writing that the Beneficiary wishes to cease to be a beneficiary of the Trust. Any such notice does not limit the Beneficiary's rights against the Performing Subsidiary other than its rights as a beneficiary of the Trust.
- (c) The relevant Beneficiary undertakes to do all things necessary to give effect to the cessation of its being a beneficiary under clause 2.4(a) (if it is satisfied, acting reasonably, that clauses 2.4(a)(i), 2.4(a)(ii) and 2.4(a)(iii) are satisfied) or 2.4(b), including, without limitation, the execution of the consent referred to in clause 2.4(a) and the surrender of its Beneficiary Nomination Letter.
- (d) A Beneficiary ceases to be a beneficiary of the Trust and thereupon ceases to have the benefit of the Undertaking:
 - (i) under clause 2.4(a), on receipt by the Undertaking and Guarantee Trustee of a signed consent;
 - (ii) under clause 2.4(b), on receipt by the Undertaking and Guarantee Trustee of notice from the Beneficiary.Upon receipt of the relevant signed consent or notice, the Undertaking and Guarantee Trustee must remove the Beneficiary's name from the Register.

3 Inconsistency and advice

- (a) If any provision of the Final Funding Agreement, any Related Agreement (excluding this deed, the Intercreditor Deed, or the Intercreditor Deed (Performing Subsidiary)), or any other Finance Document is inconsistent with this deed, this deed prevails to the extent of the inconsistency.
- (b) Each of the parties to this deed undertake to use all reasonable endeavours to procure that the Relevant Documents which are not executed as at the date of this deed are executed in a form that minimises the likelihood of any inconsistency.
- (c) In the event that the Undertaking and Guarantee Trustee may be required to exercise any discretion, judgement or issue a notice or determine a matter relating to this deed or any Relevant Document, the Undertaking and Guarantee Trustee will be entitled to seek such legal, accounting, tax or other advice as is reasonable in all the circumstances.

4 Termination

Without prejudice to the provisions of clause 8.5, upon the Performing Subsidiary delivering:

- (a) to the Undertaking and Guarantee Trustee:
 - (i) a written notice stating that the Final Funding Agreement and its Related Agreements have been terminated; and
 - (ii) legal opinions from lawyers practising in New South Wales and each other jurisdiction whose laws govern any such Related Agreement which collectively confirm that the Final Funding Agreement and its Related Agreements have ceased to be in full force and effect under their respective governing laws,
- (b) to each Beneficiary:
 - (i) an original signed counterpart of a replacement guarantee; and
 - (ii) legal opinions from lawyers practising in New South Wales in respect of such replacement guarantee which confirm that such replacement guarantee constitutes a valid, binding and enforceable obligation of the Performing Subsidiary (subject to their customary assumptions and qualifications),

this deed is automatically terminated and, with respect to each Beneficiary, replaced by such replacement guarantee.

James Hardie — Performing Subsidiary Undertaking and Guarantee Trust Deed

Part 2 Trust and the Undertaking and Guarantee Trustee

5 Trust

5.1 Declaration of trust

The Undertaking and Guarantee Trustee:

- (a) declares that it holds the benefit of the Undertaking and Guarantee, each Relevant Document and any other document in connection with the Undertaking and Guarantee or any Relevant Document which contains provisions in favour of, or for the benefit of, the Undertaking and Guarantee Trustee or a Beneficiary (including, without limitation, all representations, warranties and undertakings made in favour of the Undertaking and Guarantee Trustee or any Beneficiary and any other rights, claims or entitlements of the Undertaking and Guarantee Trustee or a Beneficiary under the Undertaking and Guarantee or any Relevant Document) on separate trusts for each relevant Beneficiary in accordance with, and on the terms of, this deed; and
- (b) agrees to comply with the provisions of this deed which purport to bind it and to perform the duties and responsibilities of the Undertaking and Guarantee Trustee specified in this deed.

5.2 Duration of trust

Each trust created pursuant to clause 5.1 commences on the date of the relevant Beneficiary Nomination Letter and terminates on the earlier of:

- (a) the date the relevant Beneficiary ceases to be a beneficiary in accordance with clause 2.4;
- (b) the date this deed is automatically terminated under clause 4;
- (c) the date on which the obligations of the Performing Subsidiary to pay the Guaranteed Money pursuant to this deed are fully discharged in accordance with this deed; and
- (d) the day before the eightieth anniversary of the date of this deed.

The termination of a trust created pursuant to clause 5.1 in accordance with this clause 5.2 does not affect any other trust created pursuant to clause 5.1. Any such other trust is preserved and continues in existence until terminated in accordance with this clause 5.2.

The Undertaking and Guarantee Trustee must use reasonable endeavours prior to the eightieth anniversary (if applicable) of the date of this deed to resettlement the property then held on trust by the Undertaking and Guarantee Trustee in new trusts for the Beneficiaries on identical terms to those contained in this deed.

In the event that the Undertaking and Guarantee Trustee is unable to resettle the property of the Trust, then it will be entitled to seek directions from an appropriate court regarding the settlement of new trusts for the Beneficiaries, as required under this clause 5.2.

5.3 Trust name

The trusts established under clause 5.1(a) shall be collectively known as the Performing Subsidiary Undertaking and Guarantee Trust.

6 Nature of Guarantee

6.1 Several nature of the Guarantee

The benefit of the Guarantee held by the Undertaking and Guarantee Trustee in accordance with, and on the terms of, this deed is held by the Undertaking and Guarantee Trustee on trust for the benefit of each Beneficiary severally with respect to the Guaranteed Money owing to the relevant Beneficiary.

6.2 Claims in Insolvency

Each Beneficiary is severally a creditor of the Performing Subsidiary in relation to the Guaranteed Money owing to the Beneficiary, but its rights under the Guarantee in an Insolvency of the Performing Subsidiary are subject to the terms of this deed and are to be exercised by the Undertaking and Guarantee Trustee on its behalf on the terms of this deed.

6.3 Demands prior to Insolvency

Prior to an Insolvency of the Performing Subsidiary, and subject to the terms of this deed, each Beneficiary individually may make a demand under the Guarantee with respect to the Guaranteed Money owing to that Beneficiary.

7 Undertaking and Guarantee Trustee

7.1 Appointment

The Performing Subsidiary appoints the Undertaking and Guarantee Trustee as the trustee for each Beneficiary in respect of the Undertaking and Guarantee, each Relevant Document and any other document in connection with the Undertaking and Guarantee or any Relevant Document which contains provisions in favour of, or for the benefit of, the Undertaking and Guarantee Trustee or a Beneficiary (including, without limitation, all representations, warranties and undertakings made in favour of the Undertaking and Guarantee Trustee or any Beneficiary and any other rights, claims or entitlements of the Undertaking and Guarantee Trustee or a Beneficiary under the Undertaking and Guarantee or any Relevant Document).

The Undertaking and Guarantee Trustee accepts that appointment on the terms and conditions of this deed.

7.2 Remuneration

- (a) The Performing Subsidiary must pay the Undertaking and Guarantee Trustee the fee separately agreed by the Performing Subsidiary and the Undertaking and Guarantee Trustee (including without limitation fees in relation to the Undertaking and Guarantee Trustee's time and attendance on all matters in connection with the enforcement of Beneficiaries' rights under this deed, the Trust, and each Relevant Document, as separately agreed by the Performing Subsidiary and the Undertaking and Guarantee Trustee).
- (b) If the Undertaking and Guarantee Trustee is required at any time to undertake:
- (i) any duties in connection with the enforcement of Beneficiaries' rights under this deed, the Trust and each Relevant Document; or
 - (ii) any duties which are agreed by the Performing Subsidiary to be of an exceptional nature or otherwise outside the scope of the normal duties of the Undertaking and Guarantee Trustee,

then the Undertaking and Guarantee Trustee is entitled to such additional fees as may be agreed between the Undertaking and Guarantee Trustee and the Performing Subsidiary or, failing agreement, such fees as are determined by the Independent Valuer (acting as an expert and not as an arbitrator). The Independent Valuer's determination shall be conclusive and binding on the Performing Subsidiary and the Undertaking and Guarantee Trustee so far as permitted by law.

7.3 Power

In connection with the discharge of its duties and obligations under this deed, the Undertaking and Guarantee Trustee has all the powers of a natural person, but must exercise those powers subject to the provisions of this deed.

7.4 Specific responsibilities

The Undertaking and Guarantee Trustee agrees:

- (a) to notify the Beneficiaries of any change in the Undertaking and Guarantee Trustee's principal office and address for notices under this deed;
- (b) to maintain the Register in accordance with clause 9 ("Register");
- (c) to diligently perform its obligations under the Intercreditor Deed;
- (d) in relation to each matter arising under or in connection with the Intercreditor Deed which requires the exercise of any right or discretion vested in the Financiers collectively (as therein defined) or the Undertaking and Guarantee Trustee (on behalf of the Financiers

(as therein defined)) (including, without limitation, a request for consent or the waiver of a right), to:

- (i) promptly send to each Beneficiary (at the address last notified by the Beneficiary) a notice which:
 - (A) notifies the Beneficiary of the details of the matter and the legal basis (by reference to the particular clause of the Intercreditor Deed) for the exercise of a right or discretion by the Financiers, or the Undertaking and Guarantee Trustee on their behalf, in relation to the matter; and
 - (B) requests the Beneficiary to advise in writing, with such details as the Undertaking and Guarantee Trustee may request and within [five] Business Days of the date of the notice (or such shorter period as the Undertaking and Guarantee Trustee determines is reasonable having regard to all relevant circumstances):
 - (aa) the amount of its participation in the Finance Money Debt at that time; and
 - (ab) its instructions as to how the right or discretion should be exercised by the Undertaking and Guarantee Trustee in relation to the matter described in the notice; and
- (ii) notwithstanding the instructions of any individual Beneficiary, act in accordance with the instructions of the Beneficiaries whose aggregate participation in the Finance Money Debt (as advised by those Beneficiaries) represents more than 50% of the aggregate value of all Finance Money Debt (as advised by all Beneficiaries), provided that if any Beneficiary fails to respond to the Undertaking and Guarantee Trustee's notice within the time stated therein, the Undertaking and Guarantee Trustee may, in its discretion if it believes doing so is in the best interests of the Beneficiaries as a whole (without regard to the particular circumstances or interests of any individual Beneficiary), act in accordance with the instructions of the Beneficiaries who do respond within the stated time ("**Responding Beneficiaries**") and whose aggregate participation in the Finance Money Debt (as advised by those Responding Beneficiaries) represents more than 50% of the aggregate value of the Finance Money Debt of all Responding Beneficiaries;
- (e) upon receipt of written notice from the Performing Subsidiary or a Beneficiary of the commencement of any Insolvency of the Performing Subsidiary, to promptly send to each Beneficiary (at the address last notified by the Beneficiary) a notice which:

- (i) states that the Undertaking and Guarantee Trustee has been so notified; and
 - (ii) requests the Beneficiary to advise in writing, with such details as the Undertaking and Guarantee Trustee may request and within [five] Business Days of the date of the notice (or such shorter period as the Undertaking and Guarantee Trustee determines is reasonable having regard to all relevant circumstances), the amount of its participation in the Finance Money Debt at that time; and
- (f) in any Insolvency of the Performing Subsidiary:
- (i) to distribute all Notices of Voting in Insolvency, and to vote on any matter or matters the subject of a Notice of Voting in Insolvency, in accordance with clause 17 (“Voting in Insolvency proceedings”);
 - (ii) (if required for the purposes of any proceedings relating to, or in connection with, the Insolvency of the Performing Subsidiary) to prove separately for all amounts of Finance Money Debt notified by Beneficiaries in accordance with clause 7.4(c)(ii). For the avoidance of doubt, each Beneficiary expressly authorises the Undertaking and Guarantee Trustee to prove for all amounts of Finance Money Debt owing to it in the name of the Undertaking and Guarantee Trustee, in the name of the Undertaking and Guarantee Trustee as trustee for that Beneficiary or in the name of that Beneficiary; and
 - (iii) to distribute all Recovered Money in accordance with clause 18 (“Distribution of Recovered Money”).

7.5 No other duties

- (a) The Undertaking and Guarantee Trustee has no duties or responsibilities except those expressly set out in this deed or which the Undertaking and Guarantee Trustee has otherwise agreed in writing that it will undertake.
- (b) Without limiting the generality of clause 7.5(a), the Undertaking and Guarantee Trustee has no obligation to keep itself informed, or to inform the Beneficiaries, about:
 - (i) the performance by any party of its obligations under this deed or any other agreement; or
 - (ii) the affairs, financial condition or business of any person.
- (c) Except in the case of manifest error, the Undertaking and Guarantee Trustee may rely upon any certification, notification or other written advice given to it in good faith as being conclusive on its face and is

not obliged to make any inquiries as to the correctness of the contents of that certificate, notification or advice.

- (d) Each Beneficiary expressly authorises the Undertaking and Guarantee Trustee to act in accordance with the express terms of this deed, notwithstanding that in doing so the Undertaking and Guarantee Trustee may be in breach of any fiduciary or other duties owed by it to that Beneficiary.
- (e) Each Beneficiary expressly authorises the Undertaking and Guarantee Trustee to intermingle the Recovered Money prior to any distribution under clause 18 to the extent permitted by applicable law.
- (f) Each Beneficiary expressly waives any right or action it may have in law or equity against the Undertaking and Guarantee Trustee, arising from any action the Undertaking and Guarantee Trustee may take in accordance with clause 7.5(d) and 7.5(e).

7.6 Delegation

- (a) The Undertaking and Guarantee Trustee may employ agents and attorneys and may delegate any of its rights or obligations in the capacity as trustee under this deed without notifying any person of the delegation.
- (b) The Undertaking and Guarantee Trustee agrees to exercise reasonable care in selecting delegates and to supervise their actions.
- (c) The Undertaking and Guarantee Trustee is responsible for any loss arising due to the fraud, gross negligence or wilful misconduct of its delegate or gross or wilful breach by the delegate of their obligations where that delegate is a Related Entity to the Undertaking and Guarantee Trustee.
- (d) For the avoidance of doubt, in relation to each separate trust created pursuant to clause 5.1, the Undertaking and Guarantee Trustee may employ the same or separate agents and attorneys and may delegate any of its rights or obligations in the capacity as trustee under this deed to the same or separate persons to those agents, attorneys and delegates employed or appointed for any other trust created pursuant to clause 5.1.

7.7 Indemnity

- (a) The Undertaking and Guarantee Trustee and its officers and agents are entitled to be continually indemnified out of the Trust in the same proportions specified in clause 7.7(c) against all expenses, losses, liabilities, actions, proceedings, claims and demands (whether actual, contingent, prospective or otherwise) that are incurred as a direct or indirect consequence of the execution of this deed or any Relevant Document or any act or omission by any person under this deed or any Relevant Document.
- (b) The indemnity in clause 7.7(a):

- (i) is separate from any indemnity allowed by law;
- (ii) survives the termination of this deed; and
- (iii) does not extend to any expenses, losses, liabilities, actions, proceedings, claims and demands to the extent that they are attributable to:
 - (A) a failure by the Undertaking and Guarantee Trustee to properly perform its duties under this deed, any Relevant Document or under the Corporations Act 2001; or
 - (B) fraud, gross negligence or wilful misconduct on the part of the Undertaking and Guarantee Trustee or the officer or agent seeking to be indemnified under clause 7.7(a).
- (c) Each Beneficiary individually in accordance with its Proportion, indemnifies the Undertaking and Guarantee Trustee and its officers and agents against the non-receipt of a payment from the Performing Subsidiary and the Costs incurred by the Undertaking and Guarantee Trustee or relevant officer or agent in funding the amount not paid, if the Undertaking and Guarantee Trustee or relevant officer or agent:
 - (i) reasonably claims a payment from the Performing Subsidiary under clause 23.1 (“What the Performing Subsidiary agrees to pay”); and
 - (ii) does not receive it within seven days after the claim is made.

Each Beneficiary agrees to pay amounts due under this indemnity to the Undertaking and Guarantee Trustee or relevant officer or agent on demand from the Undertaking and Guarantee Trustee or relevant officer or agent.

- (d) The Performing Subsidiary indemnifies each Beneficiary against any liability or loss arising from, and any Costs incurred in connection with, the Beneficiary making a payment under clause 7.7(a). The Performing Subsidiary agrees to pay amounts due under this indemnity on demand from the Beneficiaries.
- (e) Each payment to be made under this clause 7.7 must be made in Australian dollars.

7.8 Payment by Beneficiaries

If the Undertaking and Guarantee Trustee:

- (a) proposes to exercise a right arising in its capacity as trustee for the Beneficiaries under this deed or any Relevant Document or take any other action in that capacity; or

- (b) the Undertaking and Guarantee Trustee is directed to exercise a right or take any action in its capacity as trustee for the Beneficiaries under this deed or any Relevant Document,

and the Undertaking and Guarantee Trustee reasonably considers this could result in the Performing Subsidiary becoming obliged to pay an amount to the Undertaking and Guarantee Trustee under clause 23.1 (“What the Performing Subsidiary agrees to pay”), then the Undertaking and Guarantee Trustee:

- (i) may request the Beneficiaries to pay to the Undertaking and Guarantee Trustee an amount at least equal to the amount the Undertaking and Guarantee Trustee reasonably determines would be the Performing Subsidiary’s liability to the Undertaking and Guarantee Trustee; and
- (ii) need not act until the Beneficiaries do so.

Each Beneficiary agrees to fund under this clause 7.8 rateably in accordance with its Proportion.

7.9 Adjustments amongst Beneficiaries

- (a) If a Beneficiary (a “**Defaulting Beneficiary**”) fails to pay any amount (a “**Default Amount**”) to the Undertaking and Guarantee Trustee under clause 7.7(a) or 7.8, any other Beneficiary (a “**Funding Beneficiary**”) acting alone or together with other Funding Beneficiaries may pay an amount equal to the Default Amount to the Undertaking and Guarantee Trustee.
- (b) If the Undertaking and Guarantee Trustee receives a payment made in accordance with clause 7.9(a), it must:
- (i) deduct an amount equal to the Default Amount from any payment it is obliged to make to the Defaulting Beneficiary; and
- (ii) pay an amount equal to each Funding Beneficiary’s contribution to the Default Amount to that Funding Beneficiary.

8 Change of Undertaking and Guarantee Trustee

8.1 Retirement

The Undertaking and Guarantee Trustee may retire by giving the Performing Subsidiary and each Beneficiary at least 90 days’ notice of its intention to do so and without being required to give any reasons for that retirement.

8.2 Removal

If the Undertaking and Guarantee Trustee breaches any material obligation under this deed and (if the breach is capable of remedy) does not correct the breach within a 30 Days, or if the Undertaking and Guarantee Trustee

becomes Insolvent, the Performing Subsidiary may remove the Undertaking and Guarantee Trustee as trustee under this deed by giving the Undertaking and Guarantee Trustee at least 45 days' notice.

8.3 Permitted successors

Subject to the Intercreditor Deed, the successor trustee must be a reputable and experienced professional trustee company, bank or financial institution (or a Related Entity of any of them) nominated by the Performing Subsidiary.

8.4 When retirement or removal takes effect

The retirement or removal of the Undertaking and Guarantee Trustee takes effect when both of the requirements in paragraphs (a) and (b) have been met or if the circumstances in paragraph (c) apply:

- (a) a successor trustee has been appointed; and
- (b) the successor trustee, each other party to this deed and each person having the benefit of this deed (although not a party to it) have the same rights and obligations among themselves as they would have had if the successor trustee had been party to this deed at the date of its execution. The retiring or removed trustee and the Performing Subsidiary agree to sign documents (including a retirement and appointment document) and do anything else necessary or appropriate to give effect to this. Everything the retiring trustee is required to do under this clause is at the Performing Subsidiary's expense except that if the Undertaking and Guarantee Trustee has been removed, it is at its own expense; or
- (c) no successor trustee has been appointed or its appointment has not become effective within 60 days of the end of the relevant retirement or removal notice period applicable under this clause 8 but the Undertaking and Guarantee Trustee has the approval of an appropriate court to cease acting as successor trustee under this deed.

8.5 Discharge of further obligations

When a successor trustee is appointed, the retiring or removed trustee is discharged from any further obligation under this deed. This discharge does not prejudice any accrued right or obligation.

8.6 Turnover

Each Beneficiary agrees for the benefit of the other Beneficiaries that if:

- (a) it receives or recovers an amount of Guaranteed Money; and
- (b) at the time of receipt or recovery of such amount, the Undertaking and Guarantee Trustee has retired or been removed and either a successor undertaking and guarantee trustee has not been appointed or the successor undertaking and guarantee trustee's appointment is not effective,

then, to the extent such amount exceeds that Beneficiary's Proportion of the Guaranteed Money (the "**Turnover Amount**"), it:

- (i) holds the Turnover Amount on trust for the other Beneficiaries; and
- (ii) agrees to pay the Turnover Amount to the other Beneficiaries rateably in accordance with their Proportions.

9 Register

9.1 Establishment and maintenance of Register

- (a) The Undertaking and Guarantee Trustee must establish and maintain the Register in accordance with this deed.
- (b) Each Beneficiary must give notice to the Undertaking and Guarantee Trustee within 10 Business Days (or, if JHINV is at that time Insolvent, 2 Business Days) of the date of any change to any of the details in clause 9.2 below such notice to be substantially in the form of the Beneficiary Change Notification set out in schedule 1(B).

9.2 Information required in Register

The Undertaking and Guarantee Trustee must enter the following information in the Register:

- (a) the name and address of each Beneficiary; and
- (b) in relation to each Beneficiary, a list of each Finance Document; and
- (c) in respect of each Finance Document, the date, the parties to it and the name of it; and
- (d) the date of each entry in the Register; and
- (e) particulars of changes notified to the Undertaking and Guarantee Trustee of information recorded in the Register; and
- (f) any other particulars as the Undertaking and Guarantee Trustee thinks fit.

9.3 No trust

No notice of any trust express or implied or constructive is to be entered in the Register regardless of whether it relates to or arises under this deed or any Relevant Document.

9.4 Register conclusive

The Register is conclusive evidence, in the absence of manifest error, of the matters recorded in it.

9.5 Update and correction of Register

The Undertaking and Guarantee Trustee agrees to:

- (a) update the Register when it is notified of any change in any of the details recorded in respect of a Beneficiary or a Finance Document; and
- (b) correct the Register if it becomes aware that any details in the Register are incorrect or incomplete.

9.6 Inspection of Register

The Performing Subsidiary and each Beneficiary may inspect the Register in respect of information that may be disclosed to it without breach by any party of any duty of confidentiality or any law, regulation or directive relating to privacy:

- (a) on prior reasonable notice to the Undertaking and Guarantee Trustee; and
- (b) between 9.30 am and 4.30 pm on any day on which business is generally carried on in the place where the Register is kept.

James Hardie — Performing Subsidiary Undertaking and Guarantee Trust Deed

Part 3 Undertaking

10 Undertaking

The Performing Subsidiary undertakes:

- (a) to pay all amounts payable by it under the Finance Documents and this deed; and
- (b) to comply with all of its obligations under the Finance Documents and this deed.

11 Guarantee and indemnity

11.1 Guarantee

- (a) The Performing Subsidiary unconditionally and irrevocably guarantees in accordance with, and on the terms of this deed, and for the benefit of each Beneficiary and the Undertaking and Guarantee Trustee, payment of the Guaranteed Money.
- (b) If the Debtor does not pay the Guaranteed Money on time and in accordance with the Finance Documents then, subject to clause 11.1(c), the Performing Subsidiary agrees to pay the Guaranteed Money to:
 - (i) prior to an Insolvency of the Performing Subsidiary, the relevant Beneficiary following a demand by that Beneficiary to the Performing Subsidiary; or
 - (ii) otherwise, the Undertaking and Guarantee Trustee following a demand by the relevant Beneficiary, or the Undertaking and Guarantee Trustee on behalf of that Beneficiary, to the Performing Subsidiary.
- (c) A demand on the Performing Subsidiary under this clause 11.1:
 - (i) may be made only if the Beneficiary has first made a demand on the Debtor and the demand is not satisfied within 2 Business Days;
 - (ii) may be made at any time and from time to time; and
 - (iii) must be made in writing in accordance with clause 27 (“Notices”).

11.2 Indemnity

- (a) The Performing Subsidiary indemnifies in accordance with, and on the terms of this deed, each Beneficiary and the Undertaking and

Guarantee Trustee against any liability or loss arising, and any Costs it suffers or incurs:

- (i) if the Debtor does not, or is unable to, pay the Guaranteed Money in accordance with the Finance Documents; or
 - (ii) if an obligation the Debtor would otherwise have to pay the Guaranteed Money (or which would have been Guaranteed Money had it not been irrecoverable) is found to be unenforceable, void or voidable; or
 - (iii) if an obligation the Performing Subsidiary would otherwise have under clause 11.1 (“Guarantee”) is found to be unenforceable; or
 - (iv) if the Beneficiary or the Undertaking and Guarantee Trustee is obliged, or agrees, to pay an amount to a trustee in bankruptcy or liquidator (of an Insolvent person) in connection with a payment by the Performing Subsidiary or the Debtor. (For example, the Beneficiary may have to, or may agree to, pay interest on the amount); or
 - (v) if the Performing Subsidiary defaults under clause 11.1 (“Guarantee”).
- (b) Subject to clause 11.1(c), the Performing Subsidiary agrees to pay amounts due under this indemnity to:
- (i) prior to an Insolvency of the Performing Subsidiary, the relevant Beneficiary following a demand by that Beneficiary to the Performing Subsidiary; or
 - (ii) otherwise, the Undertaking and Guarantee Trustee following a demand by the relevant Beneficiary, or the Undertaking and Guarantee Trustee on behalf of that Beneficiary, to the Performing Subsidiary.
- (c) A demand on the Performing Subsidiary under this clause 11.1:
- (i) may be made at any time and from time to time; and
 - (ii) must be made in writing in accordance with clause 27.

12 Interest

12.1 Obligation to pay interest

The Performing Subsidiary agrees to pay interest at the Default Rate on:

- (a) any part of the Guaranteed Money which is due for payment but which is not otherwise incurring interest; and

(b) any amount payable by it under this deed (other than under clause 11.1) which is not paid on the due date for payment.

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 Performing Subsidiary agrees to pay interest under this clause on demand from the Beneficiary.

12.2 Compounding

Interest payable under clause 12.1 (“Obligation to pay interest”) which is not paid when due for payment may be added to the overdue amount by the Beneficiary 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 12.1 (“Obligation to pay interest”).

12.3 Interest following judgment

If a liability becomes merged in a judgment, the Performing Subsidiary agrees to 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 Performing Subsidiary agrees to pay interest under this clause on demand from the Beneficiary.

13 Extent of guarantee and indemnity

- (a) The Guarantee is a continuing obligation despite any intervening payment, settlement or other thing and extends to all of the Guaranteed Money.
- (b) Subject to compliance by the Beneficiary with clauses 11.1(c) (“Guarantee”) and 27 (“Notices”), the Performing Subsidiary waives any right it has of first requiring the Undertaking and Guarantee Trustee or the Beneficiary to commence proceedings or enforce any other right against the Debtor or any other person before claiming from the Performing Subsidiary under the Guarantee.

14 Rights of the Beneficiary are protected

Rights given to each Beneficiary under the Guarantee, and the Performing Subsidiary's liabilities under it, are not affected by any act or omission of the Beneficiary or any other person or by any act, other matter or thing whatsoever, whether negligent or not. For example, those rights and liabilities are not affected by:

- (a) any act or omission:
 - (i) varying or replacing any arrangement under which the Guaranteed Money is expressed to be owing, such as by increasing a facility limit or extending the term;
 - (ii) releasing or discharging the Debtor (including, without limitation, discharge by operation of law) or giving the Debtor a concession (such as more time to pay);
 - (iii) releasing any person who gives a guarantee or indemnity in connection with any of the Debtor's obligations;
 - (iv) releasing, losing the benefit of, or not obtaining any Security Interest or negotiable instrument;
 - (v) by which the obligations of any person who guarantees any of the Debtor's obligations (including under the Guarantee) may not be enforceable;
 - (vi) by which any person who was intended to guarantee any of the Debtor's obligations does not do so, or does not do so effectively;
 - (vii) by which a person who is a co-surety or co-indemnifier for payment of the Guaranteed Money is discharged under an agreement or by operation of law;
 - (viii) by which any Security Interest which could be registered is not registered,or any other thing causing any prejudice (including, but not limited to, material prejudice) to any person;
- (b) a person dealing in any way with a Security Interest, guarantee, indemnity, judgment or negotiable instrument;
- (c) the death, mental or physical disability, incapacity or Insolvency or any legal limitation of any person including the Performing Subsidiary or the Debtor;
- (d) changes in the membership, name or business of any person;
- (e) the Debtor opening an account with any Beneficiary;
- (f) acquiescence or delay by any Beneficiary or any other person;

- (g) an assignment of rights or a novation in connection with the Guaranteed Money;
- (h) the acceptance of the repudiation of, or termination of, any Finance Document or any other document or agreement;
- (i) any payment to a Beneficiary, including any payment which at the payment date or at any time after the payment date is, in whole or in part, illegal, void, voidable, avoided or unenforceable.

This clause 14 applies regardless of whether the Performing Subsidiary is aware of, has consented to or is given notice of any act, omission, matter or thing referred to in this clause 14. This clause 14 does not limit the obligations of the Performing Subsidiary under this deed.

15 Performing Subsidiary's rights

15.1 Performing Subsidiary's rights are suspended

As long as there is any Guaranteed Money, the Performing Subsidiary may not, without the consent of each Beneficiary (or, in the case of a group or syndicate of Beneficiaries, an agent or trustee on their behalf):

- (a) reduce its liability under the Guarantee by claiming that it or the Debtor or any other person has a right of set-off or counterclaim against the Beneficiary; or
- (b) exercise any legal right to claim to be entitled to the benefit of another guarantee, indemnity or Security Interest that secures amounts including the Guaranteed Money or any other amount payable under the Guarantee (for example, the Performing Subsidiary may not try to enforce or require the enforcement of any Security Interest the Beneficiary has taken that secures amounts including the Guaranteed Money); or
- (c) claim an amount from the Debtor, or another guarantor of the Guaranteed Money, under a right of indemnity; or
- (d) claim an amount in the Insolvency of the Debtor or of another guarantor of the Guaranteed Money.

15.2 Performing Subsidiary's right of proof limited

The Performing Subsidiary agrees not to exercise in its capacity as a guarantor under this deed a right of proof after an event occurs relating to the Insolvency of the Debtor or another guarantor of the Guaranteed Money independently of an attorney appointed under clause 16.1 ("Appointment").

16 Power of Attorney

16.1 Appointment

The Performing Subsidiary irrevocably appoints the Undertaking and Guarantee Trustee and each of its Authorised Officers individually as its attorney and agrees to formally approve all action taken by an attorney under clause 16.2 (“Powers”).

16.2 Powers

Each attorney appointed under clause 16.1 (“Appointment”) may:

- (a) do anything which the Performing Subsidiary may lawfully do to exercise its right of proof after an Insolvency Event occurs in respect of the Debtor or any other guarantor of the Debtor’s obligations. (These things may be done in the Performing Subsidiary’s name or the attorney’s name and they include signing and delivering documents, taking part in legal proceedings and receiving any dividend arising out of the right of proof); and
- (b) delegate its powers (including this power) and revoke a delegation; and
- (c) exercise its powers even if this involves a conflict of duty and even if it has a personal interest in doing so.

16.3 Application of insolvency dividends

The attorney need not account to the Performing Subsidiary for any dividend received on exercising the right of proof under clause 16.2(a) (“Powers”) except to the extent that any dividend remains after each Beneficiary has received all of the Guaranteed Money and all other amounts payable under the Finance Documents.

17 Voting in Insolvency proceedings

17.1 Obtaining instructions

Upon receipt of a Notice of Voting in Insolvency, the Undertaking and Guarantee Trustee must promptly send to each Beneficiary (at the address last notified by the Beneficiary) a notice which:

- (a) encloses a copy of the Notice of Voting in Insolvency;
- (b) requests the Beneficiary to advise in writing, within five Business Days of the date of the notice (or such shorter period as the Undertaking and Guarantee Trustee determines is reasonable having regard to the terms of the Notice of Voting in Insolvency):
 - (i) its instructions as to how the Undertaking and Guarantee Trustee should vote on its behalf on each of the matters to be voted upon as described in the Notice of Voting in Insolvency;
 - (ii) any other information reasonably requested by the Undertaking and Guarantee Trustee to enable it to vote on behalf of the Beneficiary in accordance with the Notice of Voting in Insolvency; and
 - (iii) its instructions as to how the Undertaking and Guarantee Trustee should vote in respect of the Compensation Debt on each of the matters to be voted upon as described in the Notice of Voting in Insolvency.

17.2 Voting

The Undertaking and Guarantee Trustee will vote on any matter or matters the subject of a Notice of Voting in Insolvency:

- (a) on behalf of each Beneficiary (in respect of that Beneficiary's participation in the Finance Money Debt) which instructs the Undertaking and Guarantee Trustee in accordance with clause 17.1 ("Obtaining instructions") — in accordance with those instructions; and
- (b) in respect of the Compensation Debt:
 - (i) if the Undertaking and Guarantee Trustee is required by the Intercreditor Deed to vote the Compensation Debt in the manner nominated by the NSW Government — in the manner so nominated;

- (ii) if the Undertaking and Guarantee Trustee is not required by the Intercreditor Deed to vote the Compensation Debt in the manner nominated by the NSW Government — in accordance with the instructions (advised in accordance with clause 17.1(b)(iii) (“Obtaining instructions”)) of the Beneficiaries whose aggregate participation in the Finance Money Debt (as advised by those Beneficiaries) represents more than 50% of the aggregate value of all Finance Money Debt (as advised by all Beneficiaries), provided that if any Beneficiary fails to respond to the Undertaking and Guarantee Trustee’s notice within the time stated therein, the Undertaking and Guarantee Trustee may, in its discretion if it believes doing so is in the best interests of the Beneficiaries as a whole (without regard to the particular circumstances or interests of any individual Beneficiary), act in accordance with the instructions of the Beneficiaries who do respond within the stated time (“**Responding Beneficiaries**”) and whose aggregate participation in the Finance Money Debt (as advised by those Responding Beneficiaries) represents more than 50% of the aggregate value of the Finance Money Debt of all Responding Beneficiaries.

For the avoidance of doubt, in relation to each separate trust created pursuant to clause 5.1, the Undertaking and Guarantee Trustee may employ or appoint the same or separate proxies, representatives, agents or attorneys to vote on any matter or matters the subject of a Notice of Voting in Insolvency to those proxies, representatives, agents or attorneys employed or appointed for any other trust created pursuant to clause 5.1.

18 Distribution of Recovered Money

18.1 How the Undertaking and Guarantee Trustee is to distribute

The Undertaking and Guarantee Trustee agrees to distribute all Recovered Money as follows:

- (a) first, to itself for its Costs (including but not limited to costs in connection with enforcement under the Intercreditor Deed) and other amounts due to it in its capacity as trustee of the Trust; and
- (b) secondly, to the extent of any balance after payment of amounts due to the Undertaking and Guarantee Trustee under clause 18.1(a), to the Beneficiaries to satisfy the Finance Money Debt, so that each Beneficiary receives its Proportion of the Recovered Money;
- (c) thirdly, to the extent of any balance after repayment of the Finance Money Debt, to the Charitable Fund (or otherwise for the benefit of the Charitable Fund or the beneficiaries of the Charitable Fund) to satisfy the Compensation Debt; and

(d) fourthly, to the extent of any balance after repayment of the Compensation Debt, to the Performing Subsidiary (for its own account).

To the extent Recovered Money has been received by the Undertaking and Guarantee Trustee after an Insolvency of the Performing Subsidiary, which Insolvency has led to a partial payment of the Finance Money Debt or Compensation Debt, the Finance Money Debt referred to in paragraph (b) above shall be calculated taking into account only that part of the Finance Money Debt which has been irrevocably admitted in the Insolvency.

18.2 Manner of distribution

The Undertaking and Guarantee Trustee agrees to distribute amounts to each Beneficiary promptly after receipt in immediately available funds, to an account nominated in writing by the Beneficiary.

18.3 Receipt by Beneficiary not through Undertaking and Guarantee Trustee

Each Beneficiary agrees to notify the Undertaking and Guarantee Trustee (after the date of the notice issued by the Undertaking and Guarantee Trustee under clause 7.4(e) of this deed) promptly of its receipt from the Performing Subsidiary (other than by payment through the Undertaking and Guarantee Trustee) of any amount of Finance Money Debt on or after the commencement of an Insolvency of the Performing Subsidiary (including, without limitation, a recovery by set-off (including under clause 28.4 (“Set-off”) of this deed) or banker’s lien). The parties acknowledge that a receipt by way of set-off occurs at the time the Beneficiary applies the set-off in its books of account, irrespective of the time when the amount set off was deposited with that party.

18.4 Accounting to Undertaking and Guarantee Trustee

If a receipt referred to in clause 18.3 (“Receipt by Beneficiary not through Undertaking and Guarantee Trustee”) represents an amount which, had it been received by the Undertaking and Guarantee Trustee, would have been distributable not only to the Beneficiary who receives it but also to the other Beneficiaries, then the Beneficiary agrees to pay to the Undertaking and Guarantee Trustee promptly following receipt of the notice issued by the Undertaking and Guarantee Trustee under clause 7.4(e) of this deed an amount equivalent to the amount received within two Business Days of receiving it. The amount paid to the Undertaking and Guarantee Trustee is to be:

- (a) taken to have been received by the Undertaking and Guarantee Trustee and not by the Beneficiary who receives it (and the participation of that Beneficiary in the Finance Money Debt is taken not to have been reduced by that amount); and
- (b) distributed by the Undertaking and Guarantee Trustee to the parties entitled to it in accordance with clause 18.1 (“How the Undertaking and Guarantee Trustee is to distribute”).

18.5 Refund to Beneficiary

If a Beneficiary who receives a payment referred to in clause 18.3 (“Receipt by Beneficiary not through Undertaking and Guarantee Trustee”) is obliged to refund any part of it under laws relating to insolvency then, on request from the Beneficiary, each party to which any part of the payment was distributed must repay to the Beneficiary the proportion of the amount received by that party equal to the proportion of the payment received by the Beneficiary which the Beneficiary is obliged to refund.

18.6 Deemed Payment

An amount paid under clause 18.5 (“Refund to Beneficiary”) will be deemed to have been a payment for the account of the Undertaking and Guarantee Trustee and not to the relevant Beneficiary for its own account and to that extent the liability to the relevant Beneficiary will not be reduced by the amount received, other than to the extent of any distribution received by the relevant Beneficiary under clause 18.4(b).

19 Payments

19.1 Manner of payment by the Performing Subsidiary

The Performing Subsidiary agrees to make payments under the Finance Documents:

- (a) in full without set-off or counterclaim and without any deduction in respect of Taxes unless prohibited by law;
- (b) if the payment relates to the Guaranteed Money, in the currency in which the payment is due, and otherwise in US Dollars in immediately available funds; and
- (c) to the Undertaking and Guarantee Trustee by payment into the account nominated by the Undertaking and Guarantee Trustee, or by payment as the Undertaking and Guarantee Trustee otherwise directs.

If the Undertaking and Guarantee Trustee directs the Performing Subsidiary to pay a particular person or in a particular manner, the Performing Subsidiary is taken to have satisfied its obligation to the Undertaking and Guarantee Trustee by paying in accordance with the direction.

19.2 Direction to pay

The Undertaking and Guarantee Trustee directs that until the Performing Subsidiary becomes Insolvent or would become Insolvent by paying the Compensation Debt (whichever occurs first), the Performing Subsidiary make all payments due under the Finance Documents to the Beneficiary entitled to such payments.

19.3 Currency of payment

The Performing Subsidiary waives any right it has in any jurisdiction to pay an amount other than in the currency in which it is due. However, if the Beneficiary receives an amount in a currency other than that in which it is due:

- (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 Performing Subsidiary 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.

20 Application of payments

20.1 Application of money

Subject to the Finance Documents, each Beneficiary may apply money paid by the Debtor, the Debtor's estate, the Performing Subsidiary or otherwise towards satisfaction of the Guaranteed Money and other money payable under this deed in the manner it sees fit.

20.2 Order of payment

Subject to the Finance Documents, each Beneficiary may use money received under this deed towards paying any part of the Guaranteed Money the Beneficiary chooses. This applies even if that part only falls due after the Beneficiary gives a notice of demand.

20.3 Suspense account

Subject to the Finance Documents, each Beneficiary may place in an interest bearing suspense account any payment it receives towards satisfaction of the Guaranteed Money (and any net interest on that payment after tax) for as long as it thinks prudent and need not apply the payment or net interest towards satisfying the Guaranteed Money or other money payable under this deed.

20.4 Remaining money

Each Beneficiary agrees to pay any money remaining after the Guaranteed Money is paid either to the Performing Subsidiary (which the Beneficiary may do by paying it into an account in the Performing Subsidiary's name) or to another person entitled to it. In doing so, it does not incur any liability to the Performing Subsidiary. The Beneficiary is not required to pay the Performing Subsidiary interest on any money remaining after the Guaranteed Money is paid.

20.5 Credit from date of receipt

The Performing Subsidiary is only credited with money from the date the Beneficiary actually receives it.

21 Withholding tax

21.1 Payments by the Performing Subsidiary

If a law requires the Performing Subsidiary to deduct or withhold an amount in respect of Taxes (other than Indirect Taxes) in respect of a payment under this deed such that a Beneficiary ("**Indemnified Party**") would not actually receive on the due date the full amount provided for under this deed, then:

- (a) the Performing Subsidiary agrees to deduct the amount for such Taxes and any further deduction applicable to any further payment due under paragraph (c) below; and

- (b) the Performing Subsidiary 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 paragraph (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.

21.2 Tax credit

If and to the extent that any Beneficiary 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 the Performing Subsidiary to pay any additional amount pursuant to clause 21.1 (“Payments by the Performing Subsidiary”), that Beneficiary shall:

- (a) give notice thereof to the Performing Subsidiary 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 Performing Subsidiary such amount of the credit, rebate or benefit as that Beneficiary shall, in its opinion (acting reasonably), have determined to be attributable to the deduction or withholding. In complying with this clause, no Beneficiary need disclose to the Performing Subsidiary information about their tax affairs or order them in a particular way.

22 Indirect Taxes

- (a) All payments to be made by the Performing Subsidiary under or in connection with this deed 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 Performing Subsidiary makes the payment:
 - (i) it must pay to the Beneficiary an additional amount equal to that payment (or part) multiplied by the appropriate rate of Indirect Tax; and
 - (ii) the Beneficiary will promptly provide to the Performing Subsidiary a tax invoice complying with the relevant law relating to that Indirect Tax.
- (b) Where this deed requires the Performing Subsidiary to reimburse a Beneficiary for any Costs or expenses, the Performing Subsidiary shall also at the same time pay and indemnify that Beneficiary against all Indirect Tax incurred by that Beneficiary in respect of the Costs or expenses save to the extent that that Beneficiary is entitled to

repayment or credit in respect of the Indirect Tax. The Beneficiary will promptly provide to the Performing Subsidiary a tax invoice complying with the relevant law relating to that Indirect Tax.

23 Costs

23.1 What the Performing Subsidiary agrees to pay

The Performing Subsidiary agrees to pay or reimburse the Undertaking and Guarantee Trustee and each Beneficiary on demand for:

- (a) its reasonable Costs in connection with:
 - (i) the registration of, and payment of Taxes on, this deed;
 - (ii) giving and considering consents, waivers and releases requested by the Performing Subsidiary in connection with this deed; and
 - (iii) any expenditure incurred in accordance with clause 3(c);
- (b) its Costs in exercising, enforcing or preserving rights against the Performing Subsidiary under this deed; and
- (c) Taxes and fees (including registration fees) and fines and penalties in respect of fees paid, or that the Undertaking and Guarantee Trustee or the Beneficiary reasonably believes are payable, in connection with this deed or a payment or receipt or any other transaction involving the Performing Subsidiary contemplated by this deed. However, the Performing Subsidiary need not pay a fine or penalty in connection with Taxes or fees to the extent that it has placed the Undertaking and Guarantee Trustee or the Beneficiary in sufficient cleared funds for the Undertaking and Guarantee Trustee or Beneficiary (as the case may be) to be able to pay the Taxes or fees by the due date.

23.2 Currency conversion on judgment debt

If a judgment, order or proof of debt for an amount payable by the Performing Subsidiary under this deed is expressed in a currency other than the currency in which the amount is due under this deed, then the Performing Subsidiary indemnifies the Beneficiary against:

- (a) any difference arising from converting the other currency if the rate of exchange used by the Beneficiary under clause 19.3 (“Currency of payment”) for converting currency when it receives a payment in the other currency is less favourable to the Beneficiary 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.

24 Reinstatement of rights

Under law relating to Insolvency Events, a person may claim that a transaction (including a payment) in connection with the Finance Documents or the Finance Money Debt is void or voidable. If a claim is made and upheld, conceded or compromised, then to the extent to which the claim concerns a transaction in connection with the Finance Documents:

- (a) the Beneficiary is immediately entitled as against the Performing Subsidiary to the rights in respect of the amounts payable under the Finance Documents to which it was entitled immediately before the transaction; and
- (b) on request from the Beneficiary, the Performing Subsidiary agrees to do anything (including signing any document) reasonably required to restore to the Beneficiary any Security Interest held by it from the Performing Subsidiary immediately before the transaction.

This clause applies whether or not the Beneficiary knew, or ought to have known, that the transaction would be void or voidable.

25 No merger

This deed does not merge with or adversely affect, and is not adversely affected by any of the following:

- (a) any Security Interest, guarantee or other right or remedy to which a Beneficiary is entitled; or
- (b) a judgment which a Beneficiary obtains against the Performing Subsidiary, the Debtor or any other person in connection with the Guaranteed Money.

The Beneficiary may still exercise its rights under this deed as well as under the judgment, Security Interest or right or remedy.

26 Dealings

26.1 Dealings by the Performing Subsidiary with the Compensation Debt

Without the consent of each Beneficiary (or, in the case of a group or syndicate of Beneficiaries, an agent or trustee on their behalf), the Performing Subsidiary may not:

- (a) vary, amend or replace the Final Funding Agreement, or enter into an agreement having that effect;
- (b) during the Insolvency of the Performing Subsidiary, exercise any right of set-off in respect of the Compensation Debt (except as contemplated by clauses 4.3 and 6.2 of the Intercreditor Deed);

- (c) create or allow to exist any Security Interest or guarantee, indemnity or assurance against financial loss in respect of the Compensation Debt in accordance with the Final Funding Agreement; or
- (d) enter into any arrangement, take any action or fail to do any thing, which results in the Compensation Debt not being subordinated to the Finance Money Debt in accordance with the terms of the Intercreditor Deed,

provided that such consent is not to be unreasonably withheld if such action is not adverse in any material respect to the interests of the Beneficiaries under the Intercreditor Deed.

26.2 Dealings by the Performing Subsidiary

The Performing Subsidiary may not assign or otherwise deal with its rights under this deed or allow any interest in it to arise or be varied, without the consent of each Beneficiary (or, in the case of a group or syndicate of Finance Beneficiaries, an agent or trustee on their behalf).

26.3 Dealings by Beneficiaries

Subject to the Finance Documents, a Beneficiary may assign or otherwise deal with its rights under this deed in any way it considers appropriate. If a Beneficiary does this, the Performing Subsidiary may not claim against any assignee (or any other person who has an interest in this deed) any right of set-off or other rights it has against the Beneficiary.

27 Notices

27.1 Form

Unless expressly stated otherwise in this deed, all demands, notices, certificates, consents, approvals, waivers and other communications in connection with this deed (“**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 or, if the recipient has notified otherwise, then marked for attention in the way last notified.

27.2 Demand under Guarantee

Any demand made by a Beneficiary under the Guarantee must comply with the following requirements (in addition to those contained in clause 27.1 (“**Form**”)):

- (a) clearly identify the Finance Document under which the Guaranteed Money is payable by the Debtor;
- (b) state the amount of the Guaranteed Money demanded and describe in reasonably adequate detail the nature of the unpaid obligation; and
- (c) state the date on which demand was made on the Debtor and certify that the Guaranteed Money remains unpaid at the date of the demand.

27.3 Delivery

Notices must be:

- (a) delivered to the address set out or referred to in the Details (or, in the case of a Beneficiary, the address identified in the Register); or
- (b) sent by prepaid post (airmail if appropriate) to the address set out or referred to in the Details (or, in the case of a Beneficiary, the address identified in the Register); or
- (c) sent by fax to the fax number set out or referred to in the Details (or, in the case of a Beneficiary, the address identified in the Register).

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.

27.4 When effective

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

27.5 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).

27.6 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.

28 General

28.1 Consents

The Performing Subsidiary agrees to comply with all conditions in any consents given in connection with this deed if the Performing Subsidiary relies on that consent in performing its obligations under this deed.

28.2 Prompt performance

If this deed specifies when the Performing Subsidiary agrees to perform an obligation, it agrees to perform it by the time specified. The Performing Subsidiary agrees to perform all other obligations promptly.

28.3 Certificates

A Beneficiary may give the Undertaking and Guarantee Trustee or the Performing Subsidiary a certificate about an amount payable or other matter in connection with this deed or a Finance Document. The certificate is

sufficient evidence of the amount or matter, unless it is proved to be incorrect.

28.4 Set-off

A Beneficiary may set off any amount due for payment by the Beneficiary to the Performing Subsidiary against any amount due for payment by the Performing Subsidiary to the Beneficiary under this deed. This does not restrict any right of insolvency set-off which may arise under Dutch law.

28.5 Discretion in exercising rights

A Beneficiary may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions), unless this deed expressly states otherwise.

28.6 Partial exercising of rights

If a Beneficiary does not exercise a right or remedy fully or at a given time, the Beneficiary may still exercise it later.

28.7 Indemnities

The indemnities in this deed are continuing obligations, independent of the Performing Subsidiary's other obligations under this deed and continue after this deed ends. It is not necessary for a Beneficiary to incur expense or make payment before enforcing a right of indemnity under this deed.

28.8 Inconsistent law

To the extent permitted by law, this deed prevails to the extent it is inconsistent with any law.

28.9 Supervening legislation

Any present or future legislation which operates to vary the obligations of the Performing Subsidiary in connection with this deed with the result that the Beneficiaries' 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.

28.10 Remedies cumulative

The rights and remedies of each Beneficiary under this deed are in addition to other rights and remedies given by law independently of this deed.

28.11 Time of the essence

Time is of the essence in this agreement in respect of an obligation of the Performing Subsidiary to pay money.

28.12 Variation and waiver

Unless this deed expressly states otherwise, a provision of this deed, or right created under it, may not be waived or varied except in writing signed by the party or parties to be bound and with the prior written consent of each Beneficiary (or, in the case of a group or syndicate of Beneficiaries, an agent or trustee on their behalf).

28.13 Confidentiality

No party to this deed, nor any Beneficiary, may disclose information provided by any party or Beneficiary that is not publicly available (including the existence of or contents of this deed or any Finance Document) except:

- (a) to any person in connection with an exercise of rights or (subject to compliance with clause 26 (“Dealings”)) a dealing with rights or obligations under this deed (including when a Beneficiary consults other Beneficiaries 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 Beneficiary in connection with a Finance Document); or
- (b) to officers, employees, legal and other advisers and auditors of any party to this deed or any Beneficiary, provided the recipient agrees to act consistently with this clause 28.13; or
- (c) to any party to a Finance Document or any Related Entity of any party to a Finance Document, provided the recipient agrees to act consistently with this clause 28.13; or
- (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 Government Agency.

Each party to this deed and each Beneficiary is taken to consent to disclosures made in accordance with this clause 28.13.

28.14 Further steps

The Performing Subsidiary and each Beneficiary agrees to do anything reasonably required by the Undertaking and Guarantee Trustee (such as obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed):

- (a) to enable the Undertaking and Guarantee Trustee to perform its duties under this deed;
- (b) to enable the Beneficiaries or the Undertaking and Guarantee Trustee to exercise their rights in connection with this deed; and
- (c) (in the case of the Performing Subsidiary) to show whether it is complying with this deed.

28.15 Counterparts

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

28.16 Governing law

This deed is governed by the law in force in New South Wales. Each of the Undertaking and Guarantee Trustee, the Performing Subsidiary and the Beneficiaries submit to the non-exclusive jurisdiction of the courts of New South Wales.

28.17 Serving documents

Without preventing any other method of service, any document in a court action may be served on a party by being delivered or left at that party's address for service of notices under clause 27.3 ("Delivery").

EXECUTED as a deed

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James Hardie — Performing Subsidiary Undertaking and Guarantee Trust Deed
12 December 2006

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James Hardie — Performing Subsidiary Undertaking and Guarantee Trust Deed

Schedule 1(A) — Form of Beneficiary Nomination Letter (clause 2)

[Date]

To: *[Beneficiary]*

James Hardie — Performing Subsidiary Undertaking and Guarantee Trust Deed — Beneficiary Nomination Letter

We refer to the James Hardie — Performing Subsidiary Undertaking and Guarantee Trust Deed between James Hardie 117 Pty Limited and AET Structured Finance Services Pty Limited (as Undertaking and Guarantee Trustee) dated / /2006 (“**Performing Subsidiary Undertaking and Guarantee Trust Deed**”).

For the purposes of the Performing Subsidiary Undertaking and Guarantee Trust Deed, on and from the date of this letter:

1. we nominate the following document as a Finance Document:

Name: //
Date: //
Parties: //

2. the agreement described above, and each document named or referred to as a *["Financing Document"]* in that agreement, is a Finance Document for the purposes of the Performing Subsidiary Undertaking and Guarantee Trust Deed; and

3. we nominate you as a “Beneficiary” in relation to that Finance Document.

Please confirm your acceptance of the above nomination, and the benefit and obligations of the Performing Subsidiary Undertaking and Guarantee Trust Deed, by signing and returning the attached copy of this letter.

Clauses 1 (“Interpretation”) and 28.16 (“Governing law”) of the Performing Subsidiary Undertaking and Guarantee Trust Deed apply to this letter as they were fully set out in this letter.

For and on behalf of
James Hardie 117 Pty Limited.

by its Authorised Officer:
Name:
Title:

We accept and agree to the above nomination. We accept the benefit and obligations of the Performing Subsidiary Undertaking and Guarantee Trust Deed, and we agree to be bound by the terms of that deed.

For and on behalf of
[Insert name of Beneficiary]

by its Authorised Officer
Name:
Title:

The Undertaking and Guarantee Trustee confirms that it holds the benefit of this nomination and the other documents described in clause 5.1(a) of the Performing Subsidiary Undertaking and Guarantee Trust Deed on trust for the Beneficiary in accordance with the terms of the Performing Subsidiary Undertaking and Guarantee Trust Deed.

For and on behalf of
AET STRUCTURED FINANCE SERVICES PTY LIMITED
as Undertaking and Guarantee Trustee

by its Authorised Officer
Name:
Title:

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James Hardie — Performing Subsidiary Undertaking and Guarantee Trust Deed
12 December 2006

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James Hardie — Performing Subsidiary Undertaking and Guarantee Trust Deed

Schedule 1(B) — Form of Beneficiary Change Notification (clause 9.1(b))

[Date]

To: *[Undertaking and Guarantee Trustee]*

James Hardie — Performing Subsidiary Undertaking Trust Deed — Beneficiary Nomination Letter

We refer to the James Hardie — Performing Subsidiary Undertaking and Guarantee Trust Deed between James Hardie 117 Pty Limited and AET Structured Finance Services Pty Limited (as Undertaking and Guarantee Trustee) dated / / 2006 (“**Performing Subsidiary Undertaking and Guarantee Trust Deed**”).

For the purposes of clause 9.1(b) of the Performing Subsidiary Undertaking and Guarantee Trust Deed, we notify you that:

[insert amended details for the purposes of clause 8.2].

Clauses 1 (“Interpretation”) and 28.16 (“Governing law”) of the Performing Subsidiary Undertaking and Guarantee Trust Deed apply to this letter as they were fully set out in this letter.

For and on behalf of

[Insert name of Beneficiary]

by its Authorised Officer

Name:

Title:

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James Hardie — Performing Subsidiary Undertaking and Guarantee Trust Deed
12 December 2006

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James Hardie — Performing Subsidiary Undertaking and Guarantee Trust Deed

Signing page

DATED: 19 December 2006

Executed by JAMES HARDIE 117)
PTY LIMITED by authority of its)
directors in the presence of:)

/s/ Bruce J. W. Potts
Signature of authorised person

Director
Office held

Bruce J. W. Potts
Name of authorised person
(block letters)

THE COMMON SEAL of AET)
STRUCTURED FINANCE)
SERVICES PTY LIMITED is duly)
affixed by authority of its Authorised)
Officers in the presence of:)

/s/ Stuart Howard
Signature of authorised person

Authorised Officer
Office held

Stuart Alexander Howard
Name of authorised person
(block letters)

/s/ Donald A. J. Salter
Signature of authorised person
Director
Office held

Donald A. J. Salter
Name of authorised person
(block letters)

/s/ Yvonne Drake
Signature of authorised person

Authorised Officer
Office held

Yvonne Drake
Name of authorised person
(block letters)



LAWYERS

INTERCREDITOR DEED

**THE STATE OF NEW SOUTH WALES
ASBESTOS INJURIES
COMPENSATION FUND LIMITED
(ACN 117 363 461)
JAMES HARDIE INDUSTRIES N.V.
(ARBN 097 829 895)
AET STRUCTURED FINANCE
SERVICES PTY LIMITED (ABN 12 106 424 088)**

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DATED 19 December 2006

PARTIES

1. **THE STATE OF NEW SOUTH WALES** of Level 39, Governor Macquarie Tower, Farrer Place, Sydney, NSW 2000 (**NSW Government**)
2. **ASBESTOS INJURIES COMPENSATION FUND LIMITED (ACN 117 363 461)** of Level 3, 22 Pitt Street, Sydney, NSW 2000 in its capacity as trustee for the Charitable Fund (**Fund Trustee**)
3. **JAMES HARDIE INDUSTRIES N.V.** (ARBN 097 829 895) a limited liability company incorporated in The Netherlands, with its corporate seat in Amsterdam, and having its registered office at Atrium, Unit 04-07, Strawinskyalaan 3077, 1077 ZX Amsterdam, The Netherlands (with its Australian registered office at Level 3, 22 Pitt Street, Sydney in the State of New South Wales) (**JHINV**)
4. **AET STRUCTURED FINANCE SERVICES PTY LIMITED (ABN 12 106 424 088)** of 80 Alfred Street, Milsons Point NSW 2061 in its capacity as trustee for the Financiers under the Guarantee Trust (**Guarantee Trustee**)

The defined terms in the above list of parties are given expanded meanings in the Dictionary in Part 1 of Attachment A to this deed.

BACKGROUND

This deed is entered into in the following context (where capitalised terms are defined in clause 1):

- A. James Hardie Industries Limited (now known as ABN 60 Pty Limited) (**JHIL**), a company organised under the laws of Australia, was listed on the Australian Stock Exchange in 1951. The business then carried on by JHIL and its subsidiaries had by that time been carried on in Australia, in one form or another and under the “James Hardie” name, for at least 60 years.
- B. Under plans of reorganisation and capital restructuring executed between 1998 and 2001, JHIL sold on arm’s length terms substantially all of its business, operations and undertaking to members of the JHINV Group with the result that

JHINV became the ultimate holding company of the businesses formerly carried on or controlled by JHIL.

- C.** JHINV is a company organised under the laws of The Netherlands and is listed on both the Australian Stock Exchange and the New York Stock Exchange (with the listing on the latter exchange via American Depository Receipts). At the date of this deed, the JHINV Group carries on the business of manufacturing building products in the United States of America, Australia, New Zealand and the Philippines.
- D.** On 21 December 2004, JHINV and others entered into a non-binding Heads of Agreement containing, among other things, a set of agreed principles on which the Performing Subsidiary will provide, and JHINV will guarantee the payment of, funding to the Charitable Fund on a long term basis of compensation for personal injury and death claims made in Australia against JHIL or certain former subsidiaries of JHIL arising from exposure to asbestos in Australia.
- E.** On 1 December 2005 the NSW Government, JHINV and the Performing Subsidiary entered into the Original Final Funding Agreement with the common intention of making funding available by JHINV and/or its subsidiaries to pay, on the basis set out in the Original Final Funding Agreement, Proven Claims (as defined in the Original Final Funding Agreement) against the Liable Entities (as defined in the Original Final Funding Agreement).
- F.** On 8 June 2006 the Fund Trustee executed a Deed of Accession so as to become a party to the Original Final Funding Agreement and to give effect to the intention and agreement of the relevant parties referred to in paragraph E above.
- G.** On 21 November 2006 the parties to the Original Final Funding Agreement (including the Fund Trustee) entered into Final Funding Agreement, thereby amending and restating the Original Final Funding Agreement.
- H.** On or about 14 December 2006 Asbestos Injuries Compensation Fund Limited entered into the Trust Deed and on or about 14 December 2006 in its capacity as trustee of the Discretionary Fund became a party to the Final Funding Agreement by executing a Deed of Accession.
- I.** JHINV has guaranteed the obligations of the Performing Subsidiary under the Final Funding Agreement on and subject to the terms of the Guarantee.

- J.** The creditor of JHINV under the Guarantee is the Fund Trustee.
- K.** The claim of the Fund Trustee against JHINV under the Guarantee is an ordinary unsecured claim (*concurrente vordering*).
- L.** The NSW Government is not a creditor of JHINV in relation to the payment of the Compensation Debt.
- M.** However, the NSW Government shall be entitled to directly enforce all promises made by JHINV to the Fund Trustee under the Guarantee subject to, and in accordance with, the provisions of the Guarantee.
- N.** The purpose of this deed is to set out the agreement between (1) the Fund Trustee and the NSW Government, and (2) the Guarantee Trustee and the Financiers, as to the manner in which certain rights in respect of the Compensation Debt and the Finance Money Debt respectively are to be exercised in an Insolvency of JHINV.
- O.** JHINV is a party to this deed for the sole purpose of nominating Persons as Financiers, assuming certain obligations and being entitled to directly enforce the promises made under clauses 2.2 and 8 of this deed (and, if required for such enforcement, clauses 1, 2.1, 2.3 and 10 to 14 inclusive).
- P.** This deed is not intended, and shall not be taken, to (1) affect the status or ranking of the Compensation Debt as an ordinary unsecured claim (*concurrente vordering*) against JHINV, (2) affect the status or ranking of the Compensation Debt as against the other debts (including the Finance Debt Money) or the other creditors of JHINV (including the Financiers) in an Insolvency of JHINV, or (3) constitute a subordination agreement within the meaning of section 3:277 (2) Dutch Civil Code.

THE PARTIES AGREE

1. PRELIMINARY

1.1 Defined Terms and Interpretation

- (a) A term or expression starting with a capital letter which is defined in the Dictionary in Part 1 of Attachment A (**Dictionary**), has the meaning given to it in the Dictionary.
- (b) The Interpretation clauses in Parts 2 and 3 of Attachment A (**Interpretation and Trust Convention**) set out rules of interpretation for this deed.

1.2 Consideration

Each party acknowledges entering into this deed and incurring obligations and giving rights under this deed for valuable consideration received from the other parties to this deed (including, in the case of the Fund Trustee, the NSW Government and JHINV, the execution of the Final Funding Agreement and the Guarantee).

Each Replacement Trustee or New Guarantee Trustee who accedes to this deed in accordance with clause 4.6 or 7.6 will be taken to acknowledge becoming a party to this deed and incurring obligations and giving rights under this deed for valuable consideration received from the other parties to this deed.

1.3 Crown immunity

This deed binds the Crown in right of New South Wales and to the maximum extent permitted by law the NSW Government hereby waives all Crown immunity with respect to this deed.

1.4 Condition precedent

Notwithstanding any other provision of this deed, the provisions of, and the obligations of the parties under, this deed are subject to, and do not commence until, each of the conditions set out in clause 2.1 of the Final Funding Agreement have been satisfied or waived in writing by the parties to the Final Funding Agreement.

2. DEED

2.1 Effect

Subject to clauses 2.3, 4.6 and 7.6, this deed takes effect as both:

- (a) a deed between the NSW Government, the Fund Trustee, JHINV and the Guarantee Trustee; and

- (b) a deed poll by the NSW Government and the Fund Trustee in favour of each Financier from time to time in respect of any Finance Money Debt raised or incurred by JHINV from time to time during the term of the Final Funding Agreement.

For the avoidance of doubt:

- (i) this deed continues for the term of the Final Funding Agreement even though there may be no Finance Money Debt outstanding at any particular point in time;
- (ii) this deed terminates on the date upon which the obligations of JHINV under the Guarantee have been satisfied or discharged in full in accordance with the Guarantee; and
- (iii) undertakings expressed to be in favour of some of the parties to this deed (excluding JHINV) are not given in favour of JHINV, although JHINV is entitled to directly enforce the promises made under clauses 2.2 and 8 of this deed (and, if required for such enforcement, clauses 1, 2.1, 2.3 and 10 to 14 inclusive).

2.2 Benefit

- (a) Each Financier has the benefit of, is bound by and is entitled to enforce this deed even though it is not a party to, or is not in existence at the date of execution and delivery of this deed.
- (b) Subject to clause 2.2(f), the benefit and obligations of this deed may be extended to any Person (and such Person shall become a Financier) in relation to any document (and such document shall become a Finance Document) under which liabilities are owed to such Person where such liabilities are, or are required to be, included in the JHINV Group's financial statements or notes thereto as debt or borrowings (including bank loans, letter of credit facilities, derivatives and debt capital markets issues which are, or are required to be, so included or noted) of JHINV (or another member of the JHINV Group the performance of whose obligations has been guaranteed by JHINV) by JHINV signing and delivering to that Person (or an agent or trustee acting on behalf of that Person) and the Guarantee Trustee, a Financier Nomination Letter and the Person (or an agent or trustee acting on behalf of the Person) countersigning such Financier Nomination

Letter and delivering the countersigned Financier Nomination Letter to the Guarantee Trustee.

- (c) Without limiting clause 2.2(b), the benefits and obligations of this deed do not extend to a Person:
 - (i) by reason of any conduct or representation made by JHINV to that Person; and
 - (ii) unless and until the Guarantee Trustee has received a duly countersigned Financier Nomination Letter from that Person (or an agent or trustee acting on behalf of the Person).
- (d) The Guarantee Trustee must:
 - (i) promptly send a copy of each countersigned Financier Nomination Letter to the NSW Government and the Fund Trustee (other than a Financier Nomination Letter in respect of a Financier where this deed has ceased to apply to that Financier in accordance with clause 2.2(g)) upon an officer of the Guarantee Trustee responsible for the day to day administration of this deed becoming aware of the occurrence of an Insolvency of JHINV; and
 - (ii) following the occurrence of an Insolvency of JHINV, on request provide to the NSW Government and the Fund Trustee written confirmation of the nature and quantum of the Finance Money Debt as at the date such information is provided.
- (e) The Fund Trustee and the NSW Government confirm that, subject to clause 2.2(f), each of them has irrevocably and for valuable consideration authorised JHINV to sign and deliver any Financier Nomination Letter, nominating a Person as a Financier and a document as a Finance Document, and acknowledge and confirm that the provisions of this deed which are for the benefit of the Financiers, will extend to that Financier and the Finance Document so nominated.
- (f) The benefit and obligations of this deed in relation to Financiers may not be extended to any Person to the extent that Person is an Excluded Lender and any such nomination shall be of no force or effect for the purposes of this deed.

- (g) This deed shall cease to apply to a Financier once:
- (i) there is no Finance Money Debt in respect of that Financier;
 - (ii) JHINV has no outstanding obligations to the Financier in relation to any Finance Money Debt; and
 - (iii) that Financier has no further obligation to provide financial accommodation to JHINV (or another member of the JHINV Group the performance of whose obligations has been guaranteed by JHINV) under the relevant Finance Documents,
- or that Financier otherwise consents in writing to such cessation.
- (h) If this deed ceases to apply to a Financier in accordance with clause 2.2(g), JHINV and that Financier must promptly notify the Guarantee Trustee.

2.3 Inconsistency

If any provision of the Final Funding Agreement, any Related Agreement (as defined in the Final Funding Agreement, but excluding this deed), the Guarantee, the Finance Guarantee or any Finance Document is inconsistent with this deed, this deed prevails to the extent of the inconsistency unless a contrary intention is expressed in this deed.

3. INTERCREDITOR ARRANGEMENTS

3.1 Purpose of this deed

The purpose of this deed is to set out the agreement between:

- (a) the Fund Trustee and the NSW Government; and
- (b) the Guarantee Trustee and the Financiers,

as to the manner in which certain rights in respect of the Compensation Debt and the Finance Money Debt respectively are to be exercised in an Insolvency of JHINV.

3.2 NSW Government not a creditor of JHINV

Notwithstanding the wording of any other provision of the Final Funding Agreement, the Guarantee, any other Related Agreement or this deed, the NSW Government

acknowledges that it is not a creditor of JHINV in relation to the payment of the Compensation Debt.

3.3 Turnover

Each Compensation Party agrees for the benefit of the Guarantee Trustee and the Financiers that if JHINV becomes Insolvent, any amount (in the form of money or other property) paid to it by or for the account of, or recovered by it from or for the account of, JHINV in respect of the Compensation Debt, after the occurrence of the relevant Insolvency Event, will be paid, or otherwise accounted for, to the Guarantee Trustee or the relevant Financiers in accordance with this deed, until the Finance Money Debt has been paid and satisfied in full.

3.4 Status and ranking of the Compensation Debt

The parties to this deed acknowledge and agree that this deed does not:

- (a) affect the status or ranking of the Compensation Debt as an ordinary unsecured claim (*concurrente vordering*) against JHINV;
- (b) affect the status or ranking of the Compensation Debt as against the other debts (including the Finance Money Debt) or the other creditors of JHINV (including the Financiers) in an Insolvency of JHINV; nor
- (c) constitute a subordination agreement within the meaning of section 3:277 (2) Dutch Civil Code.

4. PROCEDURE ON INSOLVENCY

4.1 Proceeds held on trust

Subject to this deed, while JHINV is Insolvent and for so long as any Finance Money Debt remains outstanding, each Compensation Party agrees for the benefit of the Guarantee Trustee and the Financiers to hold all Proceeds received by it from or on account of JHINV (or such proportion of the Proceeds sufficient to discharge and satisfy the Finance Money Debt in full) on trust for the relevant Financiers.

For so long as any Finance Money Debt remains outstanding, then promptly after receipt by it of any Proceeds from or on account of JHINV, each Compensation Party agrees for the benefit of the Guarantee Trustee and the Financiers to notify the Guarantee Trustee and deposit the Proceeds (or such proportion of the Proceeds sufficient to discharge and satisfy the Finance Money Debt in full) into one or more accounts specifically designated

by the Guarantee Trustee for that purpose (or, in the case of any Proceeds which consist of property other than money, transfer such property to the Guarantee Trustee).

This clause establishes a trust over the Proceeds. The trust commences on the date of this deed and if not previously terminated, terminates on the day before the eightieth anniversary of the date of this deed. It does not create a charge or other security interest over the Proceeds.

4.2 Distribution of Proceeds

Each Compensation Party agrees for the benefit of the Guarantee Trustee and the Financiers that all Proceeds received by it from or on account of JHINV are to be held and distributed:

- (a) first, to the Guarantee Trustee on account of the Finance Money Debt which remains owing by JHINV to the Financiers, after all payments received from, or due and payable under the Insolvency by, the Insolvency Official and all prior payments under this clause 4.2(a), if any, have been taken into account (“**Net Finance Money Debt**”);
- (b) secondly, to the extent of any balance after repayment of the Net Finance Money Debt owed by JHINV to the Financiers in full, to the Fund Trustee to satisfy the Compensation Debt; and
- (c) thirdly, to the extent of any balance after repayment of the Compensation Debt in full, to JHINV (for its own account).

4.3 Payment of amounts recovered

Subject to the provisions of this clause 4.3, each Compensation Party agrees for the benefit of the Guarantee Trustee and the Financiers that, if at any time while JHINV is Insolvent an amount (in the form of money or any other property):

- (a) is received or recovered by a Compensation Party on account of the Compensation Debt (which is not subject to the trust in clause 4.1); or
- (b) is paid to any Person other than a Compensation Party in connection with the Compensation Debt with the consent or at the request of a Compensation Party or for the benefit of a Compensation Party; or
- (c) is set off by a Compensation Party against the Compensation Debt (whether by operation of law or otherwise),

the Compensation Party agrees for the benefit of the Guarantee Trustee and the Financiers to promptly notify the Guarantee Trustee and pay into one or more accounts specifically designated by the Guarantee Trustee for that purpose the amount (or, in the case of any Proceeds which consists of property other than money, transfer such property to the Guarantee Trustee) received, recovered, paid or set off (or such proportion of the amount or other property sufficient to discharge and satisfy the Finance Money Debt in full).

If in an Insolvency of JHINV, a Compensation Party is required to refund, repay or otherwise disgorge to, or in favour of, JHINV all or any part of an Annual Payment received prior to the occurrence of the relevant Insolvency Event (otherwise than pursuant to clause 14.9(b) of the Final Funding Agreement as the result of any overpayment of that Annual Payment), this clause 4.3 does not apply if that amount is set off against another amount owed by JHINV to that Compensation Party and no payment is required by that Compensation Party pursuant to this clause 4.3 in respect of the amount set off.

4.4 Residual Rights

If at any time subsequent to the occurrence of an Insolvency Event in respect of JHINV, the Financiers have received, whether by way of distribution by the Insolvency Official in the Insolvency, as payments to the Guarantee Trustee under clause 4 or otherwise, an amount at least equal to the amount (in the form of money or any other property) of the Finance Money Debt, the Financiers agree for the benefit of the Fund Trustee and the NSW Government that the Financiers must:

- (a) not withdraw, waive, release, compromise or deal in any way with their remaining rights in the Insolvency in relation to the Finance Money Debt **Residual Rights**);
- (b) until the Compensation Debt has been discharged and satisfied in full, do anything reasonably required by the NSW Government (at the cost of the NSW Government) to assign or otherwise transfer their Residual Rights to the Fund Trustee or to enable the Fund Trustee to be subrogated to, or otherwise enjoy the benefit of, the Residual Rights; and
- (c) pay any money and/or any other property received pursuant to the Residual Rights to the Fund Trustee.

4.5 No exercise of Financiers' rights

As long as any of the Finance Money Debt remains outstanding, each Compensation Party and the NSW Government agree for the benefit of the Guarantee Trustee and the Financiers that such party may not, without the prior written consent of the Guarantee Trustee, exercise any right to claim to be entitled to the benefit of any of the rights of some or all of the Financiers (including the benefit of any Residual Rights or any Security Interest or guarantee, indemnity or assurance against financial loss) in respect of any Finance Money Debt.

In addition, if a Replacement Trustee has been appointed or nominated, but not yet executed and delivered an Accession Deed (and a power of attorney as required by clause 8.1(b)) in accordance with clause 4.6, the NSW Government agrees for the benefit of the Guarantee Trustee and the Financiers to ensure that, as long as any of the Finance Money Debt remains outstanding, the Replacement Trustee does not exercise or seek to exercise any right to claim to be entitled to the benefit of any of the rights of some or all of the Financiers (including the benefit of any Residual Rights or any Security Interest or guarantee, indemnity or assurance against financial loss) in respect of any Finance Money Debt.

4.6 Substitution of the Fund Trustee

If a Replacement Trustee is appointed in accordance with the Final Funding Agreement then the NSW Government must:

- (a) promptly notify the Guarantee Trustee of the appointment and the identity and contact details of the Replacement Trustee; and
- (b) procure, at its own expense, that the Replacement Trustee duly executes and delivers an Accession Deed (and a power of attorney as required by clause 8.1(b)) to each party to this deed.

A Replacement Trustee acquires no rights or benefits under this deed (either in its capacity as such or as successor to the Fund Trustee) until such time as an Accession Deed (and a power of attorney as required by clause 8.1(b)) has been duly executed by the Replacement Trustee and delivered to each party to this deed. This clause does not require such documents to be delivered to a Financier.

The NSW Government shall ensure that the Replacement Trustee is incorporated in the State of New South Wales.

4.7 Additional Rights

- (a) If in connection with an Insolvency of JHINV a Compensation Party is required to disgorge or unwind all or part of the recovery of receipt of Proceeds or any

other amounts (in the form of money or other property) received by it from, or on account of, JHINV and which have been paid to the Guarantee Trustee or a Financier in accordance with this clause 4, the Guarantee Trustee or the relevant Financier (as the case may be), must promptly, following a request from the relevant Compensation Party, repay to the relevant Compensation Party the amounts (or other property) so received by it from that Compensation Party.

- (b) If in connection with an Insolvency of JHINV the Guarantee Trustee or a Financier is required to disgorge or unwind all or part of the recovery of any money and/or any other property received pursuant to the Residual Rights and which have been paid to the Fund Trustee in accordance with clause 4.4(c), the Fund Trustee, must promptly, following a request from the Guarantee Trustee or the relevant Financier (as the case may be), repay to the Guarantee Trustee or the relevant Financier (as the case may be), the amounts (or other property) so received by it in accordance with clause 4.4(c).

5. RIGHTS IN RELATION TO THE COMPENSATION DEBT

5.1 No prohibition

Subject to the provisions of clauses 3.3, 4.1, 4.2, 4.5, 6 and 8 of this deed, no Compensation Party nor the NSW Government is prohibited by this deed from, or restricted in exercising all or any of its rights under the Final Funding Agreement or the Guarantee in relation to the obligations and liabilities of JHINV, whether before or after the occurrence of an Insolvency Event in respect of JHINV.

Without limiting the generality of the foregoing, but subject to the provisions of clauses 3.3, 4.1, 4.2, 4.5, 6 and 8 of this deed, a Compensation Party and the NSW Government (but only to the extent it is entitled to do so acting in accordance with the Final Funding Agreement and applicable law) may:

- (a) make demand for, commence proceedings in relation to, enforce any judgment in relation to and compromise or settle any claim in relation to all such obligations and liabilities;
- (b) seek or obtain from any court of competent jurisdiction at any time an order directing JHINV to make any payment under or to specifically perform its obligations under the Final Funding Agreement or the Guarantee, or similar equitable relief;

- (c) make application to any court of competent jurisdiction for the winding up of, or in relation to the Insolvency, of JHINV;
- (d) be present and vote at any meeting of creditors or other meeting which it is entitled to attend concerning any proposal relating to JHINV or at any meeting relating to the Insolvency of JHINV;
- (e) individually make submissions to an Insolvency Official in connection with any Insolvency of JHINV;
- (f) prove the Compensation Debt in any Insolvency of JHINV; and
- (g) participate in any proceedings relating to its right to vote and prove or otherwise participate in any meeting, proceeding or distribution concerning the Insolvency of JHINV.

5.2 NSW Government Enforcement Rights

- (a) Any action or the enforcement of any rights of a Compensation Party under this deed in the event of an Insolvency of JHINV may only be taken by the NSW Government, unless the NSW Government otherwise consents in writing to the Fund Trustee taking such action or enforcing those rights.

For the avoidance of doubt, this clause does not preclude an Attorney exercising any rights under a power of attorney granted pursuant to, and in accordance with, clause 8.

- (b) Any action taken by the NSW Government under this deed:
 - (i) shall oblige the Fund Trustee to cause any similar or inconsistent action to be revoked, rescinded or discontinued, provided that the Fund Trustee may resume or initiate any such action if and to the extent that the corresponding action taken by the NSW Government is revoked or abandoned by notice in writing by the NSW Government; and
 - (ii) shall oblige the NSW Government to hold on trust for the Fund Trustee in accordance with, and subject to, clause 4.1 any amounts (in the form of money or other property) received or recovered under, or in respect of, the action taken.

- (c) Where this deed requires or contemplates the consent of, or a nomination or determination by the Fund Trustee, such consent, nomination or determination shall only be effective if consented to by the NSW Government, and the Guarantee Trustee must not accept or act on a notice of consent, nomination or determination, or any other direction, by the Fund Trustee, unless such notice is accompanied by consent from the NSW Government.
- (d) Without limiting clauses 5.2(a) or (c), the parties acknowledge that:
 - (i) under clause 16.6(f) of the Final Funding Agreement the Fund Trustee has agreed not to, without the prior written consent of the NSW Government, waive or compromise all or any part of any payment (actually or contingently) due from JHINV or the Performing Subsidiary under the Final Funding Agreement or any Related Agreement (including this deed); and
 - (ii) any such waiver or compromise by the Fund Trustee that is not accompanied by such written consent from the NSW Government shall be invalid and has no effect on the obligations of the parties under this deed and cannot be relied upon by the parties or pleaded by way of estoppel or otherwise in any action or proceeding for the enforcement of the Final Funding Agreement or any Related Agreement (including this deed).
- (e) The NSW Government acknowledges that its right to enforce this deed is subject to clause 16.6 of the Final Funding Agreement (but, in an Insolvency of JHINV, only to the extent the provisions of that clause apply in an Insolvency of JHINV).
- (f) Without limiting clauses 5.2(a) or (c), the parties acknowledge that the NSW Government may commence or institute proceedings in any jurisdiction in relation to the existence or amount of the Compensation Debt (but, in the case of any Wind Up or Reconstruction Amount (as defined in the Final Funding Agreement), subject to clause 10 of the Final Funding Agreement) or any voting rights attaching thereto, or any matters incidental to determining such amount or voting rights.

6. COVENANTS

6.1 Restriction on dealings

The Fund Trustee and the NSW Government agree for the benefit of the Guarantee Trustee and the Financiers that such party may not assign, transfer, create a Security Interest in respect of or otherwise create rights in respect of or deal with any of its rights under the Final Funding Agreement, the Guarantee or this deed (including all Proceeds), or consent or agree to any of those things, without:

- (a) in the case of an assignment, a transfer, the creation of a Security Interest or other rights or a dealing which in any case affects the nature, timing or quantum of the amount actually or contingently payable to a Compensation Party under the Final Funding Agreement, the Guarantee or another Related Agreement, the prior written consent of the Guarantee Trustee acting on instructions from all or a specified majority of the Financiers as referred to in clause 7.3; and
- (b) the assignee, the transferee, the holders of that Security Interest or those other rights and all other persons having an interest in the rights of the Fund Trustee and the NSW Government under the Final Funding Agreement, the Guarantee or this deed (including all Proceeds) as a result of any such dealing, having agreed to be bound by the corresponding obligations of the relevant Compensation Party or the NSW Government under the Final Funding Agreement, the Guarantee or this deed (as the case may be).

6.2 No security

Each of the Fund Trustee and the NSW Government agree for the benefit of the Guarantee Trustee and the Financiers that it may not do, or agree to do, any of the following:

- (a) **(set off)** during the Insolvency of JHINV, exercise any right of set off in respect of the Compensation Debt;
- (b) **(Security Interest or guarantee)** except for the Guarantee and a Cross Guarantee (Fund Guaranteed Money), accept from JHINV or another member of the JHINV Group the benefit of any Security Interest or guarantee, indemnity or assurance against financial loss in respect of the Compensation Debt; or
- (c) **(arrangements)** enter into any arrangement, take any action or fail to do any thing, which results in any Proceeds received by it from or on account of JHINV

(or such proportion of the Proceeds sufficient to discharge and satisfy the Finance Money Debt in full) not being held on trust for the relevant Financiers in accordance with the terms of this deed,

without the prior written consent of the Guarantee Trustee acting on instructions from all or a specified majority of the Financiers as referred to in clause 7.3.

If in an Insolvency of JHINV, a Compensation Party is required to refund, repay or otherwise disgorge to, or in favour of, JHINV all or any part of an Annual Payment received prior to the occurrence of the relevant Insolvency Event (otherwise than pursuant to clause 14.9(b) of the Final Funding Agreement as the result of any overpayment of that Annual Payment), clause 6.2(a) does not prohibit that amount being set off by that Compensation Party against another amount owed by JHINV to that Compensation Party.

7. GUARANTEE TRUSTEE

7.1 Appointment and removal

Subject to clause 7.6, the Fund Trustee and the NSW Government:

- (a) acknowledge that JHINV or the Financiers may appoint, remove and replace the Guarantee Trustee as trustee under the Finance Guarantee (such newly appointed or replacement trustee, a **New Guarantee Trustee**); and
- (b) agree to do anything reasonably required by JHINV, the Financiers, the outgoing Guarantee Trustee or the New Guarantee Trustee to enable the New Guarantee Trustee to become a party to this deed in substitution for the outgoing Guarantee Trustee.

7.2 Sole Representative

- (a) So long as a Person is acting as trustee under the Finance Guarantee, the Fund Trustee and the NSW Government may deal exclusively with that Person in respect of all matters concerning this deed.
- (b) The Financiers acknowledge and confirm that the Person acting as trustee under the Finance Guarantee is empowered to exercise all of their rights and powers under this deed and agree not to take any action or proceedings to set aside any act, notice or omission of the Guarantee Trustee undertaken in accordance with this deed.

7.3 Acknowledgement by the Fund Trustee and the NSW Government

The Fund Trustee and the NSW Government acknowledge that in exercising some or all of the rights and powers of the Financiers under this deed (including voting on any matter in any meeting, proceeding or distribution concerning the Insolvency of JHINV), the Guarantee Trustee may be required to obtain instructions and/or consent from all or a specified majority of the Financiers.

If the Guarantee Trustee is so required to obtain instructions and/or consent from all or a specified majority of the Financiers, the Guarantee Trustee must promptly request such instructions and/or consent.

The Fund Trustee and the NSW Government are entitled to rely on any representation by the Guarantee Trustee in relation to its instructions.

7.4 No Guarantee Trustee

Subject to clause 8.10, if no Person is acting as trustee under the Finance Guarantee, then unless a contrary intention is apparent from this deed, all references to the Guarantee Trustee in this deed shall be taken to be references to each Financier to which this deed applies from time to time acting severally such that each Financier may severally exercise the rights of the Guarantee Trustee.

If the Guarantee Trustee is to cease to be trustee under the Finance Guarantee and a New Guarantee Trustee is not being appointed in accordance with clause 7.6, the outgoing Guarantee Trustee must send promptly a copy of each countersigned Financier Nomination Letter to the Fund Trustee and the NSW Government (other than a Financier Nomination Letter in respect of a Financier where this deed has ceased to apply to that Financier in accordance with clause 2.2(g)).

7.5 Acknowledgement by the Guarantee Trustee

The Guarantee Trustee acknowledges and undertakes (and each New Guarantee Trustee at the date of becoming a party to this deed will be deemed to acknowledge and undertake) that it:

- (a) is a wholly owned subsidiary of Australian Executors Trustees Limited which is a recognised trustee company under the laws of New South Wales;
- (b) has relevant and substantive experience and expertise in custody of financial obligations and in insolvency proceedings generally;

- (c) except to the extent it is entitled to be paid fees or reimbursed or indemnified for costs and expenses by JHINV, has no interest or duty which to its knowledge conflicts or may conflict with its functions under this deed; and
- (d) is not a member of a firm, or a director or employee of a firm or a body owned by a firm, performing any role as advisor, banker, custodian or trustee to JHINV, another member of the JHINV Group or (except for roles undertaken in the ordinary course of business for state owned business enterprises) the NSW Government during a period of 3 years prior to the date of this deed or becoming a party to this deed, as the case may be.

7.6 Substitution of the Guarantee Trustee

- (a) JHINV or the Financiers can only replace the Guarantee Trustee with any Person who at the date of becoming a New Guarantee Trustee:
 - (i) is either (A) a recognised trustee company under the laws of the place in which its Specified Office is located, or (B) a wholly owned subsidiary of a recognised trustee company under the laws of that place;
 - (ii) has relevant and substantive experience and expertise in custody of financial obligations and in insolvency proceedings generally;
 - (iii) except to the extent it is entitled to be paid fees or reimbursed or indemnified for costs and expenses by JHINV, has no interest or duty which to its knowledge conflicts or may conflict with its functions as contemplated under this deed; and
 - (iv) is not a member of a firm, or a director or employee of a firm or a body owned by a firm, performing any role as advisor, banker, custodian or trustee to JHINV, another member of the JHINV Group or (except for roles undertaken in the ordinary course of business for state owned business enterprises) the NSW Government during a period of 3 years prior to becoming a party to this deed.
- (b) A substitution under clause 7.6(a) will not occur and a New Guarantee Trustee acquires no rights or benefits under this deed unless and until the New Guarantee Trustee duly executes and delivers an Accession Deed to each party to this deed. This clause does not require an Accession Deed to be delivered to a Financier.

- (c) If the New Guarantee Trustee is not incorporated in Australia, the Financiers must procure, at no expense to the Fund Trustee or the NSW Government, the delivery to the Fund Trustee and the NSW Government of an opinion of generally recognised independent legal counsel qualified to practise in the relevant jurisdiction to the effect that the Accession Deed and this deed are valid, binding and enforceable obligations of the New Guarantee Trustee (subject to laws and defences generally affecting the enforcement of contracts and the discretionary nature of equitable remedies).

7.7 Standard of Duty

The Guarantee Trustee must exercise, and must procure that each Authorised Officer of the Guarantee Trustee exercises, good faith and the same degree of care, skill and diligence as a reasonable and prudent Person would exercise in carrying out its functions, duties and obligations under this deed.

7.8 Functions, duties and obligations of the Guarantee Trustee

7.8.1 Role of the Guarantee Trustee

Subject to the other provisions of this deed, the Guarantee Trustee must:

- (a) upon an officer of the Guarantee Trustee responsible for the day to day administration of this deed becoming aware of any Insolvency of JHINV, promptly send to each Compensation Party a notice which requests them to advise in writing the amount of the Compensation Debt or, alternatively, the basis on which the Compensation Debt is to be calculated and, in the event of a conflict in the amount of the Compensation Debt advised by the Fund Trustee and the NSW Government, then (in the absence of manifest error) the amount advised by the NSW Government prevails;
- (b) not do anything to prevent or interfere with a Compensation Party proving the Compensation Debt in an Insolvency (to the extent that the Compensation Party is acting in accordance with the Final Funding Agreement and applicable law);
- (c) not make any representation or submission to an Insolvency Official in relation to the valuation of the claims of the Compensation Parties in respect of the Compensation Debt unless reasonably requested by the NSW Government;
- (d) where the Guarantee Trustee is entitled to exercise any vote pursuant to clause 8, take all necessary and reasonable steps permitted by applicable law to exercise

that vote for the value of the Compensation Debt for the purposes of the Insolvency of JHINV (including the presentation of all evidence and submissions to any Insolvency Official as reasonably requested by the NSW Government);

(e) promptly advise each Compensation Party of any dispute between:

- (i) the Guarantee Trustee; and
- (ii) an Insolvency Official, JHINV and/or one or more creditors of JHINV,

in relation to the Compensation Debt or this deed and which may come before a court of competent jurisdiction, and take all reasonable steps permitted by applicable law to delay the determination of the dispute for such period of time (as is reasonable having regard to the procedural laws governing the conduct of the dispute before the relevant court of competent jurisdiction) so as to give the Compensation Parties a reasonable opportunity to present evidence and submissions to the relevant court of competent jurisdiction if they so wish;

(f) if JHINV is Insolvent, take all reasonable action permitted by applicable law to ensure that:

- (i) all moneys recoverable in respect of the Finance Money Debt are duly and promptly recovered from the relevant Insolvency Official; and
- (ii) any amount payable or repayable to a Compensation Party by a Financier under this deed, by reason of that Financier receiving whether by way of distribution by the Insolvency Official in the Insolvency, as payments by a Compensation Party under this deed or otherwise, an amount in excess of the Finance Money Debt owed to that Financier, are paid or repaid by that Financier to that Compensation Party;

(g) not do anything to prevent or interfere with a Compensation Party promptly recovering from the relevant Insolvency Official all moneys which are recoverable in respect of the Compensation Debt;

(h) take all reasonable steps permitted by applicable law and requested by the NSW Government to assist the Compensation Parties with the determination of any dispute between:

- (i) a Compensation Party; and
 - (ii) an Insolvency Official, JHINV and/or one or more creditors of JHINV, in relation to the Compensation Debt or this deed;
- (i) to the extent permitted by applicable law, apply for and use reasonable endeavours to obtain any stay, extension of time or other order in relation to the Insolvency of JHINV which the Guarantee Trustee reasonably considers is necessary in order to enable any Independent Expert to discharge its responsibilities under and in accordance with clause 8 or which the NSW Government reasonably requests for such purpose;
 - (j) to the extent permitted by applicable law and if requested by the NSW Government, take all reasonable steps to recover compensation for any expenses, losses, liabilities, actions, proceedings, claims and demands (whether actual, contingent, prospective or otherwise) that are incurred by the Guarantee Trustee (or would have been incurred by the Guarantee Trustee but for clause 15.1(g)) as a direct or indirect consequence of the fraud, gross negligence or wilful misconduct of any attorney, agent or delegate appointed by the Guarantee Trustee in accordance with this deed;
 - (k) upon an officer of the Guarantee Trustee responsible for the day to day administration of this deed becoming aware of any breach of this deed by any party, promptly notify JHINV, the Financiers and the Compensation Parties of that breach including details of that breach; and
 - (l) promptly notify JHINV, the Financiers and the Compensation Parties if for any reason it is unable to perform its obligations under this deed.

7.8.2 Provision of information

Without limiting the provisions of clause 8 in relation to Notice of Voting in Insolvency, the Guarantee Trustee and each Compensation Party agree to give notice to the Compensation Parties or the Guarantee Trustee, as the case may be, of any request received from an Insolvency Official in an Insolvency of JHINV which seeks instructions and/or consent from one or more creditors of JHINV (including, for the avoidance of doubt, a Financier, the Guarantee Trustee or a Compensation Party) or otherwise requests action to be taken by one or more creditors of JHINV in exercise of their respective rights as creditors of JHINV.

7.8.3 Limitations on the obligations of the Guarantee Trustee

Notwithstanding clause 7.8.1, the Guarantee Trustee is not required to do any act, matter or thing requested by the NSW Government (including make any representation or submission, or present any evidence, to an Insolvency Official or provide any assistance with the determination of any dispute between a Compensation Party and an Insolvency Official before a court of competent jurisdiction) which in the opinion of the Guarantee Trustee (after having received advice from legal counsel appointed by it and acting reasonably) will constitute a breach by the Guarantee Trustee of its fiduciary duties owed to the Financiers in respect of the Finance Money Debt (including, for the avoidance of doubt, any duty not to act in manner which conflicts with a direction of all or a specified majority of the Financiers).

If any such act, matter or thing will constitute such a breach, the Guarantee Trustee must promptly notify the NSW Government and take all reasonable steps subsequently requested by the NSW Government and permitted under applicable law to ensure that the objective of the original act, matter or thing requested by the NSW Government is able to be otherwise achieved:

- (a) in a manner which does not constitute a breach by the Guarantee Trustee of its fiduciary duties owed to the Financiers in respect of the Finance Money Debt; or
- (b) by the NSW Government doing the relevant act, matter or thing in a manner which, if the relevant act, matter or thing had been done by the Guarantee Trustee, would be in accordance with this deed.

7.8.4 Duties of the Guarantee Trustee

The Guarantee Trustee has no duties to the Compensation Parties or the NSW Government except as expressly provided for in this deed.

7.8.5 Limitation on Liability

To the extent permitted by law, nothing in this clause 7.8 imposes liability on the Guarantee Trustee for:

- (a) special, indirect, incidental, consequential or punitive damages; or
- (b) economic loss, loss of profits, loss of revenue, or loss of goodwill,

arising out of any action undertaken by it in accordance with clause 7.8.1, except to the extent resulting from the fraud, gross negligence or wilful misconduct of the Guarantee Trustee.

7.8.6 Indemnity

To the extent permitted by law, the NSW Government indemnifies and keeps indemnified the Guarantee Trustee against any claims, cost or liability which may be imposed and which arises out of any action properly undertaken by it in accordance with 7.8.1(d) or undertaken by the Guarantee Trustee in accordance with a request of the NSW Government under clause 7.8.1, except to the extent caused by the fraud, gross negligence or wilful misconduct of the Guarantee Trustee or the failure of the Guarantee Trustee to take action at the request of the NSW Government.

8. VOTING IN INSOLVENCY PROCEEDINGS

8.1 Irrevocable Appointment of Attorney

- (a) Subject to this clause 8, Asbestos Injuries Compensation Fund Limited in its capacity as trustee for the Charitable Fund irrevocably and for valuable consideration agrees to appoint the Guarantee Trustee and each Authorised Officer of the Guarantee Trustee individually as the attorney of Asbestos Injuries Compensation Fund Limited in its capacity as trustee for the Charitable Fund (together with any person appointed as an attorney in accordance with clause 8.1(b), an **Attorney**) to vote the Compensation Debt during the Insolvency of JHINV or at any meeting, proceeding or distribution concerning the Insolvency of JHINV for so long as any Finance Money Debt remains outstanding, by executing a power of attorney substantially in the form of Schedule 3 to this deed, provided that any vote must be exercised in accordance with this clause 8 and Asbestos Injuries Compensation Fund Limited in that capacity further irrevocably and for valuable consideration agrees, if required for further assurance, to execute a proxy or authority in a form ordinarily required under the applicable law governing the relevant proceeding.
- (b) Subject to this clause 8 and simultaneously with executing and delivering an Accession Deed in accordance with clause 4.6, each Replacement Trustee must irrevocably and for valuable consideration appoint the Guarantee Trustee and each Authorised Officer of the Guarantee Trustee individually as the attorney of the Replacement Trustee to vote the Compensation Debt during the Insolvency of JHINV or at any meeting, proceeding or distribution concerning the Insolvency of JHINV for so long as any Finance Money Debt remains outstanding, by

executing a power of attorney substantially in the form of Schedule 3 to this deed provided that any vote must be exercised in accordance with this clause 8 and the Replacement Trustee further irrevocably and for valuable consideration agrees, if required for further assurance, to execute a proxy or authority in a form ordinarily required under the applicable law governing the relevant proceeding.

- (c) Subject to this clause 8, the Fund Trustee and the NSW Government agree not to vote or attempt to vote the Compensation Debt during the Insolvency of JHINV or at any meeting, proceeding or distribution concerning the Insolvency of JHINV for so long as any Finance Money Debt remains outstanding.
- (d) The Fund Trustee irrevocably and for valuable consideration authorises the Guarantee Trustee to provide an original or copy of any power of attorney executed in accordance with clause 8.1(a) or (b) to an Insolvency Official for the purpose of establishing the right and entitlement of each Attorney during the Insolvency of JHINV to exercise the appointor's right to vote the Compensation Debt at any meeting, proceeding or distribution concerning the Insolvency of JHINV.
- (e) The Guarantee Trustee must ensure that an Attorney only exercises, and in circumstances where the Guarantee Trustee is itself appointed an Attorney, the Guarantee Trustee must only exercise, its rights under a power of attorney granted in accordance with this clause 8 in accordance with, and subject to, the provisions of this deed.
- (f) To the extent required under applicable law, the Fund Trustee agrees to ratify:
 - (i) anything the Guarantee Trustee does in accordance with this clause 8, and such ratification is without prejudice to its rights in respect of any breach of this deed by the Guarantee Trustee; and
 - (ii) whatever an Attorney does in exercising powers under a power of attorney granted in accordance with this clause 8, provided that there is no obligation to ratify or confirm any act or matter in breach of this deed or any applicable law.
- (g) Subject to the provisions of this deed, each Compensation Party and the NSW Government must not do anything to prevent or interfere with the exercise by:

- (i) the Guarantee Trustee of its rights and powers, or the performance of its obligations, under this clause 8; or
 - (ii) an Attorney of its rights and powers, or the performance of its obligations, under the relevant power of attorney.
- (h) Subject to the terms and conditions of this deed and subject to compliance with its provisions, an Attorney may exercise the right to vote in the appointor's name or, if necessary or desirable under the applicable law governing the relevant proceeding, the Attorney's name, and may do anything necessary or incidental to such exercise including signing and delivering documents.
- (i) If for any reason whatsoever an Attorney is not entitled by operation of law to exercise its rights under the relevant power of attorney, the appointor shall exercise those rights as directed by the Guarantee Trustee, provided such directions are in accordance with this clause 8.
 - (j) The Guarantee Trustee must promptly provide the NSW Government with reasonable details of any action taken by the Guarantee Trustee or an Attorney in respect of the exercise of its powers under a power of attorney granted in accordance with this clause 8.
 - (k) The Guarantee Trustee must promptly provide full details of any action taken or any votes cast by the Guarantee Trustee or an Attorney in respect of the Compensation Debt.

8.2 Voting

- (a) The Compensation Parties are responsible for proving the Compensation Debt in any Insolvency of JHINV and providing such information as to the value of the Compensation Debt as is required by the relevant Insolvency Official for the purposes of ascribing a value to the Compensation Debt for the purposes of an Insolvency of JHINV. In proving the Compensation Debt, the Compensation Parties must:
 - (i) use reasonable endeavours to ensure that the relevant Insolvency Official sends all Notices of Voting in Insolvency in an Insolvency of JHINV (or a copy of all such notices) to the Guarantee Trustee; and

(ii) to the extent such notices are received by the Compensation Parties, provide a copy to the Guarantee Trustee.

Notwithstanding any other provision of this deed other than, and subject to, clauses 7.8.1(b) and (c), the Guarantee Trustee is not responsible for proving the Compensation Debt in any Insolvency of JHINV.

The Compensation Parties agree to provide the Guarantee Trustee with copies of all documents submitted to the relevant Insolvency Official for the purposes of ascribing a value to the Compensation Debt for the purposes of an Insolvency of JHINV or ensuring that the relevant Insolvency Official sends all Notices of Voting in Insolvency in an Insolvency of JHINV (or a copy of all such notices) to the Guarantee Trustee.

- (b) Subject to clauses 8.8 and 8.9, during the Insolvency of JHINV the Guarantee Trustee must ensure that an Attorney only votes on any matter in any meeting, proceeding or distribution concerning the Insolvency of JHINV in respect of the Compensation Debt in accordance with the instructions of the Financiers given in accordance with the Finance Guarantee, provided that:
- (i) the Guarantee Trustee must ensure that an Attorney does not vote unless the Guarantee Trustee has provided the NSW Government with 10 Business Days notice (or, subject to clause 7.8.1(i), such shorter notice as the Guarantee Trustee determines is reasonable having regard to the terms of the Notice of Voting in Insolvency) of the Attorney's intention to vote and the Attorney votes in accordance with the intention as notified; and
 - (ii) if an Independent Expert has been appointed under clause 8.3, and the Independent Expert has determined that, in its opinion, the criteria set out in:
 - A. clauses 8.4(a), (b), (c) and, if applicable, (d); or
 - B. clause 8.4(e),are satisfied in relation to the Preferred Option or a particular choice as described in clause 8.3(a)(ii)(B) or (C), as the case may be, then the Guarantee Trustee must ensure that an Attorney votes in favour of the Preferred Option or that particular choice.

For the avoidance of doubt, the Guarantee Trustee must ensure that an Attorney votes in accordance with the proviso to this clause 8.2(b) irrespective of any instructions of the Financiers to the contrary given in accordance with the Finance Guarantee.

- (c) Each of the Fund Trustee and NSW Government acknowledge that in clause 10.5 of the Final Funding Agreement they agreed that, without prejudice to their obligations under or the operation of this deed and to the extent permitted by law, all voting rights arising out of the Guarantee will be exercised in respect of any proposed composition with creditors, plan of arrangement, plan of reorganization, or other restructuring for JHINV in connection with any Reconstruction Event (“Plan”) so as to vote in favour of the Plan where, if the Plan were to come into force the conditions specified in clause 10.5 of the Final Funding Agreement would be satisfied.

Accordingly, if the circumstances in clause 10.5 of the Final Funding Agreement apply, the Fund Trustee and NSW Government agree that the Plan is the Preferred Option.

- (d) If following the occurrence of a Wind-Up Event in respect of JHINV, the value of the assets of JHINV available for distribution to pay the claims of ordinary unsecured creditors (or realisation to allow such payment), as determined or estimated (in the absence of manifest error) by the relevant Insolvency Official (or otherwise determined or estimated for the purposes of the relevant Insolvency proceeding in accordance with applicable law) is equal to or less than the amount required to enable discharge and satisfaction of the Finance Money Debt in full, then, subject to clauses 8.8 to 8.10 inclusive, during the Wind-Up Event an Attorney may vote on any matter in any meeting, proceeding or distribution concerning the Wind-Up Event in respect of the Compensation Debt in accordance with the instructions of the Financiers given in accordance with the Finance Guarantee and clauses 8.2(b) and (c), 8.3 to 8.7 inclusive and 8.11 do not apply.

8.3 Appointment of an Independent Expert

- (a) If during the Insolvency of JHINV:
 - (i) the Guarantee Trustee or an Attorney receives a Notice of Voting in Insolvency (or a copy of a Notice of Voting in Insolvency); and

- (ii) a vote on any matter in any meeting, proceeding or distribution concerning the Insolvency of JHINV requires a choice between:
 - A. two or more options, proposals, courses of action or other alternatives (howsoever described) (**Options**) for the partial or full winding up, restructure or reconstruction of JHINV or the realisation of some or all of JHINV's assets in connection with its Insolvency;
 - B. deferring or not deferring any action; or
 - C. extending or not extending the Insolvency proceeding,

then the Guarantee Trustee must promptly provide the NSW Government with a copy of the Notice of Voting in Insolvency and procure the appointment of an Independent Expert in accordance with this clause 8.3, such appointment to be made within 10 Business Days of receipt by the Guarantee Trustee of the Notice of Voting in Insolvency (unless the NSW Government gives notice that it does not so require).

- (b) The Guarantee Trustee must, prior to any appointment of an Independent Expert under this deed, provide the NSW Government with 5 Business Days notice (or, subject to clause 7.8.1(i), such shorter notice as the Guarantee Trustee determines is reasonable having regard to the terms of the Notice of Voting in Insolvency) of the Person nominated by the Guarantee Trustee to act as Independent Expert, together with evidence demonstrating such nominee's compliance with the criteria and qualifications required of an Independent Expert under this deed.
- (c) If an Independent Expert is appointed under this clause 8.3, the costs of the Independent Expert shall be borne by the NSW Government.
- (d) Subject to clause 8.3(e), upon receipt of a Notice of Voting in Insolvency and at any time prior to 2 Business Days before the latest date on which the Independent Expert must make a determination in accordance with clauses 8.4 and 8.5 (or, subject to clause 7.8.1(i), such earlier time as the Guarantee Trustee determines is reasonable having regard to the terms of the Notice of Voting in Insolvency and advises the Fund Trustee and the NSW Government), the NSW Government may nominate:

- (i) an Option which it would like an Attorney to vote for in respect of the Compensation Debt; or
 - (ii) if the vote relates to deferring or not deferring any action or extending or not extending the Insolvency proceeding, which alternative it would like the Attorney to vote for in respect of the Compensation Debt.
- (e) If an Independent Expert appointed under this clause 8 determines that an Option, other than the Option nominated by the NSW Government under clause 8.3(d)(i), satisfies the criteria set out in:
- (i) clauses 8.4(a), (b), (c) and if applicable, (d); or
 - (ii) clause 8.4(e).
- then the NSW Government may immediately, with notice in writing to the Guarantee Trustee, nominate the Option so determined by the Independent Expert as the Option that it would like an Attorney to vote for in respect of the Compensation Debt.
- (f) For the purposes of this clause 8 and subject to clause 8.2(c), **Preferred Option** means:
- (i) subject to clause 8.3(f)(ii), the Option nominated by the NSW Government under clause 8.3(d)(i); or
 - (ii) if the circumstances in clause 8.3(e) apply, the Option nominated by the NSW Government under clause 8.3(e); or
 - (iii) if the circumstances in clause 8.3(g) apply, the Option nominated by the NSW Government under clause 8.3(g); or
 - (iv) if the NSW Government has not nominated an Option in accordance with clause 8.3(d)(i) or 8.3(e), the Preferred Option is deemed to be the Option which the Independent Expert determines satisfies the criteria set out in:
 - A. clauses 8.4(a), (b), (c) and, if applicable, (d); or
 - B. clause 8.4(e),

and in respect of which the amounts anticipated to be received by, or on behalf of the Charitable Fund, have a higher net present value than any other Option having regard (among any other factors) to any potential future payment by JHINV or a James Hardie Successor (under an agreement similar in its effect to the Final Funding Agreement) in respect of part or all amounts payable under the guarantee of payment of the Fund Guaranteed Money in accordance with the Guarantee.

- (g) If the Independent Expert determines that there are two or more Options which satisfy the criteria set out in clause 8.2(b)(ii), the NSW Government may notify the Guarantee Trustee in writing which Option it wishes to nominate as the Preferred Option.

8.4 Role of the Independent Expert

If an Independent Expert is appointed under this clause 8, the Independent Expert shall determine (and shall be instructed by the Guarantee Trustee only to determine), in its opinion:

- (a) whether, one or more Options (if approved and implemented in the manner described in the Notice of Voting in Insolvency) are likely to result in the recovery by the Guarantee Trustee of an amount in respect of the Finance Money Debt which would be sufficient (taking into account prior ranking claims, the likely or anticipated distribution to Financiers by the Insolvency Official and any likely payment to the Guarantee Trustee under clause 4) to discharge and satisfy the Finance Money Debt in full;
- (b) whether one or more of the Options which satisfy the requirements of paragraph (a) (if approved and implemented in the manner described in the Notice of Voting in Insolvency) are likely to result in the recovery by the Guarantee Trustee in respect of the Finance Money Debt of an amount:
 - (i) which would be at least 5% greater than the amount which the Guarantee Trustee would be likely to recover in respect of the Finance Money Debt under any other Option, after allowing for the time value of money; and
 - (ii) which would discharge and satisfy the Finance Money Debt in full by a date no later than 12 months after the earliest date by which any of the other Options would achieve full discharge and satisfaction of the Finance Money Debt; and

- (c) whether the conditions (if any) attached to one or more of the Options which satisfy the requirements of paragraph (a) (as described in the Notice of Voting in Insolvency) do not involve a materially greater risk of non-recovery, or delay in recovery of more than 12 months, by the Guarantee Trustee of an amount which would be sufficient (taking into account prior ranking claims, the likely or anticipated distribution to the Financiers by the Insolvency Official and any likely payment to the Guarantee Trust under clause 4) to discharge and satisfy the Finance Money Debt in full, compared to the risks of non-recovery, or delay in recovery of more than 12 months, associated with the other Options (taking into account the conditions (if any) attached to those other Options (as described in the Notice of Voting in Insolvency)); and
- (d) if one or more of the Options which satisfy the requirements of paragraph (a) (if approved and implemented in the manner described in the Notice of Voting in Insolvency) are each likely to result in the recovery by the Guarantee Trustee of an amount sufficient to discharge and satisfy the Finance Money Debt in full within substantially the same period of time (taking into account prior ranking claims, the likely or anticipated distribution to the Financiers by the Insolvency Official and any likely payment to the Guarantee Trust under clause 4), which Option would result in the amounts anticipated to be received by, or on behalf of, the Charitable Fund in respect of the Compensation Debt having a higher net present value than the other Options having regard (among any other relevant factors) to any potential future payment by JHINV or a James Hardie Successor (under an agreement similar in its effect to the Final Funding Agreement) in respect of part or all amounts payable under the guarantee of payment of the Fund Guaranteed Money in accordance with the Guarantee; and
- (e) if the vote relates to deferring or not deferring any action or extending or not extending the Insolvency proceeding, which choice is likely to result in:
 - (i) a greater net recovery in respect of the Finance Money Debt (taking into account prior ranking claims, the likely or anticipated distribution to the Financiers by the Insolvency Official and any likely payment to the Guarantee Trust under clause 4); or
 - (ii) if either choice would result in the recovery by the Guarantee Trustee of an amount sufficient to discharge and satisfy the Finance Money Debt in full (taking into account prior ranking claims, the likely or anticipated distribution to the Financiers by the Insolvency Official and any likely

payment to the Guarantee Trust under clause 4), a greater net recovery in respect of the Compensation Debt (taking into account prior ranking claims, the likely or anticipated distribution to the Financiers by the Insolvency Official and any likely payment to the Guarantee Trust under clause 4) within the next 12 months.

8.5 Notice of determination by the Independent Expert

The Independent Expert shall send its determination, together with reasons and supporting material, in writing to the Guarantee Trustee and the NSW Government within 10 Business Days of its appointment (or such shorter period as the Guarantee Trustee may specify at the time of appointment of the Independent Expert having regard to the terms of the Notice of Voting in Insolvency).

8.6 Assistance to the Independent Expert

Subject to any duty of confidentiality or applicable law, the Guarantee Trustee, the Financiers, JHINV, the Fund Trustee and the NSW Government must promptly provide the Independent Expert with any information or assistance it reasonably requests for the purpose of making its determination under clause 8.4.

8.7 Determination by the Independent Expert final

The determination of the Independent Expert shall (in the absence of manifest error) be final and binding on the Guarantee Trustee, each Financier, JHINV, the Fund Trustee and the NSW Government.

8.8 Consent of NSW Government required in certain circumstances

- (a) Subject to clauses 8.9 to 8.11 inclusive, but otherwise notwithstanding any other provision of clauses 8.2 to 8.7 inclusive, the Guarantee Trustee must ensure that an Attorney does not, without the prior written consent of the NSW Government, vote in respect of the Specified Proportion of the Compensation Debt in favour of any arrangement, assignment, reconstruction, composition, option, proposal or other course of action proposed in connection with JHINV's Insolvency which, if approved and implemented, would result in the extinguishment of any part of the Compensation Debt (other than by payment in full or upon the final dissolution or winding up of JHINV in circumstances where there will be an insufficiency of assets to enable payment of any part of the Compensation Debt taking into account prior ranking claims, the distribution to the Financiers by the Insolvency Official and payments to the Guarantee Trust under clause 4). An Attorney may

vote the balance of the Compensation Debt in accordance with the instructions of the Financiers given in accordance with the Finance Guarantee (or, in the absence of such instructions, as the Guarantee Trustee directs).

- (b) Where there are two or more Options, the Guarantee Trustee must appoint and obtain advice from an Independent Expert in accordance with clauses 8.3 and 8.4 and, provided that the Independent Expert has had due regard to the matters specified in clause 8.4, the Guarantee Trustee must, subject to clauses 8.2(d) and 8.9 to 8.11 inclusive, ensure that an Attorney votes the Specified Proportion of the Compensation Debt in favour of the Preferred Option. An Attorney may vote the balance of the Compensation Debt in accordance with the instructions of the Financiers given in accordance with the Finance Guarantee.

8.9 Options providing for a return to shareholders of JHINV

Notwithstanding any other provision of this clause 8, where any arrangement, assignment, reconstruction, composition, option, proposal or other course of action is proposed in connection with JHINV's Insolvency which, if approved and implemented, would result in:

- (a) a return to the shareholders of JHINV without:
 - (i) payment of the Compensation Debt in full; or
 - (ii) the entry into an arrangement approved by the NSW Government by a James Hardie Successor which is materially similar in nature and value to the arrangements under the Final Funding Agreement; or
- (b) a maintenance or continuing standing of JHINV or the creation or promotion of any James Hardie Successor, under which shareholders of JHINV have or might have any continuing value or interest attaching to their shares in JHINV,

the Guarantee Trustee must appoint and obtain advice from an Independent Expert.

Where the Independent Expert determines that if the arrangement, assignment, reconstruction, composition, option, proposal or other course of action was implemented, the return to, or interests of, the shareholders of JHINV in JHINV or a James Hardie Successor, would exceed US\$10 million in aggregate value (**Shareholder Option**), the Guarantee Trustee must, subject to clause 8.10, ensure that an Attorney votes against the Shareholder Option, in respect of 100 per cent (100%) of the Compensation Debt, unless:

- (i) the NSW Government has otherwise consented; or
- (ii) the Independent Expert has determined that the implementation of the arrangement, assignment, reconstruction, composition, option, proposal or other course of action would be likely to result in a greater return in respect of the Compensation Debt than any other option which is likely to be available (including a Wind-Up Event in respect of JHINV), having regard (among any other relevant factors) to any potential future payment by JHINV or a James Hardie Successor (under an agreement similar in its effect to the Final Funding Agreement) in respect of part or all amounts payable under the guarantee of payment of the Fund Guaranteed Money in accordance with the Guarantee.

Where the return to, or interests of the shareholders of JHINV in JHINV or a James Hardie Successor is less than or equal to US\$10 million in aggregate value the Guarantee Trustee must ensure that an Attorney votes in accordance with this clause 8 and otherwise with the instructions of the Financiers given in accordance with the Finance Guarantee.

If an Independent Expert is appointed under this clause 8.9, the costs of the Independent Expert shall be borne by the NSW Government.

8.10 Defaulting or absent Guarantee Trustee

If:

- (a) a court of competent jurisdiction has determined that the Guarantee Trustee is in breach of, or default under, this deed; or
- (b) there is no Person acting as trustee under the Finance Guarantee,

then for so long as such breach or default continues and remains unremedied, or until a Person is appointed as a New Guarantee Trustee in accordance with clause 7.6, as the case may be, the Compensation Parties may exercise any vote in any Insolvency proceeding in respect of the Compensation Debt which would otherwise be exercised by an Attorney.

8.11 Residual Power

If the Guarantee Trustee is obliged by reason of this clause 8 to ensure that an Attorney votes in a manner recommended by the Independent Expert, the Guarantee Trustee may cause the Attorney to vote in another manner approved by the NSW Government.

9. CHANGES TO RIGHTS

9.1 Rights of the Financiers are protected

- (a) Rights given to or for the benefit of the Financiers under this deed, and the obligations of each Compensation Party and the NSW Government under it, are not affected by any act or omission by a Compensation Party, the NSW Government, the Guarantee Trustee, any Financier or any other Person or by any other act, other matter or thing whatsoever, whether negligent or not, except as agreed to in writing by the Guarantee Trustee. For example, those rights and liabilities are not affected by:
- (i) any act or omission:
 - A. varying or replacing any arrangement under which any Finance Money Debt or Compensation Debt is expressed to be owing, such as by increasing a facility limit or extending the term;
 - B. releasing or discharging JHINV or any Security Provider (including discharge by operation of law) or giving them a concession (such as more time to pay);
 - C. releasing any Person who gives a guarantee or indemnity in connection with any of JHINV's obligations;
 - D. releasing, losing the benefit of, or not obtaining any Security Interest or negotiable instrument;
 - E. by which the obligations of a Compensation Party, the NSW Government, JHINV or any Security Provider may not be enforceable;
 - F. by which any Person who was intended to guarantee or provide a Security Interest securing all or part of the Finance Money Debt does not do so, or does not do so effectively;
 - G. by which a Compensation Party or the NSW Government is discharged from its obligations to the Financiers by operation of law;

- H. by which any Security Interest which could be registered is not registered; or
- I. any other thing causing any prejudice (including material prejudice);
- (ii) a Person dealing in any way with a Security Interest, guarantee, indemnity, judgment or negotiable instrument;
- (iii) the death, mental or physical disability, incapacity, Insolvency or any legal limitation of any Person including JHINV, a Compensation Party or the NSW Government;
- (iv) changes in the membership, name or business of any Person;
- (v) JHINV opening an account with any Financier;
- (vi) acquiescence or delay by any Financier or any other Person;
- (vii) an assignment of rights or a novation in connection with all or part of the Finance Money Debt or the Compensation Debt;
- (viii) the acceptance of the repudiation of, or termination of, any Finance Document or any other document or agreement; or
- (ix) any payment to a Financier, including any payment which at the payment date or at any time after the payment date is, in whole or part, illegal, void, voidable, avoided or unenforceable.

This clause applies regardless of whether JHINV, a Compensation Party or the NSW Government is aware of, has consented to or is given notice of any act, omission, matter or thing referred to in this clause. This clause does not limit the obligations of a Compensation Party or the NSW Government under this deed.

- (b) Subject to this deed, the Financiers may act freely in their interests in relation to any matter concerning the Finance Money Debt without regard to the interests of a Compensation Party or the NSW Government or the terms of the Compensation Debt and without incurring any liability to a Compensation Party or the NSW Government.

9.2 Payments

The Fund Trustee and the NSW Government agree to make any payments required under this deed:

- (a) to, or as directed by, the Guarantee Trustee;
- (b) in full without set off or counterclaim, and without any deduction in respect of Taxes unless prohibited by law; and
- (c) in the currency in which it receives or recovers payment in respect of the Compensation Debt.

9.3 Reinstatement of rights

Under any law relating to Insolvency, a Person may claim that a transaction (including a payment) in connection with this deed or the Finance Money Debt is void or voidable. If such a claim is made and upheld, conceded or compromised, then the Financiers are immediately entitled as against each Compensation Party and the NSW Government to the rights under this deed in respect of the Finance Money Debt to which they were entitled immediately before the transaction. On request from the Financiers, each Compensation Party and the NSW Government agrees to do anything reasonably required and at the cost of the Financiers (including signing any document) to restore to the Financiers any right the Financiers held under this deed immediately before the transaction.

This clause 9.3 applies whether or not the Guarantee Trustee or a Financier, knew, or ought to have known, that the transaction would or may be void or voidable.

9.4 Set-off

A Financier may set off any amount due for payment by the Financier to a Compensation Party against any amount due for payment by that Compensation Party to the Financier. This does not restrict any right of set-off which may arise at law.

9.5 Discretion in exercising rights

A Financier may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions), unless this deed expressly states otherwise.

9.6 Partial exercising of rights

If any party or a Financier does not exercise a right or remedy fully or at a given time, that party or the Financier (as the case may be) may still exercise it later.

9.7 Remedies cumulative

The rights and remedies of each party and the Financiers under this deed are in addition to other rights and remedies given by law independently of this deed.

9.8 Variation and waiver

Unless this deed expressly states otherwise, a provision of this deed, or right created under it, may not be waived or varied except in writing signed by the party or parties to be bound and with the prior written consent of the other parties.

For the avoidance of doubt, but subject to any requirement for the Guarantee Trustee to obtain instructions and/or consent from all or a specified majority of the Financiers as referred to in clause 7.3, this clause 9.8 does not require a Financier to sign any such waiver or variation.

10. INCONSISTENT LAW

10.1 Inconsistent law

To the extent permitted by law, this deed prevails to the extent it is inconsistent with any law.

10.2 Supervening legislation

Any present or future legislation which operates to vary the obligations of a Compensation Party or the NSW Government in connection with this deed with the result that the Financiers' 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.

11. NOTICES

- (a) A notice, approval, consent, nomination or other communication (including a Financier Nomination Letter) **(Communication)** to a Person relating to this deed:
- (i) must state that it relates to this deed and state the relevant clause in this deed;

- (ii) must be signed by an Authorised Officer;
 - (iii) must be in legible writing; and
 - (iv) must be in English.
- (b) Communications must be addressed as follows:

If the Communication is to NSW Government then it must be addressed as follows:

Name: The State of New South Wales, c/- The Cabinet Office
Attention: Deputy Director-General (Legal)
Address: Level 39, Governor Macquarie Tower, Farrer Place, Sydney, NSW 2000
Facsimile: (61) (02) 9228 3062

unless the NSW Government has notified the other parties of new contact details, in which case the Communication must be addressed in the manner last notified by the NSW Government.

If the Communication is to the Fund Trustee then it must be addressed as follows:

Name: Asbestos Injuries Compensation Fund Limited
Attention: Chairman
Address: Level 3, 22 Pitt Street, Sydney, NSW 2000
Facsimile: (61) (02) 8274 5217

unless the Fund Trustee has notified the other parties of new contact details, in which case the Communication must be addressed in the manner last notified by the Fund Trustee.

A copy of any such Communication to the Fund Trustee must promptly be sent to the NSW Government in accordance with this clause 11.

If the Communication is to JHINV then it must be addressed as follows:

Name: James Hardie Industries N.V.
Attention: The Chairman and the Chief Financial Officer
Addresses: Atrium, 8th floor, Strawinskyiaan 3077, 1077ZX Amsterdam, The Netherlands

and

Level 3, 22 Pitt Street, Sydney, NSW 2000

Facsimile: (61) (02) 8274 5218

unless JHINV has notified the other parties of new contact details, in which case the Communication must be addressed in the manner last notified by JHINV.

If the Communication is to the Guarantee Trustee then it must be addressed as follows:

Name: AET Structured Finance Services Pty Limited

Attention: Corporate Trust

Address: 80 Alfred Street, Milsons Point NSW 2061

Facsimile: (61) (02) 9028 5942

unless the Guarantee Trustee has notified the other parties of new contact details, in which case the Communication must be addressed in the manner last notified by the Guarantee Trustee.

If the Communication is to a Financier then it must be addressed as specified in the relevant Financier Nomination Letter, unless the Financier has subsequently notified the other parties of new contact details, in which case the Communication must be addressed in the manner last notified by the Financier.

If the Communication is to a Replacement Trustee or a New Guarantee Trustee then it must be addressed as specified in the relevant Accession Deed, unless the Replacement Trustee or New Guarantee Trustee has subsequently notified the other parties of new contact details, in which case the Communication must be addressed in the manner last notified by the Replacement Trustee or New Guarantee Trustee.

(c) If the Communication is sent by the sender it shall be deemed to be received by the receiver:

- (i) if the Communication is hand delivered, upon delivery to the receiving party;
- (ii) if the Communication is sent by facsimile, upon the successful completion of the relevant transmission;
- (iii) if the Communication is sent by registered mail within Australia, 2 business days after the registration of the notice of posting; and

(iv) if the Communication is sent by ordinary mail within Australia, 3 business days from then including the date of postage, provided that where a notice to a party must be copied to another Person, each such notice will only be given at the time the last notice is received.

(d) For the avoidance of doubt, a Communication shall not be sent by electronic email.

12. GOVERNING LAW AND JURISDICTION

12.1 Governing law

This deed is governed by the laws of New South Wales.

12.2 Submission to jurisdiction

Each party and Financier submits to the non-exclusive jurisdiction of courts exercising jurisdiction in New South Wales, and waives any right to claim that those courts are an inconvenient forum.

12.3 Service

(a) A document may be served on a party or a Financier by delivering it to that party at its address in clause 11.

(b) This clause 12.3 does not prevent another mode of service.

13. COUNTERPARTS

This deed may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

14. GENERAL

14.1 Severability

(a) If a provision of this deed is invalid, illegal or unenforceable, then that provision to the extent of the invalidity, illegality or unenforceability must be ignored in the interpretation of this deed.

(b) All the other provisions of this deed remain in full force and effect.

14.2 No waiver

- (a) A party's agreement to waive a right or entitlement under this deed is only effective if that party gives written notice of that waiver to the party seeking the benefit of the waiver.
- (b) Waiver by a party of anything required to be done under this deed is not a waiver of any other thing required to be done under this deed.
- (c) Paragraph (b) applies whether the other act or thing required to be done under this deed is of the same or a different nature as the act or thing waived.
- (d) A failure or delay in exercising a right arising from a breach of this deed is not a waiver of that right.
- (e) The parties must not waive this clause 14.

14.3 Further assurances

Each party and Financier must do everything necessary to give full effect to this deed.

14.4 Entire agreement

- (a) This deed embodies the entire agreement between the Fund Trustee and the NSW Government on the one part, and the Guarantee Trustee and the Financiers on the other part.
- (b) This deed supersedes all previous agreements.

14.5 Cumulative rights

A right, power, discretion and remedy arising out of this deed in favour of a party or a Financier:

- (a) is cumulative; and
- (b) does not diminish any other right, power, discretion and remedy of any party or a Financier.

14.6 Certificates

A Financier or the Guarantee Trustee may give a Compensation Party or the NSW Government a certificate about an amount payable or other matter in connection with this deed, the Finance Guarantee or a Finance Document. The certificate is sufficient evidence of the amount or matter, unless it is proved to be incorrect.

14.7 Amendment of this deed

The parties can only vary a term of this deed if the variation is in writing and all parties execute an amending deed.

14.8 Confidentiality

Subject to the exceptions set out below, each party shall, and shall procure that its employees, officers, agents and advisers (each a **'Representative'**) keep strictly confidential all information provided to that party or its Representatives in relation to, or in connection with the Original Final Funding Agreement and the Final Funding Agreement, this deed and the other Related Agreements and each party shall be responsible for all acts and omissions of its Representatives in relation to such information.

A party (and its Representatives) may disclose information under or obtained in connection with the Original Final Funding Agreement and the Final Funding Agreement, this deed and the other Related Agreements as may be necessary to:

- (a) the party's related bodies corporate, professional advisors, bankers, financial advisors and financiers, if those persons undertake to keep the information disclosed confidential;
- (b) comply with any applicable law or requirement of any regulatory body (including any relevant stock exchange) and any corporate governance guidelines adopted by such bodies which are adopted by such party;
- (c) any of its employees to whom it is necessary to disclose the information, if that employee undertakes to keep the information confidential;
- (d) any Person as permitted by the written agreement of all parties; or
- (e) any Person if the content of the disclosure is or has become generally available to the public otherwise than by breach of this deed.

15. GUARANTEE TRUSTEE LIMITATION OF LIABILITY

15.1 Limitation of liability

- (a) The Guarantee Trustee enters into this deed in its capacity as trustee for the Financiers under the Guarantee Trust and will not be liable in any capacity other than as trustee for the Financiers under the Guarantee Trust.
- (b) A liability arising under or in connection with this deed is limited to and can be enforced against the Guarantee Trustee only to the extent to which it can be satisfied out of any property held by the Guarantee Trustee out of which the Guarantee Trustee is actually indemnified for the liability. This limitation of the Guarantee Trustee's liability applies despite any other provision of this deed and extends to all liabilities and obligations of the Guarantee Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this deed.
- (c) The parties (other than the Guarantee Trustee) may not sue the Guarantee Trustee in any capacity other than as trustee of the Guarantee Trust, including seeking the appointment of a receiver (except in relation to property of the Guarantee Trust), a liquidator, an administrator or any other similar person to the Guarantee Trustee or prove in any liquidation of or affecting the Guarantee Trustee (except in relation to the property of the Guarantee Trust).
- (d) The parties waive their rights and release the Guarantee Trustee from any personal liability in respect of any loss or damage which any of them may suffer as a consequence of a failure of the Guarantee Trustee to perform its obligations under this deed, which cannot be paid or satisfied out of any property of the Guarantee Trust held by the Guarantee Trustee.
- (e) The provisions of this clause 15.1 will not apply to any obligation or liability of the Guarantee Trustee to the extent to which such obligation or liability:
 - (i) arises as a result of the Guarantee Trustee's fraud, gross negligence or wilful misconduct; or
 - (ii) cannot be satisfied out of any property held by the Guarantee Trustee as a result of the Guarantee Trustee's fraud, gross negligence or wilful misconduct.

- (f) No act or omission of the Guarantee Trustee (including any related failure to satisfy its obligations or breach of representation or warranty under this deed) will be considered fraud, gross negligence or wilful misconduct of the Guarantee Trustee to the extent to which the act or omission was caused or contributed to by any failure of any party (other than the Guarantee Trustee) or any other person to fulfil its obligations relating to the Guarantee Trust or by any other act or omission of any party (other than the Guarantee Trustee) or any other person having obligations relating to the Guarantee Trust.
- (g) Any fraud, gross negligence or wilful misconduct of an attorney, agent or delegate appointed by the Guarantee Trustee in accordance with this deed is not, and is not to be deemed to be, an act on behalf of the Guarantee Trustee for the purposes of this deed and does not create rights or obligations on any party to this deed nor expose the Guarantee Trustee to any personal liability, provided that:
 - (i) nothing in this paragraph (g) relieves the Guarantee Trustee from any liability to the extent of any fraud, gross negligence or wilful misconduct of the Guarantee Trustee in the selection, appointment, oversight or supervision (according to the standard set out in clause 7.7) of any such attorney, agent or delegate; and
 - (ii) in accordance with clause 7.8.1(j), the Guarantee Trustee must take all reasonable steps to recover compensation from any such attorney, agent or delegate.

15.2 Guarantee Trustee's knowledge

The Guarantee Trustee will only be considered to have knowledge or awareness of, or notice of, any thing, or grounds to believe any thing, by virtue of the officers of the Guarantee Trustee having day to day responsibility for the administration of the Guarantee Trustee having actual knowledge, actual awareness or actual notice of that thing, or grounds or reason to believe that thing (and similar references will be interpreted in this way).

15.3 Reliance on notices

Where any notice is provided by any of the parties (other than the Guarantee Trustee) to the Guarantee Trustee and the notice has been executed by an Authorised Officer of that party then the Guarantee Trustee may assume that the notice has been properly prepared

and considered by that party and the Guarantee Trustee is not required to investigate further.

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Executed as a deed

Each person executing this deed states that the person has no notice of the revocation, termination or suspension of the authority pursuant to which the person executes this deed.

Signed, sealed and delivered by
The Honourable Robert John Debus MP,
Attorney-General of New South Wales,
for The State of New South Wales

/s/ Robert J. Debus

Signed, sealed and delivered by Asbestos Injuries Compensation Fund Limited in its capacity as trustee for the **Charitable Fund**

/s/ P. W. Baker

Name: P. W. Baker
Title: Director

/s/ Joanne Marchione

Name: Joanne Marchione
Title: Director

Signed, sealed and delivered by James Hardie Industries N.V.

/s/ Meredith Hellicar

Name: Meredith Hellicar
Title: Attorney

/s/ Russell Chenu

Name: Russell Chenu
Title: Member of Managing Board and Attorney

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Signed, sealed and delivered by AET Structured Finance Services Pty Limited

/s/ Stuart Howard

Name: Stuart Alexander Howard

Title: Authorised Officer

/s/ Yvonne Drake

Name: Yvonne Drake

Title: Authorised Officer

[Common Seal of AET Structured Finance]
Services Pty Limited A.B.N. 12 106 424 088]

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SCHEDULE 1
FINANCIER NOMINATION LETTER

[Date]

To: [Financier]

Intercreditor Deed — Financier Nomination Letter

We refer to the Intercreditor Deed between the State of New South Wales, Asbestos Injuries Compensation Fund Limited, ourselves and AET Structured Finance Services Pty Limited (**Guarantee Trustee**) dated [insert date] (**Intercreditor Deed**).

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

We nominate the following document as a finance document:

Name: [insert details]

Date: [insert details]

Parties: [insert details]

The agreement described above, and each document named or referred to as a ["Finance Document"] in that agreement, is a Finance Document for the purposes of the Intercreditor Deed; and

We nominate you as a "Financier" in relation to each Finance Document referred to above.

Please confirm your acceptance of the above nomination, and the benefit and obligations of the Intercreditor Deed, by signing and returning the attached copy of this letter to the Guarantee Trustee.

Clauses 1 (**Interpretation**) and 12 (**Governing law and Jurisdiction**) of the Intercreditor Deed apply to this letter as they were fully set out in this letter.

Executed as deed poll for and on behalf of

JAMES HARDIE INDUSTRIES N.V.
with its corporate seat in Amsterdam

by its Authorised Officer:

Name:

Title:

Endorsement by the Guarantee Trustee:

We undertake that, if required by clause 2.2(b) of the Intercreditor Deed, we will send a copy of the signed Financier Nomination Letter to the State of New South Wales and the Fund Trustee (each as defined in the Intercreditor Deed).

Executed as a deed poll for and on behalf of

AET STRUCTURED FINANCE SERVICES PTY LIMITED

by its Authorised Officer:

Name:

Title:

Acceptance by the nominated Financier

We accept and agree to the above nomination.

We acknowledge becoming entitled to the benefit of the Intercreditor Deed and incurring obligations and giving rights under the Intercreditor Deed for valuable consideration received from the parties to the Intercreditor Deed.

We further acknowledge that the Intercreditor Deed does not:

(a) affect the status or ranking of the Compensation Debt as an ordinary unsecured claim (*concurrente vordering*) against JHINV;

- (b) affect the status or ranking of the Compensation Debt as against the other debts (including the Finance Money Debt) or the other creditors of JHINV (including the Financiers) in an Insolvency of JHINV; nor
- (c) constitute a subordination agreement within the meaning of section 3:277 (2) Dutch Civil Code.

We accept the benefit and obligations of the Intercreditor Deed, and agree to:

- (i) be bound by the terms of that deed;
- (ii) promptly respond to any requests from the Guarantee Trustee for (A) instructions as to the manner in which the Guarantee Trustee should exercise any of its rights or benefits under the Intercreditor Deed, or (B) any consent required from the Financiers (and agree not to unreasonably withhold or delay such consent); and
- (iii) agree that if we fail to promptly so respond, the Guarantee Trustee may exercise such rights or benefits in accordance with the instructions of the requisite majority of the Financiers who do so respond in accordance with the Finance Guarantee.

Executed as a deed poll for and on behalf of
[Insert name of Financier]

by its Authorised Officer:
Name:
Title:

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SCHEDULE 2
ACCESSION DEED

[Date]

To: [Existing parties to the Intercreditor Deed]

Intercreditor Deed — Accession as [Replacement Trustee / New Guarantee Trustee]

We refer to the Intercreditor Deed between the State of New South Wales, Asbestos Injuries Compensation Fund Limited, James Hardie Industries N.V. and AET Structured Finance Services Pty Limited (**Guarantee Trustee**) dated [insert date] (**Intercreditor Deed**).

We acknowledge becoming a party to the Intercreditor Deed and incurring obligations and giving rights under the Intercreditor Deed for valuable consideration received from the other parties to the Intercreditor Deed.

We hereby undertake, for the benefit of existing parties to the Intercreditor Deed, that on and from the date of this letter, we will perform and comply with all the duties and obligations [of a Replacement Trustee and the Fund Trustee] [expressed to be assumed by [a Replacement Trustee / New Guarantee Trustee]] under the Intercreditor Deed.

Clauses 1 (**Interpretation**) and 12 (**Governing law and Jurisdiction**) of the Intercreditor Deed apply to this letter as they were fully set out in this letter.

Executed as a deed poll for and on behalf of

[NAME OF REPLACEMENT TRUSTEE / NEW GUARANTEE TRUSTEE]

by its Authorised Officer:

Name:

Title:

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SCHEDULE 3
FORM OF POWER OF ATTORNEY

Appointer: [Asbestos Injuries Compensation Fund Limited in its capacity as trustee for the Charitable Fund] / [*name of replacement trustee*] as replacement trustee of the Charitable Fund] / [*name of New Person*] as [successor] to [Asbestos Injuries Compensation Fund Limited] / [*name of replacement trustee*] in its capacity as trustee for the Charitable Fund] ([*ABN*]) of [*address of Appointer*]

Attorney: AET Structured Finance Services Pty Limited (ABN 12 106 424 088) (**Guarantee Trustee**) of 80 Alfred Street, Milsons Point NSW 2061 and each Authorised Officer of the Guarantee Trustee from time to time individually

Date: [*date of power of attorney*]

1. APPOINTMENT

Subject to clause 4, the Appointer irrevocably and for valuable consideration appoints the Attorney to be the Appointer's attorney. This appointment is of each Attorney individually and any two or more of them jointly.

2. WHAT THE APPOINTER MAY DO

The Attorney may:

- (a) exercise the right to cast all and any votes attaching to, or to be cast in respect of, the Compensation Debt during the Insolvency of JHINV at, or in connection with, any meeting, proceeding or distribution concerning the Insolvency of JHINV for so long as any Finance Money Debt remains outstanding and to the exclusion of the right of the Appointer to exercise all of any such votes for so long as any Finance Money Debt remains outstanding;
- (b) do anything necessary or incidental to such exercise including, without limitation, signing and delivering documents;
- (c) provide an original or copy of this power of attorney to an Insolvency Official for the purpose of establishing the right and entitlement of the Attorney during the

Insolvency of JHINV to exercise the right to cast all and any votes attaching to, or to be cast in respect of, the Compensation Debt during the Insolvency of JHINV at, or in connection with, any meeting, proceeding or distribution concerning the Insolvency of JHINV; and

- (d) do anything which in the Attorney's opinion is necessary or desirable to ensure the validity and enforceability of this power of attorney under any applicable law (including, without limitation, stamping or registering this power of attorney or filing this power of attorney with any government authority).

Subject to the terms and conditions set out in the Intercreditor Deed, the Attorney may do these things in the name and on behalf of the Appointer or, if necessary or desirable under any applicable law in the Attorney's opinion, the Attorney's name.

3. GENERAL

3.1 Attorney's acts valid

Subject to the terms and conditions set out in the Intercreditor Deed, the Appointer declares that all acts, matters and things done by the Attorney in exercising powers under this power of attorney and which are in accordance with the terms and conditions set out in the Intercreditor Deed, will be as valid and effective as if they had been done by the Appointer.

3.2 Benefit to the Attorney

The Attorney may exercise a power under this power of attorney even if:

- (a) it involves a conflict of duty; or
- (b) the Attorney has a personal interest in the doing of that act.

3.3 Governing law

This deed is governed by the law in force in New South Wales. Each party submits to the non-exclusive jurisdiction of the courts of that place.

4. COMPLIANCE WITH INTERCREDITOR DEED

Notwithstanding any other provision of this Power of Attorney, the Attorney must exercise the rights granted to it under this Power of Attorney in accordance with, and subject to, the terms and conditions set out in the Intercreditor Deed.

5. INTERPRETATION

In this power of attorney:

Authorised Officer has the meaning given to it in the Intercreditor Deed.

Charitable Fund has the meaning given to it in the Final Funding Agreement

Compensation Debt has the meaning given to it in the Intercreditor Deed.

Final Funding Agreement has the meaning given to it in the Intercreditor Deed.

Finance Money Debt has the meaning given to it in the Intercreditor Deed.

Insolvency has the meaning given to it in the Intercreditor Deed.

Insolvency Official has the meaning given to it in the Intercreditor Deed.

Intercreditor Deed means the Intercreditor Deed between the State of New South Wales, Asbestos Injuries Compensation Fund Limited, James Hardie Industries N.V and AET Structured Finance Services Pty Limited dated [*insert date*].

JHINV has the meaning given to it in the Intercreditor Deed.

EXECUTED as a deed poll

Signed, sealed and delivered by [*name of Appointer*]

[*name of signatory*]
[*capacity of signatory*]

[*name of signatory*]
[*capacity of signatory*]

ATTACHMENT A
DICTIONARY AND INTERPRETATION
(CLAUSE 1)

1. DICTONARY

In this deed:

Accession Deed means a letter (executed as a deed poll) in the form of Schedule 2 to this deed.

Annual Payment has the meaning given to it in the Final Funding Agreement.

Attorney has the meaning given to it in clause 8.1(a).

Audited Financial Statements means, in respect of a Person and a Financial Year, the audited consolidated financial statements of that Person for that Financial Year prepared in accordance with the following generally accepted accounting principles (**GAAP**), consistently applied throughout that Financial Year:

- (a) where that Person is Listed at the time the relevant audit report is signed, the generally accepted accounting principles used in that Person's published financial reports; or
- (b) where that Person is not Listed at that time and paragraph (c) does not apply, US GAAP or such other GAAP as is commonly applied by multinational companies at that time in respect of their financial statements; or
- (c) where that Person is not Listed at that time and it and its subsidiaries operate wholly or predominantly in one jurisdiction, the generally accepted accounting principles of that jurisdiction.

Authorised Officer means:

- (a) in the case of the Guarantee Trustee or a Financier, a director or secretary, or an officer 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 nominated by the Guarantee Trustee or the Financier, as the case may be, as an Authorised Officer for the purposes of this deed;
- (b) in the case of the Fund Trustee, a Person appointed by the Fund Trustee and notified to the Guarantee Trustee and the Financiers as an Authorised Officer for

the purposes of this deed, and whose specimen signature is provided with such notification;

- (c) in the case of JHINV, a managing director of JHINV or a person appointed by JHINV and notified to the Fund Trustee, the NSW Government, the Guarantee Trustee and the Financiers as an Authorised Officer for the purposes of this deed, and whose specimen signature is provided with such notification; and
- (d) in the case of the NSW Government, any person who is a member of the Chief Executive Service or the Senior Executive Service of the New South Wales Public Service at the time the relevant act pursuant to this deed is to be undertaken. The Guarantee Trustee may rely on a statement from any person it reasonably believes is a member of the Chief Executive Service or the Senior Executive Service of the New South Wales Public Service that such person is in fact a member of the Chief Executive Service or the Senior Executive Service of the New South Wales Public Service.

Business Day means a day on which banks are open for business excluding Saturdays, Sundays and public holidays in Sydney, Australia and Amsterdam, The Netherlands.

Charitable Fund has the meaning given to it in the Final Funding Agreement.

Communication has the meaning given to it in clause 11(a).

Compensation Debt means at any time all amounts then due for payment or which will or may become due for payment or that remain unpaid by JHINV in connection with the Guarantee (including all amounts payable under the guarantee of payment of the Fund Guaranteed Money in accordance with the Guarantee), provided that once such amounts have been ascribed a value by an Insolvency Official for the purposes of an Insolvency of JHINV (including acceptance of a proof of debt for such amounts or a lesser amount by an Insolvency Official), a reference to the Compensation Debt is a reference to amounts having that value, provided that if interest is payable on such amount under applicable law, the Compensation Debt also includes such interest as is payable under applicable law (including all interest accruing on or subsequent to the filing of a petition initiating any proceeding in bankruptcy or insolvency or any like proceeding whether or not such interest is an allowed claim in such proceeding).

For the avoidance of doubt, the Compensation Debt is only payable once to the Fund Trustee or the NSW Government for the sole benefit of the Fund Trustee in accordance with the terms of the Guarantee, the Final Funding Agreement and the other Related Agreements and nothing in this deed obliges JHINV to pay the same amount to more than one Person.

Compensation Parties means, subject to clause 5.2, the Fund Trustee and the NSW Government.

Controlled Entity means in respect of a Person, another Person in respect of which the first-mentioned Person is required to consolidate in its Audited Financial Statements but, in the case of JHINV, does not include any Liable Entity (as defined in the Final Funding Agreement) or the Fund Trustee. For the avoidance of doubt, JHINV is not a Controlled Entity of the JHINV Group.

Cross Guarantee (Fund Guaranteed Money) means a guarantee or indemnity (or other covenant to secure the satisfaction of any payment or obligation) given by a member of the JHINV Group (other than JHINV) (**Subsidiary Guarantor**):

- (a) in favour of the Fund Trustee in respect of the Fund Guaranteed Money;
- (b) on substantially the same terms as a guarantee or indemnity (or other covenant to secure the satisfaction of any payment or obligation) given by the Subsidiary Guarantor in respect of financial accommodation provided by a Person to another member of the JHINV Group;
- (c) which terminates when the guarantee, indemnity or other covenant referred to in paragraph (b) terminates whether by express provision or by operation of law, provided that the Fund Trustee and the NSW Government have entered into a deed on substantially the same terms as this deed in relation to the benefit of any such guarantee or indemnity (or other covenant to secure the satisfaction of any payment or obligation).

Deed of Accession has the meaning given to it in the Final Funding Agreement.

Discretionary Fund has the meaning given to it in the Final Funding Agreement.

Excluded Lender means any Person to the extent that such Person:

- (a) is a trade creditor;
- (b) has provided any debt on terms that it is to be subordinated to the Compensation Debt;
- (c) has provided any debt or other borrowing which arises pursuant to a derivative:
 - (i) relating to equity interests in a member of the JHINV Group; or
 - (ii) which is recognised as equity under applicable accounting standards;

- (d) is a member of the JHINV Group;
- (e) is or becomes a creditor in respect of an amount owing to such Person in its capacity as a shareholder of JHINV or another member of the JHINV Group otherwise than on arm's length terms;
- (f) provides financial accommodation to a Controlled Entity of the JHINV Group and receives the benefit of a guarantee or indemnity (or other covenant to secure the satisfaction of any payment or obligation) given by a JHINV Group member (other than JHINV), where there is no Cross Guarantee (Fund Guaranteed Money) provided to the Fund Trustee on substantially the same terms as the Guarantee; or
- (g) acquires the rights, as a creditor, of any such Person referred to in any of paragraphs (a) to (f) inclusive or their assignees.

For avoidance of doubt, if a Person has acceded as a Financier in accordance with clause 2.2. in relation to particular debt or borrowings which satisfies the criteria set out clause 2.2 and would not make the relevant Person an Excluded Lender ("**Qualifying Debt**") and separately has provided financial accommodation falling within the description of paragraph (f) of this definition of Excluded Lender ("**Non-Qualifying Debt**"):

- (i) that Person will only be an Excluded Lender in respect of the Non-Qualifying Debt and will continue to be a Financier in respect of the Qualifying Debt; and
- (ii) if that Person waives or releases any rights it may have under any guarantee or indemnity within the description of paragraph (f), then to the extent it would have been an Excluded Lender by virtue of falling within paragraph (f) of this definition of Excluded Lender, that Person will cease to be an Excluded Lender in respect of the relevant financial accommodation.

Final Funding Agreement means the deed dated 21 November 2006 between the NSW Government, JHINV, the Performing Subsidiary and the Fund Trustee which amended and restated the Original Final Funding Agreement.

Finance Document in relation to a Financier means each agreement to which the Financier (whether or not together with any other Person) is a party under which liabilities are owed by JHINV (or another member of the JHINV Group the performance of whose obligations has been guaranteed by JHINV) where such liabilities are, or are

required to be, included in the JHINV Group's financial statements or notes thereto as debt or borrowings (including bank loans, letter of credit facilities, derivatives and debt capital markets issues which are, or are required to be, so included or noted) and which is nominated as a "Finance Document" in a Financier Nomination Letter. For the avoidance of doubt, the Finance Guarantee is not a Finance Document.

Finance Guarantee means the deed dated on or about the date of this deed given by JHINV, among other things, guaranteeing the obligations of other members of the JHINV Group in favour of the Guarantee Trustee and the Financiers.

Finance Money Debt means at any time, the total of all amounts then due for payment or which will or may become due for payment or that remain unpaid by JHINV (or another member of the JHINV Group where payment of such amounts has been guaranteed by JHINV under the Finance Guarantee) to any Financier (for its own account or for the account of another Person) pursuant to any Finance Document or to the Guarantee Trustee (for the account of a Financier) under the Finance Guarantee, provided that once such amounts have been ascribed a value by an Insolvency Official for the purposes of an Insolvency of JHINV (including acceptance of a proof of debt for such amounts or a lesser amount by an Insolvency Official), a reference to the Finance Money Debt is a reference to amounts having that value, as ascribed from time to time, provided that in determining such value for the purposes of an Insolvency of JHINV:

- (a) if any Financier (for its own account or for the account of another Person) or the Guarantee Trustee (for the account of a Financier):
 - (i) fails to lodge a proof of debt (or similar claim) in an Insolvency of JHINV within the time provided for under applicable law (as such time may be extended by a relevant Insolvency Official); or
 - (ii) lodges a proof of debt (or similar claim) in an Insolvency of JHINV and such proof of debt has not been accepted in whole or part by the relevant Insolvency Official (and such decision is not subject to appeal to, or review by, that Insolvency Official or another relevant Insolvency Official and the time for commencing any such appeal, or requesting any such review, has passed),

such amount shall be deemed to be zero or, in the case of subparagraph (ii), such amount shall be deemed to be reduced to the extent that it is not accepted by the relevant Insolvency Official;

- (b) if interest is payable on such amount under applicable law, the Finance Money Debt also includes such interest as is payable under applicable law (including all interest accruing on or subsequent to the filing of a petition initiating any proceeding in bankruptcy or insolvency or any like proceeding whether or not such interest is an allowed claim in such proceeding);
- (c) if a Financier enters into, or is otherwise bound by, any conversion of debt to equity (which is not also a distribution subject to paragraph (d) below), then Finance Money Debt shall be deemed to be reduced by the full amount of the face value of the debt (and any applicable interest) so converted; or
- (d) if a Financier receives any money or other property or any other right pursuant to a Reconstruction Event, then Finance Money Debt (and any applicable interest) shall be deemed to be reduced by the full amount of the fair market value of the money, property or right acquired as at the date of receipt.

This definition applies:

- (i) irrespective of the capacity in which JHINV, the other member of the JHINV Group or the Financier became entitled to the amount concerned;
- (ii) irrespective of the capacity in which JHINV, the other member of the JHINV Group or the Financier became liable in respect of the amount concerned;
- (iii) whether JHINV, the other member of the JHINV Group or the Financier is liable as principal debtor, as surety or otherwise;
- (iv) whether JHINV or other member of the JHINV Group is liable alone, or together with another Person;
- (v) even if JHINV or another member of the JHINV Group owes an amount or obligation to the Financier because it was assigned to the Financier, whether or not:
 - A. the assignment was before, at the same time as, or after the date of this deed; or
 - B. JHINV or another member of the JHINV Group consented to or was aware of the assignment; or

- C. the assigned obligation was secured;
- (vi) even if this deed was assigned to the Financier, whether or not:
 - A. JHINV or another member of the JHINV Group consented to or was aware of the assignment; or
 - B. any of the Finance Money Debt was previously unsecured; or
- (vii) if JHINV or another member of the JHINV Group is a trustee, whether or not it has a right of indemnity from the trust fund.

Financial Year means a year ending on 31 March, or if there is any change from time to time to the Financial Year of the JHINV Group, the twelve-month period that ends on the new end date adopted by JHINV except that the first such Financial Year after that change shall be a period of not less than six months and not greater than 18 months ending on the new end date.

Financier means each Person nominated as a “Financier” in a Financier Nomination Letter in accordance with clause 2.2(b) of this deed. A reference to a “Financier” includes the Guarantee Trustee or another agent or trustee acting on behalf of the Financier, but excludes an Excluded Lender.

Financier Nomination Letter means a letter (executed as a deed poll by each party to it) in the form set out in Schedule 1 to this deed and, for the avoidance of doubt, includes, without limitation, such a letter provided to any successor or permitted assign of a Financier.

Fund Guaranteed Money means, subject to the Performing Subsidiary Intercreditor Deed, all amounts that:

- (a) at any time;
- (b) for any reason or any circumstance in connection with any agreement, transaction, instrument (whether negotiable or non-negotiable), document, event, act, omission, matter or thing whatsoever;
- (c) whether at law or otherwise; and
- (d) whether or not of a type but in the contemplation of the parties of the date of this deed,

are payable, are owing but not currently payable, are contingently owing, or remain unpaid by the Performing Subsidiary to the Fund Trustee under the Final Funding Agreement.

Fund Trustee includes any Replacement Trustee.

Guarantee means the guarantee dated 21 November 2006 given by JHINV, among other things, guaranteeing the obligations of the Performing Subsidiary under the Final Funding Agreement or, subject to compliance with clause 6.1, a guarantee provided in replacement of or in substitution for, or in addition to, that guarantee in accordance with the Final Funding Agreement.

Guarantee Trust means the James Hardie Guarantee Trust established under the Finance Guarantee.

Guarantee Trustee means AET Structured Finance Services Pty Limited or such other Person acting as trustee under the Finance Guarantee (including any New Guarantee Trustee).

Heads of Agreement means the non-binding agreement entered into on 21 December 2004 between JHINV, the NSW Government, the Australian Council of Trade Unions, Unions New South Wales and a representative of certain asbestos victims groups.

Independent Expert means any Person who:

- (a) has relevant and substantive experience and expertise in insolvency proceedings generally and, if applicable, financial restructuring appropriate to undertake the determination referred to in clause 8;
- (b) except to the extent he or she is entitled to be paid fees or reimbursed or indemnified for costs and expenses by the NSW Government in accordance with this deed, has no interest or duty which to his or her knowledge conflicts or may conflict with his or her functions as contemplated under this deed; and
- (c) is not a member of a firm, or a director or employee of a firm or a body owned by the firm, performing any role as advisor, banker, custodian or trustee to the JHINV Group or (except for roles undertaken in the ordinary course of business for state owned business enterprises) the NSW Government during a period of 3 years prior to the date of appointment under clause 8.

Insolvency Event means, in respect of a Person, the occurrence in respect of that Person of any one or more of the events referred to in paragraphs (a) to (h) of the definition of "Insolvent".

Insolvency Official means a custodian, receiver, receiver and manager, trustee, liquidator, provisional liquidator, administrator or any other officer appointed in connection with the Insolvency of JHINV and includes, without limitation:

- (a) a receiver in bankruptcy (*curator*), an administrator (*bewindvoerder*) and a liquidator (*vereffenaar*) appointed under Dutch law or a trustee or debtor in possession in any proceedings under Chapter 7 or Chapter 11 of the US Bankruptcy Code in relation to JHINV (or another member of the JHINV Group in circumstances where the US bankruptcy court has jurisdiction to make an order affecting the nature, timing, quantum or ranking of creditors' claims against JHINV); and
- (b) where the context so requires, a supervisory judge or a court of competent jurisdiction exercising jurisdiction in respect of the Insolvency of JHINV.

A Person is **Insolvent** if the Person:

- (a) admits in writing its inability to pay its debts generally as they become due (otherwise then as contemplated in clause 16.6 of the Final Funding Agreement);
- (b) was established under Dutch law and files a petition with any court in the Netherlands in relation to its bankruptcy (*faillissement*) or seeking an order for a suspension of payments (*surseance van betaling*);
- (c) files, or consents by answer or otherwise to the filing against it of, a petition for relief or insolvent reorganisation or insolvent arrangement or any other petition in bankruptcy, for liquidation or to take advantage of any bankruptcy, insolvency, insolvent reorganisation, insolvent moratorium or other similar law of any jurisdiction (including, without limitation, a filing by the Person under Chapter 7 or Chapter 11 of the US Bankruptcy Code), provided that where the filing is a filing under Chapter 11 of that Code, the Person:
 - (i) is at the time of filing unable to pay its debts generally as and when they become due; or
 - (ii) in the case of JHINV, after it makes such a filing, fails to pay a JHINV Contribution or other amount under the JHINV Guarantee when such payment would (but for the moratorium granted as a result of that filing) have been due for 30 days after that due date,

and also provided that, in any such filing under Chapter 11 of that Code a Person is Insolvent no later than the earliest date as of which creditors may vote on any matter or accept or reject a plan of reorganisation;

- (d) makes an assignment for the benefit of its creditors generally;
- (e) consents to the appointment of a custodian (not being a nominee for the person), receiver, receiver and manager, trustee or other officer with similar powers with respect to it or with respect to a substantial part of its property;
- (f) consents to the appointment of an insolvency administrator or such an insolvency administrator is appointed and that appointment is not terminated within 28 days;
- (g) is adjudicated as insolvent or to be liquidated, in each case, by a court of competent jurisdiction; or
- (h) is subject to a Wind-Up Event,

and **Insolvency** has a corresponding meaning.

James Hardie Successor means any entity which will or might pursuant to a restructuring or by any other transaction proposed under, or in connection with, the Insolvency of JHINV acquire the whole or a substantial part of the business or assets of a member of the JHINV Group and which offers or acknowledges an entitlement of the shareholders of JHINV to become shareholders of that entity (disregarding any shareholders to whom it is illegal in their jurisdiction of residence to become such shareholders).

JHIL has the meaning specified in Recital A.

JHINV includes any Parent Entity which has acceded to the Final Funding Agreement in accordance with that document.

JHINV Contribution has the meaning given to it in the Final Funding Agreement.

JHINV Group means JHINV and its Controlled Entities.

Liquidation means, in respect of any Person, the liquidation of all or substantially all of its assets (other than, in the case of JHINV, where the acquirer of all or substantially all of such assets has by deed of accession become bound to observe all the obligations of JHINV under this deed and the JHINV Guarantee and the other Related Agreements to which JHINV is a party) with the intention of distributing the proceeds to creditors or security holders, or a final order directing or requiring such a liquidation is made or entered or deemed to have been made or entered by any court of competent jurisdiction.

Listed means listed on a stock market of Australian Stock Exchange Limited or any approved foreign exchange (as defined under the Corporations Act 2001 of Australia).

Net Finance Money Debt has the meaning given to it in clause 4.2(a).

New Guarantee Trustee has the meaning given to it in clause 7.1(a).

New Person has the meaning given to it in clause 4.6 of the Final Funding Agreement.

Notice of Voting in Insolvency means a written notice from an Insolvency Official of any matter or matters in connection with the Insolvency of JHINV (or another member of the JHINV Group where the Insolvency of such member is being administered on a combined or consolidated basis with an Insolvency of JHINV including any proceedings or reconstruction pursuant to, or any orders under, Chapter 7 or Chapter 11 of the US Bankruptcy Code which involve both JHINV and such member) and requiring or inviting the casting of votes by creditors of JHINV (or creditors of the companies whose Insolvencies are being administered on a combined or consolidated basis) in relation to such matter or matters.

Option has the meaning given to it in clause 8.3.

Original Final Funding Agreement means the legally binding agreement entitled "Final Funding Agreement" dated 1 December 2005 between JHINV, the Performing Subsidiary and the NSW Government to which the Fund Trustee became a party on 8 June 2006.

Parent Entity means any Person which becomes the ultimate holding company of JHINV.

Performing Subsidiary means James Hardie 117 Pty Limited (formerly known as LGTDD Pty Limited (ACN 116 110 948)) of Level 3, 22 Pitt Street, Sydney NSW 2000 or any other subsidiary of JHINV substituted for that Person in accordance with the terms of the Final Funding Agreement.

Performing Subsidiary Intercreditor Deed means the deed dated on or about the date of this deed between the NSW Government, the Fund Trustee, the Performing Subsidiary, JHINV and the Guarantee Trustee in its separate capacity as trustee for certain lenders to the Performing Subsidiary (as more fully described in that deed).

Person includes any general partnership, limited partnership, corporation, limited liability company, joint venture, trust, business trust, governmental agency, co-operative, association, individual or other entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such a Person as the context may require.

Preferred Option has the meaning given to it in clause 8.3(f).

Proceeds means:

- (a) any amount (in the form of money or any other property) received or recovered by a Compensation Party in respect of the Compensation Debt during an Insolvency of JHINV;
- (b) any amount (in the form of money or any other property) received or recovered by a Compensation Party in connection with the failure by any of them or JHINV to comply with their respective obligations under this deed.

Reconstruction Event means:

- (a) the summoning of a meeting of creditors or the obtaining of an order of a court to do so for the purpose of considering any scheme or plan of arrangement for reconstruction or compromise with creditors;
- (b) a final order for relief under Chapter 11 of the US Bankruptcy Code is entered by a US court;
- (c) a filing by JHINV for a suspension of payments under Dutch law, provided that the Court grants the (provisional) suspension of payments to JHINV;
- (d) any comparable action under the laws of any other jurisdiction occurs having substantially the same effect as the orders described in paragraphs (b) and (c),

but in each case none of the aforementioned events will comprise a Reconstruction Event where the proceeding or other action is commenced or initiated by or on behalf of the Fund Trustee or the NSW Government under this deed or the JHINV Guarantee, whether acting alone or together with others, and for this purpose an order will be deemed to be final when any timely-commenced proceeding for review of such an order has been concluded without such order being subsequently dismissed, withdrawn, struck out, vacated or reversed, and the time for commencing any further proceeding for review of such order has expired.

Related Agreement means documents ancillary to the Final Funding Agreement listed in Schedule 1 to the Final Funding Agreement.

Replacement Trustee means any replacement trustee of the Charitable Fund and any New Person, in either case appointed in accordance with the Final Funding Agreement, as a substitute for Asbestos Injuries Compensation Fund Limited in its capacity as trustee for the Charitable Fund (or a previously appointed replacement trustee or New Person) as the creditor of:

- (a) the Performing Subsidiary in respect of the Fund Guaranteed Money and the Final Funding Agreement; and
- (b) JHINV in respect of the Guarantee (including all amounts payable under the guarantee of payment of the Fund Guaranteed Money).

Residual Rights has the meaning given to it in clause 4.4.

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.

Security Provider means a Person (other than JHINV) who at any time is liable by guarantee, indemnity or otherwise alone or jointly, or jointly and individually, to pay or indemnify against non-payment of the Finance Money Debt or the Compensation Debt (as the context requires).

Specified Office means the office or branch through which the Guarantee Trustee (or any New Guarantee Trustee) enters into this deed.

Specified Proportion means:

- (a) if in the Insolvency of JHINV, the votes relating to the Compensation Debt can be proportionately cast in favour of different courses of action:
 - A. 100 per cent of the amount of the Compensation Debt,
less
 - B. such percentage of the Compensation Debt, which when added to all Finance Money Debt owed by JHINV, represents the amount reasonably expected at that time (having regard to the value of the assets of JHINV available for distribution to pay the claims of ordinary unsecured creditors as estimated by the Insolvency Official (or otherwise determined or estimated for the purposes of the relevant Insolvency proceeding in accordance with applicable law) and taking into account

prior ranking claims, the likely or anticipated distribution to the Financiers by the Insolvency Official and any likely payment to the Guarantee Trust under clause 4) would be required to enable discharge and satisfaction of the Finance Money Debt in full; or

- (b) if in the Insolvency of JHINV, the votes relating to the Compensation Debt cannot be proportionately cast in favour of different courses of action, 100 per cent of the amount of the Compensation Debt.

Trust Convention means the Convention on the Law applicable to Trusts and on their Recognition 1985.

Trust Deed has the meaning given to it in the Final Funding Agreement.

US GAAP means generally accepted accounting principles as in force in the United States of America and, unless expressly otherwise provided in this deed, means those principles as in force from time to time.

Wind-Up Event means, in respect of a Person, the occurrence of any one or more of the following:

- (a) a final court order is entered that it be wound up or declared bankrupt;
- (b) a liquidator (excluding a provisional liquidator) is appointed to it and the appointment is not subsequently terminated;
- (c) a court declaration of bankruptcy is made in relation to it and is not subsequently withdrawn, struck out, dismissed, vacated or reversed;
- (d) the dissolution of such Person under Dutch law (*ontbinding*) or the law of any other jurisdiction;
- (e) the declaration of its bankruptcy under Dutch law (*faillissement*);
- (f) the Liquidation of that Person;
- (g) a final order for relief occurs or is deemed to occur in relation to it under Chapter 7 or Chapter 11 of the US Bankruptcy Code which, when implemented, will result in the Liquidation of that Person; and
- (h) any comparable action occurs under the law of any competent jurisdiction which has a substantially the same effect to paragraphs (a) to (g) of this definition,

and an order shall be deemed to be final when any timely-commenced proceeding for review of such an order has been concluded without such order being subsequently dismissed, withdrawn, struck out, vacated or reversed, and the time for commencing any further proceeding for review of such order has expired.

2. INTERPRETATION

In this deed the following rules of interpretation apply unless the contrary intention appears.

- (a) Headings are for convenience only and do not affect the interpretation of this deed.
- (b) The singular includes the plural and vice versa.
- (c) Words that are gender neutral or gender specific include each gender.
- (d) Where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
- (e) The words 'such as', 'including', 'particularly' and similar expressions are not used as nor are intended to be interpreted as words of limitation.
- (f) A reference to:
 - (i) a thing (including but not limited to a chose in action or other right) includes a part of that thing;
 - (ii) a party or a Financier includes its successors and permitted assigns;
 - (iii) a document includes all amendments or supplements to that document;
 - (iv) a clause, term, party, schedule or attachment is a reference to a clause or term of, or party, schedule or attachment to this deed;
 - (v) this deed includes all schedules and attachments to it;
 - (vi) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or

- equity or a rule of an applicable official stock exchange and is a reference to that law as amended, consolidated or replaced;
- (vii) an agreement other than this deed includes an undertaking, or legally enforceable arrangement or understanding whether or not in writing;
 - (viii) a monetary amount is in Australian dollars; and
 - (ix) the words “to prove for”, “prove” and “right of proof”, when used in connection with a Insolvency proceeding under Dutch law include, without limitation, “filing”, “filing for verification purposes” and “verification procedure”, as the context may require.
- (g) An agreement on the part of two or more persons binds them severally.
 - (h) When the day on which something must be done is not a Business Day, that thing must be done on the following Business Day.
 - (i) In determining the time of day where relevant to this deed, the relevant time of day is:
 - (i) for the purposes of giving or receiving notices, the time of day where a party receiving a notice is located; or
 - (ii) for any other purpose under this deed, the time of day in the place where the party required to perform an obligation is located.
 - (j) No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this deed or any part of it.

3. TRUST CONVENTION

It is the express intention of the parties to this deed that each trust constituted by this deed:

- (a) be recognised as a trust in accordance with the terms of this deed in any relevant jurisdiction;
- (b) qualify as a “trust” for the purpose of the Trust Convention; and

(c) be recognised as a trust in accordance with the Trust Convention in any jurisdiction where the Trust Convention applies.

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James Hardie Industries N.V.

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Strawinskylaan 3077
1077 ZX Amsterdam
The Netherlands

Tel +31 20 3012980

Fax +31 20 4042544

21 March 2007

The State of New South Wales
c/- The Cabinet Office
Level 39, Governor Macquarie Tower
Farrer Place, Sydney NSW 2000
Attention: Deputy Director-General (Legal)

Asbestos Injuries Compensation Fund Limited
Level 3
22 Pitt Street
Sydney NSW 2000
Attention: Chairman

AET Structured Finance Services Pty Limited
Level 22
207 Kent Street
Sydney NSW 2000
Attention: Corporate Trust

Strictly Private & Confidential

Dear Sirs

Intercreditor Deed

We refer to the Intercreditor Deed between the State of New South Wales, Asbestos Injuries Compensation Fund Limited, ourselves and AET Structured Finance Services Pty Limited (**Guarantee Trustee**) dated 19 December 2006 (**Intercreditor Deed**).

1. Cross-Reference Correction

Schedule 1 to the Intercreditor Deed includes an incorrect reference to "clause 2.2(b)" in the form of the endorsement to be given by the Guarantee Trustee to the Financier Nomination Letters. The reference should be to "clause 2.2(d)".

We propose that the Intercreditor Deed be amended by deleting the words "clause 2.2(b)" in the endorsement by the Guarantee Trustee in Schedule 1 to the Intercreditor Deed and inserting the words "clause 2.2(d)". If you agree to that amendment please sign and return the attached copies of this letter to us and to the Guarantee Trustee.

2. AET Change of Address

We have been advised by the Guarantee Trustee that it has changed its address details to the following:

8827213_2

AET Structured Finance Services Pty Limited
Level 22
207 Kent Street,
Sydney NSW 2000

We have been requested to inform you that under clause 11 of the Intercreditor Deed this letter constitutes the Guarantee Trustee's notification of its new contact details and therefore all further Communications should be directed to that address. The "Name", "Attention" and "Facsimile" details all remain the same as previously set out in the Intercreditor Deed.

Please also confirm your acknowledgment and agreement of the above matters by signing and returning the attached copies of this letter to us and to the Guarantee Trustee.

Clauses 1 (**Interpretation**) and 12 (**Governing law and Jurisdiction**) of the Intercreditor Deed apply to this letter as they were fully set out in this letter.

Executed as a deed.

Signed, sealed and delivered by James Hardie Industries N.V.

/s/ Benjamin Butterfield

Name: B Butterfield

Title: Director

/s/ Russell Chenu

Name: R Chenu

Title: Director

Accepted and Agreed:

**Signed, sealed and delivered by The Honourable John Hatzistergos MLC,
Attorney-General of New South Wales,
for The State of New South Wales**

/s/ John Hatzistergos

Signed, sealed and delivered by Asbestos Injuries Compensation Fund Limited in its capacity as trustee for the Charitable Fund

/s/ Peter W. Baker

Name: Peter W. Baker

Title: Director

/s/ Joanne Marchione

Name: Joanne Marchione

Title: Director

Signed, sealed and delivered by AET Structured Finance Services Pty Limited

/s/ Stuart Howard

Name: Stuart Alexander Howard

Title: Authorised Officer

/s/ Yvonne Drake

Name: Yvonne Drake

Title: Authorised Officer



LAWYERS

**PERFORMING SUBSIDIARY
INTERCREDITOR DEED**

**THE STATE OF NEW SOUTH WALES
ASBESTOS INJURIES
COMPENSATION FUND LIMITED
(ACN 117 363 461)
JAMES HARDIE 117 PTY LIMITED
(ABN 30 116 110 948)
AET STRUCTURED FINANCE
SERVICES PTY LIMITED
(ABN 12 106 424 088)**

2 Park Street Sydney NSW 2000 Australia
email@gtlaw.com.au www.gtlaw.com.au Telephone + 61 2 9263 4000 Facsimile + 61 2 9263 4111

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DATED 19 December 2006

PARTIES

1. **THE STATE OF NEW SOUTH WALES** of Level 39, Governor Macquarie Tower, Farrer Place, Sydney, NSW 2000 (**NSW Government**)
2. **ASBESTOS INJURIES COMPENSATION FUND LIMITED (ACN 117 363 461)** of Level 3, 22 Pitt Street, Sydney NSW 2000 in its capacity as trustee for the Charitable Fund (**Fund Trustee**)
3. **JAMES HARDIE 117 PTY LIMITED (ABN 30 116 110 948)** (formerly known as LGTDD Pty Limited) of Level 3, 22 Pitt Street, Sydney in the State of New South Wales) (**Performing Subsidiary**)
4. **AET STRUCTURED FINANCE SERVICES PTY LIMITED (ABN 12 106 424 088)** of 80 Alfred Street, Milsons Point NSW 2061 in its capacity as trustee for the Financiers under the Undertaking and Guarantee Trust (**Undertaking and Guarantee Trustee**)

The defined terms in the above list of parties are given expanded meanings in the Dictionary in Part 1 of Attachment A to this deed.

BACKGROUND

This deed is entered into in the following context (where capitalised terms are defined in clause 1):

- A. James Hardie Industries Limited (now known as ABN 60 Pty Limited) (**JHIL**), a company organised under the laws of Australia, was listed on the Australian Stock Exchange in 1951. The business then carried on by JHIL and its subsidiaries had by that time been carried on in Australia, in one form or another and under the "James Hardie" name, for at least 60 years.
- B. Under plans of reorganisation and capital restructuring executed between 1998 and 2001, JHIL sold on arm's length terms substantially all of its business, operations and undertaking to members of the JHINV Group with the result that JHINV became the ultimate holding company of the businesses formerly carried on or controlled by JHIL.

- C.** JHINV is a company organised under the laws of The Netherlands and is listed on both the Australian Stock Exchange and the New York Stock Exchange (with the listing on the latter exchange via American Depository Receipts). At the date of this deed, the JHINV Group carries on the business of manufacturing building products in the United States of America, Australia, New Zealand and the Philippines.
- D.** The Performing Subsidiary is a wholly owned subsidiary of JHINV.
- E.** On 21 December 2004, JHINV and others entered into a non-binding Heads of Agreement containing, among other things, a set of agreed principles on which the Performing Subsidiary will provide, and JHINV will guarantee the payment of, funding to the Charitable Fund on a long term basis of compensation for personal injury and death claims made in Australia against JHIL or certain former subsidiaries of JHIL arising from exposure to asbestos in Australia.
- F.** On 1 December 2005 the NSW Government, JHINV and the Performing Subsidiary entered into the Original Final Funding Agreement with the common intention of making funding available by JHINV and/or its subsidiaries to pay, on the basis set out in the Original Final Funding Agreement, Proven Claims (as defined in the Original Final Funding Agreement) against the Liable Entities (as defined in the Original Final Funding Agreement).
- G.** On 8 June 2006 the Fund Trustee executed a Deed of Accession so as to become a party to the Original Final Funding Agreement and to give effect to the intention and agreement of the relevant parties referred to in paragraph E above.
- H.** On 21 November 2006 the parties to the Original Final Funding Agreement (including the Fund Trustee) entered into Final Funding Agreement, thereby amending and restating the Original Final Funding Agreement.
- I.** On or about 14 December 2006 Asbestos Injuries Compensation Fund Limited entered into the Trust Deed and on or about 14 December 2006 in its capacity as trustee of the Discretionary Fund became a party to the Final Funding Agreement by executing a Deed of Accession.
- J.** The creditor of the Performing Subsidiary under the Final Funding Agreement is the Fund Trustee.

- K.** The NSW Government is not a creditor of the Performing Subsidiary in relation to the payment of the Compensation Debt (Performing Subsidiary).
- L.** However, the NSW Government shall be entitled to directly enforce all promises made by the Performing Subsidiary to the Fund Trustee under the Final Funding Agreement subject to, and in accordance with, the provisions of the Final Funding Agreement.
- M.** The purpose of this deed is to set out the agreement between (1) the Fund Trustee and the NSW Government, and (2) the Undertaking and Guarantee Trustee and the Financiers, as to the manner in which certain rights in respect of the Compensation Debt (Performing Subsidiary) and the Finance Money Debt (Performing Subsidiary) respectively are to be exercised in an Insolvency of the Performing Subsidiary.
- N.** The Performing Subsidiary is a party to this deed for the sole purpose of nominating Persons as Financiers, assuming certain obligations and being entitled to directly enforce the promises made under clauses 2.2 and 8 of this deed (and, if required for such enforcement, clauses 1, 2.1, 2.3 and 10 to 14 inclusive).
- O.** This deed is not intended, and shall not be taken, to (1) affect the status or ranking of the Compensation Debt (Performing Subsidiary) as an ordinary unsecured claim against the Performing Subsidiary, or (2) affect the status or ranking of the Compensation Debt (Performing Subsidiary) as against the other debts (including the Finance Money Debt (Performing Subsidiary)) or the other creditors of the Performing Subsidiary (including the Financiers).

THE PARTIES AGREE

1. PRELIMINARY

1.1 Defined Terms and Interpretation

- (a) A term or expression starting with a capital letter which is defined in the Dictionary in Part 1 of Attachment A (**Dictionary**), has the meaning given to it in the Dictionary.

(b) The Interpretation clauses in Part 2 of Attachment A (**Interpretation**) set out rules of interpretation for this deed.

1.2 Consideration

Each party acknowledges entering into this deed and incurring obligations and giving rights under this deed for valuable consideration received from the other parties to this deed (including in the case of the Fund Trustee, the NSW Government and the Performing Subsidiary, the execution of the Final Funding Agreement).

Each Replacement Trustee or New Undertaking and Guarantee Trustee who accedes to this deed in accordance with clause 4.6 or 7.6 will be taken to acknowledge becoming a party to this deed and incurring obligations and giving rights under this deed for valuable consideration received from the other parties to this deed.

1.3 Crown immunity

This deed binds the Crown in right of New South Wales and to the maximum extent permitted by law the NSW Government hereby waives all Crown immunity with respect to this deed.

1.4 Condition precedent

Notwithstanding any other provision of this deed, the provisions of, and the obligations of the parties under, this deed are subject to, and do not commence until, each of the conditions set out in clause 2.1 of the Final Funding Agreement have been satisfied or waived in writing by the parties to the Final Funding Agreement.

2. DEED

2.1 Effect

Subject to clauses 2.3, 4.6 and 7.6, this deed takes effect as both:

- (a) a deed between the NSW Government, the Fund Trustee, the Performing Subsidiary and the Undertaking and Guarantee Trustee; and
- (b) a deed poll by the NSW Government and the Fund Trustee in favour of each Financier from time to time in respect of any Finance Money Debt (Performing

Subsidiary) raised or incurred by the Performing Subsidiary from time to time during the term of the Final Funding Agreement.

For the avoidance of doubt:

- (i) this deed continues for the term of the Final Funding Agreement even though there may be no Finance Money Debt (Performing Subsidiary) outstanding at any particular point in time;
- (ii) this deed terminates on the date upon which the obligations of the Performing Subsidiary under the Final Funding Agreement have been satisfied or discharged in full in accordance with the Final Funding Agreement; and
- (iii) undertakings expressed to be in favour of some of the parties to this deed (excluding the Performing Subsidiary) are not given in favour of the Performing Subsidiary, although the Performing Subsidiary is entitled to directly enforce the promises made under clauses 2.2 and 8 of this deed (and, if required for such enforcement, clauses 1, 2.1, 2.3 and 10 to 14 inclusive).

2.2 Benefit

- (a) Each Financier has the benefit of, is bound by and is entitled to enforce this deed even though it is not a party to, or is not in existence at the date of execution and delivery of this deed.
- (b) Subject to clause 2.2(f), the benefit and obligations of this deed may be extended to any Person (and such Person shall become a Financier) in relation to any document (and such document shall become a Finance Document) under which liabilities are owed to such Person where such liabilities are, or are required to be, included in the Performing Subsidiary Group's financial statements or notes thereto as debt or borrowings (including bank loans, letter of credit facilities, derivatives and debt capital markets issues which are, or are required to be, so included or noted) of the Performing Subsidiary (or another member of the Performing Subsidiary Group the performance of whose obligations has been guaranteed by the Performing Subsidiary) by the Performing Subsidiary signing and delivering to that Person (or an agent or trustee acting on behalf of that Person) and the Undertaking and Guarantee

Trustee, a Financier Nomination Letter and the Person (or an agent or trustee acting on behalf of the Person) countersigning such Financier Nomination Letter and delivering the countersigned Financier Nomination Letter to the Undertaking and Guarantee Trustee.

- (c) Without limiting clause 2.2(b), the benefits and obligations of this deed do not extend to a Person:
 - (i) by reason of any conduct or representation made by the Performing Subsidiary or JHINV to that Person; and
 - (ii) unless and until the Undertaking and Guarantee Trustee has received a duly countersigned Financier Nomination Letter from that Person (or an agent or trustee acting on behalf of the Person).
- (d) The Undertaking and Guarantee Trustee must:
 - (i) promptly send a copy of each countersigned Financier Nomination Letter to the NSW Government and the Fund Trustee (other than a Financier Nomination Letter in respect of a Financier where this deed has ceased to apply to that Financier in accordance with clause 2.2(g)) upon an officer of the Undertaking and Guarantee Trustee responsible for the day to day administration of this deed becoming aware of the occurrence of an Insolvency of the Performing Subsidiary; and
 - (ii) following the occurrence of an Insolvency of the Performing Subsidiary, on request provide to the NSW Government and the Fund Trustee written confirmation of the nature and quantum of the Finance Money Debt (Performing Subsidiary) as at the date such information is provided.
- (e) The Fund Trustee and the NSW Government confirm that, subject to clause 2.2(f), each of them has irrevocably and for valuable consideration authorised the Performing Subsidiary to sign and deliver any Financier Nomination Letter, nominating a Person as a Financier and a document as a Finance Document, and acknowledge and confirm that the provisions of this deed which are for the benefit of the Financiers, will extend to that Financier and the Finance Document so nominated.

- (f) The benefit and obligations of this deed in relation to Financiers may not be extended to any Person to the extent that Person is an Excluded Lender and any such nomination shall be of no force or effect for the purposes of this deed.
- (g) This deed shall cease to apply to a Financier once:
 - (i) there is no Finance Money Debt (Performing Subsidiary) in respect of that Financier;
 - (ii) the Performing Subsidiary has no outstanding obligations to the Financier in relation to any Finance Money Debt (Performing Subsidiary); and
 - (iii) that Financier has no further obligation to provide financial accommodation to the Performing Subsidiary (or another member of the Performing Subsidiary Group the performance of whose obligations has been guaranteed by the Performing Subsidiary) under the relevant Finance Documents,or that Financier otherwise consents in writing to such cessation.
- (h) If this deed ceases to apply to a Financier in accordance with clause 2.2(g), the Performing Subsidiary and that Financier must promptly notify the Undertaking and Guarantee Trustee.

2.3 Inconsistency

If any provision of the Final Funding Agreement, any Related Agreement (as defined in the Final Funding Agreement, but excluding this deed and the JHINV Intercreditor Deed), the Finance Undertaking and Guarantee (Performing Subsidiary) or any Finance Document is inconsistent with this deed, this deed prevails to the extent of the inconsistency unless a contrary intention is expressed in this deed.

3. INTERCREDITOR ARRANGEMENTS

3.1 Purpose of this deed

The purpose of this deed is to set out the agreement between:

- (a) the Fund Trustee and the NSW Government; and

(b) the Undertaking and Guarantee Trustee and the Financiers,

as to the manner in which certain rights in respect of the Compensation Debt (Performing Subsidiary) and the Finance Money Debt (Performing Subsidiary) respectively are to be exercised in an Insolvency of the Performing Subsidiary.

3.2 NSW Government not a creditor of the Performing Subsidiary

Notwithstanding the wording of any other provision of the Final Funding Agreement, any Related Agreement or this deed, the NSW Government acknowledges that it is not a creditor of the Performing Subsidiary in relation to the payment of the Compensation Debt (Performing Subsidiary).

3.3 Turnover

Each Compensation Party agrees for the benefit of the Undertaking and Guarantee Trustee and the Financiers that if the Performing Subsidiary becomes Insolvent, any amount (in the form of money or other property) paid to it by or for the account of, or recovered by it from or for the account of, the Performing Subsidiary in respect of the Compensation Debt (Performing Subsidiary), after the occurrence of the relevant Insolvency Event, will be paid, or otherwise accounted for, to the Undertaking and Guarantee Trustee or the relevant Financiers in accordance with this deed, until the Finance Money Debt (Performing Subsidiary) has been paid and satisfied in full.

3.4 Status and ranking of the Compensation Debt (Performing Subsidiary)

The parties to this deed acknowledge and agree that this deed does not:

- (a) affect the status or ranking of the Compensation Debt (Performing Subsidiary) as an ordinary unsecured claim against the Performing Subsidiary; or
- (b) affect the status or ranking of the Compensation Debt (Performing Subsidiary) as against the other debts (including the Finance Money Debt (Performing Subsidiary)) or the other creditors of the Performing Subsidiary (including the Financiers).

4. PROCEDURE ON INSOLVENCY

4.1 Proceeds held on trust

Subject to this deed, while the Performing Subsidiary is Insolvent and for so long as any Finance Money Debt (Performing Subsidiary) remains outstanding, each Compensation Party agrees for the benefit of the Undertaking and Guarantee Trustee and the Financiers to hold all Proceeds received by it from or on account of the Performing Subsidiary (or such proportion of the Proceeds sufficient to discharge and satisfy the Finance Money Debt (Performing Subsidiary) in full) on trust for the relevant Financiers.

For so long as any Finance Money Debt (Performing Subsidiary) remains outstanding, then promptly after receipt by it of any Proceeds from or on account of the Performing Subsidiary, each Compensation Party agrees for the benefit of the Undertaking and Guarantee Trustee and the Financiers to notify the Undertaking and Guarantee Trustee and deposit the Proceeds (or such proportion of the Proceeds sufficient to discharge and satisfy the Finance Money Debt (Performing Subsidiary) in full) into one or more accounts specifically designated by the Undertaking and Guarantee Trustee for that purpose (or, in the case of any Proceeds which consist of property other than money, transfer such property to the Undertaking and Guarantee Trustee).

This clause establishes a trust over the Proceeds. The trust commences on the date of this deed and if not previously terminated, terminates on the day before the eightieth anniversary of the date of this deed. It does not create a charge or other security interest over the Proceeds.

4.2 Distribution of Proceeds

Each Compensation Party agrees for the benefit of the Undertaking and Guarantee Trustee and the Financiers that all Proceeds received by it from or on account of the Performing Subsidiary are to be held and distributed:

- (a) first, to the Undertaking and Guarantee Trustee on account of the Finance Money Debt (Performing Subsidiary) which remains owing by the Performing Subsidiary to the Financiers, after all payments received from, or due and payable under the Insolvency by, the Insolvency Official and all prior payments under this clause 4.2(a), if any, have been taken into account ("**Net Finance Money Debt (Performing Subsidiary)**");

- (b) secondly, to the extent of any balance after repayment of the Net Finance Money Debt (Performing Subsidiary) owed by the Performing Subsidiary to the Financiers in full, to the Fund Trustee to satisfy the Compensation Debt (Performing Subsidiary); and
- (c) thirdly, to the extent of any balance after repayment of the Compensation Debt (Performing Subsidiary) in full, to the Performing Subsidiary (for its own account).

4.3 Payment of amounts recovered

Subject to the provisions of this clause 4.3, each Compensation Party agrees for the benefit of the Undertaking and Guarantee Trustee and the Financiers that, if at any time while the Performing Subsidiary is Insolvent an amount (in the form of money or any other property):

- (a) is received or recovered by a Compensation Party on account of the Compensation Debt (Performing Subsidiary) (which is not subject to the trust in clause 4.1); or
- (b) is paid to any Person other than a Compensation Party in connection with the Compensation Debt (Performing Subsidiary) with the consent or at the request of a Compensation Party or for the benefit of a Compensation Party; or
- (c) is set off by a Compensation Party against the Compensation Debt (Performing Subsidiary) (whether by operation of law or otherwise),

the Compensation Party agrees for the benefit of the Undertaking and Guarantee Trustee and the Financiers to promptly notify the Undertaking and Guarantee Trustee and pay into one or more accounts specifically designated by the Undertaking and Guarantee Trustee for that purpose the amount (or, in the case of any Proceeds which consists of property other than money, transfer such property to the Undertaking and Guarantee Trustee) received, recovered, paid or set off (or such proportion of the amount or other property sufficient to discharge and satisfy the Finance Money Debt (Performing Subsidiary) in full).

If in an Insolvency of the Performing Subsidiary, a Compensation Party is required to refund, repay or otherwise disgorge to, or in favour of, the Performing Subsidiary all or any part of an Annual Payment received prior to the occurrence of the relevant

Insolvency Event (otherwise than pursuant to clause 14.9(b) of the Final Funding Agreement as the result of any overpayment of that Annual Payment), this clause 4.3 does not apply if that amount is set off against another amount owed by the Performing Subsidiary to that Compensation Party and no payment is required by that Compensation Party pursuant to this clause 4.3 in respect of the amount set off.

4.4 Residual Rights

If at any time subsequent to the occurrence of an Insolvency Event in respect of the Performing Subsidiary, the Financiers have received, whether by way of distribution by the Insolvency Official in the Insolvency, as payments to the Undertaking and Guarantee Trustee under clause 4 or otherwise, an amount at least equal to the amount (in the form of money or any other property) of the Finance Money Debt (Performing Subsidiary), the Financiers agree for the benefit of the Fund Trustee and the NSW Government that the Financiers must:

- (a) not withdraw, waive, release, compromise or deal in any way with their remaining rights in the Insolvency in relation to the Finance Money Debt (Performing Subsidiary) (**Residual Rights**);
- (b) until the Compensation Debt (Performing Subsidiary) has been discharged and satisfied in full, do anything reasonably required by the NSW Government (at the cost of the NSW Government) to assign or otherwise transfer their Residual Rights to the Fund Trustee or to enable the Fund Trustee to be subrogated to, or otherwise enjoy the benefit of, the Residual Rights; and
- (c) pay any money and/or any other property received pursuant to the Residual Rights to the Fund Trustee.

4.5 No exercise of Financiers' rights

As long as any of the Finance Money Debt (Performing Subsidiary) remains outstanding, each Compensation Party and the NSW Government agree for the benefit of the Undertaking and Guarantee Trustee and the Financiers that such party may not, without the prior written consent of the Undertaking and Guarantee Trustee, exercise any right to claim to be entitled to the benefit of any of the rights of some or all of the Financiers (including the benefit of any Residual Rights or any Security Interest or guarantee, indemnity or assurance against financial loss) in respect of any Finance Money Debt (Performing Subsidiary).

In addition, if a Replacement Trustee has been appointed or nominated, but not yet executed and delivered an Accession Deed (and a power of attorney as required by clause 8.1(b)) in accordance with clause 4.6, the NSW Government agrees for the benefit of the Undertaking and Guarantee Trustee and the Financiers to ensure that, as long as any of the Finance Money Debt (Performing Subsidiary) remains outstanding, the Replacement Trustee does not exercise or seek to exercise any right to claim to be entitled to the benefit of any of the rights of some or all of the Financiers (including the benefit of any Residual Rights or any Security Interest or guarantee, indemnity or assurance against financial loss) in respect of any Finance Money Debt (Performing Subsidiary).

4.6 Substitution of the Fund Trustee

If a Replacement Trustee is appointed in accordance with the Final Funding Agreement then the NSW Government must:

- (a) promptly notify the Undertaking and Guarantee Trustee of the appointment and the identity and contact details of the Replacement Trustee; and
- (b) procure, at its own expense, that the Replacement Trustee duly executes and delivers an Accession Deed (and a power of attorney as required by clause 8.1(b)) to each party to this deed.

A Replacement Trustee acquires no rights or benefits under this deed (either in its capacity as such or as successor to the Fund Trustee) until such time as an Accession Deed (and a power of attorney as required by clause 8.1(b)) has been duly executed by the Replacement Trustee and delivered to each party to this deed. This clause does not require such documents to be delivered to a Financier.

The NSW Government shall ensure that the Replacement Trustee is incorporated in the State of New South Wales.

4.7 Additional Rights

- (a) If in connection with an Insolvency of the Performing Subsidiary a Compensation Party is required to disgorge or unwind all or part of the recovery of receipt of Proceeds or any other amounts (in the form of money or other property) received by it from, or on account of, the Performing Subsidiary and which have been paid to the Undertaking and Guarantee Trustee or a Financier in accordance with this clause 4, the Undertaking and Guarantee Trustee or the

relevant Financier (as the case may be), must promptly, following a request from the relevant Compensation Party, repay to the relevant Compensation Party the amounts (or other property) so received by it from that Compensation Party.

- (b) If in connection with an Insolvency of the Performing Subsidiary the Undertaking and Guarantee Trustee or a Financier is required to disgorge or unwind all or part of the recovery of any money and/or any other property received pursuant to the Residual Rights and which have been paid to the Fund Trustee in accordance with clause 4.4(c), the Fund Trustee, must promptly, following a request from the Undertaking and Guarantee Trustee or the relevant Financier (as the case may be), repay to the Undertaking and Guarantee Trustee or the relevant Financier (as the case may be), the amounts (or other property) so received by it in accordance with clause 4.4(c).

4.8 Replacement or substitution of the Performing Subsidiary

If the Performing Subsidiary is replaced or substituted as Performing Subsidiary (as that term is defined in the Final Funding Agreement) by another Person (**Replacement Subsidiary**) in accordance with clause 6.2 of the Final Funding Agreement, this deed shall automatically terminate (and no party shall have any rights or owe any obligations under this deed) upon the Compensation Parties, the Undertaking and Guarantee Trustee and the Replacement Subsidiary (each acting reasonably) having entered into a replacement deed on substantially the same terms as this deed.

If the Replacement Subsidiary assumes any obligations in respect of a Financier, that Person may become a Financier under that replacement deed.

5. RIGHTS IN RELATION TO THE COMPENSATION DEBT (PERFORMING SUBSIDIARY)

5.1 No prohibition

Subject to the provisions of clauses 3.3, 4.1, 4.2, 4.5, 6 and 8 of this deed, no Compensation Party nor the NSW Government is prohibited by this deed from, or restricted in exercising all or any of its rights under the Final Funding Agreement in relation to the obligations and liabilities of the Performing Subsidiary, whether before or after the occurrence of an Insolvency Event in respect of the Performing Subsidiary.

Without limiting the generality of the foregoing, but subject to the provisions of clauses 3.3, 4.1, 4.2, 4.5, 6 and 8 of this deed, a Compensation Party and the NSW Government (but only to the extent it is entitled to do so acting in accordance with the Final Funding Agreement and applicable law) may:

- (a) make demand for, commence proceedings in relation to, enforce any judgment in relation to and compromise or settle any claim in relation to all such obligations and liabilities;
- (b) seek or obtain from any court of competent jurisdiction at any time an order directing the Performing Subsidiary to make any payment under or to specifically perform its obligations under the Final Funding Agreement, or similar equitable relief;
- (c) make application to any court of competent jurisdiction for the winding up of, or in relation to the Insolvency, of the Performing Subsidiary;
- (d) be present and vote at any meeting of creditors or other meeting which it is entitled to attend concerning any proposal relating to the Performing Subsidiary or at any meeting relating to the Insolvency of the Performing Subsidiary;
- (e) individually make submissions to an Insolvency Official in connection with any Insolvency of the Performing Subsidiary;
- (f) prove the Compensation Debt (Performing Subsidiary) in any Insolvency of the Performing Subsidiary; and
- (g) participate in any proceedings relating to its right to vote and prove or otherwise participate in any meeting, proceeding or distribution concerning the Insolvency of the Performing Subsidiary.

5.2 NSW Government Enforcement Rights

- (a) Any action or the enforcement of any rights of a Compensation Party under this deed in the event of an Insolvency of the Performing Subsidiary may only be taken by the NSW Government, unless the NSW Government otherwise consents in writing to the Fund Trustee taking such action or enforcing those rights.

For the avoidance of doubt, this clause does not preclude an Attorney exercising any rights under a power of attorney granted pursuant to, and in accordance with, clause 8.

- (b) Any action taken by the NSW Government under this deed:
 - (i) shall oblige the Fund Trustee to cause any similar or inconsistent action to be revoked, rescinded or discontinued, provided that the Fund Trustee may resume or initiate any such action if and to the extent that the corresponding action taken by the NSW Government is revoked or abandoned by notice in writing by the NSW Government; and
 - (ii) shall oblige the NSW Government to hold on trust for the Fund Trustee in accordance with, and subject to, clause 4.1 any amounts (in the form of money or other property) received or recovered under, or in respect of, the action taken.
- (c) Where this deed requires or contemplates the consent of, or a nomination or determination by the Fund Trustee, such consent, nomination or determination shall only be effective if consented to by the NSW Government, and the Undertaking and Guarantee Trustee must not accept or act on a notice of consent, nomination or determination, or any other direction, by the Fund Trustee, unless such notice is accompanied by consent from the NSW Government.
- (d) Without limiting clauses 5.2(a) or (c), the parties acknowledge that:
 - (i) under clause 16.6(f) of the Final Funding Agreement the Fund Trustee has agreed not to, without the prior written consent of the NSW Government, waive or compromise all or any part of any payment (actually or contingently) due from the Performing Subsidiary under the Final Funding Agreement or any Related Agreement (including this deed); and
 - (ii) any such waiver or compromise by the Fund Trustee that is not accompanied by such written consent from the NSW Government shall be invalid and has no effect on the obligations of the parties under this deed and cannot be relied upon by the parties or pleaded by way of estoppel or otherwise in any action or proceeding for the enforcement of

the Final Funding Agreement or any Related Agreement (including this deed).

- (e) The NSW Government acknowledges that its right to enforce this deed is subject to clause 16.6 of the Final Funding Agreement (but, in an Insolvency of JHINV, only to the extent the provisions of that clause apply in an Insolvency of JHINV).
- (f) Without limiting clauses 5.2(a) or (c), the parties acknowledge that the NSW Government may commence or institute proceedings in any jurisdiction in relation to the existence or amount of the Compensation Debt (but, in the case of any Wind Up or Reconstruction Amount (as defined in the Final Funding Agreement), subject to clause 10 of the Final Funding Agreement) or any voting rights attaching thereto, or any matters incidental to determining such amount or voting rights.

6. COVENANTS

6.1 Restriction on dealings

The Fund Trustee and the NSW Government agree for the benefit of the Undertaking and Guarantee Trustee and the Financiers that such party may not assign, transfer, create a Security Interest in respect of or otherwise create rights in respect of or deal with any of its rights under the Final Funding Agreement or this deed (including all Proceeds), or consent or agree to any of those things, without:

- (a) in the case of an assignment, a transfer, the creation of a Security Interest or other rights or a dealing which in any case affects the nature, timing or quantum of the amount actually or contingently payable to a Compensation Party under the Final Funding Agreement or another Related Agreement, the prior written consent of the Undertaking and Guarantee Trustee acting on instructions from all or a specified majority of the Financiers as referred to in clause 7.3; and
- (b) the assignee, the transferee, the holders of that Security Interest or those other rights and all other persons having an interest in the rights of the Fund Trustee and the NSW Government under the Final Funding Agreement or this deed (including all Proceeds) as a result of any such dealing, having agreed to be bound by the corresponding obligations of the relevant Compensation Party or the NSW Government under the Final Funding Agreement or this deed (as the case may be).

6.2 No security

Each of the Fund Trustee and the NSW Government agree for the benefit of the Undertaking and Guarantee Trustee and the Financiers that it may not do, or agree to do, any of the following:

- (a) **(set off)** during the Insolvency of the Performing Subsidiary, exercise any right of set off in respect of the Compensation Debt (Performing Subsidiary);
- (b) **(Security Interest or guarantee)** except for the JHINV Guarantee (as defined in the Final Funding Agreement) and a Cross Guarantee (Fund Guaranteed Money), accept from the Performing Subsidiary or another member of the Performing Subsidiary Group the benefit of any Security Interest or guarantee, indemnity or assurance against financial loss in respect of the Compensation Debt (Performing Subsidiary); or
- (c) **(arrangements)** enter into any arrangement, take any action or fail to do any thing, which results in any Proceeds received by it from or on account of the Performing Subsidiary (or such proportion of the Proceeds sufficient to discharge and satisfy the Finance Money Debt (Performing Subsidiary) in full) not being held on trust for the relevant Financiers in accordance with the terms of this deed,

without the prior written consent of the Undertaking and Guarantee Trustee acting on instructions from all or a specified majority of the Financiers as referred to in clause 7.3.

If in an Insolvency of the Performing Subsidiary, a Compensation Party is required to refund, repay or otherwise disgorge to, or in favour of, the Performing Subsidiary all or any part of an Annual Payment received prior to the occurrence of the relevant Insolvency Event (otherwise than pursuant to clause 14.9(b) of the Final Funding Agreement as the result of any overpayment of that Annual Payment), clause 6.2(a) does not prohibit that amount being set off by that Compensation Party against another amount owed by the Performing Subsidiary to that Compensation Party.

7. UNDERTAKING AND GUARANTEE TRUSTEE

7.1 Appointment and removal

Subject to clause 7.6, the Fund Trustee and the NSW Government:

- (a) acknowledge that the Performing Subsidiary or the Financiers may appoint, remove and replace the Undertaking and Guarantee Trustee as trustee under the Finance Undertaking and Guarantee (Performing Subsidiary) (such newly appointed or replacement trustee, a **New Undertaking and Guarantee Trustee**); and
- (b) agree to do anything reasonably required by the Performing Subsidiary, the Financiers, the outgoing Undertaking and Guarantee Trustee or the New Undertaking and Guarantee Trustee to enable the New Undertaking and Guarantee Trustee to become a party to this deed in substitution for the outgoing Undertaking and Guarantee Trustee.

7.2 Sole Representative

- (a) So long as a Person is acting as trustee under the Finance Undertaking and Guarantee (Performing Subsidiary), the Fund Trustee and the NSW Government may deal exclusively with that Person in respect of all matters concerning this deed.
- (b) The Financiers acknowledge and confirm that the Person acting as trustee under the Finance Undertaking and Guarantee (Performing Subsidiary) is empowered to exercise all of their rights and powers under this deed and agree not to take any action or proceedings to set aside any act, notice or omission of the Undertaking and Guarantee Trustee undertaken in accordance with this deed.

7.3 Acknowledgement by the Fund Trustee and the NSW Government

The Fund Trustee and the NSW Government acknowledge that in exercising some or all of the rights and powers of the Financiers under this deed (including voting on any matter in any meeting, proceeding or distribution concerning the Insolvency of the Performing Subsidiary), the Undertaking and Guarantee Trustee may be required to obtain instructions and/or consent from all or a specified majority of the Financiers.

If the Undertaking and Guarantee Trustee is so required to obtain instructions and/or consent from all or a specified majority of the Financiers, the Undertaking and Guarantee Trustee must promptly request such instructions and/or consent.

The Fund Trustee and the NSW Government are entitled to rely on any representation by the Undertaking and Guarantee Trustee in relation to its instructions.

7.4 No Undertaking and Guarantee Trustee

Subject to clause 8.10, if no Person is acting as trustee under the Finance Undertaking and Guarantee (Performing Subsidiary), then unless a contrary intention is apparent from this deed, all references to the Undertaking and Guarantee Trustee in this deed shall be taken to be references to each Financier to which this deed applies from time to time acting severally such that each Financier may severally exercise the rights of the Undertaking and Guarantee Trustee.

If the Undertaking and Guarantee Trustee is to cease to be trustee under the Finance Undertaking and Guarantee (Performing Subsidiary) and a New Undertaking and Guarantee Trustee is not being appointed in accordance with clause 7.6, the outgoing Undertaking and Guarantee Trustee must send promptly a copy of each countersigned Financier Nomination Letter to the Fund Trustee and the NSW Government (other than a Financier Nomination Letter in respect of a Financier where this deed has ceased to apply to that Financier in accordance with clause 2.2(g)).

7.5 Acknowledgement by the Undertaking and Guarantee Trustee

The Undertaking and Guarantee Trustee acknowledges and undertakes (and each New Undertaking and Guarantee Trustee at the date of becoming a party to this deed will be deemed to acknowledge and undertake) that it:

- (a) is a wholly owned subsidiary of Australian Executors Trustees Limited which is a recognised trustee company under the laws of New South Wales;
- (b) has relevant and substantive experience and expertise in custody of financial obligations and in insolvency proceedings generally;
- (c) except to the extent it is entitled to be paid fees or reimbursed or indemnified for costs and expenses by the Performing Subsidiary or JHINV, has no interest

or duty which to its knowledge conflicts or may conflict with its functions under this deed; and

- (d) is not a member of a firm, or a director or employee of a firm or a body owned by a firm, performing any role as advisor, banker, custodian or trustee to the Performing Subsidiary, JHINV, another member of the JHINV Group or (except for roles undertaken in the ordinary course of business for state owned business enterprises) the NSW Government during a period of 3 years prior to the date of this deed or becoming a party to this deed, as the case may be.

7.6 Substitution of the Undertaking and Guarantee Trustee

- (a) The Performing Subsidiary or the Financiers can only replace the Undertaking and Guarantee Trustee with any Person who at the date of becoming a New Undertaking and Guarantee Trustee:
 - (i) is either (A) a recognised trustee company under the laws of the place in which its Specified Office is located, or (B) a wholly owned subsidiary of a recognised trustee company under the laws of that place;
 - (ii) has relevant and substantive experience and expertise in custody of financial obligations and in insolvency proceedings generally;
 - (iii) except to the extent it is entitled to be paid fees or reimbursed or indemnified for costs and expenses by the Performing Subsidiary or JHINV, has no interest or duty which to its knowledge conflicts or may conflict with its functions as contemplated under this deed; and
 - (iv) is not a member of a firm, or a director or employee of a firm or a body owned by a firm, performing any role as advisor, banker, custodian or trustee to the Performing Subsidiary, JHINV, another member of the JHINV Group or (except for roles undertaken in the ordinary course of business for state owned business enterprises) the NSW Government during a period of 3 years prior to becoming a party to this deed.
- (b) A substitution under clause 7.6(a) will not occur and a New Undertaking and Guarantee Trustee acquires no rights or benefits under this deed unless and until the New Undertaking and Guarantee Trustee duly executes and delivers an

Accession Deed to each party to this deed. This clause does not require an Accession Deed to be delivered to a Financier.

- (c) If the New Undertaking and Guarantee Trustee is not incorporated in Australia, the Financiers must procure, at no expense to the Fund Trustee or the NSW Government, the delivery to the Fund Trustee and the NSW Government of an opinion of generally recognised independent legal counsel qualified to practise in the relevant jurisdiction to the effect that the Accession Deed and this deed are valid, binding and enforceable obligations of the New Undertaking and Guarantee Trustee (subject to laws and defences generally affecting the enforcement of contracts and the discretionary nature of equitable remedies).

7.7 Standard of Duty

The Undertaking and Guarantee Trustee must exercise, and must procure that each Authorised Officer of the Undertaking and Guarantee Trustee exercises, good faith and the same degree of care, skill and diligence as a reasonable and prudent Person would exercise in carrying out its functions, duties and obligations under this deed.

7.8 Functions, duties and obligations of the Undertaking and Guarantee Trustee

7.8.1 Role of the Undertaking and Guarantee Trustee

Subject to the other provisions of this deed, the Undertaking and Guarantee Trustee must:

- (a) upon an officer of the Undertaking and Guarantee Trustee responsible for the day to day administration of this deed becoming aware of any Insolvency of the Performing Subsidiary, promptly send to each Compensation Party a notice which requests them to advise in writing the amount of the Compensation Debt (Performing Subsidiary) or, alternatively, the basis on which the Compensation Debt (Performing Subsidiary) is to be calculated and, in the event of a conflict in the amount of the Compensation Debt (Performing Subsidiary) advised by the Fund Trustee and the NSW Government, then (in the absence of manifest error) the amount advised by the NSW Government prevails;
- (b) not do anything to prevent or interfere with a Compensation Party proving the Compensation Debt (Performing Subsidiary) in an Insolvency (to the extent that

- the Compensation Party is acting in accordance with the Final Funding Agreement and applicable law);
- (c) not make any representation or submission to an Insolvency Official in relation to the valuation of the claims of the Compensation Parties in respect of the Compensation Debt (Performing Subsidiary) unless reasonably requested by the NSW Government;
 - (d) where the Undertaking and Guarantee Trustee is entitled to exercise any vote pursuant to clause 8, take all necessary and reasonable steps permitted by applicable law to exercise that vote for the value of the Compensation Debt (Performing Subsidiary) for the purposes of the Insolvency of the Performing Subsidiary (including the presentation of all evidence and submissions to any Insolvency Official as reasonably requested by the NSW Government);
 - (e) promptly advise each Compensation Party of any dispute between:
 - (i) the Undertaking and Guarantee Trustee; and
 - (ii) an Insolvency Official, the Performing Subsidiary, JHINV and/or one or more creditors of the Performing Subsidiary,in relation to the Compensation Debt (Performing Subsidiary) or this deed and which may come before a court of competent jurisdiction, and take all reasonable steps permitted by applicable law to delay the determination of the dispute for such period of time (as is reasonable having regard to the procedural laws governing the conduct of the dispute before the relevant court of competent jurisdiction) so as to give the Compensation Parties a reasonable opportunity to present evidence and submissions to the relevant court of competent jurisdiction if they so wish;
 - (f) if the Performing Subsidiary is Insolvent, take all reasonable action permitted by applicable law to ensure that:
 - (i) all moneys recoverable in respect of the Finance Money Debt (Performing Subsidiary) are duly and promptly recovered from the relevant Insolvency Official; and

- (ii) any amount payable or repayable to a Compensation Party by a Financier under this deed, by reason of that Financier receiving whether by way of distribution by the Insolvency Official in the Insolvency, as payments by a Compensation Party under this deed or otherwise, an amount in excess of the Finance Money Debt (Performing Subsidiary) owed to that Financier, are paid or repaid by that Financier to that Compensation Party;
- (g) not do anything to prevent or interfere with a Compensation Party promptly recovering from the relevant Insolvency Official all moneys which are recoverable in respect of the Compensation Debt (Performing Subsidiary);
- (h) take all reasonable steps permitted by applicable law and requested by the NSW Government to assist the Compensation Parties with the determination of any dispute between:
 - (i) a Compensation Party; and
 - (ii) an Insolvency Official, the Performing Subsidiary, JHINV and/or one or more creditors of the Performing Subsidiary.in relation to the Compensation Debt (Performing Subsidiary) or this deed;
- (i) to the extent permitted by applicable law, apply for and use reasonable endeavours to obtain any stay, extension of time or other order in relation to the Insolvency of the Performing Subsidiary which the Undertaking and Guarantee Trustee reasonably considers is necessary in order to enable any Independent Expert to discharge its responsibilities under and in accordance with clause 8 or which the NSW Government reasonably requests for such purpose;
- (j) to the extent permitted by applicable law and if requested by the NSW Government, take all reasonable steps to recover compensation for any expenses, losses, liabilities, actions, proceedings, claims and demands (whether actual, contingent, prospective or otherwise) that are incurred by the Undertaking and Guarantee Trustee (or would have been incurred by the Undertaking and Guarantee Trustee but for clause 15.1(g)) as a direct or indirect consequence of the fraud, gross negligence or wilful misconduct of any attorney, agent or delegate appointed by the Undertaking and Guarantee Trustee in accordance with this deed;

- (k) upon an officer of the Undertaking and Guarantee Trustee responsible for the day to day administration of this deed becoming aware of any breach of this deed by any party, promptly notify the Performing Subsidiary, the Financiers and the Compensation Parties of that breach including details of that breach; and
- (l) promptly notify the Performing Subsidiary, the Financiers and the Compensation Parties if for any reason it is unable to perform its obligations under this deed.

7.8.2 Provision of information

Without limiting the provisions of clause 8 in relation to Notice of Voting in Insolvency, the Undertaking and Guarantee Trustee and each Compensation Party agree to give notice to the Compensation Parties or the Undertaking and Guarantee Trustee, as the case may be, of any request received from an Insolvency Official in an Insolvency of the Performing Subsidiary which seeks instructions and/or consent from one or more creditors of the Performing Subsidiary (including, for the avoidance of doubt, a Financier, the Undertaking and Guarantee Trustee or a Compensation Party) or otherwise requests action to be taken by one or more creditors of the Performing Subsidiary in exercise of their respective rights as creditors of the Performing Subsidiary.

7.8.3 Limitations on the obligations of the Undertaking and Guarantee Trustee

Notwithstanding clause 7.8.1, the Undertaking and Guarantee Trustee is not required to do any act, matter or thing requested by the NSW Government (including make any representation or submission, or present any evidence, to an Insolvency Official or provide any assistance with the determination of any dispute between a Compensation Party and an Insolvency Official before a court of competent jurisdiction) which in the opinion of the Undertaking and Guarantee Trustee (after having received advice from legal counsel appointed by it and acting reasonably) will constitute a breach by the Undertaking and Guarantee Trustee of its fiduciary duties owed to the Financiers in respect of the Finance Money Debt (Performing Subsidiary) (including, for the avoidance of doubt, any duty not to act in manner which conflicts with a direction of all or a specified majority of the Financiers).

If any such act, matter or thing will constitute such a breach, the Undertaking and Guarantee Trustee must promptly notify the NSW Government and take all reasonable steps subsequently requested by the NSW Government and permitted under applicable

law to ensure that the objective of the original act, matter or thing requested by the NSW Government is able to be otherwise achieved:

- (a) in a manner which does not constitute a breach by the Undertaking and Guarantee Trustee of its fiduciary duties owed to the Financiers in respect of the Finance Money Debt (Performing Subsidiary); or
- (b) by the NSW Government doing the relevant act, matter or thing in a manner which, if the relevant act, matter or thing had been done by the Undertaking and Guarantee Trustee, would be in accordance with this deed.

7.8.4 Duties of the Undertaking and Guarantee Trustee

The Undertaking and Guarantee Trustee has no duties to the Compensation Parties or the NSW Government except as expressly provided for in this deed.

7.8.5 Limitation on Liability

To the extent permitted by law, nothing in this clause 7.8 imposes liability on the Undertaking and Guarantee Trustee for:

- (a) special, indirect, incidental, consequential or punitive damages; or
- (b) economic loss, loss of profits, loss of revenue, or loss of goodwill,

arising out of any action undertaken by it in accordance with clause 7.8.1, except to the extent resulting from the fraud, gross negligence or wilful misconduct of the Undertaking and Guarantee Trustee.

7.8.6 Indemnity

To the extent permitted by law, the NSW Government indemnifies and keeps indemnified the Undertaking and Guarantee Trustee against any claims, cost or liability which may be imposed and which arises out of any action properly undertaken by it in accordance with 7.8.1(d) or undertaken by the Undertaking and Guarantee Trustee in accordance with a request of the NSW Government under clause 7.8.1, except to the extent caused by the fraud, gross negligence or wilful misconduct of the Undertaking and Guarantee Trustee or the failure of the Undertaking and Guarantee Trustee to take action at the request of the NSW Government.

8. VOTING IN INSOLVENCY PROCEEDINGS

8.1 Irrevocable Appointment of Attorney

- (a) Subject to this clause 8, Asbestos Injuries Compensation Fund Limited in its capacity as trustee for the Charitable Fund irrevocably and for valuable consideration agrees to appoint the Undertaking and Guarantee Trustee and each Authorised Officer of the Undertaking and Guarantee Trustee individually as the attorney of Asbestos Injuries Compensation Fund Limited in its capacity as trustee for the Charitable Fund (together with any person appointed as an attorney in accordance with clause 8.1(b), an **Attorney**) to vote the Compensation Debt (Performing Subsidiary) during the Insolvency of the Performing Subsidiary or at any meeting, proceeding or distribution concerning the Insolvency of the Performing Subsidiary for so long as any Finance Money Debt (Performing Subsidiary) remains outstanding, by executing a power of attorney substantially in the form of Schedule 3 to this deed, provided that any vote must be exercised in accordance with this clause 8 and Asbestos Injuries Compensation Fund Limited in that capacity further irrevocably and for valuable consideration agrees, if required for further assurance, to execute a proxy or authority in a form ordinarily required under the applicable law governing the relevant proceeding.
- (b) Subject to this clause 8 and simultaneously with executing and delivering an Accession Deed in accordance with clause 4.6, each Replacement Trustee must irrevocably and for valuable consideration appoint the Undertaking and Guarantee Trustee and each Authorised Officer of the Undertaking and Guarantee Trustee individually as the attorney of the Replacement Trustee to vote the Compensation Debt (Performing Subsidiary) during the Insolvency of the Performing Subsidiary or at any meeting, proceeding or distribution concerning the Insolvency of the Performing Subsidiary for so long as any Finance Money Debt (Performing Subsidiary) remains outstanding, by executing a power of attorney substantially in the form of Schedule 3 to this deed provided that any vote must be exercised in accordance with this clause 8 and the Replacement Trustee further irrevocably and for valuable consideration agrees, if required for further assurance, to execute a proxy or authority in a form ordinarily required under the applicable law governing the relevant proceeding.

- (c) Subject to this clause 8, the Fund Trustee and the NSW Government agree not to vote or attempt to vote the Compensation Debt (Performing Subsidiary) during the Insolvency of the Performing Subsidiary or at any meeting, proceeding or distribution concerning the Insolvency of the Performing Subsidiary for so long as any Finance Money Debt (Performing Subsidiary) remains outstanding.
- (d) The Fund Trustee irrevocably and for valuable consideration authorises the Undertaking and Guarantee Trustee to provide an original or copy of any power of attorney executed in accordance with clause 8.1(a) or (b) to an Insolvency Official for the purpose of establishing the right and entitlement of each Attorney during the Insolvency of the Performing Subsidiary to exercise the appointor's right to vote the Compensation Debt (Performing Subsidiary) at any meeting, proceeding or distribution concerning the Insolvency of the Performing Subsidiary.
- (e) The Undertaking and Guarantee Trustee must ensure that an Attorney only exercises, and in circumstances where the Undertaking and Guarantee Trustee is itself appointed an Attorney, the Undertaking and Guarantee Trustee must only exercise, its rights under a power of attorney granted in accordance with this clause 8 in accordance with, and subject to, the provisions of this deed.
- (f) To the extent required under applicable law, the Fund Trustee agrees to ratify:
 - (i) anything the Undertaking and Guarantee Trustee does in accordance with this clause 8, and such ratification is without prejudice to its rights in respect of any breach of this deed by the Undertaking and Guarantee Trustee; and
 - (ii) whatever an Attorney does in exercising powers under a power of attorney granted in accordance with this clause 8, provided that there is no obligation to ratify or confirm any act or matter in breach of this deed or any applicable law.
- (g) Subject to the provisions of this deed, each Compensation Party and the NSW Government must not do anything to prevent or interfere with the exercise by:
 - (i) the Undertaking and Guarantee Trustee of its rights and powers, or the performance of its obligations, under this clause 8; or

- (ii) an Attorney of its rights and powers, or the performance of its obligations, under the relevant power of attorney.
- (h) Subject to the terms and conditions of this deed and subject to compliance with its provisions, an Attorney may exercise the right to vote in the appointor's name or, if necessary or desirable under the applicable law governing the relevant proceeding, the Attorney's name, and may do anything necessary or incidental to such exercise including signing and delivering documents.
- (i) If for any reason whatsoever an Attorney is not entitled by operation of law to exercise its rights under the relevant power of attorney, the appointor shall exercise those rights as directed by the Undertaking and Guarantee Trustee, provided such directions are in accordance with this clause 8.
- (j) The Undertaking and Guarantee Trustee must promptly provide the NSW Government with reasonable details of any action taken by the Undertaking and Guarantee Trustee or an Attorney in respect of the exercise of its powers under a power of attorney granted in accordance with this clause 8.
- (k) The Undertaking and Guarantee Trustee must promptly provide full details of any action taken or any votes cast by the Undertaking and Guarantee Trustee or an Attorney in respect of the Compensation Debt (Performing Subsidiary).

8.2 Voting

- (a) The Compensation Parties are responsible for proving the Compensation Debt (Performing Subsidiary) in any Insolvency of the Performing Subsidiary and providing such information as to the value of the Compensation Debt (Performing Subsidiary) as is required by the relevant Insolvency Official for the purposes of ascribing a value to the Compensation Debt (Performing Subsidiary) for the purposes of an Insolvency of the Performing Subsidiary. In proving the Compensation Debt (Performing Subsidiary), the Compensation Parties must:
 - (i) use reasonable endeavours to ensure that the relevant Insolvency Official sends all Notices of Voting in Insolvency in an Insolvency of the Performing Subsidiary (or a copy of all such notices) to the Undertaking and Guarantee Trustee; and

(ii) to the extent such notices are received by the Compensation Parties, provide a copy to the Undertaking and Guarantee Trustee.

Notwithstanding any other provision of this deed other than, and subject to, clauses 7.8.1(b) and (c), the Undertaking and Guarantee Trustee is not responsible for proving the Compensation Debt (Performing Subsidiary) in any Insolvency of the Performing Subsidiary.

The Compensation Parties agree to provide the Undertaking and Guarantee Trustee with copies of all documents submitted to the relevant Insolvency Official for the purposes of ascribing a value to the Compensation Debt (Performing Subsidiary) for the purposes of an Insolvency of the Performing Subsidiary or ensuring that the relevant Insolvency Official sends all Notices of Voting in Insolvency in an Insolvency of the Performing Subsidiary (or a copy of all such notices) to the Undertaking and Guarantee Trustee.

- (b) Subject to clause 8.8, during the Insolvency of the Performing Subsidiary the Undertaking and Guarantee Trustee must ensure that an Attorney only votes on any matter in any meeting, proceeding or distribution concerning the Insolvency of the Performing Subsidiary in respect of the Compensation Debt (Performing Subsidiary) in accordance with the instructions of the Financiers given in accordance with the Finance Undertaking and Guarantee (Performing Subsidiary), provided that:
- (i) the Undertaking and Guarantee Trustee must ensure that an Attorney does not vote unless the Undertaking and Guarantee Trustee has provided the NSW Government with 10 Business Days notice (or, subject to clause 7.8.1(i), such shorter notice as the Undertaking and Guarantee Trustee determines is reasonable having regard to the terms of the Notice of Voting in Insolvency) of the Attorney's intention to vote and the Attorney votes in accordance with the intention as notified; and
 - (ii) if an Independent Expert has been appointed under clause 8.3, and the Independent Expert has determined that, in its opinion, the criteria set out in:
 - A. clauses 8.4(a), (b), (c) and, if applicable, (d); or
 - B. clause 8.4(e),

are satisfied in relation to the Preferred Option or a particular choice as described in clause 8.3(a)(ii)(B) or (C), as the case may be, then the Undertaking and Guarantee Trustee must ensure that an Attorney votes in favour of the Preferred Option or that particular choice.

For the avoidance of doubt, the Undertaking and Guarantee Trustee must ensure that an Attorney votes in accordance with the proviso to this clause 8.2(b) irrespective of any instructions of the Financiers to the contrary given in accordance with the Finance Undertaking and Guarantee (Performing Subsidiary).

- (c) If following the occurrence of a Wind-Up Event in respect of the Performing Subsidiary, the value of the assets of the Performing Subsidiary available for distribution to pay the claims of ordinary unsecured creditors (or realisation to allow such payment), as determined or estimated (in the absence of manifest error) by the relevant Insolvency Official (or otherwise determined or estimated for the purposes of the relevant Insolvency proceeding in accordance with applicable law) is equal to or less than the amount required to enable discharge and satisfaction of the Finance Money Debt (Performing Subsidiary) in full, then, subject to clauses 8.8 and 8.9, during the Wind-Up Event an Attorney may vote on any matter in any meeting, proceeding or distribution concerning the Wind-Up Event in respect of the Compensation Debt (Performing Subsidiary) in accordance with the instructions of the Financiers given in accordance with the Finance Undertaking and Guarantee (Performing Subsidiary) and clauses 8.2(b), 8.3 to 8.7 inclusive and 8.10 do not apply.

8.3 Appointment of an Independent Expert

(a) If during the Insolvency of the Performing Subsidiary:

- (i) the Undertaking and Guarantee Trustee or an Attorney receives a Notice of Voting in Insolvency (or a copy of a Notice of Voting in Insolvency); and
- (ii) a vote on any matter in any meeting, proceeding or distribution concerning the Insolvency of the Performing Subsidiary requires a choice between:

- A. two or more options, proposals, courses of action or other alternatives (howsoever described) (**Options**) for the partial or full winding up, restructure or reconstruction of the Performing Subsidiary or the realisation of some or all of the Performing Subsidiary's assets in connection with its Insolvency;
- B. deferring or not deferring any action; or
- C. extending or not extending the Insolvency proceeding,

then the Undertaking and Guarantee Trustee must promptly provide the NSW Government with a copy of the Notice of Voting in Insolvency and procure the appointment of an Independent Expert in accordance with this clause 8.3, such appointment to be made within 10 Business Days of receipt by the Undertaking and Guarantee Trustee of the Notice of Voting in Insolvency (unless the NSW Government gives notice that it does not so require).

- (b) The Undertaking and Guarantee Trustee must, prior to any appointment of an Independent Expert under this deed, provide the NSW Government with 5 Business Days notice (or, subject to clause 7.8.1(i), such shorter notice as the Undertaking and Guarantee Trustee determines is reasonable having regard to the terms of the Notice of Voting in Insolvency) of the Person nominated by the Undertaking and Guarantee Trustee to act as Independent Expert, together with evidence demonstrating such nominee's compliance with the criteria and qualifications required of an Independent Expert under this deed.
- (c) If an Independent Expert is appointed under this clause 8.3, the costs of the Independent Expert shall be borne by the NSW Government.
- (d) Subject to clause 8.3(e), upon receipt of a Notice of Voting in Insolvency and at any time prior to 2 Business Days before the latest date on which the Independent Expert must make a determination in accordance with clauses 8.4 and 8.5 (or, subject to clause 7.8.1(i), such earlier time as the Undertaking and Guarantee Trustee determines is reasonable having regard to the terms of the Notice of Voting in Insolvency and advises the Fund Trustee and the NSW Government), the NSW Government may nominate:
 - (i) an Option which it would like an Attorney to vote for in respect of the Compensation Debt (Performing Subsidiary); or

- (ii) if the vote relates to deferring or not deferring any action or extending or not extending the Insolvency proceeding, which alternative it would like the Attorney to vote for in respect of the Compensation Debt (Performing Subsidiary).
- (e) If an Independent Expert appointed under this clause 8 determines that an Option, other than the Option nominated by the NSW Government under clause 8.3(d)(i), satisfies the criteria set out in:
 - (i) clauses 8.4(a), (b), (c) and if applicable, (d); or
 - (ii) clause 8.4(e),then the NSW Government may immediately, with notice in writing to the Undertaking and Guarantee Trustee, nominate the Option so determined by the Independent Expert as the Option that it would like an Attorney to vote for in respect of the Compensation Debt (Performing Subsidiary).
- (f) For the purposes of this clause 8, **Preferred Option** means:
 - (i) subject to clause 8.3(f)(ii), the Option nominated by the NSW Government under clause 8.3(d)(i); or
 - (ii) if the circumstances in clause 8.3(e) apply, the Option nominated by the NSW Government under clause 8.3(e); or
 - (iii) if the circumstances in clause 8.3(g) apply, the Option nominated by the NSW Government under clause 8.3(g); or
 - (iv) if the NSW Government has not nominated an Option in accordance with clause 8.3(d)(i) or 8.3(e), the Preferred Option is deemed to be the Option which the Independent Expert determines satisfies the criteria set out in:
 - A. clauses 8.4(a), (b), (c) and, if applicable, (d); or
 - B. clause 8.4(e),and in respect of which the amounts anticipated to be received by, or on behalf of the Fund, have a higher net present value than any other Option

having regard (among any other factors) to any potential future payment by the Performing Subsidiary, JHINV or a James Hardie Successor (under an agreement similar in its effect to the Final Funding Agreement) in respect of part or all of the Compensation Debt (Performing Subsidiary).

- (g) If the Independent Expert determines that there are two or more Options which satisfy the criteria set out in clause 8.2(b)(ii), the NSW Government may notify the Undertaking and Guarantee Trustee in writing which Option it wishes to nominate as the Preferred Option.

8.4 Role of the Independent Expert

If an Independent Expert is appointed under this clause 8, the Independent Expert shall determine (and shall be instructed by the Undertaking and Guarantee Trustee only to determine), in its opinion:

- (a) whether, one or more Options (if approved and implemented in the manner described in the Notice of Voting in Insolvency) are likely to result in the recovery by the Undertaking and Guarantee Trustee of an amount in respect of the Finance Money Debt (Performing Subsidiary) which would be sufficient (taking into account prior ranking claims, the likely or anticipated distribution to Financiers by the Insolvency Official and any likely payment to the Undertaking and Guarantee Trustee under clause 4) to discharge and satisfy the Finance Money Debt (Performing Subsidiary) in full;
- (b) whether one or more of the Options which satisfy the requirements of paragraph (a) (if approved and implemented in the manner described in the Notice of Voting in Insolvency) are likely to result in the recovery by the Undertaking and Guarantee Trustee in respect of the Finance Money Debt (Performing Subsidiary) of an amount:
 - (i) which would be at least 5% greater than the amount which the Undertaking and Guarantee Trustee would be likely to recover in respect of the Finance Money Debt (Performing Subsidiary) under any other Option, after allowing for the time value of money; and
 - (ii) which would discharge and satisfy the Finance Money Debt (Performing Subsidiary) in full by a date no later than 12 months after the earliest date

by which any of the other Options would achieve full discharge and satisfaction of the Finance Money Debt (Performing Subsidiary); and

- (c) whether the conditions (if any) attached to one or more of the Options which satisfy the requirements of paragraph (a) (as described in the Notice of Voting in Insolvency) do not involve a materially greater risk of non-recovery, or delay in recovery of more than 12 months, by the Undertaking and Guarantee Trustee of an amount which would be sufficient (taking into account prior ranking claims, the likely or anticipated distribution to the Financiers by the Insolvency Official and any likely payment to the Undertaking and Guarantee Trust under clause 4) to discharge and satisfy the Finance Money Debt (Performing Subsidiary) in full, compared to the risks of non-recovery, or delay in recovery of more than 12 months, associated with the other Options (taking into account the conditions (if any) attached to those other Options (as described in the Notice of Voting in Insolvency)); and
- (d) if one or more of the Options which satisfy the requirements of paragraph (a) (if approved and implemented in the manner described in the Notice of Voting in Insolvency) are each likely to result in the recovery by the Undertaking and Guarantee Trustee of an amount sufficient to discharge and satisfy the Finance Money Debt (Performing Subsidiary) in full within substantially the same period of time (taking into account prior ranking claims, the likely or anticipated distribution to the Financiers by the Insolvency Official and any likely payment to the Undertaking and Guarantee Trust under clause 4), which Option would result in the amounts anticipated to be received by, or on behalf of, the Charitable Fund in respect of the Compensation Debt (Performing Subsidiary) having a higher net present value than the other Options having regard (among any other relevant factors) to any potential future payment by the Performing Subsidiary, JHINV or a James Hardie Successor (under an agreement similar in its effect to the Final Funding Agreement) in respect of part or all of the Compensation Debt (Performing Subsidiary); and
- (e) if the vote relates to deferring or not deferring any action or extending or not extending the Insolvency proceeding, which choice is likely to result in:
 - (i) a greater net recovery in respect of the Finance Money Debt (Performing Subsidiary) (taking into account prior ranking claims, the likely or anticipated distribution to the Financiers by the Insolvency Official and

any likely payment to the Undertaking and Guarantee Trust under clause 4); or

- (ii) if either choice would result in the recovery by the Undertaking and Guarantee Trustee of an amount sufficient to discharge and satisfy the Finance Money Debt (Performing Subsidiary) in full (taking into account prior ranking claims, the likely or anticipated distribution to the Financiers by the Insolvency Official and any likely payment to the Undertaking and Guarantee Trust under clause 4), a greater net recovery in respect of the Compensation Debt (Performing Subsidiary) (taking into account prior ranking claims, the likely or anticipated distribution to the Financiers by the Insolvency Official and any likely payment to the Undertaking and Guarantee Trust under clause 4) within the next 12 months.

8.5 Notice of determination by the Independent Expert

The Independent Expert shall send its determination, together with reasons and supporting material, in writing to the Undertaking and Guarantee Trustee and the NSW Government within 10 Business Days of its appointment (or such shorter period as the Undertaking and Guarantee Trustee may specify at the time of appointment of the Independent Expert having regard to the terms of the Notice of Voting in Insolvency).

8.6 Assistance to the Independent Expert

Subject to any duty of confidentiality or applicable law, the Undertaking and Guarantee Trustee, the Financiers, the Performing Subsidiary, the Fund Trustee and the NSW Government must promptly provide the Independent Expert with any information or assistance it reasonably requests for the purpose of making its determination under clause 8.4.

8.7 Determination by the Independent Expert final

The determination of the Independent Expert shall (in the absence of manifest error) be final and binding on the Undertaking and Guarantee Trustee, each Financier, the Performing Subsidiary, the Fund Trustee and the NSW Government.

8.8 Consent of NSW Government required in certain circumstances

- (a) Subject to clauses 8.9 and 8.10, but otherwise notwithstanding any other provision of clauses 8.2 to 8.7 inclusive, the Undertaking and Guarantee Trustee must ensure that an Attorney does not, without the prior written consent of the NSW Government, vote in respect of the Specified Proportion of the Compensation Debt (Performing Subsidiary) in favour of any arrangement, assignment, reconstruction, composition, option, proposal or other course of action proposed in connection with the Performing Subsidiary's Insolvency which, if approved and implemented, would result in the extinguishment of any part of the Compensation Debt (Performing Subsidiary) (other than by payment in full or upon the final dissolution or winding up of JHINV in circumstances where there will be an insufficiency of assets to enable payment of any part of the Compensation Debt (Performing Subsidiary) taking into account prior ranking claims, the distribution to the Financiers by the Insolvency Official and payments to the Undertaking and Guarantee Trust under clause 4). An Attorney may vote the balance of the Compensation Debt (Performing Subsidiary) in accordance with the instructions of the Financiers given in accordance with the Finance Undertaking and Guarantee (Performing Subsidiary) (or, in the absence of such instructions, as the Undertaking and Guarantee Trustee directs).
- (b) Where there are two or more Options, the Undertaking and Guarantee Trustee must appoint and obtain advice from an Independent Expert in accordance with clauses 8.3 and 8.4 and, provided that the Independent Expert has had due regard to the matters specified in clause 8.4, the Undertaking and Guarantee Trustee must, subject to clauses 8.2(c), 8.9 and 8.10, ensure that an Attorney votes the Specified Proportion of the Compensation Debt (Performing Subsidiary) in favour of the Preferred Option. An Attorney may vote the balance of the Compensation Debt (Performing Subsidiary) in accordance with the instructions of the Financiers given in accordance with the Finance Undertaking and Guarantee (Performing Subsidiary).

8.9 Defaulting or absent Undertaking and Guarantee Trustee

If:

- (a) a court of competent jurisdiction has determined that the Undertaking and Guarantee Trustee is in breach of, or default under, this deed; or

(b) there is no Person acting as trustee under the Finance Undertaking and Guarantee (Performing Subsidiary),

then for so long as such breach or default continues and remains unremedied, or until a Person is appointed as a New Undertaking and Guarantee Trustee in accordance with clause 7.6, as the case may be, the Compensation Parties may exercise any vote in any Insolvency proceeding in respect of the Compensation Debt (Performing Subsidiary) which would otherwise be exercised by an Attorney.

8.10 Residual Power

If the Undertaking and Guarantee Trustee is obliged by reason of this clause 8 to ensure that an Attorney votes in a manner recommended by the Independent Expert, the Undertaking and Guarantee Trustee may cause the Attorney to vote in another manner approved by the NSW Government.

9. CHANGES TO RIGHTS

9.1 Rights of the Financiers are protected

(a) Rights given to or for the benefit of the Financiers under this deed, and the obligations of each Compensation Party and the NSW Government under it, are not affected by any act or omission by a Compensation Party, the NSW Government, the Undertaking and Guarantee Trustee, any Financier or any other Person or by any other act, other matter or thing whatsoever, whether negligent or not, except as agreed to in writing by the Undertaking and Guarantee Trustee. For example, those rights and liabilities are not affected by:

(i) any act or omission:

- A. varying or replacing any arrangement under which any Finance Money Debt (Performing Subsidiary) or Compensation Debt (Performing Subsidiary) is expressed to be owing, such as by increasing a facility limit or extending the term;
- B. releasing or discharging the Performing Subsidiary or any Security Provider (including discharge by operation of law) or giving them a concession (such as more time to pay);

- C. releasing any Person who gives a guarantee or indemnity in connection with any of the Performing Subsidiary's obligations;
 - D. releasing, losing the benefit of, or not obtaining any Security Interest or negotiable instrument;
 - E. by which the obligations of a Compensation Party, the NSW Government, the Performing Subsidiary or any Security Provider may not be enforceable;
 - F. by which any Person who was intended to guarantee or provide a Security Interest securing all or part of the Finance Money Debt (Performing Subsidiary) does not do so, or does not do so effectively;
 - G. by which a Compensation Party or the NSW Government is discharged from its obligations to the Financiers by operation of law;
 - H. by which any Security Interest which could be registered is not registered; or
 - I. any other thing causing any prejudice (including material prejudice);
- (ii) a Person dealing in any way with a Security Interest, guarantee, indemnity, judgment or negotiable instrument;
 - (iii) the death, mental or physical disability, incapacity, Insolvency or any legal limitation of any Person including the Performing Subsidiary, a Compensation Party or the NSW Government;
 - (iv) changes in the membership, name or business of any Person;
 - (v) the Performing Subsidiary opening an account with any Financier;
 - (vi) acquiescence or delay by any Financier or any other Person;

- (vii) an assignment of rights or a novation in connection with all or part of the Finance Money Debt (Performing Subsidiary) or the Compensation Debt (Performing Subsidiary);
- (viii) the acceptance of the repudiation of, or termination of, any Finance Document or any other document or agreement; or
- (ix) any payment to a Financier, including any payment which at the payment date or at any time after the payment date is, in whole or part, illegal, void, voidable, avoided or unenforceable.

This clause applies regardless of whether the Performing Subsidiary, a Compensation Party or the NSW Government is aware of, has consented to or is given notice of any act, omission, matter or thing referred to in this clause. This clause does not limit the obligations of a Compensation Party or the NSW Government under this deed.

- (b) Subject to this deed, the Financiers may act freely in their interests in relation to any matter concerning the Finance Money Debt (Performing Subsidiary) without regard to the interests of a Compensation Party or the NSW Government or the terms of the Compensation Debt (Performing Subsidiary) and without incurring any liability to a Compensation Party or the NSW Government.

9.2 Payments

The Fund Trustee and the NSW Government agree to make any payments required under this deed:

- (a) to, or as directed by, the Undertaking and Guarantee Trustee;
- (b) in full without set off or counterclaim, and without any deduction in respect of Taxes unless prohibited by law; and
- (c) in the currency in which it receives or recovers payment in respect of the Compensation Debt (Performing Subsidiary).

9.3 Reinstatement of rights

Under any law relating to Insolvency, a Person may claim that a transaction (including a payment) in connection with this deed or the Finance Money Debt (Performing Subsidiary) is void or voidable. If such a claim is made and upheld, conceded or compromised, then the Financiers are immediately entitled as against each Compensation Party and the NSW Government to the rights under this deed in respect of the Finance Money Debt (Performing Subsidiary) to which they were entitled immediately before the transaction. On request from the Financiers, each Compensation Party and the NSW Government agrees to do anything reasonably required and at the cost of the Financiers (including signing any document) to restore to the Financiers any right the Financiers held under this deed immediately before the transaction.

This clause 9.3 applies whether or not the Undertaking and Guarantee Trustee or a Financier, knew, or ought to have known, that the transaction would or may be void or voidable.

9.4 Set-off

A Financier may set off any amount due for payment by the Financier to a Compensation Party against any amount due for payment by that Compensation Party to the Financier. This does not restrict any right of set-off which may arise at law.

9.5 Discretion in exercising rights

A Financier may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions), unless this deed expressly states otherwise.

9.6 Partial exercising of rights

If any party or a Financier does not exercise a right or remedy fully or at a given time, that party or the Financier (as the case may be) may still exercise it later.

9.7 Remedies cumulative

The rights and remedies of each party and the Financiers under this deed are in addition to other rights and remedies given by law independently of this deed.

9.8 Variation and waiver

Unless this deed expressly states otherwise, a provision of this deed, or right created under it, may not be waived or varied except in writing signed by the party or parties to be bound and with the prior written consent of the other parties.

For the avoidance of doubt, but subject to any requirement for the Undertaking and Guarantee Trustee to obtain instructions and/or consent from all or a specified majority of the Financiers as referred to in clause 7.3, this clause 9.8 does not require a Financier to sign any such waiver or variation.

10. INCONSISTENT LAW

10.1 Inconsistent law

To the extent permitted by law, this deed prevails to the extent it is inconsistent with any law.

10.2 Supervening legislation

Any present or future legislation which operates to vary the obligations of a Compensation Party or the NSW Government in connection with this deed with the result that the Financiers' 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.

11. NOTICES

- (a) A notice, approval, consent, nomination or other communication (including a Financier Nomination Letter) (**Communication**) to a Person relating to this deed:
- (i) must state that it relates to this deed and state the relevant clause in this deed;
 - (ii) must be signed by an Authorised Officer;
 - (iii) must be in legible writing; and
 - (iv) must be in English.

(b) Communications must be addressed as follows:

If the Communication is to NSW Government then it must be addressed as follows:

Name: The State of New South Wales, c/- The Cabinet Office
Attention: Deputy Director-General (Legal)
Address: Level 39, Governor Macquarie Tower, Farrer Place, Sydney, NSW 2000
Facsimile: (61) (02) 9228 3062

unless the NSW Government has notified the other parties of new contact details, in which case the Communication must be addressed in the manner last notified by the NSW Government.

If the Communication is to the Fund Trustee then it must be addressed as follows:

Name: Asbestos Injuries Compensation Fund Limited
Attention: Chairman
Address: Level 3, 22 Pitt Street, Sydney, NSW 2000
Facsimile: (61) (02) 8274 5217

unless the Fund Trustee has notified the other parties of new contact details, in which case the Communication must be addressed in the manner last notified by the Fund Trustee.

A copy of any such Communication to the Fund Trustee must promptly be sent to the NSW Government in accordance with this clause 11.

If the Communication is to the Performing Subsidiary then it must be addressed as follows:

Name: James Hardie 117 Pty Limited
Attention: The Chairman and the Chief Financial Officer
Addresses: Atrium, 8th floor, Strawinskyiaan 3077, 1077ZX Amsterdam, The Netherlands

and

Level 3, 22 Pitt Street, Sydney, NSW 2000

Facsimile: (61) (02) 8274 5218

unless the Performing Subsidiary has notified the other parties of new contact details, in which case the Communication must be addressed in the manner last notified by the Performing Subsidiary.

If the Communication is to the Undertaking and Guarantee Trustee then it must be addressed as follows:

Name: AET Structured Finance Services Pty Limited

Attention: Corporate Trust

Address: 80 Alfred Street, Milsons Point NSW 2061

Facsimile: (61) (02) 9028 5942

unless the Undertaking and Guarantee Trustee has notified the other parties of new contact details, in which case the Communication must be addressed in the manner last notified by the Undertaking and Guarantee Trustee.

If the Communication is to a Financier then it must be addressed as specified in the relevant Financier Nomination Letter, unless the Financier has subsequently notified the other parties of new contact details, in which case the Communication must be addressed in the manner last notified by the Financier.

If the Communication is to a Replacement Trustee or a New Undertaking and Guarantee Trustee then it must be addressed as specified in the relevant Accession Deed, unless the Replacement Trustee or New Undertaking and Guarantee Trustee has subsequently notified the other parties of new contact details, in which case the Communication must be addressed in the manner last notified by the Replacement Trustee or New Undertaking and Guarantee Trustee.

(c) If the Communication is sent by the sender it shall be deemed to be received by the receiver:

(i) if the Communication is hand delivered, upon delivery to the receiving party;

- (ii) if the Communication is sent by facsimile, upon the successful completion of the relevant transmission;
 - (iii) if the Communication is sent by registered mail within Australia, 2 business days after the registration of the notice of posting; and
 - (iv) if the Communication is sent by ordinary mail within Australia, 3 business days from then including the date of postage, provided that where a notice to a party must be copied to another Person, each such notice will only be given at the time the last notice is received.
- (d) For the avoidance of doubt, a Communication shall not be sent by electronic email.

12. GOVERNING LAW AND JURISDICTION

12.1 Governing law

This deed is governed by the laws of New South Wales.

12.2 Submission to jurisdiction

Each party and Financier submits to the non-exclusive jurisdiction of courts exercising jurisdiction in New South Wales, and waives any right to claim that those courts are an inconvenient forum.

12.3 Service

- (a) A document may be served on a party or a Financier by delivering it to that party at its address in clause 11.
- (b) This clause 12.3 does not prevent another mode of service.

13. COUNTERPARTS

This deed may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

14. GENERAL

14.1 Severability

- (a) If a provision of this deed is invalid, illegal or unenforceable, then that provision to the extent of the invalidity, illegality or unenforceability must be ignored in the interpretation of this deed.
- (b) All the other provisions of this deed remain in full force and effect.

14.2 No waiver

- (a) A party's agreement to waive a right or entitlement under this deed is only effective if that party gives written notice of that waiver to the party seeking the benefit of the waiver.
- (b) Waiver by a party of anything required to be done under this deed is not a waiver of any other thing required to be done under this deed.
- (c) Paragraph (b) applies whether the other act or thing required to be done under this deed is of the same or a different nature as the act or thing waived.
- (d) A failure or delay in exercising a right arising from a breach of this deed is not a waiver of that right.
- (e) The parties must not waive this clause 14.

14.3 Further assurances

Each party and Financier must do everything necessary to give full effect to this deed.

14.4 Entire agreement

- (a) This deed embodies the entire agreement between the Fund Trustee and the NSW Government on the one part, and the Undertaking and Guarantee Trustee and the Financiers on the other part.
- (b) This deed supersedes all previous agreements.

14.5 Cumulative rights

A right, power, discretion and remedy arising out of this deed in favour of a party or a Financier:

- (a) is cumulative; and
- (b) does not diminish any other right, power, discretion and remedy of any party or a Financier.

14.6 Certificates

A Financier or the Undertaking and Guarantee Trustee may give a Compensation Party or the NSW Government a certificate about an amount payable or other matter in connection with this deed, the Finance Undertaking and Guarantee (Performing Subsidiary) or a Finance Document. The certificate is sufficient evidence of the amount or matter, unless it is proved to be incorrect.

14.7 Amendment of this deed

The parties can only vary a term of this deed if the variation is in writing and all parties execute an amending deed.

14.8 Confidentiality

Subject to the exceptions set out below, each party shall, and shall procure that its employees, officers, agents and advisers (each a **'Representative'**) keep strictly confidential all information provided to that party or its Representatives in relation to, or in connection with Original Final Funding Agreement and the Final Funding Agreement, this deed and the other Related Agreements and each party shall be responsible for all acts and omissions of its Representatives in relation to such information.

A party (and its Representatives) may disclose information under or obtained in connection with the Original Final Funding Agreement and the Final Funding Agreement, this deed and the other Related Agreements as may be necessary to:

- (a) the party's related bodies corporate, professional advisors, bankers, financial advisors and financiers, if those persons undertake to keep the information disclosed confidential;

- (b) comply with any applicable law or requirement of any regulatory body (including any relevant stock exchange) and any corporate governance guidelines adopted by such bodies which are adopted by such party;
- (c) any of its employees to whom it is necessary to disclose the information, if that employee undertakes to keep the information confidential;
- (d) any Person as permitted by the written agreement of all parties; or
- (e) any Person if the content of the disclosure is or has become generally available to the public otherwise than by breach of this deed.

15. UNDERTAKING AND GUARANTEE TRUSTEE LIMITATION OF LIABILITY

15.1 Limitation of liability

- (a) The Undertaking and Guarantee Trustee enters into this deed in its capacity as trustee for the Financiers under the Undertaking and Guarantee Trust and will not be liable in any capacity other than as trustee for the Financiers under the Undertaking and Guarantee Trust.
- (b) A liability arising under or in connection with this deed is limited to and can be enforced against the Undertaking and Guarantee Trustee only to the extent to which it can be satisfied out of any property held by the Undertaking and Guarantee Trustee out of which the Undertaking and Guarantee Trustee is actually indemnified for the liability. This limitation of the Undertaking and Guarantee Trustee's liability applies despite any other provision of this deed and extends to all liabilities and obligations of the Undertaking and Guarantee Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this deed.
- (c) The parties (other than the Undertaking and Guarantee Trustee) may not sue the Undertaking and Guarantee Trustee in any capacity other than as trustee of the Guarantee Trust, including seeking the appointment of a receiver (except in relation to property of the Guarantee Trust), a liquidator, an administrator or any other similar person to the Undertaking and Guarantee Trustee or prove in any liquidation of or affecting the Undertaking and Guarantee Trustee (except in relation to the property of the Guarantee Trust).

- (d) The parties waive their rights and release the Undertaking and Guarantee Trustee from any personal liability in respect of any loss or damage which any of them may suffer as a consequence of a failure of the Undertaking and Guarantee Trustee to perform its obligations under this deed, which cannot be paid or satisfied out of any property of the Undertaking and Guarantee Trust held by the Undertaking and Guarantee Trustee.
- (e) The provisions of this clause 15.1 will not apply to any obligation or liability of the Undertaking and Guarantee Trustee to the extent to which such obligation or liability:
 - (i) arises as a result of the Undertaking and Guarantee Trustee's fraud, gross negligence or wilful misconduct; or
 - (ii) cannot be satisfied out of any property held by the Undertaking and Guarantee Trustee as a result of the Undertaking and Guarantee Trustee's fraud, gross negligence or wilful misconduct.
- (f) No act or omission of the Undertaking and Guarantee Trustee (including any related failure to satisfy its obligations or breach of representation or warranty under this deed) will be considered fraud, gross negligence or wilful misconduct of the Undertaking and Guarantee Trustee to the extent to which the act or omission was caused or contributed to by any failure of any party (other than the Undertaking and Guarantee Trustee) or any other person to fulfil its obligations relating to the Undertaking and Guarantee Trust or by any other act or omission of any party (other than the Undertaking and Guarantee Trustee) or any other person having obligations relating to the Undertaking and Guarantee Trust.
- (g) Any fraud, gross negligence or wilful misconduct of an attorney, agent or delegate appointed by the Undertaking and Guarantee Trustee in accordance with this deed is not, and is not to be deemed to be, an act on behalf of the Undertaking and Guarantee Trustee for the purposes of this deed and does not create rights or obligations on any party to this deed nor expose the Undertaking and Guarantee Trustee to any personal liability, provided that:
 - (i) nothing in this paragraph (g) relieves the Undertaking and Guarantee Trustee from any liability to the extent of any fraud, gross negligence or wilful misconduct of the Undertaking and Guarantee Trustee in the

selection, appointment, oversight or supervision (according to the standard set out in clause 7.7) of any such attorney, agent or delegate; and

- (ii) in accordance with clause 7.8.1(j), the Undertaking and Guarantee Trustee must take all reasonable steps to recover compensation from any such attorney, agent or delegate.

15.2 Undertaking and Guarantee Trustee's knowledge

The Undertaking and Guarantee Trustee will only be considered to have knowledge or awareness of, or notice of, any thing, or grounds to believe any thing, by virtue of the officers of the Undertaking and Guarantee Trustee having day to day responsibility for the administration of the Undertaking and Guarantee Trustee having actual knowledge, actual awareness or actual notice of that thing, or grounds or reason to believe that thing (and similar references will be interpreted in this way).

15.3 Reliance on notices

Where any notice is provided by any of the parties (other than the Undertaking and Guarantee Trustee) to the Undertaking and Guarantee Trustee and the notice has been executed by an Authorised Officer of that party then the Undertaking and Guarantee Trustee may assume that the notice has been properly prepared and considered by that party and the Undertaking and Guarantee Trustee is not required to investigate further.

Executed as a deed

Each person executing this deed states that the person has no notice of the revocation, termination or suspension of the authority pursuant to which the person executes this deed.

**Signed, sealed and delivered by The Honourable Robert John Debus MP,
Attorney-General of New South Wales,
for The State of New South Wales**

/s/ Robert J. Debus

Signed, sealed and delivered by Asbestos Injuries Compensation Fund Limited in its capacity as trustee for the **Charitable Fund**

/s/ P. W. Baker

**Name: P. W. Baker
Title: Director**

/s/ Joanne Marchione

**Name: Joanne Marchione
Title: Director**

Signed, sealed and delivered by James Hardie 117 Pty Limited

/s/ Bruce J. W. Potts

**Name: Bruce J. W. Potts
Title: Director**

/s/ Donald A. J. Salter

**Name: Donald A. J. Salter
Title: Director**

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Signed, sealed and delivered by AET Structured Finance Services Pty Limited

/s/ Yvonne Drake

Name: Yvonne Drake
Title: Authorised Officer

/s/ Stuart Howard

Name: Stuart Alexander Howard
Title: Authorised Officer

[Common Seal of AET Structured Finance
Services Pty Limited A.B.N. 12 106 424 088]

SCHEDULE 1
FINANCIER NOMINATION LETTER

[Date]

To: [Financier]

Performing Subsidiary Intercreditor Deed — Financier Nomination Letter

We refer to the Performing Subsidiary Intercreditor Deed between the State of New South Wales, Asbestos Injuries Compensation Fund Limited, ourselves and AET Structured Finance Services Pty Limited (**Undertaking and Guarantee Trustee**) dated [insert date] (**Performing Subsidiary Intercreditor Deed**).

For the purposes of the Performing Subsidiary Intercreditor Deed, on and from the date of this letter:

We nominate the following document as a finance document:

Name: [insert details]

Date: [insert details]

Parties: [insert details]

The agreement described above, and each document named or referred to as a ["Finance Document"] in that agreement, is a Finance Document for the purposes of the Performing Subsidiary Intercreditor Deed; and

We nominate you as a "Financier" in relation to each Finance Document referred to above.

Please confirm your acceptance of the above nomination, and the benefit and obligations of the Performing Subsidiary Intercreditor Deed, by signing and returning the attached copy of this letter to the Undertaking and Guarantee Trustee.

Clauses 1 (**Interpretation**) and 12 (**Governing law and Jurisdiction**) of the Performing Subsidiary Intercreditor Deed apply to this letter as they were fully set out in this letter.

Executed as deed poll for and on behalf of
JAMES HARDIE 117 PTY LIMITED

by its Authorised Officer:
Name:
Title:

Endorsement by the Undertaking and Guarantee Trustee:

We undertake that, if required by clause 2.2(b) of the Performing Subsidiary Intercreditor Deed, we will send a copy of the signed Financier Nomination Letter to the State of New South Wales and the Fund Trustee (each as defined in the Performing Subsidiary Intercreditor Deed).

Executed as a deed poll for and on behalf of
AET STRUCTURED FINANCE SERVICES PTY LIMITED

by its Authorised Officer:
Name:
Title:

Acceptance by the nominated Financier

We accept and agree to the above nomination.

We acknowledge becoming entitled to the benefit of the Performing Subsidiary Intercreditor Deed and incurring obligations and giving rights under the Performing Subsidiary Intercreditor Deed for valuable consideration received from the parties to the Performing Subsidiary Intercreditor Deed.

We further acknowledge that the Performing Subsidiary Intercreditor Deed does not:

- (a) affect the status or ranking of the Compensation Debt (Performing Subsidiary) as an ordinary unsecured claim against the Performing Subsidiary;

- (b) affect the status or ranking of the Compensation Debt (Performing Subsidiary) as against the other debts (including the Finance Money Debt (Performing Subsidiary)) or the other creditors of the Performing Subsidiary (including the Financiers) in an Insolvency of the Performing Subsidiary.

We accept the benefit and obligations of the Performing Subsidiary Intercreditor Deed, and agree to:

- (i) be bound by the terms of that deed;
- (ii) promptly respond to any requests from the Undertaking and Guarantee Trustee for (A) instructions as to the manner in which the Undertaking and Guarantee Trustee should exercise any of its rights or benefits under the Performing Subsidiary Intercreditor Deed, or (B) any consent required from the Financiers (and agree not to unreasonably withhold or delay such consent); and
- (iii) agree that if we fail to promptly so respond, the Undertaking and Guarantee Trustee may exercise such rights or benefits in accordance with the instructions of the requisite majority of the Financiers who do so respond in accordance with the Finance Undertaking and Guarantee (Performing Subsidiary).

Executed as a deed poll for and on behalf of
[Insert name of Financier]

by its Authorised Officer:

Name:

Title:

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SCHEDULE 2
ACCESSION DEED

[Date]

To: [Existing parties to the Performing Subsidiary Intercreditor Deed]

Performing Subsidiary Intercreditor Deed — Accession as [Replacement Trustee / New Undertaking and Guarantee Trustee]

We refer to the Performing Subsidiary Intercreditor Deed between the State of New South Wales, Asbestos Injuries Compensation Fund Limited, James Hardie 117 Pty Limited and AET Structured Finance Services Pty Limited (**Undertaking and Guarantee Trustee**) dated [insert date] (**Performing Subsidiary Intercreditor Deed**).

We acknowledge becoming a party to the Performing Subsidiary Intercreditor Deed and incurring obligations and giving rights under the Performing Subsidiary Intercreditor Deed for valuable consideration received from the other parties to the Performing Subsidiary Intercreditor Deed.

We hereby undertake, for the benefit of existing parties to the Performing Subsidiary Intercreditor Deed, that on and from the date of this letter, we will perform and comply with all the duties and obligations [of a Replacement Trustee and the Fund Trustee] [expressed to be assumed by [a Replacement Trustee / New Undertaking and Guarantee Trustee]] under the Performing Subsidiary Intercreditor Deed.

Clauses 1 (**Interpretation**) and 12 (**Governing law and Jurisdiction**) of the Performing Subsidiary Intercreditor Deed apply to this letter as they were fully set out in this letter.

Executed as a deed poll for and on behalf of
[NAME OF REPLACEMENT TRUSTEE / NEW GUARANTEE TRUSTEE]

by its Authorised Officer:

Name:

Title:

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SCHEDULE 3
FORM OF POWER OF ATTORNEY

Appointer: [Asbestos Injuries Compensation Fund Limited in its capacity as trustee for the Charitable Fund] / [*name of replacement trustee*] as replacement trustee of the Charitable Fund] / [*name of New Person*] as [successor] to [Asbestos Injuries Compensation Fund Limited] / [*name of replacement trustee*] in its capacity as trustee for the Charitable Fund] ([*ABN*]) of [*address of Appointer*]

Attorney: AET Structured Finance Services Pty Limited (ABN 12 106 424 088) (**Undertaking and Guarantee Trustee**) of 80 Alfred Street, Milsons Point NSW 2061 and each Authorised Officer of the Undertaking and Guarantee Trustee from time to time individually

Date: [*date of power of attorney*]

1. APPOINTMENT

Subject to clause 4, the Appointer irrevocably and for valuable consideration appoints the Attorney to be the Appointer's attorney. This appointment is of each Attorney individually and any two or more of them jointly.

2. WHAT THE APPOINTER MAY DO

The Attorney may:

- (a) exercise the right to cast all and any votes attaching to, or to be cast in respect of, the Compensation Debt (Performing Subsidiary) during the Insolvency of the Performing Subsidiary at, or in connection with, any meeting, proceeding or distribution concerning the Insolvency of the Performing Subsidiary for so long as any Finance Money Debt (Performing Subsidiary) remains outstanding and to the exclusion of the right of the Appointor to exercise all of any such votes for so long as any Finance Money Debt (Performing Subsidiary) remains outstanding;
- (b) do anything necessary or incidental to such exercise including, without limitation, signing and delivering documents;

- (c) provide an original or copy of this power of attorney to an Insolvency Official for the purpose of establishing the right and entitlement of the Attorney during the Insolvency of the Performing Subsidiary to exercise the right to cast all and any votes attaching to, or to be cast in respect of, the Compensation Debt (Performing Subsidiary) during the Insolvency of the Performing Subsidiary at, or in connection with, any meeting, proceeding or distribution concerning the Insolvency of the Performing Subsidiary; and
- (d) do anything which in the Attorney's opinion is necessary or desirable to ensure the validity and enforceability of this power of attorney under any applicable law (including, without limitation, stamping or registering this power of attorney or filing this power of attorney with any government authority).

Subject to the terms and conditions set out in the Performing Subsidiary Intercreditor Deed, the Attorney may do these things in the name and on behalf of the Appointer or, if necessary or desirable under any applicable law in the Attorney's opinion, the Attorney's name.

3. GENERAL

3.1 Attorney's acts valid

Subject to the terms and conditions set out in the Performing Subsidiary Intercreditor Deed, the Appointer declares that all acts, matters and things done by the Attorney in exercising powers under this power of attorney and which are in accordance with the terms and conditions set out in the Performing Subsidiary Intercreditor Deed, will be as valid and effective as if they had been done by the Appointer.

3.2 Benefit to the Attorney

The Attorney may exercise a power under this power of attorney even if:

- (a) it involves a conflict of duty; or
- (b) the Attorney has a personal interest in the doing of that act.

3.3 Governing law

This deed is governed by the law in force in New South Wales. Each party submits to the non-exclusive jurisdiction of the courts of that place.

4. COMPLIANCE WITH PERFORMING SUBSIDIARY INTERCREDITOR DEED

Notwithstanding any other provision of this Power of Attorney, the Attorney must exercise the rights granted to it under this Power of Attorney in accordance with, and subject to, the terms and conditions set out in the Performing Subsidiary Intercreditor Deed.

5. INTERPRETATION

In this power of attorney:

Authorised Officer has the meaning given to it in the Performing Subsidiary Intercreditor Deed.

Charitable Fund has the meaning given to it in the Final Funding Agreement

Compensation Debt (Performing Subsidiary) has the meaning given to it in the Performing Subsidiary Intercreditor Deed.

Final Funding Agreement has the meaning given to it in the Performing Subsidiary Intercreditor Deed.

Finance Money Debt (Performing Subsidiary) has the meaning given to it in the Performing Subsidiary Intercreditor Deed.

Insolvency has the meaning given to it in the Performing Subsidiary Intercreditor Deed.

Insolvency Official has the meaning given to it in the Performing Subsidiary Intercreditor Deed.

Performing Subsidiary Intercreditor Deed means the Intercreditor Deed between the State of New South Wales, Asbestos Injuries Compensation Fund Limited, James Hardie 117 Pty Limited and AET Structured Finance Services Pty Limited dated [*insert date*].

Performing Subsidiary has the meaning given to it in the Performing Subsidiary Intercreditor Deed.

EXECUTED as a deed poll

Signed, sealed and delivered by *[name of Appointer]*

[name of signatory]
[capacity of signatory]

[name of signatory]
[capacity of signatory]

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ATTACHMENT A
DICTIONARY AND INTERPRETATION
(CLAUSE 1)

1. DICTONARY

In this deed:

Accession Deed means a letter (executed as a deed poll) in the form of Schedule 2 to this deed.

Annual Payment has the meaning given to it in the Final Funding Agreement.

Attorney has the meaning given to it in clause 8.1(a).

Audited Financial Statements means, in respect of a Financial Year, the audited consolidated financial statements of the Performing Subsidiary for that Financial Year prepared in accordance with the generally accepted accounting principles with respect to which the Performing Subsidiary prepares its published financial reports, in each case consistently applied throughout that Financial Year.

Authorised Officer means:

- (a) in the case of the Undertaking and Guarantee Trustee or a Financier, a director or secretary, or an officer 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 nominated by the Undertaking and Guarantee Trustee or the Financier, as the case may be, as an Authorised Officer for the purposes of this deed;
- (b) in the case of the Fund Trustee, a Person appointed by the Fund Trustee and notified to the Undertaking and Guarantee Trustee and the Financiers as an Authorised Officer for the purposes of this deed, and whose specimen signature is provided with such notification;
- (c) in the case of the Performing Subsidiary, a director of the Performing Subsidiary or a person appointed by the Performing Subsidiary and notified to

the Fund Trustee, the NSW Government, the Undertaking and Guarantee Trustee and the Financiers as an Authorised Officer for the purposes of this deed, and whose specimen signature is provided with such notification; and

- (d) in the case of the NSW Government, any person who is a member of the Chief Executive Service or the Senior Executive Service of the New South Wales Public Service at the time the relevant act pursuant to this deed is to be undertaken. The Undertaking and Guarantee Trustee may rely on a statement from any person it reasonably believes is a member of the Chief Executive Service or the Senior Executive Service of the New South Wales Public Service that such person is in fact a member of the Chief Executive Service or the Senior Executive Service of the New South Wales Public Service.

Business Day means a day on which banks are open for business excluding Saturdays, Sundays and public holidays in Sydney, Australia.

Charitable Fund has the meaning given to it in the Final Funding Agreement.

Communication has the meaning given to it in clause 11(a).

Compensation Debt (Performing Subsidiary) means at any time all amounts then due for payment or which will or may become due for payment or that remain unpaid by the Performing Subsidiary in connection with the Final Funding Agreement, provided that once such amounts have been ascribed a value by an Insolvency Official for the purposes of an Insolvency of the Performing Subsidiary (including acceptance of a proof of debt for such amounts or a lesser amount by an Insolvency Official), a reference to the Compensation Debt (Performing Subsidiary) is a reference to amounts having that value, provided that if interest is payable on such amount under applicable law, the Compensation Debt (Performing Subsidiary) also includes such interest as is payable under applicable law (including all interest accruing on or subsequent to the filing of a petition initiating any proceeding in bankruptcy or insolvency or any like proceeding whether or not such interest is an allowed claim in such proceeding).

For the avoidance of doubt, the Compensation Debt (Performing Subsidiary) is only payable once to the Fund Trustee or the NSW Government for the sole benefit of the Fund Trustee in accordance with the terms of the Final Funding Agreement and the Related Agreements and nothing in this deed obliges the Performing Subsidiary to pay the same amount to more than one Person.

Compensation Parties means subject to clause 5.2, the Fund Trustee and, the NSW Government.

Controlled Entity means in respect of a Person, another Person in respect of which the first-mentioned Person is required to consolidate in its Audited Financial Statements but, in the case of the Performing Subsidiary, does not include any Liable Entity (as defined in the Final Funding Agreement) or the Fund Trustee. For the avoidance of doubt, the Performing Subsidiary is not a Controlled Entity of the Performing Subsidiary Group.

Cross Guarantee (Fund Guaranteed Money) means a guarantee or indemnity (or other covenant to secure the satisfaction of any payment or obligation) given by a member of the Performing Subsidiary Group (other than the Performing Subsidiary) (**Subsidiary Guarantor**):

- (a) in favour of the Fund Trustee in respect of the Compensation Debt (Performing Subsidiary);
- (b) on substantially the same terms as a guarantee or indemnity (or other covenant to secure the satisfaction of any payment or obligation) given by the Subsidiary Guarantor in respect of financial accommodation provided by a Person to another member of the Performing Subsidiary Group;
- (c) which terminates when the guarantee, indemnity or other covenant referred to in paragraph (b) terminates whether by express provision or by operation of law, provided that the Fund Trustee and the NSW Government have entered into a deed on substantially the same terms as this deed in relation to the benefit of any such guarantee or indemnity (or other covenant to secure the satisfaction of any payment or obligation).

Deed of Accession has the meaning given to it in the Final Funding Agreement.

Discretionary Fund has the meaning given to it in the Final Funding Agreement.

Excluded Lender means any Person to the extent that such Person:

- (a) is a trade creditor;

- (b) has provided any debt on terms that it is to be subordinated to the Compensation Debt (Performing Subsidiary);
- (c) has provided any debt or other borrowing which arises pursuant to a derivative:
 - (i) relating to equity interests in a member of the Performing Subsidiary Group; or
 - (ii) which is recognised as equity under applicable accounting standards;
- (d) is a member of the Performing Subsidiary Group;
- (e) is or becomes a creditor in respect of an amount owing to such Person in its capacity as a shareholder of the Performing Subsidiary or another member of the Performing Subsidiary Group otherwise than on arm's length terms;
- (f) provides financial accommodation to a Controlled Entity of the Performing Subsidiary Group and receives the benefit of a guarantee or indemnity (or other covenant to secure the satisfaction of any payment or obligation) given by a the Performing Subsidiary Group member (other than the Performing Subsidiary), where there is no Cross Guarantee (Fund Guaranteed Money) provided to the Fund Trustee on substantially the same terms as the Guarantee; or
- (g) acquires the rights, as a creditor, of any such Person referred to in any of paragraphs (a) to (f) inclusive or their assignees.

For avoidance of doubt, if a Person has acceded as a Financier in accordance with clause 2.2. in relation to particular debt or borrowings which satisfies the criteria set out in clause 2.2 and would not make the relevant Person an Excluded Lender ("**Qualifying Debt**") and separately has provided financial accommodation falling within the description of paragraph (f) of this definition of Excluded Lender ("**Non-Qualifying Debt**"):

- (i) that Person will only be an Excluded Lender in respect of the Non-Qualifying Debt and will continue to be a Financier in respect of the Qualifying Debt; and
- (ii) if that Person waives or releases any rights it may have under any guarantee or indemnity within the description of paragraph (f), then to the extent it would have been an Excluded Lender by virtue of falling within paragraph (f) of this

definition of Excluded Lender, that Person will cease to be an Excluded Lender in respect of the relevant financial accommodation.

Final Funding Agreement means the deed dated 21 November 2006 between the NSW Government, JHINV, the Performing Subsidiary and the Fund Trustee which amended and restated the Original Final Funding Agreement.

Finance Document in relation to a Financier means each agreement to which the Financier (whether or not together with any other Person) is a party under which liabilities are owed by the Performing Subsidiary (or another member of the Performing Subsidiary Group the performance of whose obligations has been guaranteed by the Performing Subsidiary) where such liabilities are, or are required to be, included in the Performing Subsidiary Group's financial statements or notes thereto as debt or borrowings (including bank loans, letter of credit facilities, derivatives and debt capital markets issues which are, or are required to be, so included or noted) and which is nominated as a "Finance Document" in a Financier Nomination Letter. For the avoidance of doubt, the Finance Undertaking and Guarantee (Performing Subsidiary) is not a Finance Document.

Finance Money Debt (Performing Subsidiary) means at any time, the total of all amounts then due for payment or which will or may become due for payment or that remain unpaid by the Performing Subsidiary (or another member of the Performing Subsidiary Group where payment of such amounts has been guaranteed by the Performing Subsidiary under the Finance Undertaking and Guarantee (Performing Subsidiary)) to any Financier (for its own account or for the account of another Person) pursuant to any Finance Document or to the Undertaking and Guarantee Trustee (for the account of a Financier) under the Finance Undertaking and Guarantee (Performing Subsidiary), provided that once such amounts have been ascribed a value by an Insolvency Official for the purposes of an Insolvency of the Performing Subsidiary (including acceptance of a proof of debt for such amounts or a lesser amount by an Insolvency Official), a reference to the Finance Money Debt (Performing Subsidiary) is a reference to amounts having that value, as ascribed from time to time, provided that in determining such value for the purposes of an Insolvency of the Performing Subsidiary:

(a) if any Financier (for its own account or for the account of another Person) or the Undertaking and Guarantee Trustee (for the account of a Financier):

- (i) fails to lodge a proof of debt (or similar claim) in an Insolvency of the Performing Subsidiary within the time provided for under applicable law (as such time may be extended by a relevant Insolvency Official); or
- (ii) lodges a proof of debt (or similar claim) in an Insolvency of the Performing Subsidiary and such proof of debt has not been accepted in whole or part by the relevant Insolvency Official (and such decision is not subject to appeal to, or review by, that Insolvency Official or another relevant Insolvency Official and the time for commencing any such appeal, or requesting any such review, has passed),

such amount shall be deemed to be zero or, in the case of subparagraph (ii), such amount shall be deemed to be reduced to the extent that it is not accepted by the relevant Insolvency Official;

- (b) if interest is payable on such amount under applicable law, the Finance Money Debt (Performing Subsidiary) also includes such interest as is payable under applicable law (including all interest accruing on or subsequent to the filing of a petition initiating any proceeding in bankruptcy or insolvency or any like proceeding whether or not such interest is an allowed claim in such proceeding);
- (c) if a Financier enters into, or is otherwise bound by, any conversion of debt to equity (which is not also a distribution subject to paragraph (d) below), then Finance Money Debt (Performing Subsidiary) shall be deemed to be reduced by the full amount of the face value of the debt (and any applicable interest) so converted;
- (d) if a Financier receives any money or other property or any other right pursuant to a Reconstruction Event, then Finance Money Debt (Performing Subsidiary) (and any applicable interest) shall be deemed to be reduced by the full amount of the fair market value of the money, property or right acquired as at the date of receipt; or
- (e) if any amount is received or due from a Person in respect of the Insolvency of JHINV or by operation of the JHINV Intercreditor Deed and the amount so received or due is in whole or part "Finance Money Debt" (as that term is defined in the JHINV Intercreditor Deed), then the Finance Money Debt (Performing Subsidiary) shall be deemed to be reduced by that amount.

This definition applies:

- (i) irrespective of the capacity in which the Performing Subsidiary, the other member of the Performing Subsidiary Group or the Financier became entitled to the amount concerned;
- (ii) irrespective of the capacity in which the Performing Subsidiary, the other member of the Performing Subsidiary Group or the Financier became liable in respect of the amount concerned;
- (iii) whether the Performing Subsidiary, the other member of the Performing Subsidiary Group or the Financier is liable as principal debtor, as surety or otherwise;
- (iv) whether the Performing Subsidiary or other member of the Performing Subsidiary Group is liable alone, or together with another Person;
- (v) even if the Performing Subsidiary or another member of the Performing Subsidiary Group owes an amount or obligation to the Financier because it was assigned to the Financier, whether or not:
 - A. the assignment was before, at the same time as, or after the date of this deed; or
 - B. the Performing Subsidiary or another member of the Performing Subsidiary Group consented to or was aware of the assignment; or
 - C. the assigned obligation was secured;
- (vi) even if this deed was assigned to the Financier, whether or not:
 - A. the Performing Subsidiary or another member of the Performing Subsidiary Group consented to or was aware of the assignment; or
 - B. any of the Finance Money Debt (Performing Subsidiary) was previously unsecured; or

- (vii) if the Performing Subsidiary or another member of the Performing Subsidiary Group is a trustee, whether or not it has a right of indemnity from the trust fund.

Finance Undertaking and Guarantee (Performing Subsidiary) means the deed dated on or about the date of this deed given by the Performing Subsidiary, among other things, providing undertakings to, and guaranteeing the obligations of other members of the Performing Subsidiary Group in favour of, the Undertaking and Guarantee Trustee and the Financiers.

Financial Year means a year ending on 31 March, or if there is any change from time to time to the Financial Year of the Performing Subsidiary Group, the twelve-month period that ends on the new end date adopted by the Performing Subsidiary except that the first such Financial Year after that change shall be a period of not less than six months and not greater than 18 months ending on the new end date.

Financier means each Person nominated as a “Financier” in a Financier Nomination Letter in accordance with clause 2.2(b) of this deed. A reference to a “Financier” includes the Undertaking and Guarantee Trustee or another agent or trustee acting on behalf of the Financier, but excludes an Excluded Lender.

Financier Nomination Letter means a letter (executed as a deed poll by each party to it) in the form set out in Schedule 1 to this deed and, for the avoidance of doubt, includes, without limitation, such a letter provided to any successor or permitted assign of a Financier.

Fund Trustee includes any Replacement Trustee.

Heads of Agreement means the non-binding agreement entered into on 21 December 2004 between JHINV, the NSW Government, the Australian Council of Trade Unions, Unions New South Wales and a representative of certain asbestos victims groups.

Independent Expert means any Person who:

- (a) has relevant and substantive experience and expertise in insolvency proceedings generally and, if applicable, financial restructuring appropriate to undertake the determination referred to in clause 8;

- (b) except to the extent he or she is entitled to be paid fees or reimbursed or indemnified for costs and expenses by the NSW Government in accordance with this deed, has no interest or duty which to his or her knowledge conflicts or may conflict with his or her functions as contemplated under this deed; and
- (c) is not a member of a firm, or a director or employee of a firm or a body owned by the firm, performing any role as advisor, banker, custodian or trustee to the JHINV Group or (except for roles undertaken in the ordinary course of business for state owned business enterprises) the NSW Government during a period of 3 years prior to the date of appointment under clause 8.

Insolvency Event means, in respect of a Person, the occurrence in respect of that Person of any one or more of the events referred to in paragraphs (a) to (h) of the definition of “Insolvent” .

Insolvency Official means a custodian, receiver, receiver and manager, trustee, liquidator, provisional liquidator, administrator or any other officer appointed in connection with the Insolvency of the Performing Subsidiary.

A Person is **Insolvent** if the Person:

- (a) admits in writing its inability to pay its debts generally as they become due (otherwise then as contemplated in clause 16.6 of the Final Funding Agreement);
- (b) was established under Dutch law and files a petition with any court in the Netherlands in relation to its bankruptcy (*faillissement*) or seeking an order for a suspension of payments (*surseance van betaling*);
- (c) files, or consents by answer or otherwise to the filing against it of, a petition for relief or insolvent reorganisation or insolvent arrangement or any other petition in bankruptcy, for liquidation or to take advantage of any bankruptcy, insolvency, insolvent reorganisation, insolvent moratorium or other similar law of any jurisdiction (including, without limitation, a filing by the Person under Chapter 7 or Chapter 11 of the US Bankruptcy Code), provided that where the filing is a filing under Chapter 11 of that Code, the Person:
 - (i) is at the time of filing unable to pay its debts generally as and when they become due; or
 - (ii) in the case of JHINV, after it makes such a filing, fails to pay a JHINV Contribution or other amount under the JHINV Guarantee when such payment would (but for the moratorium granted as a result of that filing) have been due for 30 days after that due date,

and also provided that, in any such filing under Chapter 11 of that Code a Person is Insolvent no later than the earliest date as of which creditors may vote on any matter or accept or reject a plan of reorganisation;

- (d) makes an assignment for the benefit of its creditors generally;
- (e) consents to the appointment of a custodian (not being a nominee for the person), receiver, receiver and manager, trustee or other officer with similar powers with respect to it or with respect to a substantial part of its property;
- (f) consents to the appointment of an insolvency administrator or such an insolvency administrator is appointed and that appointment is not terminated within 28 days;
- (g) is adjudicated as insolvent or to be liquidated, in each case, by a court of competent jurisdiction; or
- (h) is subject to a Wind-Up Event,

and **Insolvency** has a corresponding meaning.

James Hardie Successor means any entity which will or might pursuant to a restructuring or by any other transaction proposed under, or in connection with, the Insolvency of JHINV acquire the whole or a substantial part of the business or assets of a member of the JHINV Group and which offers or acknowledges an entitlement of the shareholders of JHINV to become shareholders of that entity (disregarding any shareholders to whom it is illegal in their jurisdiction of residence to become such shareholders).

JHIL has the meaning specified in Recital A.

JHINV means James Hardie Industries N.V. (ARBN 097 829 895) a limited liability company incorporated in The Netherlands, with its corporate seat in Amsterdam, and having its registered office at Atrium, Unit 04-07, Strawinskylaan 3077, 1077 ZX Amsterdam, The Netherlands (with its Australian registered office at of Level 3, 22 Pitt Street, Sydney in the State of New South Wales) and includes any Parent Entity which has acceded to the Final Funding Agreement in accordance with that document.

JHINV Contribution has the meaning given to it in the Final Funding Agreement.

JHINV Group means JHINV and its Controlled Entities.

JHINV Intercreditor Deed means the Intercreditor Deed between the State of New South Wales, Asbestos Injuries Compensation Fund Limited in its capacity as trustee for the Charitable Fund, James Hardie Industries N.V and AET Structured Finance Services Pty Limited dated on or about the date of this deed.

Liquidation means, in respect of any Person, the liquidation of all or substantially all of its assets (other than, in the case of JHINV, where the acquirer of all or substantially all of such assets has by deed of accession become bound to observe all the obligations of JHINV under this deed and the JHINV Guarantee and the other Related Agreements to which JHINV is a party) with the intention of distributing the proceeds to creditors or security holders, or a final order directing or requiring such a liquidation is made or entered or deemed to have been made or entered by any court of competent jurisdiction.

Net Finance Money Debt (Performing Subsidiary) has the meaning given to it in clause 4.2(a).

New Person has the meaning given to it in clause 4.6 of the Final Funding Agreement.

New Undertaking and Guarantee Trustee has the meaning given to it in clause 7.1(a).

Notice of Voting in Insolvency means a written notice from an Insolvency Official of any matter or matters in connection with the Insolvency of the Performing Subsidiary (or another member of the Performing Subsidiary Group where the Insolvency of such member is being administered on a combined or consolidated basis with an Insolvency of the Performing Subsidiary).

Option has the meaning given to it in clause 8.3.

Original Final Funding Agreement means the legally binding agreement entitled "Final Funding Agreement" dated 1 December 2005 between JHINV, the Performing Subsidiary and the NSW Government to which the Fund Trustee became a party on 8 June 2006.

Parent Entity means any Person which becomes the ultimate holding company of JHINV.

Performing Subsidiary includes any other subsidiary of JHINV substituted for the Performing Subsidiary in accordance with the terms of the Final Funding Agreement until a replacement for this deed is entered into in accordance with clause 4.8.

Performing Subsidiary Group means the Performing Subsidiary and its Controlled Entities.

Person includes any general partnership, limited partnership, corporation, limited liability company, joint venture, trust, business trust, governmental agency, co-operative, association, individual or other entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such a Person as the context may require.

Preferred Option has the meaning given to it in clause 8.3(f).

Proceeds means:

- (a) any amount (in the form of money or any other property) received or recovered by a Compensation Party in respect of the Compensation Debt (Performing Subsidiary) during an Insolvency of the Performing Subsidiary;
- (b) any amount (in the form of money or any other property) received or recovered by a Compensation Party in connection with the failure by any of them or the Performing Subsidiary to comply with their respective obligations under this deed.

Reconstruction Event means:

- (a) the summoning of a meeting of creditors or the obtaining of an order of a court to do so for the purpose of considering any scheme or plan of arrangement for reconstruction or compromise with creditors;
- (b) a final order for relief under Chapter 11 of the US Bankruptcy Code is entered by a US court;
- (c) a filing by JHINV for a suspension of payments under Dutch law, provided that the Court grants the (provisional) suspension of payments to JHINV;
- (d) any comparable action under the laws of any other jurisdiction occurs having substantially the same effect as the orders described in paragraphs (b) and (c),

but in each case none of the aforementioned events will comprise a Reconstruction Event where the proceeding or other action is commenced or initiated by or on behalf of the Trustee or the NSW Government under this deed or the JHINV Guarantee, whether

acting alone or together with others, and for this purpose an order will be deemed to be final when any timely-commenced proceeding for review of such an order has been concluded without such order being subsequently dismissed, withdrawn, struck out, vacated or reversed, and the time for commencing any further proceeding for review of such order has expired.

Related Agreement means documents ancillary to the Final Funding Agreement listed in Schedule 1 to the Final Funding Agreement.

Replacement Trustee means any replacement trustee of the Charitable Fund and any New Person, in either case appointed in accordance with the Final Funding Agreement, as a substitute for Asbestos Injuries Compensation Fund Limited in its capacity as trustee for the Charitable Fund (or a previously appointed replacement trustee or New Person) as the creditor of the Performing Subsidiary in respect of the Compensation Debt (Performing Subsidiary) and the Final Funding Agreement.

Residual Rights has the meaning given to it in clause 4.4.

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.

Security Provider means a Person (other than the Performing Subsidiary) who at any time is liable by guarantee, indemnity or otherwise alone or jointly, or jointly and individually, to pay or indemnify against non-payment of the Finance Money Debt (Performing Subsidiary) or the Compensation Debt (Performing Subsidiary) (as the context requires).

Specified Office means the office or branch through which the Undertaking and Guarantee Trustee (or any New Undertaking and Guarantee Trustee) enters into this deed.

Specified Proportion means:

- (c) if in the Insolvency of the Performing Subsidiary, the votes relating to the Compensation Debt (Performing Subsidiary) can be proportionately cast in favour of different courses of action:
 - A. 100 per cent of the amount of the Compensation Debt (Performing Subsidiary),
less
 - B. such percentage of the Compensation Debt (Performing Subsidiary), which when added to all Finance Money Debt (Performing Subsidiary) owed by the Performing Subsidiary, represents the amount reasonably expected at that time (having regard to the value of the assets of the Performing Subsidiary available for distribution to pay the claims of ordinary unsecured creditors as estimated by the Insolvency Official (or otherwise determined or estimated for the purposes of the relevant Insolvency proceeding in accordance with applicable law) and taking into account prior ranking claims, the likely or anticipated distribution to the Financiers by the Insolvency Official and any likely payment to the Undertaking and Guarantee Trust under clause 4) would be required to enable discharge and satisfaction of the Finance Money Debt (Performing Subsidiary) in full; or
- (d) if in the Insolvency of the Performing Subsidiary, the votes relating to the Compensation Debt (Performing Subsidiary) cannot be proportionately cast in favour of different courses of action, 100 per cent of the amount of the Compensation Debt (Performing Subsidiary).

Trust Deed has the meaning given to it in the Final Funding Agreement.

Undertaking and Guarantee Trustee means AET Structured Finance Services Pty Limited or such other Person acting as trustee under the Finance Undertaking and Guarantee (Performing Subsidiary) (including any New Undertaking and Guarantee Trustee). For the avoidance of doubt the Undertaking and Guarantee Trustee enters into this deed in a separate and different capacity from the capacity in which it enters into the JHINV Intercreditor Deed.

Undertaking and Guarantee Trust means the Performing Subsidiary Undertaking and Guarantee Trust established under the Finance Undertaking and Guarantee (Performing Subsidiary).

Wind-Up Event means, in respect of a Person, the occurrence of any one or more of the following:

- (a) a final court order is entered that it be wound up or declared bankrupt;
 - (b) a liquidator (excluding a provisional liquidator) is appointed to it and the appointment is not subsequently terminated;
 - (c) a court declaration of bankruptcy is made in relation to it and is not subsequently withdrawn, struck out, dismissed, vacated or reversed;
 - (d) the dissolution of such Person under Dutch law (ontbinding) or the law of any other jurisdiction;
 - (e) the declaration of its bankruptcy under Dutch law (faillissement);
 - (f) the Liquidation of that Person;
 - (g) a final order for relief occurs or is deemed to occur in relation to it under Chapter 7 or Chapter 11 of the US Bankruptcy Code which, when implemented, will result in the Liquidation of that Person; and
 - (h) any comparable action occurs under the law of any competent jurisdiction which has a substantially the same effect to paragraphs (a) to (g) of this definition,
- and an order shall be deemed to be final when any timely-commenced proceeding for review of such an order has been concluded without such order being subsequently dismissed, withdrawn, struck out, vacated or reversed, and the time for commencing any further proceeding for review of such order has expired.

2. INTERPRETATION

In this deed the following rules of interpretation apply unless the contrary intention appears.

- (a) Headings are for convenience only and do not affect the interpretation of this deed.
- (b) The singular includes the plural and vice versa.
- (c) Words that are gender neutral or gender specific include each gender.
- (d) Where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
- (e) The words 'such as', 'including', 'particularly' and similar expressions are not used as nor are intended to be interpreted as words of limitation.
- (f) A reference to:
 - (i) a thing (including but not limited to a chose in action or other right) includes a part of that thing;
 - (ii) a party or a Financier includes its successors and permitted assigns;
 - (iii) a document includes all amendments or supplements to that document;
 - (iv) a clause, term, party, schedule or attachment is a reference to a clause or term of, or party, schedule or attachment to this deed;
 - (v) this deed includes all schedules and attachments to it;
 - (vi) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity or a rule of an applicable official stock exchange and is a reference to that law as amended, consolidated or replaced;
 - (vii) an agreement other than this deed includes an undertaking, or legally enforceable arrangement or understanding whether or not in writing; and
 - (viii) a monetary amount is in Australian dollars.
- (g) An agreement on the part of two or more persons binds them severally.

- (h) When the day on which something must be done is not a Business Day, that thing must be done on the following Business Day.
- (i) In determining the time of day where relevant to this deed, the relevant time of day is:
 - (i) for the purposes of giving or receiving notices, the time of day where a party receiving a notice is located; or
 - (ii) for any other purpose under this deed, the time of day in the place where the party required to perform an obligation is located.
- (j) No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this deed or any part of it.



James Hardie

James Hardie 117 Pty Limited

Level 3
22 Pitt Street
Sydney NSW 2000
Australia

Tel +61 2 8274 5239

Fax +61 2 8274 5218

21 March 2007

The State of New South Wales
c/- The Cabinet Office
Level 39, Governor Macquarie Tower
Farrer Place, Sydney NSW 2000
Attention: Deputy Director-General (Legal)

Asbestos Injuries Compensation Fund Limited
Level 3
22 Pitt Street
Sydney NSW 2000
Attention: Chairman

AET Structured Finance Services Pty Limited
Level 22
207 Kent Street
Sydney NSW 2000
Attention: Corporate Trust

Strictly Private & Confidential

Dear Sirs

Performing Subsidiary Intercreditor Deed

We refer to the Performing Subsidiary Intercreditor Deed between the State of New South Wales, Asbestos Injuries Compensation Fund Limited, ourselves and AET Structured Finance Services Pty Limited (**Undertaking and Guarantee Trustee**) dated 19 December 2006 (**Performing Subsidiary Intercreditor Deed**).

1. Cross-Reference Correction

Schedule 1 to the Performing Subsidiary Intercreditor Deed includes an incorrect reference to "clause 2.2(b)" in the form of the endorsement to be given by the Undertaking and Guarantee Trustee to the Financier Nomination Letters. The reference should be to "clause 2.2(d)".

We propose that the Performing Subsidiary Intercreditor Deed be amended by deleting the words "clause 2.2(b)" in the endorsement by the Undertaking and Guarantee Trustee in Schedule 1 to the Performing Subsidiary Intercreditor Deed and inserting the words "clause 2.2(d)". If you agree to that amendment please sign and return the attached copies of this letter to us and to the Undertaking and Guarantee Trustee.

2. AET Change of Address

We have been advised by the Undertaking and Guarantee Trustee that it has changed its address details to the following:

8843527_2

AET Structured Finance Services Pty Limited
Level 22
207 Kent Street,
Sydney NSW 2000

We have been requested to inform you that under clause 11 of the Performing Subsidiary Intercreditor Deed this letter constitutes the Undertaking and Guarantee Trustee's notification of its new contact details and therefore all further Communications should be directed to that address. The "Name", "Attention" and "Facsimile" details all remain the same as previously set out in the Performing Subsidiary Intercreditor Deed.

Please also confirm your acknowledgment and agreement of the above matters by signing and returning the attached copies of this letter to us and to the Undertaking and Guarantee Trustee.

Clauses 1 (**Interpretation**) and 12 (**Governing law and Jurisdiction**) of the Performing Subsidiary Intercreditor Deed apply to this letter as they were fully set out in this letter.

Executed as a deed.

Signed, sealed and delivered by James Hardie 117 Pty Limited

/s/ Bruce Potts

Name: Bruce Potts
Title: Director

/s/ Donald A. J. Salter

Name: Donald A. J. Salter
Title: Director

Accepted and Agreed:

**Signed, sealed and delivered by The Honourable John Hatzistergos MLC,
Attorney-General of New South Wales,
for The State of New South Wales**

/s/ John Hatzistergos

Signed, sealed and delivered by Asbestos Injuries Compensation Fund Limited in its capacity as trustee for the Charitable Fund

/s/ Peter W. Baker

Name: Peter W. Baker
Title: Director

/s/ Joanne Marchione

Name: Joanne Marchione
Title: Director

Signed, sealed and delivered by AET Structured Finance Services Pty Limited

/s/ Stuart Howard

Name: Stuart Alexander Howard
Title: Authorised Officer

/s/ Yvonne Drake

Name: Yvonne Drake
Title: Authorised Officer

LIST OF SIGNIFICANT SUBSIDIARIES

The table below sets forth our significant subsidiaries, all of which are 100% owned by James Hardie Industries SE, either directly or indirectly.

<u>Name of Company</u>	<u>Jurisdiction of Establishment</u>
James Hardie 117 Pty Ltd.	Australia
James Hardie Aust Holdings Pty Ltd.	Australia
James Hardie Austgroup Pty Ltd.	Australia
James Hardie Australia Management Pty Ltd.	Australia
James Hardie Australia Pty Ltd.	Australia
James Hardie Australia Finance Pty Ltd.	Australia
James Hardie Building Products Inc.	United States
James Hardie Europe B.V.	Netherlands
James Hardie Holdings Limited	Ireland
James Hardie International Finance Limited	Ireland
James Hardie International Holdings SE	Ireland
James Hardie N.V.	Netherlands
James Hardie New Zealand Limited	New Zealand
James Hardie Philippines Inc.	Philippines
James Hardie Research (Holdings) Pty Ltd.	Australia
James Hardie Research Pty Ltd.	Australia
James Hardie Technology Limited	Bermuda
James Hardie U.S. Investments Sierra Inc.	United States
N.V. Technology Holdings A Limited Partnership	Australia
RCI Pty Ltd.	Australia

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.

/s/ PricewaterhouseCoopers LLP

PricewaterhouseCoopers LLP
Los Angeles, California
June 14, 2010

CONSENT OF ERNST & YOUNG LLP, INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the reference to our firm under the caption "Experts" in this Post-Effective Amendment No. 1 to 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
June 14, 2010