

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Form 20-F

(Mark One)

REGISTRATION STATEMENT PURSUANT TO SECTION 12(b) OR (g) OF THE SECURITIES EXCHANGE ACT OF 1934

or

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended March 31, 2004

or

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from to

Commission file number 1-15240

**James Hardie Industries N.V.**

*(Exact name of Registrant as specified in its charter)*

N/A

*(Translation of Registrant's name into English)*

**The Netherlands**

*(Jurisdiction of incorporation or organization)*

**4th Level, Atrium, unit 04-07**

**Strawinskylaan 3077**

**1077 ZX Amsterdam, The Netherlands**

*(Address of principal executive offices)*

**Securities registered or to be registered pursuant to Section 12(b) of the Act:**

Title of Each Class:

Name of Each Exchange on Which Registered:

Common stock, represented by CHESS Units of Foreign Securities  
CHESS Units of Foreign Securities  
American Depositary Shares, each representing five units of CHESS Units of Foreign Securities

New York Stock Exchange\*  
New York Stock Exchange\*  
New York Stock Exchange

\* Listed, not for trading, but only in connection with the registered American Depositary Shares, pursuant to the requirements of the Securities and Exchange Commission

**Securities registered or to be registered pursuant to Section 12(g) of the Act.**

None.

**Securities for which there is a reporting obligation pursuant to Section 15(d) of the Act.**

None.

Indicate the number of outstanding shares of each of the issuer's classes of capital or common stock as of the close of the period covered by the annual report: 458,558,436 shares of common stock at March 31, 2004.

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark which financial statement item the registrant has elected to follow.  Item 17  Item 18

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**PART I**

**Item 1. Identity of Directors, Senior Management and Advisers**

Not Required

**Item 2. Offer Statistics and Expected Timetable**

Not Applicable

**Item 3. Key Information**

*In this annual report, unless the context otherwise indicates, James Hardie Industries N.V., a “naamloze vennootschap,” or a Dutch public limited liability company incorporated under the laws of The Netherlands, is referred to as “JHI NV.” JHI NV and its subsidiaries are collectively referred to as “we,” “us,” “our,” “JHI NV and its subsidiaries,” the “Company” or “company,” “James Hardie” or the “James Hardie Group.”*

*The term “fiscal year” refers to our fiscal year ended March 31 of such year, the term “dollars” or “\$” refers to U.S. dollars, the term “A\$” refers to Australian dollars, the term “NZ\$” refers to New Zealand dollars, the term “PHP” refers to Philippine pesos and the term “CLP” refers to Chilean pesos. The term “msf” refers to thousands of square feet and the term “mmsf” refers to millions of square feet, where a square foot is defined as a standard square foot of 5/16” thickness.*

*As a company incorporated under the laws of The Netherlands, JHI NV has listed its securities for trading on the Australian Stock Exchange (“ASX”) through the use of the Clearing House Electronic Subregister System (“CHESS”) Units of Foreign Securities (“CUFS”). CUFS are a form of depositary security that represents a beneficial ownership interest in the securities of a non-Australian corporation. Each of our CUFS represents the beneficial ownership of one share of common stock of JHI NV, the legal ownership of which is held by CHESS Depositary Nominees Pty Ltd. The CUFS are listed and traded on the ASX under the symbol “JHX.”*

*The Company has also listed its securities for trading on the New York Stock Exchange (“NYSE”). The Company sponsors a program, whereby beneficial ownership of five CUFS is represented by one American Depositary Share (“ADS”), which is issued by The Bank of New York. These ADSs trade on the NYSE in the form of American Depositary Receipts (“ADRs”) under the symbol “JHX.” Unless the context indicates otherwise, when we refer to ADRs, we are referring to ADRs or ADSs depending on the context and when we refer to our “common stock” we are referring to the shares of our common stock that are represented by CUFS.*

**Selected Financial Data**

We have included in Item 18 of this annual report the audited consolidated financial statements of JHI NV, consisting of our consolidated balance sheets and consolidated statements of changes in shareholders’ equity as of March 31, 2004 and March 31, 2003, and our consolidated statements of income and cash flows for the years ended March 31, 2004, 2003 and 2002, together with the related notes. For periods prior to October 19, 2001, the effective date of our corporate restructuring (see Item 4 “Information on the Company — History and Development of the Company — Corporate Restructuring”), the consolidated financial statements represent the financial position, results of operations and cash flows of ABN 60 000 009 263 Pty Ltd (“ABN 60”), which was formerly known as James Hardie Industries Limited (“JHIL”) and its wholly owned subsidiaries. For periods after October 19, 2001, our consolidated financial statements represent the financial position, results of operations and cash flows of JHI NV and its wholly owned subsidiaries.

The consolidated financial statements included in this annual report have been prepared in accordance with accounting principles generally accepted in the United States, or “U.S. GAAP.”

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The selected consolidated financial information summarized below has been derived in part from JHI NV's financial statements. You should read the selected consolidated financial information in conjunction with JHI NV's financial statements and related notes contained in Item 18 and under the section entitled "Operating and Financial Review and Prospects" contained in Item 5. Such historic financial data is not necessarily indicative of our future results and you should not unduly rely on it.

	Fiscal Years Ended March 31,				
	2004	2003	2002	2001	2000
(In millions, except sales price per unit and per share data)					
<b>Consolidated Statements of Income Data:</b>					
Net Sales					
USA Fiber Cement	\$ 738.6	\$ 599.7	\$ 444.8	\$ 373.0	\$ 310.5
Asia Pacific Fiber Cement(1)	219.8	174.3	141.7	152.0	185.5
Other(2)	23.5	9.6	5.2	1.3	2.0
Total net sales	<u>\$ 981.9</u>	<u>\$ 783.6</u>	<u>\$ 591.7</u>	<u>\$ 526.3</u>	<u>\$ 498.0</u>
Operating income(3)	\$ 172.2	\$ 128.8	\$ 46.8	\$ 40.5	\$ 58.8
Interest expense	(11.2)	(23.8)	(18.4)	(21.4)	(25.9)
Interest income	1.2	3.9	2.4	8.2	5.4
Other income (expense), net(4)	3.5	0.7	(0.4)	1.6	(1.6)
Income from continuing operations before income taxes	165.7	109.6	30.4	28.9	36.7
Income tax (expense) benefit	(40.4)	(26.1)	(3.1)	0.6	(13.0)
Income from continuing operations	<u>\$ 125.3</u>	<u>\$ 83.5</u>	<u>\$ 27.3</u>	<u>\$ 29.5</u>	<u>\$ 23.7</u>
Net income	<u>\$ 129.6</u>	<u>\$ 170.5</u>	<u>\$ 30.8</u>	<u>\$ 38.6</u>	<u>\$ 118.1</u>
Income from continuing operations per common share — basic	\$ 0.27	\$ 0.18	\$ 0.06	\$ 0.07	\$ 0.06
Net income per common share — basic	0.28	0.37	0.07	0.09	0.29
Income from continuing operations per common share — diluted	0.27	0.18	0.06	0.07	0.06
Net income per common share — diluted	0.28	0.37	0.07	0.09	0.29
Dividends paid per share	0.05	0.08	0.05	0.10	0.10
Return of capital per share	\$ 0.15	\$ 0.20	\$ 0.05	\$ —	\$ —
Weighted average number of common shares outstanding					
Basic	458.1	456.7	438.4	409.6	407.0
Diluted	461.4	459.4	440.4	409.6	407.0
<b>Consolidated Cash Flow Information:</b>					
Cash flows provided by operating activities	\$ 162.6	\$ 64.8	\$ 76.6	\$ 94.6	\$ 146.3
Cash flows (used in) provided by investing activities	(58.0)	237.9	(77.2)	(162.9)	5.8
Cash flows (used in) provided by financing activities	\$ (87.9)	\$ (279.4)	\$ (40.8)	\$ 1.3	\$ (49.0)
<b>Other Data:</b>					
Depreciation and amortization(5)	\$ 36.4	\$ 27.4	\$ 23.5	\$ 20.6	\$ 20.8
Adjusted EBITDA(6)	208.6	156.2	70.3	68.6	79.6
Capital expenditures(7)	\$ 74.1	\$ 90.2	\$ 50.8	\$ 114.7	\$ 44.1

Fiscal Years Ended March 31,

	2004	2003	2002	2001	2000
(In millions, except sales price per unit and per share data)					
Volume (million square feet)(8)					
USA Fiber Cement	1,519.9	1,273.6	988.5	852.3	724.9
Asia Pacific Fiber Cement(1)	362.1	349.9	320.7	318.9	333.8
Average sales price per unit (per thousand square feet)					
USA Fiber Cement	\$ 486	\$ 471	\$ 450	\$ 438	\$ 428
Asia Pacific Fiber Cement(1)	A\$ 862	A\$ 887	A\$ 861	A\$ 857	A\$ 879
<b>Consolidated Balance Sheet Data:</b>					
Net current assets	\$ 195.9	\$ 159.4	\$115.1	\$ 84.9	\$ 180.3
Total assets	971.2	851.8	968.0	969.0	1,018.6
Long-term debt	147.4	165.0	325.0	357.3	346.5
Shareholders' equity	\$ 504.7	\$ 434.7	\$370.7	\$281.1	\$ 244.7

- (1) Asia Pacific Fiber Cement includes all fiber cement manufactured in Australia, New Zealand and the Philippines and sold in Australia, New Zealand and Asia. See section entitled "Notes to Results of Operations" on page 49 in Item 5 for additional details on sales volume and average sales price per unit in fiscal years 2004 and 2003.
- (2) Includes fiber cement manufactured and sold in Chile, fiber reinforced concrete pipes manufactured and sold in the United States, fiber cement operations in Europe and roofing operations in the United States. Also includes general corporate income in fiscal years 2002, 2001 and 2000 comprised primarily of rental income from subleasing office space in Sydney, Australia.
- (3) Amount includes restructuring and other operating income/expenses as follows: (i) for fiscal year 2004, \$2.1 million expense primarily related to an increase in cost provisions for our Australian and New Zealand business, (ii) for fiscal year 2003, \$1.0 million income related to the settlement of a terminated derivative contract, (iii) for fiscal year 2002, \$12.6 million expense related to the roofing Class Action Settlement Agreement in the United States, \$7.4 million expense associated with the corporate reorganization and \$8.1 million expense related to the decrease in fair value of derivative contracts, (iv) for fiscal year 2001, asset write-downs, lease termination charges and employee termination costs of \$15.5 million primarily associated with the restructuring of our fiber cement business in Australia and the creation of the new Asia Pacific regional structure and (v) for fiscal year 2000, \$4.1 million of employee termination costs associated with the restructuring and upgrading of the fiber cement business in Australia.
- (4) Consists primarily of: (i) for fiscal year 2004, the net gain achieved after accounting for income items, including a \$4.5 million profit on the sale of our New Zealand property. These income items were partially offset by expense items including \$3.2 million primarily due to a capital duty fee paid in conjunction with our Dutch corporate structure, (ii) for fiscal year 2003, investment income of \$0.7 million, (iii) for fiscal year 2002, investment expenses of \$0.4 million, (iv) for fiscal year 2001, investment income of \$1.6 million and (v) for fiscal year 2000, investment expenses of \$1.6 million.
- (5) Information for depreciation and amortization is for continuing businesses only.

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- (6) Represents income from continuing operations before interest income, interest expense, income taxes, other nonoperating expenses as described above, net, depreciation and amortization charges, and certain other property, goodwill and equipment impairment charges as follows:

("Adjusted EBITDA")	Fiscal Years Ended March 31,				
	2004	2003	2002	2001	2000
	(In millions)				
Income from continuing operations	\$125.3	\$ 83.5	\$27.3	\$29.5	\$23.7
Income tax expense (benefit)	40.4	26.1	3.1	(0.6)	13.0
Interest expense	11.2	23.8	18.4	21.4	25.9
Interest income	(1.2)	(3.9)	(2.4)	(8.2)	(5.4)
Other (income) expense, net	(3.5)	(0.7)	0.4	(1.6)	1.6
Depreciation and amortization	36.4	27.4	23.5	20.6	20.8
Impairment of property, plant and equipment	—	—	—	7.5	—
Adjusted EBITDA	\$208.6	\$156.2	\$70.3	\$68.6	\$79.6

Adjusted EBITDA is not a measure of financial performance under U.S. GAAP and should not be considered an alternative to, or more meaningful than, income from operations, net income or cash flows as defined by U.S. GAAP or as a measure of our profitability or liquidity. Not all companies calculate Adjusted EBITDA in the same manner and, accordingly, Adjusted EBITDA may not be comparable with other companies. We have included information concerning Adjusted EBITDA because we believe that this data is commonly used by investors to evaluate the ability of a company's earnings from its core business operations to satisfy its debt, capital expenditure and working capital requirements. To permit evaluation of this data on a consistent basis from period to period, Adjusted EBITDA has been adjusted for noncash charges such as goodwill and asset impairment charges, as well as nonoperating income and expense items. See our consolidated financial statements and "Operating and Financial Review and Prospects" for further information to assist in identifying and evaluating trends in Adjusted EBITDA.

- (7) Information for capital expenditures includes both cash and credit purchases, and is for continuing businesses only.
- (8) Fiber cement volume is measured in 5/16" thick square feet, which are referred to as standard feet.

## Risk Factors

***We may be subject to potential liability because ABN 60 and certain former subsidiaries formerly manufactured products containing asbestos.***

A New Zealand subsidiary of JHI NV manufactured products containing asbestos in New Zealand prior to 1987. Statutory provisions in New Zealand currently bar claims for compensatory damages arising from work-related asbestos exposure. In addition, prior to 1987, two former subsidiaries of ABN 60, Amaca Pty Limited and Amaba Pty Limited, which are now owned and controlled by the Medical Research and Compensation Foundation (the "Foundation"), manufactured products containing asbestos in Australia. In addition, prior to 1937, ABN 60, now owned by the ABN 60 Foundation Pty Ltd ("ABN 60 Foundation"), manufactured products containing asbestos in Australia. We cannot predict with any certainty any future claims or allegations that may be made, how the laws of various jurisdictions may be applied to the facts or how the laws may change in the future. If, however, a court of competent jurisdiction relying on applicable law were to find JHI NV, our New Zealand subsidiary or another James Hardie subsidiary liable for damages connected with existing or former subsidiaries or their manufacture of asbestos-containing products, we may incur significant liabilities in connection with any damages that may be awarded in the legal proceedings, in addition to the costs associated with defending against such claims. See Item 4 "Information on the Company — Legal Proceedings."

***Following a Special Commission of Inquiry that was established in Australia to consider matters related to the Foundation, we may be subject to claims and allegations involving asbestos-related liability, or our corporate restructurings, including the corporate restructuring related to the creation of the Foundation and the ABN 60 Foundation and associated intercompany transactions.***

In February 2004, the Government of the State of New South Wales (“NSW”), Australia established a Special Commission of Inquiry (“SCI”) to investigate, among other matters described in Item 4 “Information on the Company — Legal Proceedings,” the circumstances in which the Foundation was established. The SCI heard evidence and received submissions from April 5, 2004 to August 13, 2004.

The Company provided submissions to the SCI and, on July 14, 2004, issued a statement announcing that it would recommend that shareholders approve the provision of an unspecified amount of additional funding to enable an effective statutory scheme to compensate all future claimants for asbestos-related injuries caused by former James Hardie subsidiary companies. The submission also stated that an effective scheme would reduce legal, superimposed (judicial) inflation and administrative costs and that the proposal was made without any admission of liability or prejudice to the Company’s rights or defenses. Superimposed inflation is inflation in claim awards above the underlying rate of inflation and is sometimes called judicial inflation. In addition, the Company provided additional oral and written submissions to the SCI in response to questions from the Commissioner of the SCI concerning James Hardie’s proposed statutory scheme.

The SCI issued its report on September 21, 2004. The SCI indicated that the establishment of the Foundation and the establishment of the ABN 60 Foundation were legally effective and that, accordingly, it was not likely that any significant liabilities for present or future asbestos claims for claimants against Amaca, Amaba or ABN 60 could be successfully made directly against JHI NV or any other James Hardie subsidiary. The SCI found that there was a significant funding shortfall in the establishment of the Foundation inasmuch as the net assets of the Foundation and the ABN 60 Foundation were not sufficient to meet the central estimate of approximately A\$1.570 billion discounted value of asbestos liabilities of Amaca and Amaba. The SCI also concluded that the assets of the Foundation were likely to be exhausted in the first half of 2007.

The SCI’s findings are not binding and a later court consideration of the issues could lead to one or more different conclusions. The claims to which we may be subject could include claims by the Foundation or its current subsidiaries or their directors. The SCI further found, however, that there were hurdles that might prove to be insuperable against any substantial recovery or remedy by such potential claimants against the Company. In addition, the NSW Government has announced its preparedness to pass legislation, as described in Item 4 “Information on the Company — Legal Proceedings,” which would alter the Company’s liability position.

The NSW Government has stated that it would not consider assisting the implementation of any proposal advanced by the Company unless it was the result of an agreement reached with the union movement acting through the Australian Council of Trade Unions (“ACTU”) and the Labor Council of NSW as well as the representatives of the asbestos claimants (together, the “Representatives”). The statutory scheme that the Company recommended on July 14, 2004 was rejected by the Representatives. The Company is currently in discussions with the Representatives regarding potential arrangements that could be acceptable to both the Representatives and the Company and subsequently to the Company’s shareholders and the NSW Government. Both the outcome of those discussions and the timing of any potential resolution are highly uncertain, and accordingly, the Company cannot yet determine whether it will achieve a satisfactory resolution or what any potential arrangement may involve.

The terms of any resolution, or the uncertainty arising from the lack of any resolution, could have a material adverse effect on the Company’s financial position, results of operations and cash flows. The Company has announced its intention to put any such resolution to shareholders for approval at a General Meeting. If no resolution is reached and implemented, it is not possible to predict what action the Foundation, the NSW Government or other state and territory governments and/or the Australian federal government, Representatives or others may take or what the outcome may be. The impact of any such actions however, could be materially adverse to the Company.

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The Company has incurred substantial costs associated with the SCI and may incur material costs in the future related to the SCI or subsequent legal proceedings. See Item 4 “Information on the Company — Legal Proceedings.”

***We may have difficulty obtaining financing (debt or equity), or obtaining financing on usual terms, or retaining existing financial support because of concerns or uncertainty relating to the SCI, legal or legislative action following the SCI, or the Company’s offer to provide additional funding to the Foundation.***

Debt as well as equity finance providers may view the uncertainty relating to the SCI, legal or legislative action following the SCI, or the Company’s offer to provide an additional funding mechanism for payment to asbestos claimants as negatively impacting the Company’s ability to service or repay debt or generate acceptable after tax profit. As a consequence, we may have difficulty obtaining financing, obtaining financing on usual terms or retaining existing financial support.

In addition, if a resolution is reached with the Representatives and approved by them, the NSW Government and the Company’s Board, shareholders and lenders, the Company may be required to make a substantial provision in its accounts at a later date. It is also possible that any future resolution of this issue may result in the Company having negative shareholders’ equity, which would be likely to restrict its ability to pay dividends to its shareholders. These events may also cause the Company to be in breach of certain debt covenants, which could lead to acceleration of the repayment of the indebtedness. It is not certain that alternative financing would become available, whether on usual terms or otherwise.

See also Liquidity and Capital Resources under Item 5 “Operating and Financial Review and Prospects — Liquidity and Capital Resources.”

***We may encounter product boycotts, negative publicity or other measures taken by the Representatives or others to influence the resolution of matters relating to the SCI investigation or encourage governmental action if there is no resolution.***

The Representatives and/or others may encourage or continue to encourage consumers and union members in Australia and elsewhere to boycott the Company’s products, to demonstrate or otherwise create negative publicity toward the Company in order to influence the Company’s approach to discussions with the Representatives or to encourage governmental action if the discussions are unsuccessful. The Representatives and/or others might also take such actions in an effort to influence the Company’s shareholders, a significant number of which are located in Australia, to approve any proposed arrangement. Any such measures, and the influences resulting from them, could have a material adverse impact on the Company’s financial position, results of operations and cash flows.

***The Government of the State of New South Wales has announced its preparedness to pass legislation if current negotiations between James Hardie, the ACTU and asbestos claimants do not reach an acceptable conclusion.***

The Ministerial Council for Corporations (the relevant body of the Federal, State and Territory Ministers) agreed to support a negotiated settlement that would ensure that claimants of asbestos-related diseases receive full and timely compensation from the Company. If current negotiations between James Hardie, the ACTU and asbestos claimants do not reach an acceptable conclusion, the NSW Government announced its preparedness to pass legislation which would “wind back James Hardie’s corporate restructure and rescind the cancellation of the A\$1.9 billion in partly-paid shares.” Negotiations with the Representatives continue and no draft legislation has currently been published. See Item 4 “Information on the Company — Legal Proceedings.”

***Our current senior management team was recently appointed on an interim basis after the resignations of our chief executive officer and chief financial officer.***

Our senior executives were appointed in October 2004 on an interim basis after the resignations of Peter Macdonald, formerly our Chief Executive Officer, and Peter Shafron, formerly our Chief Financial Officer.



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Because of the unscheduled departure of our former senior management, and the essentially concurrent appointment of current management, there was little time available to smoothly transition over to the new management team. Accordingly, it may take time for our new management team to effectively transition into their new roles and to develop effective working relationships with our board of directors, employees, shareholders and others. We cannot assure you that this major restructuring of our senior management team will not adversely affect our results of operations or otherwise adversely affect us.

***Our board of directors and senior management continue to devote significant attention to matters arising from and related to the Special Commission of Inquiry.***

Since the establishment of the SCI, our board of directors, our senior management and others within our organization have devoted a significant amount of time and resources to investigating the allegations raised in the report of the SCI, to producing documents to and complying with requests from governmental and regulatory authorities and others, and to seeking a resolution of the issues arising out of the SCI. The board of directors' and management's focus on issues related to the SCI may distract them from conducting the business of the Company, and this could adversely effect our results of operations.

***Continuing negative publicity may adversely affect our business.***

As a result of the events that are the focus of the SCI, we have been the subject of continuing negative publicity, both in Australia and elsewhere in the world. We believe that this negative publicity has contributed to declines in the price of our publicly traded securities in 2004, and that this publicity has brought increased regulatory scrutiny upon us. We also believe that many of our employees are operating under stressful conditions, which may reduce morale and could lead to increased employee turnover. Continuing negative publicity could have a material adverse effect on our results of operations and liquidity and the market price of our publicly traded securities and create difficulties in attracting or retaining high caliber staff.

***Continued scrutiny resulting from ongoing investigations may have an adverse effect on our business.***

We are subject to an ongoing investigation by the Australian Securities and Investments Commission. We cannot predict when this investigation will be completed, nor can we predict what the results of this investigation will be. It is possible that we will be required to pay material fines, provide indemnification payments, or suffer other penalties, each of which could have a material adverse effect on our business. We cannot assure you that the effects and results of these or other investigations will not be material and adverse to our business, financial condition, results of operations or liquidity.

***We may incur costs of current or former officers and employees of the James Hardie Group to the extent that those costs are covered by indemnity arrangements granted by the James Hardie Group to those persons.***

We may incur costs of current or former officers and employees of James Hardie Group to the extent that those costs are covered by indemnity arrangements granted by the James Group to those persons. The Company may be reimbursed under directors' and officers' insurance policies taken out by the Company. However, there is no guarantee that such insurance will completely cover any claims that would be made.

***Substantial and increasing competition in the building products industry could adversely affect our business.***

Competition in the building products industry is based largely on price and, to a lesser extent, quality, performance and service. Our fiber cement products compete with products manufactured from natural and engineered wood, vinyl, stucco, masonry, gypsum and other materials as well as fiber cement products from other manufacturers. Some of our competitors may have greater financial and other resources than we do and, among other factors, may be less affected by reductions in margins resulting from price competition.

Some of our competitors have lowered prices of their products to compete for sales. In addition, we expect our competitors to continue to expand their manufacturing capacities, to improve the design and

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performance of their products and to introduce new products with competitive price and performance characteristics. Increased competition by existing or future competitors could adversely impact fiber cement prices, as well as require us to increase our investment in product development, productivity improvements and customer service and support to compete in our markets.

Fiber cement product prices in the United States, Australia and New Zealand have fluctuated for a number of years due to the entry into the market of new producers and competition from alternative products, among other reasons, and these prices could continue to fluctuate in the future. Because of the maturity of the Australian and New Zealand markets, we believe that prices in those markets may decline and that sales volumes may not increase significantly or may decline in the future. Historically, increased sales volumes of our U.S. fiber cement products, the addition of proprietary products to our product mix and improved operating efficiencies have more than offset the decrease in pricing for such products in the United States. However, there may be future price decreases and we may not be able to offset such decreases with increased volume, new products or improved operating efficiencies. For instance, unanticipated technical problems could impair our efforts to commission new equipment aimed at improving operating efficiencies. Any of these factors could have a material adverse effect on our business, results of operations and financial condition.

### ***Our business is dependent on the residential and commercial construction markets.***

Demand for our products depends in large part on residential construction markets and, to a lesser extent, on commercial construction markets. The level of activity in residential construction markets depends on new housing starts and residential remodeling projects, which are a function of many factors not within our control, including general economic conditions, mortgage and other interest rates, inflation, unemployment, demographic trends, gross domestic product growth and consumer confidence in each of the countries and regions in which we operate. Historically, in periods of economic decline, both new housing starts and residential remodeling also decline. The level of activity in the commercial construction market depends largely on vacancy rates and general economic conditions. Because residential and commercial construction markets are sensitive to cyclical changes in the economy, downturns in the economy or a lack of substantial improvement in the economy of any of our geographic markets could negatively affect operating results. Because of these and other factors, our operating results may be subject to substantial fluctuations and the results for any prior period may not be indicative of results for any future period.

### ***We may acquire or divest businesses from time to time, and this may adversely affect our operating results and financial condition as well as significantly change the nature of the company in which you have invested.***

In the past, we have divested business segments and, from time to time in the future, we may acquire other businesses or sell some or all of our assets or business segments. Any significant acquisition or sale may adversely affect our operating results and financial condition and could change the overall profile of our business. As a result, the value of our shares may decrease in response to any such acquisition or sale and, upon any such acquisition or sale, our shares may represent an investment in a company with significantly different assets and prospects from the Company when you made your initial investment in us.

### ***If our research and development efforts fail to generate new, innovative products or processes, our overall profit margins may decrease and demand for our products may fall, which would have an adverse effect on our results of operations and financial condition.***

We have invested significantly in research and development because we believe that such efforts are key to sustaining and growing our existing market leadership position in fiber cement. Because profit margins for fiber cement products and building products generally erode the longer a product has been on the market, innovation is particularly important. We rely on our research and development efforts to generate new products and processes to increase demand and to protect profit margins. If our research and development efforts fail to generate new, innovative products or processes, our overall profit margins may decrease and demand for our products may fall, which would have an adverse effect on our results of operations and financial condition.

*Because demand for our products in our major markets is seasonal, our quarterly results of operations may vary throughout the year.*

In the United States, a large proportion of our fiber cement products is sold in three regions: the Southeast, the Southcentral and the Pacific Northwest. Demand for building products in these regions is seasonal because construction activity diminishes during the winter season. In Australia, New Zealand and the Philippines, demand for building products is also seasonal because, in Australia and New Zealand, construction activity diminishes during the summer period of December to February, and in the Philippines, construction activity diminishes during the wet season from June to September and the last half of December due to the slowdown in business activity over the Christmas period. We commenced production of fiber cement products in Chile in early 2001, where markets also experience decreased seasonal construction activity from May through September.

*We may experience adverse fluctuations in the supply and cost of raw materials necessary to our business and a significant reduction or cessation of shipments from an important supplier could adversely affect our business if we are unable to secure alternative supplies within a short time or on reasonable terms.*

Our fiber cement business periodically experiences fluctuations in supply and costs of raw materials, and some of our supply markets are concentrated. Cellulose fiber, silica, cement and water are the principal raw materials utilized in the production of fiber cement. Cellulose fiber has been subject to significant price fluctuations. Although we have not recently experienced any shortages of raw materials that have materially affected our operations, price fluctuations or material delays may occur in the future due to lack of raw materials or suppliers. The loss or deterioration of our relationship with a major supplier, an increase in demand by third parties for a particular supplier's products or materials or delays in obtaining materials could have a material adverse effect on our business, results of operations and financial condition.

*Demand for our products is subject to changes in consumer preference.*

The continued development of builder and consumer preference for our fiber cement products over competitive products is critical to sustaining and expanding demand for our products. Therefore, the failure to maintain and increase builder and consumer acceptance of our fiber cement products could have a material adverse effect on our growth strategy as well as our business, results of operations and financial condition.

*We rely on only a few distributors to distribute our fiber cement products and the loss of any distributor could adversely affect our business.*

Our top two distributors in the United States represented approximately 50% of our total U.S. fiber cement sales in fiscal year 2004. In addition, a large home center retailer also accounted for approximately 15% of our total U.S. fiber cement sales in fiscal year 2004. Our top two distributors in Australia and our top four distributors in New Zealand accounted for approximately 30% and 95% of our total sales of fiber cement in Australia and New Zealand, respectively, in fiscal year 2004. We generally do not have long-term contracts with our large distributors. Accordingly, if we were to lose one or more of these distributors because our competitors were able to offer distributors more favorable pricing terms or for any other reasons, we may not be able to replace such distributors in a timely manner and on reasonable terms. The loss of one or more distributors could have a material adverse effect on our business, results of operations and financial condition.

*If one or more of our fiber cement products fail to perform as expected or contain a design defect, such failure or defect, and/or any resulting negative publicity, could result in lower sales and may subject us to claims from purchasers or users of our fiber cement products.*

Because our fiber cement products have been used only since the early 1980s, we cannot assure you that these products will perform in accordance with our expectations over an extended period of time or that there are no serious design defects in such products. If our fiber cement technology fails to perform as expected or a product is discovered to have design defects, such failure or defects, and/or any resulting negative publicity, could result in lower sales of our products and may subject us to claims from purchasers or users of defective

products, either of which could have a material adverse effect on our business, results of operations and financial condition.

***Warranty claims resulting from unforeseen defects in our products and exceeding our warranty reserves could have a material adverse effect on our business, results of operations and financial condition.***

We have offered, and continue to offer, various warranties on our products, including a 50-year limited warranty on certain of our fiber cement siding products in the United States. Although we maintain reserves for warranty-related claims and legal proceedings that we believe are adequate, we cannot assure you that warranty expense levels or the results of any warranty-related legal proceedings will not exceed our reserves.

***If damages resulting from product defects exceed our insurance coverage, paying these damages could result in a material adverse effect on our business, results of operations and financial condition.***

The actual or alleged existence of defects in any of our products could subject us to significant product liability claims. Although we do not have replacement insurance coverage for damages to, or defects in, our products, we do have product liability insurance coverage for consequential damages that may arise from our products. Although we believe this coverage is adequate and currently intend to maintain this coverage in the future, we cannot assure you that this coverage will be sufficient to cover all future product liability claims or that this coverage will be available at reasonable rates in the future. The successful assertion of one or more claims against us that exceed our insurance coverage could require us to incur significant expenses to pay these damages. These additional expenses could have a material adverse effect on our business, results of operations and financial condition.

***We rely on a continuous power supply and availability of utilities to conduct our operations, and any shortages or interruptions could disrupt our operations and increase our expenses.***

In the manufacture of our products, we rely on a continuous and uninterrupted supply of electric power, water and natural gas as well as the availability of water, waste and emissions discharge facilities. Any future shortages or discharge curtailments could significantly disrupt our operations and increase our expenses. We currently do not have backup generators to maintain power and do not have alternate sources of power in the event of a blackout. In addition, our current insurance does not provide coverage for any damages that we or our customers may suffer as a result of any interruption in our power supply. If blackouts interrupt our power supply, we would be temporarily unable to continue operations at the affected facilities. Any future interruption in our ability to continue operations at our facilities could damage our reputation, harm our ability to retain existing customers or obtain new customers and could result in lost revenue, any of which could have a material adverse effect on our business, results of operations and financial condition.

***We may incur significant costs in the future in complying with applicable environmental and health and safety laws and regulation, and if we fail to comply with these laws and regulations, or these laws or regulations change, we may be subject to significant liabilities, including but not limited to damages and penalties.***

We are subject to U.S. federal, state and local and foreign environmental and health and safety laws and regulations governing, among other matters, our operations and the use, handling, disposal and remediation of hazardous substances currently or formerly used by us or any affiliates. Under these laws and regulations, we may be held jointly and severally responsible for the remediation of any hazardous substance contamination at our or our predecessors' past or present facilities and at third-party waste disposal sites and may also be held liable for any claims arising out of human exposure to such substances or other environmental damage. We will continue to be liable for any environmental problems that occurred while we owned or operated any of the three gypsum facilities that we sold in April 2002. See "Information on the Company — Capital Expenditures and Divestitures — Divestitures" in Item 4.

In addition, many James Hardie products contain crystalline silica, which can be released in a respirable form in connection with manufacturing practices and handling or use by consumers. The inhalation of

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respirable crystalline silica is known or suspected to be associated with silicosis, lung cancer and other adverse human health effects. We may face future costs of engineering and compliance to meet new standards relating to crystalline silica if standards are made more stringent. In addition, there is a risk that claims for silica-related disease could be made against us. At this time, we are not subject to any silica-related claims, prosecutions or litigation. However, we cannot assure you that we will have adequate resources, including adequate insurance coverage, to satisfy any future silica-related disease claims or that there will not be adverse business consequences in the distribution, end user or other markets. Any such claims may have a material adverse effect on our financial condition. See Risk Factor above captioned “— If damages resulting from product defects exceed our insurance coverage, paying these damages could result in a material adverse effect on our business, results of operations and financial condition.”

The costs of complying with environmental and health and safety laws relating to our operations, or the liabilities arising from past or future releases of, or exposure to, hazardous substances or from product liability matters may result in us making future expenditures that could have a material adverse effect on our business, results of operations or financial condition. In addition, we cannot make any assurances that the laws currently in place will not change. Also, if applicable laws or judicial interpretations related to successor liability or “piercing the corporate veil” were to change, it could have a material adverse effect on our business, results of operations and financial condition. See “Information on the Company — Legal Proceedings” in Item 4.

***Changes in, or failure to comply with, the laws, regulations, policies or conditions of any jurisdiction in which we conduct our business could result in, among other consequences, the loss of our assets in such jurisdiction, the elimination of certain rights that are critical to the operation of our business in such jurisdiction, a decrease in revenues or the imposition of additional taxes or other costs.***

Because we manufacture and sell our products internationally, our activities are subject to political, economic, legal and other uncertainties, including:

- changing political and economic conditions;
- changing laws and policies;
- the general hazards associated with the assertion of sovereign rights over certain areas in which we conduct our business; and
- laws limiting or conditioning the right and ability of subsidiaries and joint ventures to pay dividends or remit earnings to affiliated companies.

Although we seek to take applicable laws, regulations and conditions into account in structuring our business on a global basis, changes in, or our failure to comply with, the laws, regulations, policies or conditions of any jurisdiction in which we conduct our business could result in, among other consequences, the loss of our assets in such jurisdiction, the elimination of certain rights that are critical to the operation of our business in such jurisdiction, a decrease in revenues or the imposition of additional taxes. Therefore, any change in laws, regulations, policies or conditions of a jurisdiction could have a material adverse effect on our business, results of operations and financial condition.

***Our reliance on intellectual property and other proprietary information subjects us to the risk that competitors could copy our products or processes.***

Our success depends, in part, on the proprietary nature of our technology, including non-patentable intellectual property such as our process technology. Despite safeguards, to the extent that a competitor is able to reproduce or otherwise capitalize on our technology, it may be difficult, expensive or impossible for us to obtain necessary legal protection. Also, the laws of some foreign countries may not protect our intellectual property to the same extent as do the laws of the United States. In addition to patent protection of intellectual property rights, we consider elements of our product designs and processes to be proprietary and confidential. We rely on employee, consultant and vendor non-disclosure agreements and contractual provisions and a system of internal safeguards to protect our proprietary information. However, any of our registered or

unregistered intellectual property rights may be challenged or exploited by others in the industry, which could harm our operating results and competitive position.

***Because we have significant operations outside of the United States and report our earnings in U.S. dollars, unfavorable fluctuations in currency values and exchange rates could have a significant negative impact on our earnings.***

Because our reporting currency is the U.S. dollar, our non-U.S. operations face the additional risk of fluctuating currency values and exchange rates. Such operations may also face hard currency shortages and controls on currency exchange. Approximately 24% and 23% of our net sales in fiscal years 2004 and 2003, respectively, were derived from sales outside the United States. Consequently, changes in the value of foreign currencies (principally Australian dollars, New Zealand dollars, Philippine pesos, Chilean pesos, Euros, U.K. pounds and Canadian dollars) could significantly affect our business, results of operations and financial condition. We generally attempt to mitigate foreign exchange risk by (1) entering, where possible, into contracts providing for payment in U.S. dollars instead of the local currency and (2) having non-U.S. operations borrow in local currencies, particularly the Philippines and Chile. Although we did not have any material interest rate swaps or forward exchange contracts outstanding as of March 31, 2004, we may enter into such financial instruments from time to time to manage our market risks. There can be no assurance that we will be successful in these mitigation strategies, or that fluctuations in foreign currencies and other foreign exchange risks will not have a material adverse effect on our business, results of operations and financial condition.

***Our Articles of Association and Dutch law contain provisions that could delay or prevent a change of control that may otherwise be beneficial to you.***

Our Articles of Association contain several provisions that could have the effect of delaying or preventing a change of control of our ownership. Broadly, our Articles of Association prohibit the holding of shares of our common stock if, because of an acquisition of a relevant interest (including interests held in the form of shares of our common stock, CUFs or ADRs) in such shares, a party's relevant interest in our common stock or voting rights in us increases from 20% or below to over 20% or from a starting point that is above 20% and below 90%. However, this prohibition is subject to exceptions, including acquisitions that result from acceptance under a takeover bid as described in our Articles of Association. Although these provisions in our Articles of Association may help to ensure that no person acquires voting control of us without making an offer to all shareholders, these provisions may also have the effect of delaying or preventing a change of control that may otherwise be beneficial to you. See "Additional Information — Key Provisions of our Articles of Association — Limitations on Right to Hold Common Stock" under Item 10.

***Because we are incorporated under Dutch laws, you may not be able to effectively seek legal recourse against us or our management in the United States and you may have further difficulty enforcing any U.S. judgments or rulings in a foreign jurisdiction.***

We are incorporated under the laws of The Netherlands. In addition, many of our directors and executive officers are residents of jurisdictions outside the United States and a substantial portion of our assets are located outside the United States. As a result, it may be difficult to effect service of process within the United States upon such persons, or to enforce outside the United States judgments obtained against such persons in U.S. courts, or to enforce in U.S. courts any judgments obtained against such persons in courts located in jurisdictions outside the United States, including actions predicated upon the civil liability provisions of the U.S. securities laws. In addition, it may be difficult for you to enforce, in original actions brought in courts located in jurisdictions outside the United States, rights predicated upon the U.S. securities laws.

The rights of shareholders and the responsibilities of directors under the laws of The Netherlands may not be as clearly established as under statutes or judicial precedent in existence in certain U.S. jurisdictions. Therefore, our shareholders may have more difficulty in challenging the actions by our directors than they would otherwise as shareholders of a corporation incorporated in the United States.

*The issuance of additional shares or the grant of additional options could dilute the value of your shares and adversely affect the price of our common stock.*

Because the authority to issue shares (and to grant rights to subscribe for shares, such as options) up to the amount of our authorized share capital has been delegated to our Supervisory Board, the issuance of such shares or rights could dilute the value of your shares and adversely affect the price of our common stock.

In addition, if we issue a large number of our equity securities, the trading price of our equity securities could decrease. We may pursue acquisitions of businesses and may issue equity securities in connection with these acquisitions, although we do not currently have specific acquisitions planned. We may also issue equity securities to satisfy other liabilities of the Company. We cannot predict the effect, if any, the future sales or issuances of our equity securities or the availability of such securities for future sale will have on our securities market price from time to time.

*If we experience labor disputes or interruptions, as we have from time to time in the past, our operations may be disrupted and our business, financial condition and results of operations may be adversely affected.*

Approximately 53% of our employees in Australia and 58% of our employees in New Zealand are currently represented by labor unions. Our unionized employees are covered by a range of federal and state-based agreements in Australia and New Zealand. Our Australian and New Zealand agreements expire at various times beginning September 2005. We cannot assure you that the agreements will be renewed on reasonable terms, or at all. During the past three years we experienced occasional strikes and work interruptions lasting up to two days in Australia. In the event we experience a prolonged labor dispute at any of our facilities, any strikes or work interruptions associated with such dispute could have a material adverse effect on our business, financial condition and results of operations.

*Under the U.S.-Netherlands income tax treaty and Netherlands law, we derive substantial tax benefits from the group finance operations of our Netherlands-based finance subsidiary, and changes in either the treaty or laws applicable to the finance subsidiary, including the recently approved Protocol, could increase our effective tax rate and, as a result, reduce our future profits and cash flows.*

We believe the current U.S.-Netherlands Income Tax Treaty (the "U.S.-NL Treaty") applies to us and our Dutch and U.S. subsidiaries and that, accordingly, we are eligible for its benefits. Under the current U.S.-NL Treaty, a reduced 5% withholding tax applies to dividends, and no withholding tax applies to interest and royalties, that our U.S. subsidiaries pay to JHI NV or our Dutch finance subsidiary. The current U.S.-NL Treaty has various conditions of eligibility for reduced tax withholding rates (and other treaty benefits), all of which we expect to satisfy. If, however, the current U.S.-NL Treaty were not to apply, such dividend and interest payments would be subject to a 30% U.S. withholding tax.

The United States and The Netherlands approved a new protocol that, when ratified, would amend the current U.S.-NL Treaty. We expect ratification to occur soon. Companies eligible for benefits under the amended treaty qualify for a zero percent withholding rate on dividends. However, the Protocol has various new, more restrictive eligibility requirements for reduced tax withholding rates and other treaty benefits. We can elect to apply and continue to benefit from the current treaty until the first day of the 14<sup>th</sup> month after ratification of the Protocol, when we will become subject to the amended treaty. Unless we change our organizational and operational structure, we are unlikely to satisfy the requirements of the amended treaty. Accordingly, we are evaluating various reorganization options to satisfy those requirements and thus remain eligible for benefits under the amended treaty. However, we cannot guarantee whether we can remain eligible for benefits under the amended treaty, or to obtain an equally favorable result. The loss of treaty benefits could significantly increase our effective tax rate in the future, which could have a material adverse impact on our financial condition, cash flows and results of operations.

We have concentrated our finance and treasury activities in our Dutch finance subsidiary located in The Netherlands. In addition to providing financing to our various subsidiaries, the finance subsidiary owns and develops intellectual property that it licenses to our operating subsidiaries. Under the Netherlands Interna-

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tional Group Finance Company rules, we have obtained a ruling from the Dutch revenue authority that allows the finance subsidiary to set aside, in a Financial Risk Reserve ("FRR"), a portion of its taxable profits from financing and from licensing its intellectual property. The amounts set aside in the FRR are free of current Dutch income tax. Consequently, the finance subsidiary will generally incur a tax rate of approximately 15% to 18% on its qualifying financing and licensing income and a 34.5% statutory rate on all other income, including any amounts involuntarily released from the FRR to cover any risks (including currency, bad debt and foreign branch losses) for which the FRR was established. The tax rate on qualifying income may be reduced to as low as approximately 7% to 10%, depending on the extent to which amounts from the FRR pay for capital expenditures of our operating companies. Issued in December 2000, the ruling became effective July 1, 2001, and applies for ten years (although it will end earlier, on December 31, 2010, because of developments described below), so long as we satisfy the requirements of the International Group Finance Company provisions under Dutch law.

Under the European Union Code of Conduct on Direct Business Taxation, member states of the European Union have agreed to eliminate harmful tax competition within the European Union. Accordingly, the EU Council of Economic and Finance Ministers, a working group of EU member countries, reviewed the tax regimes of all its member countries and identified certain tax concessions the Council considered as harmfully competitive and therefore in violation of the Code of Conduct. Among the identified tax concessions is the Netherlands International Group Finance Company regime. In December 2002, The Netherlands agreed to end its International Group Finance Company regime for new entrants.

In a separate but related development, the European Commission, the executive arm of the European Union, similarly has reviewed the tax regimes of its member countries to identify tax concessions that the Commission considers a form of "prohibited state aid" and therefore contrary to the provisions of the European Community Treaty. In February 2003, the Commission concluded that the existence of special tax concessions in certain countries, including the Netherlands International Group Finance Company regime, cannot be reconciled with EU rules regarding state aid. Accordingly, the Commission banned certain concessionary tax regimes, including the Netherlands International Group Finance Company regime, but allowed companies then operating under that regime, including our Dutch finance subsidiary, to continue to operate under the regime until December 31, 2010. Some uncertainty exists whether, during this extended period of the International Group Finance Company regime, qualifying companies can: (1) continue to set aside profits in their FRR and (2) defer any taxable recovery of profits from their FRR until the expiration date. Until December 31, 2010 and absent further legal developments, we intend to maintain and continue to add to the FRR of our Dutch finance subsidiary all allowable profits the subsidiary earns, and to fund capital expenditures of our operating companies with amounts from the FRR.

Although our Dutch finance company can continue to derive benefits under the Netherlands International Group Finance Company rules until December 31, 2010, we cannot guarantee that either the EU again, or another relevant authority or legislative body, would not attempt to repeal that law earlier, or that a court of competent jurisdiction would not invalidate it, possibly with retrospective effect.

### ***Our effective income tax rate could increase and adversely affect our operating results.***

We operate in multiple jurisdictions and pay tax on our income according to the tax laws of these jurisdictions. Various factors, some of which are beyond our control, determine our effective tax rate, including changes in or interpretations of tax laws in any given jurisdiction; our ability to use net operating losses and tax credit carry forwards and other tax attributes; changes in geographical allocation of income and expense; and our judgment about the realizability of deferred tax assets.

In addition, because we derive a majority of our revenues in the United States, certain proposed changes in U.S. tax laws, if enacted, could increase our effective tax rate. Recent legislative and regulatory proposals would reduce or eliminate certain of our tax advantages as a foreign-based company with U.S. operations. If any of these proposals were enacted, our U.S. income tax liability could increase and thus reduce our cash flow and earnings. We cannot predict whether any such proposals will be enacted and the extent to which any enacted proposal would apply to us.



*If we are classified as a “controlled foreign corporation,” a “passive foreign investment company” or a “foreign personal holding company,” our shareholders could be subject to increased tax liability as a consequence of their investment in our securities.*

Our U.S. citizen and resident shareholders could incur adverse U.S. federal income tax consequences if, for federal income tax purposes, we are classified as a “controlled foreign corporation,” a “passive foreign investment company” or, for our tax years beginning before January 1, 2005, a “foreign personal holding company.” For information regarding these consequences, see Item 10 — “Additional Information — Taxation — United States Taxation.” In addition, shareholders could be adversely affected by changes in the current tax laws, regulations and interpretations thereof in the United States and The Netherlands, including changes that could have retroactive effect.

#### **Forward-Looking Statements**

This annual report contains forward-looking statements. We may from time to time make forward-looking statements in our periodic reports filed with the Securities and Exchange Commission on Forms 20-F and 6-K, in our annual reports to shareholders, in offering circulars and prospectuses, in media releases and other written materials and in oral statements made by our officers, directors or employees to analysts, institutional investors, representatives of the media and others. Examples of such forward-looking statements include:

- projections of our operating results or financial condition;
- statements of our plans, objectives or goals, including those relating to competition, acquisitions, dispositions and our products;
- statements about our future economic performance or that of the United States, Australia or other countries in which we operate; and
- statements about product or environmental liabilities.

Words such as “believe,” “anticipate,” “plan,” “expect,” “intend,” “target,” “estimate,” “project,” “predict,” “forecast,” “guideline,” “should,” “aim” and similar expressions are intended to identify forward-looking statements but are not the exclusive means of identifying such statements.

Forward-looking statements involve inherent risks and uncertainties. We caution you that a number of important factors could cause actual results to differ materially from the plans, objectives, expectations, estimates and intentions expressed in such forward-looking statements. These factors, some of which are discussed under “Risk Factors” beginning on page 5, include but are not limited to: all matters relating to or arising out of the prior manufacture of asbestos by ABN 60 and certain former subsidiaries; competition and product pricing in the markets in which we operate; general economic and market conditions; compliance with and possible changes in environmental and health and safety laws; the successful transition of new senior management; the success of our research and development efforts; the supply and cost of raw materials; our reliance on a small number of product distributors; the consequences of product failures or defects; exposure to environmental, asbestos or other legal proceedings; risks of conducting business internationally; compliance with and changes in tax laws and treatments; and foreign exchange risks. We caution you that the foregoing list of factors is not exclusive and that other risks and uncertainties may cause actual results to differ materially from those in forward-looking statements. Forward-looking statements speak only as of the date they are made.

#### **Item 4. Information on the Company**

##### **History and Development of the Company**

Our legal name was changed to James Hardie Industries N.V. from RCI Netherlands Holdings B.V. in July 2001 when our legal form was converted from *‘besloten vennootschap met beperkte aansprakelijkheid* (“B.V.”), or private limited liability company, to a *‘naamloze vennootschap* (“N.V.”), or public limited liability company whose stock, unlike a private limited liability company, may be transferred without

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executing a notarial deed if such company is listed on a recognized stock exchange. We operate under Dutch law. Our corporate seat is located in Amsterdam, The Netherlands. The address of our registered office in The Netherlands is 4th Level Atrium, unit 04-07, Strawinskylaan 3077, 1077 ZX Amsterdam. The telephone number there is 011 31 20 301 2984. Our Company Secretary is W. (Pim) Vlot who is based in The Netherlands.

### ***Corporate Restructuring***

On July 2, 1998, ABN 60, which was then a public company organized under the laws of Australia and listed on the Australian Stock Exchange, announced a plan of reorganization and capital restructuring (the “1998 Reorganization”).

James Hardie N.V. (“JHNV”) was incorporated in August 1998 as an intermediary holding company, with all of its common stock owned by indirect subsidiaries of ABN 60. On October 16, 1998, ABN 60’s shareholders approved the 1998 Reorganization. Effective as of November 1, 1998, ABN 60 and its subsidiaries contributed certain business assets to ABN 60’s subsidiary, JHNV and JHNV’s subsidiaries. In connection with the 1998 Reorganization, ABN 60 and its non-transferring subsidiaries retained certain other assets and liabilities.

On July 24, 2001, ABN 60 announced a further plan of reorganization and capital restructuring (the “2001 Reorganization”). On October 19, 2001, we completed our 2001 Reorganization. In connection with the 2001 Reorganization, JHI NV issued common shares represented by CUFS on a one for one basis to existing ABN 60 shareholders in exchange for their shares in ABN 60 and thereby became the ultimate holding company for ABN 60 and JHNV. In addition, JHI NV subscribed for partly-paid shares in ABN 60, with respect to which ABN 60 could call upon JHI NV to pay any or all of the remainder of the issue price at any time, and from time to time, in the future for such amount as is necessary to ensure that ABN 60 remains solvent.

Following the 2001 Reorganization, JHI NV controlled the same assets and liabilities as ABN 60 controlled immediately prior to the 2001 Reorganization.

During fiscal year 2003, JHI NV and ABN 60 cancelled the partly-paid shares and ABN 60 transferred control of all of its non-operating subsidiaries to RCI Holdings Pty Ltd. On March 31, 2003, we transferred control of ABN 60 to a newly established company named the ABN 60 Foundation. See “Information on the Company — Capital Expenditures and Divestitures — Divestitures.”

### **Recent Developments**

#### ***Special Commission of Inquiry***

In February 2004, the NSW Government established the SCI to investigate, among other matters described in “Legal Proceedings”, the circumstances in which the Foundation was established. The SCI heard evidence and received submissions from April 5, 2004 to August 13, 2004. On July 14, 2004, the Company issued a statement announcing that it would recommend that shareholders approve the provision of an unspecified amount of additional funding to enable an effective statutory scheme to compensate all future claimants for asbestos-related injuries caused by former James Hardie subsidiary companies. On September 21, 2004, the SCI issued its report to the NSW Government. The report in part supported certain allegations made against certain Company personnel and the Company, but also supported positions taken by the Company on a number of important issues. The SCI’s findings are not binding and a later court consideration of the issues could lead to one or more different conclusions. In addition, the NSW Government has announced its preparedness to pass legislation that would alter the Company’s liability position.

The NSW Government has stated that it would not consider assisting the implementation of any proposal advanced by the Company unless it was the result of an agreement reached with the union movement acting through the ACTU and the Labor Council of NSW as well as the representatives of the asbestos claimants (together, the “Representatives”). The statutory scheme that the Company recommended on July 14, 2004 was rejected by the Representatives. The Company is currently in discussions with the Representatives

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regarding potential arrangements that could be acceptable to both the Representatives and the Company and subsequently to the Company's shareholders and the NSW Government. Both the outcome of those discussions and the timing of any potential resolution are highly uncertain and, accordingly, the Company cannot determine whether it will achieve a satisfactory resolution or what any potential arrangement may involve.

The Company has incurred substantial costs associated with the SCI and may incur material costs in the future related to the SCI or subsequent legal proceedings. See "Legal Proceedings" and Risk Factors entitled "We may be subject to potential liability because ABN 60 and certain former subsidiaries formerly manufactured products containing asbestos" and "Following a Special Commission of Inquiry that was established in Australia to consider matters related to the Foundation, we may be subject to claims and allegations involving asbestos-related liability, or our corporate restructurings, including the corporate restructuring related to the creation of the Foundation and the ABN 60 Foundation and associated intercompany transactions" in Item 3.

### ***Australian Securities and Investments Commission Investigation ("ASIC")***

On September 22, 2004, the ASIC announced that it was conducting an investigation into potential contraventions of certain Australian laws arising from the transactions considered by the SCI. We received a notice from ASIC under relevant legislation to produce certain categories of documents to be considered by it in its investigation. We are currently responding to this notice and will cooperate with the ASIC in relation to all aspects of its investigation. See "Legal Proceedings."

### ***Board and Management Changes***

On August 11, 2004, Mr. Alan McGregor resigned as Chairman of the Supervisory Board due to his continuing ill health. Ms. Meredith Hellicar was appointed Chairman of the Supervisory Board on the same day.

On September 28, 2004, the Company announced that Mr. Peter Macdonald and Mr. Peter Shafron were standing aside as Chief Executive Officer and Chief Financial Officer, respectively.

On October 21, 2004, Mr. Macdonald resigned from his position on the Managing Board and as Chief Executive Officer. On the same day, Mr. Louis Gries was appointed as a temporary member of the Managing Board in accordance with article 15.4 of the Company's Articles of Association and was granted the title of Interim Chief Executive Officer. On October 20, 2004, Mr. Shafron resigned from his position as Chief Financial Officer. Mr. Russell Chenu was appointed as Executive Vice President — Australia and Interim Chief Financial Officer on October 21, 2004.

On October 21, 2004, Mr. Folkert Zwinkels resigned from the Managing Board. Mr. W. (Pim) Vlot, the Company's Secretary, was appointed as a temporary member of the Managing Board in accordance with article 15.4 of the Company's Articles of Association on the same day.

### **General Overview of Our Business**

Based on revenue, we believe we are the largest manufacturer of fiber cement products and systems for internal and external building construction applications in the United States, Australia, New Zealand and the Philippines, and the second largest manufacturer of flat sheet fiber cement products in Chile. Fiber cement is currently one of the fastest growing segments of the U.S. residential exteriors industry. Based on our knowledge, experience, and third-party data regarding our industry, we estimate that total U.S. industry shipments of fiber cement siding, trim, soffit and fascia were approximately 1.4 billion square feet during fiscal year 2004, an increase of approximately 15% from fiscal year 2003. Based on our knowledge, experience and third-party data, fiber cement is estimated to have 25% to 30% of the U.S. Interior Cement Board market. We market our fiber cement products and systems under various Hardi brand names and other brand names such as Cemplank® siding, Sentry® siding and Artisan™ roofing. We believe that, in certain applications, our fiber cement products and systems provide a combination of distinctive performance, design and cost advantages

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when compared to other fiber cement products and alternative products and systems using solid wood, engineered wood, vinyl, brick, stucco or gypsum wallboard.

The sale of fiber cement products in the United States accounted for 75%, 77% and 75% of our total net sales from continuing operations in fiscal years 2004, 2003 and 2002, respectively.

Our fiber cement products are used in various markets including new residential construction (single and multi-family housing), manufactured housing (mobile and pre-fabricated homes), repair and remodeling and a variety of commercial and industrial applications (stores, warehouses, offices, hotels, motels, schools, libraries, museums, dormitories, hospitals, detention facilities, religious buildings and gymnasiums). We manufacture numerous types of fiber cement products with a variety of patterned profiles and surface finishes for a range of applications including external siding and soffit lining, roofing, internal linings, facades, fencing, pipes and floor and tile underlayments. In contrast to some other building materials, fiber cement provides durability attributes such as strong resistance to moisture, fire, impact and termites, requires relatively little maintenance and can be used as a substrate to create a wide variety of architectural effects with textured and colored finishes. During fiscal year 2004, management believes, based on its analysis of competitors' sales that we sold approximately 90% of all fiber cement products sold in the United States, approximately 65% of all fiber cement products sold in Australia and approximately 90% of all fiber cement products sold in New Zealand. We estimate that we had approximately 11% of the approximately 12 billion square foot per year U.S. exteriors market in fiscal year 2004.

The breakdown of our revenue by product category and geographic area for each of our last three fiscal years is as follows:

	Fiscal Year Ended March 31,		
	2004	2003	2002
	(In millions)		
<b>Continuing Operations</b>			
Fiber Cement			
United States	\$738.6	\$599.7	\$444.8
Asia Pacific	219.8	174.3	141.7
Other	23.5	9.6	4.2
General Corporate	—	—	1.0
<b>Total Continuing Operations</b>	<b>\$981.9</b>	<b>\$783.6</b>	<b>\$591.7</b>
<b>Discontinued Operations</b>			
Gypsum (United States)	\$ —	\$ 18.7	\$247.6
Building Systems (New Zealand)	2.9	20.1	15.2
<b>Total Discontinued Operations</b>	<b>\$ 2.9</b>	<b>\$ 38.8</b>	<b>\$262.8</b>
<b>Total (Continuing and Discontinued Operations)</b>	<b>\$984.8</b>	<b>\$822.4</b>	<b>\$854.5</b>

## Industry Overview

### *U.S. Housing Industry and Fiber Cement*

In the United States, fiber cement is principally used in the residential building industry, which fluctuates based on the level of new home construction and the repair and remodeling of existing homes. The level of activity is generally a function of interest rates, inflation, unemployment levels, demographic trends, gross domestic product growth and consumer confidence. Demand for building products is also affected by residential housing starts and existing home sales, the age and size of the housing stock and overall home improvement expenditures. According to the U.S. Census Bureau, annual domestic housing starts increased from approximately 1.57 million in calendar year 2000 to approximately 1.85 million in calendar year 2003 and

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residential remodeling expenditures increased from approximately \$153.0 billion in calendar year 2000 to approximately \$176.9 billion in calendar year 2003.

Based on our knowledge, experience and third-party data regarding our industry, we estimate that total U.S. industry shipments of fiber cement siding, trim, soffit and fascia were approximately 1.4 billion square feet during fiscal year 2004, up approximately 15% from fiscal year 2003. The future growth of fiber cement products will not only depend on overall demand for building products but also the rate of penetration of fiber cement products against competing materials such as wood, engineered wood (hardboard and oriented strand board), vinyl, masonry and stucco.

In the United States, the largest application for fiber cement products is in the external siding industry. Fiber cement is one of the fastest growing segments of the siding industry. Continued strength in residential construction combined with gains in the repair and remodel market have resulted in strong demand for external siding products. Based on our knowledge, experience and third-party data regarding our industry, we estimate that the external siding market (including siding, fascia, trim and soffit) was approximately 12 billion square feet in fiscal year 2004. Siding is a component of every building and it usually occupies more square footage than other building components, such as windows and doors. Selection of siding material is based on installed cost, durability, aesthetic appeal, strength, weather resistance, maintenance requirements and cost, insulating properties and other features. Different regions of the United States show a decided preference among siding materials according to economic conditions, weather, materials availability and local taste. The principal siding materials are solid wood, engineered wood, fiber cement, vinyl, masonry and stucco. Vinyl has the largest share of the siding market. In recent years, fiber cement has been gaining market share against vinyl, and wood and engineered wood products, in the one of wood and engineered wood products, share growth is believed to be due to durability concerns and higher maintenance requirements of those products.

In the U.S. civil construction market, large diameter pipes are used for major public infrastructure projects such as storm water, sewer, water distribution and other non-pressurized drainage applications. According to the most recent Freedonia Report on Large Diameter Pipes, the U.S. market for large diameter pipe is estimated at 177 million linear feet annually. Of this amount, approximately 45% is used for storm water and sewer applications, approximately 20% is used in drainage and irrigation applications and approximately 35% is used for a variety of other applications. The market is expected to grow approximately 2.4% annually.

### ***International Fiber Cement Industry***

In Australia and New Zealand, fiber cement building products are used in both the residential and commercial building industries with applications in external siding, internal walls, ceilings, floors, soffits and fences. The residential building industry represents the principal market for fiber cement products. We believe the level of activity in this industry is generally a function of interest rates, inflation, unemployment levels, demographic trends, gross domestic product growth and consumer confidence. Demand for fiber cement building products is also affected by the level of new housing starts and renovation activity. According to the Australian Bureau of Statistics, new housing starts in Australia have grown from approximately 167,137 in fiscal year 2000 to approximately 169,272 in fiscal year 2004. Renovation activity, as measured in local currency expenditures by the Australian Bureau of Statistics, has increased steadily each year from calendar year ended December 31, 2000 to calendar year ended December 31, 2003 for a total increase over this period of approximately 46%. According to Statistics New Zealand, new dwellings authorized in New Zealand grew from approximately 25,858 in fiscal year 2000 to 31,423 in fiscal year 2004. Residential renovation activity in New Zealand has steadily increased each year from fiscal year 2000 to fiscal year 2004 for a total increase over this period of approximately 52%.

Fiber cement products have gained broader acceptance across a range of product applications in Australia and New Zealand than in the United States primarily due to their earlier introduction. Our former ABN 60 subsidiaries developed fiber cement in Australia as a replacement for asbestos cement in the early 1980's. Asbestos sheet production ceased in the early 1980s and asbestos pipe-based production ceased in early 1987. Competition has intensified over the past eight years in Australia. In addition to competition from solid wood,

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engineered wood, wallboard, masonry and brick, two Australian competitors have established fiber cement manufacturing facilities in Australia and fiber cement imports are also available. Competition has also intensified in New Zealand as fiber cement imports have increased, resulting in increasingly competitive market pricing.

Management believes that fiber cement has good long-term growth potential in some Asian and South American markets because of the benefits of framed construction over traditional masonry construction. In addition, we believe the opportunity to replace wood-based products such as plywood with more durable fiber cement will be attractive to consumers in these markets.

### **Products**

We manufacture fiber cement products in the United States, Australia, New Zealand, the Philippines and Chile. In fiscal year 2004, we also commenced our Europe Fiber Cement business by distributing in the U.K. and France. In addition, we made our first commercial sales of our new generation of fiber cement roofing products manufactured at our pilot roofing plant in Fontana, California. Our total product offering is aimed at building and construction markets, including new residential construction, manufactured housing, repair and remodeling and a variety of commercial and industrial building applications.

We offer a wide range of fiber cement products for both exterior and interior applications, some of which have not yet been introduced into the United States. In the United States and elsewhere, our products are typically sold as planks or flat sheets with a variety of patterned profiles and finishes. Planks are used for external siding while flat sheets are used for internal and external wall linings and floor underlay. At our Plant City, Florida facility, we manufacture fiber reinforced concrete pipes for use as large diameter storm water and non-pressurized drainage applications. Outside the United States, we also manufacture fiber cement products for use in other applications such as building facades, lattice, fencing, decorative columns and ceiling applications.

We have developed a proprietary technology platform enabling the production of thicker yet lighter-weight fiber cement products that are generally lighter and easier to handle than traditional building products. The first application of this technology has been our Harditrim® product. Harditrim is a fiber cement trim product that is used on the exterior of residential and commercial construction to replace traditional wood and engineered wood trim. Harditrim was launched in fiscal year 1999 from our Cleburne, Texas plant and demand has been strong since that time. A new production process for manufacturing Harditrim was commissioned at the Cleburne plant and production commenced in fiscal year 2002.

Management believes that our products provide certain performance, design and cost advantages. The principal fiber cement attribute in exterior applications is durability, particularly when compared to competing wood and wood-based products, while offering comparable aesthetics. Our fiber cement products exhibit superior resistance to the damaging effects of moisture, fire, impact and termites compared to wood and wood-based products, which has enabled us to gain a competitive advantage over competing products. Vinyl siding products generally have better durability characteristics than wood-based products, but typically cannot duplicate the superior aesthetics of fiber cement and lack the characteristics necessary for effectively accepting paint applications.

Our fiber cement products provide strength and the ability to imprint simulated patterns that closely resemble patterns and profiles of traditional materials such as wood and stucco. The surface properties provide a superior paint-holding finish to wood and engineered wood products such that the periods between necessary maintenance and repainting are longer. Compared to masonry construction, the product is lightweight, physically flexible and can be cut using readily available tools. This makes the product suitable for lightweight construction across a range of architectural styles. The product is well suited to both timber and steel framed construction.

In ceramic tile underlayment applications, our products provide superior handling and installation characteristics compared to fiberglass mesh cement boards. Compared to wood and wood-based products, our products provide the same general advantages that apply to external applications. In addition, our fiber cement

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products exhibit less movement in response to exposure to moisture than many alternative competing products, providing a more consistent and durable substrate on which to install tiles. In internal lining applications where exposure to moisture and impact damage are significant concerns, our products provide superior moisture resistance and impact resistance to traditional gypsum wet area wallboard and other competing products.

Hardie® Pipe continues to offer advantages to the mid-size drainage pipe market because our product features span both traditional concrete pipes and newer flexible pipes. We offer the initial crush strength of rigid pipes, combined with the lighter-weight, longer lengths and ease of installation of flexible pipes. The result is productivity gains over rigid pipes and less installation and service risk than with flexible pipes.

We seek to emphasize the performance attributes of our products and continue to develop new products that, due to the materials used and the process technology employed in their manufacture, may be difficult for competitors to emulate. While no assurances can be given, we believe that the proprietary nature of these products, our ability to competitively source raw materials for these products and the economies of scale that are derived from their manufacture should assist our efforts to maintain our leadership and low cost competitive position. See “Research and Development.”

In fiscal year 2000, we launched Hardibacker 500® tile underlayment, a new 1/2 inch thick tile backer board in the United States. This enabled us to increase sales of products to home center retailers which access the building trade and home repair markets. We also introduced Harditrim, a new generation of low density fiber cement trim products for residential construction that further extended our product range and enhanced our reputation as a leader in fiber cement product innovation. The addition of Harditrim enabled us to offer a fiber cement system for residential construction that gave builders the option to completely replace wood and engineered wood products with fiber cement in most exterior applications. We introduced the ColorPlus™ collection, a new finished product available in specific lap siding, shingles, trim, fascia and soffit products, during fiscal year 2002. In fiscal year 2003, we expanded our new line of pre-finished exterior products, the ColorPlus collection, with the addition of several new colors, and successfully launched a new all-weather low density trim product utilizing our new proprietary XLD® low density fiber cement technology. We also launched our new improved proprietary grid 1/4” backer product EzGrid® underlayment. In fiscal year 2004, we introduced pre-finished trim accessories to further expand our ColorPlus collection line. And the first commercial sales of our Artisan® Roofing product were made in the second half of fiscal year 2004. Additionally, in the past five years, we launched many new textures, styles and coatings in fiber cement siding products in the United States to capitalize on demand for a variety of styles among homebuilders and homeowners. In Australia and New Zealand, new products released over the past three years include Hardifloor® panels, Monotek® cladding, HardiGroove® lining, HardiGlaze® tile sheet, EziGrid® tilebacker, Hardirock® board (Australia only), Linea® weatherboards and new column profiles and accessories. In fiscal year 2004, we launched Hardiplank® siding in South Korea and China, and launched a shorter and lighter version of HardiSenepa™ fascia board in the Philippines.

### **Seasonality**

Our business is seasonal and follows activity levels in the building and construction industry. In the United States, the quarters ending in December and March generally reflect reduced levels of building activity depending on weather conditions. In Australia, the quarter ending in March is usually affected by a slowdown due to summer vacations. In the Philippines, sales are generally lower during the period from June through September as this is typhoon season and during the last half of December due to the slowdown in business activity over the Christmas period. In Chile, sales are generally lower from May through September due to weather conditions. In addition, general industry patterns can be affected by weather, economic conditions, industrial disputes and other factors.

### **Raw Materials**

All of the raw materials required in the manufacture of our fiber cement products are available from a number of sources and we have not experienced any shortages that have materially affected our operations.

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The principal raw materials used in the manufacture of fiber cement are cellulose fiber (wood-based pulp), silica (sand), portland cement and water.

*Cellulose Fiber.* Reliable access to specialized, consistent quality, low cost pulp is critical to the production of fiber cement building materials. Cellulose fiber is sourced from New Zealand, the United States and Canada, and is processed to our specifications. It is further processed using our proprietary technology to provide the reinforcing material in the cement matrix of fiber cement. We have developed a high level of internal expertise in the production and use of wood-based pulps. This expertise is shared with pulp producers, which have access to appropriate raw wood stocks, in order to formulate superior reinforcing pulps. The resulting pulp formulas are typically proprietary and are the subject of confidentiality agreements between the pulp producers and us. There are a variety of supply alternatives for the sourcing of pulp. Although we have entered into contracts to hedge pulp prices in the past, we currently have none in effect. However, we continue to evaluate options on agreements with suppliers for the purchase of pulp that could fix our pulp prices over the longer-term.

*Silica.* High purity silica is sourced locally by the various production plants. In the majority of locations, we use silica sand as a silica source. In certain other locations, however, we process quartz rock and beneficiate silica sand to ensure the quality and consistency of this key raw material. In our Fontana, California and Tacoma, Washington plants, where cost-effective sources of sand are not available, we operate quartz mines and process the rock to obtain silica.

*Cement.* Cement is acquired in bulk from local suppliers and is supplied on a just-in-time basis to our manufacturing facilities. The silos at each fiber cement plant hold between one and three days of our cement requirements.

*Water.* We use local water supplies and seek to process all wastewater to comply with environmental requirements.

## **Sales, Marketing and Distribution**

The principal markets for our fiber cement products are the United States, Australia, New Zealand, the Philippines, Chile, the U.K. and France. In addition, we sell fiber cement products in Canada, Taiwan, Thailand, Singapore, Japan, China, Vietnam, Malaysia, Hong Kong, the Middle East, South Korea, Indonesia, Argentina, Spain, The Netherlands, Denmark and the Republic of Ireland. Our Hardi<sup>TM</sup> brand name, customer education in comparative product advantages, differentiated product range and customer service, including technical advice and assistance, provide the basis for our marketing strategy. We offer our customers support through a specialized fiber cement sales force and customer service infrastructure in the United States, Australia, New Zealand, the Philippines, Europe, Canada and Chile. The customer service infrastructure includes inbound customer service support coordinated nationally in each country, and is complemented by outbound telemarketing capability. Within each regional market, we provide sales and marketing support to building products dealers and lumber yards and also provide support directly to the customers of these distribution channels, principally homebuilders and building contractors.

In the United States, we sell fiber cement products for new residential construction predominantly to distributors, which then sell these products to dealers or lumber yards. This two-step distribution process is increasingly being supplemented with direct sales to customers as a means of accelerating product penetration and sales. Our top two U.S. distributors accounted for approximately 50% of our total U.S. fiber cement sales in fiscal year 2004. In addition, a large home center retailer also accounted for approximately 15% of our total U.S. fiber cement sales in fiscal year 2004. Repair and remodel products in the United States are typically sold through the large home center retailers and specialist distributors. In Australia and New Zealand, both new construction and repair and remodel products are generally sold directly to hardware stores and lumber yards rather than through the two-step distribution process used in the United States. In the Philippines, a network of thousands of small to medium size dealer outlets sells our fiber cement products to consumers, builders and real estate developers. In Chile, we sell directly to builders and contractors, as well as to hardware stores and distributors. Physical distribution of product in each country is primarily by road or sea transport with also some use of rail in the United States.



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We maintain dedicated regional sales management teams in the major sales territories. The sales teams (including telemarketing staff) consist of approximately 320 people in the United States and Canada, 69 people in Australia, 26 people in New Zealand, 40 people in the Philippines, 24 people in Chile, 25 people in Europe and one person in Taiwan and Korea. Our national sales managers and national account managers together with the regional sales managers and sales representatives maintain relationships with national and other major accounts. Our sales force includes skilled trades people who provide on-site technical advice and assistance. In certain cases, sales forces manage specific product categories. For example, in the United States there are separate sales forces for siding products, interior products, pipes and roofing. The interior products sales force provides in-store merchandising support for home center retailers.

We also use trade and consumer advertising and public relations campaigns to generate demand for our products. These campaigns usually explain the differentiating attributes of our fiber cement products and the suitability of our fiber cement products and systems for specific applications.

Despite the fact that distributors are generally our direct customers, we also aim to increase primary demand for our products by marketing our products directly to homeowners, architects and builders. We encourage them to specify and install our products because of the quality and craftsmanship of our products. This “pull through” strategy, in turn, assists us in expanding sales for our distribution network as distributors benefit from the increasing demand for our products.

Geographic expansion of our fiber cement business has occurred, such as in parts of Asia and South America, in markets where framed construction is prevalent for residential applications or where there are opportunities to change building practices from masonry to framed construction. Expansion is also possible where there are direct substitution opportunities irrespective of the methods of construction. Our entry into the Philippines is an example of the ability to substitute fiber cement for an alternative product (in this case plywood). With the exception of our current major markets, as well as Japan and certain rural areas in Asia and Eastern Europe, most markets in the world principally utilize masonry construction for external walls in residential construction. Accordingly, further geographic expansion depends on our ability to provide alternative solutions and for those solutions to be accepted by the markets.

The launch of fiber cement products in the Philippines in fiscal year 1999 was accompanied by strategies to address the particular needs of local customers and the building trade as fiber cement products are relatively new to this market and until recently were not widely used. For example, we have established a carpenter training and accreditation program whereby Filipino carpenters who are unfamiliar with our products are taught installation techniques. We have also instituted a business development agreement program to build further loyalty with top residential developers.

Fiber cement products manufactured in Australia, New Zealand and the Philippines are exported to a number of markets in Asia and the Middle East by sea transport. A regional sales management team based in the Philippines is responsible for coordinating export sales into Asia and the Middle East.

## **Research and Development**

We pioneered the successful development of cellulose reinforced fiber cement and, during the 1980s, progressively introduced products resulting from our proprietary product formulation and process technology. We have capitalized on our strong market positions to maintain leadership in product research and development and process technology enhancements. Our product differentiation strategy, and our quest to maintain our position as one of the low cost manufacturers of fiber cement, is supported by our significant investment in research and development activities. In fiscal year 2004, we spent \$26.1 million in research and development activities or approximately 2.7% of total net sales in research and development activities, which includes \$3.5 million of amounts classified as selling, general and administrative expenses for U.S. GAAP purposes. For fiscal years 2003 and 2002, we spent \$20.8 million and \$16.0 million, respectively, in research and development expenditures, which includes \$2.7 million and \$1.9 million of amounts classified as selling, general and administrative expenses for U.S. GAAP purposes, or 2.7% of total net sales in fiscal years 2003 and 2002. We believe that we now have one of the largest and most advanced fiber cement research and development capabilities in the world.

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Globally, we employ over 110 scientists, engineers and technicians in Core Research and in Product & Process Development. Over 50% of our scientists have advanced degrees, and 45% have worked for James Hardie for over five years.

We have Research & Development Centers in Sydney, Australia, and Fontana, California, where we conduct core research, develop new manufacturing technology platforms and develop products for specific markets and applications. By investing in production technology, we aim to keep reducing our capital and operating costs, and at the same time find new ways to make existing products and new products.

Over the past ten years, advances in process technology have allowed us to reduce the incremental cost of additional capacity at existing sites. At the same time, we have reduced the relative cost of raw materials through yield improvements in the plants, by providing technological support to drive process improvements in our suppliers' operations, and from our increased business scale.

We believe that we also benefit from superior economies of scale, since we operate plants that have two to three times larger capacity than our fiber cement competitors.

In addition, our goals are to:

- continue to lower the capital cost of each unit of production at new plants by learning from past projects and through continuing innovation in engineering; and
- reduce operating costs at all plants by improving manufacturing processes, raw materials yields and machine productivity.

We believe that efficient, low-cost manufacturing, combined with our unique technology, will allow us to generate higher returns on invested capital because we will be able to sell our products at prices that are attractive to our customers, and achieve a profit margin that is attractive to shareholders.

### **Dependence on Trade Secrets and Research and Development**

Our current patent portfolio is based mainly on manufacturing and use of fiber cement products. Our additional technical intellectual property consists primarily of our operating and manufacturing know-how, which is treated as a trade secret. We are in the process of elevating our abilities to effectively create, manage and utilize our intellectual property and have developed a strategy that increasingly uses patenting, licensing, trade secret protection and joint development. If our research and development efforts fail to generate new, innovative products or processes, our overall profit margins may decrease and demand for our products may fall.

### **Governmental Regulation**

#### *Environmental Regulation*

Our operations and properties are subject to extensive federal, state and local and foreign environmental protection and health and safety laws, regulations and ordinances. These environmental laws, among other matters, govern activities and operations that may have adverse environmental effects, such as discharges to air, soil and water, and establish standards for the handling of hazardous and toxic substances and the handling and disposal of solid and hazardous wastes. In the United States, these environmental laws include:

- the Resource Conservation and Recovery Act;
- the Comprehensive Environmental Response, Compensation and Liability Act;
- the Clean Air Act;
- the Occupational Safety and Health Act;
- the Emergency Planning and Community Right to Know Act;
- the Clean Water Act;

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- the Safe Drinking Water Act;
- the Surface Mining Control and Reclamation Act;
- the Toxic Substances Control Act;
- the National Environmental Policy Act; and
- the Endangered Species Act,

as well as analogous state statutes and regulations. Other countries also have statutory schemes relating to the protection of the environment. Pursuant to certain environmental laws, a current or previous owner or operator of real property may be liable for the costs of removal or remediation of environmental contamination on, under or in that property. In addition, persons who arrange, or are deemed to have arranged, for the disposal or treatment of hazardous substances may also be liable for the costs of removal or remediation of environmental contamination at the disposal or treatment site, regardless of whether the affected site is owned or operated by such person. Environmental laws often impose liability whether or not the owner, operator or arranger knew of, or was responsible for, the presence of such environmental contamination. Also, third parties may make claims against owners or operators of properties for personal injuries and property damage associated with releases of hazardous or toxic substances pursuant to applicable environmental laws as well as common law tort theories, including strict liability. Environmental compliance costs in the future will depend, in part, on regulatory developments and future requirements that cannot be predicted.

### **Organizational Structure**

JHI NV is incorporated in The Netherlands, with its corporate seat in Amsterdam.

The table below sets forth our significant subsidiaries, all of which are 100% owned by JHI NV, either directly or indirectly, as of October 31, 2004.

<b>Name of Company</b>	<b>Jurisdiction of Establishment</b>
James Hardie Aust Holdings Pty Ltd.	Australia
James Hardie Aust Investments No. 1 Pty Ltd.	Australia
James Hardie Austgroup Pty Ltd.	Australia
James Hardie Australia Management Pty Ltd.	Australia
James Hardie Australia Pty Ltd.	Australia
James Hardie Building Products Inc.	United States
James Hardie Fibre Cement Pty Ltd.	Australia
James Hardie International Finance B.V	Netherlands
James Hardie N.V.	Netherlands
James Hardie New Zealand Inc.	New Zealand
James Hardie Philippines Inc.	Philippines
James Hardie Research (Holdings) Pty Ltd.	Australia
James Hardie U.S. Investments Sierra Inc.	United States
N.V. Technology Holdings A Limited Partnership	Australia
RCI Pty Ltd.	Australia

**Capital Expenditures and Divestitures**

*Capital Expenditures*

The following table sets forth our capital expenditures, calculated on an accrual basis, for each year in the three-year period ended March 31, 2004.

	Fiscal Years Ended March 31,		
	2004	2003	2002
(In millions)			
<b>Continuing Operations</b>			
Fiber Cement			
United States	\$56.2	\$81.0	\$39.3
Asia Pacific	8.4	6.6	8.1
Chile, U.S. Pipes, U.S. Roofing and Europe	9.5	2.5	3.3
Total Fiber Cement	74.1	90.1	50.7
General Corporate	—	0.1	0.1
Total Continuing Operations	\$74.1	\$90.2	\$50.8
<b>Discontinued Operations</b>			
Gypsum (United States)	\$ —	\$ —	\$ 1.4
Windows (Australia)	—	—	0.2
Total Discontinued Operations	—	—	1.6
<b>Total Capital Expenditures (Continuing and Discontinued Operations)</b>	<b>\$74.1</b>	<b>\$90.2</b>	<b>\$52.4</b>

The significant capital expenditure projects over the past three fiscal years in our USA Fiber Cement business include:

- the addition of our first XLD trim line at our Cleburne, Texas plant at a total cost of \$22.7 million, where \$4.3 million occurred during fiscal year 2002 and \$18.4 million occurred during fiscal years 2000 and 2001;
- the addition of the first line built by James Hardie at our Waxahachie, Texas plant at a cost of \$12.6 million, which occurred during fiscal year 2002. This addition was made to replace an existing second line built by a third party for Temple Inland. In fiscal year 2001, we spent \$9.1 million related to upgrades to the existing first line and plant infrastructure at our Waxahachie, Texas plant;
- the addition of a second flat sheet production line at our Peru, Illinois plant at a total cost of \$24.7 million, consisting of capital expenditures of \$19.1 million, which occurred during fiscal years 2002 and 2003, and \$5.6 million, which occurred during fiscal year 2001;
- the purchase of land and building in Summerville, South Carolina and Blandon, Pennsylvania, at a cost of \$10.0 million and \$7.6 million, respectively, in fiscal year 2003;
- the addition of a panel production line at our Waxahachie, Texas plant at a cost of \$26.5 million, which occurred during fiscal years 2003 and 2004;
- the addition of a pre-finishing line and expansion of the building at our Peru, Illinois plant at a total cost of \$7.8 million, which occurred during fiscal years 2003 and 2004;
- upgrades to our Blandon, Pennsylvania plant at a cost of \$14.4 million, which occurred during fiscal years 2003 and 2004;
- the addition of a new trim line at our Peru, Illinois plant, which began during fiscal year 2004 and is expected to commence production by the fourth quarter of fiscal year 2005. This new production line will have a design capacity of 160 million square feet and is currently estimated to cost \$61.0 million. Previously, we announced that the estimated cost would be \$49.9 million; and

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- the addition of a new green-field (“from scratch” on undeveloped land) fiber cement plant in Reno, Nevada, construction of which began during the fourth quarter of fiscal year 2004 and is expected to commence production by the end of calendar year 2004. The plant is expected to have a single production line with a design capacity of 300 million square feet a year, 50% more than the capacity of any of our production lines today. The plant will make plank, panel and backer products and is currently estimated to cost \$54.5 million. Previously, we announced that the estimated cost would be \$47.5 million.

The significant capital expenditure project in our U.S. Pipes businesses over the past five fiscal years was for the construction of our pipe plant in Plant City, Florida at a cost of \$33.7 million, which primarily occurred during fiscal year 2001.

In our roofing operations, we spent \$11.7 million in fiscal years 2003 and 2004 on our new pilot plant in Fontana, California. This pilot plant was built to test our proprietary manufacturing technology and provide product market testing in Southern California for a new generation of fiber cement roofing product.

In addition, in fiscal year 2004, \$2.2 million was spent to upgrade the fiber cement manufacturing plant at Rosehill in Sydney and \$1.8 million was spent at our Brisbane plant to install a coating facility.

We currently expect the level of our capital expenditures to continue to be substantial. Competitive pressures or market developments could require increased capital expenditures. Our financing for these capital expenditures is expected to come from our internal cash flows from our future operations and external debt to the extent that internal cash flows do not cover our capital expenditures.

### ***Divestitures***

#### *Building Systems*

On May 30, 2003, we sold our New Zealand Building Systems business to a third party. We recorded a gain of \$1.9 million representing the excess of net proceeds from the sale of \$6.7 million over the net book value of assets sold of \$4.8 million. The proceeds from the sale comprised cash of \$5.0 million and a note receivable in the amount of \$1.7 million.

#### *Gypsum*

On March 12, 2002, we signed an agreement to sell our Gypsum operations to BPB U.S. Holdings, Inc. for cash proceeds of \$345.0 million less selling costs of \$10.6 million. The sale was completed on April 25, 2002. We recorded a pre-tax gain of \$81.4 million representing the excess of net proceeds from the sale of \$334.4 million over the net book value of assets sold of \$253.0 million. The sale resulted in income tax expense of \$26.1 million. The net assets of our Gypsum business prior to the sale primarily consisted of trade receivables, inventory, accounts payable, mineral reserves, property, plant and equipment, goodwill and deferred taxes.

Prior to the sale of our Gypsum operations in April 2002, we owned and operated three gypsum wallboard-manufacturing facilities in the United States.

Part of our former Gypsum business included three gypsum rock mines located in an area covering parts of Northwest Arizona, Utah and Nevada; in Las Vegas, Nevada; and in Nashville, Arkansas. In June 2001, we entered into an agreement to sell our Las Vegas mine to a developer for \$50.0 million. On March 21, 2003, we completed the sale of our gypsum mine in Las Vegas and recorded a pre-tax gain of \$49.2 million representing the excess of net proceeds from the sale of \$48.4 million less the cost of assets sold of \$0.7 million and the assumption of \$1.5 million in liabilities by the buyer. The sale resulted in an income tax expense of \$19.2 million. The proceeds from the sale comprised cash of \$50.6 million less selling costs of \$2.2 million. The other two gypsum rock mines were included with the sale of our Gypsum operations to BPB U.S. Holdings, Inc. in April 2002.

Under the terms of the sale agreement, we agreed to customary indemnification obligations related to our representations and warranties in the agreement. In addition, we agreed to indemnify BPB U.S. Holdings, Inc.

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for any future liabilities arising from asbestos-related injuries to persons or property arising from our former Gypsum business. Although we are not aware of any asbestos-related claims arising from the Gypsum business nor circumstances that would give rise to such claims, under the sale agreement, our obligation to indemnify the purchaser for liabilities arising from asbestos-related injuries arises only if such claims exceed \$5 million in the aggregate, is limited to \$250 million in the aggregate and will continue for 30 years after the closing date of our Gypsum business.

Pursuant to the terms of our agreement to sell our Gypsum business, we also retained responsibility for any losses incurred by the purchaser resulting from environmental conditions at the Duwamish River in the State of Washington so long as notice of a claim is given within 10 years of closing. Our indemnification obligations are subject to a \$34.5 million limitation. The Seattle gypsum facility had previously been included on the "Confirmed and Suspected Contaminate Sites Report" released in 1987 due to the presence of metals in the groundwater. As we believe the metals found emanated from an offsite source, we do not believe we are liable for, and have not been requested to conduct, any investigation or remediation relating to the metals in the groundwater.

### *Building Services*

During the year ended March 31, 2003, we recorded a loss of \$1.3 million relating to our Building Services business, which was disposed of in November 1996. The loss consisted of expenses of \$0.8 million and a \$0.5 million write-down of an outstanding receivable that was retained as part of the sale.

### *Amaca Pty Ltd and Amaba Pty Ltd*

In fiscal year 2001, we gifted A\$3.0 million (\$1.7 million) in cash and transferred ownership of Amaca Pty Ltd (formerly James Hardie & Coy Pty Ltd) ("Amaca") and Amaba Pty Ltd (formerly Jsekarb Pty Ltd) ("Amaba") to the Medical Research and Compensation Foundation. The change in ownership resulted in a gain on disposal of \$2.3 million. In addition, ABN 60 (formerly JHIL) agreed to repay its existing loan of A\$70.0 million (\$34.3 million) due to Amaca. Following the placement of ABN 60 shares on August 1, 2001, this A\$70.0 million loan was repaid in full on August 8, 2001. ABN 60 also agreed to provide 42 annual payments to the former subsidiaries, totaling A\$234.2 million (\$141.4 million), in return for certain covenants and undertakings by the former subsidiaries not to bring any asbestos-related claims against ABN 60 or to make claims with respect to payments previously made by the former subsidiaries to ABN 60 or its affiliates, and to indemnify ABN 60 in relation to any asbestos-related claims that may be brought against it in connection with the former subsidiaries. Under this agreement, ABN 60 had the option of making the first seven annual payments and then a final payment of A\$73.0 million (\$44.1 million) when the eighth payment becomes due, making a total payment of A\$112.0 million (\$67.6 million). However, the former subsidiaries' obligation to indemnify ABN 60 and its related entities is not limited to the amount ABN 60 is obligated to pay to the Foundation. Apart from the express indemnity for non-asbestos matters provided to ABN 60 and a possible arrangement to fund some or all future claimants for asbestos-related injuries caused by former James Hardie subsidiary companies and to the potential liabilities more fully described in "Legal Proceedings", we do not believe we would have any liability under current Australian law should future asbestos-related liabilities of Amaca and Amaba exceed the funds available to those entities or the Foundation.

On September 9, 2001, ABN 60 made an early payment of A\$1.0 million (\$0.5 million) to the Foundation. This payment was in addition to the annual required payment that is made each February. As a result, the required annual payments of A\$5.6 million have been reduced to A\$5.5 million. On March 31, 2003, we transferred ownership and control of ABN 60 to the ABN 60 Foundation as described below, and consequently the indirect benefit of the deed of covenant and indemnity and related liability, to a newly established company named ABN 60 Foundation. Also see "Legal Proceedings" and Notes 14 and 17 to our consolidated financial statements included in Item 18 in this Form 20-F.

*ABN 60*

On March 31, 2003, we transferred control of ABN 60 to a newly established company named ABN 60 Foundation. The ABN 60 Foundation was established to be the sole shareholder of ABN 60 and to ensure ABN 60 meets its payment obligations to the Foundation. Following the establishment of the ABN 60 Foundation, JHI NV no longer owns any shares of ABN 60. The ABN 60 Foundation is managed by independent directors and operates entirely independently of the Company. We do not control the activities of ABN 60 or the ABN 60 Foundation in any way. We have no economic interest in ABN 60 or the ABN 60 Foundation and have no right to dividends or capital distributions. Apart from the express indemnity for non-asbestos matters provided to ABN 60 as described above under “Amaca Pty Ltd and Amaba Pty Ltd” and a possible arrangement to fund some or all future claimants for asbestos-related injuries caused by former James Hardie subsidiary companies and to the potential liabilities more fully described in “Legal Proceedings,” we do not believe we will have any liability under current Australian law should future liabilities of ABN 60 or ABN 60 Foundation exceed the funds available to those entities. As a result of the change in ownership of ABN 60 on March 31, 2003, we recorded a loss on disposal of \$0.4 million, representing the liabilities of ABN 60 (to the Foundation) of A\$94.6 million (\$57.2 million), the A\$94.5 million (\$57.1 million) in cash held on the balance sheet, and costs associated with the establishment and funding of the ABN 60 Foundation. Also see “Legal Proceedings” and Notes 14 and 17 to our consolidated financial statements included in Item 18 in this Form 20-F.

*Windows*

On November 30, 2001, we sold our Windows business. We began the divestiture of our Windows business in August 2000 when we approved a plan to dispose of the business. In fiscal year 2001, we recorded a loss on disposal of \$17.4 million, net of an income tax benefit of \$0.6 million. This loss on disposal consisted of \$17.2 million for a write-down of assets to their expected net realizable value on disposal and transaction costs expected to be incurred with the disposal. In addition, operating losses from August 15, 2000 to the final disposition date were estimated at \$0.8 million and included in fiscal year 2001’s loss on disposal. In fiscal year 2002, we recorded a gain on disposal of \$2.0 million representing the excess of cash proceeds of \$7.8 million over the net book value of the assets sold of \$5.8 million, a retirement plan settlement loss of \$1.3 million and an income tax benefit of \$1.3 million. The cash proceeds were offset by cash divested of \$0.5 million.

**Property, Plant and Equipment**

Over the past several years, we have built significant production capacity in the United States in an effort to ensure that we will be able to meet expected increases in demand for our products and improve our operating efficiencies. As part of our facilities investment strategy, we have constructed a plant for flat sheet and trim products in Illinois and upgraded and expanded our existing plants in Illinois, Texas, California and Pennsylvania. In addition, we entered into a long-term lease arrangement in fiscal year 2001 for our Waxahachie, Texas plant and upgraded the existing first line, replaced the existing second line and completed construction on a new panel production line at this fiber cement plant in fiscal years 2001, 2002 and 2004, respectively. In fiscal year 2002, we also acquired the operating assets of Cemplant, Inc., which included a fiber cement plant at Blandon, Pennsylvania and a fiber cement plant at Summerville, South Carolina, and in fiscal year 2003 we purchased the property on which these plants are located. In fiscal year 2004, we completed upgrades to our Blandon, Pennsylvania plant. In addition, we started construction on our new green-field plant in Reno, Nevada and our new trim line at our Peru, Illinois plant, and completed our pilot roofing plant in Fontana, California. Over the last five years we have spent an aggregate of approximately \$229.7 million related to the construction and upgrades of our plants in the United States. Our management estimates that once our green-field plant is completed in Reno, Nevada, our nine manufacturing plants will be among the largest and lowest cost fiber cement manufacturing plants in the United States. Our management also believes that the location of our plants in California, Texas, Florida, Illinois, Washington, Pennsylvania, South Carolina and Nevada positions us near high growth markets in the United States while minimizing our transportation costs for product distribution and raw material sourcing.

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In fiscal year 2002, we closed our fiber cement plant in Western Australia and have been meeting demand from our remaining facilities. The remaining plants in Australia have also been upgraded over recent years to both improve output and productivity. In fiscal year 2004, A\$3.2 million (\$2.2 million) was spent to upgrade the fiber cement manufacturing plant at Rosehill in Sydney. In addition, we spent A\$2.6 (\$1.8 million) in fiscal year 2004 at our Brisbane plant to install a coating facility, which we believe will add value to our basic product range. In New Zealand, our fiber cement production line was upgraded in fiscal year 2001 at a cost of NZ\$1 million (\$1 million) to enable it to produce new siding and internal lining fiber cement products. In the Philippines, we have one fiber cement manufacturing plant, which began producing marketable product in fiscal year 1999.

In December 2000, we purchased and significantly upgraded a plant in Santiago, Chile and the production of our products commenced in March 2001.

In March 2001, our fiber reinforced concrete pipe plant at Plant City, Florida commenced operations. Built at a total cost of \$33.7 million, the plant has commenced production of drainage pipes and has an annual production capacity of 100,000 tons.

*Plants and Process.* We manufacture fiber cement products in the United States, Australia, New Zealand, the Philippines and Chile. The location of each of our fiber cement plants and the annual design capacity for such plants are set forth below:

Location	Existing Annual Design Capacity(1)	Committed Additional Design Capacity(1)	Total Planned Design Capacity(1)
<b>Fiber Cement Flat Sheet (in million square feet)</b>			
<b>United States</b>			
Fontana, California	180	—	180
Plant City, Florida	300	—	300
Cleburne, Texas	500	—	500
Tacoma, Washington	200	—	200
Peru, Illinois	400	160	560
Waxahachie, Texas	360	—	360
Blandon, Pennsylvania	200	—	200
Summerville, South Carolina	190	—	190
Reno, Nevada	—	300	300
Total United States			2,790
<b>Australia</b>			
Sydney, New South Wales(2)	200	—	200
Brisbane, Queensland (Carole Park)(2)(3)	160	—	160
Total Australia			360
<b>New Zealand</b>			
Auckland(2)	75	—	75
<b>The Philippines</b>			
Manila	145	—	145
<b>Chile</b>			
Santiago	55	—	55
Total Fiber Cement Flat Sheet			3,425
<b>Fiber Reinforced Concrete Pipes (in tons)(4)</b>			
Plant City, Florida (pipes)	100,000	—	100,000
Brisbane, Queensland (Meeandah)(2)(3)	50,000	—	50,000
Total Fiber Reinforced Concrete Pipes			150,000

- (1) Annual design capacity is based on management's historical experience with our production process and is calculated assuming continuous operation, 24 hours per day, seven days per week, producing 5/16" thickness siding at a target operating speed. Plants outside the United States produce a range of thicker



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products, which negatively affect their outputs. Actual production is affected by factors such as product mix, batch size, plant availability and production speeds and is usually less than annual design capacity.

- (2) Prior to March 2004, the land on which these Australian facilities are located was leased on a long-term basis from Amaca Pty Limited. In March 2004, various subsidiaries of Multiplex Property Trust (together, "Multiplex"), an unrelated third party, acquired the land and buildings related to these four fiber cement manufacturing facilities from the Foundation.
- (3) There are two manufacturing plants in Brisbane. Carole Park produces only flat sheets and Meeandah produces only pipes and columns.
- (4) Pipe and column capacity is measured in tons rather than million square feet.

While the same basic process is used to manufacture fiber cement products at each facility, plants are designed to produce the appropriate mix of products to meet each market's specific, projected needs. All of our manufacturing facilities have been either newly constructed or substantially modernized and upgraded in the past five years. The facilities were constructed so production can be efficiently adjusted in response to increased consumer demand by either increasing production capacity utilization or enhancing the economies of scale or by adding additional lines to existing facilities, or by making corresponding reductions in production capacity in response to weaker demand. Except for the Waxahachie, Texas plant, we own all of our fiber cement sites and plants located in the United States. The lease for the Waxahachie, Texas site and plant expires on March 31, 2020, at which time we have an option to purchase the plant. Pursuant to the lease, we make quarterly base rental payments of \$850,000. In 1998, we entered into lease agreements with a former subsidiary now held by the Foundation for all of our fiber cement sites located in Australia. In March 2004, Multiplex acquired the land and buildings related to the four fiber cement manufacturing facilities from the Foundation. Prior to that acquisition, we renegotiated the four leases with Multiplex. Upon completion of the acquisition and subsequent transfer of title into Multiplex's name, Multiplex then assumed the responsibility of landlord under each of the amended leases. In addition, in March 2004, Multiplex also acquired our New Zealand land and buildings and we now make lease payments to Multiplex related to this site. We own our fiber cement plant located in Chile and our Pipe plant in the United States. In addition, we own 40% of our fiber cement plant located in the Philippines.

For fiscal year 2004, average capacity utilization for our fiber cement plants by country was approximately as follows:

Country	Capacity Utilization(1)
United States	70%
Australia	57%
New Zealand	56%
Philippines	67%
Chile	82%

- (1) Capacity utilization is based on design capacity that is based on management estimates as described above, as no industry standard exists for the calculation of fiber cement manufacturing facility capacities.

The capital cost per unit of production for new plants has significantly declined since we opened our first U.S. plant in Fontana, California in 1989. This improvement is largely attributable to our utilization of proprietary technology. Management believes that this capital cost per unit of capacity is substantially lower than that of many of our competitors' plants. In addition, we can now build and commission new manufacturing plants significantly faster than when we built our first production line in the United States. Management believes that the speed and cost at which we can construct new plants relative to our competitors enable us to respond rapidly to emerging regional demand for fiber cement products and to gain the advantage accorded to the first local producer in a market.

*Mines.* We own a quartz mine in Fontana, California and lease a quartz mine in Tacoma, Washington. Our five-year lease for the mine in Tacoma, Washington expires on February 28, 2006, at which time we have

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the option to renew our lease for an additional four years. We pay production royalties to the owner based on silica tonnage removed from the mine. Because cost effective sources of sand are not available at these locations, we operate these quartz mines and process the rock to obtain silica for our fiber cement products.

### **Legal Proceedings**

Our subsidiaries are involved from time to time in various legal proceedings and administrative actions incidental to the normal conduct of business. Although it is impossible to predict the outcome of any pending legal proceeding, our management believes that such proceedings and actions in the normal conduct of business should not, individually or in the aggregate, have a material adverse effect on either our consolidated financial position, results of operations or cash flows.

With regard to asbestos-related matters, see Risk Factors entitled “We may be subject to potential liability because ABN 60 and certain former subsidiaries formerly manufactured products containing asbestos” and “Following a Special Commission of Inquiry that was established in Australia to consider transactions related to the Foundation, we may be subject to claims and allegations involving asbestos-related liability, or our corporate restructurings, including the corporate restructuring related to the creation of the Foundation and the ABN 60 Foundation and associated intercompany transactions” in Item 3.

#### ***Claims Against Former Subsidiaries***

##### *Amaca Pty Ltd, Amaba Pty Ltd and ABN 60*

Following the establishment of the Foundation in February 2001, JHI NV no longer owns any shares of Amaca or Amaba, former Australian subsidiaries of ABN 60 that previously manufactured products containing asbestos in Australia. Following the establishment of the ABN 60 Foundation on March 31, 2003, JHI NV no longer owns any shares of ABN 60, which manufactured products containing asbestos prior to 1937. Amaca, Amaba and ABN 60 have all agreed to indemnify JHI NV and its related corporate entities for past and future asbestos-related liabilities as part of the establishment of the respective foundations. Amaba and ABN 60’s obligation to indemnify JHI NV and its related entities includes claims that may arise associated with the manufacturing activities of those companies. JHI NV has agreed to indemnify the ABN 60 Foundation for any non asbestos-related legal claims made on ABN 60. See also Note 17 to our consolidated financial statements included in Item 18 of this Form 20-F.

Up to the date of the establishment of the Foundation, Amaca and Amaba incurred costs of asbestos-related litigation and settlements. From time to time, ABN 60 was joined as a party to asbestos suits which were primarily directed at Amaca and Amaba. As Amaca, Amaba and ABN 60 are no longer a part of James Hardie, and all relevant claims against ABN 60 had been successfully defended, no provision for asbestos-related claims was established in the Company’s accounts at September 30, 2004 and March 31, 2004.

It is possible that JHI NV or any member of the James Hardie group could become subject to suits for damages for personal injury or death in connection with the former manufacture or sale of asbestos products that are or may be filed against Amaca, Amaba or ABN 60. Although it is difficult to predict the incidence or outcome of future litigation, we believe that in the absence of governmental action introducing legislation or a change in jurisprudence as previously adopted in prior case law before the NSW Supreme Court and Federal High Court, as more fully described below, the risk that such suits could be successfully asserted against us is low to remote. However, if suits are made possible and/or successfully brought, they could have a material adverse effect on our business, results of operations or financial condition. This belief is based in part on the fact that following the transfers of Amaca and Amaba to the Foundation and of ABN 60 to the ABN 60 Foundation, none of those companies are part of James Hardie; the separateness of corporate entities under Australian law; the limited circumstances where “piercing the corporate veil” might occur under Australian and Dutch law; there being no equivalent under Australian law of the U.S. legal doctrine of “successor liability”; and because JHI NV has been advised that the principle applicable under Dutch law, to the effect that transferees of assets may be held liable for the transferor’s liabilities when they acquire assets at a price that leaves the transferor with insufficient assets to meet claims, is not triggered by the restructuring or previous group transactions. The courts in Australia have generally refused to hold parent entities responsible

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for the liabilities of their subsidiaries absent any finding of fraud, agency, direct operational responsibility or the like. In New Zealand, where RCI Holdings Pty Ltd holds a subsidiary that formerly manufactured asbestos-containing products, there is current legislation entitled the "Accident Insurance Act 1998" which bars claims for compensatory damages arising from work-related asbestos exposure. While claims in New Zealand for non work-related injury might still be alleged, and while it is possible that a claimant for work-related asbestos exposure could still seek non-compensatory damages, we believe that any such claims would not have a material adverse effect on our business, results of operations or financial condition.

During the period ended September 30, 2004, James Hardie has not been a party to any asbestos litigation and has not made any settlement payments in relation to such litigation.

Under U.S. laws, the doctrine of "successor liability" provides that an acquirer of the assets of a business carried on by a corporation can, in certain states and in certain circumstances, be held responsible for liabilities arising from the conduct of that business prior to the acquisition, notwithstanding the absence of any contractual arrangement between the acquirer and the selling corporation pursuant to which the acquirer agreed to assume such liabilities.

The general principle under Australian law is that, in the absence of a contractual agreement to transfer specified liabilities of a business and where there is no fraudulent conduct, the liabilities remain with the corporation that previously carried on the business and are not passed on to the acquirer of assets. Prior to March 2004, we leased certain manufacturing sites from the former subsidiaries now owned and controlled by the Foundation. In addition, we purchased certain of our business assets comprising plant and equipment and inventory pursuant to the first phase of our restructuring at fair value from those former subsidiaries now owned and controlled by the Foundation. Each of these transactions concerned only Australian companies, and accordingly, we believe the transactions are governed by Australian laws and not the laws of any other jurisdiction. We do not believe these transactions should give rise to the assumption by us or our subsidiaries of any asbestos-related liabilities (tortious or otherwise) under Australian law that may have been incurred during the period prior to the transfer of the assets.

As an issue related to the restructuring completed on October 19, 2001, under Dutch law, a Dutch transferee of assets may be held responsible for the liabilities of the transferor following a transfer of such assets, if the transfer results in the transferor having insufficient assets to meet the claims of its creditors or if the transfer will otherwise jeopardize the position of the creditors of the transferor. We believe the transfer by ABN 60 of all of the shares of JHNV to us under the restructuring will not result in us being held responsible as transferee under this principle of Dutch law since, upon the transfer and the implementation of the other aspects of the restructuring, ABN 60 had the same financial resources to meet the claims of its creditors as it had prior to the transfer.

### *Special Commission of Inquiry*

The Foundation issued a press release on October 29, 2003 stating that its "most recent actuarial analysis estimates that the compensation bill for the organization could reach one billion Australian dollars in addition to those funds already paid out to claimants since the Foundation was formed and that existing funding could be exhausted within five years." In February 2004, the Government of the State of New South Wales, Australia established the SCI to investigate, among other matters described below, the circumstances in which the Foundation was established. The SCI was instructed to determine the current financial position of the Foundation and whether it is likely to meet its future asbestos-related claims in the medium to long-term. It was also instructed to report on the circumstances in which the Foundation was separated from James Hardie and whether this may have resulted in or contributed to a possible insufficiency of assets to meet its future asbestos-related liabilities, and the circumstances in which any corporate restructure or asset transfers occurred within or in relation to the James Hardie group prior to the funding of the Foundation to the extent that this may have affected the Foundation's ability to meet its current and future liabilities. The SCI was also instructed to report on the adequacy of current arrangements available to the Foundation under the Corporations Act of Australia to assist the Foundation in managing its liabilities and whether reform is desirable in order to assist the Foundation in managing its obligations to current and future claimants.

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On July 14, 2004, the Company lodged a submission with the SCI stating that the Company would recommend that shareholders approve the provision of an unspecified amount of additional funding to enable an effective statute-based scheme to compensate all future claimants for asbestos-related injuries for which Amaca and Amaba are liable. The Company proposed that the statutory scheme include the following elements:

- speedy, fair and equitable compensation for all existing and future claimants, including objective criteria to reduce superimposed (judicial) inflation;
- contributions to be made in a manner which provide certainty to claimants as to their entitlement, the scheme administrator as to the amount available for distribution, and the proposed contributors (including James Hardie) as to the ultimate amount of their contributions;
- significant reductions in legal costs through reduced and more abbreviated litigation; and
- limitation of legal avenues outside of the scheme.

The submission stated that the proposal was made without any admission of liability or prejudice to the Company's rights or defenses.

The SCI finished taking evidence on August 13, 2004 and issued its report on September 21, 2004. The SCI indicated that the establishment of the Foundation and the establishment of the ABN 60 Foundation were legally effective and that, accordingly, although any liabilities in relation to the asbestos claims for claimants remained with Amaca, Amaba or ABN 60 (as the case may be), no significant liabilities for those claims could likely be assessed directly against JHI NV or any other James Hardie entities.

In relation to the assertions by the Foundation concerning the circumstances of its establishment, the SCI examined these in detail. Although the SCI made certain adverse findings against Mr. Macdonald (former CEO) and Mr. Shafron (former CFO), it did not find that their conduct caused any material loss to the Foundation or the asbestos claimants which would create a valuable cause of action against, and therefore a material liability of, any James Hardie entity or would lead to any of the restructuring arrangements being reversed. Indeed, the SCI specifically noted that there were significant hurdles, which might be insuperable, to establishing any liability in respect of these claims against the Company, ABN 60 or their respective directors and that, even if liability were established, there were further hurdles which might prove to be insuperable against any substantial recovery or remedy by such potential claimants in respect of them.

In relation to the question of the funding of the Foundation, the SCI found that there was a significant funding shortfall. In part, this was based on actuarial work indicating that the discounted value of the central estimate of the asbestos liabilities of Amaca and Amaba was approximately A\$1.570 billion. The SCI found that the net assets of the Foundation and the ABN 60 Foundation were not sufficient to meet these prospective liabilities and were likely to be exhausted in the first half of 2007.

In relation to the Company's statutory scheme proposal, the SCI reported that there were several issues that needed to be refined quite significantly but that it would be an appropriate starting point for devising an appropriate compensation scheme.

The SCI's findings are not binding and a later court consideration of the issues could lead to one or more different conclusions.

The NSW Government has stated that it would not consider assisting the implementation of any proposal advanced by the Company unless it was the result of an agreement reached with the union movement acting through the ACTU and the Labor Council of NSW as well as the representatives of the asbestos claimants (together, the "Representatives"). The statutory scheme that the Company recommended on July 14, 2004 was rejected by the Representatives. The Company is currently in discussions with the Representatives regarding potential arrangements that could be acceptable to both the Representatives and the Company and subsequently to the Company's shareholders and the NSW Government. Both the outcome of those discussions and the timing of any potential resolution are highly uncertain and, accordingly, the Company

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cannot yet determine whether it will achieve a satisfactory resolution or what any potential arrangement may involve.

The Company's view is that, except to the extent that it agrees otherwise as a result of these discussions, under current Australian law it is not liable for any shortfall in the assets of Amaca, Amaba, the Foundation, the ABN 60 Foundation or ABN 60. The Company cannot determine when or if a resolution may be reached between itself and the Representatives. The Company is attempting to negotiate a resolution as quickly as possible. Accordingly, the Company has not established a provision for asbestos-related liabilities because at this time it is not probable nor estimable.

In order to facilitate the release of funding by ABN 60 to the Foundation, and thereby inter alia to seek to ensure that asbestos-related claims processing is not interrupted during the negotiations and facilitate negotiations with the Representatives, the Company offered an indemnity to the directors of ABN 60, which it announced on November 16, 2004. This proposed indemnity would require the Company to pay for any liability incurred by the ABN 60 directors resulting from the release of funding by ABN 60 to the Foundation. The Company believes that the release of funding by ABN 60 is in accordance with law and contracts in place and therefore the Company should not incur liability under this indemnity, but the indemnity is being offered to relieve the concerns of those who may have hesitation about their legal and financial exposure. Additionally, the Company has offered to provide funding to the Foundation on an interim basis for a period of up to six months, commencing on November 16, 2004. The proposed interim funding by the Company would only be provided once existing Foundation funds have been exhausted. The Company believes, based on actuarial and legal advice that claims against the Foundation should not exceed the funds which are or which are expected to become available to the Foundation during the period of the interim funding proposal. By way of example, the Company expects the prospect of such funds being exhausted will be materially reduced in the event that ABN 60 releases funds to the Foundation in light of the indemnity described above. The proposal for interim funding was put forward to relieve concerns regarding the short-term funding and payment of legitimate asbestos-related claims, and so that the Foundation would continue claims processing during the negotiation process. The Company has not recorded a provision for either the proposed indemnity or the potential payments under the interim funding proposal.

In October 2004, the Company commissioned an updated actuarial study of potential asbestos-related liabilities.

Based on the results of the study, which was updated as at June 30, 2004, it is estimated that the discounted central estimate, after allowing for expected insurance recoveries, of asbestos-related liabilities of Amaca, Amaba and ABN 60 is A\$1.536 billion (discounted at 6.12% per annum) or an undiscounted central estimate of A\$3.586 billion.

In estimating the potential asbestos-related exposure, the actuaries have made a number of assumptions relating to wage inflation, superimposed inflation (being the excess of total claim cost inflation over wage inflation), discount rates, the total number of claims expected to be reported through to 2071, the pace of such notifications and their settlement, the average costs of an award (which is affected by the disease type, the age and occupation of the claimant and the jurisdiction in which the claim is brought and settled), the proportion of claims for which no award is paid by the above-named entities, and the associated average claimant and defendant legal fees to be incurred.

Further, the actuaries have relied on the data and information provided by the Medical Research and Compensation Foundation and Litigation Management Group Pty Limited and assumed that it is accurate and complete in all material respects. The actuaries have not verified that information independently nor established the reliability, accuracy or completeness of the data and information provided or used for the preparation of their report, and were not provided with the information required to carry out such a verification exercise.

Due to inherent uncertainties in the legal and medical environment; the number and timing of future claim notifications and settlements; the recoverability of claims against insurance contracts and in estimating

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the future trends in average claim awards as well as the extent to which the above-named entities will contribute to the overall settlements, the outcome could differ materially from that currently projected.

Sensitivity analysis has been performed, showing how the actuarial estimates would change if the outcome of certain assumptions (being the rate of superimposed inflation, the average costs of claims and legal fees, and the projected numbers of claims) were different to that included within the central estimates.

This shows that the discounted central estimates could fall in a range A\$1.1 billion to A\$2.3 billion (undiscounted estimates of A\$2.0 billion to A\$5.7 billion) based on the current information available and reflecting current trends. It should be noted that the actual cost of the liabilities could fall outside that range depending on the actual outcome of the assumptions made.

If a resolution is reached with the Representatives and approved by them, the NSW Government and the Company's Board, shareholders and lenders, the Company may be required to make a substantial provision in its accounts at a later date, and it is possible that the Company would need to seek additional borrowing facilities. See Risk Factor entitled "We may have difficulty obtaining financing (debt or equity), or obtaining financing on usual terms, or retaining existing financial support because of concerns or uncertainty relating to the SCI, legal or legislative action following the SCI, or the Company's offer to provide additional funding to the Foundation" in Item 3. Additionally, it is possible that any future resolution of this issue may result in the Company having negative shareholders' equity, which would be likely to restrict its ability to pay dividends to its shareholders. If the terms of a future resolution involve James Hardie making payments, either on an annual or other basis, pursuant to a statutory scheme or other form of arrangement, James Hardie's financial position, results of operations and cash flows could be materially adversely affected.

It is also possible that the Representatives and/or others may encourage or continue to encourage consumers and union members in Australia and elsewhere to boycott the Company's products, to demonstrate or otherwise create negative publicity toward the Company in order to influence the Company's approach to the discussions with the Representatives or to encourage governmental action if the discussions are unsuccessful. The Representatives and/or others might also take such actions in an effort to influence the Company's shareholders, a significant number of which are located in Australia, to approve any proposed arrangement. Any such measures, and the influences resulting from them, could have a material adverse impact on the Company's financial position, results of operations and cash flows.

On October 28, 2004, the NSW Premier announced that the NSW Government would seek the agreement of the Ministerial Council comprised of Ministers of the Commonwealth and the Australian States and Territories to allow the NSW Government to pass legislation which he announced would "wind back James Hardie's corporate restructure and rescind the cancellation of A\$1.9 billion in partly paid shares." The announcement said that "the laws will effectively enforce the liability [for asbestos-related claims] against the Dutch parent company." On November 5, 2004, the Australian Attorney-General and the Parliamentary Secretary to the Treasurer (the two relevant ministers of the Australian Federal Government) issued a news release stating that the Ministerial Council for Corporations (the relevant body of Federal, State and Territory Ministers, "MINCO") had unanimously agreed "to support a negotiated settlement that will ensure that victims of asbestos-related diseases receive full and timely compensation from James Hardie" and if "the current negotiations between James Hardie, the ACTU and asbestos victims do not reach an acceptable conclusion, MINCO also agreed in principle to consider options for legislative reform." The news release of November 5, 2004 indicated that treaties to enforce Australian judgments in Dutch and U.S. courts are not required but that the Australian Government has been involved in communications with Dutch and U.S. authorities regarding arrangements to ensure that Australian judgments are able to be enforced where necessary. Should negotiations not lead to an acceptable conclusion, James Hardie is aware of suggestions of legislative intervention but has no detailed information as to its likely content. Negotiations with the Representatives continue and no draft legislation has currently been published.

On November 18, 2004, the NSW Government announced its intention to conduct a review of current asbestos compensation arrangements in NSW. The intention of this review is primarily to determine ways to reduce legal and administrative costs, and to consider the current processes for handling and resolving dust

diseases compensation claims. The review is expected to report to the NSW Government early in 2005. The Company is unable to predict the outcome of this review.

*Australian Securities and Investments Commission Investigation ("ASIC")*

On September 22, 2004, ASIC announced that it was conducting an investigation into potential contraventions of certain Australian laws arising from the transactions considered by the SCI. The persons whose conduct is being investigated have not been expressly identified by the ASIC. The investigation will include a review of the conduct of the directors of various James Hardie Group companies, including their conduct and statements made in relation to securities of JHI NV or JHIL and the circumstances in which various transactions occurred (including the cancellation of partly-paid shares in JHIL).

We have received a notice from ASIC under relevant legislation to produce certain categories of documents to be considered by it in its investigation. We are currently responding to this notice and will cooperate with the ASIC in relation to all aspects of its investigation.

The Company may incur costs of current or former officers of the James Hardie Group to the extent that those costs are covered by indemnity arrangements granted by the James Hardie Group to those persons. To date, no claims have been received by any current or former officers in relation to the ASIC investigation and, if claims do arise, the Company may be reimbursed under directors' and officers' insurance policies taken out by the Company.

**Item 5. *Operating and Financial Review and Prospects***

For the periods prior to October 19, 2001, the effective date of the 2001 Reorganization, the consolidated financial statements represent the financial position and results of operations of JHIL and its wholly owned subsidiaries. The following discussion of our financial condition and results of operations should be read in conjunction with the consolidated financial statements and the related notes thereto, included under Item 18.

**Overview**

We intend this discussion to provide information that will assist in understanding our March 31, 2004 consolidated financial statements, the changes in significant items in those consolidated financial statements from year to year, and the primary reasons for those changes. This discussion includes our critical accounting policies and how these policies affect our consolidated financial statements, and information about the consolidated financial results of each business segment to provide a better understanding of how each segment and its results affect our financial condition and operating results as a whole. Our March 31, 2004 consolidated financial statements and the notes accompanying those consolidated financial statements should be read in conjunction with this discussion.

*The Company and the Building Product Markets*

Based on revenues, we believe we are the largest manufacturer of fiber cement products and systems for internal and external building construction applications in the United States, Australia, New Zealand and the Philippines and the second largest manufacturer of flat sheet products in Chile. Our current primary geographic markets include the United States, Australia, New Zealand, the Philippines, Chile and Europe. Through significant research and development expenditure, we develop key product and production process technologies that we patent or hold as trade secrets. We believe that these technologies give us a competitive advantage in the markets in which we sell our products.

We manufacture numerous types of fiber cement products with a variety of patterned profiles and surface finishes for a range of applications including external siding and soffit lining, trim, roofing, internal linings, facades, floor and tile underlayments, drainage pipes and decorative columns. Our products are used in various markets including new residential construction, manufactured housing, repair and remodel and a variety of commercial and industrial construction applications. We believe that in certain construction applications, our

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fiber cement products and systems provide a combination of distinctive performance, design and cost advantages over competing building products and systems.

Our products are primarily sold to the residential housing markets. Residential construction fluctuates based on the levels of new home construction activity and the repair and remodeling of existing homes. These levels of activity are affected by many factors including home mortgage interest rates, inflation rates, unemployment levels, existing home sales, the average age and the size of housing inventory, consumer home repair and remodel spending, gross domestic product growth and consumer confidence levels. These factors were generally favorable during fiscal year 2004, resulting in healthy levels of residential construction and home repair and remodel activity.

### ***Fiscal Year 2004 Key Results***

Total net sales increased 25% to \$981.9 million in fiscal year 2004, operating income increased 34% to \$172.2 million, and income from continuing operations increased 50% to \$125.3 million.

Our largest market is North America, where fiber cement is one of the fastest growing segments of the external siding market. USA Fiber Cement net sales contributed 75% of total net sales, and its operating income was the primary contributor of total company operating income, during fiscal year 2004. Both net sales and operating income increased from fiscal year 2003 due mainly to healthy levels of residential construction and repair and remodel activity, and strong penetration against competing products, in the United States.

Asia Pacific net sales contributed 22% of total net sales, and its operating income was the second largest contributor of total company operating income. Net sales increased in fiscal year 2004 in both our Australia/ New Zealand and our Philippines Fiber Cement businesses. In Australia/ New Zealand, this increase was primarily due to favorable foreign currency exchange rates and less to factors that affected that segment's markets. Operating income increased primarily due to favorable foreign currency exchange rate differences and cost savings initiatives that we implemented during fiscal year 2004 that caused a decrease in selling, general and administrative expense.

In our emerging businesses of Chile Fiber Cement and Hardi® Pipe, we continued to make good progress. We also commenced our fiber cement business in Europe and commissioned a pilot roofing plant at Fontana, California to test our proprietary manufacturing technology and to provide product for market testing in Southern California. Our investment in these emerging businesses is expected to provide good growth over the medium to longer-term.

For further information regarding our business and operations, please see Item 4 "Information on the Company."

### **Critical Accounting Policies**

Our accounting policies affecting our financial condition and results of operations are more fully described in Note 2 to our consolidated financial statements included in Item 18 of this Form 20-F. Certain of our accounting policies require the application of judgment by management in selecting appropriate assumptions for calculating financial estimates, which inherently contain some degree of uncertainty. Management bases its estimates on historical experience and various other assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the reported carrying value of assets and liabilities and the reported amounts of revenues and expenses that may not be readily apparent from other sources. Actual results may differ from these estimates under different assumptions and conditions. We consider the following policies to be the most critical in understanding the judgments that are involved in preparing our consolidated financial statements and the uncertainties that could impact our results of operations, financial condition and cash flows.

### ***Sales***

We record estimated reductions to sales for customer rebates and discounts including volume, promotional, cash and other rebates and discounts. Rebates and discounts are recorded based on management's best



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estimate when products are sold. The estimates are based on historical experience for similar programs and products. Management reviews these rebates and discounts on an ongoing basis and the related accruals are adjusted, if necessary, as additional information becomes available.

### *Accounts Receivable*

We evaluate the collectibility of accounts receivable, based on historical bad debts, customer credit-worthiness, current economic trends and changes in our customer payment activity, on an ongoing basis and an allowance for doubtful accounts is provided for known and estimated bad debts. While credit losses have historically been within our expectations, we cannot guarantee that we will continue to experience the same credit loss rates that we have in the past. Since our accounts receivable are concentrated in a relatively small number of customers, a significant change in the liquidity or financial position of any of these customers could impact their ability to make payments and result in the need for additional allowances which would decrease our net sales. For additional information regarding our customer concentration, see Item 3 "Risk Factors."

### *Inventory*

Inventories are recorded at the lower of cost or market. In order to determine market, management regularly reviews inventory quantities on hand and evaluates significant items to determine whether they are excess, slow-moving or obsolete. The estimated value of excess, slow-moving and obsolete inventory is recorded as a reduction to inventory and an expense in cost of sales in the period it is identified. This estimate requires management to make judgments about the future demand for inventory, and is therefore at risk to change from period to period. If our estimate for the future demand for inventory is greater than actual demand and we fail to reduce manufacturing output accordingly, we could be required to record additional inventory reserves, which would have a negative impact on our gross profit.

### *Accrued Warranty Reserve*

We offer various warranties on our products, including a 50-year limited warranty on certain of our fiber cement siding products in the United States. Because our fiber cement products have only been used since the early 1980s, there is a risk that these products will not perform in accordance with our expectations over an extended period of time. A typical warranty program requires that we replace defective products within a specified time period from the date of sale. We record an estimate for future warranty related costs based on an analysis of actual historical warranty costs as they relate to sales. Based on this analysis and other factors, we adjust the adequacy of our warranty provisions as necessary. While our warranty costs have historically been within calculated estimates, if our experience is significantly different from our estimates, it could result in the need for additional reserves. For additional information regarding warranties, see Item 3 "Risk Factors."

### *Accounting for Income Tax*

We account for income taxes according to SFAS No. 109, "Accounting for Income Taxes," under which we compute our deferred tax assets and liabilities, which arise from differences in the timing of recognition of revenue and expense for tax and financial statement purposes. We must assess whether, and to what extent, we can recover our deferred tax assets. If full or partial recovery is unlikely, we must increase our income tax expense by recording a valuation allowance against the portion of deferred tax assets that we cannot recover. We believe that we will recover all of the deferred tax assets recorded (net of valuation allowance) on our consolidated balance sheet at March 31, 2004. However, if facts later indicate that we will be unable to recover all or a portion of our net deferred tax assets, our income tax expense would increase in the period in which we determine that recovery is unlikely.

Due to the size of the Company and the nature of our business, we are subject to ongoing reviews by the Internal Revenue Service ("IRS") and other taxing jurisdictions on various tax matters, including challenges to various positions we assert. We accrue for tax contingencies based on our best estimate of the taxes ultimately expected to be paid, which is updated over time as more information becomes available. Such amounts are included in taxes payable or other non-current liabilities, as appropriate. If we ultimately

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determine that payment of these amounts is unnecessary, we reverse the liability and recognize a tax benefit during the period in which we determine that the liability is no longer necessary. We record an additional charge in the period in which we determine that the recorded tax liability is less than we expect the ultimate assessment to be.

The IRS has audited our U.S. income tax returns for all tax years ended through March 31, 2000. We settled all issues and paid all assessments arising out of the audit during fiscal year 2004. The California Franchise Tax Board ("FTB") audited our California franchise tax returns for all tax years ended through March 31, 1999 and proposed substantial assessments. We have accrued a lesser amount for these proposed assessments based on a protest that we filed on which we believe we will prevail on several issues, with the estimated result that the final assessment will not exceed the amount accrued.

The IRS, the FTB, and the Australian Tax Office are each in the process of auditing our respective jurisdictional income tax returns for various ranges of years including 1998 through 2003. None of the audits have progressed sufficiently to predict their ultimate outcome. We have accrued income tax liabilities for these audits based on knowledge of all relevant facts and circumstances, taking into account existing tax laws, our experience with previous audits and settlements, the status of current tax examinations, and how the tax authorities view certain issues.

## Results of Operations

In fiscal years 2002 through 2004, there was a significant increase in net sales generated from our USA Fiber Cement operations primarily as a result of demand for our fiber cement products and \$176.5 million in capital investments during fiscal years 2002 to 2004 in this segment. In fiscal year 2002, restructuring and other operating expenses adversely affected the impact of increased sales from our USA Fiber Cement business.

The following table shows JHI NV's selected financial and operating data for continuing operations, expressed in millions of dollars and as a percentage of total net sales:

	Fiscal Years Ended March 31,					
	2004		2003		2002	
Net sales:						
USA Fiber Cement	\$ 738.6	75.2%	\$ 599.7	76.5%	\$ 444.8	75.2%
Asia Pacific Fiber Cement	219.8	22.4	174.3	22.2	141.7	23.9
Other(1)	23.5	2.4	9.6	1.3	5.2	0.9
Total net sales	981.9	100.0	783.6	100.0	591.7	100.0
Cost of goods sold	(623.0)	(63.4)	(492.8)	(62.9)	(393.4)	(66.5)
Gross profit	358.9	36.6	290.8	37.1	198.3	33.5
Selling, general and administrative expenses	(162.0)	(16.5)	(144.9)	(18.5)	(109.3)	(18.5)
Research and development expenses	(22.6)	(2.3)	(18.1)	(2.3)	(14.1)	(2.4)
Other operating (expense) income	(2.1)	(0.3)	1.0	0.1	(28.1)	(4.7)
Operating income	172.2	17.5	128.8	16.4	46.8	7.9
Interest expense	(11.2)	(1.1)	(23.8)	(3.0)	(18.4)	(3.1)
Interest income	1.2	0.1	3.9	0.5	2.4	0.4
Other income (expense), net	3.5	0.4	0.7	0.1	(0.4)	(0.1)
Income from continuing operations before income taxes	165.7	16.9	109.6	14.0	30.4	5.1
Income tax expense	(40.4)	(4.1)	(26.1)	(3.3)	(3.1)	(0.5)
Income from continuing operations	\$ 125.3	12.8%	\$ 83.5	10.7%	\$ 27.3	4.6%

- (1) Includes sales for fiber cement in Chile and fiber reinforced concrete pipes in the United States, our roofing operations in the United States and fiber cement operations in Europe. Also includes general corporate income in fiscal year 2002, which is comprised primarily of rental income from subleasing office space in Sydney, Australia.

***Year Ended March 31, 2004 Compared to Year Ended March 31, 2003***

**Total Net Sales.** Total net sales increased 25% from \$783.6 million in fiscal year 2003 to \$981.9 million in fiscal year 2004. Net sales from USA Fiber Cement increased 23% from \$599.7 million in fiscal year 2003 to \$738.6 million in fiscal year 2004 due to continued strong growth in sales volumes and higher average net selling prices. Net sales from Asia Pacific Fiber Cement increased 26% from \$174.3 million in fiscal year 2003 to \$219.8 million in fiscal year 2004 due to increased sales volumes and favorable currency exchange rate differences. Net sales from Other Fiber Cement increased 145% from \$9.6 million in fiscal year 2003 to \$23.5 million in fiscal year 2004 as the Chilean flat sheet business, the USA-based Hardie Pipe business and the Europe Fiber Cement business continued to grow strongly.

**USA Fiber Cement Net Sales.** Net sales increased 23% from \$599.7 million in fiscal year 2003 to \$738.6 million in fiscal year 2004. Sales volume increased 19% from 1,273.6 million square feet in fiscal year 2003 to 1,519.9 million square feet in fiscal year 2004 due to strong growth in primary demand for fiber cement and a favorable housing construction market. Residential housing activity remained healthy during fiscal year 2004 buoyed by low mortgage rates, strong housing prices, low inventory levels of new homes for sale and a recovering domestic economy. Strong growth continued in both the interior and exterior product markets and in our emerging and established markets as our products continued to take share from alternative materials, mainly wood-based and vinyl siding.

The average net selling price increased 3% from \$471 per thousand square feet in fiscal year 2003 to \$486 per thousand square feet in fiscal year 2004. This was due to an increased proportion of sales of higher-priced, differentiated products and a price increase in some regions implemented in the first quarter of fiscal year 2004.

In the exterior products market, there was continued strong growth in sales of higher-priced, differentiated products such as vented soffits, Heritage® panels, the ColorPlus™ Collection of pre-painted siding and Harditrim® XLD® planks. In the interior products market, sales of our Hardibacker 500® half-inch backerboard grew strongly as it further penetrated its target market, helping to lift our share of the interior cement board market.

During the fourth quarter of fiscal year 2004, we commenced construction of our new 300 million square foot green-field fiber cement plant at Reno, Nevada. The plant will service the rapidly growing demand in the west-coast region of the United States and is expected to commence production by the end of calendar year 2004.

During fiscal year 2004, we completed the upgrade and began ramping-up our Blandon, Pennsylvania plant acquired from Cemplank in December 2001. The upgrade increased design capacity of the plant from 120 million square feet to 200 million square feet. We also completed the upgrade and began ramping-up our 160 million square foot panel production line at our Waxahachie, Texas plant. In addition, in fiscal year 2004 we commissioned and commenced ramping-up our new proprietary pre-finishing line at our Peru, Illinois plant. This is expected to significantly reduce painting costs for our ColorPlus™ Collection of exterior siding, and help accelerate our market penetration in the northern region. Also at our Peru, Illinois plant, we commenced construction of the new 160 million square foot trim line, which is expected to commence production by the fourth quarter of fiscal year 2005.

**Asia Pacific Fiber Cement Net Sales** (See "Notes to Results of Operations" on page 49). Net sales increased 26% from \$174.3 million in fiscal year 2003 to \$219.8 million in fiscal year 2004. Net sales increased 2% in Australian dollars. Sales volume increased 3% from 349.9 million square feet in fiscal year 2003 to 362.1 million square feet in fiscal year 2004. Net selling price decreased by 3% primarily due to the increase in the Philippines' product mix in overall Asia Pacific net sales.

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In Australia and New Zealand Fiber Cement, net sales increased 25% from \$156.3 million in fiscal year 2003 to \$195.5 million in fiscal year 2004, primarily due to favorable foreign exchange rate differences. In Australian dollars, net sales increased 1%. The increase in net sales in local currency was due to a 1% increase in sales volume from 280.2 million square feet in fiscal year 2003 to 284.2 million square feet in fiscal year 2004. The average net selling price was flat compared to fiscal year 2003. In Australia, new residential housing activity slowed during the year, but was better than industry forecasts. The impact of this was partly offset by strong residential renovation and commercial activity. Fiber Reinforced Concrete ("FRC") Pipes continued to penetrate its targeted market and increased sales volumes compared to fiscal year 2003. During fiscal year 2004, FRC® pipes was successful in tendering to supply storm drainage pipes for the Sydney Orbital road project. The project involves the supply of a significant volume of FRC pipes over the next year. A new pipe standard was released by Standards Australia during fiscal year 2004. This will enable our fiber cement pipes to compete more effectively against steel reinforced concrete pipes. During fiscal year 2004, we launched ExoTec® Facade Panel, our new premium facade panel incorporating the next generation of fiber cement composites. The new product is designed for commercial applications. In New Zealand, new residential housing activity remained at healthy levels and demand was strong for soffits and weatherboards, including our Linea® range of weatherboards, which uses proprietary low-density technology.

In the Philippines, net sales increased 16% from \$18.0 million in fiscal year 2003 to \$20.8 million in fiscal year 2004. In local currency, net sales increased 22%. Sales volume increased 12% from 69.7 million square feet in fiscal year 2003 to 77.9 million square feet in fiscal year 2004. The average net selling price increased 10% compared to fiscal year 2003 due to a combination of increased regional export business and expansion of product range into higher priced products in the domestic market.

*Other Sales.* Other sales include sales of our fiber cement products manufactured in Chile, sales of Hardie® Pipe in the United States, our roofing operations in the United States and fiber cement operations in Europe.

Our Chilean operation continued to increase its penetration of the local market in line with its targets. Net sales increased 167% compared to fiscal year 2003 due to a 103% increase in sales volume and a higher average net selling price. The level of construction activity in Chile improved during fiscal year 2004 after being stagnant since the end of 2001. The average net selling price increased due to strong export sales and growth in sales of higher-priced, differentiated products.

Our USA Hardie Pipe business continued to penetrate the south-east market of the United States and improve its manufacturing efficiency. Net sales increased 95% compared to fiscal year 2003 due to a 95% increase in sales volume. The average net selling price was flat compared to fiscal year 2003. Market acceptance of our fiber cement pipes continued to grow strongly and we further increased our share of the market for our targeted diameter range of drainage pipes in Florida. The manufacturing performance of the plant continued to improve during the period, reducing costs and increasing output, particularly of the larger diameter pipes. Despite this, manufacturing costs remain higher than our targets. The competitive response to our entry into the south-east market remains intense.

Our Europe Fiber Cement business commenced operations during fiscal year 2004 with the launch in the United Kingdom and France markets of our Hardibacker® backerboard range of interior products and our proprietary pre-painted siding products. Awareness of our product range among distributors, builders and contractors is growing and sales of Hardibacker® tile backer and our pre-painted siding products are in line with our expectations. In June 2003, we commissioned a new coating line near Southampton in England. The line is used to apply the finishing coat to siding products imported from our United States business.

In June 2003, we commissioned our pilot roofing plant at Fontana, California. The pilot plant, which has a design capacity of 25 million square feet, was built to test our proprietary manufacturing technology and to provide product for market testing in Southern California. Plant testing and manufacturing trials commenced during fiscal year 2004 and the first on-site installations of the new roofing product were completed. The first commercial sales of our Artisan<sup>TM</sup> roofing product were made in the second half of fiscal year 2004. There were no commercial sales in the first half of fiscal year 2005, but sales began in October 2004 and are expected to

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ramp up through the end of fiscal year 2005. Interest in our roofing product within our targeted market is strong.

*Gross Profit.* Gross profit increased 23% from \$290.8 million in fiscal year 2003 to \$358.9 million in fiscal year 2004 due to improvements in all our major businesses. The gross profit margin decreased 0.5 of a percentage point to 36.6% in fiscal year 2004.

USA Fiber Cement gross profit increased 24% due to higher sales volumes and a higher average net selling price, partly offset by an increase in unit cost of sales and higher freight costs. The higher unit cost of sales resulted primarily from higher pulp costs, increased sales of higher-priced differentiated products and the ramp-up of the new manufacturing lines at the Blandon, Pennsylvania; Waxahachie, Texas; and Peru, Illinois plants. The gross profit margin increased 0.2 of a percentage point.

Asia Pacific Fiber Cement gross profit increased 19% following improvements from Australia and New Zealand Fiber Cement, and Philippines Fiber Cement, which increased 16% and 70%, respectively. The improved result for Australia and New Zealand was due to a favorable foreign exchange difference. In the Philippines, increased sales and reduced manufacturing costs resulted in the stronger gross profit performance. The Asia Pacific Fiber Cement gross profit margin decreased 2.1 percentage points.

*Selling, General and Administrative (SG&A) Expenses.* SG&A expenses increased 12% compared to the prior year, from \$144.9 million in fiscal year 2003 to \$162.0 million in fiscal year 2004. The increase in SG&A expenses was due mainly to sales and marketing expenses associated with growth initiatives in the USA. However, as a percentage of sales, SG&A expenses were 2.0 percentage points lower, at 16.5% in fiscal year 2004.

*Research and Development Expenses.* Research and development includes costs associated with “core” research projects that are aimed at benefiting all fiber cement business units. These costs are recorded in the Research and Development segment rather than being attributed to individual business units. These costs increased 36% during fiscal year 2004 to \$14.1 million. Our Research and Development segment includes these costs and \$3.5 million of Research and Development administrative expenses classified as SG&A expense. Other research and development costs associated with commercialization projects in business units are included in the business unit segment results. In total, these costs increased 10% to \$8.5 million in fiscal year 2004.

*Other Operating (Expenses)/ Income.* Other operating expenses of \$2.1 million in fiscal year 2004 mainly reflect an increase in cost provisions for our Australia and New Zealand business. In fiscal year 2003, we realized a \$1.0 million gain from the settlement of a pulp hedge contract.

*Operating Income.* Operating income increased 34% from \$128.8 million in fiscal year 2003 to \$172.2 million in fiscal year 2004. The operating income margin increased 1.1 percentage points to 17.5% in fiscal year 2004.

USA Fiber Cement operating income increased 26% from \$155.1 million in fiscal year 2003 to \$195.6 million in fiscal year 2004. The increase was due to strong growth in net sales, partly offset by an increase in unit cost of sales, freight and SG&A expenses. The operating income margin increased 0.6 percentage points to 26.5% in fiscal year 2004.

Asia Pacific Fiber Cement operating income increased 38% from \$27.3 million in fiscal year 2003 to \$37.6 million in fiscal year 2004. The operating income margin increased 1.4 percentage points to 17.1% in fiscal year 2004. Australia and New Zealand Fiber Cement operating income increased 30% from \$27.2 million in fiscal year 2003 to \$35.4 million in fiscal year 2004, primarily due to favorable foreign exchange rate differences. In Australian dollars, Australia and New Zealand Fiber Cement operating income increased 5% mainly due to lower SG&A expenses, partly offset by a temporary decrease in manufacturing performance at the Rosehill, NSW plant during fiscal year 2004 and increased freight costs. The operating income margin for Australia and New Zealand Fiber Cement was 0.7 of a percentage point higher, at 18.1%. Our Philippines business recorded operating income of \$2.2 million for fiscal year 2004 compared to a \$0.1 million operating income in fiscal year 2003.

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The Chile Fiber Cement business recorded its first full year positive operating income since commencing commercial production in 2001.

Despite continued strong volume growth and improved manufacturing performance, our USA Hardie Pipe business incurred an operating loss for the year due to low prices and higher than targeted unit costs.

Our Europe Fiber Cement business became operational during fiscal year 2004 and incurred an operating loss, as expected.

General corporate costs decreased by \$2.4 million from \$29.9 million in fiscal year 2003 to \$27.5 million in fiscal year 2004. This decrease was primarily due to a reduction in employee bonus plan expense and a \$1.6 million gain from the positive resolution of a vendor dispute, partly offset by changes in a number of other corporate expenses.

*Net Interest Expense.* Net interest expense decreased by \$9.9 million from \$19.9 million in fiscal year 2003 to \$10.0 million in fiscal year 2004. In fiscal year 2003, we incurred a \$9.9 million make-whole payment from the early retirement of \$60.0 million of long-term debt. Interest expense decreased further by \$2.7 million due to lower average borrowings. These decreases in net interest expense were partially offset by a \$2.7 million decrease in interest income due to lower average cash balances compared to fiscal year 2003.

*Other Income, net.* We realized a gain before income tax of \$4.5 million on the sale of property formerly owned by one of our New Zealand subsidiaries. Additionally, a previously recorded liability related to potential contingent legal claims was reversed, resulting in income of \$4.3 million. We also realized \$0.1 million in net investment income. These income items were partially offset by an impairment charge that we recorded of \$2.2 million on an investment in a company that filed a voluntary petition for reorganization under Chapter 11 of the U.S. bankruptcy code. Additionally, we incurred an expense of \$3.2 million primarily due to a capital duty fee paid in conjunction with our Dutch legal structure. We incurred this to extend the scope of our international finance subsidiary to lend to global operations.

*Income Tax Expense.* Income tax expense increased by \$14.3 million from \$26.1 million in fiscal year 2003 to \$40.4 million in fiscal year 2004 due to the increase in profit.

*Income from Continuing Operations.* Income from continuing operations increased by 50% or \$41.8 million, from \$83.5 million in fiscal year 2003 to \$125.3 million in fiscal year 2004.

### **Year Ended March 31, 2003 Compared to Year Ended March 31, 2002**

*Total Net Sales.* Total net sales increased 32% from \$591.7 million in fiscal year 2002 to \$783.6 million in fiscal year 2003. Net sales from USA Fiber Cement increased 35% from \$444.8 million in fiscal year 2002 to \$599.7 million in fiscal year 2003 due to continued growth in sales volumes and higher selling prices. Net sales from Asia Pacific Fiber Cement increased 23% from \$141.7 million in fiscal year 2002 to \$174.3 million in fiscal year 2003 due mainly to higher sales volumes. Net sales from Other increased 85% from \$5.2 million in fiscal year 2002 to \$9.6 million in fiscal year 2003 as the Chilean flat sheet business and the U.S.-based fiber reinforced concrete Pipes business continued to ramp up, following its start-up early in the 2001 calendar year.

*USA Fiber Cement Sales.* Net sales increased 35% from \$444.8 million in fiscal year 2002 to \$599.7 million in fiscal year 2003. Sales volume increased 29% from 988.5 million square feet in fiscal year 2002 to 1,273.6 million square feet in fiscal year 2003, due to strong growth in primary demand for fiber cement, increased housing construction activity and sales of product from the Cemplank operations acquired in December 2001. The residential housing market remained healthy during fiscal year 2003 buoyed by low mortgage rates and strong housing prices despite a softening in consumer confidence and a bad weather-related slowdown in activity during the fourth quarter of fiscal year 2003. There was strong volume growth across all major markets. Market share increased in the siding, backer and trim segments and in both the southern and northern regions of the country.

In the northern region, we continued to take market share from the dominant siding material, vinyl. Market penetration strategies designed to build awareness of our products' attributes among the region's builders, distributors and homeowners helped to generate increased demand in the region. In the southern

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region, growth strategies, including a greater focus on the repair and remodel segment and increased selling activity in rural areas, helped the business increase demand in the region. In the exterior products market, there was strong sales growth in higher-priced, differentiated products such as trim, vented soffits, Heritage® panels and the ColorPlus™ Collection of pre-finished siding. In the interior cement board market, sales of Hardibacker 500®, our 1/2 inch backerboard that is manufactured using proprietary G2 Technology®, continued to grow strongly.

The average selling price increased 5% from \$450 per thousand square feet in fiscal year 2002 to \$471 per thousand square feet in fiscal year 2003, due to an increased proportion of sales of higher-priced, differentiated products.

During fiscal year 2003, we commenced construction of a 160 million square feet panel line at Waxahachie, Texas and a pilot roofing products plant at Fontana, California. At the Peru, Illinois plant, we began to manufacture products on a newly commissioned second production line in September 2002. On October 22, 2002, we announced that our Blandon, Pennsylvania plant will undergo a \$15.3 million upgrade that is expected to increase its annual production capacity from 120 million square feet to 200 million square feet to meet rapidly growing demand in the northeast region.

*Asia Pacific Fiber Cement Sales (See "Notes to Results of Operations" on page 49).* Net sales increased 23% from \$141.7 million in fiscal year 2002 to \$174.3 million in fiscal year 2003. Sales volume increased 9% from 320.7 million square feet in fiscal year 2002 to 349.9 million square feet in fiscal year 2003.

In our Australia and New Zealand business, net sales increased 27% from \$123.5 million in fiscal year 2002 to \$156.3 million in fiscal year 2003. In Australian dollars, the increase was 16%. The growth in net sales was due to a 10% increase in sales volume, from 255.9 million square feet in fiscal year 2002 to 280.2 million square feet in fiscal year 2003 and a 6% increase in the average selling price. In Australia, demand for new residential housing remained at high levels during the period buoyed by a relatively strong economy and low interest rates. Despite new housing approvals slowing in the second half of the year, robust residential renovation activity and the 3-6 month lag between the start of house construction and the sale of our products helped to maintain strong demand. During fiscal year 2003, we relocated our corrugate production line in Australia, which manufactures HardiFence® panels, from Perth to Brisbane. In addition, in Australia, we launched two new internal lining products, HardiRock® board and EziGrid® tilebacker. HardiRock™ is a fiber cement wet area lining board that is flexible and is easy to cut and nail. EziGrid tilebacker is another wet area lining sheet designed to make tile installation easier for internal lining. Both products are expected to strengthen our share of the internal lining segment. In New Zealand, we experienced stronger demand arising from increased residential building activity, which was fueled by low and stable interest rates, strong housing prices and a stronger economy. The new Linea® weatherboard cladding range of products launched in March 2002 continued to penetrate its targeted markets, taking market share from alternative products such as brick. Linea weatherboard is a thick, lightweight weatherboard that uses our proprietary low-density technology and offers a number of performance advantages, notably superior durability, over timber weatherboards. Despite the non-residential building market in New Zealand being weaker during fiscal year 2003 compared to fiscal year 2002, sales of panel products such as Hardipanel® Titan cladding and Hardipanel Compressed sheet were up strongly during fiscal year 2003 compared to fiscal year 2002. We also gained several key customers in New Zealand during fiscal year 2003 and increased our share of fiber cement sales.

In the Philippines, net sales decreased by 1% from \$18.2 million in fiscal year 2002 to \$18.0 million in fiscal year 2003. In local currency, net sales were flat. This was due to an increase in sales volume, offset by a lower average selling price. Sales volume increased 8% from 64.8 million square feet in fiscal year 2002 to 69.7 million square feet in fiscal year 2003 due to increased demand in the domestic building boards market. We continued to penetrate the domestic building boards market during the year, taking further share from the main competing material, plywood. Strong demand for HardiFlex® lite panel, a thin, light sheet designed for ceiling applications, and HardiFlex panel, used in ceiling and internal wall applications, continued during fiscal year 2003. During fiscal year 2003, we launched our first plank product, Hardiplank® Select Cedarmill cladding, which is being marketed to architects and developers. The launch of plank is expected to increase sales to large residential projects. Export sales were weaker in fiscal year 2003 compared to fiscal year 2002.

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due primarily to supply issues and lower export demand. The average selling price decreased 7% compared to fiscal year 2002 due to a decrease in sales of higher-priced exports.

*Other Sales.* Other sales include sales of our fiber cement products manufactured in Chile, sales of Hardie® Pipe in the United States and general corporate income, which is comprised primarily of rental income from subleasing office space in Sydney, Australia.

Our Chilean operation, which began commercial production in March 2001, penetrated the market at its targeted rate. Economic instability in the neighboring countries of Argentina and Brazil continued to have a negative effect on the Chilean economy. Despite weak market conditions during fiscal year 2003, net sales and volumes were significantly higher than fiscal year 2002, increasing 153% and 120%, respectively. During fiscal year 2003, the business moved to the next stage of its market penetration strategy with the launch of new interior and exterior products. These included Hardibacker® underlayment, for interior applications, and textured panels and planks, for exterior cladding. Selling prices continued to be negatively affected by aggressive pricing by competitors as they continued to try to maintain market positions.

Our Hardie Pipe business continued to penetrate the southeast market of the United States and improve its operational efficiencies. Net sales more than doubled in fiscal year 2003 compared to fiscal year 2002. Sales volumes continued to grow since the business began operating early in calendar year 2001, as awareness among construction contractors increased and as the product range has been progressively expanded. The increased sales have resulted in a doubling of our share of our targeted large diameter drainage pipe market in Florida compared to fiscal year 2002. Competition has reacted to our market entry with aggressive pricing. As a result, our average selling price was lower compared to fiscal year 2002. This decrease was offset by unit production costs that have continued to decline during fiscal year 2003 as we achieved significant improvements in manufacturing efficiencies. The Florida civil construction market remained buoyant. Activity increased due to the start of projects funded by TEA-21 and the Florida State Mobility Act, both of which involve significant increases in government spending on highway construction.

*Gross Profit.* Gross profit increased 47% from \$198.3 million in fiscal year 2002 to \$290.8 million in fiscal year 2003 due to strong improvements in USA Fiber Cement and Asia Pacific Fiber Cement. The gross profit margin increased 3.6 percentage points in fiscal year 2003 to 37.1%. USA Fiber Cement gross profit increased 49% due to higher sales volumes, higher average selling prices and lower unit cost of sales. The gross profit margin for USA Fiber Cement increased 3.8 percentage points in fiscal year 2003. Asia Pacific Fiber Cement gross profit increased 32% in fiscal year 2003 following strong improvements from all businesses. Increased volumes, lower raw material costs and improved manufacturing efficiencies were major factors in the improved results. The gross profit margin for Asia Pacific Fiber Cement increased 2.5 percentage points in fiscal year 2003.

*Adjustments Related to Stock Option Accounting.* Effective fiscal year 2003, we adopted retrospectively the fair value based method of accounting for stock options as outlined in SFAS No. 123. SFAS No. 123 requires the Company to value stock options issued based on an option-pricing model and recognize this value as compensation expense over the periods in which the options vest. Previously, we used variable plan accounting. As a result, fiscal year 2002 has been restated to reflect lower compensation cost of \$1.4 million that would have been recognized under the fair value based accounting method for all options granted, modified or settled in fiscal years beginning after December 15, 1994.

*Selling, General and Administrative (“SG&A”) Expenses.* SG&A expenses increased 33% from \$109.3 million in fiscal year 2002 to \$144.9 million in fiscal year 2003. The amount previously reported for 2002 is adjusted and decreased by \$1.4 million for the adoption of the fair value provisions of SFAS No. 123. After this adjustment, the increase in SG&A expenses was mainly due to the funding of growth initiatives in the United States, an increase in bonus accruals in line with the significant improvement in operating profit and redundancy costs associated with restructuring in the Asia Pacific business. As a percentage of sales, SG&A expenses remained comparable to fiscal year 2002, at 18.5% in fiscal year 2003.

*Research and Development Expenses.* Research and development includes costs associated with “core” research projects that are aimed at benefiting all fiber cement business units. These costs are recorded in the



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Research and Development segment rather than being attributed to individual business units. These costs increased 27% to \$10.4 million in fiscal year 2003 due to increased project costs and intellectual property costs. Other research and development costs associated with commercialization projects in business units are included in the business unit segment results. In total, these costs increased 30% to \$7.7 million in fiscal year 2003, reflecting a greater number of projects in the development and commercialization phase. Total research and development costs as a percentage of sales decreased by 0.1 of a percentage point to 2.3% in fiscal year 2003.

*Other Operating Income (Expense).* During fiscal year 2003, we realized a \$1.0 million gain from the settlement of a pulp hedge contract. In fiscal year 2002, there was a charge of \$28.1 million related to a number of costs that did not recur in fiscal year 2003.

*Operating Income.* Operating income increased 175% from \$46.8 million in fiscal year 2002 to \$128.8 million in fiscal year 2003. The amount previously reported for fiscal year 2002 is adjusted and increased by \$1.4 million for the adoption of the fair value provisions of SFAS No. 123. After this adjustment, the operating profit margin increased 8.5 percentage points to 16.4% in fiscal year 2003.

Our USA Fiber Cement operating income increased 81% from \$85.8 million in fiscal year 2002 to \$155.1 million in fiscal year 2003 due to strong sales volume growth driven by increased primary demand for fiber cement and lower unit cost of sales from improved manufacturing efficiencies, partly offset by higher SG&A costs.

Our Asia Pacific Fiber Cement operating income increased 31% from \$20.9 million in fiscal year 2002 to \$27.3 million in fiscal year 2003. Our Australia and New Zealand Fiber Cement business' operating income increased 23% from \$22.1 million in fiscal year 2002 to \$27.2 million in fiscal year 2003. In Australian dollars, the increase was 13%. The stronger operating income performance was due to higher sales volume and lower unit cost of sales, partly offset by higher SG&A costs. Australia and New Zealand Fiber Cement's operating income margin decreased 0.5 of a percentage point to 17.4% in fiscal year 2003 primarily due higher SG&A costs. Our Philippines business recorded a small operating income in fiscal year 2003, compared to a small operating loss in fiscal year 2002, primarily due to increased domestic sales and lower costs of production and SG&A.

Both Hardie Pipe and Chile Fiber Cement incurred operating losses during fiscal year 2003 as these businesses continued to ramp up.

General corporate costs decreased by \$11.2 million from \$41.1 million in fiscal year 2002 to \$29.9 million in fiscal year 2003. The amount previously reported for fiscal year 2002 is adjusted and decreased by \$1.4 million for the adoption of the fair value provisions of SFAS No. 123 and by \$0.6 million related to activities that are now a part of Other. After these adjustments, the decrease in general corporate costs was primarily due to a \$8.1 million charge for a decrease in the fair value of the pulp hedge contract and a \$7.4 million charge related to our corporate restructuring being incurred in fiscal year 2002, which were not repeated in fiscal year 2003, partially offset by increased bonus expense, in line with the significant improvement in operating profit. For fiscal year 2003, general corporate costs consist of bonus expense of \$7.1 million, SFAS No. 123 expense of \$1.7 million and other general costs of \$21.1 million.

*Net Interest Expense.* Net interest expense increased 24% from \$16.0 million in fiscal year 2002 to \$19.9 million in fiscal year 2003. This increase was primarily due to a \$9.9 million make-whole payment, which was partially offset by a decrease in net borrowings following the receipt of proceeds from the sale of our Gypsum business in April 2002. The make-whole payment resulted from the early retirement of \$60.0 million of long-term debt in December 2002. The retirement of the debt will result in savings of approximately \$24.4 million in interest costs for the remaining term of the debt.

*Income Tax Expense.* Income tax expense increased by \$23.0 million from \$3.1 million in fiscal year 2002 to \$26.1 million in fiscal year 2003.

*Income from Continuing Operations.* Income from continuing operations increased by \$56.2 million from \$27.3 million in fiscal year 2002 to \$83.5 million in fiscal year 2003. Income from continuing operations

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previously reported for fiscal year 2002 is adjusted and increased by \$1.7 million for the adoption of the fair value provisions of SFAS No. 123, which includes a deferred tax benefit of \$0.3 million.

### Notes to Results of Operations

#### *Volume and Average Net Selling Price — Asia Pacific Fiber Cement — Adjusted:*

During the first quarter of fiscal year 2005, we disclosed in a Form 6-K that in fiscal years 2004 and 2003, our Asia Pacific Fiber Cement segment reported incorrect volume figures due to errors when converting to our standard square feet measurement and due to our Philippines Fiber Cement business including intercompany volume during fiscal year 2004. The following table presents adjusted volume and average net selling price for our Asia Pacific Fiber Cement business segment. We have adjusted this Form 20-F for the revised volume and average net selling price.

	Fiscal Years Ended March 31,			
	2004		2003	
	As Previously Published	Adjusted Figure	As Previously Published	Adjusted Figure
Volume (million square feet)	402.1	362.1	368.3	349.9
Average sales price per unit (per thousand square feet)	A\$ 788	A\$ 862	A\$ 843	A\$ 887

#### *Net Sales — Philippines Fiber Cement — Adjusted:*

During the first quarter of fiscal year 2005, we disclosed in a Form 6-K that in fiscal year 2004, our Philippines business incorrectly reported intercompany transfers as external net sales and cost of sales. Adjustment to the Philippines Fiber Cement discussion is necessary to provide an accurate year-to-year discussion of Philippines Fiber Cement net sales. Therefore, for discussion purposes only, for the Philippines Fiber Cement business we adjusted fiscal year 2004 Philippines Fiber Cement net sales. We have not restated the Asia Pacific Fiber Cement business segment results or the consolidated financial statements since these adjustments are not material to our Asia Pacific Fiber Cement segment or to the consolidated financial statements taken as a whole. The following table presents adjusted Philippines Fiber Cement net sales for discussion purposes only:

	Fiscal Year Ended March 31, 2004
Previously Reported	(In millions of U.S. dollars) \$ 24.2
Adjustment	(3.4)
Adjusted Net Sales	\$ 20.8

### Discontinued Operations

In total, we recorded income from discontinued operations of \$4.3 million, \$87.0 million and \$3.5 million in fiscal years 2004, 2003 and 2002, respectively. The amount for fiscal year 2004 primarily includes a favorable outcome from matters related to our former Gypsum business and a gain on the sale of our New Zealand Building Systems business, net of other wind-up costs of Gypsum and other discontinued businesses. See Note 17 to our consolidated financial statements included in Item 18 in this Form 20-F for additional information on the results of our discontinued operations.

#### *Building Systems*

On May 30, 2003, we sold our New Zealand Building Systems business to a third party. We recorded a gain of \$1.9 million representing the excess of net proceeds from the sale of \$6.7 million over the net book

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value of assets sold of \$4.8 million. The proceeds from the sale comprised cash of \$5.0 million and a note receivable in the amount of \$1.7 million.

### *Gypsum*

In fiscal year 2002, we successfully completed the transformation of the Company into a purely fiber cement business when we signed a definitive agreement to sell our Gypsum business. We completed the sale on April 25, 2002 and recorded a pre-tax gain of \$81.4 million in fiscal year 2003, with income tax expense of \$26.1 million. See Item 4 “Information on the Company — Capital Expenditures and Divestitures — Divestitures.”

On June 28, 2001, we entered into an agreement to sell our gypsum mine property in Las Vegas, Nevada to a developer. We completed the transaction on March 21, 2003 and realized a \$49.2 million pre-tax gain on the sale with \$19.2 million of income tax expense. See Item 4 “Information on the Company — Capital Expenditures and Divestitures — Divestitures.”

### *Building Services*

During the year ended March 31, 2003, we recorded a loss of \$1.3 million related to our Building Services business, which was disposed of in November 1996. The loss consisted of expenses of \$0.8 million and a \$0.5 million write down of an outstanding receivable that was retained as part of the sale.

### *Windows*

In September 2000, we decided to exit our Australian Windows operation. This led to the carrying value of the Windows business’ assets being written down to its near-term realizable value, as opposed to maintaining a value for these assets that reflected the longer term development potential of the business. A provision was also established for costs that were likely to be incurred as part of the divestiture process. In November 2001, we sold our Windows business.

### *Amaca Pty Ltd and Amaba Pty Ltd*

In February 2001, we announced the establishment of a special purpose foundation to compensate individuals with claims against two former ABN 60 subsidiaries and to fund medical research into asbestos-related diseases (the “Foundation”). We gifted A\$3.0 million (\$1.7 million) in cash and transferred ownership and control of the two former subsidiaries to the Foundation. The two former subsidiaries manufactured and marketed asbestos-related products prior to 1987, when all such activities ceased. The change in ownership resulted in a gain on disposal of \$2.3 million. See Item 4 “Information on the Company — Capital Expenditures and Divestitures — Divestitures.”

The Foundation is managed by independent trustees and operates entirely independently of us. We do not control the activities of the Foundation in any way and, since February 16, 2001, we have not controlled the activities of the two former subsidiaries. In particular, the trustees are responsible for the effective management of claims against the former subsidiaries and for the investment of its assets. We have no economic interest in either the Foundation or the two former subsidiaries. Apart from the express indemnity for non-asbestos matters provided to ABN 60 and a possible arrangement to fund some or all future claimants for asbestos-related injuries caused by former James Hardie subsidiary companies and to the potential liabilities more fully described in “Legal Proceedings” in Item 4, we do not believe we will have any liability under current Australian law should future asbestos-related liabilities of Amaca and Amaba exceed the funds available to those entities or the Foundation. Also see “Legal Proceedings” in Item 4 and Notes 14 and 17 to our consolidated financial statements included in Item 18 in this Form 20-F.

### *ABN 60*

On March 31, 2003, we transferred control of ABN 60 to a newly established company named ABN 60 Foundation. The ABN 60 Foundation was established to be the sole shareholder of ABN 60 and to ensure

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ABN 60 meets its payment obligations to the Foundation. Following the establishment of the ABN 60 Foundation, JHI NV no longer owns any shares of ABN 60. The ABN 60 Foundation is managed by independent directors and operates entirely independently of the Company. We do not control the activities of ABN 60 or the ABN 60 Foundation in any way. We have no economic interest in ABN 60 or the ABN 60 Foundation and have no right to dividends or capital distributions. Apart from the express indemnity for non-asbestos matters provided to ABN 60 and a possible arrangement to fund some or all future claimants for asbestos-related injuries caused by former James Hardie subsidiary companies and to the potential liabilities more fully described in “Legal Proceedings” in Item 4, we do not believe we will have any liability under current Australian law should future liabilities of ABN 60 or ABN 60 Foundation exceed the funds available to those entities. As a result of the change in ownership of ABN 60 on March 31, 2003, we recorded a loss on disposal of \$0.4 million, representing the liabilities of ABN 60 (to the Foundation) of A\$94.6 million (\$57.2 million), the A\$94.5 million (\$57.1 million) in cash held on the balance sheet, and costs associated with the establishment and funding of the ABN 60 Foundation. Also see “Legal Proceedings” in Item 4 and Notes 14 and 17 to our consolidated financial statements included in Item 18 in this Form 20-F.

### **Impact of Recent Accounting Pronouncements**

#### *Amendment of SFAS No. 133, Accounting for Derivative Instruments and Hedging Activities*

In April 2003, the Financial Accounting Standards Board (“FASB”) issued SFAS No. 149, “Amendment of Statement No. 133, Accounting for Derivative Instruments and Hedging Activities.” This statement clarifies the definition of a derivative and incorporates certain decisions made by the FASB as part of the Derivatives Implementation Group process. This statement is effective for contracts entered into or modified, and for hedging relationships designated after June 30, 2003 and should be applied prospectively. The provisions of the statement that relate to implementation issues addressed by the Derivatives Implementation Group that have been effective should continue to be applied in accordance with their respective effective dates. Adoption of this standard did not have a material impact on our consolidated financial statements.

#### *Certain Financial Instruments with Characteristics of both Liabilities and Equity*

In May 2003, the FASB issued SFAS No. 150, “Certain Financial Instruments with Characteristics of both Liabilities and Equity.” This statement establishes standards for how a company clarifies and measures certain financial instruments with characteristics of both liabilities and equity. It requires that a company classify such instruments as liabilities, whereas they previously may have been classified as equity. The standard is effective for all financial instruments entered into or modified after May 31, 2003, and otherwise is effective July 1, 2003. The adoption of this standard did not have an impact on our consolidated financial statements.

#### *Employers’ Disclosures about Pensions and Other Postretirement Benefits*

In December 2003, the FASB issued SFAS No. 132 (revised 2003) (“SFAS No. 132R”), “Employers’ Disclosures about Pensions and Other Postretirement Benefits, an amendment of FASB Statement 87, Employers’ Accounting for Pensions, No. 88, Employers’ Accounting for Settlement and Curtailments of Defined Benefit Pension Plans and for Termination Benefits, and No. 106, Employers’ Accounting for Postretirement Benefits Other than Pensions.” SFAS No. 132R requires additional disclosures about the assets, obligations, cash flows and net periodic benefit/cost of defined benefit pension plans and other defined benefit postretirement plans. SFAS No. 132R is effective for foreign plans for the fiscal years ending after June 15, 2004. The Company does not expect the adoption of this standard to have a material impact on our consolidated financial statements.

#### *Consolidation of Variable Interest Entities*

In December 2003, the FASB issued FASB Interpretation No. (“FIN”) 46 (revised December 2003), “Consolidation of Variable Interest Entities” (“FIN 46R”), which addresses how a business should evaluate whether it has a controlling financial interest in an entity through means other than voting rights and

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accordingly should consolidate the entity. FIN 46R replaced FIN 46, which was issued in January 2003. FIN 46 or FIN 46R applies immediately to entities created after January 31, 2003 and no later than the end of the first reporting that ended after December 15, 2003 to entities considered to be special-purpose entities ("SPEs"). FIN 46R is effective for all other entities no later than the end of the first interim or annual reporting period ending after March 15, 2004. The adoption of the provisions of FIN 46 or FIN 46R relative to SPEs and for entities created after January 31, 2003 did not have an impact on our consolidated financial statements. Additionally, we do not expect the other provisions of FIN 46R to have a material impact on our consolidated financial statements.

### Liquidity and Capital Resources

We have historically met our working capital needs and capital expenditure requirements through a combination of cash flow from operations, proceeds from the divestiture of businesses, credit facilities and other borrowings, proceeds from the sale of property, plant and equipment and proceeds from the redemption of investments. Seasonal fluctuations in working capital generally have not had a significant impact on our short-term or long-term liquidity. We believe that we can meet our present working capital requirements for at least the next 12 months based on our current capital resources.

We had cash and cash equivalents of \$72.3 million as of March 31, 2004. At that date we also had credit facilities totaling \$446.0 million of which \$175.8 million was outstanding. Our credit facilities are all uncollateralized and consist of the following:

Description	Interest Rate at March 31, 2004	Total Facility at March 31, 2004	Principal Outstanding at March 31, 2004
(In millions)			
US\$ notes; fixed interest; repayable annually in varying tranches from November 2004 through November 2013	7.09%	\$ 165.0	\$ 165.0
A\$ revolving loan; can be drawn down in either US\$ or A\$; variable interest based on US\$ LIBOR or A\$ bank bill rate plus margin; can be repaid and redrawn until maturity in November 2006	N/A	152.0	—
US\$ stand-by loan; can be drawn down in either US\$ or A\$; variable interest based on US\$ LIBOR or A\$ bank bill rate plus margin until maturity in April 2005	N/A	117.5	—
US\$ line of credit; can be drawn down in Chilean Pesos; variable interest based on Chilean Tasa Activa Bancaria rate plus margin until maturity in October and December 2004	3.24%	11.5	10.8
Total		\$ 446.0	\$ 175.8

The US\$ line of credit was amended for an aggregate amount of \$15.0 million with a maturity date of December 2004. We currently plan to extend this line of credit upon its maturity, under substantially similar terms.

As a consequence of the completion of the sale of our Gypsum business on April 25, 2002, we were technically not in compliance as of that date with certain pre-approval covenants of our US\$ noncollateralized note agreements totaling \$225.0 million. Effective December 23, 2002, the note purchase agreement was amended to, among other matters, modify these covenants to remove the technical non-compliance caused by the sale of our Gypsum business. In connection with such amendment, we prepaid \$60.0 million in principal amount of the notes. As a result of the early retirement, we incurred a \$9.9 million make-whole payment charge, which was charged to interest expense during fiscal year 2003.

***Cash Flow Provided by Operating Activities***

Net cash provided by operating activities was \$162.6 million, \$64.8 million and \$76.6 million in fiscal years 2004, 2003 and 2002, respectively.

Fiscal year 2004 net income, after adjusting for the gain on disposal of subsidiaries and businesses and for a gain on sale of land and buildings, increased by \$35.6 million compared to fiscal year 2003. Adjusting further for non-cash items included in net income, cash flows from operations increased additionally by \$36.7 million in fiscal year 2004 compared to fiscal year 2003. Other working capital changes caused a net increase in cash of \$25.5 million.

The major reason for the \$11.8 million decrease in cash flow provided by operating activities for fiscal year 2003 compared to fiscal year 2002 was the increase in operating income, which was partially offset by the gain on disposal of subsidiaries and businesses and other non-cash charges. This net increase was offset by changes in working capital balances, which primarily reflect increases in inventories and accounts payable and accrued liabilities.

***Cash Flow (Used in) Provided by Investing Activities***

Net cash (used in) provided by investing activities was (\$58.0) million, \$237.9 million and (\$77.2) million in fiscal years 2004, 2003 and 2002, respectively.

The decrease in cash flows from investing activities from fiscal year 2003 to fiscal year 2004 was primarily due to proceeds from the sale of our Gypsum business and from the Las Vegas land sale in fiscal year 2003, which was partially offset by a \$57.1 million payment related to the transfer of control of ABN 60 in fiscal year 2003 that did not recur in fiscal year 2004. In addition, we spent \$15.4 million less on capital expenditures during fiscal year 2004 compared to fiscal year 2003. The \$5.0 million from the sale of businesses resulted from the sale of our New Zealand Building Systems business in May 2003. The \$10.9 million from property sold resulted primarily from land and buildings of our Australia/ New Zealand segment that we sold for cash in March 2004. The \$74.8 million capital expenditures in fiscal year 2004 resulted primarily from continued operating plant expansions and construction and new property purchases.

Net investing cash inflows increased in fiscal year 2003 primarily due to proceeds of \$383.4 million mainly from the sale of our Gypsum business and Las Vegas land, which was partially offset by a \$57.1 million payment related to the transfer of ABN 60 and higher capital expenditures in fiscal year 2003.

***Cash Flow Used in Financing Activities***

Net cash used in financing activities was \$87.9 million, \$279.4 million and \$40.8 million in fiscal years 2004, 2003 and 2002, respectively.

Net cash outflow in fiscal year 2004 resulted primarily from a \$68.7 million return of capital and \$22.9 million of dividends paid. In fiscal year 2003, the return of capital was higher by \$26.1 million. In addition, in fiscal year 2003 we repaid \$160.0 million of bank debt, which did not recur in fiscal year 2004. Net proceeds from borrowings decreased from fiscal year 2003 by \$5.0 million to \$0.5 million in fiscal year 2004. The proceeds of \$3.2 million represent stock option exercises during fiscal year 2004.

The increase in outflow in fiscal year 2003 compared to fiscal year 2002 was primarily due to a \$109.7 million decrease in proceeds from the issuance of shares, a \$72.3 million increase in repayments of capital and a \$42.6 million increase in net repayments of borrowings.

***Capital Requirements and Resources***

Our capital requirements consist of expansion, renovation and maintenance of our production facilities and construction of new facilities. Our working capital requirements consisting primarily of inventory and accounts receivable and payables fluctuate seasonally and increase prior to and during months of the year when overall construction and renovation activity volumes increase. We have historically funded cash flow

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shortfalls with cash generated from divestiture of non-fiber cement business operations and other business assets and from available cash under bank debt facilities.

During fiscal year 2004, our continuing businesses generated cash in excess of our capital requirements. As we continue expanding our fiber cement businesses, we expect to use cash primarily generated from our operations to fund capital expenditures and working capital. We expect to spend significantly during fiscal year 2005 on capital expenditures that include facility upgrades and new facility construction. Upgrades generally include required expenditures to maintain our facilities and expenditures for implementing new fiber cement technologies. If we do not generate sufficient cash from operations to fund our planned capital expenditures and working capital requirements, we believe the cash and cash equivalents, and cash available at March 31, 2004 of approximately \$270.2 million under debt facilities, will be sufficient to meet any cash shortfalls during the next two to three years. Beyond three years, we intend to rely, for the most part, on increased market penetration of our products and increased profitability from a more favorable product mix to generate cash to fund our growth. Historically, our products have been well accepted by our market and our product mix has changed towards higher priced differentiated products that generate higher margins. We are relying on the markets for our products to continue recognizing that value to achieve sufficient market penetration and a product mix sufficiently profitable to fund our growth plans. We also intend to maintain sufficient levels of available cash under bank debt facilities to offset any cash shortfall.

We believe that we will be able to continue increasing our market share by further market penetration against competing products. Generally, over the past three years, a large part of our growth resulted from market share increases, especially in our major market of North America. We have historically acquired market share from vinyl and wood-based products in this market and believe that our success is based primarily on our superior and proprietary product and production technologies that give us competitive product advantages. We expect to continue our research and development activities over the short and long-term to maintain, improve and increase our technology advantages. Based on our market penetration history, technology benefits from our research and development activities, and other factors, we expect that our market penetration trend will continue over the short and long-term.

We believe our business is affected by general economic conditions and interest rates in the United States and in other countries since these factors may affect the number of new housing starts and the level of housing prices and household income levels. We believe that housing prices, which may affect available owner equity, and household income levels are contributors to the currently robust renovation and remodel markets for our products. We believe continued improvements in general economic conditions and continued low mortgage interest rates will maintain new housing starts and the renovation and remodel markets at historically high levels, which we expect will result in our operations generating cash flow sufficient to fund the majority of our planned capital expenditures. It is possible that a decline in residential housing starts in the United States and in other countries, in which we manufacture and sell our products, would negatively impact our growth and current levels of revenue and profitability and therefore decrease our liquidity and our ability to generate sufficient cash from operations to meet our capital requirements. The anticipated interest rate increase in the United States during calendar year 2004 may slow down new housing starts in the United States and decrease housing prices, which may reduce demand for our products.

Pulp is a primary ingredient in our fiber cement formulation and affects our working capital requirements. Pulp prices have risen during fiscal year 2004 and it is possible that they will continue rising. To minimize additional working capital requirements caused by rising pulp prices, we may seek to enter into contracts with suppliers for the purchase of pulp that could fix our pulp prices over the longer-term. However, if pulp prices do not continue rising, our cash generated from operations may be negatively impacted if pulp pricing is fixed over the longer-term.

Freight costs have increased due to higher fuel prices and an increase in the average length of haul of our products from our facilities to our customers' facilities. We expect fuel costs to remain higher, which will increase our working capital requirements as compared to fiscal year 2004.

During fiscal year 2004, the United States and The Netherlands approved a new protocol that, when ratified, would amend the current U.S.-Netherlands Income Tax Treaty, under which we currently derive

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significant tax benefits. We expect ratification will occur soon. Unless we change our organizational and operational structure, we are unlikely to satisfy the requirements of the amended treaty. Accordingly, we are evaluating various reorganization options either to: 1) satisfy those requirements and thus remain eligible for benefits under the amended treaty, or 2) obtain an equally favorable result. If we are unable to remain eligible for benefits under the amended treaty or obtain an equally favorable result, our effective tax rate would significantly increase beginning in our fiscal year 2006. See Risk Factor entitled “Under the U.S.-Netherlands income tax treaty and Netherlands law, we derive substantial tax benefits from the group finance operations of our Netherlands-based finance subsidiary, and changes in either the treaty or laws applicable to the finance subsidiary, including the recently approved Protocol, could increase our effective tax rate and, as a result, reduce our future profits and cash flows” in Item 3.

In October 2004, the American Job Creation Act of 2004 (the “Act”) was signed into law. The Act establishes a deduction for certain qualified domestic production activities, a deduction to which we expect to become entitled in tax years that begin after 2004. This and other provisions of the Act will require guidance from the Internal Revenue Service to fully assess their consequences. The FASB has proposed guidance on how companies should account for the effects of the Act, including the special deduction for domestic production activities. Based on the FASB’s proposal, we expect to recognize the tax benefits from the deduction beginning in our consolidated financial statements for our fiscal year that begins April 1, 2005.

The SCI was established by the NSW Government in February 2004 to investigate, among other matters described in “Legal Proceedings” in Item 4, the circumstances in which the Foundation was established. The SCI’s report was delivered on September 21, 2004. We are currently in discussions with the Representatives regarding potential arrangements that could be acceptable to both the Representatives and our Company and subsequently to our shareholders and the NSW Government. Both the outcome of those discussions and the timing of any potential resolution are highly uncertain and accordingly, we cannot determine whether we will achieve a satisfactory resolution or what any potential arrangement may involve.

If a resolution is reached with the Representatives and approved by them, the NSW Government and the Company’s Board, shareholders and lenders, the Company may be required to make a substantial provision in its accounts at a later date, and it is possible that the Company would need to seek additional borrowing facilities. See Risk Factor entitled, “We may have difficulty obtaining financing (debt or equity), or obtaining financing on usual terms, or retaining existing financial support because of concerns or uncertainty relating to the SCI, legal or legislative action following the SCI, or the Company’s offer to provide additional funding to the Foundation” in Item 3. Additionally, it is possible that any future resolution of this issue may result in the Company having negative shareholders’ equity, which would be likely to restrict its ability to pay dividends to shareholders. If the terms of a future resolution involve James Hardie making payments, either on an annual or other basis, pursuant to a statutory scheme or other form of arrangement, James Hardie’s financial position, results of operations and cash flows could be materially adversely affected.

It is also possible that the Representatives and/or others may encourage or continue to encourage consumers and union members in Australia and elsewhere to boycott the Company’s products, to demonstrate or otherwise create negative publicity toward the Company in order to influence the Company’s approach to the discussions with the Representatives or to encourage governmental action if the discussions are unsuccessful. The Representatives and/or others might also take such actions in an effort to influence the Company’s shareholders, a significant number of which are located in Australia, to approve any proposed arrangement. Any such measures, and the influences resulting from them, could have a material adverse impact on the Company’s financial position, results of operations and cash flows.

We anticipate that, during our involvement with the SCI, we will incur increased administration expenses of up to approximately \$2.0 million each month. It is currently the Company’s policy to expense any legal costs incurred. See Item 4 “Information on the Company — Legal Proceedings.”

As a result of the SCI and other related developments, the Company has reviewed the long-lived assets of its Australian business for impairment and determined that no impairment charge was required.



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The collective impact of the foregoing factors, and other factors, may affect our ability to generate sufficient cash flows from operations to meet our short and longer-term capital requirements. We believe that we will be able to fund any cash shortfalls with cash available under existing or future bank debt facilities and that we will be able to maintain sufficient cash available under those facilities. Additionally, we could determine it necessary to scale back or postpone our expansion plans to maintain sufficient capital resources over the short and longer-term.

### Capital Expenditures

Our total capital expenditures, including amounts accrued, for continuing operations for fiscal years 2004, 2003 and 2002 were \$74.1 million, \$90.2 million and \$50.8 million, respectively. The capital expenditures were primarily used to create additional low cost, high volume manufacturing capacity to meet increased demand for our fiber cement products and to create new manufacturing capacity for new fiber cement products.

Significant capital expenditures in fiscal year 2004 included the completion of: (i) an upgrade to our Blandon, Pennsylvania plant; (ii) a panel production line at our Waxahachie, Texas plant; (iii) a new pre-finishing line at our Peru, Illinois plant; and (iv) a pilot roofing plant in Fontana, California. In addition, we commenced construction on a new green-field fiber cement plant at Reno, Nevada and on a new trim line at our Peru, Illinois plant. Significant capital expenditures in fiscal year 2003 included the completion of a second flat sheet production line at our plant in Peru, Illinois. In addition, we commenced construction on a panel production line at our Waxahachie, Texas plant and a pilot roofing products plant at Fontana, California; and began an upgrade to our Blandon, Pennsylvania plant. Significant capital expenditures in fiscal year 2002 included the addition of our first line at our plant in Waxahachie, Texas and the addition of a second line at our plant in Peru, Illinois. See Item 4 "Information on the Company — Capital Expenditures and Divestitures."

### Contractual Obligations

The following table summarizes our significant contractual obligations at March 31, 2004:

	Payments Due				
	During Fiscal Year Ending March 31,				
	Total	2005	2006 to 2007	2008 to 2009	Thereafter
	(In millions)				
Long-Term Debt	\$165.0	\$17.6	\$ 52.8	\$ 54.3	\$ 40.3
Interest on Long-Term Debt	55.6	11.7	19.2	13.1	11.6
Operating Leases	128.3	12.5	22.0	18.6	75.2
Purchase Obligations(1)	26.8	26.8	—	—	—
Line of Credit	10.8	10.8	—	—	—
<b>Total</b>	<b>\$386.5</b>	<b>\$79.4</b>	<b>\$ 94.0</b>	<b>\$ 86.0</b>	<b>\$ 127.1</b>

- (1) Purchase Obligations are defined as agreements to purchase goods or services that are enforceable and legally binding on the Company and that specify all significant terms, including: fixed or minimum quantities to be purchased; fixed, minimum or variable price provisions; and the approximate timing of the transactions. Purchase obligations listed above primarily represent commitments for capital expenditures. The Company did not have any agreements with variable price provisions.

The table above does not include amounts related to our future funding obligations for our Australian defined benefit plan. We estimate that our pension plan funding will be approximately \$3.0 million for fiscal year 2005. Projected payments beyond fiscal year 2005 are not currently determinable. Also see Note 9 to our consolidated financial statements in Item 18 in this Form 20-F.

In addition, the table above does not include any amounts related to funding obligations that might arise from matters discussed under the headings "Amaca Pty Ltd, Amaba Pty Ltd and ABN 60," "Special Commission of Inquiry," "Australian Securities and Investments Commission Investigation," "Severance

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Agreements” and “ABN 60 Indemnity” in Note 14 to our consolidated financial statements in Item 18 in this Form 20-F. The Company has not established a provision for any of these liabilities because at this time it is not probable nor estimable, but depending on future developments, the impact on future cash funding obligations could be significant.

See Notes 11 and 14 to our consolidated financial statements in Item 18 in this Form 20-F for further information regarding long-term debt and operating leases, respectively.

### **Off-Balance Sheet Arrangements**

As of March 31, 2004 and 2003, we did not have any material off-balance sheet arrangements.

### **Inflation**

We do not believe that inflation has had a significant impact on our results of operations for the three years presented.

### **Seasonality and Quarterly Variability**

Earnings are seasonal and typically follow activity levels in the building and construction industry. In the United States, the quarters ending December and March reflect reduced levels of building activity depending on weather conditions. In Australia and New Zealand, the quarter ending March is usually affected by a slowdown due to summer vacations. In the Philippines, construction activity diminishes during the wet season from June to September and during the last half of December due to the slowdown in business activity over the Christmas period. In Chile, we also experience decreased construction activity from May through September due to weather. Also, general industry patterns can be affected by weather, economic conditions, industrial disputes and other factors.

### **Research and Development**

For fiscal years 2004, 2003 and 2002, our expenses for research and development were \$22.6 million, \$18.1 million and \$14.1 million, respectively.

We have invested heavily in research and development, with a focus primarily on fiber cement. We view research and development as key to sustaining our existing market leadership position and expect to continue to allocate significant funding to this endeavor. By investing in process technology, we aim to keep reducing our capital and operating costs, and at the same time find new ways to make existing and new products.

Over the past ten years, advances in process technology have allowed us to reduce the incremental cost of additional capacity at existing sites. At the same time, we have reduced the cost of raw materials through yield improvements in the plants; by providing technological support to drive process improvements in our suppliers' operations; and from our increased business scale.

We believe that we also benefit from superior economies of scale, since we operate plants that are two to three times larger than our competitors.

In addition, our goals are to:

- continue to lower the capital cost of each unit of production at new plants by learning from past projects and through continuing innovation in engineering; and
- reduce operating costs at each plant by improving manufacturing processes, raw materials yields and machine productivity.

We believe that efficient, low-cost manufacturing, combined with our unique technology, will allow us to generate higher returns on invested capital because we will be able to sell our products at prices that are attractive to our customers, and achieve a profit margin that is attractive to shareholders.

**Outlook**

In North America, there is little on the short-term horizon to suggest the housing construction sector will not remain strong. Interest rates continue to be low and expected increases over the balance of the fiscal year 2005 should have only a modest impact on demand for new housing. Builders are reporting an optimistic outlook for the remainder of fiscal year 2005 and continue to have relatively low inventories of new homes for sale and large backlogs of orders for homes to be built. Further strong top-line growth is expected and improved manufacturing performance and lower costs should lift profitability as the Company's North American business continues to penetrate its exterior and interior product markets.

During the first half of fiscal year 2005, the USA Fiber Cement business results were negatively impacted by higher spending on ramping-up growth initiatives and higher manufacturing costs, including increased costs caused by efficiency problems at a number of our U.S. plants. We have addressed the efficiency issues and expect to see improved efficiency levels in the second half of fiscal year 2005. In addition, we expect pulp prices to decrease beginning in the third quarter of fiscal year 2005. Further ramping-up costs are expected to be incurred in the second half of fiscal year 2005 for a number of growth initiatives.

Despite expectations of higher interest rates, the fundamental drivers of housing demand continue to look positive. The U.S. domestic economy is strengthening and demographic factors such as immigration, internal migration and household formation all suggest healthy levels of housing demand over the medium to longer-term.

In the Australia and New Zealand ("ANZ") business, new housing and the renovations segments in Australia are expected to further soften with the expectation of higher interest rates over the medium term. In New Zealand, the new housing segment is believed to have peaked and activity may soften as interest rates increase. Demand and profitability for the ANZ business may be also adversely affected by product boycotts and negative sentiment in Australia associated with the Special Commission of Inquiry and related matters.

In the Philippines, stronger domestic and export demand is expected from increased construction activity, reflecting more favorable economic conditions in the region. Increased demand and more cost savings should further improve operating performance.

In our emerging Chile Fiber Cement, Europe Fiber Cement and U.S. Hardie® Pipe businesses, sales and market share are expected to increase as awareness of their products among builders, contractors and distributors continues to grow.

Overall, the strong top-line growth momentum evident in the first half of fiscal year 2005 is continuing into the third quarter of fiscal year 2005. Operating performance for the full fiscal year 2005 is expected to benefit from improved manufacturing performance and reduced costs in the second half of fiscal year 2005.

Costs associated with the SCI and other associated developments are continuing to be incurred and may continue to be material.

**Item 6. *Directors, Senior Management and Employees***

**Board Practices and Senior Management**

***Board Structure***

We have a multi-tiered board structure that is consistent with Dutch corporate law. This structure consists of our Supervisory Board, our Managing Board and our Joint Board.

Our Supervisory Board currently includes only non-executive directors, including the Chairman, Ms. Meredith Hellicar, and is responsible for advising and supervising our Managing Board based on the best interests of the Company, including the interests of our shareholders.

Our Managing Board currently consists of two executive officers and is responsible for overseeing general affairs, operations and finance, including our treasury. Our interim CEO, Mr. Louis Gries, is the temporary

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Chairman of our Managing Board. Mr. W. (Pim), Vlot, Company Secretary, is also a temporary member of our Managing Board.

Our Joint Board comprises all of the members of our Supervisory Board and the Chairman of our Managing Board. In its role and composition, our Joint Board (“Board”) is the equivalent of a full board of directors of a U.S. or an Australian public company.

The Chairman of our Joint Board must be an independent, non-executive director. Our Joint Board must always include at least a two-thirds majority of independent directors.

### ***Board Mission and Responsibilities***

A key responsibility of our Board is determining strategy and monitoring Company performance. To this end, the Company adopts a 3-year business plan and a 12-month operating plan. Financial results and performance are closely monitored against the operating plan. Our Board also ensures that the Company has in place effective external disclosure policies and procedures so that shareholders and the financial markets are fully informed on all matters that might influence our share price. The core responsibility of directors is to exercise their business judgment in the best interest of the Company and its shareholders. Directors must fulfill their fiduciary duties to shareholders in compliance with all applicable laws and regulations. As appropriate, directors will also take into consideration the interests of other stakeholders in the Company, including employees, customers, creditors and others with a legitimate interest in our affairs. In discharging their duties, directors are provided direct access to, and may rely on, our senior executives and outside advisors and auditors. Board committees and individual directors may seek independent professional advice at our expense for the purposes of the proper performance of their duties.

### ***Qualifications***

Directors should possess qualifications, experience and expertise which will assist the Board in fulfilling its responsibilities, as well as assist the Company in achieving future growth. Directors must also be able to devote a sufficient amount of time to prepare for, and effectively participate in, Board and committee meetings.

Members of our Supervisory Board, who are elected by our shareholders, and members of our Managing Board (other than our Chief Executive Officer) are elected for a three-year term. In each case, such terms expire at the end of the third annual meeting of shareholders following election.

### ***Tenure***

The Board does not believe that arbitrary limits on the tenure of directors are appropriate or in the best interests of the Company and its shareholders. Limits on tenure may cause the loss of experience and expertise that are important contributors to the long-term growth and prosperity of the Company. Conversely, the Board does not believe that directors should expect to be automatically nominated for re-election at the end of their three-year term, but that their nomination for re-election should be based on their individual performance and the needs of the Company.

### ***Standard of Performance***

There are performance and evaluation processes for directors that are conducted by the Nominating and Governance Committee and these are important factors in determining nominations for re-election as well as for selecting nominees for new directors.

During fiscal year 2004, the Board and individual directors underwent an independent, external review and assessment. This process was conducted in accordance with the charter of the Nominating and Governance Committee and was designed to answer questions such as whether the Board is focusing on the right issues and using its time efficiently.

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Each of the non-executive directors was interviewed, as were members of management and the Board consultant. The review covered relative strengths and relative weaknesses of the Board compared to other boards and it reviewed former decisions and the lessons that emerged from those decisions. It also covered meeting planning and process, Board composition and structure, director performance, relations with management, director nominations and succession issues. The report, which included advice about improving performance, was given to the Chairman of the Nominating and Governance Committee and discussed with directors.

### *Independence*

All directors are expected to bring their independent views and judgment to the Board and must declare any potential or actual conflicts of interest. The Board has a policy that at least a two-thirds majority of its members must be independent and that the office of Chairman of the Board and Chief Executive Officer cannot be held by the same person simultaneously, other than in special circumstances and/or for a short period of time.

In determining the independence of directors and whether a director has a material relationship with the Company or another party that might impair his or her independence, the Board considers all relevant facts and circumstances, including the following:

- Company stock owned either directly or indirectly by the director;
- compensation received by the director or a family member (other than amounts received for service to the Board);
- employment by the Company (or any of its affiliates) of the director or a family member and whether such employment is current or in the past;
- past or present business relationships between (i) the director or a family member or any business entity associated with them and (ii) any of the Company, the Company's auditors, advisors, vendors, customers or other business entities or individuals providing services to the Company;
- any interlocking Board or other company committee relationships; and
- any other direct or indirect relationship between the director and the Company that may be material.

The Board may determine that a director is independent, even if there is a material relationship. This may occur if that relationship is not considered by the Board to influence, or be perceived to influence, the director's decisions in relation to the Company. The Board has not set materiality thresholds and will consider all relationships on a case-by-case basis, having regard to the accounting standards' approach to materiality.

The Board has considered the issue of the independence of the Company's directors and determined that each of the members of the Joint Board other than Mr. Gries and Mr. Cameron are independent. Mr. Gries is our Interim CEO and as such is not independent. Until March 31, 2002, Mr. Cameron was a partner of the Australian law firm Allens Arthur Robinson. Allens Arthur Robinson has advised the Company in relation to the New South Wales Special Commission of Inquiry investigation into the Foundation. In view of the significance of the inquiry, the Board currently considers the firm to be a material professional advisor to the Company. As such, Mr. Cameron is not considered independent.

All of the independent directors have:

- undertaken to advise the Board of any change in their circumstances that could affect their independence; and
- completed a comprehensive questionnaire that confirms their independence.

The Nominating and Governance Committee reviews the applicable definitions and director independence on a regular basis.

### *Meetings*

The Joint and Supervisory Boards generally meet between five and eight times each year and the committees of the Board meet as required to fulfill their responsibilities. At each Board meeting, the Supervisory Board conducts sessions without any members of the Company's management present. The Board has an annual program of visiting Company facilities and spending time with line management, customers and suppliers to assist directors to better understand our business and the markets in which we operate.

The Audit Committee meets a minimum of once each quarter to conduct business pursuant to its charter, to review quarterly financial results and releases and to discharge its other responsibilities.

The Managing Board meets between five and eight times each year.

### *Director Orientation*

The Company has an orientation procedure for new directors. Our Chief Executive Officer, Chief Financial Officer, General Counsel and Executive Vice Presidents are responsible for providing information for the orientation for new directors and for periodically providing materials or briefing papers to the Board on matters as requested or appropriate for the fulfillment of the directors' duties. Typically, a new director will undergo an extensive orientation including:

- visits to Company facilities and meetings with management and customers;
- reviews of financial position, strategy, operating performance and risk management;
- their rights, duties and responsibilities; and
- the role of Board Committees.

Similar induction and orientation programs are in place for executives and employees and are tailored according to seniority and position.

The Company encourages its directors to participate in continuing education programs to assist them in performing their responsibilities.

### *Management Succession*

The Board, together with the Nominating and Governance Committee, has developed and periodically revises management succession plans, policies and procedures for our Chief Executive Officer and other senior officers, whether such succession occurs as a result of a promotion, termination, resignation, retirement or an emergency.

### *Current and Former Directors and Executive Officers*

#### *Recent Developments*

On August 11, 2004, Mr. Alan McGregor resigned as Chairman of the Supervisory Board due to his continuing ill health. Ms. Meredith Hellicar was appointed Chairman of the Supervisory Board on the same day.

On September 28, 2004, the Company announced that Mr. Peter Macdonald and Mr. Peter Shafron were standing aside as Chief Executive Officer and Chief Financial Officer, respectively.

On October 21, 2004, Mr. Macdonald resigned from his position on the Managing Board and as Chief Executive Officer. On the same day, Mr. Louis Gries was appointed as a temporary member of the Managing Board in accordance with article 15.4 of the Company's Articles of Association and was named Interim Chief Executive Officer. On October 20, 2004, Mr. Shafron resigned from his position as Chief Financial Officer. On October 21, 2004, Mr. Russell Chenu was named Executive Vice President, Australia and Interim Chief Financial Officer.

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On October 21, 2004, Mr. Folkert Zwinkels resigned from the Managing Board. Mr. W. (Pim) Vlot, the Company's Secretary, was appointed as a temporary member of the Managing Board in accordance with article 15.4 of the Company's Articles of Association on the same day.

The current members of our Supervisory Board, Managing Board and Joint Board and our executive officers, along with certain of our former directors and executive officers are as follows:

<u>Name</u>	<u>Age</u>	<u>Position</u>	<u>Term Expires</u>
<b>Supervisory Board</b>			
Meredith Hellicar	50	Chairman of the Joint Board and Chairman of the Supervisory Board	2006
John Barr	57	Deputy Chairman of the Joint Board and Deputy Chairman of the Supervisory Board	2007
Michael Brown	58	Member of the Joint Board and the Supervisory Board	2005
Peter Cameron	53	Member of the Joint Board and the Supervisory Board	2006
Gregory Clark	61	Member of the Joint Board and the Supervisory Board	2005
Michael Gillfillan	56	Member of the Joint Board and the Supervisory Board	2006
James Loudon	61	Member of the Joint Board and the Supervisory Board	2005
Donald McGauchie	54	Member of the Joint Board and the Supervisory Board	2006
<b>Managing Board</b>			
Louis Gries	51	Interim Chief Executive Officer, Member of the Joint Board and Temporary Chairman of the Managing Board	
W. (Pim) Vlot	40	Temporary member of the Managing Board	
<b>Other Executive Officers</b>			
Russell Chenu	55	Executive Vice President — Australia and Interim Chief Financial Officer	
Donald Merkley	41	Executive Vice President — Research and Development	
David Merkley	41	Executive Vice President — Engineering and Process Development	
James Chilcoff	40	Vice President — International(1)	
Mark Fisher	34	Vice President — Interiors/Pipes/Trim(2)	
Nigel Rigby	37	Vice President — Emerging Markets(2)	
Robert Russell	38	Vice President — Established Markets(2)	
<b>Former Directors and Executive Officers</b>			
Alan McGregor	68	Former Chairman of the Joint Board and Former Chairman of the Supervisory Board(3)	
Peter Macdonald	52	Former Chief Executive Officer, Former Member of the Joint Board and Former Chairman of the Managing Board(4)	
Peter Shafron	43	Former Senior Vice President Legal and Chief Financial Officer(5)	
Phillip Morley	56	Former Chief Financial Officer(5)	
Folkert Zwinkels	35	Current Treasurer and Former Member of the Managing Board(6)	

(1) Mr. Chilcoff became a Vice President in August 2004.

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- (2) Mr. Fisher, Mr. Rigby and Mr. Russell became Vice Presidents in November 2004.
- (3) On August 11, 2004, Mr. McGregor resigned as Chairman and on August 25, 2004 resigned his Board and committee memberships due to continuing ill health.
- (4) Mr. Macdonald resigned on October 21, 2004.
- (5) At the end of May 2004, Mr. Shafron replaced Mr. Morley as Chief Financial Officer. Mr. Shafron resigned on October 20, 2004.
- (6) On October 21, 2004, Mr. Zwinkels resigned from the Managing Board. Mr. Vlot, Company Secretary, was appointed as temporary member of the Managing Board on the same day.

## **Directors**

*Meredith Hellicar* is the Chairman of our Joint Board and the Chairman of our Supervisory Board. Ms. Hellicar is also the Chairman of the Special Committee overseeing the Company's participation in the SCI into the Medical Research and Compensation Foundation, and a member of our Remuneration Committee, Nominating and Governance Committee and Audit Committee. Ms. Hellicar joined James Hardie Industries Limited (now named ABN 60) as an independent, non-executive director in May 1992 and was appointed to our Supervisory Board and Joint Board in October 2001. She was last reappointed by our shareholders at our August 2003 Annual General Meeting. Ms. Hellicar was appointed Chairman of our Joint and Supervisory Board after Mr. McGregor's resignation. She is experienced as a company director and has held chief executive positions in resources, transport and logistics, law and financial services. She is a director of AMP Limited, Southern Cross Airports Group, Amalgamated Holdings Limited, NSW Treasury Corporation and HIH Claims Support; Chairman of The Sydney Institute and HLA Envirosciences Pty Limited; and a board or committee member of several charitable organizations. Ms. Hellicar is also a member of the Australian Takeovers Panel and the Board of the Garvan Institute Foundation. Her previous experience includes directorships with AurionGold and the NSW Environment Protection Authority and she has served on the Foreign Affairs Council and Australian Business and the Arts Foundation. Ms. Hellicar was Chief Executive Officer of the law firm Corrs Chambers Westgarth, Managing Director of TNT Logistics Asia Pte Ltd and of InTech Pty Ltd. Ms. Hellicar received a Bachelor of Arts and Master of Laws, specializing in international business law, from University of Sydney.

*John Barr* joined James Hardie as an independent, non-executive director as a member of our Joint Board and Supervisory Board in September 2003. He was reappointed by our shareholders at our September 2004 Annual General Meeting. Mr. Barr is also a member of our Remuneration Committee (Chairman). He has more than 30 years of management experience in the North American industrial sector, including 25 years at The Valvoline Company, a leading marketer, distributor and producer of quality branded automotive and industrial products and services, eight years as President and Chief Executive Officer. Between 1995 and 1999 Mr. Barr served as President and Chief Operating Officer and a member of the Board of Directors of the Quaker State Corporation, a leading automotive aftermarket products and consumer car care company, now part of Royal Dutch Shell. Since 1999, Mr. Barr has been President and Chief Executive Officer of Automotive Performance Industries, a private U.S. company that provides a variety of logistics services to major automotive manufacturers. Since December 2002, Mr. Barr has served as director of United Auto Group, the second largest publicly held automotive retailer in the United States, and in August 2003 he was appointed to the Board of Directors of Clean Harbors Inc., the leading provider of hazardous waste and environmental management services throughout North America. In December 2003, he was appointed as Director to UST Inc. Mr. Barr is also currently Vice Chairman of Papa Murphy's International, Inc.

*Michael Brown* is a member of our Joint Board and Supervisory Board and Audit Committee (Chairman). Mr. Brown joined James Hardie Industries Limited as an independent, non-executive director in September 1992 and was appointed to our Supervisory Board and Joint Board in October 2001. He was last reappointed by our shareholders at our August 2002 Annual General Meeting. Mr. Brown has broad executive experience in finance, accounting and general management in Australia, Asia and the United States. He is Chairman of Repco Corporation Ltd and of Energy Developments Ltd and a non-executive director of Wattyl Ltd and Innamincka Petroleum Ltd. He was Group Finance Director of Brambles Industries Limited from



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1995 to 2000; prior to that he was Finance Director of Goodman Fielder Ltd, Renison Goldfields Consolidated Ltd, and Esso Australia Ltd.

*Peter Cameron* joined James Hardie Industries N.V. as a non-executive director as a member of our Joint Board and Supervisory Board after appointment by shareholders at the August 2003 Annual General Meeting. He is also a member of our Nominating and Governance Committee. Mr. Cameron has been involved in some of Australia's largest corporate takeovers, mergers and corporate reconstructions, and has a wealth of commercial and corporate advisory experience. He is Chairman of Investment Banking in Australia and a Managing Director of Credit Suisse First Boston. Mr. Cameron was formerly a partner and Head of Mergers and Acquisitions with the Australian law firm, Allens Arthur Robinson. In addition, he is a member of the Australian Takeovers Panel and Chairman of the Advisory Board of the University of Sydney Law School. Mr. Cameron has a Bachelor of Arts and Bachelor of Laws from the University of Sydney.

*Gregory Clark* was elected as an independent, non-executive director of James Hardie Industries N.V. at our July 2002 Annual General Meeting. Dr. Clark first joined the Company as a consultant to the Board in December 2001. He is also a member of our Nominating and Governance Committee. He has a distinguished background in science and business, specializing in the development and commercialization of new technology. He is the recipient of a number of international awards for science and technology, including the Australian Academy of Science Pawsey Medal as the most outstanding Australian scientist. Dr. Clark is currently Principal of Clark Capital Partners, a technology advisor to a number of financial institutions and a Director of ANZ Bank. He served as President and Chief Operating Officer of U.S.-based Loral Space and Communications LLC from 1998 to 2000. Prior to that he was President of News Corporation's News Technology Group and a member of News Corporation's Executive Committee. Dr. Clark received a PhD in Physics from the Australian National University.

*Michael Gillfillan* is a member of our Joint Board and Supervisory Board, Audit Committee and Special Committee. Mr. Gillfillan joined James Hardie Industries Limited as an independent, non-executive director in August 1999 and was appointed to our Supervisory Board and Joint Board in September 2001. He was last reappointed by our shareholders at our August 2003 Annual General Meeting. He provides James Hardie with considerable knowledge of U.S. capital markets and a depth of experience in commercial and corporate banking. He has held a number of senior executive positions, including Vice Chairman of Wells Fargo Bank. He is a director of UnionBanCal Corporation and its primary subsidiary, Union Bank of California, NA and is a partner at Meriturn Partners, LLC. Mr. Gillfillan received a B.A. in History from the University of California, Berkeley and an MBA from the University of California, Los Angeles.

*James Loudon* was elected as an independent director of James Hardie Industries N.V. at our July 2002 Annual General Meeting. Mr. Loudon is also a member of our Audit Committee and Remuneration Committee. Mr. Loudon first joined the Company as a consultant to the Board in March 2002. He has held management positions in finance and investment banking and senior roles in the transport and construction industries. He is currently Deputy Chairman of Caledonia Investments Plc, a non-executive director of Lafarge Malayan Cement Berhad and of Lafarge UK Pension Trustees and Governor of the University of Greenwich and of several charitable organizations. He served as Group Finance Director of Blue Circle Industries Plc, one of the world's largest cement producers, from 1987 until 2001 and prior to that he was the first Vice-President of Finance for Blue Circle's companies in the United States. Mr. Loudon received an MBA from the Stanford Graduate School of Business.

*Donald McGauchie* joined James Hardie Industries N.V. as an independent, non-executive director as a member of our Joint Board and Supervisory Board after appointment by shareholders at the August 2003 Annual General Meeting. He is also a member of our Nominating and Governance Committee (Chairman) and Special Committee. Mr. McGauchie has extensive commercial and public policy experience, having previously held several high-level advisory positions to the Australian Government including the Prime Minister's Supermarket to Asia Council, the Foreign Affairs Council and the Trade Policy Advisory Council. Mr. McGauchie is Chairman of Telstra Corporation Limited, and is a director of The Reserve Bank of Australia, Nufarm Limited and National Foods Limited. Mr. McGauchie was Chairman of Woolstock

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Australia Ltd from 1999 to 2002 and President of the National Farmers Federation from 1994 to 1998. In 2003, he was awarded the Centenary Medal for service to Australian society through agriculture and business.

*Louis Gries* is our Interim Chief Executive Officer, Executive Vice President — Operations, Member of the Joint Board and temporary Chairman of the Managing Board. His election as a permanent member of the Managing Board will be required at the next General Meeting of shareholders. Mr. Gries joined James Hardie as Manager of the Fontana fiber cement plant in California in February 1991 and was appointed President of James Hardie Building Products (USA) in December 1993 and Executive Vice President — Operations in January 2003. In October 2004, Mr. Gries was appointed Interim CEO. He previously held management positions with United States Gypsum Company (“USG”). He has a Bachelor of Science in Mathematics from the University of Illinois and an MBA from California State University, Long Beach.

*W. (Pim) Vlot* is our Company Secretary and was elected as a temporary member of our Managing Board in October 2004. His election as a permanent member of the Managing Board will be required at the next General Meeting of shareholders. Mr. Vlot joined James Hardie in January 2004 as Legal Counsel Europe & Global Manager Intellectual Property. In February 2004, Mr. Vlot was also appointed Company Secretary. Before joining the Company, from January 2003 to December 2003, he worked at the Amsterdam office of the Amicorp Group, a privately owned international provider of multinational company management, trust & fiduciary and financial services. From October 2001 to December 2002, he worked at Ernst & Young in The Netherlands as Senior Manager, tax and legal. From 2000 to 2001 Mr. Vlot worked at EQT Scandinavia B.V., the Dutch branch of a Swedish Private Equity firm in Amsterdam, as its in-house counsel tax & legal. Mr. Vlot is also currently a part-time teacher in corporate tax law at the Inholland University for Economic and Legal studies in Rotterdam and has taught at the Dutch Federal Tax Consultants Association in Amsterdam. Mr. Vlot holds a Masters degree in Dutch and International Tax Law from the University of Amsterdam.

### **Executive Officers**

*Russell Chenu* is our Interim Chief Financial Officer and Executive Vice President, Australia. Mr. Chenu joined James Hardie in October 2004. From February 2001 to July 2004, Mr. Chenu served as Chief Financial Officer of Tab Limited, then a publicly traded entertainment and gambling company. Prior to that, from November 1999 to February 2001, he served as Chief Financial Officer of Delta Gold Limited, then a publicly traded gold mining company. Mr. Chenu previously worked for James Hardie for 13 years in a variety of capacities, ultimately as Group Banking Manager from 1982 to 1984. He has a Bachelor of Commerce from the University of Melbourne and an MBA from Macquarie University in Australia.

*Donald Merkley* is our Executive Vice President — Research and Development. Mr. Merkley joined James Hardie in 1993 as Manager of the Plant City fiber cement plant in Florida and was appointed U.S. Product Development Manager in 1997. In 2002, he was made Executive Vice President — Research and Development and in January 2003, his role was expanded to give him responsibility for our emerging Roofing business in the United States. Mr. Merkley is also involved in reviewing business development opportunities. Before joining James Hardie, Mr. Merkley held positions with USG in various engineering-related roles. He has a Bachelor of Science in Engineering from Arizona State University.

*David Merkley* is our Executive Vice President — Engineering and Process Development. Mr. Merkley joined James Hardie in 1994 as Plant Manager of the Fontana fiber cement operation in California. Other roles Mr. Merkley has held include: Manager, Research and Development 1994 to 1996; Plant Manager, Plant City 1996 to 1998, Process Development Manager 1998 to 2000, Operations Manager for James Hardie Building Products USA. In 2002, Mr. Merkley was made Executive Vice President — Manufacturing and Engineering, with global responsibility. In August 2004, Mr. Merkley became Executive Vice President — Engineering and Process Development. Prior to joining James Hardie, Mr. Merkley held various engineering positions in the civil construction industry. Mr. Merkley has a Bachelor of Science in Construction from Arizona State University.

*James Chilcoff* is our Vice President — International. Mr. Chilcoff joined James Hardie in 1997 as a Senior Product Manager for Siding. Other roles Mr. Chilcoff has held include: Siding Product Development

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Manager — Marketing from 1998 to 1999; Siding Product Manager from 1999 to 2000; Exterior Marketing Manager from 2000 to 2001; Southern Division Sales/Marketing Manager from 2001 to 2002; Vice President Sales/ Marketing from 2002 to 2003; and General Manager of our Australian and New Zealand business. In August 2004, Mr. Chilcoff became Vice President — International. Before joining James Hardie, Mr. Chilcoff held various positions with CertainTeed Corporation, S. C. Johnson Wax, Formica Corporation and Armstrong World Industries. Mr. Chilcoff has a Bachelor of Business Administration from Eastern Michigan University and an MBA from Xavier University in Ohio.

*Mark Fisher* is our Vice President — Interiors/Pipes/Trim. Mr. Fisher joined James Hardie in 1993 as a Production Engineer. Other roles Mr. Fisher has held include: Finishing Manager, Production Manager and Product Manager at various locations from 1993 to 1999; Sales and Marketing Manager from 2000 to 2002; and General Manager of our European business. In November 2004, Mr. Fisher became Vice President — Interiors/Pipes/Trim. Before joining James Hardie, Mr. Fisher held various engineering positions at Chevron. Mr. Fisher has a Bachelor of Science in Mechanical Engineering and an MBA from University of Southern California.

*Robert Russell* is our Vice President — Established Markets. Mr. Russell joined James Hardie in 1996 as a Production Engineer. Other roles Mr. Russell held include: Production Manager from 1997 to 1998; Plant Manager from 1998 to 1999; Interior Products & Retail Sales Manager from 1999 to 2000; Vice President Marketing and Sales (James Hardie Gypsum) from 2000 to 2001; Business Development Manager from 2001 to 2002 and Vice President Exterior Sales and Marketing — Established Markets from 2002 to 2004. In November 2004, Mr. Russell became Vice President — Established Markets. Prior to joining James Hardie, Mr. Russell held various engineering positions with United States Gypsum Company. Mr. Russell has a Bachelor of Science Degree in Industrial Engineering from The University of Arizona and is currently completing his MBA at The University of California Los Angeles.

*Nigel Rigby* is our Vice President — Emerging Markets. Mr. Rigby joined James Hardie in 1998 as a Planning Manager for our New Zealand business. Other roles Mr. Rigby held include: Sales and Marketing and Product Development from 1999 to 2002; Strategic Marketing Manager for our Australian business from 2002 to 2003; Business Development Manager for our U.S. business in 2003; and Vice President Exterior Sales — Emerging Markets. In November 2004, Mr. Rigby became Vice President — Emerging Markets. Before joining James Hardie, Mr. Rigby held various management positions at Fletcher Challenge, a New Zealand based company involved in energy, pulp and paper, forestry and building materials.

Donald Merkley and David Merkley are brothers. None of the other persons above have any familial relationship with each other. In addition, none of the individuals listed above is party to any arrangement or understanding with a major shareholder, customer, supplier or other entity, pursuant to which any of the above was selected as a director or member of senior management.

### **Former Directors and Executive Officers**

#### *Former Directors*

*Alan McGregor, AO* was Chairman of our Joint Board and Supervisory Board until August 11, 2004 and resigned as a director on August 25, 2004 due to continuing ill health. Mr. McGregor was also a member of our Audit Committee, Nominating and Governance Committee (Chairman) and Remuneration Committee (Chairman). Mr. McGregor joined James Hardie in 1989 as an independent, non-executive director and became Chairman in 1995, and was appointed to our Joint and Supervisory Board in September 2001. Mr. McGregor has a distinguished career in the law and as a director and chairman of a number of large Australian public companies. He is a former Chairman of Burns Philp & Co. Ltd, the Australian Wool Testing Authority Ltd and FH Faulding & Co. Ltd. Mr. McGregor has been a board or committee member of a number of charitable and community organizations and private companies. Mr. McGregor received an M.A. in Economics and Law from the University of Cambridge in the United Kingdom and a Bachelor of Laws from the University of Adelaide in Australia.

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*Peter Macdonald* was our Chief Executive Officer, Member of the Joint Board and Chairman of the Managing Board. Mr. Macdonald resigned on October 21, 2004 but is expected to remain in a consulting capacity for an interim period. Mr. Macdonald joined James Hardie in 1993 as General Manager of James Hardie's Australian fiber cement business and was appointed President of our U.S. operations in 1994. He was appointed Chief Operating Officer in September 1998 and Managing Director and Chief Executive Officer in November 1999. Prior to joining James Hardie, Mr. Macdonald held senior roles at CSR Ltd and Metal Manufactures Ltd. Mr. Macdonald received a Bachelor of Commerce and Administration from Victoria University, New Zealand and an MBA from Pepperdine University.

*Folkert Zwinkels* is our Treasurer and was elected to James Hardie's Managing Board in August 2003 and was appointed in September 2003. Mr. Zwinkels resigned on October 21, 2004 from the Managing Board. Mr. Zwinkels joined James Hardie in October 2001 as Treasury Manager and was appointed Treasurer of James Hardie in January 2003. Before joining James Hardie, he was Treasury Manager for Reichhold Chemicals and prior to that he held a number of financial positions at ING Barings and ABN AMRO. In addition, he is a member of the Dutch Association of Corporate Treasurers. Mr. Zwinkels has a Bachelor of Business Administration from Erasmus University in Rotterdam and an MBA from University of Bradford.

### ***Former Executive Officers***

*Peter Shafron* was our Senior Vice President Legal and Chief Financial Officer until he resigned on October 20, 2004. Mr. Shafron joined James Hardie in August 1993 and served as Senior Company Solicitor from June 1995 until he was appointed General Counsel in March 1997. He was appointed Senior Vice President — Finance and Legal in November 2002 and in February 2004 was named as the Company's Chief Financial Officer, taking over after Mr. Morley's retirement from the position at the end of May 2004. Before joining James Hardie, Mr. Shafron was an associate with the Australian law firm, Allen Allen & Hemsley. He has a Bachelor of Arts from the Australian National University, a Bachelor and Master of Laws from the University of Sydney and an MBA from Pepperdine University. Mr. Shafron is admitted to practice law in Australia and California.

*Phillip Morley* was our Chief Financial Officer until he retired from the position at the end of May 2004. Mr. Morley joined James Hardie as Chief Accountant in October 1984 and served as Financial Controller from 1988 to 1995 and Executive General Manager Building Services from 1995 to 1997. He was appointed Chief Financial Officer in 1997. Before joining James Hardie, Mr. Morley held senior positions in finance and management at Swift & Co Ltd and Pfizer Corporation. He is a Chartered Accountant and has a Bachelor of Economics and an MBA from the University of Sydney.

## **Compensation**

### ***Remuneration***

The aggregate amount of compensation that we paid to, or accrued with respect to, members of our Supervisory Board, our Managing Board and our Joint Board and to our executive officers (18 persons in aggregate) for services in all their capacities to us in fiscal year 2004 was approximately \$11.3 million. This figure consists of base salaries, bonuses paid, accrued compensation relating to awards of shadow stock, superannuation and retirement benefits and stock options.

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The tables below set forth the compensation for those non-executive and executive directors who served on the JHI NV Board during the fiscal year ended March 31, 2004 and for our five most highly compensated officers of JHI NV during the fiscal year ended March 31, 2004:

**Non-Executive Directors**

Name	Directors' Cash Fees US\$	JHI NV Stock(1) US\$	Total US\$
A.G. McGregor	\$160,000	\$ 10,000	\$170,000
M. Hellicar	43,333	20,000	63,333
M.R. Brown	53,333	10,000	63,333
M.J. Gillfillan	53,333	10,000	63,333
J.R.H. Loudon	47,333	16,000	63,333
G.J. Clark	—	63,333	63,333
P. Cameron	—	63,333	63,333
D.G. McGauchie	31,667	15,000	46,667
J.D. Barr	33,519	—	33,519
<b>Total compensation for non-executive directors</b>	<b>\$422,518</b>	<b>\$207,666</b>	<b>\$630,184</b>

**Executive Directors**

Name	Base Pay US\$	Bonuses US\$	Total Cash Pay US\$	Superannuation and Other Benefits US\$	Shadow Share and Options(3) US\$
P.D. Macdonald	\$822,500	\$1,745,390	\$2,567,890	\$ 27,693	\$593,558
F.H. Zwinkels	121,756	27,921	149,677	24,241	3,345
<b>Total compensation for executive directors</b>	<b>\$944,256</b>	<b>\$1,773,311</b>	<b>\$2,717,567</b>	<b>\$ 51,934</b>	<b>\$596,903</b>

**Executive Officers**

Name	Base Pay US\$	Bonuses US\$	Total Cash Pay US\$	Superannuation and Other Benefits(2) US\$	Shadow Share & Options(3) US\$	Relocation Allowances and Other Non-recurring US\$
L. Gries	\$439,427	\$753,720	\$1,193,147	\$ 126,725	\$228,535	\$ —
P.G. Morley	327,630	445,742	773,372	90,802	580,926	—
Donald Merkley	315,577	437,401	752,978	80,503	173,176	—
P.J. Shafron	307,500	375,951	683,451	46,625	360,222	16,356
David Merkley	285,577	394,064	679,641	80,481	135,437	—

- (1) The annual allocation to non-executive directors of JHI NV stock to the value of \$10,000 was approved by shareholders at the Annual General Meeting held on July 19, 2002. The non-executive directors can elect to take additional stock in lieu of fees.
- (2) Gross up of tax on the increase/ decrease in investment value of superannuation is included for Mr. Morley.
- (3) Options are valued using the Black-Scholes option-pricing model and the fair value of options granted are included in compensation during the period in which the options vest. The weighted average assumptions and weighted average fair valued used for grants in fiscal year 2004 was as follows: 1.0% dividend yield; 26% expected volatility; 2.7% risk free interest rate; 3.3 years of expected life; A\$1.42 weighted average

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fair value used at grant date. Shadow share expense included in compensation is calculated based on the movement in the JHI NV share price during the year and the increase in vesting of the shadow shares; A\$/US\$ foreign exchange movements also affect the result. Actual benefit received depends on the JHI NV share price and foreign exchange rates at the time of exercise.

We sponsor a U.S. defined contribution plan, the James Hardie Retirement and Profit Sharing Plan, for our employees in the United States and a defined benefit pension plan, the Hardiplan Superannuation Plan, for our employees in Australia. The U.S. defined contribution plan is a tax-qualified retirement and savings plan (the "401(k) Plan") covering all U.S. employees, subject to certain eligibility requirements. Participating employees may elect to reduce their current annual compensation by up to \$13,000 and have the amount of such reduction contributed to the 401(k) Plan, with a maximum compensation limit of \$205,000. In addition, we match employee contributions dollar for dollar up to a maximum of the first 6% of an employee's salary or base compensation. The Hardiplan Superannuation Plan is funded based on statutory requirements in Australia and is based primarily on the contributions and income derived thereon held by the plan on behalf of the member, and to a lesser degree, on the participants' eligible compensation and years of credited service.

On December 5, 2003, December 3, 2002 and December 17, 2001, JHI NV granted options to purchase 6,179,583 shares, 4,037,000 shares and 4,248,417 shares of our common stock, respectively, at fair market value to management and other employees of the Company under the JHI NV 2001 Equity Incentive Plan. The JHIL Key Management Equity Incentive Plan ("KMEIP") was terminated as of October 19, 2001 and was replaced with the JHI NV KMEIP Option Plan. See the section below entitled "Option Ownership."

On October 19, 2001, the effective date of the 2001 Reorganization, we confirmed JHI NV's Economic Profit Incentive Plan. The Economic Profit Incentive Plan provides incentive compensation, in the form of year-end bonus payments, to certain of our officers and key employees based on the participant's achievement of mutually agreed upon individual performance objectives and the Company's achievement of certain target economic profit levels.

In addition, as part of the 2001 Reorganization, we amended the JHIL 1998 Executive Stock Incentive Plan, the JHIL 2000 Executive Stock Incentive Plan and the James Hardie Inc. Shadow Stock Plan, such that JHI NV's common stock served as the benchmark for determining cash payments at maturity as opposed to JHIL's common stock.

At our Annual General Meeting on July 19, 2002, our shareholders approved a Supervisory Board Share Plan ("SBSP"), which requires that all non-executive directors on our Joint Board and Supervisory Board receive our shares as payment for a portion of their director fees. This plan requires that our directors take at least \$10,000 of their fees in shares, but directors may receive additional fees in shares at their discretion. Shares issued under the \$10,000 compulsory component of the SBSP are subject to a two-year holding lock, where members of the Supervisory Board must retain those shares for at least two years following issue. The issue price for the shares will be at market value at the time of issue. No loans will be entered into by the Company in relation to the grant of shares pursuant to the SBSP.

## **Service Contracts and Severance Agreements**

### *Service Contracts with Current Directors*

Mr. Gries and Mr. Vlot, each a member of or treated as a member of our Managing Board, have employment agreements with us pursuant to which they are compensated for their services as executive officers. The terms of the agreement are described below. None of our Supervisory Board members has a service contract with us.

#### *Louis Gries*

Mr. Gries serves as our Interim Chief Executive Officer, temporary Chairman of the Managing Board and Member of the Joint Board. Mr. Gries was appointed Interim Chief Executive Officer and Temporary Managing Director on October 21, 2004. His appointment expires on October 21, 2005 unless he is appointed Chief Executive Officer and Managing Director before then or his appointment is terminated earlier at the

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sole and absolute discretion of the Board of Directors. If Mr. Gries is appointed Chief Executive Officer and Managing Director, a new contract will be negotiated and put in place at that time. If his appointment is terminated before October 21, 2005, Mr. Gries will receive the remainder of the salary and bonus due until October 21, 2005. In addition, if Mr. Gries is not appointed to the Chief Executive Officer and Managing Director role and he and the Company do not agree upon a new contract for his return to employment with the Company in a senior officer role, then he will receive an amount equal to one and one half (1.5) years severance pay which includes a salary equal to his annual salary at the time of departure plus an annual bonus equal to the average annual bonus he was paid over the immediately preceding three years. Additionally, he will agree to consult to the company for two (2) years and abide by certain restrictions in exchange for his annual salary and annual target bonus during this time as well as certain additional benefits.

### *Pim Vlot*

Mr. Vlot serves as Company Secretary and a temporary Member of the Managing Board. We entered into an Executive Service Agreement with Mr. Vlot on January 1, 2004 and amended it on June 15, 2004. This agreement provides that unless an indefinite contract is negotiated in November 2004, this contract will terminate on December 30, 2004.

### *Service Contracts with Former Directors*

During the fiscal year ended March 31, 2004, Mr. Macdonald and Mr. Zwinkels were members of our Managing Board. Each has employment agreements with us pursuant to which they were compensated. The terms of the agreement are described below.

### *Peter Macdonald*

Until October 21, 2004, Mr. Macdonald served as our Chief Executive Officer, Chairman of the Managing Board and Member of the Joint Board. In accordance with his Executive Service Agreement, he served as one of the Members of our Managing Board and as our Chief Executive Officer and as Chief Executive Officer of several of our subsidiaries. Mr. Macdonald's current agreement took effect on November 1, 2002 and was to expire on October 31, 2005.

### *Folkert Zwinkels*

Mr. Zwinkels currently serves as our Treasurer. During fiscal year 2004 and until October 21, 2004, he was a Member of the Managing Board of Directors. On October 1, 2001, James Hardie Industries Finance B.V. entered into an Employment Agreement Treasury Manager with Mr. Zwinkels, and the agreement was amended on August 6, 2004. The agreement, as amended, provides that if the Company wishes to terminate the agreement for reasons not exclusively to an act or omission or a series of acts of omissions or other performance related issues committed by Mr. Zwinkels or if the termination is not based on urgent grounds as defined in Netherlands Civil Code, it will pay him a severance fee equal to 12 months of his pretax salary.

### *Severance Agreements*

In connection with the resignation of Mr. Macdonald and Mr. Shafron, we entered into severance agreements with each individual.

The severance agreement with Mr. Macdonald was consistent with the terms of his employment agreement. We made a lump sum payment to Mr. Macdonald equal to two times his current annual salary at the time of his departure plus twice the annual bonus paid in the year immediately preceding the year of termination, plus fiscal year ending 2004's notional balance under our Economic Profit Incentive Plan.

The severance agreement with Mr. Shafron was consistent with his employment agreement. We made a lump sum payment to Mr. Shafron equal to the sum of his current annual salary at the time of his departure plus his annual target bonus plus fiscal year ending 2004's notional balance under our Economic Profit Incentive Plan. In addition, Mr. Shafron will receive an annual bonus which relates to the Company's

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economic profit results following the finalization of the fiscal year 2005 accounts, pro-rated to the date of resignation. Mr. Shafron will not be entitled to receive any discretionary component of this bonus.

### **Audit Committee, Nominating and Governance Committee, Remuneration Committee and Special Committee**

The charters for our Audit, Nominating and Governance, and Remuneration committees are available on our Investor Relations website at [www.jameshardie.com](http://www.jameshardie.com).

#### *Audit Committee*

Our Audit Committee provides advice and assistance to the Board in fulfilling its responsibilities relating to the Company's financial statements, financial reporting processes and compliance with legal and regulatory requirements, internal accounting and financial control systems, internal audit, external audit and such other matters as the Board may request from time to time.

Our Audit Committee comprises at least three members of the Board who are appointed by the Board. Each member is a non-executive director, independent of the Company and management. All members are financially literate and have sufficient business and financial expertise to act effectively as members of the committee, as determined by the Board. In addition, the Audit Committee has at least one member who qualifies as an Audit Committee financial expert. The Chair is nominated by the Board and may not also be the Chairman of the Board.

Currently, our Audit Committee comprises Mr. Brown (Chairman), Ms. Hellicar, Mr. Gillfillan and Mr. Loudon and its responsibilities include:

- overseeing the adequacy and effectiveness of our accounting and financial policies and controls, including having periodic discussions with management, external auditors and internal auditors and assuring compliance with relevant regulatory and statutory requirements;
- overseeing our financial reporting process and reporting on the results of our activities to the Joint Board. Specifically, our Audit Committee reviews with management and the external auditors our annual and quarterly financial statements and reports to our shareholders, seeking assurance that the external auditor is satisfied with the disclosures and content of the financial statements. In addition, our Audit Committee reviews material accounting principles and policies, any off-balance sheet transactions and material litigation on an as needed or quarterly basis. The Chair of our Audit Committee may represent the entire Audit Committee for the purposes of quarterly reviews;
- discussing with our external auditors the overall scope and plans for its audit activities, including staffing, contractual arrangements and fees. Our Audit Committee reviews all audit reports provided by the external auditor, including an annual report from the external auditor on its internal quality-control procedures and on its independence to the Company. In addition, the Audit Committee specifically approves or establishes approval policies or procedures for any proposed audit and non-audit activity by the provider of the external audit, and oversees the independence of the external auditor;
- discussing with our internal auditors the overall scope and plans for their audit activities and reviewing all internal audit reports;
- reviewing the performance of our external auditor with direct responsibility for the appointment, compensation and oversight of the external auditor;
- reviewing the adequacy and effectiveness of, and any significant changes to, the Company's internal controls;
- reviewing and reporting on the adequacy and effectiveness of the Company's disclosure controls and procedures;



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- establishing procedures for handling complaints regarding accounting, internal accounting controls and auditing matters, including procedures for confidential, anonymous submission of concerns by employees regarding accounting and auditing matters; and
- reviewing and discussing, in conjunction with the Board, the Company's policies with respect to risk assessment and risk management.

Our Audit Committee's processes include:

- maintaining free and open communications with the external auditor, internal auditor and management. The committee periodically meets with the external auditors without representatives of management present to discuss the adequacy of the Company's disclosures and policies, and to satisfy itself regarding the external auditor's independence from the Company;
- investigating any matter brought to its attention, and for this purpose, has full access to the Company's records, personnel and any required external support. Our Audit Committee has the authority to retain (at the Company's expense) outside counsel, accountants, experts and other advisors it determines are appropriate to assist it to perform its functions;
- reviewing and taking any necessary action to uphold the overall quality of the Company's financial reporting and practices;
- reviewing and reassessing its charter at least annually, and recommending any changes it considers appropriate to the Board;
- conducting an annual performance review of its function and report its findings to the Board;
- regularly reviewing with the Board any issues that arise with respect to the quality or integrity of the Company's financial statements, its compliance with legal or regulatory requirements, the performance and independence of the external auditor, or the performance of the internal audit function; and
- undertaking other special duties during the course of the year as requested by the Board.

The external auditor attends shareholder meetings — either personally or by telephone — and is available to answer questions from shareholders about the conduct of the audit and the preparation and content of the audit report and the Company's accounts.

### *Nominating and Governance Committee*

The Nominating and Governance Committee's responsibilities include:

- continuously evaluating and refining our corporate governance processes and principles;
- evaluating individual director performance and independence;
- evaluating, at least annually, the performance of each Board and the Board committees;
- recommending candidates for re-election;
- making recommendations on the structure, composition and function of the board and its committees, including consideration of the periodic rotation of directors among committees;
- identifying, evaluating and recruiting candidates for election or appointment to our boards, including candidates recommended by our shareholders;
- reviewing and assessing the channels through which the Board receives information and the quality and timeliness of this information;

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- considering changes in directors' compensation; and
- overseeing succession planning for senior management positions, including the Chief Executive Officer.

Members of the Nominating and Governance Committee are: Mr. McGauchie (Chairman), Ms. Hellicar, Mr. Cameron and Mr. Clark.

### ***Remuneration Committee***

Our Joint Board established a Remuneration Committee to institute appropriate controls in the remuneration of senior executives and non-executive directors and to advise it on remuneration policies and practices.

The Company uses a mix of fixed pay, performance-based remuneration and equity-based remuneration. In recent years, the use of variable or at-risk remuneration has been expanded so that a growing proportion of executive remuneration is at-risk and dependent on individual and Company performance. Performance-based remuneration is determined by the extent to which our economic profit exceeds the cost of capital and the extent to which the executive contributed to such an outcome.

We also encourage share ownership by directors, executives and employees to align their interest with those of the shareholders. Executives and employees participate in share option and share purchase schemes tied to individual and Company performance. The Company's share and share option plans operate within limits approved by shareholders and deliver a benefit to executives and employees only if there is a corresponding benefit to shareholders. Our past Chief Executive Officer's most recent option plans deliver a benefit only if the Company's Total Shareholder Return ("TSR") exceeds the average TSR for a benchmark group of 100 companies listed on the ASX. The options do not fully vest for three years from date of grant.

In addition, directors are required to receive at least \$10,000 of their directors' fees in shares of the Company's stock. Our executive officers do not receive additional compensation for their service as directors. We believe that compensation for non-employee members of the Board should be competitive. The Remuneration Committee will report once a year to the Board on the status of Board compensation in relation to other comparable companies. As part of a Board member's total compensation and to create a direct link with corporate performance, the Board believes that a meaningful portion of a Board member's total compensation should be provided in common stock or stock options. A retirement plan for directors was terminated in 2002 and directors appointed since then are not entitled to retirement benefits. At the end of fiscal year 2004, three directors had accumulated benefits under the plan that will be paid out when they retire and Australian-based directors still receive government mandated superannuation payments. Subsequent to fiscal year 2004, one director has retired and will begin receiving these benefits.

The Remuneration Committee comprises Mr. Barr (Chairman), Ms. Hellicar and Mr. Loudon. The Remuneration Committee's membership comprises independent directors and its responsibilities include:

- reviewing and approving our Chief Executive Officer's remuneration package and evaluating his or her performance each year;
- reviewing and approving the annual remuneration for other senior executives;
- administering and making recommendations to the Board with respect to the Company's incentive-compensation and equity based compensation plans;
- approving the granting of stock options or other forms of equity-based compensation to senior executives;
- reviewing and recommending employment agreements and severance arrangements for senior executives; and
- approving any significant changes in remuneration policy, superannuation, or executive and employee incentive plans.

### *Special Committee*

In July 2004, the Board established a committee of the Board to oversee the Company's further participation in the Special Commission of Inquiry's investigation into the Foundation. The committee comprises Ms. Hellicar (Chairman), Mr. McGauchie and Mr. Gillfillan and its responsibilities include:

- reviewing the Commissioner's report, which was delivered to the NSW Government on September 21, 2004, and recommending to the Board appropriate actions in response to its findings; and
- overseeing on behalf of the Company any developments or discussion of suitable arrangements as to the SCI's findings and taking any recommendations to the Board and, ultimately, to shareholders for approval.

### **Employees**

As of the end of each of the last three fiscal years, we employed the following number of people:

	Fiscal Years Ended March 31,		
	2004	2003	2002
<b>Continuing Operations</b>			
Fiber Cement:			
United States (includes Canada)	1,722	1,500	1,177
Australia	459	539	611
New Zealand	161	183	191
Philippines	225	209	175
Chile	122	91	66
Pipes (United States and Australia)	178	162	42
Europe	37	30	1
Roofing	18	—	—
Total Fiber Cement	2,922	2,714	2,263
Research & Development, including Technology	117	107	51
General Corporate	34	34	34
<b>Discontinued Businesses</b>			
Gypsum	—	—	590
Building Systems (New Zealand)	—	65	64
Total Employees	3,073	2,920	3,002

As of the end of fiscal year 2004, of the 3,073 people we employ, 398 are members of labor unions: 304 in Australia and 94 in New Zealand. Management believes it has a satisfactory relationship with these unions as well as with its employees and there are currently no labor disputes. See "Risk Factors — If we experience labor disputes or interruptions, as we have from time to time in the past, our operations may be disrupted and our business, financial condition and results of operations may be adversely affected" in Item 3.

**Share Ownership**

The number of shares of common stock of JHI NV beneficially owned by each person listed in the table under the heading “Compensation — Remuneration,” as of October 31, 2004 was:

Name	Number of Shares Beneficially Owned	Percent of Class(1)
Meredith Hellicar	7,934	*
John Barr	21,000	*
Michael Brown	12,901	*
Peter Cameron	11,602	*
Gregory Clark	12,290	*
Michael Gillfillan	52,901	*
James Loudon	3,480	*
Donald McGauchie(2)	4,743	*
Louis Gries	823,462	*
<b>Former Directors and Executive Officers</b>		
Alan McGregor (former Chairman)(3)	8,614,895	1.88%
Peter Macdonald (former CEO)(4)	1,628,600	*
Phillip Morley (former CFO)	480,484	*
Folkert Zwinkels (current Treasurer and former member of our Managing Board)	2,925	*

\* Indicates that the individual beneficially owns less than 1% of our shares of common stock. In addition, Messrs. Donald Merkley, David Merkley and P. Shafron (former CFO) each beneficially own less than 1% of our shares of common stock.

- (1) Based on 458,773,612 shares of common stock at October 31, 2004, which were all issued in the form of CUFS.
- (2) Includes 3,000 shares held in the McGauchie Superfund, of which Mr. McGauchie is a trustee.
- (3) Includes 5,121,200 shares held in the Andrew Thyne Reid Charitable Trust and 3,490,794 shares held in a discretionary family trust. Mr. McGregor is a director of two trust companies but is not a beneficiary of the discretionary family trust. Mr. McGregor resigned as Chairman on August 11, 2004 and as a director on August 25, 2004 due to continuing ill health.
- (4) Includes 380 shares held by Mr. Peter Macdonald’s wife in trust for their children. On October 21, 2004, Mr. Macdonald resigned from our Company.

None of the shares held by any of the directors or executive officers has any special voting rights. Beneficial ownership of shares includes shares issuable upon exercise of options which are exercisable within 60 days of October 31, 2004.

**Option Ownership**

The number of shares of JHI NV common stock that each person listed in the table under the heading “Compensation — Remuneration,” have an option to purchase as of October 31, 2004 was:

Name	Number of Shares Underlying Options Owned	Exercise Price	Expiration Date
Louis Gries	40,174(1)(2)	A\$3.1321/share(3)(4)(5)	November 2009
	175,023(1)(6)	A\$3.0921/share(3)(4)(5)	November 2010
	324,347(7)	A\$5.0586/share(4)(5)	December 2011
	325,000(8)	A\$6.4490/share(5)	December 2012
	325,000(9)	A\$ 7.05/share	December 2013
Donald Merkley	48,209(1)(10)	A\$3.1321/share(3)(4)(5)	November 2009
	138,170(1)(11)	A\$3.0921/share(3)(4)(5)	November 2010
	170,709(7)	A\$5.0586/share(4)(5)	December 2011
	200,000(8)	A\$6.4490/share(5)	December 2012
	250,000(9)	A\$ 7.05/share	December 2013
David Merkley	48,209(1)(10)	A\$3.1321/share(3)(4)(5)	November 2009
	82,902(1)(11)	A\$3.0921/share(3)(4)(5)	November 2010
	102,425(7)	A\$5.0586/share(4)(5)	December 2011
	200,000(8)	A\$6.4490/share(5)	December 2012
	250,000(9)	A\$ 7.05/share	December 2013
<b>Former Directors and Executive Officers</b>			
Peter Macdonald (former CEO)	1,200,000(12)	A\$3.1821/share(3)(4)(5)	November 2009
	624,000(13)	A\$4.7621/share(3)(4)(5)	July 2011
	1,950,000(14)	A\$5.7086/share(4)(5)	July 2012
Phillip Morley (former CFO)	273,134(7)	A\$5.0586/share(4)(5)	December 2011
	134,300(8)	A\$6.4490/share(5)	December 2012
	100,000(9)	A\$ 7.05/share	December 2013
Peter Shafron (former CFO)	85,355(15)	A\$5.0586/share(4)(5)	December 2011
	50,000(16)	A\$6.4490/share(5)	December 2012
Folkert Zwinkels (Current Treasurer and former member of our Managing Board)	8,775(17)	A\$6.4490/share(5)	December 2012

- (1) This nonqualified stock option to purchase shares of JHI NV common stock under the JHI NV 2001 Equity Incentive Plan was granted on October 19, 2001 in exchange for the termination of an award of shadow stock covering an equal number of shares of JHIL common stock. See “— Equity Plans — 2001 Equity Incentive Plan” under Item 6.
- (2) Options vest and become exercisable in November 2004.
- (3) The exercise price reflects an A\$0.0965 per share price reduction due to a capital return paid to shareholders in December 2001.
- (4) The exercise price reflects an A\$0.3804 per share price reduction due to a capital return paid to shareholders in November 2002.
- (5) The exercise price reflects an A\$0.2110 per share price reduction due to a capital return paid to shareholders in November 2003.
- (6) Options vest and become exercisable in two equal installments in November 2004 and 2005.

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- (7) Granted under the 2001 Equity Incentive Plan and vests and becomes exercisable in three installments: 25% on December 17, 2002; 25% on December 17, 2003 and 50% on December 17, 2004.
- (8) Granted under the 2001 Equity Incentive Plan and vests and becomes exercisable in three installments: 25% on December 3, 2003; 25% on December 3, 2004 and 50% on December 3, 2005.
- (9) Granted under the 2001 Equity Incentive Plan and vests and becomes exercisable in three installments: 25% on December 5, 2004; 25% on December 5, 2005; and 50% on December 5, 2006.
- (10) Options vest and become exercisable in two equal installments in November 2003 and 2004.
- (11) Options vest and become exercisable in three equal installments in November 2003, 2004 and 2005.
- (12) JHIL granted a nonqualified stock option to Mr. Macdonald on November 17, 1999 under the JHIL Peter Donald Macdonald Share Option Plan. That option was terminated and replaced by this stock option to purchase shares of JHI NV common stock. See “— Equity Plans — JHI NV Peter Donald Macdonald Share Option Plan” below.
- (13) JHIL granted a nonqualified stock option to Mr. Macdonald on July 12, 2001 under the JHIL Peter Donald Macdonald Share Option Plan 2001. That option was terminated and replaced by this stock option to purchase shares of JHI NV common stock. See “— Equity Plans — JHI NV Peter Donald Macdonald Share Option Plan 2001” below.
- (14) This option was granted to Mr. Macdonald on July 19, 2002 under the Peter Donald Macdonald 2002 Share Option Plan.
- (15) Granted under the 2001 Equity Incentive Plan on December 17, 2001 and is fully vested and exercisable.
- (16) Granted under the 2001 Equity Incentive Plan on December 3, 2002 and is fully vested and exercisable.
- (17) Granted under the 2001 Equity Incentive Plan and vests and becomes exercisable in two installments: 2,925 on December 5, 2005; and 5,850 on December 5, 2006.

## **Equity Plans**

### ***Peter Donald Macdonald Share Option Plans***

Mr. Macdonald was granted an option to purchase 1,200,000 shares of our common stock at an exercise price of A\$3.87 per share under the JHI NV Peter Donald Macdonald Share Option Plan as a replacement for options previously granted by JHIL. As with the original JHIL option grant, this stock option became fully vested and exercisable on November 17, 2004. The options will expire on April 20, 2005, six months after the date of Mr. Macdonald's resignation. The exercise price and the number of shares available on exercise may be adjusted on the occurrence of certain events, including new issues, share splits, rights issues and capital reconstructions, as set out in the plan rules. Consequently, the exercise price was reduced by A\$0.21, A\$0.38 and A\$0.10 for the November 2003, November 2002 and December 2001 returns of capital, respectively.

Mr. Macdonald was granted an option to purchase 624,000 shares of our common stock at an exercise price per share equal to A\$5.45 under the JHI NV Peter Donald Macdonald Share Option Plan 2001 as a replacement for options previously granted by JHIL. The replacement options will become exercisable for 468,000 shares on the first business day on or after July 12, 2004, if our total shareholder returns (essentially our dividend yield and common stock performance) from July 12, 2001 to that date is at least equal to the median total shareholder returns for the companies comprising our peer group, as determined by our Joint Board (the “Initial Performance Milestone”). In addition, the replacement options will become exercisable on that same day for an additional 6,240 shares for each one-percent improvement in our total shareholder returns ranking above the median total shareholder returns for our peer group (up to a total of 156,000 additional shares). As of this 20-F filing, the performance hurdles have not been satisfied. On the first business day of each month from November 2004 until the options expire on April 20, 2005, six months after the date of Mr. Macdonald's resignation, our total shareholder returns will again be compared with that of our peer group to determine if any previously unvested options vest according to the applicable test described above. As set out in the plan rules, the exercise price and the number of shares available on exercise may be adjusted on the occurrence of certain events, including new issues, share splits, rights issues and capital reconstructions.

Consequently, the exercise price was reduced by A\$0.21, A\$0.38 and A\$0.10 for the November 2003, November 2002 and December 2001 returns of capital, respectively.

Under the JHI NV Peter Donald Macdonald 2002 Share Option Plan, Mr. Macdonald was granted an option to purchase 1,950,000 shares of our common stock at an exercise price of A\$6.30 per share. These options will become exercisable for 1,462,500 shares of our common stock on the first business day on or after July 19, 2005, if our total shareholder returns from July 19, 2002 to that date is at least equal to the median total shareholder returns for the companies comprising our peer group, which comprises those companies included in the S&P/ ASX 200 index excluding the companies listed in the 200 Financials and 200 Property Trust indices. Additionally, for each one-percent improvement in our total shareholder returns ranking above the median total shareholder returns for our peer group 19,500 shares become exercisable (up to a total of 487,500 additional shares). If any options remain unexercisable on that date because the applicable test for total shareholder returns is not satisfied, then on the first business day of each month occurring from that day until October 31, 2005, our total shareholder returns will again be compared with that of our peer group to determine if any previously unvested options vest according to the applicable test described above. The vested options will remain exercisable until the tenth anniversary of the issue date, July 19, 2012. As set out in the plan rules, the exercise price and the number of shares available on exercise may be adjusted on the occurrence of certain events, including new issues, share splits, rights issues and capital reconstructions. Consequently, the exercise price was reduced by A\$0.21 and A\$0.38 for the November 2003 and November 2002 returns of capital, respectively.

### ***2001 Equity Incentive Plan***

Under our 2001 Equity Incentive Plan (the "Equity Incentive Plan"), our employees, including employees of our subsidiaries and officers who are employees, but not including any member of our Managing Board or Supervisory Board, are eligible to receive awards in the form of nonqualified stock options, performance awards, restricted stock grants, stock appreciation rights, dividend equivalent rights, phantom stock or other stock-based benefits. The Equity Incentive Plan is intended to promote our long-term financial interests by encouraging our management and other persons to acquire an ownership position in us, to align their interests with those of our shareholders and to encourage and reward their performance. The Equity Incentive Plan was approved by our Joint Board subject to implementation of the consummation of our 2001 Reorganization.

An aggregate of 45,077,100 shares of common stock have been made available for issuance under the Equity Incentive Plan, provided that such number (and any awards granted) will be subject to adjustment in the event of a stock split, stock dividend or other changes in our common stock or capital structure or our restructuring. Our ADSs evidenced by ADRs and our common stock in the form of CUFS will be equivalent to and interchangeable with our common stock for all purposes of the Equity Incentive Plan, in the case of ADRs on a proportionately adjusted basis to account for the ratio of outstanding common stock or CUFS in relation to outstanding ADRs. The following options to purchase shares are outstanding as of October 31, 2004:

- options to purchase 1,870,596 shares of our common stock awarded to our employees on October 19, 2001 in exchange for the cancellation of JHIL shadow stock awards under the JHIL Key Management Equity Incentive Plan;
- options to purchase 2,316,322 shares of our common stock that were granted to employees in December 2001; and
- options to purchase 2,844,325 shares of our common stock that were granted to employees in December 2002.
- Options to purchase 4,737,250 shares of our common stock that were granted to employees in December 2003.

Our Remuneration Committee administers the Equity Incentive Plan. Subject to the provisions of the Equity Incentive Plan, our Joint Board or Remuneration Committee is authorized to determine who may

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participate in the Equity Incentive Plan, the number and types of awards made to each participant and the terms, conditions and limitations applicable to each award. In addition, our Joint Board or Remuneration Committee will have the exclusive power to interpret the Equity Incentive Plan and to adopt such rules and regulations as it may deem necessary or appropriate for purposes of administering the Equity Incentive Plan. Subject to certain limitations, our Joint Board or Remuneration Committee will be authorized to amend, modify or terminate the Equity Incentive Plan to meet any changes in legal requirements or for any other purpose permitted by law.

The purchase or exercise price of any award granted under the Equity Incentive Plan may be paid in cash or other consideration at the discretion of our Joint Board or Remuneration Committee. Our Joint Board or Remuneration Committee, in its discretion, may allow cashless exercises of awards or may permit us to assist in the exercise of options.

*Stock Options.* Under the Equity Incentive Plan, our Joint Board or Remuneration Committee is authorized to award nonqualified options to purchase shares of common stock as additional employment compensation. The Equity Incentive Plan does not allow us to grant options qualified as “incentive stock options” under Section 422 of the U.S. Internal Revenue Code of 1986, as amended. Options shall be exercisable over such periods as may be determined by our Joint Board or Remuneration Committee, but no stock option may be exercised after 10 years from the date of grant. Options may be exercisable in installments and upon such other terms as determined by our Joint Board or Remuneration Committee. Options will be evidenced by notices of option grants authorized by our Joint Board or Remuneration Committee. No option may be transferable other than by will or by the laws of descent and distribution or pursuant to certain domestic relations orders.

*Performance Awards.* Our Joint Board or Remuneration Committee, in its discretion, may award performance awards to an eligible person contingent on the attainment of criteria specified by our Joint Board or Remuneration Committee. Performance awards will be paid in the form of cash, shares of common stock or a combination of both. Our Joint Board or Remuneration Committee will determine the total number of performance shares subject to an award, and the terms and the time at which the performance shares will be issued.

*Restricted Stock Awards.* Under the Equity Incentive Plan, our Joint Board or Remuneration Committee may award restricted shares of common stock, which are subject to forfeiture under such conditions and for such periods of time as our Joint Board or Remuneration Committee may determine. Shares of such restricted stock may not be sold, transferred, assigned, pledged or otherwise encumbered so long as such shares remain restricted. Our Joint Board or Remuneration Committee shall determine the conditions or restrictions of any restricted stock awards, which may include restrictions on requirements of continued employment, individual performance or our financial performance or other criteria.

*Stock Appreciation Rights.* Under the Equity Incentive Plan, our Joint Board or Remuneration Committee also may award stock appreciation rights either in tandem with an option or alone. Stock appreciation rights granted in tandem with a stock option may be granted at the same time as the stock option or at a later time. A stock appreciation right shall entitle the participant to receive from us an amount payable in cash, in shares of common stock or in a combination of cash and common stock, equal to the positive difference between the fair market value of a share of common stock on the date of exercise and the grant price, or such lesser amount as our Joint Board or Remuneration Committee may determine.

*Dividend Equivalent Rights.* Dividend equivalent rights, defined as a right to receive payment with respect to all or some portion of the cash dividends that are or would be payable with respect to shares of common stock, may be awarded in tandem with stock options, stock appreciation rights or other awards under the Equity Incentive Plan. Our Joint Board or Remuneration Committee will determine the terms and conditions of these rights. The rights may be paid in cash, shares of common stock or other awards.

*Other Stock-Based Benefits.* Our Joint Board or Remuneration Committee may award other benefits that by their terms might involve the issuance or sale of common stock or other securities of JHI NV, or involve a benefit that is measured by the value, appreciation, dividend yield or other features attributable to a



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specified number of shares of our common stock or other securities, including but not limited to stock payments, stock bonuses and stock sales.

*Effect of Change in Control.* The Equity Incentive Plan provides for the automatic acceleration of certain benefits and the termination of the plan under certain circumstances in the event of a “change in control.” A change in control will be deemed to have occurred if either (1) any person or group acquires beneficial ownership equivalent to 30% of our voting securities, (2) individuals who are members of our Joint Board as of the effective date of the Equity Incentive Plan, or individuals who became members of our Joint Board after the effective date of the Equity Incentive Plan whose election or nomination for election was approved by a majority of such individuals (or, in the case of directors nominated by a person, entity or group with 20% of our voting securities, by two-thirds of such individuals) cease to constitute at least a majority of the members of our Joint Board or (3) there occurs the consummation of certain mergers, the sale of substantially all of our assets or our complete liquidation or dissolution.

### **Executive Share Purchase Plan**

Prior to July 1998, JHIL issued stock under an Executive Share Purchase Plan (the “Plan”). Under the terms of the Plan, eligible executives purchased JHIL shares at their market price when issued. Executives funded purchases of JHIL shares with non-recourse, interest-free loans provided by JHIL and collateralized by the shares. In such cases, the amount of indebtedness is reduced by dividend income earned by, and capital returns from, the collateralized shares. These loans are generally payable within two years after termination of an executive’s employment. As part of the 2001 Reorganization, the identical terms of the agreement have been carried over to JHI NV. Variable plan accounting under the provisions of APB Opinion No. 25 has been applied to the Plan shares granted prior to April 1, 1995 and fair value accounting, pursuant to the requirements of SFAS No. 123, has been applied to shares granted after March 31, 1995. No shares were issued to executives under the Plan during fiscal years 2004, 2003 and 2002.

### **Economic Profit Incentive Plan**

We maintain an Economic Profit Incentive Plan, which provides incentive compensation to certain of our directors, officers and key executives. These designated executives are entitled to receive bonus payments upon the accomplishment of certain economic profit target levels of the Company and certain other mutually agreed upon personal objectives. Our Economic Profit Incentive Plan is a variable pay plan, which links the Company’s economic profit to bonus payments to certain key individuals. The target bonus is paid to the participant at the end of the year if the economic profit target is met. If the economic profit target is exceeded, the participant earns a bonus greater than his or her target bonus, but only one-third of the excess bonus is paid to the participant at the end of the year. The remaining two-thirds is then deposited with a notional bank and is paid to the executive over the following two years if the economic profit target is met in these years, or is reduced if the economic profit target is not met. This arrangement distinguishes between sustained performance and one-time performance and encourages participants to maintain a long-term view.

### **Employment Agreements**

Under our compensation plan, we enter into employment agreements with certain of our senior executives. The amounts paid under these agreements are listed under “Compensation.” The terms of these agreements provide for an annual base salary, potential annual bonus payment pursuant to our Economic Profit Incentive Plan, and various benefits and expense reimbursements. These agreements also include restrictive covenants to protect our trade secrets, as well as non-competition and non-solicitation of our employees for a specified period in the event the executive is no longer employed by us.

## **Item 7. Major Shareholders and Related Party Transactions**

### **Major Shareholders**

At October 31, 2004, all issued and outstanding JHI NV shares were listed on the Australian Stock Exchange in the form of CHESS Units of Foreign Securities (“CUFS”). CUFS represent beneficial

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ownership of JHI NV shares and CHESS Depository Nominees Pty Ltd is the registered owner of the shares represented by CUFS. Each of our CUFS represents one share of our common stock.

To our knowledge, based on substantial shareholder notices filed with the Australian Stock Exchange as of October 31, 2004, the following table identifies those shareholders which beneficially owned 5% or more of our common stock and their holdings as of the date of their last respective notices:

Shareholder	Shares Beneficially Owned	Percentage of Shares Outstanding
Commonwealth Bank of Australia (and subsidiaries)	68,968,946	15.04%
Schroder Investment Management Australia Limited	39,835,741	8.69%
Lazard Asset Management Pacific Co.	36,080,578	7.87%
National Australia Bank Limited Group	28,198,184	6.15%
Concord Capital Ltd.	23,787,238	5.19%
The Capital Group Companies, Inc.	28,039,211	6.11%

Commonwealth Bank merged with Colonial First State Investments in June 2000, and their combined holdings as of March 22, 2001 exceeded 5% of JHIL's outstanding stock. Commonwealth Bank increased its percentage ownership of JHIL to approximately 13% in May 2001. Through subsequent periodic purchases, Commonwealth Bank gradually increased its interest in JHI NV to 17.03% in July 2003, but in the last notice received had reduced its interest in JHI NV on May 21, 2004 to 15.04%.

Schroder Investment Management Australia Limited became a substantial shareholder on January 28, 2004, with a 5.55% interest in JHI NV outstanding shares and increased its holding in JHI NV on April 6, 2004 to 8.69% in the last notice received.

Lazard Asset Management Pacific Co became a substantial shareholder on April 1, 2004, with a 5.34% interest in our outstanding stock and increased its holding in JHI NV on October 22, 2004 to 7.87% in the last notice received.

National Australia Bank Limited Group became a substantial shareholder on May 25, 2004, with 5.03% of our outstanding stock and increased its holding in JHI NV on June 16, 2004 to 6.15% in the last notice received.

Concord Capital Ltd became a substantial shareholder on June 18, 2004, with 5.34% of our outstanding stock before reducing its holding in JHI NV below 5% on August 6, 2004. However, in the last notice received, Concord Capital Ltd became a substantial shareholder again on August 20, 2004, with a 5.19% interest of our outstanding stock.

The Capital Group Companies, Inc became a substantial shareholder on August 3, 2004, with a 5.09% interest in JHI NV outstanding shares and increased its holding in JHI NV on September 6, 2004 to 6.11% in the last notice received.

Deutsche Bank AG on July 23, 2002 announced its interest in 5.24% of our outstanding shares before reducing its holding in JHI NV below 5% in September 2002. Through subsequent periodic purchases, Deutsche Bank's interest in JHI NV fluctuated above and below 5% and, in the last notice received, its interest was reduced to below 5% on September 30, 2004.

Merrill Lynch began purchasing JHIL common stock in April 1999. Through subsequent periodic purchases, Merrill Lynch gradually increased its interest in JHIL to 9.14% in February 2001, but thereafter reduced its holding in JHI NV below 5% in July 2003.

AMP Limited increased its percentage ownership interest in JHIL to approximately 6% in May 2001 before reducing its holding below 5% in October 2001. However, through subsequent periodic purchases, AMP Limited gradually increased its holdings in JHI NV to 6.16% at December 10, 2002 before reducing its holdings in JHI NV below 5% in July 2003.

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Each of the above shareholders has the same voting rights as all other holders of our common stock. To our knowledge, except for the major shareholders described above, we are not directly or indirectly owned or controlled by another corporation, by a foreign government or by any other natural or legal persons severally or jointly.

### **Other Security Ownership Information**

At October 31, 2004, 0.60% of the outstanding shares of common stock of JHI NV were held by 69 CUFs holders with registered addresses in the United States. In addition, at October 31, 2004, 0.37% of the outstanding shares of JHI NV were represented by JHI NV ADRs held by 15 holders, all of whom have registered addresses in the United States. A total of 0.97% of the outstanding capital stock of JHI NV was registered to 84 United States holders as of October 31, 2004.

### **Related Party Transactions**

#### *Transactions and Existing Loans to our Directors and Directors of our Subsidiaries*

Loans receivable totaling \$167,635 were outstanding from directors of JHI NV and its subsidiaries under the terms and conditions of the Plan at March 31, 2004. Loans under the Plan are interest free and repayable from dividend income earned by, or capital returns from, securities acquired under the Plan. The loans are collateralized by shares issued under the Plan. No new loans to directors or executive officers of JHI NV, under the Plan or otherwise, and no modifications to the existing loans have been made since December 1997. Repayments totaling \$22,693 were received in fiscal year 2004 in respect of the Plan from such directors.

During fiscal year 2004, a director resigned with a \$26,204 loan outstanding at the date of his resignation. This amount is repayable within two years under the terms of the Plan.

The following table sets forth the names of JHI NV and its subsidiaries' directors and the loan amounts outstanding for each such director as of March 31, 2004. All figures are in U.S. dollars.

Director	March 31, 2004
A.T. Kneeshaw	\$ 12,159
P.D. Macdonald	17,330
P.G. Morley	117,003
D.A.J. Salter	21,143
Total	\$167,635

In February 2004, we entered into a consulting agreement in usual commercial terms and conditions with The Gries Group in respect to professional services. The principal of The Gries Group, James P. Gries, is Mr. Louis Gries' brother. Under the agreement, approximately \$12,000 is paid each month to The Gries Group. The agreement expires in June 2005 and payments of \$18,423 were made for the year ended March 31, 2004.

#### *Payments Made to Directors and Director Related Entities of our Subsidiaries*

Payments of \$13,240 for the year ended March 31, 2004 were made to Grech, Vella, Tortell & Hyzler Advocates. Dr. J.J. Vella was a director of a number of the Company's subsidiaries. The payments were in respect of professional services and were negotiated in accordance with usual commercial terms and conditions.

Payments of \$111,705 for the year ended March 31, 2004 were made to Pether and Associates Pty Ltd, technical contractors. J.F. Pether is a director of a subsidiary of the Company and a director of Pether and Associates Pty Ltd. The payments were in respect of technical services and were negotiated in accordance with usual commercial terms and conditions.

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Payments totaling \$845 for the year ended March 31, 2004 were made to R. Christensen and T. Norman who are directors of a subsidiary of the Company. The payments were in respect of professional services and were negotiated in accordance with usual commercial terms and conditions.

### *Transactions Related to the Foundation*

In 1998, we entered into lease agreements with Amaca whereby we lease, on a long-term basis, fiber cement manufacturing facilities in Australia. Obligations under such leases amount to an aggregate of approximately \$2.7 million per year. All of the leases expire on October 31, 2008. The leases contain renewal options and provisions adjusting lease payments based on changes in various market factors as reflected in changes in the consumer price index.

In March 2004, Multiplex acquired the land and building related to the four fiber cement manufacturing facilities in Australia from Amaca. Prior to the acquisition, we renegotiated these four leases with Multiplex. See Item 4 “Information on the Company — Property, Plant and Equipment.”

### **Item 8.      *Financial Information***

See Item 4 “Information on the Company — Legal Proceedings,” Item 18 “Financial Statements” and pages F-1 through F-51. There has been no significant change to the financial statements included in this annual report since the date of such financial statements.

### **Item 9.      *Listing Details***

#### **Price History**

Prior to the restructuring completed in October 2001, there was no public market for shares of JHI NV common stock, nor was there a market for JHI NV ADRs. Shares in JHIL, which represented substantially the same operations, assets and liabilities as those of JHI NV prior to our 2001 Reorganization, were traded on the Australian Stock Exchange and over-the-counter as ADRs. One JHIL ADR represented two JHIL shares. After October 19, 2001, one JHI NV ADR represents five JHI NV shares.

JHIL shares were exchanged for JHI NV shares represented by CUFS shares on October 19, 2001. See Item 4 “Information on the Company — History and Development of the Company.”

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The high and low trading prices of JHI NV CUFS on the Australian Stock Exchange are as follows (Note: Prices listed after October 19, 2001 represent JHI NV CUFS; prices listed prior to October 19, 2001, represent JHIL shares):

Period	High		Low	
	(A\$)	(US\$)	(A\$)	(US\$)
Fiscal year ended:				
March 31, 2004	8.04	5.58	5.84	4.05
March 31, 2003	7.06	3.96	5.56	3.12
March 31, 2002	6.77	3.47	4.19	2.15
March 31, 2001	4.65	2.58	3.36	1.87
March 31, 2000	4.62	2.98	3.21	2.07
Fiscal quarter ended:				
September 30, 2004	6.30	4.52	4.95	3.55
June 30, 2004	6.88	4.92	5.22	3.73
March 31, 2004	7.02	5.44	6.15	4.77
December 31, 2003	8.04	5.74	6.32	4.51
September 30, 2003	7.80	5.14	6.64	4.38
June 30, 2003	7.20	4.61	5.84	3.74
March 31, 2003	7.06	4.17	5.81	3.43
December 31, 2002	6.89	3.84	5.92	3.30
September 30, 2002	6.90	3.78	5.56	3.05
June 30, 2002	6.56	3.62	5.90	3.25
Month ended:				
October 31, 2004	6.38	4.53	5.68	4.04
September 30, 2004	6.16	4.35	5.24	3.70
August 31, 2004	5.68	4.03	4.95	3.52
July 31, 2004	6.30	4.64	5.42	3.99
June 30, 2004	6.24	4.33	5.22	3.63
May 31, 2004	6.88	4.87	5.90	4.17

The U.S. dollar prices set forth above were calculated using the weighted average exchange rate for the relevant period.

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The high and low trading prices of JHI NV ADRs on the New York Stock Exchange after October 19, 2001, the effective date of the 2001 Reorganization, are as follows:

Period	High (US\$)	Low (US\$)
Fiscal year ended:		
March 31, 2004	28.50	18.25
March 31, 2003	19.95	15.29
March 31, 2002	17.95	11.10
Fiscal quarter ended:		
September 30, 2004	22.26	18.10
June 30, 2004	25.05	18.82
March 31, 2004	27.60	23.60
December 31, 2003	28.50	24.40
September 30, 2003	25.85	22.50
June 30, 2003	23.95	18.25
March 31, 2003	19.95	17.75
December 31, 2002	18.85	16.30
September 30, 2002	18.70	15.29
June 30, 2002	18.86	16.05
Month ended:		
October 31, 2004	23.36	20.50
September 30, 2004	21.40	18.40
August 31, 2004	20.56	18.10
July 31, 2004	22.26	19.71
June 30, 2004	21.66	18.82
May 31, 2004	24.71	21.30

Prior to the 2001 Reorganization, JHIL ADRs traded over the counter. Because historically the JHIL ADRs have not been actively traded, complete trading price information is not readily available. However, we believe that the trading price of the JHIL ADRs generally reflect the price of the underlying JHIL shares represented thereby, as well as any transaction costs associated with the ADRs.

During the 12 months ended October 31, 2004, an average of 2,144,518 JHI NV CUFS were traded daily on the Australian Stock Exchange.

During the 12 months ended October 31, 2004, an average of 1,672 JHI NV ADRs were traded daily on the New York Stock Exchange.

### Trading Markets

Prior to the restructuring, JHIL shares traded on the Australian Stock Exchange. After the restructuring was completed in October 2001, our securities became listed and quoted on the following stock exchanges:

Common stock (in the form of CUFS)  
ADRs

Australian Stock Exchange  
New York Stock Exchange

We cannot predict the prices at which our shares and ADRs will trade or the volume of trading for such securities, nor can we assure you that these securities will continue to meet the applicable listing requirements of these exchanges.

## Trading on the Australian Stock Exchange

The Australian Stock Exchange is headquartered in Sydney, Australia, with branches located in each state capital. Our CUFS trade on the Australian Stock Exchange under the symbol JHX. The Australian Stock Exchange is a publicly listed company with trading being undertaken by brokers registered under the Australian Corporations Act 2001. Trading principally takes place between the hours of 10:00 a.m. and 4:00 p.m. on each weekday (excluding Australian public holidays). Settlement of trades in uncertificated securities listed on the Australian Stock Exchange is generally effected electronically on the third business day following the trade. This is undertaken through CHES (Clearing House Electronic Sub-register System), which is the clearing and settlement system operated by the Australian Stock Exchange.

## Trading on the New York Stock Exchange

In the United States, five JHI NV CUFS equal one JHI NV ADR. Our ADRs trade on the New York Stock Exchange under the symbol JHX. Trading principally takes place between the hours of 9:30 a.m. and 4:00 p.m. on each weekday (excluding U.S. public holidays). All inquiries and correspondence regarding ADRs should be directed to The Bank of New York, depository for our ADRs, at The Bank of New York, ADR Department, 101 Barclay Street, New York, New York 10286 or at its website located at [www.adrbny.com](http://www.adrbny.com) or contact: Bank of New York, Investor Relations, P.O. Box 11258, Church Street Station, New York, NY 10286-1258, toll free telephone number for USA domestic callers: 1-888-BNY-ADRs, non-USA callers can call: 610-312-5315 or email: [shareowners@bankofny.com](mailto:shareowners@bankofny.com).

## Item 10. Additional Information

### General

We were originally incorporated in 1998 as a private company with limited liability, or “*besloten vennootschap met beperkte aansprakelijkheid*” (a “B.V.”). By notarial deed dated July 24, 2001, we changed our name to James Hardie Industries N.V. and by the same deed we changed our legal form into that of a “*naamloze vennootschap*” (an “N.V.”), a public limited liability company under Dutch law. Our Articles of Association were most recently amended on November 5, 2003.

Our corporate seat is in Amsterdam, The Netherlands and we have offices at The Atrium, 4th floor, Strawinskylaan 3077, 1077 ZX Amsterdam, The Netherlands. We are registered at the trade register of the Chamber of Commerce and Industry for Amsterdam, The Netherlands under number 34106455.

### Key Provisions of our Articles of Association of JHI NV

#### *Purpose of the Company*

Our purposes are:

- to participate in, to take an interest in any other way in and to conduct the management of business enterprises of whatever nature;
- to raise funds through the issuance of debt or equity or in any other way and to finance third parties;
- to provide guarantees, including guarantees for the debts of third parties; and
- to perform all activities which are incidental to or which may be conducive to, or connected with, any of the foregoing.

#### *Issuance of Shares; Preemptive Rights*

Pursuant to Dutch law and our Articles of Association, the authority to issue shares and to grant rights to subscribe for shares, such as options, and to limit or exclude preemptive rights is vested in our shareholders as a group, unless our shareholders have delegated this authority to another corporate body. Such delegation is valid for a maximum period of five years, but may be renewed at any time prior to its expiration.

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Our Supervisory Board has been delegated the authority to issue shares and to grant rights to subscribe for shares, such as options, and to limit or exclude preemptive rights for a period expiring on August 15, 2006. After August 15, 2006, shares and rights to subscribe for shares may be issued, and preemptive rights may be limited or excluded by our shareholders or by our Supervisory Board, provided it has again been delegated this authority by our shareholders (such delegation shall be for a maximum period of five years). We plan to ask our shareholders to delegate this authority to our Supervisory Board again prior to the expiration of the period ending on August 15, 2006. It is anticipated that our Supervisory Board will eliminate preemptive rights with respect to any and all issuances of shares of common stock during such period.

Shares of common stock must be issued for a subscription price at least equal to their nominal value and at least 25% of the nominal value must have been paid up at the time of issuance.

As a Dutch company that has listed securities in Australia and the United States, we are subject to applicable legislation regarding insider trading. Generally, Dutch law prohibits anyone, whether or not a director or employee of the issuer, from trading in or bringing about transactions in the securities of the issuer while in possession of inside, non-public information and from passing on inside information or recommending a transaction while in possession of inside information. Under Australian law, persons are prohibited from trading on the basis of undisclosed, price-sensitive information regarding a company's securities. Similarly, in the United States, persons are prohibited from trading on the basis of material, non-public information. We have adopted an internal code on insider trading consistent with Dutch, Australian and U.S. laws and regulations.

### ***Repurchase of Shares***

At the proposal of our Joint Board, we may acquire shares in our own capital, subject to certain provisions of Dutch law and of our Articles of Association, if and insofar as (1) shareholders' equity, less the amount to be paid for the shares acquired, is not less than the sum of the paid and called up part of our issued share capital, plus any reserves required to be maintained by Dutch law or our Articles of Association, (2) the aggregate par value of the shares of our capital which we or our subsidiaries acquire, already hold or on which we or they hold a right of pledge, amounts to no more than one-tenth of the aggregate par value of the issued share capital and (3) our shareholders, as a group, have authorized our Managing Board to acquire such shares. Neither we nor any of our subsidiaries may vote shares that are held by them or us.

At the September 17, 2004 Annual General Meeting, our Managing Board was authorized to cause JHI NV to acquire shares in JHI NV's capital for a period expiring on March 17, 2006. After March 17, 2006, shares in JHI NV's capital may be acquired if our Managing Board has again been authorized to do so by our shareholders (such authorization may be for a maximum period of 18 months). We intend to ask our shareholders in our 2005 Annual General Meeting to renew the authorization of the Managing Board to cause JHI NV to acquire shares in JHI NV's capital, such on terms substantially identical as the September 17, 2004 authorization.

### ***Reduction of Share Capital***

Upon the proposal of our Joint Board, our shareholders as a group have the power to effect a reduction of share capital by deciding to (i) cancel shares, or depositary receipts related to shares, acquired by us in our own share capital, or (ii) to reduce the nominal value of our shares, subject to applicable statutory provisions, with or without a partial repayment or release. In case of a partial repayment or release, these must be made *pro rata* to all shares. The *pro rata* requirements may be waived by agreement of all shareholders concerned.

### ***Shareholders Meetings and Voting Rights***

Each shareholder, person entitled to vote and CUPS holder (but not an ADR holder) has the right to attend general meetings of shareholders, either in person or by proxy, to address shareholder meetings and, in the case of shareholders and other persons entitled to vote (for instance, certain pledge holders), to exercise voting rights, subject to the provisions of our Articles of Association. Meetings of shareholders are held in The Netherlands at least annually, within six months after the close of each of our fiscal years. These meetings take



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place in either Amsterdam, The Hague, Rotterdam or Haarlemmermeer. Additional meetings of shareholders may be held as often as our Joint Board, our Managing Board or our Supervisory Board deems necessary or upon the call of (1) holders of shares of common stock jointly representing at least 5% of our issued share capital, (2) at least 100 holders of shares of common stock or one shareholder representing at least 100 CUFS holders or any relevant combination thereof so that the request of at least 100 persons is taken into account or (3) any one member of either the Managing, Joint or Supervisory Boards. Our Articles of Association also provide that an information meeting of shareholders must be undertaken prior to each general meeting, which must be held in Australia.

We give notice of each meeting of shareholders by mail and by way of an announcement in a nationally distributed newspaper in The Netherlands. Such notice is given no later than the 28th day prior to the day of the meeting and includes or is accompanied by an agenda identifying the business to be considered at the meeting. We currently are exempt from the proxy rules under the U.S. Securities Exchange Act of 1934 (the "Exchange Act"). Holders of shares of common stock represented by CUFS are provided notice of general meetings of shareholders and other communications with shareholders by us, and the ADR depositary, The Bank of New York, provides our ADR holders with such notices and communications. CHES Depositary Nominees Pty Ltd ("CDN"), or we on behalf of CDN, may deliver to CUFS holders instruction forms allowing the CUFS holders to instruct CDN how to vote at a meeting. Similarly, the ADR depositary may deliver to ADR holders instruction forms allowing the ADR holders to direct the ADR depositary on how to instruct CDN to vote at a meeting. In order for CUFS holders to attend general meetings of shareholders in person, such holders need not withdraw the shares of common stock represented by the CUFS, but must follow such rules and procedures as may be established by the CUFS Subregistrar and our share registry. CUFS holders may request CDN to appoint them as proxy for the purposes of voting the shares underlying their holding of CUFS on behalf of CDN. In order for ADR holders to attend general meetings of shareholders in person, such holders will have to convert their ADRs into CUFS and, in doing so, must follow the procedures set forth in the deposit agreement and such rules and procedures as may be established by the ADR depositary.

Each share of common stock entitles the holder thereof to one vote on each matter to be voted upon by the shareholders. Holders of CUFS will be entitled to attend and to speak, but not vote, at our shareholders meetings. A CUFS holder may follow instructions set out in a relevant Notice of Meeting to have the registered shareholder, CDN, appoint the CUFS holder as a proxy of CDN to vote their CUFS holding at the relevant meeting of shareholders. Holders of ADRs are not entitled to attend or speak, nor vote, at our general meetings of shareholders.

Unless otherwise required by our Articles of Association or Dutch law, resolutions of the general meeting of shareholders will be validly adopted by an absolute majority of the votes cast at a meeting at which at least 5% of our issued share capital is present or represented. Except where expressly stated otherwise in this Form 20-F, all references here and elsewhere herein to actions by the shareholders, or shareholders as a group, are references to actions taken by way of such a resolution at a meeting of shareholders.

Dutch law and our Articles of Association currently do not impose any limitations on the rights of persons who are not resident of The Netherlands to hold or vote shares of common stock, solely as a result of such non-resident status.

### *Annual Report*

Our fiscal year runs from April 1 through March 31. Dutch law requires that within five months after the end of our fiscal year, unless the general meeting of shareholders has extended this period for a maximum of six months, our Managing Board must make available to our shareholders a report with respect to that fiscal year. This report must include the financial statements and a report of an independent accountant. The annual report must be submitted to the shareholders for adoption. The annual report, including the management report, is prepared in English and, in the case of the JHI NV and its subsidiaries' consolidated accounts, according to U.S. GAAP, and in the case of JHI NV's accounts, according to accounting principles generally accepted in The Netherlands ("Dutch GAAP").

### ***Indemnification***

Our Articles of Association provide that we shall generally indemnify any person who is or was a member of our Managing, Supervisory or Joint Boards or one of our employees, officers or agents, and who 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 nonetheless.

### ***Dividends***

All calculations to determine the amounts available for dividends or other distributions are based on our statutory accounts, which are, as a holding company, different from our consolidated accounts and which are prepared in accordance with Dutch GAAP because we are a Dutch company. Because we are a holding company and have limited operations of our own, we are largely dependent on dividends or other distributions from our subsidiaries to fund any cash dividends.

The profits of JHI NV in any financial year, if any, shall first be retained by way of a reserve in such amount as determined by our Supervisory Board. The remaining portion of the profits shall be at the disposal of our Joint Board for further allocation to our reserves or, if permitted by Dutch law and our Articles of Association, be made available for distribution as a dividend to the holders of shares of common stock, or a combination thereof. Our Joint Board may also declare interim dividends as permitted by Dutch law and our Articles of Association.

We may not make any distribution, whether out of our profits as an interim dividend, out of our general share premium reserve or out of any other reserves that are available for shareholder distributions under Dutch law, if the distribution would reduce shareholders' equity to an amount less than the sum of the paid and called up part of our issued share capital, plus certain reserves that are required to be maintained by Dutch law and our Articles of Association. Distributions may, at the discretion of our Joint Board, be made in cash or in shares or other securities, such as a stock dividend, provided that our shareholders as a group are authorized to make distributions in shares or other securities, if and so long as our Supervisory Board has not been delegated the authority to issue shares and rights to subscribe for shares. See "Issuance of Shares; Preemptive Rights."

Cash dividends and other distributions that have not been collected within five years and two days after the date on which they became due and payable will revert to us.

JHIL historically paid dividends to its shareholders. JHI NV's Joint Board determines whether to declare a dividend and the amount of any such dividend. The Joint Board also determines the record dates at which time registered holders of our shares, including the CHESSE Depository Nominee issuing CUFS to the ADR depository, will be entitled to dividends and sets the payment dates. Dividends are declared payable to our shareholders in U.S. dollars. The ADR Depository (Bank of New York) receives dividends in U.S. dollars directly from JHI NV on each CUFS dividend payment date and will distribute any dividend to holders of ADRs in U.S. dollars pursuant to the terms of the deposit agreement. Other CUFS holders registered at a dividend record date are paid their dividend on each CUFS dividend payment date in the equivalent amount of Australian dollars, as determined by the prevailing exchange rate shortly after the CUFS dividend record date.

### ***Amendment of Articles of Association***

Our Articles of Association may be amended by our shareholders by resolution approved by 75% of the votes cast at a general meeting of shareholders at which at least 5% of our issued share capital is present or represented.

### ***Liquidation Rights***

In the event of our dissolution and liquidation, and after we have paid all debts and liquidation expenses, all assets available for distribution shall be distributed to our holders of shares of common stock *pro rata* based on the nominal amount paid upon the shares of common stock held by such holders. As a holding company, our sole material assets are the capital stock of our subsidiaries. Therefore, in the event of a dissolution or liquidation, we will either distribute the capital stock of our subsidiaries or sell such stock and distribute the net proceeds thereof, or liquidate such subsidiaries and distribute the net proceeds thereof, after satisfying our liabilities.

### ***Limitations on Right to Hold Common Stock***

Subject to certain exceptions, our Articles of Association prohibit the holding of shares of our common stock if, because of an acquisition of a relevant interest (including in the form of shares of our common stock, CUFSS or ADRs) in such shares: (1) the number of shares of our common stock in which any person, directly or indirectly, acquires or holds a relevant interest increases from 20% or below to over 20% or from a starting point that is above 20% and below 90% of the issued and outstanding share capital of JHI NV or (2) the voting rights which any person, directly or indirectly, is entitled to exercise at a general meeting of shareholders increase from 20% or below to over 20% or from a starting point that is above 20% and below 90% of the total number of such voting rights which may be exercised by any person at a general meeting of shareholders. The purpose of this prohibition is to ensure that the principles which underpin the Australian Corporations Act 2001 takeover regime are complied with in a change of control, namely that: (1) the acquisition of control over the Company takes place in an efficient, competitive and informed market; (2) the holders of the shares of our common stock or CUFSS and our Managing Board, Joint Board and Supervisory Board know the identity of any person who proposes to acquire a substantial interest in the Company, have a reasonable time to consider the proposal, and are given enough information to enable them to assess the merits of the proposal and (3) as far as practicable, the holders of the shares of our common stock or CUFSS *inter alia* all have a reasonable and equal opportunity to participate in any benefits accruing to the holders through any proposal under which a person would acquire a substantial interest in the Company. The exceptions to this prohibition set forth in our Articles of Association generally include:

- acquisitions that result from acceptances under a takeover bid, which complies with the Articles of Association, including the principles set forth above;
- acquisitions which result in a person's voting power increasing by not more than 3% in a six-month period;
- acquisitions which are consistent with the principles set forth above, conform to the other takeover principles set out in the Articles of Association (adjusting those principles as appropriate to meet the particular circumstances of the acquisitions) and have received the prior approval of the Supervisory Board; and
- acquisitions approved at a general meeting of shareholders, subject to certain requirements being satisfied in relation to voting and the provision of information.

The prohibition does not apply to holdings by the CUFSS depository, CDN, of our shares as custodian for the CUFSS holders but will apply to CDN where another person holds a relevant interest thereby constituting a breach of the provisions. If a person has a relevant interest that constitutes a breach of the prohibition, JHI NV has several powers available to it under our Articles of Association. These include powers to require the disposal of our common stock, disregard the exercise of votes and suspend dividend rights. These powers will only extend to that number of shares of common stock which result in the prohibition being breached.

The Supervisory Board may cause JHI NV to exercise these powers if JHI NV has first obtained a judgment from a court of competent jurisdiction that a breach of the prohibition has occurred and is continuing. Alternatively, these powers may also be exercised without having recourse to the courts if certain procedures in relation to obtaining legal advice are followed. Our right to exercise these powers by complying with these procedures must be renewed by shareholder approval every five years or such powers will lapse. If

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renewed, confirmation of this renewal must be made by lodgement of a declaration by the Joint Board with the relevant authority in accordance with Dutch law.

Furthermore, if JHI NV becomes subject to the law of any jurisdiction, which applies so as to regulate the acquisition of control and the conduct of any takeover of the Company, JHI NV shall consult promptly with the ASX to determine whether, in the light of the application of such law:

- (i) ASX requires an amendment to the takeover provisions in our Articles of Association to comply with the ASX Listing Rules as then in force; or
- (ii) any waiver of the ASX Listing Rules permitting the inclusion of the takeovers provisions has ceased to have effect.

In either case, the Managing Board shall put to a general meeting of shareholders a proposal to amend our Articles of Association so as to make them, to the fullest extent permitted by law, consistent with the ASX Listing Rules.

Although these provisions of our Articles of Association may help to ensure that no person may acquire voting control of us without making an offer to all shareholders, these provisions may also have the effect of delaying or preventing a change in control of the Company.

### ***Disclosure of Holdings***

Holders of shares of our common stock, including those shares represented by CUFS or ADRs, may become subject to notification obligations under the Dutch 1995 Act on the Supervision of the Securities Trade (*Wet toezicht effectenverkeer* 1995, the “Dutch Securities Act”). Those obligations are summarized below. You are advised to consult your own legal advisers to determine whether the obligations apply to you.

Under the Dutch Securities Act, certain persons must notify the Netherlands Authority for the Financial Markets (the “AFM”) or “*Stichting Autoriteit Financiële Markten*” of any transaction in our shares of our common stock, CUFS, ADRs or ADSs or related securities. Notification must be made within 10 days of the end of the calendar month in which the transaction was made, using a form that can be obtained from the AFM (P.O. Box 11723, 1001 GS Amsterdam, The Netherlands, telephone +31 (20) 553 52 00). The AFM keeps a public register of all notifications received.

Persons who must notify the AFM of transactions in our shares, ADRs or related securities include:

- persons who directly or indirectly hold more than 25% of JHI NV’s outstanding share capital;
- managing and supervisory directors of such greater than 25% shareholders; and
- the spouses of the persons referred to above, relations by blood or affinity to the first degree and other persons who share a household with these persons, and relations by blood or affinity to the first degree who do not share a household with these persons but hold at least 5% of our shares or will obtain this percentage through the transaction.

In case of non-observance of the notification obligations of the Dutch Securities Act, criminal (including fines and imprisonment) or administrative sanctions (including fines) may be imposed.

Further pursuant to our Articles of Association, shareholders are required to notify us of acquisitions of 5% or more of our outstanding securities and of any further change of 1% or more of our outstanding securities. In addition, pursuant to our Articles of Association, we have the power to require our shareholders and CUFS holders to provide to us information about the identity of persons who have relevant interests in our securities and the details of that interest. These provisions are intended to mirror the tracing of beneficial ownership provisions of the Australian Corporations Act 2001, which would not have applied statutorily to us as a Dutch company absent a specific provision in our Articles of Association.

Finally, shareholders are subject to beneficial ownership reporting disclosure requirements under U.S. securities laws, including the filing of beneficial ownership reports on Schedules 13D and 13G with the U.S. Securities and Exchange Commission (the “SEC”). The SEC’s rules require all persons who

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beneficially own more than 5% of a class of securities registered with the SEC to file either a Schedule 13D or 13G. This filing requirement applies to all holders of our shares of common stock, ADRs or CUFS because our securities have been registered with the SEC. The number of shares of common stock underlying ADRs and CUFS is used to determine whether a person beneficially owns more than 5% of the class of securities. This beneficial ownership-reporting requirement applies whether or not the holders are U.S. residents. The decision of whether to file a Schedule 13D or a Schedule 13G will depend primarily on the nature of the beneficial owner and the circumstances surrounding the person's beneficial ownership. A copy of the rules and regulations relating to the reporting of beneficial ownership with the SEC, as well as Schedules 13D and 13G, are available on the SEC's website at [www.sec.gov](http://www.sec.gov).

### **Material Contracts**

On April 25, 2002, James Hardie Inc. and James Hardie Gypsum, Inc. entered into the Continued Mining and Reclamation agreement whereby James Hardie Inc. granted to James Hardie Gypsum, Inc. continuing mining rights with respect to our gypsum mine located in Las Vegas, Nevada for a maximum of 18 months, with a further period of six months to remove stockpiled ore and equipment. We had previously contracted to sell the Las Vegas mine and associated properties to a third party in June 2001, and that sale was completed in March 2003.

*Notes.* In November 1998, we issued \$225.0 million of noncollateralized notes as part of a seven-tranche private placement facility. Principal repayments are due in seven installments on specified dates that commence on November 5, 2004 and end on November 5, 2013. The tranches bear fixed interest rates of 6.86%, 6.92%, 6.99%, 7.05%, 7.12%, 7.24% and 7.42%, respectively. Interest is payable in May and November each year. The notes are issued by James Hardie International Finance B.V. ("JHIF BV") and JHI NV guarantees the principal and interest of the notes. Effective December 23, 2002, the note purchase agreement was amended to, among other matters, modify certain covenants in connection with the sale of our Gypsum business in April 2002, and, in connection with this amendment, we prepaid \$60.0 million in principal amount of the notes. As a result of the early retirement, we incurred a \$9.9 million make-whole payment charge which was charged to interest expense during the year ended March 31, 2003.

*Revolving Loan Facility.* Under the Revolving Loan Agreements among JHIF BV as borrower, JHI NV as guarantor, and James Hardie N.V. and James Hardie U.S. Funding Inc., as retiring guarantors, and certain lenders thereto, we have an Australian dollar-denominated noncollateralized revolving loan facility providing for borrowings up to A\$200.0 million that can be repaid and redrawn until maturity in November 2006. Interest is recalculated at the commencement of each drawdown period based on the US\$ LIBOR or the average Australian bank bill rate plus the margins of individual lenders. During fiscal year 2004, we paid \$0.4 million in commitment fees. As of March 31, 2004, there was \$152.0 million (A\$200.0 million) available under this revolving loan facility. This loan facility was novated to the current parties on December 16, 2002.

*Stand-by Loan Facility.* Under the 364 Day Standby Loan Agreements among JHIF BV, as borrower, JHI NV as guarantor, and James Hardie Australia Investco Pty Limited, James Hardie N.V. and James Hardie U.S. Funding Inc., as retiring guarantors, and certain lenders thereto, we have short-term noncollateralized stand-by loan facilities that allow us to borrow up to \$117.5 million. As of March 31, 2004, the loan facilities had a maturity date of October 30, 2004 and we had not drawn down any of the available facilities. During April 2004, we renegotiated the facilities to extend the maturity date to April 30, 2005. Interest is recalculated at the commencement of each draw-down period based on either the US\$ LIBOR or the average A\$ bank bill bid rate plus the margins of the individual lenders and is payable at the end of each draw-down period. During fiscal year 2004, we paid \$0.2 million in commitment fees. JHI NV guarantees the principal and interest under the standby loans. This loan facility was novated to the current parties on December 16, 2002.

### **Exchange Controls**

There are no legislative or other legal provisions currently in force in The Netherlands or arising under our Articles of Association restricting remittances to our security holders not resident in The Netherlands.

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Cash dividends payable in U.S. dollars on our common stock may be officially transferred from The Netherlands and converted into any other convertible currency.

There are no limitations, either by Dutch law or in our Articles of Association, on the right of non-residents of The Netherlands to hold or vote our common stock.

### **Taxation**

The following summarizes the material Dutch and U.S. tax consequences of an investment in shares of our common stock. This summary does not address every aspect of taxation relevant to a particular investor subject to special treatment under any applicable law, and is not intended to apply in all respects to all categories of investors. In addition, except for the matters discussed under “Netherlands Taxation,” this summary does not consider the effect of other foreign tax laws or any state, local or other tax laws that may apply to an investment in shares of our common stock. This summary assumes that we will conduct our business in the manner described in this annual report. Changes in our organizational structure or the manner in which we conduct our business may invalidate all or parts of this summary. The laws on which this summary is based could change, perhaps with retroactive effect, and any law changes could invalidate all or parts of this summary. We will not update this summary for any law changes after the date of this annual report.

This discussion does not bind either the U.S. or Dutch tax authorities, or the courts of those jurisdictions. Except as noted, we have not sought a ruling nor will we seek a ruling of the U.S. or Dutch tax agencies about matters in this summary. We cannot assure you that such tax agencies will concur with the views in this summary concerning the tax consequences of the purchase, ownership or disposition of our common stock, or that any reviewing judicial body in the United States or The Netherlands would likewise concur.

### **PROSPECTIVE INVESTORS SHOULD CONSULT THEIR TAX ADVISORS REGARDING THE PARTICULAR TAX CONSEQUENCES OF THEIR ACQUIRING, OWNING AND DISPOSING OF OUR COMMON SHARES, INCLUDING THE EFFECT OF ANY FOREIGN, STATE OR LOCAL TAXES.**

#### *United States Taxation*

The following is a summary of the material U.S. federal income tax consequences generally applicable to “U.S. Shareholders” (as defined below) who invest in shares of our common stock and hold the shares as capital assets. For purposes of this summary, “U.S. Shareholders” means: (1) citizens or residents of the United States (as defined for U.S. federal income tax purposes); (2) corporations created or organized in or under the laws of the United States or any of its political subdivisions; (3) estates whose income is subject to U.S. federal income taxation regardless of its source and (4) trusts if (i) a court in the United States can exercise primary supervision over the administration of the trust and (ii) one or more U.S. persons can control all of the substantial decisions of the trust.

This summary does not comprehensively describe all possible tax issues that could influence a current or prospective U.S. Shareholder’s decision to buy or sell shares of our common stock. In particular, this summary does not discuss: (1) the tax treatment of special classes of U.S. Shareholders, such as financial institutions, life insurance companies, tax exempt organizations, tax-qualified employer plans and other tax-qualified or qualified accounts, investors liable for the alternative minimum tax, dealers in securities, shareholders who hold shares of our common stock as part of a hedge, straddle, or other risk reduction arrangement, or shareholders whose functional currency is not the U.S. dollar; (2) the tax treatment of U.S. Shareholders who own (directly or indirectly by attribution through certain related parties) 10% or more of our voting stock and (3) the application of other U.S. federal taxes, such as the U.S. federal estate tax. The summary is based on the Internal Revenue Code of 1986, as amended (the “Code”), applicable Treasury regulations, judicial decisions and administrative rulings and practice, all as of the date of this annual report.

*Treatment of ADRs.* For U.S. federal income tax purposes, a holder of an ADR is considered the owner of the shares of stock represented by the ADR. Accordingly, except as otherwise noted, references in this

summary to ownership of shares of our common stock includes ownership of the shares of our common stock underlying the corresponding ADRs.

*Taxation of Distributions.* The tax treatment of a distribution on shares of our common stock held by a U.S. Shareholder depends on whether such distribution is from our current or accumulated earnings and profits (as determined under U.S. federal income tax principles). To the extent a distribution is from our current or accumulated earnings and profits, a U.S. Shareholder will include such amount in gross income as a dividend. To the extent a distribution exceeds our current and accumulated earnings and profits, a U.S. Shareholder will treat such amount first as a non-taxable return of capital to the extent of the U.S. Shareholder's tax basis in such shares, and any excess amount will be treated and taxed as a capital gain. See the discussion of "Capital Gains Rates" below. Notwithstanding the foregoing described treatment, we do not intend to maintain calculations of our current and accumulated earnings and profits. Dividends received on shares of our common stock will not qualify for the inter-corporate dividends received deduction.

Distributions to U.S. Shareholders that are treated as dividends may be subject to a reduced rate of tax under recently enacted U.S. tax laws. For tax years beginning after December 31, 2002 and before January 1, 2009, "qualified dividend income" is subject to a maximum tax rate of 15%. "Qualified dividend income" includes dividends received from a "qualified foreign corporation." A "qualified foreign corporation" includes (1) a foreign corporation that is eligible for the benefits of a comprehensive income tax treaty with the U.S. that contains an exchange of information program and (2) a foreign corporation that pays dividends with respect to shares of its stock that are readily tradable on an established securities market in the U.S. We believe that we are, and will continue to be, a "qualified foreign corporation" and that dividends we pay with respect to our shares will qualify as "qualified dividend income." To be eligible for the 15% tax rate, a U.S. Shareholder must hold our shares un-hedged for a minimum holding period (generally, 61 days during the 121-day period beginning on the date that is 60 days before the ex-dividend date of the distribution). Although we believe we presently are, and will continue to be, a "qualified foreign corporation," we cannot guarantee that we will so qualify. For example, we will not constitute a "qualified foreign corporation" if we are classified as a 1) a "passive foreign investment company" (discussed below) in either the taxable year of the distribution or the preceding tax year or 2) a "foreign investment company" or a "foreign personal holding company" (each discussed below) in either the taxable year of the distribution or the preceding tax year, but only for our tax years beginning before January 1, 2005.

Distributions to U.S. Shareholders that are treated as dividends are generally considered income from sources outside the United States and foreign source "passive" income for foreign tax credit purposes. However, if U.S. persons own, directly or indirectly, 50% or more of our shares of common stock, then a portion of the dividends (based on the proportion of our income that is from U.S. sources) may be treated as sourced within the U.S. This 50% ownership rule could potentially limit a U.S. shareholder's ability to use foreign tax credits against the shareholder's U.S. tax liability. In addition, special rules will apply to determine a U.S. Shareholder's foreign tax credit limitation if a dividend distributed with respect to our shares constitutes "qualified dividend income" (as described above). See the discussion of "Credit of Foreign Taxes Withheld" below.

Any amounts of foreign currency we distribute on shares of our common stock generally will equal the fair market value in U.S. dollars of such foreign currency on the date of receipt. A U.S. Shareholder will have a tax basis in the foreign currency equal to its U.S. dollar value on the date of receipt, and will recognize gain or loss when it sells or exchanges the foreign currency. Such gain or loss is taxable as ordinary income or loss from U.S. sources. U.S. Shareholders who are individuals will not recognize gain upon selling or exchanging foreign currency if the gain does not exceed \$200 and the sale or exchange constitutes a "personal transaction" under the Internal Revenue Code. The amount of any property other than money that we distribute with respect to shares of our common stock will equal its fair market value on the date of distribution.

*Credit of Foreign Taxes Withheld.* Under certain conditions, including a requirement to hold shares of our common stock un-hedged for a certain period, and subject to limitation, a U.S. Shareholder may claim a credit against the U.S. shareholder's federal income tax liability for the foreign tax owed and withheld or paid with respect to taxable dividends on its shares. Alternatively, a U.S. Shareholder may deduct the amount of

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withheld foreign taxes, but only for a year for which the U.S. Shareholder elects to deduct all foreign income taxes. Complex rules determine how and when the foreign tax credit applies, and U.S. Shareholders should consult their tax advisors to determine whether and to what extent they may claim foreign tax credits.

Under certain conditions, we may retain a portion of Netherlands taxes we withhold from dividends paid to our shareholders, rather than pay that portion of the withheld taxes to The Netherlands Tax Administration. Uncertainty exists whether a U.S. Shareholder can properly claim as a foreign tax credit any Netherlands withholding taxes we retain. As a result, U.S. Shareholders should consult their tax advisors regarding their ability to do so. If unable to claim a foreign tax credit for those tax amounts, a U.S. shareholder still may deduct them for U.S. federal income tax purposes, but only for a year for which the U.S. Shareholder elects to deduct all foreign income taxes. The conditions under which we could retain Netherlands withholding taxes are unlikely to occur, but upon request, we will inform U.S. Shareholders whether we retained any Dutch tax withheld from distributions on shares of our common stock.

*Sale or Other Disposition of Shares.* A U.S. Shareholder will recognize capital gain or loss on the sale or other taxable disposition of shares of our common stock, equal to the difference between the U.S. Shareholder's adjusted tax basis in the shares sold or disposed of and the amount realized on the sale or disposition. Individual U.S. Shareholders may benefit from lower marginal tax rates on capital gains recognized on shares sold, depending on the U.S. Shareholder's holding period of the shares. See the discussion of "Capital Gains Rates" below. Capital losses not offset by capital gains are subject to limitations on deductibility. The gain or loss from the sale or other disposition of shares of our common stock generally will be treated as income from sources within the United States for foreign tax credit purposes, unless the U.S. Shareholder is a U.S. citizen residing outside the United States and certain other conditions are met.

*Capital Gains Rates.* For individual U.S. Shareholders, the tax rates applicable to capital gain and ordinary income may vary substantially. For calendar year 2003, the highest marginal income tax rate that could apply to the ordinary income of an individual U.S. Shareholder (disregarding the effect of limitations on deductions) is 35%. In contrast, for taxable years ending after May 6, 2003, a maximum rate of 15% applies to any net capital gain of an individual U.S. Shareholder recognized on or after May 6, 2003 if such gain is attributable to the sale or exchange of capital assets held more than one year. Gain attributable to the sale or exchange of capital assets held one year or less is short-term capital gain, taxable at the same rates as ordinary income. In addition, a maximum rate of 15% applies to "qualified dividend income" (as described above).

*Controlled Foreign Corporation Status.* If more than 50% of the voting power of all classes of our stock or the total value of our stock is owned, directly or indirectly, by citizens or residents of the United States, United States domestic partnerships and corporations or estates or trusts other than foreign estates or trusts, each of whom owns 10% or more of the total combined voting power of all classes of our stock entitled to vote or the total value of our stock ("10-Percent Shareholder"), we could be treated as a "controlled foreign corporation" ("CFC") under Subpart F of the Code. This classification would, among other consequences, require 10-Percent Shareholders to include in their gross income, their pro rata share of our "Subpart F income" (as specifically defined by the Code) and our earnings invested in U.S. property (as specifically defined by the Code).

In addition, gain from the sale or exchange of our common shares by a U.S. person who is or was a United States shareholder (as defined in the Code) at any time during the five-year period ending with the sale or exchange is treated as dividend income to the extent of earnings and profits of the company attributable to the stock sold or exchanged. Under certain circumstances, a corporate shareholder that directly owns 10% or more of our voting shares may be entitled to an indirect foreign tax credit for amounts characterized as dividends under the Code.

If we were classified as both a Passive Foreign Investment Company, as described below, and a CFC, generally we would not be treated as a Passive Foreign Investment Company ("PFIC") with respect to 10-Percent Shareholders. We believe that we are not, nor will we become, a CFC.

*Passive Foreign Investment Company Status.* Special U.S. federal income tax rules apply to U.S. Shareholders owning capital stock of a PFIC. A foreign corporation will be a PFIC for any taxable year



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in which 75% or more of its gross income is passive income or in which 50% or more of the average value of its assets are considered “passive assets” (generally assets that generate passive income or assets held for the production of passive income). For these purposes, passive income generally excludes interest, dividends or royalties from related parties.

If we were a PFIC, each U.S. Shareholder would likely face increased tax liabilities (possibly including an interest charge) upon the sale or other disposition of shares of our common stock or upon receipt of “excess distributions,” unless the U.S. Shareholder elects (1) to be taxed currently on its *pro rata* portion of our income, regardless of whether such income was distributed in the form of dividends or otherwise, or (2) to mark its shares to market by accounting for any difference between such shares’ fair market value and adjusted basis at the end of the taxable year by either an inclusion in income or a deduction from income. Because of the manner in which we operate our business, we are not, nor do we expect to become, a PFIC.

*Foreign Personal Holding Company Status.* For our tax years beginning before January 1, 2005, special U.S. federal income tax rules apply to U.S. Shareholders owning shares of a “foreign personal holding company” (a “FPHC”). A foreign corporation will be a FPHC if (1) at any time during its taxable year, five or fewer individuals who are U.S. citizens or residents own (directly or indirectly by attribution through certain related parties) more than 50% of the corporation’s capital stock (by either voting power or value) (the “Shareholder Test”) and (2) the corporation derives at least 60% of its gross income (reduced to at least 50% after the initial year of qualification under certain circumstances), as adjusted, for the taxable year from certain passive sources (the “Income Test”). We and certain of our subsidiaries meet and will likely continue to meet the Income Test, because most of our income derives from interest or dividends. However, we will fail the Shareholder Test, because U.S. citizens or residents do not own more than 50% of the shares of our common stock. Therefore, neither we nor any of our subsidiaries are a FPHC for U.S. federal income tax purposes.

If we or any of our subsidiaries were a FPHC, U.S. Shareholders (including certain indirect holders) would be required to include in gross income, as a dividend, their *pro rata* share of the undistributed taxable income (as specifically adjusted) of the FPHC, if they were holders on the last day of our taxable year (or, if earlier, the last day on which the FPHC satisfies the Shareholder Test), but such *pro rata* share would increase their basis in their shares by a corresponding amount. In addition, if we or any of our subsidiaries were to become a FPHC, U.S. persons who acquire shares of our common stock from decedents would not receive a “stepped-up” basis in such shares. Instead, such holders would have a tax basis in such shares equal to the lesser of the decedent’s basis or fair market value. These special rules regarding foreign personal holding companies were recently repealed by the American Job Creation Act of 2004 (the “Act”) and these rules will not apply to our tax years beginning after December 31, 2004.

*Foreign Investment Company Status.* As described above, dividends we pay on our stock after December 31, 2002 are subject to a tax rate of no more than 15%, provided we are a “qualified foreign corporation” and the required un-hedged holding period is satisfied. We will not qualify for that status if, among other reasons, we are a “foreign investment company” in either the taxable year of the distribution or the preceding tax year. A foreign investment company is a foreign corporation that is (i) registered under the Investment Company Act of 1940 as a management company or as a unit investment trust or (ii) engaged primarily in the business of investing, reinvesting, or trading in securities, commodities, or derivative positions in securities or commodities, at a time when U.S. persons directly, indirectly, or constructively own more than 50% of either its total voting power or total stock value. Because of the manner in which we operate our business, we are not, nor do we expect to become, a foreign investment company. These special rules regarding foreign investment companies were recently repealed by the Act, and these rules will not apply to our tax years beginning after December 31, 2004.

*U.S. Federal Income Tax Provisions Applicable to Non-United States Holders.* Holders of shares of our common stock who are not U.S. Shareholders (“Non-U.S. Shareholders”) generally will not be subject to U.S. federal income taxes, including U.S. withholding taxes, on any gain realized on a sale, exchange or other disposition of the shares unless (1) such gain is effectively connected with the conduct by the Non-U.S. Shareholder of a trade or business in the United States or (2) in the case of gain realized by a

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Non-U.S. Shareholder who is an individual, the Non-U.S. Shareholder is present in the United States for 183 days or more in the taxable year in which the sale or other disposition occurs and certain other conditions are met. A Non-U.S. Shareholder generally will not be subject to U.S. federal income or withholding tax on dividends received with respect to shares of our common stock, unless such income is effectively connected with the conduct by the Non-U.S. Shareholder of a trade or business in the United States.

*U.S. Information Reporting and Backup Withholding.* Dividend payments on shares of our common stock and proceeds from the sale, exchange, or redemption of shares of our common stock may be subject to information reporting to the Internal Revenue Service and possible U.S. backup withholding at a current rate of 30%. Backup withholding will not apply to a shareholder who furnishes a correct taxpayer identification number or certificate of foreign status and makes any other required certification or who is otherwise exempt from backup withholding. U.S. persons who are required to establish their exempt status generally must provide such certification on a properly completed Internal Revenue Service Form W-9 (Request for Taxpayer Identification Number and Certification). Non-U.S. shareholders generally will not be subject to U.S. information reporting or backup withholding. However, such shareholders may be required to provide certification of non-U.S. status in connection with payments received in the United States or through certain U.S.-related financial intermediaries.

Backup withholding is not an additional tax. Amounts withheld as backup withholding may be credited against a shareholder's U.S. federal income tax liability, and a shareholder may obtain a refund of any excess amounts withheld under the backup withholding rules by filing the appropriate claim for refund with the Internal Revenue Service and furnishing any required information.

### ***Netherlands Taxation***

The following is a summary of the material Dutch tax consequences generally applicable to an investment in shares of our common stock by a beneficial owner who is neither a citizen, resident nor deemed resident of The Netherlands. This summary does not comprehensively describe all possible tax issues that could influence a prospective shareholder's decision to acquire shares of our common stock. For example, this summary omits from discussion Netherlands' gift, estate and inheritance taxes. The summary is based on the Dutch tax legislation, published case law and other applicable regulations as at the date of this annual report, any of which may change possibly with retroactive effect.

*Treatment of ADRs.* In general, for Netherlands tax purposes, an owner of depositary receipts is considered the owner of the shares of stock represented by depositary receipts. Accordingly, except as otherwise noted, references in this section of the annual report to ownership of shares of our common stock includes ownership of the shares underlying the corresponding ADRs.

*Dutch Dividend Withholding Tax.* The Netherlands imposes a 25% withholding tax on amounts we distribute as dividends. The term "dividends" for this purpose includes, but is not limited to:

- (1) direct or indirect distributions in cash or in kind, deemed or constructive distributions, and repayments of additional paid-in capital not recognized as such for Netherlands dividend withholding tax purposes;
- (2) liquidation proceeds, proceeds of redemption of shares of common stock or, generally, except if a certain specific exemption applies, consideration paid by us for the repurchase of shares of common stock in excess of the average paid-in capital recognized for Netherlands dividend withholding tax purposes;
- (3) the par value of shares of common stock issued to a holder of shares of common stock or an increase of the par value of shares of common stock, as the case may be, to the extent that no contribution to capital, recognized for Netherlands dividend withholding tax purposes, was made or will be made; and
- (4) the partial repayment of paid-in capital, recognized for Netherlands dividend withholding tax purposes, if and to the extent that there are net profits ("zuivere winst") for dividend withholding tax purposes, unless the general meeting of our shareholders has previously resolved to make such repayment and provided that the par value of the shares of common stock concerned has been reduced by a corresponding

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amount by changing our Articles of Association. As a result of contributions in kind (i.e., in shares) to our paid-in capital made prior to the listing of our common shares, a portion of such paid-in capital may not be recognized for Dutch dividend withholding tax purposes. Repayment of paid-in capital in the manner described above may consequently be subject to dividend withholding tax to the extent that dividends have been received from non-Netherlands subsidiaries out of profits generated after the above-mentioned contributions in kind.

If a double taxation convention is in effect between The Netherlands and the country of residence of a non-resident shareholder and depending on the terms of that double taxation convention, such non-resident shareholder may be eligible for a full or partial exemption from, or refund of, Dutch dividend withholding tax.

Under the U.S.-NL Treaty, dividends that we pay to citizens and residents of the United States who are the beneficial owners of shares of our common stock (other than an exempt organization or exempt pension organization) are generally eligible for a reduction of the 25% Netherlands withholding tax to 15%, or in the case of certain U.S. corporate shareholders owning at least 10% of our voting power, 5%, unless the shares of common stock held by such residents form part of the business property of a business carried on through a permanent establishment in The Netherlands. The same exception applies if the beneficial owner of the shares, being a citizen or resident of the United States, performs independent personal services from a fixed base situated in The Netherlands and the holding of the shares of common stock in respect of which the dividends are paid pertains to such fixed base in The Netherlands. The U.S.-NL Treaty also exempts from tax dividends we pay to exempt pension organizations and exempt organizations, as defined under the treaty. A shareholder of our common stock, other than an individual, will be ineligible for the benefits of the U.S.-NL Treaty unless the shareholder satisfies certain tests under the limitation on benefits provisions of Article 26 of the U.S.-NL Treaty. To prevent so-called dividend stripping, Netherlands law generally denies the treaty benefit of a reduced dividend withholding tax rate for any dividend paid to a recipient who is not the "beneficial owner" of the dividend.

To claim the reduced withholding tax rate on portfolio dividends under the U.S.-NL Treaty, a shareholder of our common stock (other than an exempt organization or exempt pension organization) must give us in duplicate a signed Form IB 92 USA before payment of the dividend. The form has a qualifying banker's affidavit, requiring a bank member of the New York Stock Exchange or the American Stock Exchange, or a member bank of the Federal Reserve System, to attest that the bank has custody of the shares of common stock, or that the bank has been shown that the common shares are property of the applicant. If the Form IB 92 USA is submitted before the dividend payment date and all relevant conditions are fulfilled, we will withhold tax from the dividend at the reduced treaty rate of 15%. If a shareholder of our common stock is unable to claim withholding tax relief in this manner, the shareholder can get a refund of excess tax withheld by filing a Form IB 92 USA, describing the circumstances that prevented the holder's claiming withholding tax relief. The holder must file the form within three years after the end of calendar year in which the tax had been levied.

A qualified exempt pension organization may obtain a full exemption from the dividend withholding tax if, before the payment of the dividend, the organization gives us in duplicate a signed Form IB 96 USA, along with the requisite banker's affidavit as described above, and includes IRS Form 6166 for the relevant year or a valid qualification certification issued by the competent Dutch tax office and complies with certain other requirements. Other qualifying exempt organizations are ineligible for relief from withholding at source but may claim a refund of the tax withheld by filing a Form IB 95 USA and complying with certain other formalities.

Holders of shares of our common stock through a depository will initially receive dividends subject to a withholding tax rate of 25%. Upon timely receipt of required documents concerning a holder's eligibility for the reduced rate under the U.S.-NL Treaty, dependent on the status of the holder, the dividend-disbursing agent (via any nominee) will pay an amount equal to 10% or 25% of the dividend to the holder.

*Taxes on Income and Capital Gains.* A shareholder of shares of our common stock will not be subject to any Netherlands taxes on income or capital gains in respect of dividends distributed by the Company or in

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respect of capital gains realized on the disposition of shares of our common stock (other than the dividend withholding tax described above), provided that:

- (1) such shareholder is neither resident nor deemed to be resident in The Netherlands, nor has elected to be subject to the rules of the Dutch Income Tax Act 2001 that apply to residents of The Netherlands;
- (2) such shareholder does not have a business or an interest in a business that is, in whole or in part, carried on through a permanent establishment or a permanent representative in The Netherlands and to which business or part of a business, as the case may be, the shares of common stock are attributable;
- (3) such shareholder does not perform independent personal services in The Netherlands giving rise to a fixed base in The Netherlands to which the shares of common stock are attributable; and
- (4) the shares of common stock owned by such shareholder do not form part of a substantial interest or a deemed substantial interest, as defined below, in the share capital of the Company or, if such shares of common stock do form part of such an interest, they form part of the assets of a business other than a Netherlands business.

Generally, a shareholder of our common stock will have a substantial interest in our shares only if the shareholder, the spouse of the shareholder, certain other relatives (including foster children), or certain persons in the household of the shareholder, alone or together, whether directly or indirectly, own or possess certain rights (e.g., the right of usufruct) in, shares of our stock representing 5% or more of the total issued and outstanding capital (or the issued and outstanding capital of any class of shares), or rights to acquire the shares, whether or not already issued, that represent at any time 5% or more of the total issued and outstanding capital (or the issued and outstanding capital of any class of shares) or the ownership of certain profit participating certificates that relate to 5% or more of the annual profit and/or to 5% or more of the liquidation proceeds. Shareholders of our common stock who do not hold a substantial interest themselves will also be subject to the "substantial interest" regime if their spouse and/or certain other relatives hold a substantial interest. A deemed substantial interest is present if a substantial interest or part of a substantial interest has been disposed of, or is deemed to have been disposed of, without recognition of a gain.

If a shareholder has a substantial interest in the shares of our common stock and is resident of a country with which The Netherlands has concluded a convention to avoid double taxation, such shareholder may, depending on the terms of such double taxation convention, be eligible for an exemption from Netherlands income tax on capital gains realized upon the disposition or deemed disposition of shares of our common stock, or to a full or partial exemption from Netherlands income tax on dividends we pay.

Under the U.S.-NL Treaty, capital gains realized by a shareholder that has a substantial interest in the shares of our common stock and is a resident of the United States (as defined in the U.S.-NL Treaty) upon the disposition of shares of our common stock, are, with certain exceptions, generally exempt from Netherlands tax.

As indicated above, a shareholder of shares of our common stock, other than an individual, will be ineligible for the benefits of the U.S.-NL Treaty if such shareholder does not satisfy the limitation on benefits provisions under Article 26 of the U.S.-NL Treaty.

*Distribution Surtax.* As a result of a major tax reform effective as of January 1, 2001, we became subject to a 20% corporate income tax on "excessive" dividends we distribute from January 1, 2001 through December 31, 2005 (the "Surtax").

Dividends (to be understood in the broadest sense including distributions in cash, liquidation proceeds and proceeds from a share repurchase) are considered to be excessive if, and to the extent that, in a certain calendar year the total amount we distribute as dividends exceeds the highest of the following amounts:

- (1) 4% of our market capitalization at the beginning of the relevant calendar year;
- (2) twice the amount of the average annual dividends (exclusive of extraordinary distributions) by reference to the three calendar years immediately preceding January 1, 2001; or

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(3) our adjusted consolidated commercial result for the preceding book year.

The Surtax is not levied to the extent that the aggregate profit distributions from January 1, 2001 through December 31, 2005, exceed the balance of the assets, liabilities and provisions, calculated at fair value, reduced by the paid-in capital at the end of a taxpayer's fiscal year that ended prior to January 1, 2001. The Surtax due is reduced *pro rata* to the extent that shares of our common stock were held, at the time of the distribution of the "excessive proceeds," during an uninterrupted period of three years, by individuals or entities (other than investment institutions ("*beleggingsinstellingen*") as defined in the Dutch Corporate Income Tax Act 1969) holding at least 5% of our nominal paid-in capital, provided such individuals or legal entities are resident in The Netherlands, The Netherlands Antilles or Aruba, a Member State of the European Union or a country with which The Netherlands has concluded a convention for the avoidance of double taxation. Because any Surtax would be payable by us, this reduction will not inure to our shareholders, but to us, and therefore, indirectly to our shareholders.

We believe the Surtax does not apply to intercompany dividends and to the dividends in the reorganization that comprised our corporate restructuring in October 2001. Furthermore, we believe that the Surtax does not apply to dividends from a Dutch listed company all of whose shares are issued after January 1, 2001.

*Other Taxes and Duties.* No other Netherlands registration tax, transfer tax, stamp duty or any similar documentary tax or duty will be payable by our investors in respect of or in connection with the subscription, issue, placement, allotment or transfer of shares of our common stock.

### **Documents Available for Review**

We are subject to the reporting requirements of the Exchange Act applicable to "foreign private issuers" and in accordance therewith file reports, including annual reports, and other information with the SEC. Such reports and other information have been filed electronically with the SEC beginning November 4, 2002. The SEC maintains a site on the Internet, [www.sec.gov](http://www.sec.gov), which contains reports and other information regarding issuers that file electronically with the SEC. In addition, such reports may be obtained, upon written request, from our Company Secretary at 4th Level Atrium, unit 04-07, Strawinskyalaan 3077, 1077 ZX Amsterdam, The Netherlands or our Assistant Company Secretaries located at 26300 La Alameda, Suite 100, Mission Viejo, California 92691 and Level 3, 22 Pitt Street, Sydney, NSW 2000. Such reports and other information filed with the SEC prior to November 2002 may be inspected and copied at prescribed rates at the public reference facilities maintained by the SEC at Room 1200 450 Fifth Street, N.W., Washington, D.C. 20549, inspected at the offices of the New York Stock Exchange, Inc., 20 Broad Street, New York, New York 10005 or obtained by written request to our Corporate Secretary. Although, as a foreign private issuer, we are exempt from the rules under the Exchange Act prescribing the furnishing and content of proxy statements and annual reports to shareholders and the short-swing profit recovery provisions set forth in Section 16 of the Exchange Act, we:

- furnish our shareholders with annual reports containing consolidated financial statements examined by an independent accounting firm; and
- furnish quarterly reports for the first three quarters of each fiscal year containing unaudited consolidated financial information in filings with the SEC under Form 6-K.

### **Item 11. Quantitative and Qualitative Disclosures About Market Risk**

We have operations in foreign countries and, as a result, are exposed to foreign currency exchange rate risk inherent in purchases, sales, assets and liabilities denominated in currencies other than the U.S. dollar. We also are exposed to interest rate risk associated with our long-term debt and to changes in prices of commodities we use in production.

Our policy is to enter into derivative instruments solely to mitigate risks in our business and not for trading or speculative purposes.

**Foreign Currency Exchange Rate Risk**

We have significant operations outside of the United States and, as a result, are exposed to changes in exchange rates which affect our financial position, results of operations and cash flow.

For our fiscal year ended March 31, 2004, the following currencies comprised the following percentages of our net sales, cost of goods sold, expenses and liabilities:

	US\$	A\$	NZ\$	Other(1)
Net sales	76.3%	15.8%	4.1%	3.8%
Cost of goods sold	77.3%	15.0%	3.6%	4.1%
Expenses	68.6%	18.9%	6.3%	6.2%
Liabilities (excluding borrowings)	83.2%	9.4%	4.2%	3.2%

For our fiscal year ended March 31, 2003, the following currencies comprised the following percentages of our net sales, cost of goods sold, expenses and liabilities:

	US\$	A\$	NZ\$	Other(1)
Net sales	77.2%	15.9%	4.0%	2.9%
Cost of goods sold	79.1%	14.2%	3.4%	3.3%
Expenses	67.1%	23.6%	4.9%	4.4%
Liabilities (excluding borrowings)	83.2%	9.4%	4.2%	3.2%

(1) Comprised of Philippine Pesos, Euros and Chilean Pesos.

We purchase raw materials and fixed assets and sell some finished product for amounts denominated in currencies other than the functional currency of the business in which the related transaction is generated. In order to protect against foreign exchange rate movements, we may enter into forward exchange contracts timed to mature when settlement of the underlying transaction is due to occur. At March 31, 2004, there were no such material contracts outstanding.

**Interest Rate Risk**

We have market risk from changes in interest rates, primarily related to our borrowings. At March 31, 2004, 94% of our borrowings were fixed-rate and 6% variable-rate, as compared to 95% of our borrowings at a fixed rate and 5% at a variable rate at March 31, 2003. The large percentage of fixed-rate debt reduces the earnings volatility that would result from changes in interest rates. From time to time, we may enter into interest rate swap contracts in an effort to mitigate interest rate risk. At March 31, 2004, no interest rate swap contracts were outstanding.

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The table below presents our long-term borrowings at March 31, 2004, the expected maturity date of future principal repayments and related weighted average interest rates. For obligations with variable interest rates, we have used current interest rates and have not attempted to project future interest rates. The fair value of our outstanding debt is what we likely would have to pay over the term of the loan if we were to enter into debt on substantially the same terms today. At March 31, 2004, all of our outstanding fixed-rate and variable-rate borrowings were denominated in U.S. dollars.

### Future Principal Repayments by Expected Maturity Date

(In millions of U.S. dollars, except percentages)

	Year Ending March 31,					Thereafter	Total	Fair Value
	2005	2006	2007	2008	2009			
Fixed rate debt	\$17.6	\$25.7	\$27.1	\$ 8.1	\$46.2	\$ 40.3	\$165.0	\$186.8
Weighted-average interest rate	6.86%	6.92%	6.99%	7.05%	7.12%	7.35%	7.09%	
Variable rate debt	\$10.8	—	—	—	—	—	\$ 10.8	\$ 10.8
Weighted-average interest rate	3.24%	—	—	—	—	—	3.24%	

In addition, we have assessed the market risk for our variable-rate debt and believe that a 1% change in interest rates will increase or decrease interest expense by approximately \$0.1 million annually based on \$10.8 million of variable rate debt outstanding at March 31, 2004.

### Commodity Price Risk

Pulp is a raw material we use to produce fiber cement, and it has historically demonstrated more price sensitivity than other raw materials we use in our manufacturing process. In August 2000, we entered into a contract with a third party to hedge the price of 5,000 metric tons of pulp per month, representing approximately 50% of our production requirements at that time. The original contract term was effective from September 1, 2000 to August 31, 2005, with settlement payments due each month. On December 2, 2001, the other party filed for bankruptcy. This had the effect of terminating all outstanding swap transactions immediately prior to the bankruptcy filing. The estimated fair value at the date of termination of the pulp contract was a \$6.2 million liability and was recorded in other non-current liabilities in fiscal year 2002. Also, a current payable of \$0.6 million was recorded at March 31, 2002. In November 2002, we settled our obligation under this contract for a cash payment of \$5.8 million. Accordingly, we recorded a gain on settlement of the contract in the amount of \$1.0 million in other operating income during fiscal year 2003. Pulp prices have risen during fiscal year 2004 and we expect them to continue rising. To minimize the additional working capital requirements caused by rising pulp prices, we may seek to enter into contracts with suppliers for the purchase of pulp that could fix our pulp prices over the longer-term. However, if pulp prices do not continue rising, our cost of sales may be negatively impacted due to fixed pulp pricing over the longer-term. We have assessed the market risk for pulp and believe that, based on our most recent estimates, a \$60 per metric ton price movement in pulp prices, which represents approximately 10% of the average market pulp price in fiscal year 2004, would have had approximately a 1.5% change in cost of sales in fiscal year 2004.

### Item 12. *Description of Securities Other Than Equity Securities*

Not Required

**PART II**

**Item 13.      *Defaults, Dividend Arrearages and Delinquencies***

None

**Item 14.      *Material Modifications to the Rights of Security Holders and Use of Proceeds***

Upon the proposal of our Joint Board, our shareholders voted at our Annual General Meeting of shareholders held on August 15, 2003, to (i) amend our Articles of Association to increase the nominal value of shares, (ii) debit the share premium reserve with an amount equal to the aggregate amount of the increase for each share on issue, and (iii) subsequently amend the Articles of Association again to decrease the nominal value of shares, with the difference to be paid to shareholders as a capital return. At the Annual General Meeting, the shareholders also voted to approve the proposed procedural authorizations necessary to execute the amendments to the Articles of Association and the associated payment of the capital return. Following such shareholder vote, we executed the amended Articles of Association and effected the return on capital by paying per share the amount of Euro 13.05 cents (or its equivalent) to shareholders on November 19, 2003. In connection with the capital return, we followed all procedures and satisfied all requirements necessary to comply with Dutch law in relation to creditors' protection.

**Item 15.      *Controls and Procedures***

We carried out an evaluation, under the supervision and with the participation of our management, including our Interim Chief Executive Officer and Interim Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures as of the end of the period covered by this report. Based on that evaluation, the Interim Chief Executive Officer and Interim Chief Financial Officer concluded that, as of such date, our disclosure controls and procedures are effective to ensure that information relating to the Company (including its consolidated subsidiaries) required to be disclosed in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the applicable SEC rules and forms.

There have been no significant changes in our internal control over financial reporting during fiscal year 2004 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

**Item 16A.     *Audit Committee Financial Expert***

Our Joint Board has determined that Michael Brown, Michael Gillfillan and James Loudon are "audit committee financial experts", as such term is defined by applicable SEC rules.

**Item 16B.     *Code of Ethics***

We seek to maintain high standards of integrity and are committed to ensuring that we conduct our business in accordance with high standards of ethical behavior. In 2003 we revised and updated our already comprehensive Code of Ethics and we will continue to do so periodically. The Code of Ethics applies to all Company employees, including our principal executive and senior financial officers. This Code of Ethics is publicly available on the Corporate Governance area of our website at [www.jameshardie.com](http://www.jameshardie.com).

**Item 16C.     *Principal Accountant Fees and Services***

**Fees Paid to Our Independent Auditors**

See page F-48 in this Form 20-F for fees billed by our independent auditors in fiscal years 2004, 2003 and 2002.



**Audit Committee's Pre-Approval Policies and Procedures**

In accordance with our Audit Committee's policy and the requirements of the law, all services provided by PricewaterhouseCoopers LLP are pre-approved annually by the Audit Committee. Pre-approval includes a list of specific audit and non-audit services in the following categories: audit services, audit-related services, tax services and other services. Any additional services that we may ask our auditors to perform will be set forth in a separate document requesting Audit Committee approval in advance of the service being performed.

All of the services pre-approved by the Audit Committee are permissible under the SEC's auditor independence rules. To avoid certain potential conflicts of interest, the law prohibits a publicly traded company from obtaining certain non-audit services from its auditing firm. We obtain these services from other service providers as needed.

**Item 16D. Exemptions from Listing Standards for Audit Committees**

Not Required

**Item 16E. Purchases of Equity Securities by the Issuer and Affiliated Purchasers**

Not Required

**PART III**

**Item 18. Financial Statements**

See pages F-1 through F-48, incorporated into this annual report by reference.

**Item 19. Exhibits**

Documents filed as exhibits to this annual report:

<b>Exhibit Number</b>	<b>Description of Exhibits</b>
1.1	Articles of Association, as amended on November 5, 2003 of James Hardie Industries N.V. (English Translation)
2.1	Letter Agreement of September 6, 2001 by and between James Hardie Industries N.V. and CHESSE Depository Nominees Pty Limited, as the depository for CHESSE Units of Foreign Securities(3)
2.2	Deposit Agreement dated as of September 24, 2001 between The Bank of New York, as depository, and James Hardie Industries N.V.(2)
2.3	Note Purchase Agreement, dated as of November 5, 1998, among James Hardie Finance B.V., James Hardie N.V. and certain purchasers thereto re: \$225,000,000 Guaranteed Senior Notes(1)
2.4	Assignment and Assumption Agreement and First Amendment to Note Purchase Agreement, dated as of January 24, 2000, by and among James Hardie Finance B.V., James Hardie U.S. Funding, Inc., James Hardie N.V., James Hardie Aust Investco Pty Limited and certain noteholders thereto(1)
2.5	Second Amendment to the Note Purchase Agreement dated as of October 22, 2001, by and among, James Hardie U.S. Funding, Inc., James Hardie N.V., James Hardie Aust Investco Pty Limited, James Hardie Australia Finance Pty Limited, James Hardie International Finance B. V. and certain noteholders thereto(6)
2.6	Novation Agreement, dated August 27, 2001, relating to Amended and Restated Revolving Loan Agreement among James Hardie International Finance B.V., James Hardie N.V., James Hardie U.S. Funding Inc. and Australia and New Zealand Banking Group Limited(1)
2.7	Novation Agreement, dated August 27, 2001, relating to Amended and Restated Revolving Loan Agreement among James Hardie International Finance B.V., James Hardie N.V., James Hardie U.S. Funding Inc. and Bank One, NA(1)

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Exhibit Number	Description of Exhibits
2.8	Novation Agreement, dated August 27, 2001, relating to Amended and Restated Revolving Loan Agreement among James Hardie International Finance B.V., James Hardie N.V., James Hardie U.S. Funding Inc. and BNP Paribas(1)
2.9	Novation Agreement, dated August 27, 2001, relating to Amended and Restated Revolving Loan Agreement among James Hardie International Finance B.V., James Hardie N.V., James Hardie U.S. Funding Inc. and Australia and Westdeutsche Landesbank Girozentrale, Sydney Branch(1)
2.10	Novation Agreement, dated August 27, 2001, relating to Amended and Restated Standby Loan Agreement among James Hardie International Finance B.V., James Hardie N.V., James Hardie U.S. Funding Inc. and Australia and New Zealand Banking Group Limited(1)
2.11	Novation Agreement, dated August 27, 2001, relating to Amended and Restated Standby Loan Agreement among James Hardie International Finance B.V., James Hardie N.V., James Hardie U.S. Funding Inc. and Bank One, NA(1)
2.12	Novation Agreement, dated August 27, 2001, relating to Amended and Restated Standby Loan Agreement among James Hardie International Finance B.V., James Hardie N.V., James Hardie U.S. Funding Inc. and BBL Australia Limited(1)
2.13	Novation Agreement, dated August 27, 2001, relating to Amended and Restated Standby Loan Agreement among James Hardie International Finance B.V., James Hardie N.V., James Hardie U.S. Funding Inc. and BNP Paribas(1)
2.14	Novation Agreement, dated August 27, 2001, relating to Amended and Restated 364 Day Standby Loan Agreement among James Hardie International Finance B.V., James Hardie N.V., James Hardie U.S. Funding Inc. and Wells Fargo HSBC Trade Bank, National Association(1)
2.15	Novation Agreement, dated August 27, 2001, relating to Amended and Restated 364 Day Standby Loan Agreement among James Hardie International Finance B.V., James Hardie N.V., James Hardie U.S. Funding Inc. and Westdeutsche Landesbank Girozentrale, Sydney Branch (1)
2.16	Form of Novation Agreement, dated December 16, 2002, relating to Amended and Restated Revolving Loan Agreement among James Hardie International Finance B.V., James Hardie N.V., James Hardie U.S. Funding Inc., James Hardie Industries N.V., and each of the following banks: Australia and New Zealand Banking Group Limited; Bank One, NA; BNP Paribas; and WestLB AG, Sydney Branch(7)
2.17	Form of Novation Agreement, dated December 16, 2002, relating to Amended and Restated Standby Loan Agreement among James Hardie International Finance B.V., James Hardie N.V., James Hardie U.S. Funding Inc., James Hardie Industries N.V. and each of the following banks: Australia and New Zealand Banking Group Limited; Bank One, NA; ING Bank N.V., Sydney Branch; BNP Paribas; Wells Fargo HSBC Trade Bank, National Association; and WestLB AG, Sydney Branch(7)
2.18	Amendment Agreement to Amended and Restated Standby Loan Agreement, effective April 30, 2004, among James Hardie International Finance B.V., James Hardie Industries N.V. and Wells Fargo HSBC Trade Bank, National Association
2.19	Form of Extension Letter, relating to 364 Day Standby Loan Agreement among James Hardie International Finance B.V., James Hardie Industries N.V. and each of the following banks: Australia and New Zealand Banking Group Limited; Bank One, NA; ING Bank NV, Sydney Branch; BNP Paribas; and WestLB AG, Sydney Branch
2.20	Extension Letter relating to 364 Day Standby Loan Agreement among James Hardie International Finance B.V., James Hardie Industries N.V. and Wells Fargo HSBC Trade Bank N.A.
2.21	Assignment and Assumption Agreement and Third Amendment to Note Purchase Agreement, dated as of November 18, 2002, among James Hardie U.S. Funding Inc, James Hardie International Finance B.V., James Hardie Industries N.V., James Hardie N.V. and certain noteholders thereto(7)
4.1	James Hardie Industries N.V. 2001 Equity Incentive Plan(1)
4.2	James Hardie Industries N.V. Peter Donald Macdonald Share Option Plan(1)
4.3	James Hardie Industries N.V. Peter Donald Macdonald Share Option Plan 2001(1)
4.4	James Hardie Industries N.V. Peter Donald Macdonald Share Option Plan 2002(6)

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Exhibit Number	Description of Exhibits
4.5	Executive Service Agreement, effective as of November 1, 2002, between James Hardie Industries N.V. and Peter Donald Macdonald(6)
4.6	Letter of Resignation, dated October 21, 2004, between James Hardie Industries N.V. and Peter Donald Macdonald
4.7	Employment Agreement, effective June 1, 2004 between James Products Building Products Inc. and Peter Shafron
4.8	Letter of Resignation, dated October 21, 2004, between James Hardie Industries N.V. on behalf of James Hardie Building Products Inc. and the Company, and Peter Shafron
4.9	Consulting agreement, dated November 15, 2004, between James Hardie Industries N.V. and Peter Shafron
4.10	Form of Executive Officer Employment Agreement (applies to Mr. David Merkley, Mr. Donald Merkley and Mr. Morley)(7)
4.11	Employment Agreement, effective as of September 1, 2004, between James Hardie Building Products, Inc. and Louis Gries
4.12	Amended Secondment dated October 8, 2004 between James Hardie Building Products Inc. and James Chilcoff
4.13	Employment Agreement Treasury Manager, effective as of October 1, 2001, between RCI Netherlands Investments B.V. (to be renamed James Hardie International Finance B.V.) and Folkert H. Zwinkels
4.14	Attachment to the assignment letter of F.H. Zwinkels between James Hardie Industries N.V. and Folkert H. Zwinkels dated May 18, 2003
4.15	Addendum to Employment Agreement Treasury Manager between James Hardie International Finance B.V. and Folkert H. Zwinkels dated August 6, 2004
4.16	Contract of Employment, effective as of January 1, 2004, between James Hardie Industries N.V. and W. (Pim) Vlot
4.17	Form of Joint and Several Indemnity Agreement among James Hardie N.V., James Hardie (USA) Inc. and certain indemnitees thereto(1)
4.18	Form of Joint and Several Indemnity Agreement among James Hardie Industries N.V., James Hardie Inc. and certain indemnitees thereto(1)
4.19	Form of Deed of Access to Documents, Indemnity and Insurance among James Hardie Industries N.V. and certain indemnitees thereto(1)
4.20	Lease Amendment, dated March 23, 2004, among 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 Cobalt & Silica Street, Carole Park, Queensland, Australia
4.21	Variation of Lease dated March 23, 2004, among 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
4.22	Extension of Lease dated March 23, 2004, among 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 Rutland, Avenue, Welshpool, Western Australia, Australia
4.23	Lease Amendment dated March 23, 2004, among 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
4.24	Lease Agreement dated March 23, 2004 among 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
4.25	Lease Agreement dated March 23, 2004 among 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

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Exhibit Number	Description of Exhibits
4.26	Purchase and Sale Agreement with Escrow Instructions, dated June 28, 2001, between WL Homes LLC and James Hardie Gypsum, Inc. (5) (8)
4.27	Assignment and Assumption Agreement dated April 25, 2002, between James Hardie Gypsum, Inc. and James Hardie, Inc. in reference to the Purchase and Sale Agreement with Escrow Instructions, dated June 28, 2001(6)
4.28	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(1)
4.29	Amended and Restated Stock Purchase Agreement dated March 12, 2002, between BPB U.S. Holdings, Inc and James Hardie Inc.(6)
4.30	Asset Purchase Agreement by and between James Hardie Building Products, Inc. and Cemplank, Inc. dated as of December 12, 2001(6)
4.31	Supervisory Board Share Plan, dated July 19, 2002(6)
8.1	List of significant subsidiaries of James Hardie Industries N.V.
10.1	Consent of independent registered public accounting firm
12.1	Certification of the Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
12.2	Certification of the Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
13.1	Certification of the Chief Executive Officer and Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
99.1	Excerpts of the Securities Clearing House Business Rules, including Temporary Rule Book inserts thereto, as of September 28, 2001(4)
99.2	Excerpts of the Corporations Act 2001, as of September 28, 2001(4)
99.3	ASIC Class Order 00/182, dated February 13, 2000(4)
99.4	ASIC Modification, dated August 23, 2001 (4)

- (1) Previously filed as an exhibit to our Registration Statement on Form 20-F dated September 7, 2001 and incorporated herein by reference.
- (2) Previously filed as an exhibit to Amendment No. 1 to our Registration Statement on Form 20-F dated September 28, 2001 and incorporated herein by reference.
- (3) Previously filed as an exhibit to our Registration Statement Form F-6 dated September 12, 2001 and incorporated herein by reference.
- (4) Previously filed as an exhibit to our Amendment No. 1 to our Registration Statement Form F-6 dated September 28, 2001 and incorporated herein by reference.
- (5) Previously filed as an exhibit to Amendment No. 2 to our Registration Statement on Form 20-F dated October 1, 2001 and incorporated herein by reference.
- (6) Previously filed as an exhibit to our Annual Report on Form 20-F dated September 4, 2002 and incorporated herein by reference.
- (7) Previously filed as an exhibit to our Annual Report on Form 20-F dated July 2, 2003 and incorporated herein by reference.
- (8) Certain portions of the exhibit have been omitted and submitted to the Securities and Exchange Commission pursuant to a confidential treatment request filed on October 1, 2001.

**SIGNATURES**

The registrant hereby certifies that it meets all of the requirements for filing on Form 20-F and that it has duly caused and authorized the undersigned to sign this annual report on its behalf.

JAMES HARDIE INDUSTRIES N.V.

By: /s/ LOUIS GRIES

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Louis Gries  
*Interim Chief Executive Officer*

Date: November 22, 2004

**JAMES HARDIE INDUSTRIES NV AND SUBSIDIARIES**

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**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

To the Board of Directors and Shareholders of

James Hardie Industries N.V. and Subsidiaries

In our opinion, the accompanying consolidated balance sheets and the related consolidated statements of income, cash flows and changes in shareholders' equity present fairly, in all material respects, the financial position of James Hardie Industries N.V. and Subsidiaries (the "Company") at March 31, 2004 and 2003, and the results of their operations and their cash flows for each of the three years in the period ended March 31, 2004 in conformity with accounting principles generally accepted in the United States of America. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits of these statements in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

As discussed in Note 14 to the consolidated financial statements, the Company is subject to certain significant contingencies, including claims against former subsidiaries; the Special Commission of Inquiry established by the government of New South Wales, Australia; an investigation by the Australian Securities and Investments Commission; and an offer of an indemnity to ABN 60 together with a related offer to provide funding to the Medical Research and Compensation Foundation.

/s/ PRICEWATERHOUSECOOPERS LLP

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PRICEWATERHOUSECOOPERS LLP

Los Angeles, California

June 24, 2004, except for Note 14,  
as to which the date is November 19, 2004

JAMES HARDIE INDUSTRIES N.V. AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEETS

	Notes	March 31 2004	March 31 2003
(Millions of US dollars)			
<b>ASSETS</b>			
Current assets:			
Cash and cash equivalents	3	\$ 72.3	\$ 54.6
Accounts and notes receivable, net of allowance for doubtful accounts of \$1.2 million and \$1.0 million as of March 31, 2004 and 2003, respectively	4	118.4	87.8
Inventories	5	103.2	74.0
Refundable income taxes	16	37.8	44.6
Prepaid expenses and other current assets		8.8	6.6
Deferred tax assets	16	24.7	23.0
Current assets — discontinued operations	17	—	5.4
		—————	—————
Total current assets		365.2	296.0
Long-term receivables		6.1	3.7
Investments	6	3.7	6.0
Property, plant and equipment, net	7	567.1	520.0
Intangible assets, net	8	3.0	3.4
Prepaid pension cost	9	14.1	—
Deferred tax assets	16	12.0	21.4
Non-current assets — discontinued operations	17	—	1.3
		—————	—————
Total assets		\$971.2	\$851.8
<b>LIABILITIES AND SHAREHOLDERS' EQUITY</b>			
Current liabilities:			
Accounts payable and accrued liabilities	10	\$ 78.5	\$ 74.0
Current portion of long-term debt	11	17.6	—
Short-term debt	11	10.8	8.8
Accrued payroll and employee benefits		41.1	31.6
Accrued product warranties	13	9.7	7.3
Income taxes payable	16	9.8	7.7
Other liabilities	12	1.8	4.9
Current liabilities — discontinued operations	17	—	2.3
		—————	—————
Total current liabilities		169.3	136.6
Long-term debt	11	147.4	165.0
Deferred income taxes	16	65.2	59.5
Accrued product warranties	13	2.3	7.5
Other liabilities	12,16	82.3	48.5
		—————	—————
Total liabilities		466.5	417.1
Commitments and contingencies (Note 14)			
Shareholders' equity:			
Common stock, 2.0 billion shares authorized; Euro 0.59 par value, 458,558,436 shares issued and outstanding at March 31, 2004 and Euro 0.64 par value, 457,514,598 shares issued and outstanding at March 31, 2003	18, 23	245.2	269.7
Additional paid-in capital	18, 23	134.0	171.3
Retained earnings		151.1	44.4
Employee loans	18	(4.0)	(4.4)
Accumulated other comprehensive loss	21	(21.6)	(46.3)
		—————	—————
Total shareholders' equity		504.7	434.7
		—————	—————
Total liabilities and shareholders' equity		\$971.2	\$851.8

The accompanying notes are an integral part of these consolidated financial statements.



**JAMES HARDIE INDUSTRIES N.V. AND SUBSIDIARIES**
**CONSOLIDATED STATEMENTS OF INCOME**

	Notes	Years Ended March 31		
		2004	2003	2002
		(Millions of US dollars, except per share data)		
Net sales	20	\$ 981.9	\$ 783.6	\$ 591.7
Cost of goods sold		(623.0)	(492.8)	(393.4)
Gross profit		358.9	290.8	198.3
Selling, general and administrative expenses		(162.0)	(144.9)	(109.3)
Research and development expenses		(22.6)	(18.1)	(14.1)
Other operating (expense) income	15	(2.1)	1.0	(28.1)
Operating income		172.2	128.8	46.8
Interest expense		(11.2)	(23.8)	(18.4)
Interest income		1.2	3.9	2.4
Other income (expense)		3.5	0.7	(0.4)
Income from continuing operations before income taxes	20	165.7	109.6	30.4
Income tax expense		(40.4)	(26.1)	(3.1)
Income from continuing operations		125.3	83.5	27.3
Discontinued operations:				
Income from discontinued operations, net of income tax expense of (\$0.1) million, (\$1.6) million and (\$0.9) million for 2004, 2003 and 2002, respectively	17	0.2	3.0	1.5
Gain on disposal of discontinued operations, net of income tax benefit (expense) of \$4.8 million, (\$45.3) million and \$1.3 million for 2004, 2003 and 2002, respectively	17	4.1	84.0	2.0
Income from discontinued operations		4.3	87.0	3.5
Net income		\$ 129.6	\$ 170.5	\$ 30.8
Income per share — basic:				
Income from continuing operations		\$ 0.27	\$ 0.18	\$ 0.06
Income from discontinued operations		0.01	0.19	0.01
Net income per share — basic		\$ 0.28	\$ 0.37	\$ 0.07
Income per share — diluted:				
Income from continuing operations		\$ 0.27	\$ 0.18	\$ 0.06
Income from discontinued operations		0.01	0.19	0.01
Net income per share — diluted		\$ 0.28	\$ 0.37	\$ 0.07
Weighted average common shares outstanding (Millions):				
Basic	2	458.1	456.7	438.4
Diluted	2	461.4	459.4	440.4

The accompanying notes are an integral part of these consolidated financial statements.

**JAMES HARDIE INDUSTRIES N.V. AND SUBSIDIARIES**
**CONSOLIDATED STATEMENTS OF CASH FLOWS**

	Years Ended March 31		
	2004	2003	2002
	(Millions of US dollars)		
<b>Cash flows from operating activities:</b>			
Net income	\$ 129.6	\$ 170.5	\$ 30.8
Adjustments to reconcile net income to net cash provided by operating activities:			
Gain on disposal of subsidiaries and businesses	(4.1)	(84.8)	(2.0)
Gain on sale of land and buildings	(4.2)	—	—
(Gain) loss on disposal of investments and negotiable securities	—	(0.4)	1.3
Impairment loss on investment	2.2	—	—
Depreciation and amortization	36.4	28.7	39.9
Deferred income taxes	14.6	(10.6)	(0.6)
Prepaid pension cost	1.8	2.3	0.9
Tax benefit from stock options exercised	0.4	0.8	0.2
Stock compensation	3.3	1.9	1.8
Other	0.7	—	(0.4)
Changes in operating assets and liabilities:			
Accounts receivable	(24.8)	(10.8)	(32.1)
Inventories	(24.9)	(8.5)	16.4
Prepays and other current assets	2.1	(12.5)	1.4
Accounts payable	1.3	14.5	(4.7)
Accrued liabilities and other liabilities	28.2	(26.3)	23.7
<b>Net cash provided by operating activities</b>	<b>162.6</b>	<b>64.8</b>	<b>76.6</b>
<b>Cash flows from investing activities:</b>			
Purchases of property, plant and equipment	(74.8)	(90.2)	(52.4)
Proceeds from sale of property, plant and equipment	10.9	49.0	0.3
Payments for subsidiaries and businesses, net of cash acquired	—	—	(40.8)
Proceeds from disposal of subsidiaries and businesses, net of cash invested	5.0	334.4	7.3
Proceeds from sale and maturity of investments	—	1.1	4.4
Collections on loans receivable	0.9	0.7	4.0
Cash transferred on establishment of ABN 60 Foundation	—	(57.1)	—
<b>Net cash (used in) provided by investing activities</b>	<b>(58.0)</b>	<b>237.9</b>	<b>(77.2)</b>
<b>Cash flows from financing activities:</b>			
Net proceeds from line of credit	0.5	3.1	3.9
Proceeds from borrowings	—	2.4	226.5
Repayments of borrowings	—	(160.0)	(342.3)
Proceeds from issuance of shares	3.2	4.2	113.9
Repayments of capital	(68.7)	(94.8)	(22.5)
Dividends paid	(22.9)	(34.3)	(20.3)
<b>Net cash used in financing activities</b>	<b>(87.9)</b>	<b>(279.4)</b>	<b>(40.8)</b>
Effects of exchange rate changes on cash	0.5	0.7	(2.6)
Net increase (decrease) in cash and cash equivalents	17.2	24.0	(44.0)
Cash and cash equivalents at beginning of period	55.1	31.1	75.1
<b>Cash and cash equivalents at end of period</b>	<b>72.3</b>	<b>55.1</b>	<b>31.1</b>
<b>Components of cash and cash equivalents:</b>			
Cash at bank and on hand	24.6	39.7	11.1
Short-term deposits	47.7	14.9	20.0
Cash and cash equivalents — continuing operations	72.3	54.6	31.1
Cash at bank and on hand — discontinued operations	—	0.5	—
<b>Cash and cash equivalents at end of period</b>	<b>\$ 72.3</b>	<b>\$ 55.1</b>	<b>\$ 31.1</b>
<b>Supplemental disclosure of cash flow activities:</b>			
Cash paid during the period for interest, net of amounts capitalized	\$ 11.7	\$ 28.1	\$ 25.8
Cash (refunded) paid during the period for income taxes, net	\$ (6.5)	\$ 77.3	\$ (10.2)

The accompanying notes are an integral part of these consolidated financial statements.

## JAMES HARDIE INDUSTRIES N.V. AND SUBSIDIARIES

## CONSOLIDATED STATEMENTS OF CHANGES IN SHAREHOLDERS' EQUITY

	Common Stock	Additional Paid-In Capital	Retained Earnings (Accumulated Deficit)	Employee Loans	Accumulated Other Comprehensive Income (Loss)	Total
(Millions of US dollars)						
<b>Balances as of March 31, 2001</b>	\$ 435.5	\$ —	\$ (102.3)	\$ (7.9)	\$ (44.2)	\$281.1
Comprehensive income (loss):						
Net income	—	—	30.8	—	—	30.8
Other comprehensive income (loss):						
Effect of adopting SFAS No. 133:						
Unrealized transition loss on derivative instruments classified as cash flow hedges	—	—	—	—	(4.9)	(4.9)
Amortization of unrealized transition loss on derivative instruments	—	—	—	—	1.1	1.1
Foreign currency translation loss	—	—	—	—	(14.9)	(14.9)
Unrealized gain on available-for-sale securities	—	—	—	—	1.3	1.3
Other comprehensive loss	—	—	—	—	(17.4)	(17.4)
Total comprehensive income						13.4
Dividends paid	—	—	(20.3)	—	—	(20.3)
Conversion of JHIL no par common shares to JHI NV Euro 0.50 par value common shares	(333.4)	333.4	—	—	—	—
Issuance of common stock	103.1	9.9	—	—	—	113.0
Return of capital of \$0.05 per share	—	(22.5)	—	—	—	(22.5)
Stock compensation	—	1.8	—	—	—	1.8
Tax benefit from stock options exercised	—	0.2	—	—	—	0.2
Employee loans repaid	—	—	—	3.1	—	3.1
Stock options exercised	0.2	0.7	—	—	—	0.9
<b>Balances as of March 31, 2002</b>	205.4	323.5	(91.8)	(4.8)	(61.6)	370.7
Comprehensive income (loss):						
Net income	—	—	170.5	—	—	170.5
Other comprehensive income (loss):						
Amortization of unrealized transition loss on derivative instruments	—	—	—	—	1.1	1.1
Foreign currency translation gain	—	—	—	—	21.9	21.9
Additional minimum pension liability adjustment	—	—	—	—	(7.7)	(7.7)
Other comprehensive income	—	—	—	—	15.3	15.3
Total comprehensive income						185.8
Dividends paid	—	—	(34.3)	—	—	(34.3)
Conversion of common stock from Euro 0.50 par value to Euro 0.85 par value	157.9	(157.9)	—	—	—	—
Conversion of common stock from Euro 0.85 par value to Euro 0.64 par value and subsequent return of capital	(94.8)	—	—	—	—	(94.8)
Stock compensation	—	1.9	—	—	—	1.9
Tax benefit from stock options exercised	—	0.8	—	—	—	0.8
Employee loans repaid	—	—	—	0.4	—	0.4
Stock options exercised	1.2	3.0	—	—	—	4.2
<b>Balances as of March 31, 2003</b>	269.7	171.3	44.4	(4.4)	(46.3)	434.7
Comprehensive income (loss):						
Net income	—	—	129.6	—	—	129.6
Other comprehensive income (loss):						
Amortization of unrealized transition loss on derivative instruments	—	—	—	—	1.1	1.1
Foreign currency translation gain	—	—	—	—	16.0	16.0
Unrealized loss on available-for-sale securities	—	—	—	—	(0.1)	(0.1)
Additional minimum pension liability adjustment	—	—	—	—	7.7	7.7
Other comprehensive income	—	—	—	—	24.7	24.7
Total comprehensive income						154.3
Dividends paid	—	—	(22.9)	—	—	(22.9)
Conversion of common stock from Euro 0.64 par value to Euro 0.73 par value	48.4	(48.4)	—	—	—	—
Conversion of common stock from Euro 0.73 par value to Euro 0.5995 par value and subsequent return of capital	(68.7)	—	—	—	—	(68.7)
Conversion of common stock from Euro 0.5995 par value to Euro 0.59 par value	(5.0)	5.0	—	—	—	—
Stock compensation	—	3.3	—	—	—	3.3
Tax benefit from stock options exercised	—	0.4	—	—	—	0.4
Employee loans repaid	—	—	—	0.4	—	0.4
Stock options exercised	0.8	2.4	—	—	—	3.2
<b>Balances as of March 31, 2004</b>	\$ 245.2	\$ 134.0	\$ 151.1	\$ (4.0)	\$ (21.6)	\$504.7

The accompanying notes are an integral part of these consolidated financial statements.

**JAMES HARDIE INDUSTRIES N.V. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**1. Background and Basis of Presentation**

*Nature of Operations*

The Company manufactures and sells fiber cement building products for interior and exterior building construction applications primarily in the United States, Australia, New Zealand, Philippines, Chile and Europe. Prior to April 25, 2002, the Company manufactured gypsum wallboard for interior construction applications in the United States.

*Background*

On July 2, 1998, ABN 60 000 009 263 Pty Ltd, formerly James Hardie Industries Limited (“JHIL”), then a public company organized under the laws of Australia and listed on the Australian Stock Exchange, announced a plan of reorganization and capital restructuring (the “1998 Reorganization”). James Hardie N.V. (“JHNV”) was incorporated in August 1998, as an intermediary holding company, with all of its common stock owned by indirect subsidiaries of JHIL. On October 16, 1998, JHIL’s shareholders approved the 1998 Reorganization. Effective as of November 1, 1998, JHIL contributed its fiber cement businesses, its U.S. gypsum wallboard business, its Australian and New Zealand building systems businesses and its Australian windows business (collectively, the “Transferred Businesses”) to JHNV and its subsidiaries. In connection with the 1998 Reorganization, JHIL and its non-transferring subsidiaries retained certain unrelated assets and liabilities.

On July 24, 2001, JHIL announced a further plan of reorganization and capital restructuring (the “2001 Reorganization”). Completion of the 2001 Reorganization occurred on October 19, 2001. In connection with the 2001 Reorganization, James Hardie Industries N.V. (“JHI NV”), formerly RCI Netherlands Holdings B.V., issued common shares represented by CHESSE Units of Foreign Securities (“CUFS”) on a one for one basis to existing JHIL shareholders in exchange for their shares in JHIL such that JHI NV became the new ultimate holding company for JHIL and JHNV. Following the 2001 Reorganization, JHI NV controls the same assets and liabilities as JHIL controlled immediately prior to the 2001 Reorganization.

*Basis of Presentation*

The consolidated financial statements represent the financial position, results of operations and cash flows of JHI NV and its wholly owned subsidiaries, collectively referred to as either the “Company” or “James Hardie”, unless the context indicates otherwise. For the periods prior to October 19, 2001, the effective date of the 2001 Reorganization, the consolidated financial statements represent the financial position, results of operations and cash flows of JHIL and its wholly owned subsidiaries.

In accordance with accounting principles generally accepted in the United States of America, the transfers to JHI NV have been accounted for on a historical cost basis using the “as-if” pooling method on the basis that the transfers are between companies under common control.

**2. Summary of Significant Accounting Policies**

*Accounting Principles*

The consolidated financial statements are prepared in accordance with accounting principles generally accepted in the United States of America (“U.S. GAAP”). The U.S. dollar is used as the reporting currency. All subsidiaries are consolidated and all significant intercompany transactions and balances are eliminated.

*Use of Estimates*

The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions. These estimates and assumptions affect the reported amounts of assets and

**JAMES HARDIE INDUSTRIES N.V. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from these estimates.

***Reclassifications***

Certain prior year balances have been reclassified to conform with the current year presentation.

***Foreign Currency Translation***

All assets and liabilities are translated into U.S. dollars at current exchange rates while revenues and expenses are translated at average exchange rates in effect for the period. The effects of foreign currency translation adjustments are included directly in other comprehensive income in shareholders' equity. Gains and losses arising from foreign currency transactions are recognized in income currently.

***Cash and Cash Equivalents***

Cash and cash equivalents include amounts on deposit in banks and cash invested temporarily in various highly liquid financial instruments with original maturities of three months or less when acquired.

***Inventories***

Inventories are valued at the lower of cost or market. Cost is generally determined under the first-in, first-out method, except that the cost of raw materials and supplies is determined using actual or average costs. Cost includes the costs of materials, labor and applied factory overhead.

***Investments***

Management determines the proper classifications of investments at the time of purchase and re-evaluates such designations at each balance sheet date. All marketable securities are designated as available-for-sale securities. Accordingly, these securities are stated at fair value based upon quoted market prices, with unrealized gains and losses charged to other comprehensive income in shareholders' equity, net of taxes. Realized gains and losses and declines in value judged to be other-than-temporary on available-for-sale securities are included in other income or expense currently.

Other investments without readily available quoted market prices are recorded at the lower of cost or management's estimate of fair value.

***Property, Plant and Equipment***

Property, plant and equipment are stated at cost. Property, plant and equipment of businesses acquired are recorded at their estimated cost based on fair value at the date of acquisition. Depreciation of property, plant and equipment is computed using the straight-line method over the following estimated useful lives:

	Years
Buildings	40
Building improvements	5 to 10
Machinery and equipment	5 to 27
Computer equipment	3 to 4
Office furniture and equipment	3 to 10

The cost of additions and improvements is capitalized, while maintenance and repair costs are expensed as incurred. Interest is capitalized in connection with the construction of major facilities. Capitalized interest

**JAMES HARDIE INDUSTRIES N.V. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

is recorded as part of the asset to which it relates and is amortized over the asset's estimated useful life. Retirements, sales and disposals of assets are recorded by removing the cost and accumulated depreciation amounts with any resulting gain or loss reflected in the consolidated statements of income.

***Intangible Assets***

Intangible assets consist primarily of goodwill, which represents cost in excess of the fair value of the identifiable net assets of businesses acquired. In July 2001, the Financial Accounting Standards Board ("FASB") issued Statement of Financial Accounting Standards ("SFAS") No. 142, "Goodwill and Other Intangible Assets." SFAS No. 142, which changes the accounting for goodwill and indefinite-lived intangible assets from an amortization method to an impairment-only approach, is effective for fiscal years beginning after December 15, 2001. The adoption of this standard, effective April 1, 2002, had no material impact on the Company's consolidated financial statements. The Company's selling, general and administrative expenses were reduced by approximately \$0.1 million for each of the years ended March 31, 2004 and 2003 due to the discontinuance of goodwill amortization as required by SFAS No. 142.

***Impairment of Long-Lived Assets***

The Company regularly reviews its long-lived assets for impairment. Potential impairment of assets held for use is determined by comparing the carrying amount of an asset to the future undiscounted cash flows expected to be generated by that asset. If assets are considered to be impaired, the impairment to be recognized is measured by the amount by which the carrying value of the assets exceeds the fair value of the assets. Assets to be disposed of are reported at the lower of the carrying amount or fair value, less costs to sell. In August 2001, SFAS No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets," was issued and became effective April 2002. SFAS No. 144 supersedes SFAS No. 121, "Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to be Disposed of," however, it retains the requirement that long-lived assets be tested for recoverability when events or changes in circumstances indicate carrying amounts may not be recoverable. The adoption of this standard had no material impact on the Company's consolidated financial statements.

***Environmental***

Environmental remediation expenditures that relate to current operations are expensed or capitalized as appropriate. Expenditures that relate to an existing condition caused by past operations, and which do not contribute to current or future revenue generation, are expensed. Liabilities are recorded when environmental assessments and/or remedial efforts are probable and the costs can be reasonably estimated. Estimated liabilities are not discounted to present value. Generally, the timing of these accruals coincides with completion of a feasibility study or the Company's commitment to a formal plan of action.

***Mineral Acquisition Costs***

The Company records acquired proven and probable silica mineral ore reserves at their fair value at the date of acquisition. Depletion expense is recorded based on the estimated rate per ton multiplied by the number of tons extracted during the period. The rate per ton may be periodically revised by management based on changes in the estimated tons available to be extracted which, in turn, is based on third party studies of proven and probable reserves. The estimated costs of reclamation associated with mining activities are accrued during production and are included in determining the cost of production.

In June 2001, the FASB issued SFAS No. 143, "Accounting for Asset Retirement Obligations", which addresses the financial accounting and reporting for legal obligations associated with the retirement of tangible assets and the associated asset retirement costs. SFAS No. 143 provisions apply to legal obligations associated with the retirement of long-lived assets that result from the acquisition, construction, development and/or the

**JAMES HARDIE INDUSTRIES N.V. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

normal operation of a long-lived asset, except for certain obligations of lessees. SFAS No. 143 requires the recording of a liability for an asset retirement obligation in the period in which the liability is incurred. The initial measurement is based upon the present value of estimated third party costs and a related long-lived asset retirement cost capitalized as part of the asset's carrying value and allocated to expense over the asset's useful life. In accordance with SFAS No. 143, the Company accrues for reclamation costs associated with mining activities, which are accrued during production and are included in determining the cost of production. The adoption of this standard did not have a material impact on the Company's consolidated financial statements.

***Revenue Recognition***

The Company recognizes revenue when the risks and obligations of ownership have been transferred to the customer, which generally occurs at the time of delivery to the customer. The Company records estimated reductions to sales for customer rebates and discounts including volume, promotional, cash and other discounts. Rebates and discounts are recorded based on management's best estimate when products are sold. The estimates are based on historical experience for similar programs and products. Management reviews these rebates and discounts on an ongoing basis and the related accruals are adjusted, if necessary, as additional information becomes available.

***Advertising and Legal***

The Company expenses the production costs of advertising the first time the advertising takes place. Advertising expense was \$15.2 million, \$10.5 million and \$10.3 million during the years ended March 31, 2004, 2003 and 2002, respectively.

It is currently the Company's policy to expense any legal costs as incurred.

***Accrued Product Warranties***

An accrual for estimated future warranty costs is recorded based on an analysis by the Company, including the historical relationship of warranty costs to sales.

***Income Taxes***

The Company accounts for income taxes under the liability method. Under this method, deferred income taxes are recognized by applying enacted statutory rates applicable to future years to differences between the tax bases and financial reporting amounts of existing assets and liabilities. The effect on deferred taxes of a change in tax rates is recognized in income in the period that includes the enactment date. A valuation allowance is provided when it is more likely than not that all or some portion of deferred tax assets will not be realized.

***Financial Instruments***

To meet the reporting requirements of SFAS No. 107, "Disclosures About Fair Value of Financial Instruments," the Company calculates the fair value of financial instruments and includes this additional information in the notes to the consolidated financial statements when the fair value is different than the carrying value of those financial instruments. When the fair value reasonably approximates the carrying value, no additional disclosure is made. The estimated fair value amounts have been determined by the Company using available market information and appropriate valuation methodologies. However, considerable judgment is required in interpreting market data to develop the estimates of fair value. Accordingly, the estimates presented herein are not necessarily indicative of the amounts that the Company could realize in a current market exchange. The use of different market assumptions and/or estimation methodologies may have a material effect on the estimated fair value amounts.

**JAMES HARDIE INDUSTRIES N.V. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

On April 1, 2001, the Company adopted SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities," as amended. The cumulative effect on April 1, 2001 of adopting this statement was to reduce other comprehensive income, a component of shareholders' equity, by \$4.9 million.

Periodically, interest rate swaps, commodity swaps and forward exchange contracts are used to manage market risks and reduce exposure resulting from fluctuations in interest rates, commodity prices and foreign currency exchange rates. Where such contracts are designated as, and are effective as, a hedge, gains and losses arising on such contracts are accounted for in accordance with SFAS No. 133. Specifically, changes in the fair value of derivative instruments designated as cash flow hedges are deferred and recorded in other comprehensive income. These deferred gains or losses are recognized in income when the transactions being hedged are completed. The ineffective portion of these hedges is recognized in income currently. Changes in the fair value of derivative instruments designated as fair value hedges are recognized in income, as are changes in the fair value of the hedged item. Changes in the fair value of derivative instruments that are not designated as hedges for accounting purposes are recognized in income. The Company does not use derivatives for trading purposes.

***Stock-Based Compensation***

In fiscal year 2003, the Company adopted the fair value provisions of SFAS No. 123, "Accounting for Stock-Based Compensation," which requires the Company to value stock options issued based upon an option pricing model and recognize this value as compensation expense over the periods in which the options vest. In accordance with the provisions of SFAS No. 148, "Accounting for Stock-Based Compensation — Transition and Disclosure, an amendment of SFAS No. 123," the Company has elected to recognize stock-based compensation using the retroactive restatement method. Under this change in accounting method, the Company has restated its consolidated financial statements for all years presented herein to reflect stock-based compensation expense under a fair value based accounting method for all options granted, modified or settled in fiscal years beginning after March 31, 1995. See Note 18 for full disclosures required under SFAS No. 123 and 148.

***Employee Benefit Plans***

The Company sponsors both defined benefit and defined contribution retirement plans for its employees. The defined contribution plans cover all eligible employees and provide contributions of up to 6% of the eligible employees' salaries or wages. These contributions are recognized as periodic pension expense in the period that the employees' salaries or wages are earned. The defined benefit plan covers all eligible employees and takes into consideration the following components to calculate net periodic pension expense: (a) service cost; (b) interest cost; (c) expected return on plan assets; (d) amortization of unrecognized prior service cost; (e) recognition of net actuarial gains or losses; and (f) amortization of any unrecognized net transition asset. If the amount of the Company's total contribution to its pension plan for the period is not equal to the amount of net periodic pension cost, the Company recognizes the difference either as a prepaid or accrued pension cost.

***Dividends***

Dividends are recorded as a liability on the date that the Board of Directors formally declares the dividend.

***Earnings Per Share***

The Company is required to disclose basic and diluted earnings per share ("EPS"). Basic EPS is calculated using income divided by the weighted average number of common shares outstanding during the period. Diluted EPS is similar to basic EPS except that the weighted average number of common shares outstanding is increased to include the number of additional common shares calculated using the treasury



**JAMES HARDIE INDUSTRIES N.V. AND SUBSIDIARIES****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

method that would have been outstanding if the dilutive potential common shares, such as options, had been issued. Accordingly, basic and dilutive common shares outstanding used in determining net income per share are as follows:

	Years Ended March 31		
	2004	2003	2002
	(Millions except per share amounts)		
Basic common shares outstanding	458.1	456.7	438.4
Dilutive effect of stock options	3.3	2.7	2.0
Diluted common shares outstanding	461.4	459.4	440.4
Net income per share — basic	\$ 0.28	\$ 0.37	\$ 0.07
Net income per share — diluted	\$ 0.28	\$ 0.37	\$ 0.07

Potential common shares of 2.0 million, 1.3 million and 4.2 million for the years ended March 31, 2004, 2003 and 2002, respectively, have been excluded from the calculation of diluted common shares outstanding because the effect of their inclusion would be anti-dilutive.

***Accumulated Other Comprehensive Income (Loss)***

Accumulated other comprehensive income (loss) includes adjustments for additional minimum pension liabilities, foreign currency translation, unrealized gains and losses on available-for-sale securities and derivative instruments and is presented as a separate component of shareholders' equity.

***Extinguishments of Debt***

In May 2002, the FASB issued SFAS No. 145, "Rescission of SFAS Nos. 4, 44 and 64, Amendment of SFAS No. 13, and Technical Corrections." Among other things, SFAS No. 145 rescinds various pronouncements regarding early extinguishment of debt and allows extraordinary accounting treatment for early extinguishment only when the provisions of Accounting Principles Board ("APB") Opinion No. 30, "Reporting the Results of Operations — Reporting the Effects of Disposal of a Segment of a Business, and Extraordinary, Unusual and Infrequently Occurring Events and Transactions," are met. SFAS No. 145 provisions regarding early extinguishment of debt are generally effective for fiscal years beginning after May 15, 2002. As permitted under SFAS No. 145, the Company has early adopted the provisions of this standard effective April 1, 2002. As a result of the early retirement of \$60.0 million of the Company's long-term debt, the Company incurred charges of \$9.9 million related to a make-whole payment paid to certain noteholders on December 23, 2002. Accordingly, this amount was included in interest expense in the year ended March 31, 2003 rather than as an extraordinary item.

***Recent Accounting Pronouncements******Amendment of SFAS No. 133, Accounting for Derivative Instruments and Hedging Activities***

In April 2003, the FASB issued SFAS No. 149, "Amendment of Statement No. 133, Accounting for Derivative Instruments and Hedging Activities." This statement clarifies the definition of a derivative and incorporates certain decisions made by the FASB as part of the Derivatives Implementation Group process. This statement is effective for contracts entered into or modified, and for hedging relationships designated after June 30, 2003 and should be applied prospectively. The provisions of the statement that relate to implementation issues addressed by the Derivatives Implementation Group that have been effective should continue to be applied in accordance with their respective effective dates. The adoption of this standard did not have a material impact on the Company's consolidated financial statements.

**JAMES HARDIE INDUSTRIES N.V. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

*Certain Financial Instruments with Characteristics of both Liabilities and Equity*

In May 2003, the FASB issued SFAS No. 150, "Certain Financial Instruments with Characteristics of both Liabilities and Equity." This statement establishes standards for how a company clarifies and measures certain financial instruments with characteristics of both liabilities and equity. It requires a company to classify such instruments as liabilities, whereas they previously may have been classified as equity. The standard is effective for all financial instruments entered into or modified after May 31, 2003, and otherwise is effective July 1, 2003. The adoption of this standard did not have an impact on the Company's consolidated financial statements.

*Employers' Disclosures about Pensions and Other Postretirement Benefits*

In December 2003, the FASB issued SFAS No. 132 (revised 2003) ("SFAS No. 132R"), "Employers' Disclosures about Pensions and Other Postretirement Benefits, an amendment of FASB Statement 87, Employers' Accounting for Pensions, No. 88, Employers' Accounting for Settlement and Curtailments of Defined Benefit Pension Plans and for Termination Benefits, and No. 106, Employers' Accounting for Postretirement Benefits Other than Pensions." SFAS No. 132R requires additional disclosures about the assets, obligations, cash flows and net periodic benefit/cost of defined benefit pension plans and other defined benefit postretirement plans. SFAS No. 132R is effective for foreign plans for the fiscal years ending after June 15, 2004. The Company does not expect the adoption of this standard to have a material impact on the Company's consolidated financial statements.

*Consolidation of Variable Interest Entities*

In December 2003, the FASB issued FASB Interpretation No. ("FIN") 46 (revised December 2003), "Consolidation of Variable Interest Entities" ("FIN 46R"), which addresses how a business should evaluate whether it has a controlling financial interest in an entity through means other than voting rights and accordingly should consolidate the entity. FIN 46R replaced FIN 46 which was issued in January 2003. FIN 46 or FIN 46R applies immediately to entities created after January 31, 2003 and no later than the end of the first reporting period that ended after December 15, 2003 to entities considered to be special-purpose entities ("SPEs"). FIN 46R is effective for all other entities no later than the end of the first interim or annual reporting period ending after March 15, 2004. The adoption of the provisions of FIN 46 or FIN 46R relative to SPEs and for entities created after January 31, 2003 did not have an impact on the Company's consolidated financial statements. Additionally, the Company does not expect the other provisions of FIN 46R to have a material impact on the Company's consolidated financial statements.

**3. Cash and Cash Equivalents**

Cash and cash equivalents consist of the following components:

	March 31	
	2004	2003
	(Millions of US dollars)	
Cash at bank and on hand	\$24.6	\$39.7
Short-term deposits	47.7	14.9
<b>Total cash and cash equivalents</b>	<b>\$72.3</b>	<b>\$54.6</b>

Short-term deposits are placed at floating interest rates varying between 0.90% to 1.02% and 1.18% to 1.75% as of March 31, 2004 and 2003, respectively.

## JAMES HARDIE INDUSTRIES N.V. AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

**4. Accounts and Notes Receivable**

Accounts and notes receivable consist of the following components:

	March 31	
	2004	2003
	(Millions of US dollars)	
Trade receivables	\$109.9	\$83.0
Other receivables and advances	9.7	5.8
Allowance for doubtful accounts	(1.2)	(1.0)
Total accounts and notes receivable	\$118.4	\$87.8

The collectibility of accounts receivable, consisting mainly of trade receivables, is reviewed on an ongoing basis and an allowance for doubtful accounts is provided for known and estimated bad debts. The following are changes in the allowance for doubtful accounts:

	March 31	
	2004	2003
	(Millions of US dollars)	
Balance at April 1	\$ 1.0	\$ 0.5
Charged to expense	0.9	0.5
Costs and deductions	(0.8)	(0.1)
Foreign currency movements	0.1	0.1
Balance at March 31	\$ 1.2	\$ 1.0

**5. Inventories**

Inventories consist of the following components:

	March 31	
	2004	2003
	(Millions of US dollars)	
Finished goods	\$ 76.7	\$54.7
Work-in-process	6.4	4.5
Raw materials and supplies	22.3	16.2
Provision for obsolete finished goods and raw materials	(2.2)	(1.4)
Total inventories	\$103.2	\$74.0

JAMES HARDIE INDUSTRIES N.V. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

6. Investments

Investments consist of the following components:

	March 31	
	2004	2003
	(Millions of US dollars)	
Available-for-sale securities:		
Marketable securities at cost	\$2.1	\$3.2
Unrealized gains	—	1.1
	—	—
Marketable securities at fair value	2.1	4.3
Other investments at cost approximating fair value	1.6	1.7
	—	—
Total investments	\$3.7	\$6.0

7. Property, Plant and Equipment

Property, plant and equipment consist of the following components:

	Land	Buildings	Machinery and Equipment	Construction in Progress	Total
	(Millions of US dollars)				
Balance at April 1, 2003:					
Cost	\$ 8.6	\$119.8	\$ 444.4	\$ 107.0	\$ 679.8
Accumulated depreciation	—	(20.9)	(138.9)	—	(159.8)
Net book value	8.6	98.9	305.5	107.0	520.0
Changes in net book value:					
Capital expenditures	3.5	25.1	89.5	(44.0)	74.1
Retirements and sales	(0.8)	(5.3)	(0.6)	—	(6.7)
Depreciation	—	(4.7)	(31.2)	—	(35.9)
Other movement	—	—	(0.7)	—	(0.7)
Foreign currency translation adjustments	—	—	16.3	—	16.3
Total changes	2.7	15.1	73.3	(44.0)	47.1
Balance at March 31, 2004:					
Cost	11.3	135.0	562.8	63.0	772.1
Accumulated depreciation	—	(21.0)	(184.0)	—	(205.0)
Net book value	\$11.3	\$114.0	\$ 378.8	\$ 63.0	\$ 567.1

Construction in progress consists of plant expansions and upgrades.

Interest related to the construction of major facilities is capitalized and included in the cost of the asset to which it relates. Interest capitalized was \$1.6 million, \$1.7 million and \$6.5 million for the years ended March 31, 2004, 2003 and 2002, respectively. Depreciation expense for continuing operations was \$35.9 million, \$27.2 million and \$23.3 million for the years ended March 31, 2004, 2003 and 2002, respectively.

**JAMES HARDIE INDUSTRIES N.V. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**8. Intangible Assets**

Intangible assets consist of the following components:

	Goodwill	Other	Total
(Millions of US dollars)			
Balance at April 1, 2003:			
Cost	\$ 2.0	\$ 2.3	\$ 4.3
Accumulated amortization	(0.2)	(0.7)	(0.9)
Net book value	1.8	1.6	3.4
Changes in net book value:			
Amortization	—	(0.5)	(0.5)
Additional minimum pension liability	—	(0.1)	(0.1)
Foreign currency translation adjustments	0.3	(0.1)	0.2
Total changes	0.3	(0.7)	(0.4)
Balance at March 31, 2004:			
Cost	2.3	2.1	4.4
Accumulated amortization	(0.2)	(1.2)	(1.4)
Net book value	\$ 2.1	\$ 0.9	\$ 3.0

The Company recorded amortization expense of \$0.5 million, \$0.2 million and nil for the years ended March 31, 2004, 2003 and 2002, respectively, related to other intangibles. Amortization expense of \$0.2 million has been recorded for the year ended March 31, 2002 related to goodwill.

**9. Retirement Plans**

The Company sponsors a defined contribution plan for employees in its U.S. operations and defined benefit and defined contribution plans for its Australian and New Zealand employees, respectively. The defined contribution plan in the U.S. covers all U.S. employees meeting certain eligibility requirements and provides for contributions of up to 6% of their salary or wages. The Company's expense for its defined contribution plans totaled \$3.8 million, \$2.9 million and \$2.6 million for the years ended March 31, 2004, 2003 and 2002, respectively.

The following are the components of net periodic pension cost for the Australian defined benefit pension plan:

	Years Ended March 31		
	2004	2003	2002
(Millions of US dollars)			
Service cost	\$ 2.9	\$ 2.7	\$ 2.9
Interest cost	2.9	2.9	2.4
Expected return on plan assets	(3.6)	(3.2)	(3.7)
Amortization of unrecognized transition asset	(0.9)	(0.8)	(0.8)
Amortization of prior service costs	0.1	—	—
Recognized net actuarial loss	0.4	0.7	0.1
Net periodic pension cost	\$ 1.8	\$ 2.3	\$ 0.9

**JAMES HARDIE INDUSTRIES N.V. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

A settlement loss of \$1.3 million was recognized during the year ended March 31, 2002 as a result of the sale of the Company's Windows business.

The following are the assumptions used in developing the net periodic benefit cost and projected benefit obligation as of March 31 for the Australian defined benefit pension plan:

	March 31		
	2004	2003	2002
Net Periodic Benefit Cost Assumptions:			
Discount rate	6.8%	7.0%	5.5%
Rate of increase in compensation	3.5%	3.5%	4.0%
Expected return on plan assets	6.8%	7.0%	7.5%
Projected Benefit Obligation Assumptions:			
Discount rate	6.5%	6.8%	7.0%
Rate of increase in compensation	4.0%	3.5%	3.5%

Plan assets consist primarily of investments in marketable securities. Net unrecognized gains and losses are amortized over the average remaining service period of active employees. A market related value of assets is used to determine pension costs with the difference between actual and expected investment return each year recognized over 5 years. The discount rate methodology is based on the yield on 10 year high quality investment securities adjusted to reflect the rates at which pension benefits could be effectively settled. The changes in the discount rate from 2003 to 2004 and from 2002 to 2003 are a direct result of the changes in yields of high quality investment securities over the same periods, adjusted to rates at which pension benefits could be effectively settled. The increase in the rate of increase in compensation under the projected benefit obligation assumption from 2003 to 2004 reflects an increase in the expected margin of compensation increases over price inflation. The decrease in the expected return on plan assets from 2003 to 2004 and from 2002 to 2003 is a result of lower expected after-tax rates of return.

The following are the actuarial changes in the benefit obligation, changes in plan assets and the funded status of the Australian defined benefit pension plan:

	Years Ended March 31	
	2004	2003
(Millions of US dollars)		
Changes in benefit obligation:		
Benefit obligation at April 1	\$ 38.5	\$38.7
Service cost	2.9	2.7
Interest cost	2.9	2.9
Plan participants' contributions	0.3	0.3
Actuarial gain	(1.5)	(5.5)
Benefits paid	(11.8)	(5.5)
Foreign currency translation	9.4	4.9
Benefit obligation at March 31	\$ 40.7	\$38.5

**JAMES HARDIE INDUSTRIES N.V. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

	Years Ended March 31	
	2004	2003
	(Millions of US dollars)	
Changes in plan assets:		
Fair value of plan assets at April 1	\$ 37.7	\$ 39.8
Actual return (loss) on plan assets	3.0	(4.4)
Employer contributions	2.8	2.5
Participant contributions	0.3	0.3
Benefits paid	(11.8)	(5.5)
Foreign currency translation	9.2	5.0
	<u>          </u>	<u>          </u>
Fair value of plan assets at March 31	\$ 41.2	\$ 37.7
	<u>          </u>	<u>          </u>
Funded status	\$ 0.6	\$ (0.8)
Unamortized prior service cost	0.1	0.1
Unrecognized actuarial loss	13.4	11.9
Unrecognized net transition asset	—	(0.8)
	<u>          </u>	<u>          </u>
Net asset	\$ 14.1	\$ 10.4
	<u>          </u>	<u>          </u>
Pension assets (liabilities) recognized in the financial statements:		
Prepaid pension cost	\$ 14.1	\$ 10.4
Accrued pension liability	—	(11.2)
Accumulated other comprehensive loss	—	11.1
Intangible asset	—	0.1

The Company recorded an additional minimum pension liability of \$11.2 million at March 31, 2003 as required by SFAS No. 87, "Employers' Accounting for Pensions." The adjustment was reflected in other liabilities, accumulated other comprehensive income and intangible assets, as appropriate, and is prescribed when the accumulated benefit obligation of the plan exceeds the fair value of the underlying pension plan assets and accrued pension liabilities. In the current fiscal year, this minimum pension liability was reversed as the fair value of plan assets exceeded the plan's accumulated benefit obligation at March 31, 2004.

**10. Accounts Payable and Accrued Liabilities**

Accounts payable and accrued liabilities consist of the following components:

	March 31	
	2004	2003
	(Millions of US dollars)	
Trade creditors	\$54.7	\$49.7
Other creditors and accruals	23.8	24.3
	<u>          </u>	<u>          </u>
Total accounts payable and accrued liabilities	\$78.5	\$74.0
	<u>          </u>	<u>          </u>

**JAMES HARDIE INDUSTRIES N.V. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**11. Short and Long-Term Debt**

Long-term debt consists of the following components:

	March 31	
	2004	2003
	(Millions of US dollars)	
US\$ noncollateralized notes — current portion	\$ 17.6	\$ —
US\$ noncollateralized notes — long term portion	147.4	165.0
	\$165.0	\$165.0

The US\$ non-collateralized notes form part of a seven tranche private placement facility which provides for maximum borrowings of \$165.0 million. Principal repayments are due in seven installments that commence on November 5, 2004 and end on November 5, 2013. The tranches bear fixed interest rates of 6.86%, 6.92%, 6.99%, 7.05%, 7.12%, 7.24% and 7.42%. Interest is payable in May and November each year.

The Company has a short-term US\$ line of credit which provides for maximum borrowings of \$11.5 million. At March 31, 2004, the Company had drawn down \$10.8 million on this line of credit. The line of credit can be repaid and redrawn until maturity in October and December 2004. Interest is recalculated at the commencement of each draw-down period based on the 90-day Chilean Tasa Activa Bancaria (“TAB”) rate plus a margin and is payable at the end of each draw-down period. At March 31, 2004 and 2003, the weighted average interest rate on outstanding borrowings under this facility was 3.24% and 4.80%, respectively. The Company expects to renew this agreement under similar terms and conditions after its maturity in October and December 2004.

The US\$ denominated non-collateralized revolving loan facility can be repaid and redrawn until maturity in November 2006 and provides for maximum borrowings of A\$200.0 million (\$152.0 million). Interest is recalculated at the commencement of each draw-down period based on the US\$ LIBOR or the average Australian bank bill rate plus the margins of individual lenders, and is payable at the end of each draw-down period. During the year ended March 31, 2004, the Company paid \$0.4 million in commitment fees. At March 31, 2004, there was \$152.0 million available under this revolving loan facility.

The Company has short-term non-collateralized stand-by loan facilities which provide for maximum borrowings of \$117.5 million. At March 31, 2004, the facilities had a maturity date of October 30, 2004 and the Company had not drawn down any of these facilities. During April 2004, the Company renegotiated the facilities to extend the maturity date to April 30, 2005. Interest is recalculated at the commencement of each draw-down period based on either the US\$ LIBOR or the average A\$ bank bill bid rate plus the margins of the individual lenders and is payable at the end of each draw-down period. During the year, the Company paid \$0.2 million in commitment fees.

The A\$ loan from the Medical Research and Compensation Foundation was repaid in full during the year ended March 31, 2002.



JAMES HARDIE INDUSTRIES N.V. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

At March 31, 2004, the following are the scheduled maturities of long-term debt for each of the next five years and in total thereafter:

	(Millions of US dollars)
Years Ending March 31:	
2005	\$ 17.6
2006	25.7
2007	27.1
2008	8.1
2009	46.2
Thereafter	40.3
Total	\$ 165.0

As a consequence of the completion of the sale of the Gypsum business on April 25, 2002, the Company was technically not in compliance as of that date with certain pre-approval covenants of its US\$ non-collateralized note agreements totaling \$225.0 million. Effective December 23, 2002, the note purchase agreement was amended to, among other matters, modify these covenants to remove the technical non-compliance caused by the sale of the Gypsum business. In connection with such amendment, the Company prepaid \$60.0 million in principal amount of notes. As a result of the early retirement, the Company incurred a \$9.9 million make-whole payment charge. The make-whole payment was charged to interest expense during the year ended March 31, 2003.

At March 31, 2004, management believes it was in compliance with all restrictive covenants contained in the non-collateralized notes, revolving loan facility and the stand-by credit facility agreements. Under the most restrictive of these covenants, the Company is required to maintain certain ratios of debt to equity and net worth and levels of earnings before interest and taxes.

**12. Other Liabilities**

Other liabilities consist of the following components:

	March 31	
	2004	2003
	(Millions of US dollars)	
<b>Current other liabilities:</b>		
Reorganization	\$ 0.7	\$ 0.8
Surplus leased space	—	1.5
Other	1.1	2.6
Total current other liabilities	\$ 1.8	\$ 4.9
<b>Non-current other liabilities:</b>		
Employee entitlements	13.5	15.4
Product liability	5.6	1.2
Other	63.2	31.9
Total non-current other liabilities	\$82.3	\$48.5

**JAMES HARDIE INDUSTRIES N.V. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**13. Product Warranties**

The Company offers various warranties on its products, including a 50-year limited warranty on certain of its fiber cement siding products in the United States. A typical warranty program requires that the Company replace defective products within a specified time period from the date of sale. The Company records an estimate for future warranty related costs based on an analysis of actual historical warranty costs as they relate to sales. Based on this analysis and other factors, the adequacy of the Company's warranty provisions are adjusted as necessary. While the Company's warranty costs have historically been within its calculated estimates, it is possible that future warranty costs could exceed those estimates. The following are the changes in the product warranty provision:

	March 31	
	2004	2003
	(Millions of US dollars)	
Balance at beginning of period	\$14.8	\$17.7
Accruals for product warranties	2.2	0.1
Settlements made in cash or in kind	(5.7)	(3.3)
Foreign currency translation adjustments	0.7	0.3
Balance at end of period	\$12.0	\$14.8

**14. Commitments and Contingencies**

*Environmental*

The operations of the Company, like those of other companies engaged in similar businesses, are subject to various federal, state and local laws and regulations on air and water quality, waste handling and disposal. The Company's policy is to accrue for environmental costs when it is determined that it is probable that an obligation exists and the amount can be reasonably estimated. In the opinion of management, based on information presently known, the ultimate liability for such matters should not have a material adverse effect on either the Company's consolidated financial position, results of operations or cash flows.

*Legal*

The Company is involved from time to time in various legal proceedings and administrative actions incidental to the normal conduct of its business. Although it is impossible to predict the outcome of any pending legal proceeding, management believes that such proceedings and actions in the normal conduct of business should not, individually or in the aggregate, have a material adverse effect on either its consolidated financial position, results of operations or cash flows.

*Claims Against Former Subsidiaries*

*Amaca Pty Ltd, Amaba Pty Ltd and ABN 60*

In February 2001, ABN 60, formerly known as James Hardie Industries Limited ("JHIL") established the Medical Research and Compensation Foundation (the "Foundation") by gifting A\$3.0 million (\$1.7 million) in cash and transferring ownership of Amaca Pty Ltd (formerly James Hardie & Coy Pty Ltd) ("Amaca") and Amaba Pty Ltd (formerly Jsekarb Pty Ltd) ("Amaba") to the Foundation. The Foundation is a special purpose charitable foundation established to fund medical and scientific research into asbestos-related diseases. Amaca and Amaba were Australian companies which had manufactured and marketed asbestos-related products prior to 1987.

**JAMES HARDIE INDUSTRIES N.V. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

The Foundation is managed by independent trustees and operates entirely independently of the Company and its current subsidiaries (“James Hardie”). The Company does not control (directly or indirectly) the activities of the Foundation in any way and, effective from February 16, 2001, has not owned, or controlled (directly or indirectly) the activities of, Amaca or Amaba. In particular, the trustees are responsible for the effective management of claims against Amaca and Amaba, and for the investment of their assets. The Company has no economic interest in the Foundation, Amaca or Amaba, and has no right to dividends or capital distributions made by the Foundation.

On March 31, 2003, James Hardie transferred control of ABN 60 to a newly established company named ABN 60 Foundation Pty Ltd (“ABN 60 Foundation”). ABN 60 Foundation was established to be the sole shareholder of ABN 60 and to ensure ABN 60 meets its payment obligations to the Foundation. Following the establishment of the ABN 60 Foundation, James Hardie no longer owns any shares in ABN 60. ABN 60 Foundation is managed by independent directors and operates entirely independently of James Hardie. James Hardie does not control the activities of ABN 60 or ABN 60 Foundation in any way, it has no economic interest in ABN 60 or ABN 60 Foundation, and has no right to dividends or capital distributions made by the ABN 60 Foundation.

Up to the date of the establishment of the Foundation, Amaca and Amaba incurred costs of asbestos-related litigation and settlements. From time to time, ABN 60 was joined as a party to asbestos suits which were primarily directed at Amaca and Amaba. As Amaca, Amaba and ABN 60 are no longer a part of James Hardie, and all relevant claims against ABN 60 had been successfully defended, no provision for asbestos-related claims was established in the Company’s accounts at March 31, 2004.

It is possible that JHI NV or any member of the James Hardie group could become subject to suits for damages for personal injury or death in connection with the former manufacture or sale of asbestos products that are or may be filed against Amaca, Amaba or ABN 60. Although it is difficult to predict the incidence or outcome of future litigation, we believe that in the absence of governmental action introducing legislation, or a change in jurisprudence as previously adopted in prior case law before the NSW Supreme Court and Federal High Court, as more fully described below under “Special Commission of Inquiry,” the risk that such suits could be successfully asserted against us is low to remote. However, if suits are made possible and/or successfully brought, they could have a material adverse effect on our business, results of operations or financial condition. This belief is based in part on the fact that following the transfers of Amaca and Amaba to the Foundation and of ABN 60 to the ABN 60 Foundation, none of those companies are part of James Hardie; the separateness of corporate entities under Australian law; the limited circumstances where “piercing the corporate veil” might occur under Australian and Dutch law; and the lack under Australian law of any equivalent of the U.S. legal doctrine of “successor liability” and because JHI NV has been advised that the principle applicable under Dutch law, to the effect that transferees of assets may be held liable for the transferor’s liabilities when they acquire assets at a price that leaves the transferor with insufficient assets to meet claims, is not triggered by the restructuring or previous group transactions. The courts in Australia have generally refused to hold parent entities responsible for the liabilities of their subsidiaries except in cases of fraud, agency, direct operational responsibility or the like.

During the period ended March 31, 2004, 2003 and 2002, James Hardie has not been a party to any asbestos litigation and has not made any settlement payments in relation to such litigation.

*Special Commission of Inquiry*

On October 29, 2003, the Foundation issued a press release stating that its “most recent actuarial analysis estimates that the compensation bill for the organization could reach one billion Australian dollars in addition to those funds already paid out to claimants since the Foundation was formed and that existing funding could be exhausted within five years.” In February 2004, the Government of the State of New South Wales (“NSW”), Australia established a Special Commission of Inquiry (“SCI”) to investigate, among other

**JAMES HARDIE INDUSTRIES N.V. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

matters described below, the circumstances in which the Foundation was established. The SCI was instructed to determine the current financial position of the Foundation and whether it is likely to meet its future asbestos-related claims in the medium to long-term. It was also instructed to report on the circumstances in which the Foundation was separated from James Hardie and whether this may have resulted in or contributed to a possible insufficiency of assets to meet its future asbestos-related liabilities, and the circumstances in which any corporate restructure or asset transfers occurred within or in relation to the James Hardie group prior to the funding of the Foundation to the extent that this may have affected the Foundation's ability to meet its current and future liabilities. The SCI was also instructed to report on the adequacy of current arrangements available to the Foundation under the Corporations Act of Australia to assist the Foundation in managing its liabilities and whether reform is desirable in order to assist the Foundation managing its obligations to current and future claimants.

On July 14, 2004, the Company lodged a submission with the SCI stating that the Company would recommend that shareholders approve the provision of an unspecified amount of additional funding to enable an effective statute-based scheme to compensate all future claimants for asbestos-related injuries for which Amaca and Amaba are liable. The Company proposed that the statutory scheme should include: speedy, fair and equitable compensation for all existing and future claimants; objective criteria to reduce superimposed (judicial) inflation; contributions to be made in a manner which would provide certainty to claimants as to their entitlement, the scheme administrator as to the amount available for distribution, and the proposed contributors (including James Hardie) as to the ultimate amount of their contributions; significant reductions in legal costs through reduced and more abbreviated litigation; and limiting legal avenues outside of the scheme. The submission stated that the proposal was made without any admission of liability or prejudice to the Company's rights or defenses.

The SCI finished taking evidence on August 13, 2004 and issued its report on September 21, 2004. The SCI indicated that the establishment of the Foundation and the establishment of the ABN 60 Foundation were legally effective and that, accordingly, although any liabilities in relation to the asbestos claims for claimants remained with Amaca, Amaba or ABN 60 (as the case may be), no significant liabilities for those claims could be made directly against JHI NV or any other James Hardie entities.

In relation to the assertions by the Foundation concerning the circumstances of its establishment, the SCI examined these in detail. Although the SCI made certain adverse findings against Mr. Macdonald (former CEO) and Mr. Shafron (former CFO), it did not find that their conduct caused any material loss to the Foundation or the asbestos claimants which would create a valuable cause of action against, and therefore a material liability of, any James Hardie entity or would lead to any of the restructuring arrangements being reversed. Indeed, the SCI specifically noted that there were significant hurdles, which might be insuperable, to establishing any liability in respect of these claims against the Company, ABN 60 or their respective directors and that, even if liability were established, there were further hurdles which might prove to be insuperable against any substantial recovery or remedy by such potential claimants in respect of them.

In relation to the question of the funding of the Foundation, the SCI found that there was a significant funding shortfall. In part this was based on actuarial work indicating that the discounted value of the central estimate of the asbestos liabilities of Amaca and Amaba were approximately A\$1.570 billion. The SCI found that the net assets of the Foundation and the ABN 60 Foundation were not sufficient to meet these prospective liabilities and were likely to be exhausted in the first half of 2007.

In relation to the Company's statutory scheme proposal, the SCI reported that there were several issues which needed to be refined quite significantly but that it would be an appropriate starting point for devising an appropriate compensation scheme.

**JAMES HARDIE INDUSTRIES N.V. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

The SCI's findings are not binding and a later court consideration of the issues could lead to one or more different conclusions.

The NSW Government has stated that it would not consider assisting the implementation of any proposal advanced by the Company unless it was the result of an agreement reached with the union movement acting through the Australian Council of Trade Unions ("ACTU") and the Labor Council of NSW as well as the representatives of the asbestos claimants (together, the "Representatives"). The statutory scheme that the Company recommended on July 14, 2004 was rejected by the Representatives. The Company is currently in discussions with the Representatives regarding potential arrangements that could be acceptable to both the Representatives and the Company and subsequently to the Company's shareholders and the NSW Government. Both the outcome of those discussions and the timing of any potential resolution are highly uncertain and accordingly, the Company cannot yet determine whether it will achieve a satisfactory resolution or what any potential voluntary arrangement may involve.

The Company's view is that, except to the extent that it agrees as a result of these discussions, under current Australian law it is not liable for any shortfall in the assets of Amaca, Amaba or the Foundation, the ABN 60 Foundation or ABN 60. The Company cannot determine when or if a resolution may be reached between itself and the Representatives. The Company is attempting to negotiate a resolution as quickly as possible. Accordingly, the Company has not established a provision for asbestos-related liabilities because at this time it is not probable nor estimable.

In October 2004, the Company commissioned an updated actuarial study of potential asbestos-related liabilities.

Based on the results of the study, which was updated as at June 30, 2004, it is estimated that the discounted central estimate, after allowing for expected insurance recoveries, of asbestos-related liabilities of Amaca, Amaba and ABN 60 is A\$1.536 billion (discounted at 6.12% per annum) or an undiscounted central estimate of A\$3.586 billion.

In estimating the potential asbestos-related exposure, the actuaries have made a number of assumptions relating to wage inflation, superimposed inflation (being the excess of total claim cost inflation over wage inflation), discount rates, the total number of claims expected to be reported through to 2071, the pace of such notifications and their settlement, the average costs of an award (which is affected by the disease type, the age and occupation of the claimant and the jurisdiction in which the claim is brought and settled), the proportion of claims for which no award is paid by the above-named entities, and the associated average claimant and defendant legal fees to be incurred.

Further, the actuaries have relied on the data and information provided by the Medical Research and Compensation Foundation and Litigation Management Group Pty Limited and assumed that it is accurate and complete in all material respects. The actuaries have not verified that information independently nor established the reliability, accuracy or completeness of the data and information provided or used for the preparation of their report, and were not provided with the information required to carry out such a verification exercise.

Due to inherent uncertainties in the legal and medical environment; the number and timing of future claim notifications and settlements; the recoverability of claims against insurance contracts and in estimating the future trends in average claim awards as well as the extent to which the above-named entities will contribute to the overall settlements, the outcome could differ materially from that currently projected.

Sensitivity analysis has been performed, showing how the actuarial estimates would change if the outcome of certain assumptions (being the rate of superimposed inflation, the average costs of claims and legal fees, and the projected numbers of claims) were different to that included within the central estimates.

**JAMES HARDIE INDUSTRIES N.V. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

This shows that the discounted central estimates could fall in a range A\$1.1 billion to A\$2.3 billion (undiscounted estimates of A\$2.0 billion to A\$5.7 billion) based on the current information available and reflecting current trends. It should be noted that the actual cost of the liabilities could fall outside that range depending on the actual outcome of the assumptions made.

If a resolution is reached with the Representatives and approved by them, the NSW Government and the Company's Board, shareholders and lenders, the Company may be required to make a substantial provision in its accounts at a later date, and it is possible that the Company would need to seek additional borrowing facilities. Additionally, it is possible that any future resolution of this issue may result in the Company having negative shareholders' equity, which would be likely to restrict its ability to pay dividends to its shareholders. If the terms of a future resolution involve James Hardie making payments, either on an annual or other basis, pursuant to a statutory scheme or other form of arrangement, James Hardie's financial position, results of operations and cash flows could be materially adversely affected.

It is also possible that the Representatives and/or others may encourage or continue to encourage consumers and union members in Australia and elsewhere to boycott the Company's products, to demonstrate or otherwise create negative publicity toward the Company in order to influence the Company's approach to the discussions with the Representatives or to encourage governmental action if the discussions are unsuccessful. The Representatives and/or others might also take such actions in an effort to influence the Company's shareholders, a significant number of which are located in Australia, to approve any proposed arrangement. Any such measures, and the influences resulting from them, could have a material adverse impact on the Company's financial position, results of operations and cash flows.

On October 28, 2004, the NSW Premier announced that the NSW Government would seek the agreement of the Ministerial Council comprised of the Ministers of the Commonwealth and the Australian States and Territories to allow the NSW Government to pass legislation which he announced would "wind back James Hardie's corporate restructure and rescind the cancellation of A\$1.9 billion in partly paid shares." The announcement said that "the laws will effectively enforce the liability [for asbestos-related claims] against the Dutch parent company." On November 5, 2004, the Australian Attorney-General and the Parliamentary Secretary to the Treasurer (the two relevant ministers of the Australian Federal Government) issued a news release stating that the Ministerial Council for Corporations (the relevant body of Federal, State and Territory Ministers, "MINCO") had unanimously agreed "to support a negotiated settlement that will ensure that victims of asbestos-related diseases receive full and timely compensation from James Hardie" and if "the current negotiations between James Hardie, the ACTU and asbestos victims do not reach an acceptable conclusion, MINCO also agreed in principle to consider options for legislative reform." The news release of November 5, 2004 indicated that treaties to enforce Australian judgments in Dutch and U.S. courts are not required but that the Australian Government has been involved in communications with Dutch and U.S. authorities regarding arrangements to ensure that Australian judgments are able to be enforced where necessary. Should negotiations not lead to an acceptable conclusion, James Hardie is aware of suggestions of legislative intervention but has no detailed information as to its likely content. Negotiations with the Representatives continue and no draft legislation has currently been published.

On November 18, 2004, the NSW Government announced its intention to conduct a review of current asbestos compensation arrangements in NSW. The intention of this review is primarily to determine ways to reduce legal and administrative costs, and to consider the current processes for handling and resolving dust diseases compensation claims. The review is expected to report to the NSW Government early in 2005. The Company is unable to predict the outcome of this review.

**JAMES HARDIE INDUSTRIES N.V. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

*Australian Securities and Investments Commission Investigation*

On September 22, 2004, the Australian Securities and Investments Commission (“ASIC”) announced that it was conducting an investigation into potential contraventions of certain Australian laws arising from the transactions considered by the SCI. The persons whose conduct is being investigated have not been expressly identified by the ASIC. The investigation will include a review of the conduct of the directors of various James Hardie Group companies, including their conduct and statements made in relation to securities of JHI NV or JHIL and the circumstances in which various transactions occurred (including the cancellation of partly-paid shares in JHIL).

JHI NV has received a notice from ASIC under relevant legislation to produce certain categories of documents to be considered by it in its investigation. JHI NV is currently responding to this notice and will cooperate with the ASIC in relation to all aspects of its investigation.

The Company may incur costs of current or former officers of the James Hardie Group to the extent that those costs are covered by indemnity arrangements granted by the James Hardie Group to those persons. To date, no claims have been received by any current or former officers in relation to the ASIC investigation and if claims do arise, the Company may be reimbursed under directors’ and officers’ insurance policies taken out by the Company.

*Severance Agreements*

On October 20, 2004, Mr. Peter Shafron resigned from his position as Chief Financial Officer and on October 21, 2004, Mr. Peter Macdonald resigned from his position on the Managing Board and as Chief Executive Officer. In connection with these resignations, the Company will incur costs of \$8.8 million in the quarter ending December 31, 2004. These costs will be comprised of \$5.9 million of additional expense and \$2.9 million of accruals existing at September 30, 2004.

*ABN 60 Indemnity*

In order to facilitate the release of funding by ABN 60 to the Foundation, and thereby inter alia to seek to ensure that asbestos-related claims processing is not interrupted during the negotiations and facilitate negotiations with the Representatives, the Company offered an indemnity to the directors of ABN 60, which it announced on November 16, 2004. This proposed indemnity would require the Company to pay for any liability incurred by the ABN 60 directors resulting from the release of funding by ABN 60 to the Foundation. The Company believes that the release of funding by ABN 60 is in accordance with law and contracts in place and therefore the Company should not incur liability under this indemnity, but the indemnity is being offered to relieve the concerns of those who may have hesitation about their legal and financial exposure. Additionally, the Company has offered to provide funding to the Foundation on an interim basis for a period of up to six months, commencing on November 16, 2004. The proposed interim funding by the Company would only be provided once existing Foundation funds have been exhausted. The Company believes, based on actuarial and legal advice that claims against the Foundation should not exceed the funds which are or which are expected to become available to the Foundation during the period of the interim funding proposal. By way of example, the Company expects the prospect of such funds being exhausted will be materially reduced in the event that ABN 60 releases funds to the Foundation in light of the indemnity described above. The proposal for interim funding was put forward to relieve concerns regarding the short-term funding and payment of legitimate asbestos-related claims, and so that the Foundation would continue claims processing during the negotiation process. The Company has not recorded a provision for either the proposed indemnity or the potential payments under the interim funding proposal.

**JAMES HARDIE INDUSTRIES N.V. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

***Gypsum Business***

Under the terms of the Company’s agreement to sell its Gypsum business to BPB U.S. Holdings, Inc., the Company agreed to customary indemnification obligations related to its representations and warranties in the agreement. The Company’s indemnification obligation generally extends for 2 years from the closing date, arises only if claims exceed \$5 million in the aggregate and is limited to \$100 million in the aggregate. In addition, the Company agreed to indemnify BPB U.S. Holdings, Inc. for any future liabilities arising from asbestos-related injuries to persons or property. Although the Company is not aware of any asbestos-related claims arising from the Gypsum business, nor circumstances that would give rise to such claims, under the sale agreement, the Company’s obligation to indemnify the purchaser for liabilities arising from asbestos-related injuries arises only if such claims exceed \$5 million in the aggregate, is limited to \$250 million in the aggregate and will continue for 30 years after the closing date of the sale of the Gypsum business.

Pursuant to the terms of the Company’s agreement to sell its Gypsum business, the Company also retained responsibility for any losses incurred by the purchaser resulting from environmental conditions at the Duwamish River in Washington state so long as notice of a claim is given within 10 years of closing. Our indemnification obligations are subject to a \$34.5 million limitation. The Seattle gypsum facility had previously been included on the “Confirmed and Suspected Contaminate Sites Report” released in 1987 due to the presence of metals in the groundwater. As the Company believes the metals found emanated from an offsite source, the Company does not believe it is liable for, and have not been requested to conduct, any investigation or remediation relating to the metals in the groundwater.

***Operating Leases***

As the lessee, the Company principally enters into property, building and equipment leases. The following are future minimum lease payments for non-cancelable operating leases having a remaining term in excess of one year at March 31, 2004:

	<b>(Millions of US dollars)</b>
Years Ending March 31:	
2005	\$ 12.5
2006	11.6
2007	10.4
2008	9.8
2009	8.8
Thereafter	75.2
Total	<u>\$ 128.3</u>

Rental expense amounted to \$8.1 million, \$9.0 million and \$8.0 million for the years ended March 31, 2004, 2003 and 2002, respectively.

***Capital Commitments***

Commitments for the acquisition of plant and equipment and other purchase obligations, primarily in the United States, contracted for but not recognized as liabilities and generally payable within one year, were \$26.8 million at March 31, 2004.



**JAMES HARDIE INDUSTRIES N.V. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**15. Other Operating (Expense) Income**

In March 2001, the Company announced the creation of a new division for its fiber cement business in the Asia Pacific region, commencing with the 2002 fiscal year. The new regional division comprises the fiber cement operations in Australia, New Zealand and the Philippines. As a result, the Company had decided to phase out manufacturing at its Perth, Western Australia facility during the course of calendar year 2001. Accordingly, restructuring costs of \$15.5 million were incurred in the Asia Pacific fiber cement segment for the year ended March 31, 2001. The Company incurred employee termination costs of \$5.4 million for 189 employees: 8 from sales, 23 from administration, 5 from marketing and 153 hourly paid workers in manufacturing and distribution. One employee had left by March 31, 2001. The 2 administrative employees remaining at March 31, 2002 left in fiscal year 2003. Included in the March 2001 restructuring costs were \$7.5 million for the write down of fixed assets to their estimated fair value and \$2.6 million for lease cancellation charges. With Multiplex Property Trust's ("Multiplex"), an unrelated third party, March 2004 acquisition of the Perth, Western Australia facility from Amaca Pty Ltd (see Note 17), the remaining surplus lease space accrual of \$1.5 million was reversed.

Corporate reorganization expenses represent the costs incurred in relation to the 2001 Reorganization. Included in these expenses is \$2.3 million paid to our independent auditors, PricewaterhouseCoopers LLP, for related professional services.

On February 14, 2002, the Company signed a Class Action Settlement Agreement (the "Settlement Agreement") for all product, warranty and property related liability claims associated with its roofing products, which were previously manufactured and sold by the USA Fiber Cement business. These products were removed from the marketplace between 1995 and 1998 in areas where there had been any alleged problems. Consequently, the Company recorded a pre-tax charge of \$12.6 million in fiscal year 2002 to cover the estimated cost of the settlement, and the estimated cost of any other pending claims or lawsuits remaining which are not covered by the settlement, as well as all related costs that may be paid under the Settlement Agreement. The total liability included in the balance sheet relating to the Settlement Agreement as of March 31, 2004 and 2003 was approximately \$4.7 million and \$9.1 million, respectively, which is included in the product warranty liability (see Note 13).

Other operating (expense) income consist of the following components:

	Years Ended March 31		
	2004	2003	2002
	(Millions of US dollars)		
Other operating (expense) income:			
Settlement of terminated derivative contract	\$ —	\$1.0	\$ —
Decrease in fair value of derivative contracts	—	—	(8.1)
Corporate reorganization expenses	—	—	(7.4)
Class action settlement and roofing warranties	—	—	(12.6)
Other	(2.1)	—	—
	—	—	—
<b>Total other operating (expense) income</b>	<b>\$(2.1)</b>	<b>\$1.0</b>	<b>\$(28.1)</b>

**JAMES HARDIE INDUSTRIES N.V. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

The following table displays the activity and balances of the restructuring accrual account, which is included in other liabilities (in millions of US dollars):

Type of Cost	April 1, 2003 Balance	Additions	Deductions	March 31, 2004 Balance
Employee terminations	\$ 0.8	\$ —	\$ (0.1)	\$ 0.7
Surplus lease space	1.5	—	(1.5)	—
<b>Total</b>	<b>\$ 2.3</b>	<b>\$ —</b>	<b>\$ (1.6)</b>	<b>\$ 0.7</b>

Type of Cost	April 1, 2002 Balance	Additions	Deductions	March 31, 2003 Balance
Employee terminations	\$ 0.9	\$ —	\$ (0.1)	\$ 0.8
Surplus lease space	2.1	0.2	(0.8)	1.5
<b>Total</b>	<b>\$ 3.0</b>	<b>\$ 0.2</b>	<b>\$ (0.9)</b>	<b>\$ 2.3</b>

Additions in fiscal year 2003 reflect foreign currency movements and deductions reflect payments.

**16. Income Taxes**

The income tax (expense) benefit includes income taxes currently payable and those deferred because of temporary differences between the financial statement and tax bases of assets and liabilities. The income tax expense for continuing operations consists of the following components:

	Years Ended March 31		
	2004	2003	2002
	(Millions of US dollars)		
Income from continuing operations before income taxes:			
Domestic(1)	\$103.5	\$ 38.6	\$10.1
Foreign	62.2	71.0	20.3
Income from continuing operations before income taxes	\$165.7	\$109.6	\$30.4
Income tax (expense) benefit:			
Current:			
Domestic(1)	(6.7)	(7.0)	(2.2)
Foreign	(20.4)	1.3	(2.1)
Current income tax expense	(27.1)	(5.7)	(4.3)
Deferred:			
Domestic(1)	(3.9)	0.1	0.2
Foreign	(9.4)	(20.5)	1.0
Deferred income tax (expense) benefit	(13.3)	(20.4)	1.2
Total income tax expense for continuing operations	\$ (40.4)	\$ (26.1)	\$ (3.1)

(1) Since JHI NV is the Dutch parent holding company, domestic represents The Netherlands.

**JAMES HARDIE INDUSTRIES N.V. AND SUBSIDIARIES****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

The income tax (expense) benefit computed at the statutory rates represents taxes on income applicable to all jurisdictions in which the Company conducts business, calculated as the statutory income tax rate in each jurisdiction multiplied by the pre-tax income attributable to that jurisdiction. The income tax expense from continuing operations is reconciled to the tax at the statutory rates as follows:

	Years Ended March 31		
	2004	2003	2002
	(Millions of US dollars)		
Income tax expense computed at the statutory tax rates	\$(60.7)	\$(37.2)	\$(11.4)
U.S. state income taxes, net of the federal benefit	(0.2)	(1.2)	0.9
Benefit from Dutch financial risk reserve regime	24.8	11.9	2.6
Expenses not deductible	(2.5)	(4.7)	(1.3)
Non-assessable items	1.3	—	9.3
Losses not available for carryforward	—	(1.4)	(3.9)
Taxes related to 2001 Reorganization	—	3.5	(18.7)
Net operating losses brought back to account	—	13.0	18.7
Increase in reserves	—	(10.0)	—
Result of U.S. tax audits	(3.9)	—	—
Other items	0.8	—	0.7
Total income tax expense	<u>\$(40.4)</u>	<u>\$(26.1)</u>	<u>\$ (3.1)</u>
Effective tax rate	<u>24.4%</u>	<u>23.8%</u>	<u>10.3%</u>

Prior years' Australian legislation reduced the country's income tax rate from 34% to 30% in the year ended March 31, 2002. Consequently, the Company adjusted its Australian deferred tax assets and liabilities using the appropriate tax rate for the period in which the related timing differences are expected to reverse.

## JAMES HARDIE INDUSTRIES N.V. AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

Deferred tax balances consist of the following components:

	March 31	
	2004	2003
	(Millions of US dollars)	
Deferred tax assets:		
Provisions and accruals	\$ 18.3	\$ 28.0
Net operating loss carryforwards	14.6	35.6
Capital loss carryforwards	33.2	6.0
Prepaid interest	16.6	—
Taxes on intellectual property transfer	8.7	—
Other	0.3	0.4
Total deferred tax assets	91.7	70.0
Valuation allowance	(37.7)	(20.7)
Total deferred tax assets net of valuation allowance	54.0	49.3
Deferred tax liabilities:		
Property, plant and equipment	(76.3)	(63.5)
Prepaid pension cost	(4.2)	—
Foreign currency movements	(1.1)	—
Other	(0.9)	(0.9)
Total deferred tax liabilities	(82.5)	(64.4)
Total deferred taxes, net	\$ (28.5)	\$ (15.1)

Under SFAS No. 109, "Accounting for Income Taxes," the Company establishes a valuation allowance against a deferred tax asset if it is more likely than not that some portion or all of the deferred tax asset will not be realized. The Company has established a valuation allowance pertaining to a portion of its Australian net operating loss carryforwards and all of its Australian capital loss carryforwards.

**JAMES HARDIE INDUSTRIES N.V. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

The following are the changes in the valuation allowance:

	Years Ended March 31		
	2004	2003	2002
	(Millions of US dollars)		
Balance at April 1	\$(20.7)	\$(42.8)	\$(67.5)
Write-off Australian NOL against allowance	12.9	—	—
Australian capital losses	(29.8)	—	—
Utilization of capital losses	6.4	—	—
Cumulative translation adjustment	—	—	7.8
Transfer of ABN 60	—	16.8	—
Net deferred tax assets brought back to account	—	(4.0)	—
Reduction (addition) to expense:			
Net operating losses brought back to account	—	13.0	8.8
Timing differences brought back to account	—	—	9.7
Tax rate change	—	—	(0.1)
Reduction through sale of a business	—	—	3.3
Foreign currency movements	(6.5)	(3.7)	(4.8)
Balance at March 31	\$(37.7)	\$(20.7)	\$(42.8)

At March 31, 2004, the Company had Australian tax loss carryforwards of approximately \$38.7 million that will never expire. During fiscal year 2004, the Company wrote-off \$43.1 million in Australian tax loss carryforwards that are permanently impaired. The Company had previously provided a 100% valuation allowance against these carryforwards.

At March 31, 2004, the Company had \$110.6 million in Australian capital loss carryforwards which will never expire. During fiscal year 2004, the Company added Australian capital loss carryforwards of approximately \$99.4 million primarily as a result of the Company electing to file their Australian income tax returns as a single consolidated group, and utilized \$21.4 million during fiscal year 2004. At March 31, 2004, the Company had a 100% valuation allowance against the Australian capital loss carryforwards.

Under Australian legislation in fiscal 2003, the Company's Australian entities have elected to file their Australian income tax returns as a single consolidated group. The election allows the group to recognize value in certain deferred tax assets against which the Company had in prior years established a valuation allowance. Accordingly, the Company released \$13.0 million of valuation allowance during the year ended March 31, 2003.

At March 31, 2004, the undistributed earnings of non-Dutch subsidiaries approximated \$528.0 million. The Company intends to indefinitely reinvest these earnings, and accordingly, has not provided for taxes that would be payable upon remittance of those earnings. The amount of the potential deferred tax liability is impracticable to determine at this time.

Due to the size of the Company and the nature of its business, the Company is subject to ongoing reviews by the Internal Revenue Service ("IRS") and other taxing jurisdictions on various tax matters, including challenges to various positions the Company asserts. The Company accrues for tax contingencies based upon its best estimate of the taxes ultimately expected to be paid, which it updates over time as more information becomes available. Such amounts are included in taxes payable or other non-current liabilities, as appropriate. If the Company ultimately determines that payment of these amounts is unnecessary, the Company reverses the liability and recognizes a tax benefit during the period in which the Company determines that the liability

**JAMES HARDIE INDUSTRIES N.V. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

is no longer necessary. The Company records an additional charge in the period in which it determines that the recorded tax liability is less than it expects the ultimate assessment to be.

The IRS has audited the Company's U.S. income tax returns for all tax years ended through March 31, 2000. The Company settled all issues and paid all assessments arising out of the audit during fiscal year 2004. The California Franchise Tax Board ("FTB") audited the Company's California franchise tax returns for all tax years ended through March 31, 1999 and proposed substantial assessments. The Company has accrued a lesser amount for these proposed assessments that it based upon a protest that it filed on which it believes it will prevail on several issues, with the estimated result that the final assessment will not exceed the amount accrued.

The IRS, the FTB, and the Australian Tax Office are each in the process of auditing the Company's respective jurisdictional income tax returns for various ranges of years including 1998 through 2003. None of the audits have progressed sufficiently to predict their ultimate outcome. The Company has accrued income tax liabilities for these audits based upon knowledge of all relevant facts and circumstances, taking into account existing tax laws, its experience with previous audits and settlements, the status of current tax examinations, and how the tax authorities view certain issues.

During fiscal year 2004, the United States of America and The Netherlands signed a Protocol that if ratified, would amend the existing U.S.-Netherlands tax treaty, under which the Company currently derives significant tax benefits. If the Protocol is ratified and the Company is unable to satisfy the requirements for treaty benefits under the Protocol, and if the Company is unable to implement alternative arrangements, it could significantly increase the Company's effective tax rate in fiscal year 2006 forward.

**17. Discontinued Operations**

***Building Systems***

On May 30, 2003, the Company sold its New Zealand Building Systems business to a third party. A gain of \$1.9 million represented the excess of net proceeds from the sale of \$6.7 million over the net book value of assets sold of \$4.8 million. The proceeds from the sale were comprised of cash of \$5.0 million and a note receivable in the amount of \$1.7 million.

***Gypsum***

On March 13, 2002, the Company announced that it had signed an agreement to sell the Gypsum business to a third party. The transaction was completed on April 25, 2002. A pre-tax gain of \$81.4 million was recorded representing the excess of net proceeds from the sale of \$334.4 million over the net book value of assets sold of \$253.0 million. The sale resulted in income tax expense of \$26.1 million. The proceeds from the sale were comprised of cash of \$345.0 million less selling costs of \$10.6 million.

On June 28, 2001, the Company entered into an agreement to sell its gypsum mine property in Las Vegas, Nevada to a developer. The transaction was completed on March 21, 2003. A pre-tax gain of \$49.2 million represented the excess of net proceeds from the sale of \$48.4 million less the cost of assets sold of \$0.7 million and the assumption of \$1.5 million in liabilities by the buyer. The sale resulted in income tax expense of \$19.2 million. The proceeds from the sale were comprised of cash of \$50.6 million less selling costs of \$2.2 million.

***Building Services***

During the year ended March 31, 2003, the Company recorded a loss of \$1.3 million related to its Building Services business which was disposed of in November 1996. The loss consisted of expenses of \$0.8 million and a \$0.5 million write down of an outstanding receivable that was retained as part of the sale.

**JAMES HARDIE INDUSTRIES N.V. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

*Amaca Pty Ltd and Amaba Pty Ltd*

On February 16, 2001, JHIL announced that it had established the Foundation to compensate individuals with claims against two former James Hardie subsidiaries and to fund medical research into asbestos-related diseases. ABN 60 gifted A\$3.0 million (\$1.7 million) in cash and transferred ownership of Amaca Pty Ltd (formerly James Hardie & Coy Pty Ltd) (“Amaca”) and Amaba Pty Ltd (formerly Jsekarb Pty Ltd) (“Amaba”) to the Foundation, a special purpose charitable foundation established to fund medical and scientific research into asbestos-related diseases. Amaca and Amaba manufactured and marketed asbestos-related products prior to 1987, when all such activities ceased.

The Foundation is managed by independent trustees and operates entirely independently of James Hardie. James Hardie does not control the activities of the Foundation in any way and, effective from February 16, 2001, does not own or control the activities of Amaca or Amaba. In particular, the trustees are responsible for the effective management of claims against Amaca and Amaba, and for the investment of their assets. James Hardie has no economic interest in the Foundation, Amaca or Amaba; it has no right to dividends or capital distributions. Apart from the express indemnity for non-asbestos matters provided to ABN 60 and a possible arrangement to fund some or all future claimants for asbestos-related injuries caused by former James Hardie subsidiary companies and to the potential liabilities more fully described in Note 14, we do not believe we would have any liability under current Australian law should future asbestos-related liabilities of Amaca and Amaba exceed the funds available to those entities or the Foundation.

As a result of the change in ownership of Amaca and Amaba on February 16, 2001, a gain on disposal of \$2.3 million has been recorded by James Hardie at March 31, 2001, representing the net liabilities of Amaca and Amaba which were disposed of for no consideration, the A\$3.0 million (\$1.7 million) cash gift to the Foundation together with costs associated with the establishment and funding of the Foundation. ABN 60 had agreed to repay an existing loan of A\$70.0 million (\$34.3 million) due to Amaca in four annual tranches of A\$15.0 million (\$7.4 million) and a final tranche of A\$10.0 million (\$4.9 million) with the first tranche payable on August 15, 2002. However, the loan was repaid in full by ABN 60 during fiscal year 2002.

As part of the establishment and funding of the Foundation, ABN 60 has entered into an agreement to pay to Amaca and Amaba 42 annual payments of A\$5.6 million, totaling A\$234.2 million (\$141.4 million). Under the agreement, ABN 60 has the option of making the first seven payments and then a final payment of A\$73.0 million (\$44.1 million) when the eighth payment becomes due, making a total payment of A\$112.0 million (\$67.6 million). In addition, in the event claims against the two former subsidiaries exceed certain amounts, the Foundation has the right to demand payment of any remaining unpaid balance, discounted for early payment. On September 9, 2001, ABN 60 made an early payment of A\$1.0 million (\$0.5 million) to the Foundation. This payment was in addition to the annual required payment that is made each February. As a result, the required annual payments of A\$5.6 million have been reduced to A\$5.5 million. On March 31, 2003, ABN 60 and consequently this agreement and related liability were transferred to the ABN 60 Foundation (see Note 14).

In 1998, the Company entered into lease agreements with Amaca whereby the Company leases, on a long-term basis, four fiber cement manufacturing facilities in Australia. Obligations under such leases amount to an aggregate of approximately \$2.7 million per year. All of the leases expire on October 31, 2008. The leases contain renewal options and provisions adjusting lease payments based on changes in various market factors as reflected in changes in the consumer price index.

In March 2004, Multiplex, acquired the four fiber cement manufacturing facilities in Australia from Amaca. Prior to the acquisition, James Hardie renegotiated these four leases with Multiplex (see Note 14 and Note 15).

**JAMES HARDIE INDUSTRIES N.V. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

***ABN 60***

On March 31, 2003, James Hardie transferred control of ABN 60 to a newly established company named ABN 60 Foundation Pty Ltd (“ABN 60 Foundation”). ABN 60 Foundation was established to be the sole shareholder of ABN 60 and to ensure ABN 60 meets its payment obligations to the Foundation. Following the establishment of the ABN 60 Foundation, JHI NV no longer owns any shares of ABN 60. ABN 60 Foundation is managed by independent directors and operates entirely independently of James Hardie. James Hardie does not control the activities of ABN 60 or ABN 60 Foundation in any way. James Hardie has no economic interest in ABN 60 or ABN 60 Foundation, has no right to dividends or capital distributions. Apart from the express indemnity for non-asbestos matters provided to ABN 60 and a possible arrangement to fund some or all future claimants for asbestos-related injuries caused by former James Hardie subsidiary companies and to the potential liabilities more fully described in Note 14, we do not believe we will have any liability under current Australian law should future liabilities of ABN 60 or ABN 60 Foundation exceed the funds available to those entities. As a result of the change in ownership of ABN 60 on March 31, 2003, a loss on disposal of \$0.4 million was recorded by James Hardie at March 31, 2003, representing the liabilities of ABN 60 (to the Foundation) of A\$94.6 million (\$57.2 million), the A\$94.5 million (US\$57.1 million) in cash held on the balance sheet, and costs associated with the establishment and funding of ABN 60 Foundation.

JHI NV has agreed to indemnify ABN 60 Foundation for any non asbestos-related legal claims made on ABN 60. There is no maximum amount of the indemnity and the term of the indemnity is in perpetuity. James Hardie believes that the likelihood of any material non asbestos-related claims occurring is remote. As such, the Company has not recorded a liability for the indemnity. James Hardie has not pledged any assets as collateral for such indemnity.

Amaca, Amaba and ABN 60 have all agreed to indemnify JHI NV and its related corporate entities for past and future asbestos-related liabilities as part of the establishment of the respective foundations. Amaba and ABN 60’s obligation to indemnify JHI NV and its related entities includes claims that may arise associated with the manufacturing activities of those companies.

***Windows***

On August 15, 2000, the Company approved a plan to dispose of its Windows business. For the year ended March 31, 2001, the Company recorded a loss on disposal of \$17.4 million, net of an income tax benefit of \$0.6 million. This loss on disposal consisted of \$17.2 million for a write down of assets to their expected net realizable value on disposal and transaction costs expected to be incurred on disposal. At March 31, 2001, operating losses from August 15, 2000 to the final disposal date were estimated at \$0.8 million and were included in fiscal year 2001’s loss on disposal for the Windows segment.



JAMES HARDIE INDUSTRIES N.V. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

On November 30, 2001, the Company sold its Windows business. The Company recorded a gain on disposal of discontinued operations of \$2.0 million representing the excess of cash proceeds of \$7.8 million over the net book value of the assets sold of \$5.8 million, a retirement plan settlement loss of \$1.3 million and an income tax benefit of \$1.3 million. The cash proceeds were offset by cash divested of \$0.5 million. The following are the results of operations of discontinued businesses:

	Years Ended March 31		
	2004	2003	2002
	(Millions of US dollars)		
<b>Building Systems</b>			
Net sales	\$ 2.9	\$20.1	\$ 15.2
Income before income tax expense	0.3	2.8	1.5
Income tax expense	(0.1)	(0.9)	(0.5)
Net income	0.2	1.9	1.0
<b>Gypsum</b>			
Net sales	—	18.7	247.6
Income before income tax expense	—	1.8	0.9
Income tax expense	—	(0.7)	(0.4)
Net income	—	1.1	0.5
<b>Total</b>			
Net sales	2.9	38.8	262.8
Income before income tax expense	0.3	4.6	2.4
Income tax expense	(0.1)	(1.6)	(0.9)
Net income	0.2	3.0	1.5
Gain on disposal, net of income taxes	4.1	84.0	2.0
Income from discontinued operations	\$ 4.3	\$87.0	\$ 3.5

**18. Stock-Based Compensation**

At March 31, 2004, the Company had the following stock-based compensation plans: three Peter Donald Macdonald Share Option Plans; the Executive Share Purchase Plan; the 2001 Equity Incentive Plan and two Shadow Stock Plans. Prior to fiscal year 2003, the Company elected to follow the accounting provisions of APB Opinion No. 25, "Accounting for Stock Issued to Employees," and to provide the pro forma disclosures required under SFAS No. 123.

In fiscal year 2003, the Company adopted the fair value provisions of SFAS No. 123, which requires the Company to value stock options issued based upon an option pricing model and recognize this value as compensation expense over the periods in which the options vest (see Note 2).

**JAMES HARDIE INDUSTRIES N.V. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

The Company estimates the fair value of each option grant on the date of grant using the Black-Scholes option-pricing model. In the table below are the weighted average assumptions and weighted average fair values used for grants in fiscal years 2004, 2003 and 2002:

	2004	2003	2002
Dividend yield	1.0%	2.9%	4.1%
Expected volatility	26.0%	27.0%	22.3%
Risk free interest rate	2.7%	2.9%	3.3%
Expected life in years	3.3	4.6	3.1
Weighted average fair at grant date	A\$1.42	A\$1.12	A\$0.77

Compensation expense arising from stock option grants as determined using the Black-Scholes model was \$3.2 million, \$1.9 million and \$1.6 million for the fiscal years ended March 31, 2004, 2003 and 2002, respectively. All prior periods presented have been restated to reflect the compensation costs that would have been recognized had the recognition provisions of SFAS No. 123 been applied to all options granted after March 31, 1995.

***Peter Donald Macdonald Share Option Plans***

***Peter Donald Macdonald Share Option Plan***

On November 17, 1999, 1,200,000 options were granted by JHIL at fair market value to Mr. Peter D. Macdonald, Chief Executive Officer of JHIL at that time, under the Peter Donald Macdonald Share Option Plan. Each option conferred the right to subscribe for one ordinary share in the capital of JHIL at a price of A\$3.87 payable by Mr. Macdonald or his nominee at the time of exercise of the options. As part of the 2001 Reorganization, JHIL terminated this option plan and JHI NV granted Mr. Macdonald a replacement option plan to purchase 1,200,000 shares of JHI NV common stock at an exercise price of A\$3.87 per share. As with the original JHIL option grant, this stock option plan vests and becomes exercisable in three equal installments of 400,000 shares after November 17, 2002, 2003 and 2004. The JHI NV plan contains the same terms as the JHIL plan. The exercise price and the number of shares available on exercise may be adjusted on the occurrence of certain events, including new issues, share splits, rights issues and capital reconstructions, as set out in the plan rules. Consequently, the exercise price was reduced by A\$0.21, A\$0.38 and A\$0.10 for the November 2003, November 2002 and December 2001 returns of capital, respectively.

Options which have not lapsed may be exercised on any date on or after there has been a change of control of JHI NV or Mr. Macdonald's termination, resignation or death. Options not exercised will lapse on the first to occur of: (a) 10 years from the date of issue; or (b) expiration of six months after the date on which Mr. Macdonald dies or six months after he ceases to be employed by JHI NV.

***Peter Donald Macdonald Share Option Plan 2001***

On July 12, 2001, 624,000 options were granted by JHIL at fair market value to Mr. Peter D. Macdonald, Chief Executive Officer of JHIL at that time, under the Peter Donald Macdonald Share Option Plan 2001. Each option conferred the right to subscribe for one ordinary share in the capital of JHIL at the price of A\$5.45 per share payable by Mr. Macdonald or his nominee at the time of exercise of the options. As part of the 2001 Reorganization, JHIL terminated this option plan and JHI NV granted Mr. Macdonald a replacement option plan to purchase 624,000 shares of JHI NV common stock at an exercise price of A\$5.45 per share. The options may only be exercised if the Company meets certain performance hurdles. The first 468,000 options are exercisable after July 12, 2004 if JHI NV's total shareholder return ("TSR") is equal to or greater than the median TSR for the Company's peer group as set out in the plan. For every 1% that JHI NV's TSR is greater than the median peer group's TSR, an additional 6,240 options are exercisable, up to

**JAMES HARDIE INDUSTRIES N.V. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

156,000 options. As set out in the plan rules, the exercise price and the number of shares available on exercise may be adjusted on the occurrence of certain events, including new issues, share splits, rights issues and capital reconstructions. Consequently, the exercise price was reduced by A\$0.21, A\$0.38 and A\$0.10 for the November 2003, November 2002 and December 2001 returns of capital, respectively.

Options which have not lapsed may be exercised on any date on or after there has been a change of control of JHI NV or Mr. Macdonald's termination, resignation or death. Options not exercised will lapse on the first to occur of: (a) 10 years from the date of issue; or (b) expiration of six months after the date on which Mr. Macdonald dies or six months after he ceases to be employed by JHI NV.

*Peter Donald Macdonald Share Option Plan 2002*

On July 19, 2002, 1,950,000 options were granted by JHI NV at fair market value to Mr. Peter D. Macdonald, Chief Executive Officer of JHI NV at that time, under the Peter Donald Macdonald Share Option Plan 2002. Each option confers the right to subscribe for one ordinary share in the capital of JHI NV at the price of A\$6.30 per share payable by Mr. Macdonald or his nominee at the time of exercise of the options. The options may only be exercised if the Company meets certain performance hurdles. The first 1,462,500 options are exercisable after July 19, 2005 if JHI NV's TSR is equal to or greater than the median TSR for the Company's peer group as set out in the plan. For every 1% that JHI NV's TSR is greater than the median peer group's TSR, an additional 19,500 options are exercisable, up to 487,500 options. As set out in the plan rules, the exercise price and the number of shares available on exercise may be adjusted on the occurrence of certain events, including new issues, share splits, rights issues and capital reconstructions. Consequently, the exercise price was reduced by A\$0.21 and A\$0.38 for the November 2003 and November 2002 return of capital.

Options which have not lapsed may be exercised on any date on or after there has been a change of control of JHI NV or Mr. Macdonald's termination, resignation or death. Options not exercised will lapse on the first to occur of: (a) 10 years from the date of issue; or (b) expiration of 18 months after the date on which Mr. Macdonald dies or 18 months after he ceases to be employed by JHI NV.

*Executive Share Purchase Plan*

Prior to July 1998, JHIL issued stock under an Executive Share Purchase Plan. Under the terms of the Plan, eligible executives had purchased JHIL shares at their market price when issued. Executives funded purchases of JHIL shares with non-recourse, interest-free loans provided by JHIL and collateralized by the shares. In such cases, the amount of indebtedness is reduced by any amounts payable by JHIL in respect of such shares, including dividends and capital returns. These loans are generally payable within two years after termination of an executive's employment. As part of the 2001 Reorganization, the identical terms of the agreement have been carried over to JHI NV. Variable plan accounting under the provisions of APB Opinion No. 25 has been applied to the Executive Share Purchase Plan shares granted prior to April 1, 1995 and fair value accounting, pursuant to the requirements of SFAS No. 123, has been applied to shares granted after March 31, 1995. Accordingly, the Company recorded variable compensation expense of \$0.1 million, nil and \$0.2 million for the years ended March 31, 2004, 2003 and 2002, respectively. No shares were issued to executives during fiscal years 2004, 2003 and 2002.

*2001 Equity Incentive Plan*

On October 19, 2001 (the grant date), JHI NV granted a total of 5,468,829 stock options under the JHI NV 2001 Equity Incentive Plan to key U.S. executives in exchange for their previously granted Key Management Equity Incentive Plan ("KMEIP") shadow shares that were originally granted in November 2000 and 1999 by JHIL. These options may be exercised in five equal tranches (20% each year) starting with the first anniversary of the original shadow share grant.

**JAMES HARDIE INDUSTRIES N.V. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

As set out in the plan rules, the exercise prices and the number of shares available on exercise may be adjusted on the occurrence of certain events, including new issues, share splits, rights issues and capital reconstructions. Consequently, the exercise price was reduced by A\$0.21, A\$0.38 and A\$0.10 for the November 2003, November 2002 and December 2001 returns of capital, respectively.

Original Shadow Share Grant Date	Original Exercise Price	October 2001 Number of Options Granted	Option Expiration Date
November 1999	A\$ 3.82	1,968,544	November 2009
November 2000	A\$ 3.78	3,500,285	November 2010

On December 5, 2003, December 3, 2002 and December 17, 2001, 6,179,583 options at an exercise price of A\$7.05, 4,037,000 options at an exercise price of A\$6.66 and 4,248,417 options at an exercise price of A\$5.65, respectively, were granted by JHI NV at fair market value to management and other employees of the Company under the JHI NV 2001 Equity Incentive Plan. Each option confers the right to subscribe for one ordinary share in the capital of JHI NV. The options may be exercised as follows: 25% after the first year; 25% after the second year; and 50% after the third year. All unexercised options expire 10 years from the date of issue or 90 days after the employee ceases to be employed by the Company.

The Company is authorized to issue 45,077,100 shares under the 2001 Equity Incentive Plan. Also, as set out in the plan rules, the exercise prices and the number of shares available on exercise may be adjusted on the occurrence of certain events, including new issues, share splits, rights issues and capital reconstructions. Consequently, the exercise price on the December 3, 2002 and December 17, 2001 option grants were reduced by A\$0.21 for the November 2003 return of capital and the December 17, 2001 option grant was reduced by A\$0.38 for the November 2002 return of capital.

The following table shows the movement in the Company's outstanding options:

	2004		2003		2002	
	Number of Shares	Weighted Average Exercise Price	Number of Shares	Weighted Average Exercise Price	Number of Shares	Weighted Average Exercise Price
	(In Australian dollars)					
Outstanding at April 1	13,410,024	A\$5.20	10,969,562	A\$4.54	1,200,000	A\$3.87
Granted	6,179,583	7.05	5,987,000	6.42	10,341,246	4.37
Exercised	(1,023,047)	4.38	(2,059,879)	3.57	(496,257)	3.75
Forfeited	(587,853)	5.79	(1,486,659)	4.95	(75,427)	5.65
Outstanding at March 31	17,978,707	A\$5.72	13,410,024	A\$5.20	10,969,562	A\$4.54
Options exercisable at March 31	3,858,736	A\$4.54	1,948,346	A\$4.17	1,122,022	A\$3.70

**JAMES HARDIE INDUSTRIES N.V. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

The following table summarizes information about the Company's stock options outstanding at March 31, 2004:

Range of Exercise Prices	Options Outstanding			Options Exercisable	
	Number Outstanding at March 31, 2004	Weighted Average Remaining Contractual Life (in years)	Weighted Average Exercise Price	Number Exercisable at March 31, 2004	Weighted Average Exercise Price
	(In Australian dollars)				
A\$3.09	1,404,712	6.6	A\$3.09	529,668	A\$3.09
3.13	578,500	5.6	3.13	357,555	3.13
3.18	1,200,000	5.6	3.18	800,000	3.18
4.76	624,000	7.3	4.76	—	—
5.06	2,666,587	7.7	5.06	1,291,254	5.06
5.71	1,950,000	8.3	5.71	—	—
6.45	3,478,325	8.7	6.45	862,700	6.45
7.05	6,076,583	9.7	7.05	17,559	7.05
A\$3.09 to A\$7.05	17,978,707	8.3	A\$5.72	3,858,736	A\$4.54

**Shadow Stock Plans**

The U.S. Shadow Stock Plan provides an incentive to certain key employees in the United States based on growth in the JHI NV share price over time as if such employees were the owners of that number of JHI NV's common stock equal to the number of shares of shadow stock issued to employees. The vesting period of these shadow stock plans is five years. The last grant date under the U.S. Shadow Stock Plan was December 17, 2001. The total number of shadow stock shares outstanding under the plans at March 31, 2004, 2003 and 2002 were 425,800 shares, 687,300 shares and 1,727,000 shares, respectively.

In December 1998, a shadow stock plan for non-U.S. based employees was instituted under similar terms to the U.S. Shadow Stock Plan with a vesting period of three years. The last grant date under this plan was August 15, 2001. The total number of shadow stock shares outstanding at March 31, 2004, 2003 and 2002 were 380,619 shares, 1,512,274 shares and 2,325,000 shares, respectively.

On December 5, 2003, 12,600 shadow stock shares were granted under the terms and conditions of the Key Management Shadow Stock Incentive Plan. All of these shares are outstanding at March 31, 2004.

These plans have been accounted for as stock appreciation rights under SFAS No. 123 and, accordingly, compensation expense of \$2.6 million, \$1.9 million and \$5.1 million was recognized in fiscal years 2004, 2003 and 2002, respectively. The portion of this compensation expense related to Gypsum employees was \$0.9 million for the year ended March 31, 2002.

**19. Financial Instruments**

**Foreign Currency**

As a multinational corporation, the Company maintains significant operations in foreign countries. As a result of these activities, the Company is exposed to changes in exchange rates which affect its results of operations and cash flows. At March 31, 2004 and 2003, the Company had not entered into any material contracts to hedge these exposures.

The Company purchases raw materials and fixed assets and sells some finished product for amounts denominated in currencies other than the functional currency of the business in which the related transaction

**JAMES HARDIE INDUSTRIES N.V. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

is generated. In order to protect against foreign exchange rate movements, the Company may enter into forward exchange contracts timed to mature when settlement of the underlying transaction is due to occur. At March 31, 2004 and 2003, there were no material contracts outstanding.

***Derivatives***

In August 2000, the Company entered into a contract with a third party to hedge the price of 5,000 metric tons per month of pulp, a major commodity used in the manufacture of fiber cement products. The original contract term was effective from September 1, 2000 to August 31, 2005, with settlement payments due each month. On December 2, 2001, the counter-party filed for bankruptcy. This had the effect of terminating all outstanding swap transactions immediately prior to the bankruptcy filing. The estimated fair value at the date of termination of the pulp contract was a \$6.2 million liability and was recorded in other non-current liabilities at March 31, 2002. Also a current payable of \$0.6 million related to the contract was recorded at March 31, 2002. In November 2002, the Company settled its obligation under this contract for a cash payment of \$5.8 million. Accordingly, a gain on settlement of the contract in the amount of \$1.0 million was recorded in other operating income during the fiscal year ended March 31, 2003.

***Credit Risk***

Financial instruments which potentially subject the Company to credit risk consist primarily of cash and cash equivalents, investments and trade accounts receivable.

The Company maintains cash and cash equivalents, investments and certain other financial instruments with various major financial institutions. At times, these financial instruments may be in excess of federally insured limits. To minimize this risk, the Company performs periodic evaluations of the relative credit standing of these financial institutions and, where appropriate, places limits on the amount of credit exposure with any one institution.

For off-balance sheet financial instruments, including derivatives, credit risk also arises from the potential failure of counter-parties to meet their obligations under the respective contracts at maturity. The Company controls risk through the use of credit ratings and reviews.

The Company is exposed to losses on forward exchange contracts in the event that counter-parties fail to deliver the contracted amount. The credit exposure to the Company is calculated as the net fair value of all contracts outstanding with that counter-party. At March 31, 2004 and 2003, total credit exposure arising from forward exchange contracts was not material.

Credit risk with respect to trade accounts receivable is concentrated due to the concentration of the distribution channels for the Company's fiber cement products. Credit is extended based on an evaluation of each customer's financial condition and, generally, collateral is not required. The Company has historically not incurred significant credit losses.

***Interest Rates***

At March 31, 2004, the Company had \$10.8 million outstanding under its short-term line of credit, which is subject to variable interest rates. No interest rate hedging contracts in respect to that debt have been entered into.

**JAMES HARDIE INDUSTRIES N.V. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

*Fair Values*

The carrying values of cash and cash equivalents, marketable securities, accounts receivable, short-term borrowings and accounts payable and accrued liabilities are a reasonable estimate of their fair value due to the short-term nature of these instruments. The following table summarizes the estimated fair value of the Company's long-term debt:

	March 31			
	2004		2003	
	Carrying Value	Fair Value	Carrying Value	Fair Value
	(Millions of US dollars)			
Long-term debt:				
Floating	\$ —	\$ —	\$ —	\$ —
Fixed	165.0	186.8	165.0	200.7
Total	\$ 165.0	\$ 186.8	\$ 165.0	\$ 200.7

Fair values of long-term debt were determined by reference to the March 31, 2004 and 2003 market values for comparably rated debt instruments.

**20. Operating Segment Information and Concentrations of Risk**

The Company has reported its operating segment information in the format that the operating segment information is available to and evaluated by the Board of Directors. USA Fiber Cement manufactures and sells fiber cement flat sheet products in the United States. Asia Pacific Fiber Cement includes all fiber cement manufactured in Australia, New Zealand and the Philippines and sold in Australia, New Zealand and Asia. Research and Development represents the cost incurred by the research and development centers. Other includes the manufacture and sale of fiber cement products in Chile, the manufacture and sale of fiber cement reinforced pipes in the United States, fiber cement operations in Europe and fiber cement roofing operations in the United States. The Company's reportable operating segments are strategic operating units that are managed separately due to their different products and/or geographical location.

*Operating Segments*

The following are the Company's operating segments and geographical information:

	Net Sales to Customers(1) Years Ended March 31		
	2004	2003	2002
	(Millions of US dollars)		
USA Fiber Cement	\$738.6	\$599.7	\$444.8
Asia Pacific Fiber Cement	219.8	174.3	141.7
Other Fiber Cement	23.5	9.6	4.2
Segments total	981.9	783.6	590.7
General Corporate	—	—	1.0
Worldwide total from continuing operations	\$981.9	\$783.6	\$591.7

**JAMES HARDIE INDUSTRIES N.V. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

	<b>Income from Continuing Operations Before Income Taxes Years Ended March 31</b>		
	<b>2004</b>	<b>2003</b>	<b>2002</b>
	(Millions of US dollars)		
USA Fiber Cement(2),(3)	\$195.6	\$155.1	\$ 85.8
Asia Pacific Fiber Cement(2)	37.6	27.3	20.9
Research and Development(2)	(17.6)	(13.0)	(10.0)
Other Fiber Cement	(15.9)	(10.7)	(8.9)
Segments total	199.7	158.7	87.8
General Corporate(4)	(27.5)	(29.9)	(41.0)
Total operating income	172.2	128.8	46.8
Net interest expense(5)	(10.0)	(19.9)	(16.0)
Other income (expense), net	3.5	0.7	(0.4)
Worldwide total from continuing operations	\$165.7	\$109.6	\$ 30.4

	<b>Total Identifiable Assets March 31</b>	
	<b>2004</b>	<b>2003</b>
	(Millions of US dollars)	
USA Fiber Cement	\$554.9	\$492.2
Asia Pacific Fiber Cement	175.9	147.9
Other Fiber Cement	74.7	48.2
Segments total	805.5	688.3
General Corporate(6)	165.7	156.8
Discontinued operations	—	6.7
Worldwide total	\$971.2	\$851.8

	<b>Additions to Property, Plant and Equipment(7) Years Ended March 31</b>		
	<b>2004</b>	<b>2003</b>	<b>2002</b>
	(Millions of US dollars)		
USA Fiber Cement	\$56.2	\$81.0	\$39.3
Asia Pacific Fiber Cement	8.4	6.6	8.1
Other Fiber Cement	9.5	2.5	3.3
Segments total	74.1	90.1	50.7
General Corporate	—	0.1	0.1
Discontinued operations	—	—	1.6
Worldwide total	\$74.1	\$90.2	\$52.4



JAMES HARDIE INDUSTRIES N.V. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

	Depreciation and Amortization Years Ended March 31		
	2004	2003	2002
	(Millions of US dollars)		
USA Fiber Cement	\$25.1	\$18.2	\$14.5
Asia Pacific Fiber Cement	9.7	8.7	8.6
Other Fiber Cement	1.5	0.3	0.2
Segments total	36.3	27.2	23.3
General Corporate	0.1	0.2	0.2
Discontinued operations	—	1.3	16.4
Worldwide total	\$36.4	\$28.7	\$39.9

*Geographic Areas*

	Net Sales to Customers(1) Years Ended March 31		
	2004	2003	2002
	(Millions of US dollars)		
USA	\$748.9	\$605.0	\$447.3
Australia	154.9	124.7	100.7
New Zealand	40.6	31.6	22.8
Other Countries	37.5	22.3	19.9
Segments total	981.9	783.6	590.7
General Corporate	—	—	1.0
Worldwide total from continuing operations	\$981.9	\$783.6	\$591.7

	Total Identifiable Assets March 31	
	2004	2003
	(Millions of US dollars)	
USA	\$609.8	\$528.3
Australia	119.1	87.7
New Zealand	19.7	20.6
Other Countries	56.9	51.7
Segments total	805.5	688.3
General Corporate(6)	165.7	156.8
Discontinued operations	—	6.7
Worldwide total	\$971.2	\$851.8

(1) Export sales and inter-segmental sales are not significant.

(2) Research and development costs of \$6.3 million, \$5.3 million and \$4.0 million in fiscal years 2004, 2003 and 2002, respectively, were expensed in the USA Fiber Cement operating segment. Research and development costs of \$2.2 million, \$2.4 million and \$2.0 million in 2004, 2003 and 2002, respectively, were expensed in the Asia Pacific Fiber Cement segment. Research and development costs of \$14.1 million, \$10.4 million and \$8.1 million in fiscal years 2004, 2003 and 2002, respectively, were

**JAMES HARDIE INDUSTRIES N.V. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

expensed in the Research and Development segment. The Research and Development segment also included selling, general and administrative expenses of \$3.5 million, \$2.7 million and \$1.9 million in fiscal years 2004, 2003 and 2002, respectively.

Research and development expenditures are expensed as incurred and in total amounted to \$22.6 million, \$18.1 million and \$14.1 million for the years ended March 31, 2004, 2003 and 2002, respectively.

- (3) In 2002, the operating profit of USA Fiber Cement was reduced by a \$12.6 million charge for the settlement of all product, warranty and property related liability claims associated with roofing products which were previously manufactured and sold by the Company (see Note 15).
- (4) The principal components of General Corporate are officer and employee compensation and related benefits, professional and legal fees, administrative costs and rental expense, net of rental income, on the Company's corporate offices. Pension cost related to the Australian and New Zealand defined benefit plan for the Asia Pacific Fiber Cement segment totaling \$1.8 million, \$2.3 million and \$0.9 million in fiscal years 2004, 2003 and 2002, respectively, has been included in the General Corporate segment.
- (5) The Company does not report net interest expense for each reportable segment as reportable segments are not held directly accountable for interest expense.
- (6) The Company does not report deferred tax assets and liabilities for each reportable segment as reportable segments are not held directly accountable for deferred taxes. All deferred taxes are included in General Corporate.
- (7) Additions to property, plant and equipment are calculated on an accrual basis, and therefore differ from property, plant and equipment in the consolidated statements of cash flows.

***Concentrations of Risk***

The distribution channels for the Company's fiber cement products are concentrated. If the Company were to lose one or more of its major distributors, there can be no assurance that the Company will be able to find a replacement. Therefore, the loss of one or more distributors could have a material adverse effect on the Company's consolidated financial position, results of operations and cash flows. The Company has three major distributors that individually account for over 10% of the Company's net sales.

These three distributors represented 50% and 51% of the Company's trade accounts receivable at March 31, 2004 and 2003, respectively. The following are net sales generated by these three distributors, which are all from the USA Fiber Cement segment:

	Years Ended March 31		
	2004	2003	2002
	(Millions of US dollars)		
Distributor A	\$111.3	\$125.1	\$124.9
Distributor B	252.2	211.4	168.8
Distributor C	112.9	84.3	56.6
Total	\$476.4	\$420.8	\$350.3

Approximately 24% of the Company's fiscal year 2004 net sales from continuing operations were derived from sales outside the United States. Consequently, changes in the value of foreign currencies could significantly affect the consolidated financial position, results of operations and cash flows of the Company's non-U.S. operations on translation into U.S. dollars.

**JAMES HARDIE INDUSTRIES N.V. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**21. Other Comprehensive Loss**

The following are the components of total accumulated other comprehensive loss, net of related tax, which is displayed in the consolidated balance sheets:

	March 31	
	2004	2003
	(Millions of US dollars)	
Net unrealized gain on available-for-sale securities	\$ —	\$ 0.1
Unrealized transition loss on derivative instruments classified as cash flow hedges	(4.9)	(4.9)
Accumulated amortization of unrealized transition loss on derivative instruments	3.3	2.2
Minimum pension liability adjustment	—	(7.7)
Foreign currency translation adjustments	(20.0)	(36.0)
	<u>          </u>	<u>          </u>
Total accumulated other comprehensive loss	\$ (21.6)	\$ (46.3)

**22. Purchases of Assets of a Business**

On December 12, 2001, the Company acquired the net assets of Cemplant, Inc., primarily fiber cement equipment, for \$40.8 million in cash. The acquisition was accounted for under the purchase method of accounting and, accordingly, the consolidated statements of income include the results of operations arising from these net assets beginning December 12, 2001. The pro forma effect on the results of operations for fiscal year 2002 is not material to the Company's consolidated financial statements.

**23. Shareholders' Equity**

On November 5, 2003, the Company converted its common stock par value from Euro dollar 0.64 to Euro dollar 0.73. This resulted in an increase in common stock and a decrease in additional paid-in capital of \$48.4 million. Simultaneously, the Company returned capital of Euro dollar 0.1305 per share to shareholders in the amount of \$68.7 million. Effectively, the return of capital decreased the par value of common stock to Euro dollar 0.5995. The Company then converted its common stock par value from Euro dollar 0.5995 to Euro dollar 0.59. This resulted in a decrease in common stock and an increase in additional paid-in capital of \$5.0 million.

On November 1, 2002, the Company converted its common stock par value from Euro 0.50 to Euro 0.85. This resulted in an increase in common stock and a decrease in additional paid-in capital of \$157.9 million. Simultaneously, the Company returned capital to shareholders in the amount of \$94.8 million. Effectively, the return of capital decreased the par value of common stock to Euro 0.64.

In fiscal year 2002, the Company completed the 2001 Reorganization whereby the Company issued common shares represented by CUFS on a one for one basis to existing JHIL shareholders in exchange for their shares in JHIL. Also in fiscal year 2002, the Company returned capital to shareholders in the amount of \$22.5 million.

**24. Remuneration of Directors**

Income paid or payable, or otherwise made available by the Company and related parties to Directors of the Company in connection with the management of affairs of the Company totaled \$11.5 million and \$10.6 million for the years ended March 31, 2004 and 2003, respectively.

**JAMES HARDIE INDUSTRIES N.V. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

Remuneration for non-executive Directors comprises fees for attendance at meetings of the Board of Directors and its sub-committees. Remuneration for the executive Director is determined on the same basis as for other executives as described in Note 25 below.

**25. Remuneration of Executives**

Remuneration received or receivable from the Company by all executives (including Directors) whose remuneration was at least \$100,000 was \$13.4 million and \$10.4 million for the years ended March 31, 2004 and 2003, respectively. Remuneration for each executive includes salary, incentives, superannuation, stock options, retirement and termination payments, motor vehicles, fringe benefits, tax and other benefits.

The number of such executives within the specified bands are as follows:

Range Starting at:	March 31	
	2004	2003
	(US dollars)	
\$270,000	—	1
\$330,000	—	2
\$340,000	—	1
\$370,000	2	1
\$430,000	1	—
\$440,000	—	—
\$460,000	1	1
\$480,000	—	1
\$530,000	2	—
\$630,000	1	—
\$660,000	1	—
\$710,000	—	1
\$770,000	—	1
\$850,000	1	—
\$930,000	1	1
\$1,070,000	1	—
\$1,270,000	—	1
\$1,390,000	2	1
\$3,189,000	1	1
	—	—
	14	13

An executive is defined as the Chief Executive Officer, members of the Group Management Team, General Managers of Business Units and Company Secretaries of JHI NV.

Remuneration is determined on the basis of the cost of the remuneration to the Company, but excludes insurance premiums paid by the Company in respect of directors' and officers' liability insurance contracts.

Options and shares issued to executives under the Executive Share Purchase Plan are valued using the Black-Scholes model and the fair value of options granted is included in remuneration.

**JAMES HARDIE INDUSTRIES N.V. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**26. Remuneration of Auditors**

Remuneration to our independent auditors for services provided for 2004, 2003 and 2002 were as follows:

*Audit Fees*

The aggregate fees billed for professional services rendered by our independent auditors during the years ended March 31, 2004, 2003 and 2002 were \$1.2 million, \$1.1 million and \$0.8 million, respectively. Professional services include the audit of the Company's annual financial statements and services that are normally provided in connection with statutory and regulatory filings.

*Audit Related Fees*

The aggregate fees billed for assurance and related services rendered by our independent auditors during the years ended March 31, 2004, 2003 and 2002 were \$0.1 million, \$0.6 million and \$2.5 million, respectively. Included in the March 31, 2002 audit related fees is a \$2.3 million charge for professional services performed in relation to the 2001 Reorganization. All other audit related fees are for accounting consultations and audits in connection with disposals of businesses and employee benefit plan audits.

*Tax Fees*

The aggregate fees billed for tax compliance, tax advice and tax planning services rendered by our independent auditors during the years ended March 31, 2004, 2003 and 2002 were \$3.5 million, \$3.4 million and \$1.0 million, respectively.

*All Other Fees*

In addition to the fees described above, the Company incurred minor fees from our independent auditors related to the purchase and use of software.

**27. Related Party Transactions**

*Directors*

The names of persons who were Directors of JHI NV at any time during the financial year are disclosed in Item 6, "Directors, Senior Management and Employees" in this Form 20-F.

*Remuneration and Retirement Benefits*

Information on remuneration of Directors and Directors retirement benefits are disclosed in Item 6, "Directors, Senior Management and Employees" in this Form 20-F.

*JHI NV Directors' Securities Transactions*

The Company's Directors and their director-related entities held an aggregate of 9,170,726 ordinary shares and 8,951,955 ordinary shares at March 31, 2004 and 2003, respectively, and 3,782,775 options and 3,774,000 options at March 31, 2004 and 2003, respectively.

**JAMES HARDIE INDUSTRIES N.V. AND SUBSIDIARIES****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

Supervisory Board members on August 22, 2003 participated in an allotment of 20,791 shares at A\$7.52 per share under the terms of the Supervisory Board Share Plan which was approved by JHI NV shareholders on July 19, 2002. Directors' allocations were as follows:

Director	Shares Allotted
A.G. McGregor	1,260
M.R. Brown	1,260
M.J. Gillfillan	1,260
D.G. McGauchie	1,743
J.R.H Loudon	1,839
M. Hellicar	2,225
P.S. Cameron	5,602
G.J. Clark	5,602
Total	20,791

Managing Board Director P.D. Macdonald purchased a total of 167,600 JHI NV shares, 164,000 shares in November 2003 and 3,600 shares in March 2004.

The capital return paid by JHI NV on November 19, 2003 and JHI NV dividends paid December 16, 2003 and July 2, 2003 to Directors and their related entities were on the same terms and conditions that applied to other holders.

***Transactions and Existing Loans to the Company's Directors and Directors of James Hardie Subsidiaries***

At March 31, 2004 and 2003, loans totaling \$167,635 and \$197,130, respectively, were outstanding from Directors of JHI NV and its subsidiaries under the terms and conditions of the Executive Share Purchase Plan (the "Plan"). Loans under the Plan are interest free and repayable from dividend income earned by or capital returns from securities acquired under the Plan. The loans are collateralized by CUFS under the Plan. No new loans to Directors or executive officers of JHI NV, under the plan or otherwise, and no modifications to existing loans have been made since December 1997.

During fiscal years 2004 and 2003, repayments totaling \$22,693 and \$95,239, respectively, were received in respect of the Plan from A.T. Kneeshaw, P.D. Macdonald, P.G. Morley and D.A.J. Salter. During fiscal years 2004 and 2003, Directors resigned with loans outstanding totaling \$26,204 and \$201,840, respectively, at the date of their resignation. These amounts are repayable within two years under the terms of the Plan.

In February 2004, we entered into a consulting agreement in usual commercial terms and conditions with The Gries Group in respect to professional services. The principal of The Gries Group, James P. Gries, is Mr. Louis Gries' brother. Under the agreement, approximately \$12,000 is paid each month to The Gries Group. The agreement expires in June 2005 and payments of \$18,423 were made for the year ended March 31, 2004.

***Payments Made to Directors and Director Related Entities of the Company's Subsidiaries During the Year***

Payments of \$13,240 and \$11,350 for the years ended March 31, 2004 and 2003, respectively, were made to Grech, Vella, Tortell & Hyzler Advocates. Dr. J.J. Vella was a director of a number of the Company's subsidiaries. The payments were in respect of professional services and were negotiated in accordance with usual commercial terms and conditions.

**JAMES HARDIE INDUSTRIES N.V. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

Payments of \$111,705 and \$164,056 for the years ended March 31, 2004 and 2003, respectively, were made to Pether and Associates Pty Ltd, technical contractors. J.F. Pether is a director of a subsidiary of the Company and a director of Pether and Associates Pty Ltd. The payments were in respect of technical services and were negotiated in accordance with usual commercial terms and conditions.

Payments totaling \$845 for the year ended March 31, 2004 were made to R. Christensen and T. Norman. They are directors of a subsidiary of the Company. The payments were in respect of professional services and were negotiated in accordance with usual commercial terms and conditions.

**JAMES HARDIE INDUSTRIES N.V. AND SUBSIDIARIES**

**SELECTED QUARTERLY FINANCIAL DATA**  
**(Unaudited, not forming part of the consolidated financial statements)**

The information furnished in the selected quarterly financial data for the years ended March 31, 2004 and 2003 is unaudited but includes all adjustments which, in the opinion of management, are necessary for a fair statement of the financial results of the respective interim periods. Such adjustments are of a normal recurring nature. Interim financial statements are by necessity somewhat tentative; judgments are used to estimate interim amounts for items that are normally determinable only on an annual basis.

	Year Ended March 31, 2004				Year Ended March 31, 2003			
	By Quarter				By Quarter			
	First	Second	Third	Fourth	First	Second	Third	Fourth
	(Millions of US dollars)							
Net sales	\$ 241.5	\$ 251.6	\$ 237.5	\$ 251.3	\$ 194.6	\$ 202.1	\$ 192.6	\$ 194.3
Cost of goods sold	(152.2)	(159.2)	(150.0)	(161.6)	(126.1)	(128.5)	(121.0)	(117.2)
Gross profit	89.3	92.4	87.5	89.7	68.5	73.6	71.6	77.1
Operating income	48.3	47.9	41.2	34.8	35.1	35.6	30.2	27.9
Interest expense	(2.5)	(2.8)	(3.0)	(2.9)	(4.0)	(3.8)	(13.5)	(2.5)
Interest income	0.2	0.4	0.2	0.4	1.1	1.3	1.1	0.4
Other (expense) income, net	—	(3.3)	(0.1)	6.9	0.3	(0.2)	—	0.6
Income from continuing operations before income taxes	46.0	42.2	38.3	39.2	32.5	32.9	17.8	26.4
Income tax expense	(13.1)	(9.4)	(10.0)	(7.9)	(10.1)	(9.9)	(2.8)	(3.3)
Income from continuing operations	32.9	32.8	28.3	31.3	22.4	23.0	15.0	23.1
Discontinued operations:								
Income from discontinued operations	0.2	—	—	—	1.7	0.5	0.5	0.3
Gain on disposal of discontinued operations	1.6	—	1.8	0.7	51.8	1.1	—	31.1
Income from discontinued operations	1.8	—	1.8	0.7	53.5	1.6	0.5	31.4
Net income	\$ 34.7	\$ 32.8	\$ 30.1	\$ 32.0	\$ 75.9	\$ 24.6	\$ 15.5	\$ 54.5



**EXHIBIT INDEX**

<b>Exhibit Number</b>	<b>Description of Exhibits</b>
1.1	Articles of Association, as amended on November 5, 2003 of James Hardie Industries N.V. (English Translation)
2.1	Letter Agreement of September 6, 2001 by and between James Hardie Industries N.V. and CHESSE Depository Nominees Pty Limited, as the depository for CHESSE Units of Foreign Securities(3)
2.2	Deposit Agreement dated as of September 24, 2001 between The Bank of New York, as depository, and James Hardie Industries N.V.(2)
2.3	Note Purchase Agreement, dated as of November 5, 1998, among James Hardie Finance B.V., James Hardie N.V. and certain purchasers thereto re: \$225,000,000 Guaranteed Senior Notes(1)
2.4	Assignment and Assumption Agreement and First Amendment to Note Purchase Agreement, dated as of January 24, 2000, by and among James Hardie Finance B.V., James Hardie U.S. Funding, Inc., James Hardie N.V., James Hardie Aust Investco Pty Limited and certain noteholders thereto(1)
2.5	Second Amendment to the Note Purchase Agreement dated as of October 22, 2001, by and among, James Hardie U.S. Funding, Inc., James Hardie N.V., James Hardie Aust Investco Pty Limited, James Hardie Australia Finance Pty Limited, James Hardie International Finance B. V. and certain noteholders thereto(6)
2.6	Novation Agreement, dated August 27, 2001, relating to Amended and Restated Revolving Loan Agreement among James Hardie International Finance B.V., James Hardie N.V., James Hardie U.S. Funding Inc. and Australia and New Zealand Banking Group Limited(1)
2.7	Novation Agreement, dated August 27, 2001, relating to Amended and Restated Revolving Loan Agreement among James Hardie International Finance B.V., James Hardie N.V., James Hardie U.S. Funding Inc. and Bank One, NA(1)
2.8	Novation Agreement, dated August 27, 2001, relating to Amended and Restated Revolving Loan Agreement among James Hardie International Finance B.V., James Hardie N.V., James Hardie U.S. Funding Inc. and BNP Paribas(1)
2.9	Novation Agreement, dated August 27, 2001, relating to Amended and Restated Revolving Loan Agreement among James Hardie International Finance B.V., James Hardie N.V., James Hardie U.S. Funding Inc. and Australia and Westdeutsche Landesbank Girozentrale, Sydney Branch(1)
2.10	Novation Agreement, dated August 27, 2001, relating to Amended and Restated Standby Loan Agreement among James Hardie International Finance B.V., James Hardie N.V., James Hardie U.S. Funding Inc. and Australia and New Zealand Banking Group Limited(1)
2.11	Novation Agreement, dated August 27, 2001, relating to Amended and Restated Standby Loan Agreement among James Hardie International Finance B.V., James Hardie N.V., James Hardie U.S. Funding Inc. and Bank One, NA(1)
2.12	Novation Agreement, dated August 27, 2001, relating to Amended and Restated Standby Loan Agreement among James Hardie International Finance B.V., James Hardie N.V., James Hardie U.S. Funding Inc. and BBL Australia Limited(1)
2.13	Novation Agreement, dated August 27, 2001, relating to Amended and Restated Standby Loan Agreement among James Hardie International Finance B.V., James Hardie N.V., James Hardie U.S. Funding Inc. and BNP Paribas(1)
2.14	Novation Agreement, dated August 27, 2001, relating to Amended and Restated 364 Day Standby Loan Agreement among James Hardie International Finance B.V., James Hardie N.V., James Hardie U.S. Funding Inc. and Wells Fargo HSBC Trade Bank, National Association(1)
2.15	Novation Agreement, dated August 27, 2001, relating to Amended and Restated 364 Day Standby Loan Agreement among James Hardie International Finance B.V., James Hardie N.V., James Hardie U.S. Funding Inc. and Westdeutsche Landesbank Girozentrale, Sydney Branch(1)
2.16	Form of Novation Agreement, dated December 16, 2002, relating to Amended and Restated Revolving Loan Agreement among James Hardie International Finance B.V., James Hardie N.V., James Hardie U.S. Funding Inc., James Hardie Industries N.V., and each of the following banks: Australia and New Zealand Banking Group Limited; Bank One, NA; BNP Paribas; and WestLB AG, Sydney Branch(7)

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Exhibit Number	Description of Exhibits
2.17	Form of Novation Agreement, dated December 16, 2002, relating to Amended and Restated Standby Loan Agreement among James Hardie International Finance B.V., James Hardie N.V., James Hardie U.S. Funding Inc., James Hardie Industries N.V. and each of the following banks: Australia and New Zealand Banking Group Limited; Bank One, NA; ING Bank N.V., Sydney Branch; BNP Paribas; Wells Fargo HSBC Trade Bank, National Association; and WestLB AG, Sydney Branch(7)
2.18	Amendment Agreement to Amended and Restated Standby Loan Agreement, effective April 30, 2004, among James Hardie International Finance B.V., James Hardie Industries N.V. and Wells Fargo HSBC Trade Bank, National Association
2.19	Form of Extension Letter, relating to 364 Day Standby Loan Agreement among James Hardie International Finance B.V., James Hardie Industries N.V. and each of the following banks: Australia and New Zealand Banking Group Limited; Bank One, NA; ING Bank NV, Sydney Branch; BNP Paribas; and WestLB AG, Sydney Branch
2.20	Extension Letter relating to 364 Day Standby Loan Agreement among James Hardie International Finance B.V., James Hardie Industries N.V. and Wells Fargo HSBC Trade Bank N.A.
2.21	Assignment and Assumption Agreement and Third Amendment to Note Purchase Agreement, dated as of November 18, 2002, among James Hardie U.S. Funding Inc, James Hardie International Finance B.V., James Hardie Industries N.V., James Hardie N.V. and certain noteholders thereto(7)
4.1	James Hardie Industries N.V. 2001 Equity Incentive Plan(1)
4.2	James Hardie Industries N.V. Peter Donald Macdonald Share Option Plan(1)
4.3	James Hardie Industries N.V. Peter Donald Macdonald Share Option Plan 2001 (1)
4.4	James Hardie Industries N.V. Peter Donald Macdonald Share Option Plan 2002 (6)
4.5	Executive Service Agreement, effective as of November 1, 2002, between James Hardie Industries N.V. and Peter Donald Macdonald(6)
4.6	Letter of Resignation, dated October 21, 2004, between James Hardie Industries N.V. and Peter Donald Macdonald
4.7	Employment Agreement, effective June 1, 2004 between James Products Building Products Inc. and Peter Shafron
4.8	Letter of Resignation, dated October 21, 2004, between James Hardie Industries N.V. on behalf of James Hardie Building Products Inc. and the Company, and Peter Shafron
4.9	Consulting agreement, dated November 15, 2004, between James Hardie Industries N.V. and Peter Shafron
4.10	Form of Executive Officer Employment Agreement (applies to Mr. David Merkley, Mr. Donald Merkley and Mr. Morley)(7)
4.11	Employment Agreement, effective as of September 1, 2004, between James Hardie Building Products, Inc. and Louis Gries
4.12	Amended Secondment dated October 8, 2004 between James Hardie Building Products Inc. and James Chilcoff
4.13	Employment Agreement Treasury Manager, effective as of October 1, 2001, between RCI Netherlands Investments B.V. (to be renamed James Hardie International Finance B.V.) and Folkert H. Zwinkels
4.14	Attachment to the assignment letter of F.H. Zwinkels between James Hardie Industries N.V. and Folkert H. Zwinkels dated May 18, 2003
4.15	Addendum to Employment Agreement Treasury Manager between James Hardie International Finance B.V. and Folkert H. Zwinkels dated August 6, 2004
4.16	Contract of Employment, effective as of January 1, 2004, between James Hardie Industries N.V. and W. (Pim) Vlot
4.17	Form of Joint and Several Indemnity Agreement among James Hardie N.V., James Hardie (USA) Inc. and certain indemnitees thereto(1)
4.18	Form of Joint and Several Indemnity Agreement among James Hardie Industries N.V., James Hardie Inc. and certain indemnitees thereto(1)

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<u>Exhibit Number</u>	<u>Description of Exhibits</u>
4.19	Form of Deed of Access to Documents, Indemnity and Insurance among James Hardie Industries N.V. and certain indemnitees thereto(1)
4.20	Lease Amendment, dated March 23, 2004, among 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 Cobalt & Silica Street, Carole Park, Queensland, Australia
4.21	Variation of Lease dated March 23, 2004, among 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
4.22	Extension of Lease dated March 23, 2004, among 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 Rutland, Avenue, Welshpool, Western Australia, Australia
4.23	Lease Amendment dated March 23, 2004, among 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
4.24	Lease Agreement dated March 23, 2004 among 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
4.25	Lease Agreement dated March 23, 2004 among 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
4.26	Purchase and Sale Agreement with Escrow Instructions, dated June 28, 2001, between WL Homes LLC and James Hardie Gypsum, Inc.(5)(8)
4.27	Assignment and Assumption Agreement dated April 25, 2002, between James Hardie Gypsum, Inc. and James Hardie, Inc. in reference to the Purchase and Sale Agreement with Escrow Instructions, dated June 28, 2001(6)
4.28	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(1)
4.29	Amended and Restated Stock Purchase Agreement dated March 12, 2002, between BPB U.S. Holdings, Inc and James Hardie Inc.(6)
4.30	Asset Purchase Agreement by and between James Hardie Building Products, Inc. and Cemplank, Inc. dated as of December 12, 2001(6)
4.31	Supervisory Board Share Plan, dated July 19, 2002(6)
8.1	List of significant subsidiaries of James Hardie Industries N.V.
10.1	Consent of independent registered public accounting firm
12.1	Certification of the Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
12.2	Certification of the Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
13.1	Certification of the Chief Executive Officer and Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
99.1	Excerpts of the Securities Clearing House Business Rules, including Temporary Rule Book inserts thereto, as of September 28, 2001(4)
99.2	Excerpts of the Corporations Act 2001, as of September 28, 2001(4)
99.3	ASIC Class Order 00/182, dated February 13, 2000(4)
99.4	ASIC Modification, dated August 23, 2001(4)

(1) Previously filed as an exhibit to our Registration Statement on Form 20-F dated September 7, 2001 and incorporated herein by reference.

(2) Previously filed as an exhibit to Amendment No. 1 to our Registration Statement on Form 20-F dated September 28, 2001 and incorporated herein by reference.

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- (3) Previously filed as an exhibit to our Registration Statement Form F-6 dated September 12, 2001 and incorporated herein by reference.
- (4) Previously filed as an exhibit to our Amendment No. 1 to our Registration Statement Form F-6 dated September 28, 2001 and incorporated herein by reference.
- (5) Previously filed as an exhibit to Amendment No. 2 to our Registration Statement on Form 20-F dated October 1, 2001 and incorporated herein by reference.
- (6) Previously filed as an exhibit to our Annual Report on Form 20-F dated September 4, 2002 and incorporated herein by reference.
- (7) Previously filed as an exhibit to our Annual Report on Form 20-F dated July 2, 2003 and incorporated herein by reference.
- (8) Certain portions of the exhibit have been omitted and submitted to the Securities and Exchange Commission pursuant to a confidential treatment request filed on October 1, 2001.

DE BRAUW  
BLACKSTONE  
WESTBROEK

UNOFFICIAL ENGLISH TRANSLATION  
OF THE ARTICLES OF ASSOCIATION  
of:  
James Hardie Industries N.V.  
with corporate seat in Amsterdam,  
the Netherlands  
dated 5 November 2003

## DEFINITIONS.

## ARTICLE 1.

Capitalised terms used in these articles of association shall have the following meaning:

ARTICLES	these articles of association;
ASX	The Australian Stock Exchange Limited;
BUSINESS DAY(S)	Monday to Friday inclusive, except New Year's Day, Good Friday, Easter Monday, Christmas Day, Boxing Day, and any other day that ASX declares is not a business day;
CEO	the member of the Managing Board who has been appointed as chief executive officer pursuant to article 15.1 of these Articles;
CHESS	Clearing House Electronic Sub-Register System as such term is defined in the SCH Business Rules;
COMPANY	James Hardie Industries N.V.;
CORPORATIONS ACT	Australian Corporations Act 2001 (Cth) and the rules and regulations issued pursuant thereto, as re-enacted, amended or modified from time to time;
CUFS(S)	any CHES Unit(s) of Foreign Securities as defined in the SCH Business Rules and the Corporations Act and which are issued or made available in respect of Share(s);
CUFS HOLDER(S)	any record owner of CUFS(s) according to the terms and conditions of the SCH Business Rules and the Corporations Act;
GENERAL MEETING	as the context may require, the corporate body (orgaan) comprising Shareholders who are entitled to vote and others persons who are entitled to vote, or the meeting (bijeekkomst) of the Shareholders and other persons who are entitled to attend such meetings;
INFORMATION MEETING	the information meeting to be held in advance of each General Meeting pursuant to article 36 of these Articles;
JOINT BOARD	the board as composed or re-instituted in accordance with article 27 of these Articles;
JOINT BOARD RULES	the rules governing the internal organisation of the Joint Board (gecombineerde raad reglement) as may be adopted pursuant to article 27 of these Articles;
JOINT HOLDER(S)	in respect of an asset, any person who jointly together with one or more other participants (deelgenoten) holds legal title to such asset;
LAW	unless provided otherwise in these Articles, the law of the Netherlands;
LISTING RULES	the listing rules of the ASX as amended or modified from time to time;
MANAGEMENT RULES	the rules governing the internal organisation of the Managing Board (directiereglement) as may be adopted pursuant to article 15 of these Articles;
MANAGING BOARD	the managing board as appointed and composed in

	accordance with article 14 of these Articles;
PREScribed RATE	the base rate charged by the Company's principal banker to corporate customers from time to time in respect of overdraft loans in excess of one hundred thousand United States dollars (\$100,000) calculated on a daily basis and a year of three hundred and sixty-five (365) days;
SHARE(S)	any share(s) comprised in the authorised share capital of the Company pursuant to article 4.1. of these Articles;
SHAREHOLDER(S)	any person who by Law holds legal title (juridisch gerechtigde) to the Shares;
SHAREHOLDER'S RIGHTS	the right to vote on Shares, the right to receive dividends and other distributions on Shares and the right to participate in any General Meeting;
SCH	the Securities Clearing House as defined in, and so designated pursuant to, section 779B of the Corporations Act;
SCH BUSINESS RULES	the Australian law governed business rules of SCH governing inter alia the CUFSS;
SUPERVISORY BOARD	the supervisory board as appointed and composed in accordance with article 22 of these Articles;
SUPERVISORY RULES	the rules governing the internal organisation of the Supervisory Board (commissarissen reglement) as may  be adopted pursuant to article 23 of these Articles;
USUFRUCT	the right to use (gebruiken), and receive the proceeds of (de vruchten genieten van), another person's assets.

NAME. SEAT.

ARTICLE 2.

The name of the Company is: JAMES HARDIE INDUSTRIES N.V.

Its corporate seat is in Amsterdam.

OBJECTS.

ARTICLE 3.

The objects of the Company are:

- a. to participate in, to take an interest in any other way in and to conduct the management of business enterprises of whatever nature;
- b. to raise funds by the issues of debt or equity or in any other way and to finance third parties;
- c. to provide guarantees, including guarantees for debts of third parties,

and to perform all activities which are incidental to or which may be conducive to, or connected with, any of the foregoing.

SHARE CAPITAL. ISSUANCE OF SHARES. PRE-EMPTIVE RIGHTS.

ARTICLE 4.

- 4.1. The authorised share capital of the Company amounts to one billion one hundred and eighty million euro (EUR 1,180,000,000). It is divided into two billion (2,000,000,000) shares of fifty-nine eurocents (EUR 0.59) each.
- 4.2. The Supervisory Board shall have the power to resolve upon the issue of Shares and to determine the price and further terms and conditions of such share issue, if and in so far as the Supervisory Board has been designated by the General Meeting as the authorised corporate body (orgaan) for this purpose. A designation as referred to above shall only be valid for a specific period of not more than five years and may from time to time be extended with a period of not more than five years.
- 4.3. If a designation as referred to in article 4.2 of these Articles is not in force, the General Meeting shall have power to resolve upon the issue of Shares, but only upon the proposal of and for a price and on such further terms and conditions to be determined by the Supervisory

Board.

- 4.4. In the event of an issue of Shares, the Shareholders shall have a pre-emptive right in proportion to the number of Shares held by them. Should a Shareholder not or not fully exercise his pre-emptive right, the remaining Shareholders shall be similarly entitled to pre-emptive rights in respect of the Shares that have not been claimed.

If the latter collectively do not or do not fully exercise their pre-emptive rights, the Supervisory Board, and if a designation as referred to in article 4.2 of these Articles is not in force, the General Meeting, shall be due to decide to whom the Shares which have not been claimed shall be issued and such issue may be made at a higher price. There shall be no pre-emptive right to Shares issued against a contribution other than in cash or issued to employees of the Company or of a group company. The Company shall notify all Shareholders of an issue of Shares in respect of which pre-emption rights

exist and of the period of time within which such rights may be exercised with due observance of article 10.2 of these Articles.

The Supervisory Board shall have the power to limit or exclude any pre-emptive rights to which Shareholders shall be entitled, but only if and in so far as it has been granted such authority by the General Meeting, and provided further that the Supervisory Board can only exercise such authority if at that time it also has authority to resolve upon the issue of Shares. The provisions in the second sentence of article 4.2 of these Articles shall equally apply.

- 4.5. If a designation as referred to in article 4.2 of these Articles is not in force, the General Meeting shall have power to limit or exclude any pre-emptive rights to which Shareholders shall be entitled, but only upon the proposal of the Supervisory Board.

- 4.6. This article 4 shall equally apply to the granting of rights to subscribe for Shares (such as stock options), but shall not apply to the issue of Shares to a person who exercises a previously acquired right to subscribe for Shares, in which case no pre-emptive right exists (and no further action pursuant to articles 4.2 and 4.3 of these Articles shall be required).

ISSUANCE PRICE. PAYMENT ON SHARES. CALLS ON SHARES.

#### ARTICLE 5.

- 5.1. Without prejudice to what has been provided in section 2:80, subsection 2 Dutch Civil Code, Shares shall at no time be issued below par. Upon subscription of a Share, the amount to be paid thereon shall be equal to the nominal value of such Share and - if such Share is subscribed for a higher amount - the difference between such amounts. It may be stipulated that a part of the nominal value, not exceeding three-fourths (3/4) thereof, shall be due for payment after the Company has so called for it to be paid.

- 5.2. Calls on Shareholders in respect of any part of the nominal value unpaid on the Shares pursuant to article 5.1. shall be made with due observance of the following:

- a. the Joint Board may cause the Company to call at any time on Shareholders in respect of any part of the nominal value unpaid on the Shares which is not by the terms of issue of those Shares made payable at fixed times;
- b. each Shareholder shall, on receiving at least fourteen (14) days' notice specifying the time and place of payment, pay to the Company at the time and place so specified the amount called on the Shareholder's Shares;
- c. the Joint Board may revoke or postpone a call;
- d. a call may be required to be paid by instalments;
- e. a call is made at such time or times specified in the resolution of the Joint Board authorising the call.

- 5.3. If and so long as the Shares are quoted on the ASX, calls shall be made, and notice of those calls given, in accordance with the Listing Rules.

- 5.4. Joint Holders of a Share are jointly and severally liable to pay any call in respect of the Share.

- 5.5. If a sum called or otherwise payable to the Company in respect of a Share is not paid before or on the date fixed for payment, the

Shareholder from whom such sum is due shall pay:

- a. interest on the sum from the day fixed for payment of the sum to the time of actual payment at a rate determined by the Joint Board but not exceeding the sum of the Prescribed Rate plus five per cent (5%); and
  - b. any costs and expenses incurred by the Company by reason of non-payment or late payment of the sum.
- 5.6. The Joint Board may waive payment of some or all of the interest or costs and expenses as referred to in article 5.5 under b, wholly or in part.
- 5.7. Any sum that, under the terms of issue of a Share, becomes payable at a fixed date shall, for the purposes of these Articles, be taken to be duly called and payable on the date on which under the terms of issue the sum becomes payable.
- 5.8. The Joint Board may accept from a Shareholder the whole or a part of the amount unpaid on a Share even if that amount has not been called. The Joint Board may authorise payment by the Company of interest on the whole or any part of an amount accepted under this article 5.8 until the amount becomes payable, at a rate, not exceeding the Prescribed Rate, which is agreed between the Joint Board and the Shareholder paying the sum. At the time the amount accepted under this article 5.8 becomes payable pursuant to a call by the Company, the Company shall treat and accept the amount so paid in advance by the Shareholder as a payment on Shares and shall off set (verrekenen) the amount payable by the Company to the Shareholder pursuant to the first sentence of this Article 5.8. against the amount payable by the Shareholder to the Company pursuant to the call. The Joint Board may at any time repay the whole or any part of any amount paid in advance on serving the Shareholder with one (1) month's notice of its intention to do so.
- 5.9. Payments on Shares must be made in cash to the extent that no other contribution has been agreed upon. If the Company so agrees, payment in cash can be made in a currency other than in Euro.
- 5.10. A Shareholder shall not be entitled to vote at a General Meeting unless all calls and other sums presently payable by the Shareholder in respect of any of his Shares have been paid.

#### ACQUISITION BY THE COMPANY OF SHARES. CANCELLATION OF SHARES AND CAPITAL REDUCTION.

#### ARTICLE 6.

- 6.1. The Company may acquire Shares for valuable consideration if and in so far as:
- a. its shareholders equity (eigen vermogen) less the purchase price to be paid by the Company for such Shares is not less than the aggregate amount of the paid up and called up share capital and the reserves which must be maintained by Law;
  - b. the aggregate par value of the Shares which the Company acquires, already holds or on which it holds a right of pledge, or which are held by a subsidiary of the Company, amounts to no more than one-tenth of the aggregate par value of the issued share capital; and
  - c. the General Meeting has authorised the Managing Board to acquire such shares, which authorisation shall be valid for no more than eighteen months on each occasion,

subject to any further applicable statutory provisions and the provisions of these Articles and the Listing Rules.

- 6.2. Shares thus acquired may again be disposed of by the Company. Notwithstanding what has been provided in article 6.1, the Managing Board shall not cause the Company to acquire Shares or dispose of such Shares other than at the proposal of the Joint Board. If depositary receipts for Shares have been issued, such depositary receipts shall for the application of the provisions of articles 6.1 and 6.2 be treated as Shares. In addition, CUFSS shall for the application of the provisions of articles 6.1 and 6.2 be treated as Shares.
- 6.3. In the General Meeting no votes may be cast in respect of any Share held by the Company or by a subsidiary of the Company. No votes may be cast in respect of any Share if (i) the depositary receipt for such Share, or (ii) the CUFSS issued in respect thereof is held by the Company or by a subsidiary of the Company. However, the holders of a



right of Usufruct and the holders of a right of pledge (pandrecht) on Shares held by the Company or by a subsidiary of the Company, are nonetheless not excluded from the right to vote such Shares, if the right of Usufruct or the right of pledge was granted prior to the time such Shares were acquired by the Company or by a subsidiary of the Company. Neither the Company nor a subsidiary of the Company may cast votes in respect of a Share on which it holds a right of Usufruct or a right of pledge.

Shares in respect of which voting rights may not be exercised by Law or pursuant to these Articles shall not be considered outstanding or otherwise taken into account when determining to what extent the Shareholders have cast their votes, to what extent Shareholders are present or represented at the General Meeting or to what extent the share capital is provided or represented.

- 6.4. Upon the proposal of the Joint Board the General Meeting shall have power to decide to cancel Shares acquired by the Company or depository receipts of which were acquired by the Company or to reduce the share capital in another manner, subject however to applicable statutory provisions.
- 6.5. A partial repayment or release must be made pro rata to all Shares. The pro rata requirements may be waived by agreement of all Shareholders.

SHARES. SHARE CERTIFICATES.

ARTICLE 7.

- 7.1. Shares shall be issued in registered form only.
- 7.2. Shares shall be available in the form of an entry in the share register with or without the issue of a share certificate, which share certificate shall consist of a main part (mantel) only. Share certificates will, at the discretion of the Joint Board, be issued upon the request of a Shareholder.
- 7.3. Share certificates shall be available in such denominations as the Joint Board shall determine.
- 7.4. All share certificates shall be signed on behalf of the Company by one or more members of the Managing Board with due observance of article 18.1 of these Articles; the signature may be effected by printed facsimile. In addition, all share certificates may be signed on behalf of the Company by one or more persons designated by the Managing Board for that purpose.
- 7.5. All share certificates shall be identified by numbers and/or letters.
- 7.6. The Joint Board can determine that for the purpose to permit or facilitate trading of Shares at a foreign stock exchange, share certificates shall be issued in such form as the Joint Board may determine, in order to comply with the Listing Rules.
- 7.7. The expression "share certificate" as used in these Articles shall include a share certificate in respect of more than one share.

MISSING OR DAMAGED SHARE CERTIFICATES.

ARTICLE 8.

- 8.1. Upon written request by or on behalf of a Shareholder, and further subject to such conditions as the Joint Board may deem appropriate, missing or damaged share certificates may be replaced by new share certificates bearing the same numbers and/or letters, provided the Shareholder who has made such request, or the person making such request on his behalf, provides satisfactory evidence of his title and, in so far as applicable, the loss of the share certificates to the Joint Board.
- 8.2. If, as and when the Joint Board deems such appropriate, the replacement of missing share certificates may be made subject to the publication of the request also stating the numbers and/or letters of the missing share certificates, in at least three daily published newspapers to be designated by the Joint Board.
- 8.3. The issue of a new share certificate shall render the share certificates that it replaces invalid.
- 8.4. The issue of new certificates may in appropriate cases, at the discretion of the Joint Board, be published in newspapers to be indicated by the Joint Board.

SHARE REGISTER. OTHER REGISTERS.

ARTICLE 9.

9.1. With due observance of the applicable statutory provisions in respect of registered shares, a share register shall be kept by or on behalf of the Company, which register shall be regularly updated and, at the discretion of the Joint Board, may, in whole or in part, be kept in more than one copy and at more than one address.

Part of the register may be kept abroad in order to comply with applicable foreign statutory provisions or the Listing Rules.

9.2. Each Shareholder's name, his address and such further information as required by Law and such further information as the Joint Board deems appropriate, whether at the request of a Shareholder or not, shall be recorded in the share register.

9.3. The form and the contents of the share register shall be determined by the Joint Board with due observance of the provisions of articles 9.1 and 9.2 of these Articles.

9.4. Upon his request a Shareholder shall be provided with written evidence of the contents of the share register with regard to the Shares registered in his name free of charge, and the statement so issued may be validly signed on behalf of the Company by a person to be designated for that purpose by the Managing Board.

9.5. The provisions of articles 9.2 through 9.4 inclusive of these Articles shall equally apply to persons who hold a right of Usufruct or a right of pledge on one or more shares.

9.6. The Joint Board shall have power and authority to permit inspection of the share register

and to provide information recorded therein as well as any other information regarding the direct or indirect shareholding of a Shareholder of which the Company has been notified by that Shareholder to the authorities entrusted with the supervision and/or implementation of the trading of CUFSS on the ASX.

9.7. The Company shall establish and maintain any such registers as required to be established and maintained by it under the Corporations Act, the Listing Rules or the SCH Business Rules, including but not limited to a register of debenture holders and of option holders.

9.8. The Joint Board shall have power and authority to permit auditing of the Company's registers at such intervals, and by such persons in such manner, as required by the Listing Rules and the SCH Business Rules.

NOTICES.

ARTICLE 10.

10.1. Notices of meetings and notifications which by Law or pursuant to these Articles must be made to Shareholders shall be given by way of an announcement in a nationally distributed newspaper in the Netherlands and by at least one of the following means, determined at the discretion of the Joint Board:

- a. serving it on the Shareholder personally; or
- b. sending it by post to the Shareholder's address as shown in the share register or other registers as mentioned in article 9 of these Articles or the address supplied by the Shareholder to the Company for the giving of notices; or
- c. transmitting it to the fax number supplied by the Shareholder to the Company for the giving of notices; or
- d. transmitting it electronically to the electronic mail address given by the Shareholder to the Company for the giving of notices; or
- e. serving it in any manner contemplated in this article 10.1 on a Shareholder's attorney as specified by the Shareholder in a notice given pursuant to article 10.4.

10.2. Without prejudice to the provisions of article 10.1, the Company shall notify all Shareholders of an issue of Shares in respect of which pre-emption rights exist and of the period of time within which such rights may be exercised by way of an advertisement in the National Gazette (Staatscourant) and in a nationally distributed newspaper in the Netherlands, unless the notification to all Shareholders takes

place in writing to the address as supplied by the Shareholder to the Company for the giving of notices as referred to in article 10.1. under b.

- 10.3. Any Shareholder who failed to leave his address or update the Company on any change of address is not entitled to receive any notice but the Company may elect to serve such notices to any fax number or an electronic mail address notified by the Shareholder to the Company.
- 10.4. A Shareholder may, by written notice to the Company left at or sent to the registered office, request that all notices to be given by the Company be served on the Shareholder's attorney at an address specified in the notice and the Company may do so in its discretion.
- 10.5. Notices to a Shareholder whose address for notices is outside the country from where  
  
the notice is sent, shall be sent by airmail, air courier, fax or electronic mail.
- 10.6. Where a notice is sent by post, airmail or air courier, service of the notice shall, to the fullest extent permitted by Law, be taken to be effected by properly addressing and posting or delivering to the air courier a letter containing the notice and to have been effected on the day after the date of its posting or delivery to the air courier.
- 10.7. In proving service of any notice it will be sufficient to prove that the letter containing the notice was properly addressed and put into the post office or other public postal receptacle or delivered to the air courier.
- 10.8. Where a notice is sent by fax or electronic transmission, service of the notice shall, to the fullest extent permitted by Law, be taken to be effected by properly addressing and sending or transmitting the notice and to have been effected on the day it is sent.
- 10.9. A notice may be given by the Company to a person entitled to a Share in consequence of the death or bankruptcy of a Shareholder:
  - a. by serving it on the person personally;
  - b. by sending it by post addressed to the person by name or by the title of representative of the deceased or assignee of the bankrupt or by any like description at the address (if any) supplied for the purpose by the person;
  - c. if such an address has not been supplied, at the address to which the notice might have been sent if the death or bankruptcy had not occurred;
  - d. by transmitting it to the fax number supplied by the person to the Company; or
  - e. if such a fax number has not been supplied, by transmitting it to the fax number to which the notice might have been sent if the death or bankruptcy had not occurred; or
  - f. by transmitting it to the electronic mail address supplied by the person to the Company.
- 10.10. Unless provided otherwise in these Articles where a period of notice is required to be given, the day on which the notice is deemed to be served will, but the day of doing the act or other thing will not be included in the number of days or other period.
- 10.11. Notifications which by Law or under these Articles are to be addressed to the General Meeting may take place by including the same in the notice of the General Meeting or in a document which has been made available for inspection at the offices of the Company, provided this is mentioned in the notice of the meeting.
- 10.12. Notices of meetings and notifications which by Law or pursuant to these Articles must be made to Shareholders shall also be given to CUF Holder(s) provided the Shares are quoted on the ASX, any other persons entitled by Law to attend a General Meeting and to any other person to whom the Company is required to give notice under the Listing Rules, and any reference to Shareholder(s) in this article 10 must be read as a reference to CUF Holder(s), any such person(s) entitled by Law to attend a General Meeting and to any such other person to whom the Company is required to give notice under the Listing Rules, with such notices and notifications to be written in the English language and any other language determined by the Company.
- 10.13. Any notice as referred to in article 10.1 through article 10.12

inclusive, will be sent with due observance of the Listing Rules.

- 10.14. Notifications of Shareholders and other notifications to be addressed to the Managing

Board, the Supervisory Board or the Joint Board shall be sent by letter to the office of the Company or to the addresses of all members of the Managing Board, the Joint Board or the Supervisory Board.

TRANSFER OF REGISTERED SHARES.

ARTICLE 11.

- 11.1. The transfer of title to the Shares or the transfer of title to or a termination of a right of Usufruct on Shares or the creation or release of a right of Usufruct or of a right of pledge on Shares shall be effected by way of a written instrument and in accordance with the (further) provisions set forth in section 2:86, or, as the case may be, section 2:86c Dutch Civil Code. In addition, upon the transfer of a Share in respect of which a share certificate has been issued, such share certificate must be delivered to the Company. The Company can acknowledge the transfer of a Share in respect of which a share certificate has been issued by endorsement on the share certificate or by issuance of a new share certificate to the transferee, at the discretion of the Managing Board.
- 11.2. If the transfer concerns Shares that have not been fully paid-up the acknowledgement by the Company can only be made if the written instrument bears a fixed date (authentieke of geregistreerde onderhandse akte). After the transfer or allocation (toedeling) of partially paid up Shares, each of the previous Shareholders shall remain jointly and severally liable vis-a-vis the Company for the amount to be paid on the Shares transferred or allocated. The Managing Board together with the Supervisory Board could discharge any previous Shareholder from further joint and several liability by means of the execution of an authentic or registered private deed bearing a fixed date (authentieke of geregistreerde onderhandse akte); in such case the joint and several liability of the previous Shareholder will remain to exist for payments called for within one year after the date on which said authentic or registered deed is executed.
- 11.3. The provisions of article 11.1 shall equally apply to (i) the allotment of Shares in the event of a partition of any joint holding, (ii) the transfer of Shares as a consequence of foreclosure of a right of pledge and (iii) the creation or transfer of limited rights in rem on Shares.
- 11.4. Any requests made pursuant to and in accordance with articles 8, 9 and 11 may be sent to the Company at such address(es) as to be determined by the Managing Board, at all times including an address in the municipality or city where the ASX has its principal place of business.

FEES AND EXPENSES.

ARTICLE 12.

Without prejudice to article 9.4, the Company is authorised to charge such amounts as may be determined by the Managing Board provided they do not exceed cost price, to persons who have made a request pursuant to and in accordance with articles 8, 9 and 11.

JOINT HOLDING.

ARTICLE 13.

If Shares, CUFSS or depositary receipts for Shares issued with the co-operation of the Company are included in a joint holding, the Joint Holders may only be represented vis-a-vis the Company by a person who has been designated by them in writing for that purpose. The Joint Holders may

also designate more than one person. If the joint holding comprises Shares, the Joint Holders may determine at the time of the designation of the representative or thereafter - but only unanimously - that, if a Joint Holder so wishes, a number of votes corresponding to his interest in the joint holding will be cast in accordance with his instructions.

MANAGING BOARD. NUMBER OF MEMBERS OF THE MANAGING BOARD.

APPOINTMENT.

ARTICLE 14.

- 14.1. The Company shall be managed by the Managing Board comprising of at least two (2) more members under the supervision of the Supervisory

Board. The number of members of the Managing Board shall be determined by the Supervisory Board.

- 14.2. Other than the CEO, no member of the Managing Board shall hold office for a continuous period in excess of three (3) years or past the end of the third annual General Meeting following such member's appointment, whichever is the longer, without submitting for re-election. If no members of the Managing Board would otherwise be required to submit for re-election but the Listing Rules require that a member of the Managing Board is appointed, the member to retire at the end of the annual General Meeting will be the member, other than the CEO, who has been longest in office since their last appointment, but, as between persons, other than the CEO, who became a member of the Managing Board on the same day, the one to retire shall (unless they otherwise agree among themselves) be determined by lot.

A member of the Managing Board retiring pursuant to this article 14.2 shall be eligible for re-election and shall hold office as a member of the Managing Board until the end of the General Meeting at which such member retires.

- 14.3. Members of the Managing Board shall be appointed by the General Meeting. If a member of the Managing Board is to be appointed, the Joint Board as well as any Shareholder shall have the right to make nominations.
- 14.4. Nominations by Shareholders must be made no less than thirty-five (35) Business Days (or in the case the General Meeting is held at the request of one or more Shareholders thirty (30) Business Days) before the date of the General Meeting at which the appointment of members of the Managing Board is to be considered.

The nominations shall be included in the notice of the General Meeting at which the appointment shall be considered. If nominations have not been made or have not been made in due time, this shall be stated in the notice and the General Meeting may appoint a member of the Managing Board at its discretion.

- 14.5. Members of the Managing Board are not required to hold any Shares.

CHAIR OF THE MANAGING BOARD. CEO. ORGANISATION OF THE MANAGING BOARD. PREVENTED FROM ACTING.

#### ARTICLE 15.

- 15.1. The Supervisory Board shall appoint one of the members of the Managing Board as chair of the Managing Board.

The Supervisory Board shall appoint one of the members of the Managing Board to hold the most senior executive position in the Company and such person shall have the title and role of chief executive officer or such other title as the Supervisory Board

determines, for the period and on the terms as the Supervisory Board thinks fit. Subject to the terms of any agreement entered into between the Company and the chief executive officer in a particular case, the Supervisory Board may at any time revoke such appointment.

- 15.2. The appointment as chair or chief executive officer automatically terminates if the chair or the chief executive officer, respectively, ceases for any reason to be a member of the Managing Board.
- 15.3. With due observance of these Articles, the Joint Board may adopt Management Rules and the Joint Board shall have authority to amend the Management Rules from time to time. Also, the Joint Board may divide the duties among the members of the Managing Board, whether or not by way of a provision to that effect in the Management Rules. The Management Rules may include directions to the Managing Board concerning the general financial, economic, personnel and social policy of the Company, to be taken into consideration by the Managing Board in the performance of its duties.
- 15.4. In case one, more or all members of the Managing Board are prevented from acting or are failing, the Joint Board is authorised to designate a person temporarily in charge of management (belet en ontstentenis persoon). In case a member of the Managing Board is prevented from acting or is failing, the remaining member(s) of the Managing Board may also be temporarily responsible for the entire management. In case all members of the Managing Board are prevented from acting or are failing, the Joint Board shall temporarily be in charge of the management. Failing one or more members of the Managing Board the Joint Board shall take the necessary measures as soon as possible in order to have a definitive arrangement made.

RESOLUTIONS OF THE MANAGING BOARD. CONFLICT OF INTEREST.

ARTICLE 16.

- 16.1. Resolutions of the Managing Board shall be validly adopted, if adopted by absolute majority of votes, in a meeting at which at least two (2) of the members of the Managing Board are present.

In case of absence, a member of the Managing Board may issue a proxy only to another member of the Managing Board, provided however that a member of Managing Board can only act as proxy for not more than one other member of the Managing Board.

Each member of the Managing Board has the right to cast one vote. In case of a tie vote, if more than two members of the Managing Board are present at the meeting, the chair of the Supervisory Board shall have a decisive vote. In case of a tie vote, if only two members of the Managing Board are present at the meeting, the proposal shall be rejected.

- 16.2. The Managing Board may adopt its resolutions in writing without holding a meeting, provided that the proposals for such resolutions have been communicated in writing to all members of the Managing Board and no member of the Managing Board has objected to this method of adoption of a resolution.

- 16.3. A certificate signed by a member of the Managing Board confirming that the Managing Board has adopted a particular resolution, shall constitute evidence of such resolution vis-a-vis third parties.

- 16.4. The Management Rules shall include provisions on the manner of convening board meetings and the internal procedure at such meetings. These meetings may be held by telephone conference communications, as well as by video communications, provided all participating members of the Managing Board can hear each other simultaneously.

- 16.5. Without prejudice to article 16.6, a member of the Managing Board who has a material personal interest in a matter that relates to the affairs of the Company must give all of the other members of the Managing Board notice of his or her interest.

- 16.6. A member of the Managing Board with a material personal interest in a matter that relates to the affairs of the Company is not required to give notice in the following circumstances:

- a. if the interest:
- (i) arises because the member of the Managing Board is a Shareholder of the Company and is held in common with the other Shareholders of the Company; or
  - (ii) arises in relation to the member's remuneration as a member of the Managing Board; or
  - (iii) relates to a contract the Company is proposing to enter into that is subject to approval by the General Meeting and will not impose any obligation on the Company if it is not approved by the General Meeting; or
  - (iv) arises merely because the member of the Managing Board is a guarantor or has given an indemnity or security for all or part of a loan (or proposed loan) to the Company; or
  - (v) arises merely because the member of the Managing Board has a right of subrogation in relation to a guarantee or indemnity referred to above; or
  - (vi) relates to a contract that insures, or would insure, the member of the Managing Board against any liability such member incurs or would incur as an officer of the Company (but only if the contract does not make the Company or a related company the insurer); or
  - (vii) relates to any payment by the Company or another company in respect of an officer or any contract relating to such an indemnity; or
  - (viii) is in a contract, or proposed contract, with, or for the benefit of, or on behalf of, another company and arises merely because the member of the Managing Board is a director of the other company; or

- b. if all of the following conditions are met:
  - (i) the member of the Managing Board has already given notice of the nature and extent of the interest and its relation to the affairs of the Company;
  - (ii) if a person who was not a member of the Managing Board at the time the notice above was given, is appointed as a managing director and the notice was given by that person; and
  - (iii) the nature or extent of the interest has not materially changed or increased from that disclosed in the notice; or
- c. if the member of the Managing Board has given a standing notice of the nature and extent of the interest in accordance with article 16.8 and that standing notice is still effective in relation to the interest.

16.7. Notices of material personal interest given by a member of the Managing Board must:

- a. give details of the nature and extent of the interest of the member of the Managing Board and the relation of the interest to the affairs of the Company;
- b. be given at a meeting of the Managing Board as soon as practicable after the member of the Managing Board becomes aware of his or her interest in the matter; and
- c. be recorded in the minutes of the meeting of the Managing Board at which the notice is given.

16.8. The standing notice referred to in article 16.6 under c:

- a. may be given at any time and whether or not the matter relates to the affairs of the company at the time the notice is given;
- b. must give details of the nature and extent of the interest and be given:
  - (i) at a meeting of the Managing Board (either orally or in writing); or
  - (ii) to each of the other members of the Managing Board individually in writing.
- c. must be tabled at the next meeting of the Managing Board in the event that it is given to other members of the Managing Board individually in written form pursuant to article 16.7 under b.;
- d. recorded in the minutes of the meeting at which it is given or tabled.

16.9. A standing notice that is given under article 16.8 takes effect as soon as it is given and ceases to have effect in the following circumstances:

- a. if a person who was not a member of the Managing Board at the time when the notice was given is appointed as a member of the Managing Board; and
- b. if the nature or extent of the interest materially changed or increases from that that disclosed in the notice.

16.10. A member of the Managing Board who has a material personal interest in a matter that is being considered at a meeting of the Managing Board may neither be present while the matter is being considered at such meeting nor vote on the matter, except in the following circumstances:

- a. if the material personal interest is a matter that is not required to be disclosed under article 16.6;
- b. if the member of the Managing Board who do not have a material personal interest in the matter have passed a resolution that:
  - (i) identified the member of the Managing Board, the nature and the extent of the interest of the member of the Managing Board in the matter and in relation to the affairs of the Company; and

- (ii) states that the other members of the Managing Board are satisfied that the interest should not disqualify the member of the Managing Board from voting or being present.

16.11. If, after application of article 16.10, no member of the Managing Board, other than the member(s) in respect of whom the conflict exists, would remain to be entitled to be present while the matter is being considered at the meeting of the Managing Board and to vote on the matter, the member(s) of the Managing Board in respect of whom the conflict exists may call a General Meeting and the General Meeting may pass a resolution to decide as to whether or not such member(s) are entitled to be present

while the matter is being considered at such meeting and to vote on the matter.

16.12. Articles 16.6 up to and including 16.11 shall not derogate from article 18.4.

#### MANDATORY PRIOR APPROVAL FOR MANAGEMENT ACTION.

#### ARTICLE 17.

17.1. Without prejudice to any other applicable provisions of these Articles, the Managing Board shall require the prior approval of the Supervisory Board for any action specified from time to time by a resolution to that effect adopted by the Supervisory Board, of which the Managing Board has been informed in writing.

17.2. Without prejudice to any other applicable provisions of these Articles, the Managing Board shall require the prior approval of the General Meeting if required by Law and the provisions of these Articles, as well as for such resolutions as are clearly defined by a resolution to that effect adopted by the General Meeting, of which the Managing Board has been informed in writing.

#### REPRESENTATION. CONFLICT OF INTEREST.

#### ARTICLE 18.

18.1. The entire Managing Board is authorised to represent the Company and bind it vis-a-vis third parties. The Company may also be represented by the CEO, acting individually, and may also be represented by two members of the Managing Board acting jointly.

18.2. The Joint Board may grant special and general powers of attorney to persons, whether or not such persons are employed by the Company, authorising them to represent the Company and bind it vis-a-vis third parties. The scope and limits of such powers of attorney shall be determined by the Managing Board. The Managing Board may in addition grant to such persons such titles as it deems appropriate.

18.3. The Managing Board shall have the power to enter into and perform agreements and all legal acts (rechtshandelingen) contemplated thereby as specified in section 2:94, subsections 1 and 2 Dutch Civil Code insofar as such power is not expressly excluded or limited by any provision of these Articles.

18.4. If a member of the Managing Board has a conflict of interest with the Company (whether acting in his personal capacity by entering into an agreement with the Company or conducting any litigation against the Company or whether acting in any other capacity), he as well as any other members of the Managing Board, shall have the power to represent the Company, with due observance of the provisions of the first paragraph, unless the General Meeting designates a person for that purpose or the law provides for the designation in a different manner. Such person may also be the member of the Managing Board in respect of whom such conflict of interest existed.

#### REMUNERATION OF THE MEMBERS OF THE MANAGING BOARD.

#### ARTICLE 19.

19.1. The Joint Board shall determine the salary, the bonus, if any, and the other terms and conditions of employment (including pension benefits) of the members of the Managing Board.

19.2. The members of the Managing Board shall be paid for their services as a member of the Managing Board by way of fee, wage, salary, bonus, commission or participation in profits, but not by a commission on, or percentage of, turnover.



- 19.3. The remuneration to which a member of the Managing Board is entitled may be provided to a member in cash or in such other form as is agreed between the Company and such member. A member of the Managing Board may elect to forgo some or all of the member's entitlement to cash remuneration in favour of another agreed form of remuneration and vice versa.
- 19.4. The members of the Managing Board shall also be entitled to be paid or reimbursed for all travelling and other expenses properly incurred by them in attending and returning from any Managing Board meeting, meeting of any committee of the members of the Managing Board, General Meeting or otherwise in connection with the business or affairs of the Company.
- 19.5. If any member of the Managing Board, with the approval of the Joint Board, performs extra services or makes any special exertions for the benefit of the Company, the Company may pay to that member of the Managing Board such special and additional remuneration as the Joint Board deems fit having regard to the value to the Company of the extra services or special exertions. Any special or additional remuneration shall not include a commission on or percentage of profits or operating revenue or turnover.
- 19.6. Subject to applicable law and the Listing Rules, a member of the Managing Board may be engaged by the Company in any other capacity and may be appointed on such terms as to remuneration, tenure of office and otherwise as may be agreed with the Company.
- 19.7. In addition to any other amounts payable under these Articles, the Company may make any payment or give any benefit to any member of the Managing Board or a member of the managing board of a Subsidiary Company or any other person in connection with the such member's retirement, resignation from or loss of office or death while in office, if it is made or given in accordance with the Law and the Listing Rules.
- 19.8. Subject to this article 19.8, the Company may:
- a. make contracts or arrangements with a member of the Managing Board or a person about to become a member of the Managing Board or a member of the managing board of a Subsidiary Company under which the such member or any person nominated by such member is paid or provided with a lump sum payment, pension, retiring allowance or other benefit on or after such member or person about to become a member of the Managing Board or of the managing board of a Subsidiary Company ceases to hold office for any reason;
  - b. make any payment under any contract or arrangement referred to in paragraph a. above; and
  - c. establish any fund or scheme to provide lump sum payments, pensions, retiring allowances or other benefits for:
    - (i) members of the Managing Board, on them ceasing to hold office; or
    - (ii) any person including a person nominated by the member of the Managing Board, in the event of such member's death while in office,
    - (iii) and from time to time pay to the fund or scheme any sum as the company considers necessary to provide those benefits.
- 19.9. The Company may impose any conditions and restrictions under any contract, arrangement, fund or scheme referred to in article 19.8 as it thinks proper.
- 19.10. The Company may authorise any Subsidiary Company to make a similar contract or
- arrangement with the members of its Managing Board and make payments under it or establish and maintain any fund or scheme, whether or not all or any of the members of its managing board are also a member of the Managing Board.

#### SUSPENSION OR DISMISSAL OF MEMBERS OF THE MANAGING BOARD.

#### ARTICLE 20.

- 20.1. The General Meeting shall at any time be entitled to suspend or dismiss a member of the Managing Board.

- 20.2. The Supervisory Board shall also at any time be entitled to suspend (but not to dismiss) a member of the Managing Board. During his suspension, a member of the Managing Board will not receive any salary or other payments unless his employment agreement or the resolution regarding his suspension provides otherwise.
- 20.3. Within three months after a suspension of a member of the Managing Board has taken effect, a General Meeting shall be held, in which meeting a resolution must be adopted to either terminate or extend the suspension for a maximum period of another three months. If neither such resolution is adopted nor the General Meeting has resolved to dismiss the member of the Managing Board, the suspension shall terminate after the period of suspension has expired.

The member of the Managing Board shall be given the opportunity to account for his actions at that meeting.

- 20.4. Further to article 20.1, a member of the Managing Board shall cease to be a member of the Managing Board if he:
- a. becomes bankrupt, or obtains suspension of payments, or any event having analogous effect under applicable law, or proposes or makes any agreement for the deferral, rescheduling or other adjustment of all or part of his debts;
  - b. loses his full legal capacity (handelingsbekwaamheid), or any event having analogous effect under applicable law;
  - c. resigns by notice in writing to the Company;
  - d. is absent without the consent of the other members from Managing Board meetings held during a continuous period of three (3) months;
  - e. becomes prohibited from being a member of the Managing Board by reason of any provision of law; or
  - f. dies.

#### SUPERVISORY BOARD.

#### ARTICLE 21.

- 21.1. The Supervisory Board shall be responsible for supervising the policy pursued by the Managing Board and the general course of affairs of the Company and the business enterprise which it operates. The Supervisory Board shall assist the Managing Board with advice relating to the general policy aspects connected with the activities of the Company. In fulfilling their duties the members of the Supervisory Board shall serve the interests of the Company and the business enterprise which it operates.
- 21.2. The Managing Board shall provide the Supervisory Board in good time with all relevant information as well as with all other information as the Supervisory Board may request, in connection with the exercise of its duties.

#### NUMBER OF MEMBERS OF THE SUPERVISORY BOARD. APPOINTMENT.

#### ARTICLE 22.

- 22.1. The Supervisory Board shall consist of at least two (2) members. The number of members of the Supervisory Board shall be determined by the Joint Board.
- 22.2. No member of the Supervisory Board shall hold office for a continuous period in excess of three (3) years or past the end of the third annual General Meeting following such member's appointment, whichever is the longer, without submitting for re-election. If no member of the Supervisory Board would otherwise be required to submit for re-election but the Listing Rules require that a member of the Supervisory Board is appointed, the member of the Supervisory Board to retire at the end of the annual General Meeting will be the member who has been longest in office since their last election, but, as between persons who became member of the Supervisory Board on the same day, the one to retire shall (unless they otherwise agree among themselves) be determined by lot. A retiring member of the Supervisory Board pursuant to this article 22.2 shall be eligible for re-election and shall hold office as a member of the Supervisory Board until the end of the General Meeting at which such member retires.
- 22.3. Members of the Supervisory Board shall be appointed by the General Meeting, provided however, that in case of a vacancy in the Supervisory Board at any time after the end of an annual General Meeting and prior

to the subsequent annual General Meeting, the Joint Board may appoint the member(s) of the Supervisory Board so as to fill any vacancy provided that:

- a. the member(s) of the Supervisory Board so appointed by the Joint Board retire(s) no later than at the end of the first annual General Meeting following his or their appointment; and
- b. the number of the members of the Supervisory Board appointed by the Joint Board at any given time shall not exceed one-third (1/3) of the aggregate number of members of the Supervisory Board as fixed by the Joint Board pursuant to article 22.1, such that if the resulting number is not a whole number, the number of members to be appointed by the Joint Board shall be rounded downwards to the nearest whole number.

22.4. If a member of the Supervisory Board is to be appointed by the General Meeting, the Joint Board as well as any Shareholder shall have the right to make a nomination.

22.5. Nominations by Shareholders must be made no less than thirty-five (35) Business Days (or in the case the General Meeting is held at the request of the Shareholders thirty (30) Business Days) before the date of the General Meeting at which the appointment of members of the Supervisory Board is to be considered.

The nominations shall be included in the notice of the General Meeting at which the appointment shall be considered. If nominations have not been made or have not been made in due time, this shall be stated in the notice and the General Meeting may appoint a member of the Supervisory Board at its discretion. Whenever a member of the Supervisory Board must be appointed the information referred to in section 2:142 subsection 3 Dutch Civil Code shall be made available to the Shareholders for their prior inspection.

22.6. Members of the Supervisory Board are not required to hold any Shares.

CHAIR OF THE SUPERVISORY BOARD. ORGANISATION OF THE SUPERVISORY BOARD.

ARTICLE 23.

23.1. The Supervisory Board shall appoint one of its members as its chair.

23.2. With due observance of these Articles, the Joint Board may adopt Supervisory Rules and the Joint Board shall have the authority to amend the Supervisory Board Rules from time to time.

23.3. The Supervisory Board may decide that one or more of its members shall have access to all premises of the Company and that they shall be authorised to examine all books, correspondence and other records and to be fully informed of all actions which have taken place.

23.4. At the expense of the Company, the Supervisory Board may obtain such advice from experts as the Supervisory Board deems desirable for the proper fulfilment of its duties.

23.5. If there is only one member of the Supervisory Board in office, such member shall have all rights and obligations granted to and imposed on the Supervisory Board and the chair of the Supervisory Board by Law and by these Articles.

RESOLUTIONS BY THE SUPERVISORY BOARD. CONFLICT OF INTEREST.

ARTICLE 24.

24.1. Resolutions of the Supervisory Board shall be validly adopted, if adopted by absolute majority of votes in a meeting at which at least two (2) of the members of the Supervisory Board are present.

In case of absence, a member of the Supervisory Board may issue a proxy only to another member of the Supervisory Board, provided however that a member of Supervisory Board can only act as proxy for not more than one other member of the Supervisory Board.

Each member of the Supervisory Board has the right to cast one vote. In case of a tie vote, if more than two members of the Supervisory Board are present at the meeting, the chair of the Supervisory Board shall have a decisive vote. In case of a tie vote, if only two members of the Supervisory Board are present at the meeting, the proposal shall be rejected.

24.2. The Supervisory Board may adopt its resolutions in writing without holding a meeting, provided that the proposals for such resolutions have been communicated in writing to all members of the Supervisory

Board and no member has objected to this method of adoption of a resolution.

- 24.3. A certificate signed by a member of the Supervisory Board confirming that the Supervisory Board has adopted a particular resolution, shall constitute evidence of such resolution vis-a-vis third parties.
- 24.4. The members of the Managing Board shall attend meetings of the Supervisory Board at the latter's request.
- 24.5. Meetings of the Supervisory Board shall be convened by the chair of the Supervisory Board, either at the request of two or more members of the Supervisory Board or at the request of the Managing Board. If the chair fails to convene a meeting so that it can be held within four weeks of the receipt of the request, the members of the Supervisory

Board making the request are entitled to convene the meeting.

- 24.6. The Supervisory Rules shall include provisions on the manner of convening supervisory board meetings and the internal procedure at such meetings. These meetings may be held by telephone conference communications, as well as by video communications, provided all participating members of the Supervisory Board can hear each other simultaneously.
- 24.7. Articles 16.6 through 16.12 inclusive of these Articles shall, to the fullest extent possible, equally apply to members of the Supervisory Board. Any references to member(s) of the Managing Board or the Managing Board in those articles must be read as a reference to member(s) of the Supervisory Board or the Supervisory Board, respectively.

#### REMUNERATION OF THE MEMBERS OF THE SUPERVISORY BOARD.

#### ARTICLE 25.

- 25.1. The Joint Board shall determine the compensation of the members of the Supervisory Board provided however that, if required by the ASX Listing Rules:
  - a. the amount thereof shall not exceed in aggregate a maximum sum that is from time to time approved by resolution of the General Meeting; and
  - b. any notice convening a General Meeting at which it is proposed to seek approval to increase the maximum aggregate sum available for remuneration to the members of the Supervisory Board shall specify the proposed new maximum aggregate sum and the amount of the proposed increase.
- 25.2. The remuneration as determined in accordance with article 25.1:
  - a. shall be divided among the members of the Supervisory Board in the proportions as they may agree or, if they cannot agree, equally among them; and
  - b. shall be exclusive of any benefits that the Company provides to members of the Supervisory Board in satisfaction of legislative schemes (including benefits provided under superannuation guarantee or similar schemes).
- 25.3. Remuneration payable to members of the Supervisory Board shall be by a fixed sum and not by a commission on or as a percentage of the operating revenue of the Company.
- 25.4. The members of the Supervisory Board shall also be entitled to be paid or reimbursed for all travelling and other expenses properly incurred by them in attending and returning from any meeting of the Supervisory Board, meeting of any committee of the Supervisory Board, General Meeting or otherwise in connection with the business or affairs of the Company.
- 25.5. If any member of the Supervisory Board, with the approval of the Joint Board, performs extra services or makes any special exertions for the benefit of the Company, the Company may pay to that member of the Supervisory Board such special and additional remuneration as the Joint Board deems fit having regard to the value to the Company of the extra services or special exertions. Any special or additional remuneration shall not include a commission on or percentage of profits or operating revenue or turnover.
- 25.6. Subject to applicable law and the Listing Rules, a member of the Supervisory Board may be engaged by the Company in any other capacity and may be appointed on such terms as to remuneration, tenure of office

and otherwise as may be agreed with the Company.

- 25.7. Articles 19.7 through 19.10 of these Articles shall, to the fullest extent possible, equally apply to members of the Supervisory Board. Any references to member(s) of the Managing Board in those articles must be read as a reference to member(s) of the Supervisory Board.

#### SUSPENSION OR DISMISSAL OF MEMBERS OF THE SUPERVISORY BOARD.

#### ARTICLE 26.

- 26.1. A member of the Supervisory Board may at any time be suspended or dismissed by the corporate body (orgaan) which appointed such member with due observance of article 22 of these Articles.
- 26.2. Within three months after a suspension of a member of the Supervisory Board has taken effect, a General Meeting or meeting of the Joint Board, as the case may be, shall be held, in which meeting a resolution must be adopted to either terminate or extend the suspension for a maximum period of another three months. If neither such resolution is adopted nor the General Meeting, or the Joint Board, as the case may be, has resolved to dismiss the member of the Supervisory Board, the suspension shall terminate after the period of suspension has expired. The member of the Supervisory Board shall be given the opportunity to account for his actions at that meeting.
- 26.3. Further to article 26.1, a member of the Supervisory Board shall cease to be a member of the Supervisory Board if he:
- a. becomes bankrupt, or obtains suspension of payments, or any other event having analogous effect under applicable law, or proposes or makes any agreement for the deferral, rescheduling or other adjustment of all or part of his debts;
  - b. loses its full legal capacity (handelingsbekwaamheid), or any other event having analogous effect under applicable law;
  - c. resigns by notice in writing to the Company;
  - d. is absent without the consent of the other members of the Supervisory Board from meeting of the Supervisory Board held during a continuous period of three (3) months;
  - e. becomes prohibited from being a member of the Supervisory Board by reason of any provision of Law; or
  - f. dies.

#### JOINT BOARD.

#### ARTICLE 27.

- 27.1. The Company shall have a Joint Board comprising not less than three (3) and no more than twelve (12) members, or such greater number as determined by the General Meeting. Without prejudice to the preceding sentence, the number of members of the Joint Board shall be determined by the chair of the Supervisory Board.

The Joint Board will be responsible for planning and overseeing the general course of affairs of the Company and has the other powers as described in these Articles.

The Joint Board shall consist of all members of the Supervisory Board, the CEO and, if the chair of the Supervisory Board decides thereto, one or more other members of the Managing Board, to be designated by the chair of the Supervisory Board, provided however that the number of members of the Managing Board being on the Joint Board

can never be greater than the number of members of the Supervisory Board.

The chair of the Supervisory Board shall adopt a resolution to designate one or more members of the Managing Board as member(s) of the Joint Board in writing and shall communicate such resolution to all members of the Joint Board, including the designated members of the Managing Board.

- 27.2. The Joint Board may resolve by unanimous votes at a meeting at which all members of the Joint Board are present or represented to abolish the Joint Board. The Joint Board shall no longer be instituted from the date such resolution has been filed with the trade register of the competent Chamber of Commerce and Industry as referred to in section 2: 77 Dutch Civil Code.

- 27.3. Following any resolution of the Joint Board as referred to in article 27, paragraph 2, the Supervisory Board may resolve to re-institute a Joint Board. Any such re-institution of the Joint Board shall be effective as from the date of filing of such resolution with the trade register of the competent Chamber of Commerce and Industry as referred to in section 2: 77 Dutch Civil Code.
- If and so long as a Joint Board has been instituted, the provisions of this article shall apply to the Joint Board and its members, without prejudice to what has otherwise been provided in these Articles concerning the Joint Board and its members.
- 27.4. If and so long as the Joint Board is not instituted, the powers and authorities of the Joint Board shall vest in the Supervisory Board, and the powers and authorities of the chair of the Joint Board shall vest in the chair of the Supervisory Board.
- 27.5. The members of the Joint Board shall resign or be suspended or dismissed from the Joint Board simultaneously with their resignation, suspension or dismissal as member of the Managing Board or Supervisory Board.
- 27.6. The Joint Board shall appoint one of its members as chair of the Joint Board. The Joint Board shall appoint one of its members or someone else as secretary of the Joint Board. The Joint Board may adopt Joint Board Rules and it may further establish such committees as it shall deem appropriate.
- 27.7. Unless otherwise provided in these Articles, resolutions of the Joint Board shall be validly adopted by an absolute majority of votes in a meeting at which at least three (3) of the members of the Joint Board are present, provided however that, unless there are no members of the Supervisory Board in office, at least one member of the Supervisory Board must be present or represented at the meeting and the votes cast in favour of the resolution must include the vote of at least one member of the Supervisory Board. In case of absence, a member of the Joint Board may issue a proxy, however, only to another member of the Joint Board. Each member of the Joint Board has the right to cast one vote. In case of a tie vote, the chair of the Joint Board shall have a decisive vote.
- 27.8. The Joint Board may adopt its resolutions in writing without holding a meeting, provided that the proposals for such resolutions have been communicated to all members and no member has objected to this method of adoption of a resolution.
- 27.9. A certificate signed by a member of the Joint Board confirming that the Joint Board has adopted a particular resolution, shall constitute evidence of such resolution vis-a-vis third parties.
- 27.10. The Joint Board shall meet whenever the chairman of the Joint Board or two or more of its members so request. Meetings of the Joint Board shall be convened by the chair of the Joint Board. If the chair fails to convene a meeting so that it can be held within four weeks of the receipt of the request, the members of the Joint Board who have requested a meeting of the Joint Board to be held are entitled to convene such meeting.
- 27.11. The Joint Board Rules shall include provisions on the manner of convening board meetings and the internal procedure at such meetings. These meetings may be held by telephone conference communications, as well as by video communications, provided all participating members can hear each other simultaneously.

#### INDEMNIFICATION.

#### ARTICLE 28.

- 28.1. The Company shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action, suit or proceeding by or in the right of the Company) by reason of the fact that he is or was a member of the Managing Board, Supervisory Board or Joint Board, officer, employee or agent of the Company, or was or is serving at the request of the Company as a director, officer or agent of another company, a partnership, joint venture, trust or other enterprise, against all expenses (including attorneys' fees) judgements, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was

unlawful. The termination of any action, suit or proceeding by a judgement, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and not in a manner which he reasonably could believe to be in or not opposed to the best interests of the Company, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

- 28.2. The Company shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding by or in the right of the Company to procure a judgement in its favour, by reason of the fact that he is or was a member of the Managing Board, Supervisory Board, Joint Board, officer, employee or agent of the Company, or is or was serving at the request of the Company as a director, officer, employee or agent of another company, a partnership, joint venture, trust or other enterprise, against all expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defence or settlement of such action or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company and except that no indemnification shall be made hereunder in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for gross negligence or wilful misconduct in the performance of his duty to the Company, unless and only to the extent that the court in which such action or proceeding was brought or any other court having

appropriate jurisdiction shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnification against such expenses which the court in which such action or proceeding was brought or such other court having appropriate jurisdiction shall deem proper.

- 28.3. To the extent that a supervisory director, managing director, member of the Joint Board, officer, employee or agent of the Company has been successful on the merits or otherwise in defence of any action, suit or proceeding, referred to in paragraphs 1 and 2, or in defence of any claim, issue or matter therein, he shall be indemnified against expenses (including attorney's fees) actually and reasonably incurred by him in connection therewith.

- 28.4. Expenses incurred in defending a civil or criminal action, suit or proceeding will be paid by the Company in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the member of the Managing Board, Supervisory Board, Joint Board, officer, employee or agent to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Company as authorised in this article.

- 28.5. The indemnification provided for by this article shall not be deemed exclusive of any other right to which a person seeking indemnification may be entitled under any by-laws, agreement, resolution of the General Meeting or of the disinterested members of the Managing Board or otherwise, both as to actions in his official capacity and as to actions in another capacity while holding such position, and shall continue as to a person who has ceased to be a member of the Managing Board, Supervisory Board, Joint Board, officer, employee or agent and shall also inure to the benefit of the heirs, executors and administrators of such a person.

- 28.6. The Company shall have the power to purchase and maintain insurance on behalf of any person who is or was a member of the Managing Board, Supervisory Board, Joint Board, officer, employee or agent of the Company, or is or was serving at the request of the Company as a directors, officer, employee or agent of another company, a partnership, joint venture, trust or other enterprise, against any liability asserted against him and incurred by him in any such capacity or arising out of his capacity as such, whether or not the Company would have the power to indemnify him against such liability under the provisions of this article.

- 28.7. Whenever in this article reference is made to the Company, this shall include, in addition to the resulting or surviving company also any constituent company (including any constituent company of a constituent company) absorbed in a consolidation or merger which, if its separate existence had continued, would have had the power to indemnify its members of the Managing Board, Supervisory Board, Joint Board, officers, employees and agents, so that any person who is or was a member of the Managing Board, Supervisory Board, Joint Board, officer, employee or agent of such constituent company, or is or was serving at the request of such constituent company as a director, officer or agent

of another company, a partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this article with respect to the resulting or surviving company as he would have with respect to such

constituent company if its separate existence had continued.

#### GENERAL MEETING. ANNUAL GENERAL MEETING.

#### ARTICLE 29.

- 29.1. The annual General Meeting shall be held within six months after the close of the financial year.
- 29.2. At this General Meeting the following subjects shall be considered:
- a. the written annual report prepared by the Managing Board on the course of business of the Company and the conduct of its affairs during the past financial year;
  - b. the adoption of the annual accounts;
  - c. the discharge (decharge) of the members of the Managing Board and Supervisory Board for their duties rendered during the past financial year;
  - d. the appointment of member(s) of the Managing Board, in accordance with the provisions of article 14;
  - e. the appointment of member(s) of the Supervisory Board, in accordance with the provisions of article 22; and
  - f. any other proposal placed on the agenda in accordance with the provisions of the Law or these Articles.

#### EXTRAORDINARY GENERAL MEETINGS.

#### ARTICLE 30.

- 30.1. Without prejudice to articles 30.4 and 30.5, extraordinary General Meetings shall be called for and held as often as deemed necessary by the Joint Board, the Managing Board or the Supervisory Board and shall be held on the request of:
- a. Shareholders, representing at least five percent (5%) of the issued share capital of the Company; or
  - b. at least one hundred (100) Shareholders or one (1) Shareholder representing at least one hundred (100) CUFS Holders or any relevant combination so that the request of at least one hundred (100) persons are taken into account,
- with the percentage of votes that the Shareholders represent to be determined as at midnight (Sydney time) before the date referred to in the last stanza of article 30.2.
- 30.2. The request referred to in article 30.1:
- a. must be in writing;
  - b. must state any resolution, and the wording of any resolution, proposed to be put on the agenda for, and to be adopted at, the General Meeting;
  - c. may state any statement, and the wording of any statement, to be considered at the General Meeting as referred to in article 30.7;
  - d. must be signed by the Shareholder(s) making the request;
  - e. must be given to the Company; and
  - f. may be given in one or more counterparts,
- and if given in more than one counterpart will be taken to be received by the Company on the date that the last of such requests is received as is necessary to satisfy the representation requirement set out in article 30.1.
- 30.3. A General Meeting as requested pursuant to article 30.1 must be called within twenty-

one (21) days after the request is given to the Company. The meeting is



to be held not later than two (2) months after the request is given to the Company with the notice convening such General Meeting to be given in accordance with the other provisions of these Articles.

The Company must distribute to all of its Shareholders a copy of the proposed resolution and, if applicable, the statement as referred to in article 30.2 under c immediately following the receipt thereof, or as soon as practicable afterwards, and in the same way, as it is required to give notice to its Shareholders pursuant to article 10.1. under a. through e. inclusive. The Company shall meet the expenses incurred in making the request provided the copy of the said statement (if any) is received in time to send it out to the Shareholders together with the notice of the General Meeting. Unless the Joint Board agrees otherwise, the Shareholders requesting the General Meeting shall be jointly and individually liable for the expenses reasonably incurred by the Company in distributing a copy of the statement (if any) if the Company does not receive the same in time to send it out with the notice of the General Meeting.

- 30.4. If none of the Managing Board, Supervisory Board or Joint Board convene a General Meeting within the twenty one (21) day period referred to in article 30.3, Shareholders who represent fifty percent (50%) of the votes of all of the persons who made, or were so represented in respect of, the request under article 30.1, may call, and arrange to hold, a General Meeting, to be held within three (3) months of the request given under article 30.1, at the cost of the Company, including the reasonable expenses of the Shareholders. The notice convening such General Meeting must be given in accordance with the other provisions of these Articles.
- 30.5. In addition to article 30.1, shareholders representing at least five percent (5%) of the issued share capital of the Company may call, and arrange to hold, a General Meeting at the cost of such Shareholders. The notice convening such General Meeting must be given in accordance with the other provisions of these Articles. The percentage of votes that Shareholders represent is to be determined as at midnight (Sydney time) before the date on which the General meeting is called.
- 30.6. Shareholders, who individually or together with other Shareholders may request an extraordinary General Meeting pursuant to article 30.1, may at all times give the Company notice of a resolution that they propose to put on the agenda for, and have adopted at, a General Meeting.

Such notice:

- a. must be in writing;
- b. must state the proposed resolution, and the wording of the proposed resolution;
- c. must be signed by the Shareholder(s) making the request;
- d. must be given to the Company; and
- e. may be given in one or more counterparts, and if given in more than one counterpart will be taken to be received by the Company on the date that the last of such requests is received as is necessary to satisfy the representation requirement set out in article 30.1.

The Joint Board, Managing Board or Supervisory Board shall ensure that such resolution is considered at the next General Meeting that occurs more than two (2)

months after such notice is given with such notice to be given in accordance with the other provisions of these Articles. The Company must give its Shareholders notice of the resolution at the same time, or as soon as practicable afterwards, and in the same way, as it is required to give notice to its Shareholders pursuant to article 10.1. under a. through e. inclusive. The Company shall meet the expenses incurred in giving the notice if it receives the notice in time to send it out to the Shareholders with the notice of the General Meeting. Unless the Joint Board agrees otherwise, the Shareholders requesting the General Meeting shall be jointly and individually liable for the expenses reasonably incurred by the Company in giving notice of the resolution if the Company does not receive the request in time to send it out with the notice of the General Meeting

To the fullest extent permitted by Law, the Company need not comply with the request if the notice of the proposed resolution is more than one thousand (1,000) words long or defamatory.

- 30.7. Shareholders, who individually or together with other Shareholders may request an extraordinary General Meeting pursuant to article 30.1, may

at all times request the Company give to all its Shareholders a statement provided by the Shareholders making the request in connection with a resolution that is proposed to be adopted at a General Meeting or about any other matter that may properly be considered at a General Meeting.

Such request:

- a. must be in writing;
- b. must state the statement, and the wording of the statement;
- c. must be signed by the Shareholder(s) making the request;
- d. must be given to the Company; and
- e. may be given in one or more counterparts, and if given in more than one counterpart will be taken to be received by the Company on the date that the last of such requests is received as is necessary to satisfy the representation requirement set out in article 30.1.

The Company must distribute to all of its Shareholders a copy of the proposed resolution immediately following the receipt thereof, or as soon as practicable afterwards, and in the same way, as it is required to give notice to its Shareholders pursuant to article 10.1. under a. through e. inclusive.

The Company shall meet the expenses incurred in distributing the statement, provided it receives the statement in time to send it out to the Shareholders together with the notice of the General Meeting. Unless the Joint Board agrees otherwise, the Shareholders making the request shall be jointly and individually liable for the expenses reasonably incurred by the Company in distributing the statement if the Company does not receive the request in time to send it out with the notice of the General Meeting.

To the fullest extent permitted by Law, the Company need not comply with the request if the statement is more than one thousand (1,000) words long or defamatory.

- 30.8. Extraordinary General Meetings may be called by a single member of either the Managing Board, the Joint Board or the Supervisory Board at the Company's expense.

PLACE AND NOTICE OF GENERAL MEETINGS.

ARTICLE 31.

- 31.1. General Meetings shall be held at Amsterdam, Haarlemmermeer (Schiphol Airport), Rotterdam, or The Hague and at the time and location stated in the notice convening such General Meeting, without prejudice to article 37.2 under b sub (i) or article 37.3.
- 31.2. The notice convening a General Meeting pursuant to articles 30.1. through 30.3 inclusive shall be given by either the Managing Board, the Supervisory Board or the Joint Board. The notice convening a General Meeting pursuant to articles 30.4. and 30.5 shall be given by the Shareholders in accordance with the said articles.
- 31.3. Any notice of a General Meeting shall exclusively be given:
- a. with due observance of the provisions of articles 10 and 32 and shall state the location and time of, and in case the General Meeting may be attended and addressed by way of telephone or video conferencing pursuant to article 34.3, the details for such conferencing, and agenda (and possible other information) for, the General Meeting and the Information Meeting;
  - b. to every Shareholder and other persons entitled to receive notices of meetings and notifications pursuant to article 10.12; and
  - c. to the auditor to the Company.

NOTICE PERIOD. AGENDA.

ARTICLE 32.

- 32.1. The notice convening a General Meeting shall be sent no later than on the twenty-eighth day prior to the meeting. The notice shall always contain or be accompanied by the agenda for the meeting, the place and contact details for the purpose of receiving proxy appointments and

such information as, at the discretion of the person(s) convening the General Meeting, is deemed necessary to enable Shareholders to make a well considered decision or refer where such information shall be publicly available.

- 32.2. The agenda shall contain such subjects to be considered at the meeting as the person(s) convening the meeting shall decide. No valid resolutions can be adopted at a General Meeting in respect of subjects that are not mentioned in the agenda.

#### CHAIR OF GENERAL MEETINGS. MINUTES.

#### ARTICLE 33.

- 33.1. General Meetings shall be presided by the chair of the Joint Board. In case of absence of the chair of the Joint Board the meeting shall be presided by any other person nominated by the Joint Board. The chair of the General Meeting shall appoint the secretary of that meeting.
- 33.2. The secretary of the meeting shall keep the minutes of the business transacted at the General Meeting. Minutes shall be adopted and in evidence of such adoption be signed by the chair and the secretary of the General Meeting, or alternatively be adopted by a subsequent General Meeting; in the latter case the minutes shall be signed by the chair and the secretary of such subsequent General Meeting in evidence of their adoption.
- 33.3. The chair of the Joint Board may request a civil law notary (notaris) to include the minutes of the meeting in a notarial report (notarieel proces-verbaal).

#### ATTENDANCE OF GENERAL MEETINGS.

#### ARTICLE 34.

- 34.1. All Shareholders and other persons entitled to vote at General Meetings are entitled to attend the General Meetings, to address the General Meeting and to vote, provided that, and if so required as set out in the notice convening the meeting, such person has notified the Managing Board in writing of such person's intention to be present at the General Meeting or to be represented not later than the time specified in the notice convening the meeting.
- 34.2. The provisions laid down in article 34.1 are mutatis mutandis applicable on Shares from which the holders of a right of Usufruct or pledge who have the voting right attached to those Shares derive their rights. In addition, the provisions laid down in article 34.1 shall equally apply to CUFs Holders, except that the CUFs Holders shall not have the right to vote.
- 34.3. If so determined by the Managing Board, the Joint Board or the Supervisory Board, General Meetings may also be attended and addressed (but no voting may so be established) by means of telephone or video conference, provided each person entitled to attend and address the General Meeting pursuant to article 34.1 can hear and be heard at the same time.
- 34.4. The Managing Board may determine that the persons who are entitled to attend the General Meeting, as referred to in article 34.1 and article 34.2, are persons who (i) are a Shareholders or persons who are otherwise entitled to attend the General Meeting as at a certain date, determined by the Managing Board, such date hereinafter referred to as: the "record date", and (ii) who are as such registered in a register (or one or more parts thereof) designated thereto by the Managing Board, hereinafter referred to as: the "register", regardless of whether they are a Shareholder or person otherwise entitled to attend the General Meeting at the time of the General Meeting.
- 34.5. The record date referred to in article 34.4 cannot be earlier than at a certain time on the seventh day and not later than at a certain time on the third day, prior to the date of the General Meeting. The notice ("oproeping") of the General Meeting will contain the procedure for registration, and lodgement of valid proxies.

#### PROXIES.

#### ARTICLE 35.

- 35.1. Shareholders and other persons entitled to attend a General Meeting may be represented by proxies duly authorised in writing, and provided notice and proxy appointments are given in the form approved by the Managing Board in writing to the Managing Board in accordance with article 34.1 and with due observance of article 35.2, such proxies shall be admitted to the General Meeting.

35.2 The instrument appointing the proxy given in accordance with article 35.1, and any power of attorney or other authority (if any) under which the instrument is signed, must be deposited not less than forty-eight hours before the start of the General Meeting or adjourned General Meeting (or such lesser time as set out in the notice convening the General Meeting), at the registered office of the Company or at such other place as is specified for that purpose in the notice convening the General Meeting.

35.3. All matters regarding the admittance to the General Meeting, the exercise of voting rights and the outcome of the votes, as well as any other matters regarding the

proceedings at the General Meeting shall be decided upon by the chair of that meeting, with due observance of the provisions of section 2:13 Dutch Civil Code.

#### INFORMATION MEETING.

#### ARTICLE 36.

36.1. Information Meetings shall be held no more than seven (7) days prior to each General Meeting and shall be for the benefit of Shareholders and other persons entitled to attend a General Meeting who are unable to attend such General Meeting.

36.2. Information Meetings shall be held in Australia. The notice convening an Information Meeting shall be included in the notice convening the General Meeting and shall be given with due observance of article 31.3.

36.3. No voting will occur at any Information Meeting.

36.4. Subject to articles 34.1 and 35.1 and without limiting any other lodgement with the Company as set out in the relevant notice of a General Meeting, the Managing Board shall ensure that Shareholders and other persons entitled to vote at General Meetings are able to lodge proxies at the Information Meeting for admission to the General Meeting.

#### ADOPTION OF RESOLUTIONS. QUORUM. ADJOURNMENTS.

#### ARTICLE 37.

37.1. Unless provided otherwise by Law or these Articles, resolutions shall be validly adopted if adopted by an absolute majority of votes cast at a General Meeting at which at least five (5) % of the issued and outstanding share capital is present or represented. Blank and invalid votes shall not be counted.

37.2. If a quorum is not present within thirty (30) minutes after the opening of the General Meeting:

- a. where the meeting was convened upon the request of Shareholders, the General Meeting will be dissolved;
- b. in any other case, provided the Shares are quoted on the ASX:
  - (i) the meeting stands adjourned to a time and place as the Joint Board decides provided however that such meeting shall be resumed as soon as practically possible but not later than twenty four hours after the time originally fixed for the General Meeting and that the place may only be altered into a place within the same municipality as originally fixed for the General Meeting; and
  - (ii) if at the adjourned meeting a quorum is not present within thirty (30) minutes after the time appointed for the meeting, the meeting will be dissolved.

37.3. Provided the Shares are quoted on the ASX, the chair may in order to procure the orderly conduct of proceedings at the General Meeting (for instance, to allow for a break, to gain information and advice, to give the opportunity to deliberate) adjourn the General Meeting from time to time and from place to place, provided however that such meeting shall be resumed as soon as practically possible but not later than twenty four hours after the time originally fixed for the General Meeting and that the place may only be altered in a place within the same municipality as originally fixed for the General

Meeting. If the chair elects to adjourn the General Meeting pursuant to the preceding sentence, the chair may decide whether to seek the

approval of the Shareholders present. No business shall be transacted at any adjourned General Meeting other than the business left unfinished at the General Meeting from which the adjournment took place.

- 37.4. Any resolution to be considered at a General Meeting shall be decided on written votes and in the manner and at the time the chair of the General Meeting directs.
- 37.5. The chair shall determine any dispute as to the admission or rejection of a vote and such determination made in good faith shall be final and conclusive, subject to any judicial examination by any competent court. An objection to the qualification of a person to vote raised before or at the General Meeting or adjourned General Meeting shall be decided upon by the chair of the meeting, whose decision shall be final, subject to any judicial examination by any competent court.
- 37.6. If the voting concerns the appointment of a person and more than one person has been nominated for appointment, then votes shall be taken until one of the nominees has obtained an absolute majority of the votes cast. The further votes may, at the chair's discretion, be taken at a subsequent General Meeting.
- 37.7. In the case of an equality of votes cast at the General Meeting the chair has a casting vote.
- 37.8. Unless depositary receipts for Shares have been issued with the co-operation of the Company, the Shareholders may adopt a resolution that they can adopt at a meeting, without holding a meeting. Such a resolution shall only be valid if all Shareholders entitled to vote have cast their votes in writing in favour of the proposal concerned and all members of the Managing Board and the Supervisory Board were been offered the opportunity to advise on the resolution to be so adopted.

#### VOTING RIGHT PER SHARE.

#### ARTICLE 38.

At the General Meeting each Share shall confer the right to cast one vote, unless provided otherwise by Law or these Articles.

SPECIAL RESOLUTIONS. PROPOSALS TO AMEND THESE ARTICLES OR TO LIQUIDATE OR TO MERGE AND DEMERGE THE COMPANY.

#### ARTICLE 39.

- 39.1. Without prejudice to the quorum requirement as referred to in article 37.1., a resolution of the General Meeting to amend these Articles or to dissolve the Company shall only be valid if:
  - a. adopted by at least a three-fourths (3/4) majority of the votes cast at such General Meeting; and
  - b. with respect to a proposed amendment of these Articles one complete copy of the proposal has been freely available for the Shareholders and the other persons entitled to attend the General Meeting at the office of the Company as from the day of notice convening such meeting until the close of that meeting.
- 39.2. A resolution by the General Meeting to merge or demerge the Company shall only be valid if adopted by at least a three-fourths (3/4) majority of the votes cast at such

General Meeting.

#### ANNUAL ACCOUNTS. REPORT OF THE MANAGING BOARD AND DISTRIBUTIONS.

#### ARTICLE 40.

- 40.1. The financial year of the Company shall run from the first day of April up to and including the thirty-first day of March of the following year.
- 40.2. Each year the Managing Board shall prepare the annual accounts, consisting of a balance sheet as at the thirty-first day of March and a profit and loss account in respect of the preceding financial year, together with the explanatory notes thereto. The Managing Board shall furthermore prepare a report on the course of business of the Company and the conduct of its affairs during the past financial year.
- 40.3. The Managing Board shall draw up the annual accounts in accordance with applicable generally accepted accounting principles and all other

applicable provisions of the Law.

The annual accounts shall be signed by all members of the Managing Board and the Supervisory Board; if the signature of one or more of them is lacking, this shall be disclosed, stating the reasons thereof.

- 40.4. The Managing Board shall, on behalf of the Company, cause the annual accounts to be examined by one or more registered accountant(s) designated for the purposes by the General Meeting or other experts designated for that purpose in accordance with section 2:393 Dutch Civil Code. The auditor or the other expert designated shall report on his examination to the Supervisory Board and the Managing Board and shall issue a certificate containing the results thereof. The Managing Board shall ensure that the report on the annual accounts shall be available at the offices of the Company for the Shareholders.
- 40.5. Copies of the annual accounts, the annual report of the Managing Board and the information to be added to each of such documents pursuant to the Law shall be made freely available at the office of the Company for the Shareholders and the other persons entitled to attend General Meeting, as from the date of the notice convening the General Meeting at which meeting they shall be discussed, until the close thereof.

DISCHARGE OF MANAGING BOARD, THE SUPERVISORY BOARD AND THE JOINT BOARD.

ARTICLE 41.

To the fullest extent permitted by the Law, the adoption by the General Meeting of the annual accounts, referred to in article 40, shall fully discharge the Managing Board, the Supervisory Board and the Joint Board from liability in respect of the exercise of their duties during the financial year concerned, unless a proviso is made by the General Meeting, and without prejudice to the provisions of sections 2:138 and 2:149 Dutch Civil Code.

PROFIT AND LOSS. RESERVATION. DIVIDEND.

ARTICLE 42.

- 42.1. Out of the profit made in any financial year shall first be retained by way of reserve, with due observance of applicable provisions of Law relating to statutory reserves (wettelijke reserves) such portion of the profit - the positive balance of the profit and loss account - as determined by the Supervisory Board. The Supervisory Board may determine how to attribute losses.
- 42.2. The portion of the profit remaining after application of article 42.1, shall be at the disposal of the Joint Board.
- 42.3. Subject to the Law and these Articles, the Joint Board may resolve to declare a dividend and fix the date and amount of payment and determine as to whether or not profits are distributed to Shareholders either in cash or in Shares or other securities issued by the Company or by other companies, or a combination thereof, provided however that the General Meeting shall have the authority to make such distributions in the form of Shares in the Company, if a designation as referred to in article 4.2 is not in force.
- 42.4. Subject to the provisions of section 2:105 subsection 4 Dutch Civil Code, and these Articles the Joint Board may resolve to declare an interim dividend on Shares. Interim dividends may be distributed to the Shareholders, in proportion to the number of Shares held by each of them, either in cash or in Shares or other securities issued by the Company or by other companies, or a combination thereof, provided however that the General Meeting shall have the authority to make such distributions in the form of Shares in the Company, if a designation as referred to in article 4.2 is not in force.
- 42.6. Dividends shall be divisible among the Shareholders in proportion to the nominal amount paid (or credited as paid) (excluding the amounts unpaid on those Shares pursuant to article 5) on the Shares of each Shareholder without prejudice to the other provisions of this article 42. To the extent one or more payments on Shares are made during the period to which a dividend relates, the dividend on the amounts so paid on Shares shall be reduced pro rata to the date of these payments.
- 42.7. The Company can only declare dividends in so far as its shareholders equity (eigen vermogen) exceeds the amount of the paid up and called portion of the share capital, plus the statutory reserves (wettelijke reserves).

OTHER DISTRIBUTIONS.

ARTICLE 43.

- 43.1. Next to possible other reserves, the Company may maintain a share premium reserve for Shares.
- 43.2. The Joint Board may declare distributions out of a share premium reserve or out of any other reserve shown in the annual accounts, not being a statutory reserve (wettelijke reserve).
- 43.3. Subject to the Law and these Articles, the Joint Board may resolve to declare a distribution as referred to in article 43.2. and fix the date and amount of payment and determine as to whether or not profits are distributed to Shareholders either in cash or in Shares or other securities issued by the Company or by other companies, or a combination thereof, provided however that the General Meeting shall have the authority to make such distributions in the form of Shares in the Company, if a designation as referred to in article 4.2 is not in force.
- 43.4. Distributions shall be divisible among the Shareholders in proportion to the nominal amount paid (or credited as paid) (excluding the amounts unpaid on those Shares pursuant to article 5) on the Shares of each Shareholder.
- 43.5. The Company can only declare distributions in so far as its shareholders equity (eigen vermogen) exceeds the amount of the paid up and called portion of the share capital, plus the statutory reserves (wettelijke reserves).

PAYMENT OF DIVIDEND AND OTHER DISTRIBUTIONS.

ARTICLE 44.

- 44.1. Distributions pursuant to article 42 or article 43 of these Articles shall be payable as of the date fixed for payment by Joint Board. No dividend shall carry interest against the Company.
- 44.2. Distributions pursuant to article 42 or article 43 of these Articles shall be made payable at an address or addresses in the Netherlands, to be determined by the Joint Board, as well as at least one address in each other country or state where the Shares or CUFSS are traded on a stock exchange.
- 44.3. Cash distributions shall be declared in United States Dollars, unless the Joint Board determines otherwise and may be paid in such currency or currencies as the Joint Board determines using the rate of exchange prevailing on the date fixed for payment by the Joint Board.
- 44.4. The person entitled to a distribution on Shares pursuant to article 42 or article 43 of these Articles shall be the person in whose name the Share is registered at the date fixed for payment by the Joint Board.
- 44.5. Distributions on Shares in cash pursuant to article 42 or article 43 of these Articles that have not been collected within five years and two days after have become due and payable shall revert to the Company.
- 44.6. In the case of a distribution on Shares pursuant to articles 42.3, 43.3 or article 43.4, any Shares or other securities in the Company or another company not claimed within a period to be determined by the Joint Board shall be sold for the account of the persons entitled to the distribution who failed to claim such Shares or other securities. The net proceeds of such sale shall thereafter be held at the disposal of the above persons in proportion to their entitlement; the right to the proceeds shall lapse, however, if the proceeds are not claimed within five years and two days after the date fixed for payment of the distribution.
- 44.7. In the case of a distribution on Shares pursuant to articles 42.3, 43.3 or article 43.4, any Shares or other securities in the Company or another company that can not under applicable law be claimed or accepted by a Shareholder within a period to be determined by the Joint Board may at the request of the relevant Shareholder be sold for the account of the persons entitled to such distribution. The net proceeds of such sale shall thereafter be paid to, or held at the disposal of, the above person; the right to the proceeds shall lapse, however, if the proceeds are not claimed within five years and two days after the date the Company has notified such person of the sale and the proceeds arising therefrom.
- 44.8. The Joint Board may cause the Company to deduct from any dividend or other distribution payable to a Shareholder all sums of money due and payable by such Shareholder to the Company on account of calls or otherwise in relation to Shares.

DISSOLUTION. LIQUIDATION.

ARTICLE 45.

- 45.1. If the Company is dissolved, the liquidation shall be carried out by the person(s) designated for that purpose by the General Meeting, under the supervision of the Supervisory Board.
- 45.2. The General Meeting shall upon the proposal of the Supervisory Board determine the remuneration payable to the liquidators and to the person responsible for supervising the liquidation.
- 45.3. The liquidation shall take place with due observance of the provisions of the Law. During the liquidation period these Articles shall, to the extent possible, remain in full force and effect.
- 45.4. After settling the liquidation, the liquidators shall render account in accordance with the provisions of the Law.
- 45.5. After the Company has ceased to exist, the books and records of the Company shall remain in the custody of the person designated for that purpose by the liquidators during a seven (7) year period.

DISTRIBUTION TO SHAREHOLDERS UPON DISSOLUTION.

ARTICLE 46.

After all liabilities of the Company have been settled, including those incidental to the liquidation, the balance shall then be distributed among the Shareholders in proportion to the nominal amount paid (or credited as paid) (excluding the amounts unpaid on those Shares pursuant to article 5) on the Shares of each Shareholder.

EFFECT OF THESE ARTICLES.

ARTICLE 47.

These Articles are binding on the Company and each Shareholder and the Company, on the one hand, and each Shareholder severally, on the other hand, is to observe and perform these Articles so far as they apply to him/it.

HOLDING OF SHARES AND CUFSS.

ARTICLE 48.

The Shareholder holds the Shares (and accordingly any holder of CUFSS takes its interests in the Shares) subject to:

- a. the provisions of these Articles;
- b. any obligations or liabilities which the Shareholder may incur in respect of the Shares pursuant to these Articles; and
- c. any rights or interests of the Company or any third party in the Shares which may arise under or pursuant to the exercise of any power contained in these Articles.

CHAPTER III

LIMITATIONS ON THE RIGHT TO HOLD SHARES.

ARTICLE 49.

Capitalised terms used and not defined in article 1 in this chapter III shall have the following meaning:

- AFFILIATED COMPANIES            of a Person:
- (i) a Parent Company of the Person;
  - (ii) a Subsidiary Company of the Person; and/or
  - (iii) another company where the Person and that company are both Subsidiary Companies of the same Parent Company;
- ASIC                                Australian Securities and Investments Commission;
- ASSOCIATE                        of a Person:
- (i) an Affiliated Company of the Person; and/or



(ii) another Person with whom such Person has entered into an agreement for the purpose of holding or acquiring a Relevant Interest;

AUSTRALIAN LAW AND POLICY

- (i) decisions of an Australian court;
- (ii) published policy statements, practice notes and other guidelines and public releases issued by ASIC; and
- (iii) published decisions, rules, policies and other guidelines and public releases issued by the Panel,

each in relation to the provisions in the Corporations Act (including predecessors of that legislation) similar in nature to these Articles;

BID SECURITIES CONTROL

the CUFS or Shares being bid for under a Take-over Bid; over a Person,

(i) the ability to exercise, directly or Indirectly:

(A) more than twenty (20%) of the voting rights in a general meeting of such Person; or

(B) the right to dismiss or appoint more than fifty percent (50%) of the members of such Person's managing or supervisory board; or

(ii) in respect of a Person that is not a legal entity: being liable (whether actually or contingently) -alone or together with one or more Affiliated Companies - for such Person's debts vis-a-vis third parties;

CORPORATIONS ACT BID

a bid for Shares or CUFS made in compliance, so far as possible, with Parts 6.4, 6.5, 6.6 and 6.8 of the Corporations Act in respect of off-market bids (as that term is defined in the Corporations Act) as if the Company were incorporated in Australia and were the "target" as defined in those Parts, subject to:

(i) any requirement under those provisions for a document to be lodged with ASIC being taken to be satisfied if the document is given to ASX instead; and

(ii) any other modifications or exemptions agreed between the Person making the bid and the Supervisory Board in accordance with article 49.13;

INDIRECTLY

by, through or in concert with:

(i) one or more Affiliated Companies of such Person;

(ii) a nominee or trustee for the Person; or

(iii) another Person with whom such Person has entered

into an agreement for the purpose of holding or acquiring a Relevant Interest;

ON MARKET TRANSACTION

a transaction that is effected on ASX and is:

(i) an on-market transaction as defined in the rules governing the operation of ASX; or

(ii) if those rules do not define on-market transactions - effected in the ordinary course of trading on ASX;

PANEL

the Corporations and Securities Panel established under the Australian Securities and Investments Commission Act (2001) or any successor or replacement entity;

PARENT COMPANIES

of a Person, one or more companies exercising Control over such Person;

PERSON	a natural person, a legal entity or any other legal form that under applicable law has the power to hold a Relevant Interest;
RELEVANT INTEREST	any interest in Shares that causes or permits a Person to: <ul style="list-style-type: none"> <li>(i) exercise or to influence (or restrain) the exercise of voting rights on Shares (whether through the giving of voting instructions or as a proxy or otherwise); or</li> <li>(ii) dispose or to influence (or restrain) the disposal of Shares,</li> </ul> including inter alia the legal ownership of a Share, a CUFS, a right of pledge (pandrecht) or right of Usufruct on a Share and an interest under an option agreement to acquire a Share or a CUFS;
SENIOR COUNSEL	an Australian legal practitioner practising in the New South Wales or Victorian bar who has been appointed by the Attorney General of New South Wales or Victoria (as the case may be) as a senior counsel or queen's counsel;
SUBSIDIARY COMPANIES	of a Person, one or more companies over which Control is exercised by such Person;
TAKE-OVER BID	a bid for Shares or CUFS that at all relevant times fulfils the purposes set out in article 49.1 and complies with the principles in article 49.13.

- 49.1. The purposes of this chapter III is to ensure that:
- a. the acquisition of control over CUFS or Shares takes place in an efficient, competitive and informed market; and
  - b. each Shareholder and CUFS Holder and as well as the Managing Board, Joint Board and Supervisory Board:
    - (i) know the identity of any Person who proposes to acquire a substantial interest in the Company; and
    - (ii) are given reasonable time to consider a proposal to acquire a substantial interest in the Company; and
    - (iii) are given enough information to assess the merits of a proposal to acquire a substantial interest in the Company; and
  - c. as far as practicable, the Shareholders and CUFS Holders all have a reasonable and equal opportunity to participate in any benefits accruing through a proposal to acquire a substantial interest in the Company.

In the interpretation of a provision of article 49, a construction that would promote the purpose or object underlying these Articles is to be preferred to a construction that would not promote that purpose or object.

- 49.2. Without prejudice to the exceptions and exemptions as referred to in articles 49.5 and 49.6, no Person may hold a Share if, because of an acquisition of a Relevant Interest by any Person in that Share:
- a. the number of Shares in respect of which any Person (including, without limitation, the holder) directly or Indirectly acquires or holds a Relevant Interest increases:
    - (i) from twenty percent (20%) or below to more than twenty percent (20%); or
    - (ii) from a starting point that is above twenty (20%) and below ninety percent (90%),
of the issued and outstanding share capital of the Company; or
  - b. the voting rights which any Person (including, without limitation, the holder) directly or Indirectly, is entitled to exercise at a General Meeting on any matter increase:
    - (i) from twenty percent (20%) or below to more than twenty percent (20%); or

- (ii) from a starting point that is above twenty percent (20%) and below ninety percent (90%),

of the total number of such voting rights which may be exercised by any Person at a General Meeting.

For the purposes of this article 49 (including article 49.2), a Person holds a Share if the Person:

- (A) is the legal owner of the Share; or
- (B) holds a right of pledge (pandrecht) or right of Usufruct on Shares, provided the right to vote the Shares so pledged or subject to the right of Usufruct is included in such right.

Any holding of a Share or acquisition of a Relevant Interest in breach of this article 49.2 does not cause such acquisition or holding to be invalid.

49.2A (a) A Shareholder must give the information referred to in article 49.2A(e) to the Company if:

- (i) a Person begins to have, or ceases to have, a substantial holding in the Company; or
- (ii) a Person has a substantial holding in the Company and there is a movement of at least one percent (1%) in their holding; or
- (iii) a Person makes a Take-over Bid for securities of the Company.

The Shareholder must also give the information to the ASX. For the purposes of this article, a "Substantial Holder" means a Person referred to in paragraphs (i), (ii) or (iii) above.

(b) The obligation of the Shareholder to provide this information referred to in article 49.2A(e) is taken to be satisfied if it is provided to the Company and ASX by the Substantial Holder.

(c) For the purposes of this article, a Person has a substantial holding in the Company if the total votes attached to Shares in which the Person directly or Indirectly:

- (A) has Relevant Interests; or
- (B) would have a Relevant Interest but for the operation of article 49.5(g) or article 49.5(j),

is five percent (5%) or more of the total number of votes attached to all Shares.

(d) For the purposes of this article there is a movement of at least one percent (1%) in a Person's holding if the percentage worked out using the following formula increases or decreases by one (1) or more percentage points from the percentage they last disclosed under this article in relation to the Company:

Person's votes x one hundred (100)

Total votes in the Company where:

"Person's votes" is the total number of votes attached to all the Shares (if any) in which the Person directly or Indirectly has a Relevant Interest.

"Total votes in the Company" is the total number of votes attached to all Shares.

(e) The information to be given must include:

- (i) the Substantial Holder's name and address;
- (ii) details of their Relevant Interest in Shares and of the circumstances giving rise to that Relevant Interest;
- (iii) the name of the Shareholders in relation to the Shares in which the Substantial Holder has a Relevant Interest;
- (iv) details of any agreement through which the Substantial Holder would have a Relevant Interest in

Shares in the Company;

- (v) the name of each Associate who has a Relevant Interest in Shares in the Company, together with details of:
  - (A) the nature of their association with the Associate;
  - (B) the Relevant Interest of the Associate; and
  - (C) any agreement through which the Associate has the Relevant Interest; and
- (vi) if the information is being given because of a movement in their holding - the size and date of that movement.

(f) The information must be given in the form prescribed by the Company (if the Company has prescribed a form) and must be accompanied by:

- (i) a copy of any document including any agreement that:
  - (A) contributed to the situation giving rise to the Shareholder needing to provide the information; and
  - (B) is in writing and readily available to the Substantial Holder or Shareholder; and
- (ii) a statement by the Substantial Holder or Shareholder giving full and accurate details of any contract, scheme or arrangement that:
  - (A) contributed to the situation giving rise to the Shareholder needing to provide the information; and
  - (B) is not both in writing and readily available to the Substantial Holder or Shareholder.

(g) The information does not need to be accompanied by the documents referred to in article 49.2A(f) if the transaction that gives rise to the Shareholder needing to provide the information takes place on the ASX.

(h) The Shareholder must give the information:

- (i) within two (2) Business Days after they become aware of the information as referred to in article 49.2(A) (e); or
- (ii) by nine-thirty (9.30 am) on the next trading day of the ASX after they become aware of the information as referred to in article 49.2(A) (e) if a Take-over Bid is made.

49.3. For the purpose of article 49.2 or article 49.2A, a Person:

- a. holding or acquiring a Relevant Interest; or
- b. exercising the voting rights at a General Meeting,

shall together with his Affiliated Companies be considered as one Person in respect of such Relevant Interest or exercise of voting rights, and each of them, to the extent he holds one or more Shares shall be jointly and severally liable (hoofdelijk aansprakelijk) for each other's obligations under these Articles pursuant to article 49.7 under a., and article 50.3 under b. In addition, there may be imposed on each of them the other remedies referred to in articles 49.7 and 50.3.

49.4. For the purpose of article 49.2 or article 49.2A, if one or more Persons pursuant to an agreement or a nominee or trustee arrangement act together for the purpose of:

- a. holding or acquiring a Relevant Interest; or
- b. exercising the voting rights at a General Meeting; or
- c. circumventing the prohibition as referred to in article 49.2

or the obligation in article 49.2A,

all of them shall be considered as one Person in respect of such Relevant Interest, exercise of voting rights or circumvention of the prohibition or obligation. Each of them, to the extent he holds one or more Shares shall be jointly and severally liable (hoofdelijk aansprakelijk) for each other's obligations under these Articles pursuant to article 49.7 under a. and article 50.3 under b. In addition, there may be imposed on each of them the other remedies referred to in articles 49.7 and 50.3.

49.5. A Person is not considered to hold or acquire a Relevant Interest for the purpose of article 49.2 or article 49.2A, if the Relevant Interest arises merely because:

- a. that Person acquires a Relevant Interest solely as a nominee or trustee for a Person who may direct the nominee or trustee as to the exercise of any power relating to the Relevant Interest;
- b. that Person holds Shares as a securities intermediary (effectenbemiddelaar) within the meaning of section 7 of the 1995 Act on the supervision of the securities trade (Wet toezicht effectenverkeer 1995), such as inter alia brokers and dealers, provided such Person acts on behalf of someone else (and not for

his own account) in the ordinary course of such Person's business and provided such person is qualified to practise under applicable law;

- c. that Person holds Shares as a custodian (bewaarder) or depository in order to enable the Shares of the Company to be traded on a stock market of a securities exchange, provided such Person is qualified to practise under applicable law;

- d. that Person holds or acquires a Relevant Interest as a result of a share repurchase and cancellation of shares;

- e. of a charge or other security taken for the purpose of a transaction entered into by the Person if:

- (i) the mortgage, charge or security is taken or acquired in the ordinary course of the Person's business of providing financial services and on ordinary commercial terms; and

- (ii) the Person whose property is subject to the charge or security is not an Affiliated Company of the Person;

- f. the Person has been appointed to vote as a proxy or representative on Shares if:

- (i) the appointment is for one General Meeting only; and

- (ii) neither the Person nor any Affiliated Company gives valuable consideration for such appointment;

- g. of:

- (i) an exchange traded option over the Shares; or

- (ii) a right to acquire a Relevant Interest given by a (futures) agreement.

This paragraph g. stops applying to any Relevant Interest when the obligation to make or take delivery of the Shares arises;

- h. a company's articles of association or applicable law gives all shareholders pre-emptive rights on the transfer of shares if all shareholders of the relevant company have pre-emptive rights on the same terms;

- i. the Person is a (managing) director of a legal entity having a Relevant Interest; or

- j. of an agreement if the agreement is conditional on a resolution referred to in article 49.6 under e.

When a Person's Relevant Interest in a Share is disregarded pursuant to this article 49.5, the Person shall for the purposes of article 49.2 under b. or article 49.2A be taken not to be entitled to exercise, directly or Indirectly, the voting rights relating to that Share.

- 49.6. The prohibition as referred to in article 49.2 or the obligation as referred to in article 49.2A shall not apply to the extent that:
- a. the holding or acquisition of a Relevant Interest results from the acceptance of offers under a Take-over Bid;
  - b. the holding or acquisition of a Relevant Interest is the result of an On-Market Transaction if:
    - (i) the acquisition is by or on behalf of the bidder under a Take-over Bid; and
    - (ii) the acquisition occurs during the bid period in respect of the Take-over Bid; and
    - (iii) the Take-over Bid is for all the Bid Securities; and
    - (iv) the Take-over Bid is unconditional;
  - c. the holding or acquisition of a Relevant Interest arises in the following circumstances:
    - (i) throughout the six (6) months before the acquisition a Person directly, or Indirectly, holds a Relevant Interest in the issued and outstanding share capital of the Company of at least nineteen percent (19%); and
    - (ii) as a result of the acquisition, directly, or Indirectly, the Person would have a Relevant Interest in the issued and outstanding share capital of the Company not more than three (3) percentage points higher than he had six (6) months before the acquisition;
  - d. the holding or acquisition of a Relevant Interest:
    - (i) is consistent with the purposes in article 49.1; and
    - (ii) conforms to the principles in article 49.13 as they apply to the acquisition or holding, adjusting those principles as appropriate to meet the particular circumstances of the acquisition or holding but without derogating from the purposes in article 49.1; and
    - (iii) has received the prior approval of the Supervisory Board;
  - e. the holding or acquisition of a Relevant Interest has been approved previously by a General Meeting if:
    - (i) no votes are cast in favour of the resolution by:
      - (A) the Person proposing to make the acquisition and its Associates; or
      - (B) the Person (if any) from whom the acquisition is to be made and its Associates; and
    - (ii) the Shareholders were given all information known to the Person proposing to make the acquisition or its Associates, or known to the Company, that was material to the decision on how to vote on the resolution, including:
      - (A) the identity of the Person proposing to make the acquisition and its Associates; and
      - (B) the maximum extent of the increase in that Person's Relevant Interest in the Company that would result from the acquisition; and
      - (C) the Relevant Interest that Person would have as a result of the acquisition; and
      - (D) the maximum extent of the increase in the Relevant Interest each of that Person's Associates that would result from the acquisition; and
      - (E) the Relevant Interest that each of that Person's Associates would have as a result

of the acquisition;

- f. the holding or acquisition of a Relevant Interest results from an acquisition through operation of law including a merger by Law in accordance with the Dutch Civil Code;
- g. the holding or acquisition of a Relevant Interest results from the acceptance of take-over offers made by the Company for the securities of another body corporate listed on the stock market of a securities exchange, which offers are made in accordance with applicable securities law regulating the conduct of take-overs of bodies corporate of that kind, where Shares or securities convertible into Shares are included in the consideration for the acquisition of securities under those offers;
- h. the holding or acquisition of a Relevant Interest results from the exercise of rights of conversion attaching to securities convertible into Shares issued in accordance with paragraph g; or
- i. the holding or acquisition of a Relevant Interest results from an issue by the Company under a prospectus to a Person as underwriter or sub-underwriter to the issue where the prospectus disclosed the effect or range of possible effects that the issue would have on the number of Shares in which that Person would have a Relevant Interest and on the voting rights of that Person.

49.7. Subject to articles 49.8 and 49.9, the Supervisory Board may cause the Company to exercise any one or more of the following remedies if a breach by a Person of the provisions of article 49.2 or article 49.2A has occurred or is continuing:

- a. require, by notice in writing, the Shareholder to dispose all or part of the Shares so held in breach of article 49.2 or article 49.2A within the time specified in the notice;
- b. disregard the exercise by such Person of all or part of the voting rights arising from the Shares or the right of pledge (pandrecht) or the right of Usufruct on Shares, provided the right to vote the Shares so pledged or subject to the right of Usufruct is included in such right so held in breach of article 49.2 or article 49.2A; or
- c. suspend such Person from the right to receive all or part of the dividends or other distributions arising from the Shares so held in breach of article 49.2 or article 49.2A.

49.8. The Company may exercise the remedies referred to in article 49.7 if it first obtains a judgement from the competent courts and acts in accordance with such judgement, that a breach of the prohibition of article 49.2 or the obligation in article 49.2A has occurred and is continuing.

49.9. In addition to exercising its rights under articles 49.8 and 49.10, the Company may exercise the remedies referred to in article 49.7 if it first obtains advice from, and acts in accordance with the advice of:

- a. a Senior Counsel in the commercial field of at least five (5) years standing as a Senior Counsel; or
- b. a senior partner experienced in Australian mergers and acquisitions of a major Australian commercial law firm; and

in either case, being independent of (and not associated with) the Company or any other interested party and without a material personal interest in the matter.

The advisor shall be appointed by the Company, but must be nominated by:

- (i) the president of the Panel; or
- (ii) if such Person is unwilling or unable to make the nomination, the director of the Panel; or
- (iii) if such Person is unwilling or unable to make the nomination, a mediator on the Supreme Court of New South Wales list of approved mediators nominated by the Company.

The advisor must inter alia be instructed to:

- (A) advise whether any breach of article 49.2, article 49.2A or article 50.2 has occurred;
- (B) have regard to the purposes under article 49.1 and to the extent applicable, the principles in article 49.13, Australian Law and Policy in interpreting these provisions and giving this advice;
- (C) in determining whether the exception under article 49.6 under a. applies to an acquisition or holding of a Relevant Interest pursuant to a Take-over Bid that is not a Corporations Act Bid, have regard to the manner in which a bid for CUFS or Shares would have been conducted under a Corporations Act Bid, including the information which would have provided to shareholders in connection with such bid;
- (D) give the Company and any Person that would be aggrieved by the exercise of the Company's powers under articles 49.7 or article 50.3 the opportunity, with their legal advisors, to make submissions to the advisor, prior to the advisor providing the advice;
- (E) have regard to issues under Dutch law to the extent relevant to providing his or her advice and for that purpose to retain, at the Company's cost, an appropriately qualified expert in Dutch law; and
- (F) provide his or her advice as soon as possible.

The Company shall:

- 1. provide any assistance or information it may possess, which is reasonably required by the advisor to give this advice;
- 2. be responsible for paying the advisors' fees and expenses;
- 3. include in the terms of the advisor's appointment an indemnity by the Company in favour of the advisor for any loss or liability he or she may incur in connection with providing this advice, except as a result of his or her negligence or wilful default; and
- 4. provide a copy of the advice to the Person who has breached or is alleged to have breached article 49.2, article 49.2A or article 50.2.

The Company shall include any other terms and conditions in the appointment of the advisor which the Person nominating the advisor specifies.

49.10. Where the Company is seeking but has not received advice under article 49.9, the Company may also exercise any of the remedies described in article 49.7 (other than that as described under a.) by notice in writing to the Shareholder but so that they have effect for the period commencing on the date the notice is given and ending on the earlier of:

- a. twenty one (21) days after the notice has been given; and
- b. one (1) day after the advice under article 49.9 has been provided to the Company.

49.11. If there are reasonable grounds to believe that a breach of article 49.2 or article 49.2A has occurred, the Supervisory Board must consider whether to exercise the remedies under article 49.7 or article 50.3 and take advice as to whether it should exercise those remedies. For that purpose, the Supervisory Board must give proper consideration to (and include within any brief for advice) any submission that a breach has occurred from any Shareholders or any other interested Person or officer of the Company aggrieved by

the alleged breach.

49.12. If the requirements of any notice pursuant to article 49.7 under a. are not complied with by the Person within the time specified in the notice, the Company may, as an irrevocable proxy of the Shareholder, without any further instrument, cause the Shares referred to in the notice to be sold on any relevant securities exchange on which they are quoted, or, if they are not so quoted, in accordance with section 2:87b Dutch Civil Code.

The Company may:



- a. appoint a Person as transferor to effect a transfer in respect of any Shares sold in accordance with this article and to receive and give good discharge of the purchase money for them;
- b. acknowledge the transfer despite the fact that the share certificates (if any) may not have been delivered to the Company;
- c. issue a new share certificate (if required) in which event the previous certificate(s) (if any) are deemed to have been cancelled;
- d. if the Person delivers the relevant share certificates (if any) to the Company for cancellation, the purchase money less the expenses of any sale made in accordance with paragraph (b) above must be paid to the Person whose Shares were sold; and
- e. if the Person does not deliver the relevant share certificates (if any) to the Company, the Company may sue the Person in detinue for recovery of the share certificates (if any), and the Person is not entitled to deny or dispute the Company's ownership and right to possession of any share certificate in any legal action.

The Company may, by notice in writing, at any time require any Shareholder to provide the Company any information or evidence (on oath or otherwise verified if the Company reasonably requires) as the Company may consider likely to be of assistance in determining whether or not that Person is eligible to remain a Shareholder with respect to all his Shares.

Despite anything in this article 49.12, the Company has no liability, subject to article 49.18, arising from any Person holding Shares in circumstances which would result in or have the effect of causing an infringement or contravention of article 49.2 or article 49.2A.

The Company and the members of its Managing Board, Supervisory Board or Joint Board have no liability to any Person arising from any action taken by the Company under this article, provided that such action was taken in good faith.

49.13. In addition to fulfilling the purposes in article 49.1, a Take-over Bid must comply with the following principles.

- a. An offer for Bid Securities must be an offer to buy all the Bid Securities or a specified proportion of the Bid Securities. The proportion specified must be the same for all holders of the Bid Securities.
- b. A Person who holds one (1) or more parcels of those securities as trustee or nominee for, or otherwise on account of, another Person may accept the offer as if a separate offer had been made in relation to:
  - (i) each of those parcels; and
  - (ii) any parcel they hold in its own right;
- c. All the offers made must be the same. In applying this paragraph, the following shall be disregarded:
  - (i) any differences in the offers attributable to the fact that the number of Bid Securities that may be acquired under each offer is limited by the number of Bid Securities held by the holder;
  - (ii) any differences in the offers attributable to the fact that the offers relate to Bid Securities having different accrued dividend or distribution entitlements;
  - (iii) any differences in the offers attributable to the fact that the offers relate to Bid Securities on which different amounts are paid up or remain unpaid;
  - (iv) any differences in the offers attributable to the fact that the Person making the offer may issue or transfer only whole numbers of securities as consideration for the acquisition; and
  - (v) any additional cash amount offered to holders instead

of the fraction of a security that would otherwise be offered.

- d. The consideration offered for Bid Securities must equal or exceed the maximum consideration that the Person making the offer directly or Indirectly provided, or agreed to provide, for Shares or CUFS under any purchase or agreement during the four (4) months before the first day of the period of the offer.
- e. A Person making an offer for Bid Securities must not directly or Indirectly, during the period of the offer, give, offer to give or agree to give a benefit to a Person if:
  - (i) the benefit is likely to induce the Person directly or Indirectly to:
    - (A) accept the offer; or
    - (B) dispose of Shares or CUFS; and
  - (ii) the benefit is not offered to all holders of Bid Securities.
- f. The period of the offer must:
  - (i) start on the date the first offer is made; and
  - (ii) last for at least one (1) month, and not more than twelve (12) months.

If, within the last seven (7) days of the period of the offer:

- (A) the offers are varied to improve the consideration offered (including by offering an alternative form of consideration); or
- (B) the number of Shares in which the Person making the offer directly or Indirectly holds a Relevant Interest, or both, increases to more than fifty percent (50%) of the issued and outstanding share capital of the Company,

the period of the offer is extended so that it ends fourteen (14) days after the event referred to in paragraph (A) or (B) above.

- g. Offers must not be subject to a maximum acceptance condition. A maximum acceptance condition is one that provides that the offers will terminate, or the maximum consideration offered will be reduced, if effectively one or more of the following occurs:
  - (i) the number of Bid Securities for which the Person making the offer receives acceptances reaches or exceeds a particular number; or
  - (ii) the number of Shares in which the Person making the offer directly or Indirectly holds a Relevant Interest, or both, reaches or exceeds a particular percentage of the issued and outstanding share capital of the Company; or
  - (iii) the percentage of Bid Securities the Person making the offer has a Relevant Interest in reaches or exceeds a particular percentage of Bid Securities in that class.

Offers must not be subject to a discriminatory condition. A discriminatory condition is a condition that allows the Person making the offer to acquire, or may result in that Person acquiring, Bid Securities from some but not all of the people who accept the offers.

Offers must not be subject to a condition if the fulfilment of the condition depends on:

- (i) the opinion, belief or other state of mind of the Person making the offer or an Affiliated Company; or
- (ii) the happening of an event that is within the sole control of, or is a direct result of action by, any of the following:

- (A) the Person making the offer (acting alone or together with an Affiliated Company); or
- (B) an Affiliated Company (acting alone or together with the Person making the offer or another Affiliated Company of that Person).

h. The Person making the offer may only vary the offer made by:

- (i) improving the consideration offered (including by offering an additional form of consideration); or
- (ii) extending the period of the offer.

The terms of unaccepted offers must be varied in the same way. Any person who has already accepted an offer must be entitled to the improved consideration and, in the case of an addition of a new form of consideration, be entitled to make a fresh election.

i. A Person making an offer that is unconditional may extend the period of the offer at any time before the end of the offer. A Person making an offer that is still subject to conditions may only extend the period of the offer at least seven (7) days before the end of the period of the offer unless during that seven (7) day period another Person announces a bid for Bid Securities or improves the consideration offered under another bid for Bid Securities.

j. Each offer must be in writing and have the same date. This date is the day the first offer is made.

k. The Person making the offer must, at the same time it gives its offer to holders of Bid Securities, also give a document to those holders setting out all information known to the Person that is material to the making of the decision by a holder of Bid Securities whether or not to accept the offer. This document must be given to the Company and ASX at least fourteen (14) days before it is given to these holders and must be dated. The date is the date on which the document is given to ASX. If the Person making the offer becomes aware of:

- (i) a misleading or deceptive statement in the document; or
- (ii) an omission from the document of information required by article 49.1 or this article 49.13; or
- (iii) a new circumstance that:
  - (A) has arisen since the document was given to the Company; and
  - (B) would have been required by article 49.1 or this article 49.13 to be included in the document if it had arisen before the document was given to the Company,

that is material from the point of view of a holder of Bid Securities, the Person making the offer must prepare a supplementary document that remedies this defect. The Person making the offer must give the supplementary document to the Company and give a copy with ASX. The supplementary document must be dated. The date is the date on which the supplementary document is given to ASX.

49.14. A bid for Shares or CUFS is taken to comply with the principles in article 49.13 if it is a Corporations Act Bid at all relevant times. The Supervisory Board must act reasonably and in a timely manner in agreeing with a Person making a Corporations Act Bid to any modifications or exemptions to the application of Parts 6.4, 6.5, 6.6 and 6.8 of the Corporations Act to a Corporations Act Bid having regard to the purposes in article 49.1, the principles in article 49.13 and Australian Law and Policy.

49.15. If a Take-over Bid is made, the Company must:

- a. give to all holders of Bid Securities, ASX and the Person making the Take-over Bid a document in a timely manner setting out all information that the holders and their professional advisers would reasonably require to make an informed assessment whether to accept an offer under the Take-over Bid. The document must contain this information:

- (i) only to the extent to which it is reasonable for investors and their professional advisers to expect to see the information in the document; and
- (ii) only if the information is known to any members of the Joint Board; and

The document must also contain a statement by each member of the Joint Board:

- (A) recommending that offers under the Take-over Bid be accepted or not accepted, and giving reasons for the recommendation; or
- (B) giving reasons why a recommendation is not made.

The document must be dated. The date is the date on which the document is given to ASX;

b. if it becomes aware of:

- (i) a misleading or deceptive statement in the document; or
- (ii) an omission from the document of information required by paragraph a above; or
- (iii) a new circumstance that:
  - (A) has arisen since the document was given to the Person making the offer; and
  - (B) would have been required by paragraph a. above to be included if it had arisen before the document was given to the Person making the

offer,

that is material from the point of view of a holder of Bid Securities, prepare a supplementary document that remedies this defect and give it to the Person making the offer and ASX. The supplementary document must be dated. The date is the date on which the supplementary document is given to ASX; and

c. if it has been given a document in accordance with article 49.13 under k. and the Person making the offer makes a request for information under this paragraph for the purposes of fulfilling the purposes under article 49.1 and complying with the principles under article 49.13, the Company must inform the Person of the name and address of each Person who held Bid Securities and that Person's holding, at the specified time by the Person making the Offer. The Company must give the information to the Person making the offer in a timely manner and:

- (i) in the form that the Person requests; or
- (ii) if the Company is unable to comply with the request - in writing.

If the Company must give the information to the Person in electronic form, the information must be readable but the information need not be formatted for the preferred operating system of the Person making the offer.

49.16. The Company may, by giving notice in writing, require the holder of a Share or a CUFS to give to the Company, within two (2) Business Days after receiving the notice, a statement in writing setting out:

- a. full details of the holder's Relevant Interest and of the circumstances giving rise to that Relevant Interest; and
- b. the name and address of each other Person who has a Relevant Interest together with full details of:
  - (i) the nature and extent of the Relevant Interest; and
  - (ii) the circumstances that give rise to the Person's Relevant Interest; and
- c. the name and address of each Person who has given the holder of the Shares or the Person as referred to in paragraph b. above instructions about:

- (i) the acquisition or disposal of a Relevant Interest;  
or
- (ii) the exercise of any voting or other rights attached to a Relevant Interest;
- (iii) any other matter relating to a Relevant Interest;

together with full details of those instructions (including the date or dates on which those relevant instructions were given).

A matter referred to in paragraph b. or c. need only be disclosed to the extent to which it is known to the Person making the disclosure

Where a statement is delivered to the Company containing any details as referred to in paragraphs b. or c., the Company may, by giving notice in writing, require a holder of a Share or a CUFs to give to the Company or to use its best endeavours to procure that any other Persons as referred to in paragraphs b. or c. above to give to the Company, within two (2) days after receiving the notice, a statement in writing setting out the details as referred to in paragraphs a, b. and/or c. above.

49.17. So long as Shares are quoted on ASX, if the Company becomes subject to the law of any jurisdiction which applies so as to regulate the acquisition of control, and the

conduct of any take-over, of the Company:

- a. the Company shall consult promptly with ASX to determine whether, in the light of the application of such law:
  - (i) ASX requires amendment to Chapter III of these articles in order for these Articles to comply with the Listing Rules as then in force; or
  - (ii) any waiver of the Listing Rules permitting the inclusion of all or part of Chapter III in these Articles has ceased to have effect; and
- b. where:
  - (i) the Listing Rules require these Articles to contain a provision and it does not contain such a provision;
  - (ii) the Listing Rules require these Articles not to contain a provision and it contains such a provision; or
  - (iii) any provision of these Articles is or becomes inconsistent with the Listing Rules,

the Managing Board shall put to the General Meeting a proposal to amend these Articles so as to make them, to the fullest extent permitted by Law, consistent with the Listing Rules.

49.18. The Company shall indemnify a Person who:

- a. is or was a Shareholder for the purpose of making CUFs available; and
- b. was or is a party or is threatened to be made a party to any threatened, pending, current or completed action, suit, investigation or proceeding, whether civil, criminal, administrative or investigative brought by any other person in connection with any action taken or not taken by such person or the Company as contemplated under article 49.7, article 49.12 or article 50.3,

against all expenses (including attorneys' fees) judgements, fines and amounts paid in settlement which are actually and reasonably incurred by the person in connection with such action, suit, investigation or proceeding unless such Shareholder acted in bad faith.

CUFS HOLDERS.

#### ARTICLE 50

50.1. This article 50 is applicable to CUFs Holders who are bound by these Articles under the Corporations Act (as modified) or any other

applicable law.

- 50.2. A CUFH Holder shall not do anything which would result in a breach of these Articles whether on the part of that Person or another Person bound by these Articles.
- 50.3. Where a remedy is exercisable under article 49.7 in respect of Shares and CUFH are issued in respect of the Shares which are the subject of the remedy:
- a. the Company must give a written notice setting out the name and holding of the CUFH Holder, whose CUFH relate to the Shares, and such other information as the Company considers necessary, to the Shareholder and the Shareholder shall be entitled to rely on the information contained in that notice for the purposes of these Articles. A copy of this notice, as well as any notice given to the Shareholder under article 49.7 or article 49.10, must also be given to that CUFH Holder;
  - b. the Supervisory Board may cause the Company to require, by notice in writing to the CUFH Holder, that the CUFH Holder dispose of such number of CUFH that relate to the Shares, and within such time, as is specified in the notice;
  - c. if the notice to the Shareholder under paragraph a. above states that the right to receive dividends or other distributions in respect of any of those Shares has been suspended, the Shareholder shall not, before receiving notice from the Company that the suspension has been lifted, distribute, nor direct the Company to distribute, to the CUFH Holder any dividend or distribution from the Company in respect of the CUFH which relate to those Shares;
  - d. if the notice to the Shareholder under paragraph a. above states that the Company has determined to disregard the exercise of voting rights attached to particular Shares, the Shareholder shall inform the Company, as required by the Company, of such directions as to voting which the Shareholder has received from the CUFH Holders, and the names of the CUFH Holders concerned, in respect of all Shares held by the Shareholder, in order to ensure that the exercise of voting rights attaching to those Shares which are the subject of the Company's determination, and not other Shares, are disregarded. The Company shall be entitled to rely upon the information provided by the Shareholder.
- 50.4. If the requirements of a notice under article 50.3 under b. are not complied with by the Person within the time specified in the notice, the Company may, as an irrevocable proxy of the CUFH Holder, without any further instrument, cause the CUFH referred to in the notice to be sold to the extent permitted by and in accordance with the SCH Business Rules and must pay to the Person whose CUFH were sold the purchase money less the expenses of the sale.
- The Company may, by notice in writing, at any time require any CUFH Holder to provide the Company any information or evidence (on oath or otherwise verified if the Company reasonably requires) as the Company may reasonably consider likely to be of assistance in determining whether or not a breach of these Articles has occurred or is continuing.
- Despite anything in this article 50.4, the Company and the Shareholder have no liability arising from any Person holding CUFH in circumstances which would result in or have the effect of causing an infringement or contravention of article 49.2, article 49.2A or article 50.2.
- 50.5. A CUFH Holder shall not have any claim against the Company, the members of its Managing Board, Supervisory Board or Joint Board or the Shareholder for any action taken by any of them in accordance with article 49 or this article 50 or the SCH Business Rules, provided that such action was taken in good faith.

#### CHAPTER IV

#### RENEWAL PROVISION.

#### ARTICLE 51.

Articles 49.9 through 49.10 of these Articles shall lapse after a period of five (5) years from the later of the date referenced in the head of this deed and the date that the General Meeting last extended the applicability of articles 49.9 through 49.10, subject to the confirmation of such

extension by way of the deposit by the Joint Board of a declaration with the trade register of the competent Chamber of Commerce and Industry as referred to in section 2: 77 Dutch Civil Code. If those articles lapse, the remedies in article 49.7 may thereafter be exercised only if the Company has obtained a judgement from the competent courts in accordance with article 49.8.

[NB THIS ARTICLE HAS BEEN INCLUDED BY AMENDMENT OF THE ARTICLES OF ASSOCIATION, EFFECTED ON THE SEVENTH DAY OF SEPTEMBER TWO THOUSAND AND ONE].

#### TRANSITIONAL PROVISIONS.

DELEGATION OF THE AUTHORITY TO ISSUE SHARES, TO LIMIT AND TO EXCLUDE PRE-EMPTIVE RIGHTS.

#### ARTICLE 52.

Effective as per the amendment of these Articles on the ninth day of August two thousand and two, and on the proposal of the Joint Board, the delegation of the authority to issue shares in the capital of the Company and to grant rights to subscribe for shares, and to exclude or limit pre-emptive rights relating to such issues and grants to the Joint Board (the "Delegation"), made by written resolution of the general meeting of Shareholders of the Company dated the fourteenth day of August two thousand and one, is terminated.

Effective as per the amendment of these Articles and on the proposal of the Joint Board, the Delegation is considered to be granted to the Supervisory Board, and shall be (i) for a period ending on the fifteenth day of August two thousand and six, and (ii) up to the maximum number of Shares that may be issued under the authorised share capital, as set forth in these Articles from time to time.

[NB THIS ARTICLE HAS BEEN INCLUDED BY AMENDMENT OF THE ARTICLES OF ASSOCIATION, EFFECTED ON THE NINTH DAY OF AUGUST TWO THOUSAND AND TWO].

#### MANAGING BOARD APPOINTMENT.

#### ARTICLE 53.

For the purpose of article 14.2., Donald Ewen Cameron will be deemed to be appointed as member of the Managing Board as per the date referenced in the head of these Articles.

[NB THIS ARTICLE HAS BEEN INCLUDED BY AMENDMENT OF THE ARTICLES OF ASSOCIATION, EFFECTED ON THE SEVENTH DAY OF SEPTEMBER TWO THOUSAND AND ONE].

## AMENDMENT AGREEMENT

James Hardie International Finance B.V.

James Hardie Industries N.V.

Wells Fargo HSBC Trade Bank, National Association

Standby Loan Agreement dated 20 July 2000 as amended, novated

and restated from time to time

The Chifley Tower  
 2 Chifley Square  
 Sydney NSW 2000  
 Tel 61 2 9230 4000  
 Fax 61 2 9230 5333  
 www.aar.com.au

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AMENDMENT AGREEMENT

Allens Arthur Robinson

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## DATE

## PARTIES

- JAMES HARDIE INTERNATIONAL FINANCE B.V. incorporated in the Netherlands, having its statutory seat at Amsterdam, The Netherlands of Strawinskyiaan 3077, 1077 ZX Amsterdam, The Netherlands (the BORROWER);
- JAMES HARDIE INDUSTRIES N.V. incorporated in the Netherlands, having its statutory seat at Amsterdam, The Netherlands of Strawinskyiaan 3077, 1077 ZX Amsterdam, The Netherlands (JHINV); and
- WELLS FARGO HSBC TRADE BANK, NATIONAL ASSOCIATION of 333 South Grand Avenue, Suite 800, Los Angeles CA 90071 USA (the LENDER).

## RECITALS

- The Borrower, JHINV and the Lender are parties to a Standby Loan Agreement dated 20 July 2000, as amended, novated and restated on 27 August 2001 and further amended and novated on 16 December 2002 (the FACILITY AGREEMENT).
- The parties to this Agreement have agreed that the Facility Agreement be further amended on the terms set out in this Agreement.

IT IS AGREED as follows.



1. DEFINITIONS AND INTERPRETATION

1.1 DEFINITION

The following definition applies unless the context requires otherwise.

EFFECTIVE DATE means 30 April 2004.

1.2 FACILITY AGREEMENT DEFINITIONS

Unless otherwise defined in this Agreement the terms defined in the Facility Agreement have the same meaning when used in this Agreement.

1.3 INTERPRETATION

Clauses 1.2 and 1.3 of the Facility Agreement apply to this Agreement as if set out in full.

2. AMENDMENT

With effect from the Effective Date, the Facility Agreement shall be amended as follows:

- (a) (RECITAL A) In Recital, "US\$15,000,000" is deleted and replaced with "US\$30,000,000".

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- (b) (CLAUSE 1.1) In the definition of COMMITMENT, "US\$15,000,000" is deleted and replaced with "US\$30,000,000".

3. REPRESENTATIONS AND WARRANTIES

3.1 REPRESENTATIONS AND WARRANTIES

The Borrower and JHINV each represent and warrant for the benefit of the Lender that:

- (a) the representations and warranties set out in clause 16.1 of the Facility Agreement are true and correct in relation to it on and as of the date of this Agreement and the Effective Date as though they had been made at each such date in respect of the facts and circumstances then subsisting; and
- (b) no Event of Default is subsisting or will be subsisting immediately before or following the novations and amendment contemplated by this Agreement.

3.2 RELIANCE

The Borrower and JHINV each acknowledge that the Lender has entered into this Agreement in reliance on the representations and warranties in clause 3.1.

4. BORROWER'S ACKNOWLEDGEMENT

The Borrower acknowledges that it shall continue to be bound by and will comply with the provisions of the Facility Agreement which are expressed to be binding on it.

5. EXPENSES

The Borrower shall reimburse the Lender for its costs and expenses of and relating to the preparation, execution and completion of, or the enforcement of, or preservation of any rights under, this Agreement, including legal costs and expenses on a full indemnity basis.

6. STAMP DUTIES

The Borrower shall pay all stamp, transaction, registration, financial institutions, bank account debit and other duties and taxes (including fines and penalties) which may be payable or determined to be payable in relation to the execution, delivery, performance or enforcement of this Agreement or any payment or receipt or other transaction contemplated by this Agreement.

7. GOVERNING LAW AND JURISDICTION

This Agreement is governed by the laws of New South Wales. Each party submits to the non-exclusive jurisdiction of courts exercising jurisdiction there.

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8. COUNTERPARTS

This Agreement may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

EXECUTED as an agreement.

Each attorney executing this Agreement states that he has no notice of revocation or suspension of this power of attorney.

SIGNED for  
JAMES HARDIE INTERNATIONAL FINANCE B.V. by  
its attorney in the presence of:

/s/ Jeroen Stultiens ----- Witness Signature	/s/ Folkert H Zwinkels ----- Attorney Signature
Jeroen Stultiens ----- Print Name	Folkert H Zwinkels ----- Print Name

SIGNED for  
JAMES HARDIE INDUSTRIES N.V. by its attorney in  
the presence of:

/s/ Peter Macdonald ----- Witness Signature	/s/ Peter Shafron ----- Attorney Signature
Peter Macdonald ----- Print Name	Peter Shafron ----- Print Name

SIGNED for  
WELLS FARGO HSBC TRADE BANK, NATIONAL  
ASSOCIATION by its authorised officer:

/s/ Kollyn D. Kanz  
-----  
Signature

Kollyn D. Kanz  
-----  
Print Name

Vice President, Relationship Manager  
-----  
Title/Position



To: Wells Fargo HSBC Trade Bank N.A.

JAMES HARDIE INTERNATIONAL FINANCE BV  
364 DAY STANDBY LOAN AGREEMENT - EXTENSION LETTER

We refer to the Loan Agreement (the "Agreement") dated 20 July 2000, as novated and amended on 27 August 2001 and 12 December 2002, made between ourselves, James Hardie International Finance BV as borrower, and James Hardie Industries NV as Guarantor, and yourselves as Lender.

Pursuant to clause 6 of the Agreement, we kindly request that the Final Maturity Date in respect of the Agreement be extended to a date 364 days after the current Review Date under the Agreement. The extended Final Maturity Date would be 30 April 2005.

The current Review Date is 30 April 2004. The next Review Date is 30 October 2004.

Signed for and on behalf of JAMES HARDIE INTERNATIONAL FINANCE BV

By /s/ Folkert H Zwinkels (Responsible Officer) Dated: 20 April 2004  
-----

Signed for JAMES HARDIE INDUSTRIES NV

By /s/ Peter Macdonald (Responsible Officer) Dated: 20 April 2004  
-----

We agree to extend our Final Maturity Date in respect of the Facility to 30 April 2005.

Signed for Lender by:

/s/ Kollyn D. Kanz (Responsible Officer) Dated: 29 April 2004  
-----

October 21, 2004

Joint Board  
James Hardie Industries N.V.  
4th Floor, Atrium  
Unit 04-07, Strawinskyalaan 3077, 1077  
Amsterdam, The Netherlands

Dear Sirs and Madams:

I hereby provide notice of termination of my employment by James Hardie Industries NV (the "COMPANY") and/or its affiliates for "Good Reason" as permitted by Section 6.03 of my Executive Service Agreement with the Company dated June 10, 2002 (the "ESA"), and notice of resignation of my position as Chief Executive Officer and Managing Director of the Company under the terms and conditions attached to this letter as Attachment A. In addition, and effective immediately, I hereby give notice of resignation, and do hereby resign, from all other directorships and offices in the Company's subsidiaries and affiliates, including without limitation all trustee, committee and other positions held with such entities. Please sign below in agreement and acknowledgement of all terms in this letter and Attachment A and in acknowledgement and agreement that I have the right to terminate due to "Good Reason" as defined in Section 6.03(f) of the ESA.

Sincerely,

/s/ Peter Donald Macdonald  
-----  
Peter Donald Macdonald

ACKNOWLEDGED AND AGREED:

JAMES HARDIE INDUSTRIES NV

By: /s/ Meredith Hellicar  
-----  
Name: Meredith Hellicar

Title: Chairman of the Joint and Supervisory Boards of Directors

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Attachment A to Letter of Resignation

Agreed Terms of Resignation

James Hardie Industries NV (the "COMPANY") will enter into a consulting agreement with Mr. Macdonald effective as of October 21, 2004, in the form attached to these terms as Exhibit 1. The Company has due authorization to enter into such Consulting Agreement.

The effective date of resignation of employment from the Company will be October 21, 2004, U.S. time. The effective date of resignation of Mr Macdonald's position as Managing Director and from all other directorships and offices held by Mr Macdonald as described in the letter of resignation shall be October 21, 2004, U.S. time. The Company, the Joint Board and Mr Macdonald shall act with the greatest diligence to accomplish any task or pass any resolution or execute any additional document necessary to achieve effective resignation by Mr Macdonald as a Managing Director.

The Company agrees to pay the cash termination payments called for under Section 6.03 of the executive service agreement ("ESA") on the basis that Mr Macdonald has resigned for "Good Reason", including:

- - Salary: 24 months of Mr Macdonald's current Annual Base Salary of US\$850,000, for a total of US\$1,700,000; payable as set out below.
- - Bonus: 24 months of Mr Macdonald's annual Bonus paid in the year immediately preceding the year of termination (US\$1,726,000) for a total of US\$3,452,000; payable as set out below.
- - Bonus Bank: payment of the FY 04 ending bonus bank (US\$1,379,359), payable as set out below

The Company irrevocably and unconditionally agrees to make those payments no later than midnight on 21 October 2004 (US time) without set off apart from withholdings required by law (see further below), and to provide the following additional termination benefits called for in accordance with Section 6.03 of the ESA:

- - Stock Options: Under the ESA, subject to the terms of each plan, the stock

options which are vested on the termination date will remain vested and those that would have vested during the remainder of the term of the ESA (i.e. through to November 1, 2005) will continue to vest. Thus, again subject to the terms of the relevant plan, Mr Macdonald's options will generally continue to vest through to November 1, 2005, and thereafter will remain exercisable as long as provided in the respective plans. A full analysis follows but for the avoidance of doubt, the parties agree that the Plan rules and the relevant portions of the ESA shall continue to govern the terms upon which the options are held and exercised. The Plan and ESA have been definitively interpreted as follows:

1999 PDM Plan - Option covering 1,200,000 shares: 800,000 shares have vested already and 400,000 vest on 17 November 2004. The 1999 PDM Plan is silent on what happens if Mr Macdonald terminates for "Good Reason." With the 1999 PDM Plan silent, the ESA controls. Thus, in accordance with the ESA, the option will vest with respect to the final 400,000 shares on 17 November 2004, and will lapse if not exercised on the expiry of 6 months after the date on which Mr Macdonald ceases to be employed by the Company (4.5(b) 1999 Plan).

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2001 PDM Plan - Option covering 624,000 shares: This option is a performance option that could vest no sooner than July 16, 2004. On or after that date (until July 15, 2006), if the performance test is satisfied on the first business day of any month, a portion of (456,000 shares), or all (up to an additional 156,000), of this option vests. As of today, the performance test has not been satisfied. As with the 1999 PDM Plan, the 2001 PDM Plan is silent on what happens if Mr Macdonald terminates employment for "Good Reason." With the 2001 PDM Plan silent, the ESA controls and the option continues to vest following termination, and shall lapse if not exercised 6 months after the date of resignation (4.5(b) 2001 Plan).

2002 PDM Plan - Option covering 1,950,000 shares: This option is a performance option that can vest no sooner than the third anniversary of the grant date (12 July 2005). The 2002 PDM Plan is silent on what happens if Mr Macdonald terminates for "Good Cause." This means that the ESA controls and that this option continues to vest through November, 2005, as if Mr Macdonald were still employed. On the third anniversary of the grant (12 July 2005), if the performance metric is satisfied, Mr Macdonald will be able to exercise the option. Furthermore, if the performance metric is satisfied between 12 July 2005 and 31 October 2005, on the first business day of the month, Mr Macdonald will be able to exercise it. Section 4.5 of the 2002 PDM Plan does not state when the option terminates following Mr Macdonald's termination for "Good Reason." Thus, assuming the performance metric is satisfied by October 31, 2005 (the original end date of the ESA), the Option will remain exercisable until the tenth anniversary of the issue date (July 2012).

Because option exercises have been suspended pending filing of Form 20-F for the year ended 31 March 2004 with the SEC (inasmuch as the relevant registration statement is not current), all exercises of options must be made after filing of such 20-F. The Company will use all commercially reasonable efforts to make such 20-F filing as soon as practicable. In any event, should the Company fail to properly file the Form 20-F by the end of November or if for any other reason caused by the Company Mr Macdonald would otherwise be prohibited from exercising his vested 1999 and 2001 options within the six month post-termination exercise period, the Company and Mr Macdonald will discuss in good faith arrangements to enable the options to be exercised within the exercise period, subject to complying with applicable laws, or other appropriate arrangements to ensure Mr Macdonald is not disadvantaged should the failed exercise of the options during that period be caused by the Company. The parties agree that Mr Macdonald will not be a "Designated Person" under the Company's Insider Trading Policy following his resignation of his officer and director relationships, and will not be subject to the Company's securities transaction rules applicable exclusively to executive officers or directors following such resignations. Furthermore, the parties intend that the nature of the consulting that Mr Macdonald will perform under the Second Term of the Consulting Agreement is such that Mr Macdonald will not be expected to be an "Insider" within the meaning of the Company's insider trading policy during that Second Term.

- - Shadow Shares: Mr Macdonald's shadow shares are completely vested, but cashing out was deferred under the terms of the Plan until November 1, 2005. Under ESA 6.03(d), these rights, which are similar to stock options, will therefore remain vested following termination as governed by ESA 6.03(d).

- - Executive Share Purchase Plan: Mr Macdonald acknowledges that the Company shall withhold an amount (believed to be A\$22,240.74 but precise amount to be confirmed) for payments due under this letter equal to the amount owed by Mr Macdonald in respect of stock purchased under this plan.

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- - Medical, Health and All Other Benefits: All medical, health and other

benefits shall continue through to November 1, 2005 as follows:

Medical, prescription, dental, disability, salary continuance, employee life, group life, dependent life, accidental death, executive wellness program and travel accident insurance plans, and any other plans offered to senior executives must be continued by the Company through to November 1, 2005, and to the extent provided in the Consulting Agreement, will be continued beyond that date.

Vacation: As Mr Macdonald's paid vacation days are to continue to accrue through to November 1, 2005 (at the rate of 20 per year) under Section 6.03 of the ESA, the Company will immediately, and in any event prior to public announcement of Mr Macdonald's resignation, pay Mr Macdonald for the vacation days that have accrued to date and would otherwise have accrued through to November 1, 2005.

Motor Vehicle Insurance: Mr Macdonald has privately owned motor vehicles that have been and are insured under the Company's standard policy. Mr Macdonald has purchased the vehicles with his own funds and has paid the relevant premiums to the Company at the standard rate. Mr Macdonald will pay any deductible that might arise should any of these vehicles be involved in an accident. Mr Macdonald has been insuring vehicles and paying premiums under this arrangement for 10 years and has made no claims. This fringe benefit will continue until November 1, 2005.

Personal Tax: As with other JH employees whose term of employment includes off shore employment, PwC completes personal tax returns during employment and for two years after termination. In Mr Macdonald's case, part of his Company income is also declared in the Netherlands. In the case of Netherlands income tax, the Company has undertaken to gross up to Mr Macdonald in the US any Dutch taxes on his Company income which are in excess of taxes that would have been paid had he been solely a US tax resident. These arrangements will continue for the period of two years after his employment terminates.

Withholdings: The Company shall make such withholdings as are required under applicable laws. The precise withholdings are to be confirmed prior to payment.

- - Notice to Company: The Company agrees to dispense with any notice period or method of notification, and accepts written notice of resignation on behalf of itself and its affiliates as good, effective and proper.

- - Acknowledgement of Good Reason: The Company agrees and acknowledges that Mr Macdonald has the right to terminate for "Good Reason" under the ESA and that the Company will not later take an inconsistent position in relation to Mr Macdonald's right to terminate for Good Reason, or reverse or alter the basis upon which termination occurred.

- - Indemnity: The Company acknowledges the terms of its indemnity agreement previously granted in favour of Mr Macdonald, including clause 3 thereof.

- - Public Announcement: The Company agrees that the public announcement regarding Mr Macdonald's resignation shall be as set forth below (with any material modifications with respect to statements affecting Mr Macdonald to be approved by Mr Macdonald):

Last month Mr Peter Macdonald stepped aside as CEO but remained with the company in a senior operational role. Mr Macdonald has tendered his resignation and will cease to be a Managing Director of James Hardie effective today. Mr Macdonald is expected to remain in a consulting capacity with the company for an interim period.

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#### CONSULTING AGREEMENT

This Consulting Agreement is entered into as of October 21, 2004, between PETER D. MACDONALD ("CONSULTANT") and JAMES HARDIE INDUSTRIES NV ("COMPANY"). In consideration of the mutual covenants set forth in this Agreement, the parties agree as follows:

##### 1. RETENTION AS CONSULTANT

Upon the terms and conditions set forth in this Agreement, Company hereby agrees to retain Consultant, and Consultant agrees to act, as a consultant to Company. During the initial term of this Agreement (the "Initial Term"), Consultant shall render to Company such services of an advisory or consultative nature as the management of Company may reasonably request, up to a maximum of 80% of a full time role, so that Company may continue to have the full benefit of his experience and knowledge regarding Company's business. Consultant shall make recommendations and give advice to Company's board, management, and shall be available to consult with directors, management personnel and employees of Company, during normal business hours Monday through Friday by telephone, e-mails or in person at Company's office in Mission Viejo, California. The Initial Term will be not less than three (3) months and not more than six (6) months in duration, unless otherwise agreed by the parties. Immediately following the expiration of the Initial Term or earlier termination of the

Initial Term as provided in the final sentence of this Section 1, the second term of this Agreement shall commence (the "Second Term"), during which Consultant shall render to Company such services of an advisory or consultative nature as the management of Company may reasonably request at an average of 20 hours in any calendar month, exclusive of domestic US travel time, over the 24 month period (but which is expected to vary from month to month). The Company may, on reasonable notice, request that Consultant provide consultancy services to the Company in excess of such hours over the consultancy period, for a pro-rata rate, and the Consultant shall use reasonable endeavours to provide assistance where requested. The Second Term will be for a period of twenty-four (24) months. During the Initial Term, either party may, upon thirty (30) days advance written notice to the other party, notify the other party that effective as of the date set forth in that notice (which date shall not be sooner than three months from the commencement of the Initial Term), such party is electing to end the Initial Term and commence the Second Term.

## 2. COMPENSATION

For his services to Company under Section 1 during the Initial Term of this Agreement, Consultant shall receive from Company a consulting fee of Sixty Thousand Dollars (\$60,000) per month, payable monthly. For his services to Company during the Second Term, Consultant shall receive from Company a consulting fee of Ten Thousand Dollars (\$10,000) per month, payable monthly. In addition, Company shall, from 21 October 2005 and for the remainder of the term of this Agreement, obtain and pay for Consultant's and Consultant's immediate family's medical, prescription and dental insurance coverage consistent with the benefits provided to executive-level employees of Company, provided, however, that if Company is unable to extend such benefits to Consultant due to prohibitions in the respective Company benefit plans or applicable laws or regulations, Company shall obtain on behalf of Consultant and his immediate family and pay for substantially similar benefit plans or, at Consultant's election, shall increase Consultant's monthly cash compensation under this Section 2 to cover the additional reasonable expenditure that Consultant must undertake in order to purchase substantially similar benefits for himself and his immediate family. Except as set forth in Section 3 below or a separate agreement between Company and Consultant, no other compensation or benefits will given to Consultant for his services, unless separately approved in a writing signed by the Chairman of Company.

## 3. EXPENSES

Company shall reimburse Consultant for reasonable out-of-pocket expenses incurred by Consultant in connection with Company's business, but only, with respect to material expenses, if the incurring of any

such expenses is approved in advance by an executive officer of Company and Consultant provides Company with such substantiating receipts or other documentation as Company may reasonably require.

## 4. TERM

The term of this Agreement shall begin on the date set forth in the first paragraph and shall continue until the end of the Second Term, when it shall automatically terminate, unless the term is extended or earlier terminated as follows:

(a) Either party may terminate this Agreement prior to its expiration for material breach of this Agreement if the party who has breached this Agreement fails to cure the breach within thirty (30) days after receiving written notice specifying the nature of the breach.

(b) The Agreement shall automatically terminate upon Consultant's death.

The termination of this Agreement pursuant to this Section shall not release either party from any accrued obligation to pay any sum to the other party (whether then or thereafter payable) or operate to discharge any liability incurred prior to the termination date. In addition, Company obligations intended to survive the termination of this Agreement, including its indemnification obligations under Section 5(k), shall survive the termination of this Agreement.

## 5. MISCELLANEOUS

(a) GOVERNING LAW AND JURISDICTION. All questions with respect to the construction of this Agreement and the rights and liabilities of the parties shall be governed by the laws of the State of California, excluding its conflict of laws rules. Each of the parties submits to the jurisdiction of any state or federal court sitting in Orange County, California, in any action or proceeding arising out of or relating to this Agreement and agrees that all claims in respect of the action or proceeding may be heard and determined in any such court. Each party also agrees not to bring any action or proceeding arising out of or relating to this Agreement in any other court.

(b) SUCCESSORS AND ASSIGNS. This Agreement shall inure to the benefit of



and be binding upon the parties and their respective successors and assigns.

(c) ENTIRE AGREEMENT. This Agreement contains all of the terms and conditions agreed upon by the parties, and supersedes any prior agreements or understandings with respect to the consulting relationship between Consultant and Company to begin on the effective date set forth above. To be clear, this Agreement does not supersede or alter the parties' Joint and Several Indemnity Agreement dated December 17, 2001, and the indemnification provided for in this Agreement is in addition to, and not in replacement of, the indemnification obligations contained in the Joint and Several Indemnity Agreement. Furthermore, this Agreement does not alter the Executive Services Agreement signed by the parties as of June 10, 2002, which contains terms that survive the termination of that agreement.

(d) AMENDMENT OR MODIFICATION OF AGREEMENT. This Agreement may be modified, altered or amended only by the written agreement of both the parties.

(e) ATTORNEYS' FEES AND COSTS. In any legal proceeding to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs and necessary disbursements in addition to any other relief to which it or he may be entitled.

(f) COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which shall be a valid original agreement.

(g) SEVERABILITY. If any provision of this Agreement or its application to any person or circumstances is held to be unenforceable or invalid by any court of competent jurisdiction, its other applications and the remaining provisions of this Agreement will be interpreted so as best reasonably to effect the intent of the parties.

(h) NOTICES. Any notice or other communication to a party pursuant to this Agreement will be deemed to have been duly given if given personally to the party or on the date of delivery in writing, addressed to the party, at the following address:

If to Company:           The Company Secretary  
James Hardie Industries NV  
4th Floor, Atrium  
Unit 04-07, Strawinskyiaan 3077, 1077  
Amsterdam, The Netherlands

With a Copy to:       Senior Vice President Human Resources  
James Hardie, Inc.  
26300 La Alameda, Suite 100  
Mission Viejo, California 92691  
  
Fax: (949) 348-4534

If to Consultant:     Peter Donald Macdonald

Either party may change its or his address for purposes of this paragraph by giving the other party written notice of the new address in the manner set forth above.

(h) FURTHER ACTIONS. Each party agrees to execute and deliver any further documents and to do any additional acts reasonably required to carry out the terms of this Agreement.

(i) WAIVERS. Any provision of this Agreement may be waived at any time by the party entitled to the benefit thereof by a written instrument executed by the party or by a duly authorized officer of the party. No waiver of any of the provisions of this Agreement will be deemed, or will constitute, a waiver of any other provision, whether or not similar, nor will any waiver constitute a continuing waiver.

(j) INDEPENDENT CONTRACTOR. Consultant is retained by Company only for the purposes and to the extent set forth in this Agreement, and his relationship to Company shall, during the term of this Agreement, be that of an independent contractor. The Consultant shall have no authority or right, express or implied, to assume or create any obligation or responsibility on behalf of Company or to bind Company in any manner without the express authorization of Company. The Consultant will not represent the contrary, either expressly or implicitly, to anyone. Consultant shall not be considered as having employee status or as being entitled to participate in any plans, arrangements or distributions by Company pertaining to any pension, stock, bonus, profit sharing or similar benefits for Company's employees, unless such plans otherwise permit participation by consultants and except as set forth otherwise in this Agreement. Company shall not withhold any of Consultant's compensation payments for income tax purposes and shall not have any obligations with regard to Social Security payments for Consultant, insurance or workers' compensation coverage for Consultant, or any similar items. Nothing contained in this Agreement shall be deemed or construed to constitute a relationship of employer and employee.

(k) INDEMNIFICATION. Company shall indemnify, defend and hold harmless Consultant if Consultant is or was a party or witness or other participant in, or is threatened to be made a party or witness or other participant in, any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (including an action by or in the right of Company or any subsidiary of Company) by reason of any action or inaction on the part of Consultant in connection with his

work as a consultant to Company or any subsidiary or parent of Company, or by reason of the fact that Consultant provides or has provided consultancy services under this agreement or, following the effective date of this Agreement, has served in any other capacity at the request of Company to the Company or another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees and experts' fees and costs), and all liabilities, losses, judgments, fines, penalties, and taxes incurred by Consultant and amounts paid in settlement (if such settlement is approved in advance by Company, which approval shall not be unreasonably withheld) actually and reasonably incurred by Consultant in connection with such action, suit or proceeding, provided in each case above that Consultant acted in good faith and in a manner Consultant reasonably believed to be in or not opposed to the best interests of Company. Notwithstanding anything to the contrary herein, to the extent that Consultant has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in this Section or the defense of any claim, issue or matter therein (including, without limitation, dismissal without prejudice), Consultant shall be indemnified against expenses (including attorneys' fees and experts fees and costs) actually and reasonably incurred by Consultant in connection therewith. Company shall advance all expenses incurred by Consultant in connection with the investigation, defense, settlement or appeal of any civil or criminal action, suit or proceeding referred to in this Section (including amounts actually paid in settlement of any such action, suit or proceeding). Consultant hereby undertakes to repay such amounts advanced only if, and to the extent that, it shall ultimately be determined that Consultant is not entitled to be indemnified by Company as authorized hereby.

EXECUTED at Mission Viejo, California as of the date first written above.

COMPANY:

JAMES HARDIE INDUSTRIES NV

By: /s/ Louis Gries  
-----

Name: Louis Gries

Title: Interim CEO

CONSULTANT:

/s/ Peter Donald Macdonald  
-----

Peter Donald Macdonald

## EMPLOYMENT AGREEMENT

This Employment Agreement ("Agreement") is made and entered into as of July 29, 2004 with effect from June 1, 2004 between Peter Shafron ("Executive") and James Hardie Building Products, Inc. and its affiliates (collectively "JH"), and is effective by its terms as herein provided.

WHEREAS, Executive and JH desire to enter into this Agreement to establish and set forth the terms and conditions of Executive's employment with JH.

WHEREAS, Executive and JH acknowledge that the terms of the Agreement constitute good and valuable consideration, the adequacy and sufficiency of which Executive and JH also acknowledge.

NOW THEREFORE, in consideration of the mutual covenants herein contained, and as a result of the voluntary agreement of Executive and JH to execute and abide by the terms of the Agreement, Executive and JH agree as follows:

1. POSITION, DUTIES AND RESPONSIBILITIES

(a) Position. The Executive hereby agrees to serve as a senior executive of JH in the position of Chief Financial Officer subject to all JH policies and procedures in effect from time to time as amended in the discretion of JH. The failure of JH to continue to employ Executive in the foregoing position shall be deemed a constructive termination of the Agreement by JH pursuant to Section 4(a). The Executive shall devote his best efforts and his full business time and attention to the performance of services to JH in this capacity and in such other senior executive capacity as may reasonably be requested by the Board of Directors of the Company ("Board"). JH shall retain full direction and control of the means and methods by which the Executive performs the above services.

(b) Place of Employment. During the term of this Agreement, the Executive shall perform the services required by this Agreement at JH's present principal place of business or at such other location(s) as may be mutually agreed by JH and the Executive; provided, however, that JH may from time to time require the Executive to travel temporarily to other locations throughout the world on JH's business consistent with the business needs of JH.

(c) Other Activities. Except with the prior written approval of the Board (which the Board may grant or withhold in its sole and absolute discretion), the Executive, during the Employment Period, will not (i) accept any other employment, (ii) serve on the board of directors or similar body of any other business entity, or (iii) engage, directly or indirectly, in any other business activity (whether or not pursued for pecuniary advantage) that is or may be competitive with, or that might place him in a competing position to, that of JH.

2. TRADE SECRETS

(a) Executive acknowledges by executing the Agreement, the requirement to adhere to all JH practices and policies including those concerning the preservation of JH's

confidential information including but not limited to customer lists, pricing practices and lists, marketing plans, manufacturing processes and techniques, financial information including financial information set forth in internal records, files and ledgers or incorporated in profit and loss statements, financial reports and business plans, inventions, discoveries, devices, algorithms, as well as computer hardware and software (including but not limited to source code, object code, documentation, diagrams, flow charts, know how, methods and techniques associated with the development of a use of any of the foregoing computer software), all internal memoranda, legal opinions, any other records of JH including electronic and data processing files and records and any other information designated as a "Trade Secret" and/or constituting a trade secret and any communication within the applicable attorney-client privilege under any governing law and any other proprietary information not generally available to the public that JH considers confidential information collectively called "Confidential Information."

(b) Executive agrees as a consequence of the Agreement, that he will not directly or indirectly use or disclose to any person, firm, or corporation any Confidential Information during the term of this Agreement or after this Agreement has expired by its terms, except in the normal course of business on behalf of JH, with the prior written consent of JH or to the extent necessary to comply with law or a valid order of a court of competent jurisdiction, in which event Executive will provide notice, in writing to JH at least ten (10) days prior to the date disclosure is sought to be made, or the amount of prior notice that Executive received, whichever is greater. Executive will at all times use his best efforts to prevent such prohibited use or disclosure of Confidential Information by any other person, firm or corporation.

(c) Executive acknowledges his obligation to voluntarily execute documents and written Agreements upon request by JH concerning the preservation of and/or the nondisclosure of JH Confidential Information which both parties acknowledge are effective, notwithstanding the Agreement, and shall remain in effect in accordance with its terms and conditions and are intended to provide independent protection to JH in addition to the Agreement concerning the non-disclosure of Confidential Information simultaneously, as such documents reflect Executive's continuing obligation concerning the protection of JH's Confidential Information in the broadest manner possible consistent with applicable law.

(d) Executive must not make, otherwise than for the benefit of JH, any personal notes, memoranda, diary entries and the like relating to any matter within the scope of the business of JH or concerning any of its dealings or affairs nor shall Executive either during the term of the Agreement or after its termination use or permit to be used any such personal note, memoranda or diary entry otherwise than for the benefit of JH.

(e) Executive hereby assigns to JH all existing and future intellectual property, including copyright, in all material created by Executive arising out of employment or relating to any matter within the scope of the business of JH or concerning its dealings or affairs. Executive acknowledges that by virtue of this clause all such existing rights vest in JH and on their creation all such future rights also vest in JH. Any document (including personal notes, memoranda, or diary entries) created by Executive or relating to any matters within the scope of the business of JH and/or concerning its dealings or affairs will be the property of JH and must be left at its principle office or at such other place JH may direct upon termination of your employment under Section 4 of the Agreement.

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(f) Executive will immediately inform JH and provide it with full details relating to any or all processes, inventions, improvements, innovations and discoveries which Executive may make either alone or jointly with others in relation to or arising during the course of your employment ("Discoveries") whether or not the Discoveries are capable of being protected by patent, copyright, registered design or otherwise.

(g) The Discoveries will be the sole and exclusive property of JH. Executive assigns to JH all existing and future rights relating to or arising from the Discoveries and on their creation all such rights vest in JH. Executive will sign all documents and do all acts necessary to obtain intellectual property protection for the Discoveries and to vest the ownership of such rights to JH.

### 3. COMPENSATION RELATED MATTERS

(a) Salary. During the Employment Period, JH shall pay the Executive annual salary of not less than USD\$337,000, to be paid consistent with the standard JH payroll practices (e.g., timing of payments and standard employee deductions, such as income tax withholdings, social security, etc.) applicable to similarly situated executives. The Executive's performance and salary shall be subject to review and adjustment consistent with the standard practices of JH in its discretion as approved by the Board.

(b) Business Expenses. JH shall reimburse the Executive in connection with the conduct of the JH business upon presentation of sufficient evidence of such expenditures consistent with JH policies as in place from time to time (and subject to the limitations set forth herein).

(c) Other Benefits. The Executive shall be entitled to participate in or receive health, welfare, life insurance, long-term disability insurance, vacation, and similar benefits as JH provides generally from time to time to similarly situated executives. The cost of all benefits described in the preceding sentence shall be that amount charged to similarly situated executives employed in the United States which shall be deducted from the Executive's salary as specified in Section 3(a). JH will pay the Executive an annual sum of \$7,500 (net) on or around 1 July each year in respect of travel compensation as agreed between the company in a letter dated June 5, 2001 - - for so long as this arrangement remains in place for other executives at a similar level in the company

(d) Annual Bonus. A cash bonus (the "Annual Bonus") to be paid each year pursuant to the JH Economic Profit Bonus Plan ("Plan"), subject to the achievement of goals established in accordance with the Plan, at the same time bonuses are generally paid to similarly situated executives of JH for the relevant fiscal year. Each year of the term of this Agreement, the Chief Executive Officer (CEO) of JH shall approve goals, which shall be reduced to writing and presented to the Executive. The targeted annual Bonus shall be 65% percent of the Executive's Annual Base Salary, which target shall not constitute a guarantee.

(e) Gross Amounts. The Annual Base Salary and Annual Bonus set forth in

this Section 3(a) and (d) shall be the gross amounts of such Annual Base Salary and Annual Bonus. The Executive is responsible for paying any and all taxes due on any amounts received

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by him as salary or annual bonus, including, but not limited to, any income tax, social security tax, Medicare tax or capital gains tax.

(f) Car Allowance. JH will either lease an automobile for business and personal use by the Executive, or, in the alternative, the Executive will be entitled to an automobile lease allowance not to exceed USD\$750 per month during the term of the Agreement. JH shall be responsible for all costs relating thereto, including gasoline, repairs, maintenance and insurance. All automobile insurance policies for such automobile shall name JH and the Executive as co-insureds. Personal taxation costs arising from the Executive's personal use of such automobile shall be the Executive's sole responsibility.

(g) Annual Australia Trip and Taxation Advice . JH will provide one (1) annual trip for Executive and his immediate family. Costs to be compensated will be for round trip (Coach) airfare Los Angeles to Sydney. JH will also meet the reasonable costs of personal taxation advice and return preparation (Australia and United States) for the Executive and his wife during the term of this agreement and for the tax year (Australia and United States) following termination or separation.

(i) Stock Incentive Plans. The Executive will participate in any and all stock or option compensation plans in place within the JH group at a level commensurate with the Executive's past participation and then current responsibilities and the decisions and policies of the board of James Hardie Industries NV as made and in place from time to time.

#### 4. TERMINATION

(a) The Agreement and the employment of Executive as provided herein, shall terminate upon the written resignation by Executive upon thirty (30) days written notice to JH and/or may be terminated by JH in its discretion upon thirty (30) days written notice, by the delivery to Executive of a written notice terminating the Agreement effective as of the date specified in such notice; however, Executive and JH specifically agree that Sections 2, 5, 6 and 7 shall survive the termination of this Agreement. Upon the termination of the Agreement as provided above, the obligation of JH to compensate Executive as set forth in Section 3 shall cease, except Executive may be entitled to compensation under any applicable incentive compensation plans described in 3(d) and/or welfare benefit plans described in 3(c) pursuant to the terms of the applicable plan not already paid Executive as of the date specified in the written resignation by Executive, or the written notice issued by JH, and/or as provided by applicable law.

(b) JH expressly reserves the right to provide thirty (30) days' notice as provided above although not to assign any duties to Executive during that thirty (30) day period, provided Executive receives monthly compensation during the notice period.

#### 5. SEVERANCE

(a) Should JH exercise its discretion to terminate Executive's employment pursuant to Section 4, JH will provide one payment of Annual Salary and target Annual Bonus to Executive in the amount set forth in Section 3(a) and 3(d) less applicable deductions together

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with a proportion of the Annual Bonus represented by the months actually served by the Executive in the bonus year, at the target rate, the latter too be paid following the end of the year and finalization of accounts. For the purposes of this Section 5, a reduction by the Company in the Executive's Annual Base Salary to less than (a) \$337,000 or (b) the Executive's Annual Base Salary at the time of such reduction constitutes termination of the Executive's employment unless done so with the written agreement of the Executive.

(b) Payment to Executive pursuant to (a) above constitutes severance pay and shall be payable only upon the return to JH of a General Release and Covenant Not To Sue ("Release") in the form set forth in the Exhibit to the Agreement, executed by Executive in accordance with the provisions of the Release.

(c) Executive agrees that the opportunity and/or the actual receipt of severance pay described in (a) or (b) above in any amount, is sufficient consideration for the provisions set forth in the Agreement as well as the Release.

(d) For the period of twelve (12) months after his last day of employment as set forth in Section 4 subject to (c) above, Executive will be paid the amount charged by JH in accordance with applicable law for continued

coverage under the applicable JH medical welfare benefit plan available to Executive as of his last day of employment within which he was a participant under the same terms, while JH simultaneously complies with Consolidated Omnibus Budget Reconciliation Act, as amended ("COBRA"), thereafter the payment of the entire premium being the sole responsibility of Executive for the remainder of the COBRA period.

(e) Within 7 day's of the Executive's last day of employment as described in Section 4, Executive shall, relinquish and/or surrender possession, custody and control of any automobile or other vehicle or device provided by JH to Executive during the period of his employment pursuant to Section 3(f) or otherwise as a consequence of Executive's employment, which Executive acknowledges is the property of JH.

(f) The rights of Executive in any JH plan that JH has voluntarily designated Executive as a participant concerning stock options shall vest in accordance with the terms of the plan, as amended or modified by JH in its discretion from time to time.

#### 6. CONFIDENTIALITY

Executive and his representatives, if any, agree that they will keep strictly confidential the terms and conditions of the Agreement and the consideration provided hereunder. The sole exceptions of confidentiality are for communications to Executive's personal attorneys (and attorney's employees, personal tax advisor, attorney and/or accountant) or as required by law. Executive further agrees to take all steps necessary to ensure that confidentiality is maintained by all the individuals or entities to whom authorized disclosure is or was made, including but not limited to informing them that the terms and execution of the Agreement are strictly confidential and are not to be disclosed to any person or entity.

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#### 7. MISCELLANEOUS

(a) Other than pursuant to a valid subpoena or order commanding attendance or testimony, Executive will not instigate the commencement of or participate or assist in any judicial or administrative proceeding or matter that may in any way involve the subject matter of the Agreement, his employment and/or former employment, and/or any allegations that Executive could have raised against JH in any forum on behalf of himself or other persons against JH and (b) Executive will not instigate the commencement of, or participate or assist in any judicial or administrative proceeding or matter brought on behalf of any current or former employees and/or current or former supplier or vendor against JH. In the event that Executive is commanded to attend any proceedings or provide testimony within the meaning of this Section, Executive agrees to provide in writing to JH at least ten (10) days prior notice of such attendance or testimony, or the amount of prior notice of such attendance or testimony that he received, whichever is greater.

(b) Executive warrants that he will return to JH as of his last day of employment described in Section 4 all Confidential Information, including but not limited to documents, software, equipment (including, but not limited to, computers and computer related items), and all other property and materials belonging to JH including, but not limited to, computers and computer related items), and all other property and materials belonging to JH including, but not limited to, identification cards, keys, and the like, correspondence, notes and notebooks, drawings, prints, photographs, tape recorders, other written, typed, printed or recorded materials to which Executive had access or which Executive developed during the course of his employment with JH wherever such items may be located, and together with all copies (in whatever form thereof) of all materials relating to Executive's employment or obtained or created in the course of Executive's employment with JH.

(c) Executive represents that other than those materials that he must return to JH pursuant to Section 7(b) above, he has not copied or caused to be copied, printed out or caused to be printed out, any Confidential Information, software or documents other than those documents generally available to the public, or retained any other materials originating or belonging to JH. Executive warrants that he has not and will not retain in his possession any such Confidential Information, software, documents or other materials in machine or human readable form.

(d) If any of the provisions, terms, clauses or waivers, or releases of claims or rights contained in the Agreement are declared illegal, void, invalid, unenforceable, or ineffective in a court of competent jurisdiction, all remaining provisions, terms, clauses or waivers and releases of claims contained in the Agreement shall remain valid and binding upon both Executive and JH, and the provisions declared illegal, invalid, unenforceable or ineffective shall be modified to the extent necessary to allow it to be enforceable against either Executive or JH.

(e) Executive and JH acknowledge that they have retained counsel or have had the opportunity to retain counsel concerning this Agreement, that they have

read and fully understand the terms of the Agreement or have had it analyzed by their counsel, with sufficient

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time that they are fully aware of its contents and of its legal effect. Executive and JH enter the Agreement freely and voluntarily and with a full understanding of its terms.

(f) As part of the consideration for the benefits of the Agreement as well as the acceptance of obligations set forth in the Agreement, Executive expressly guarantees and has represented and does hereby express, warrant and represent to JH that:

(a) he is legally competent and duly authorized to execute this Agreement and it has been read and explained to him in a language and a manner fully understandable to him; and

(b) he has not assigned, pledged, or otherwise in any manner sold, hypothesized, or otherwise transferred or pledged either by instrument in writing or otherwise, any right, title, interest, or claim which he has or may have by reason of any claims, damages or otherwise sustained as of the effective date of the Agreement.

(g) Executive agrees that damages may not be an adequate remedy for the breach of the covenants contained in Sections 2, 5, 6 and 7 above as Executive recognizes that such conduct constitutes irreparable harm to JH, therefore JH shall be entitled to immediate injunctive relief without notice against Executive and to receive from Executive all legal fees and other costs incurred by JH to enforce such covenants, as well as any other remedy as provided by law.

#### 8. ENTIRE AGREEMENT: NO AMENDMENT

Other than confidentiality, IP assignment, non-compete and indemnity agreements, no agreements or representations, oral or otherwise, express or implied, have been made by either party with respect to Executive's employment by JH that are not set forth expressly in the Agreement, and there are no agreements or understandings whether express or implied, written or oral, between Executive and JH (other than as may exist in relation to express indemnities and D & O insurance) except the Agreement. Executive acknowledges that unless a written document is executed by the Chief Executive Officer (CEO) of JH amending the terms of the Agreement, he may not reasonably rely on representations of any officer and/or representative of JH to vary, modify and/or change the terms of the Agreement.

#### 9. GOVERNING LAW

The Agreement is to be construed and implemented under the laws of the State of California, without regard to principles of conflict of law or decisional authority in this regard, of the state or jurisdiction within which the Agreement is being enforced..

#### 10. COUNTERPARTS

The parties agree that this Agreement may be executed in counterparts, each of which shall be deemed to constitute an executed original.

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#### 11. AMBIGUITY

In the event that it shall be determined that there is any ambiguity contained in the Agreement, said ambiguity shall not be construed against either JH or Executive as a result of such party's preparation of the Agreement, which shall be construed in favor of or against either Executive or JH in light of all the facts, circumstances and intentions of the parties at the time this Agreement is effective.

#### 12. ASSIGNMENT

Executive may not assign any right (other than the right to receive income, if any) under the Agreement without the prior written consent of JH. If JH, or any entity resulting from any merger or consolidation with or into JH, is merged with or consolidated into, or with any other entity or entities, or if substantially all the assets of the aforementioned entities are sold or otherwise transferred (including through liquidation) to another entity, then the Agreement may be assigned without the consent of Executive and the provisions of the Agreement shall be binding upon and shall inure to the benefit of, a surviving benefit of, a surviving entity in, or the entity resulting from, such merger or consolidation, or the entity to which such assets are sold or transferred.

#### 13. EFFECTIVE DATE

Executive acknowledges that he has been advised to consult with counsel, and agrees that the Agreement shall only be effective if he voluntarily executes the Agreement and returns it to Peter Macdonald, James Hardie Building Products, Inc., 26300 La Alameda, Suite 100, Mission Viejo, CA 22691 within twenty-one (21) days from the date Executive received the Agreement. Executive acknowledges that if he signs the Agreement, he will have seven (7) days after the executes it voluntarily to revoke it and the Agreement will not become effective until seven (7) days has expired, without Executive's revocation, from the date Executive voluntarily chooses to execute it.

TO WITNESS WHEREOF, Executive and JH have caused the Agreement to be executed this twenty ninth day of July, 2004.

Date: 29 July 04

/s/ Peter Shafron

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Peter Shafron

Date: 29 July 04

/s/ Peter Macdonald

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Peter Macdonald

James Hardie Building Products, Inc.

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

\_\_\_\_\_

Witness



October 21, 2004

Joint Board  
James Hardie Industries N.V.  
4th Floor, Atrium  
Unit 04-07, Strawinskylaan 3077, 1077  
Amsterdam, The Netherlands

The Directors  
James Hardie Building Products Inc  
26300 La Alameda  
Suite 100  
Mission Viejo, CA 92691  
USA

Dear Sirs and Madams:

I hereby provide notice of resignation of my employment by James Hardie Building Products Inc ("JHBPI") and as an officer of James Hardie Industries NV (the "COMPANY") and/or its affiliates, and notice of resignation of my employment under the terms of the executive service agreement entered into on July 29 2004 between myself and JHBPI and its affiliates ("ESA") under the terms and conditions attached to this letter as Attachment A.

In addition, and effective immediately, I hereby give notice of resignation, and do hereby resign, from all other directorships and offices in the Company and its subsidiaries and affiliates, including without limitation all trustee, committee and other positions held with such entities. Please sign below in agreement and acknowledgement of all terms in this letter and Attachment A.

Sincerely,

/s/ Peter Shafron  
-----  
Peter Shafron

ACKNOWLEDGED AND AGREED  
for and on behalf of  
JHBPI and the Company by  
JAMES HARDIE INDUSTRIES NV

By: /s/ Meredith Hellicar  
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Name: Meredith Hellicar

Title: Chairman of the Joint and Supervisory Boards of Directors

Attachment A to Letter of Resignation

Agreed Terms of Resignation

The effective date of resignation shall be October 20, 2004.

James Hardie Industries NV (the "COMPANY") will enter into a consulting agreement with Mr. Shafron effective from the date of the letter of resignation, in or substantially in the terms summarized in Attachment B.

The Company and JHBPI agree to pay to Mr Shafron the cash termination payments called for under Section 6.03 of the executive service agreement ("ESA"), including:

- - Salary: 12 months of Mr Shafron's current base salary of \$337,000;
- - Target Bonus: 12 months of Mr Shafron's annual target (65%), equal to \$219,050;
- - Pro Rata Annual Bonus: The calculation of Mr Shafron's Pro-Rated Annual Bonus shall be undertaken following finalisation of the FY05 YE Accounts and he shall be entitled to be paid that proportion which relates to the economic profit component, pro rated to the date of resignation. Mr Shafron shall not be entitled to receive any discretionary component of this bonus;
- - Bonus Bank: payment of the FY 04 ending bonus bank balance (specific amount to be confirmed).

The Company agrees to make those payments 7 days after Mr Shafron executes and returns a deed of release and covenant not to sue, in the form annexed to his employment agreement.

## OPTION PLANS

Mr Shafron's options and shadow stock options shall be dealt with in accordance with the relevant option plan arrangements. For the purposes of Mr Shafron's shadow stock and option plans, he is to be regarded as having been terminated without cause.

Because option exercises have been suspended pending filing of Form 20-F for the year ended 31 March 2004 with the SEC (inasmuch as the relevant registration statement is not current), all exercises of options must be made after filing of such 20-F. The Company will use all commercially reasonable efforts to make such 20-F filing as soon as practicable.

- - Other entitlements: Mr Shafron's entitlements to be paid out or in respect of other accrued entitlements shall be governed by his ESA.

- - Withholdings: The Company shall make such withholdings as are required under applicable laws. The precise withholdings are to be confirmed prior to payment.

- - Notice to Company: The Company agrees to dispense with any notice period or method of notification, and accepts written notice of resignation on behalf of itself and its affiliates as good, effective and proper.

- - Return of Equipment: The Executive shall return all Company equipment within 14 days of the date of the date of resignation.

## INDEMNITY

Nothing in this resignation letter or the deed of release and covenant not to sue referred to above alters or derogates from Mr Shafron's rights arising under the terms of his existing access and indemnity agreements, articles of association and statutory indemnities, and directors' and officers' insurance arrangements previously executed in his favour.

### Attachment B to Letter of Resignation

#### Terms of Consultancy

JHINV and Mr Shafron agree to enter into a consultancy agreement, to have effect from 21 October 2004, to ensure members of the James Hardie group and their directors and officers from time to time during the period of Mr Shafron's consultancy have access to his knowledge and assistance, during any ASIC investigation or court actions, on or substantially on the following terms:

- - The initial consultancy period will be 2 years, which could be extended by mutual agreement;
- - The remuneration will be US\$168,500 for the consultancy period, payable in monthly instalments over the term (and subject to such withholdings required to be made by law);
- - Mr Shafron shall be entitled to a motor vehicle allowance of US\$750 per month and to reimbursement of business related expenses incurred in performing the consultancy arrangements.
- - Mr Shafron shall be reimbursed for his reasonable expenses of attending conferences during October 2004 arranged while he was an employee of JHBPI.
- - The consultancy may be terminated by JHINV on 30 days' notice (but in such a case, JHINV would pay the unpaid consultancy fees for the remaining term unless the termination arises from a breach by Mr Shafron of the consultancy terms);
- - Mr Shafron shall remain contactable and available on reasonable notice to provide assistance as required to JHINV entities in relation to:
  - any investigation by any regulatory authority into the financial affairs of the company or the transactions undertaken by the company or by JHIL up to the date of his gardening leave (including any ASIC investigation); and
  - any public announcements made by JHINV or JHIL in connection with those transactions;
  - any court actions in relation to such transactions or statements;
  - any questions executives of JHINV may have in relation to the current or former financial statements of any current or former member of the James Hardie group and their preparation or legal work attended to by Mr Shafron while he was general counsel of any

current or former group company; and

- such other assistance as JHINV may reasonably require.
- - The consultancy is in the nature of a part-time consultancy, with work load spread over the term of the consultancy. Any attendance by Mr Shafron in person shall be subject to his other work commitments, provided that he shall use all reasonable endeavours to meet reasonable requests of the Company to attend or provide assistance, and that persistent failure to provide such consultancy services shall comprise grounds for termination;
- - Mr Shafron shall arrange to attend any ASIC investigation or enquiry where required or requested by them to attend in person to give information or documents;
- - the consultancy agreement will be governed by US law; and
- - Mr Shafron shall not, in the course of the consultancy, be required to undertake acts or to forego acts which could prejudice his own legal position.

Mr Shafron and the Company shall use all reasonable endeavours to document and execute such consultancy agreement as soon as practicable.

THIS AGREEMENT is made on 15 November 2004 between

PARTIES

PETER SHAFRON (the "CONSULTANT")

AND

JAMES HARDIE INDUSTRIES NV (the "COMPANY") of Level 4, Atrium, Strawinskyiaan 3077, Amsterdam

In consideration of the mutual covenants set forth in this Agreement, the parties agree as follows:

1. RETENTION AS CONSULTANT

1.1. The Company hereby agrees to retain the Consultant on terms and conditions set forth in this Agreement, and the Consultant agrees to act, as a consultant to the Company.

1.2. During the Term of this Agreement (defined below), the Consultant shall render to the Company such services of an advisory or consultative nature as the management of the Company may reasonably request, so that the Company may continue to have the full benefit of his experience and knowledge regarding the Company's business, including, but not limited to, the following:

- (a) any investigation by any regulatory authority (including any investigation by the Australian Securities & Investments Commission ("ASIC")) into the financial affairs of the Company or the transactions undertaken by the Company or by JHIL;
- (b) any public announcements made by JHINV or JHIL in connection with those transactions;
- (c) any court actions in relation to such transactions or announcements;
- (d) any questions executives or directors of JHINV may have in relation to the current or former financial statements of any current or former member of the James Hardie group and their preparation or legal work attended to by the Consultant while he was general counsel or otherwise an employee of any current or former group company; and
- (e) such other assistance as JHINV may reasonably require.

1.3. The Consultant shall make recommendations and give advice to the Company's board, management, and shall be available to consult with directors, management personnel and employees of the Company, during normal business hours Monday through Friday by telephone, e-mails or (subject to clause 2.2) in person at the Company's office in Mission Viejo, California.

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2. TERM OF CONSULTANCY

2.1. The Term will commence with effect from 21 October 2004 and shall have a duration of 2 years, unless otherwise agreed by the parties.

2.2. The consultancy is in the nature of a part-time consultancy, but the nature of the services is such that the workload will vary over the Term. The Consultant shall use all reasonable endeavours to meet reasonable requests of the Company to attend or provide assistance. The Company recognizes that the Consultant may have other work commitments which could prevent him from providing consultancy services at a particular time; however the Consultant shall use all reasonable endeavours to be available where he is given reasonable notice by the Company of his services being required. Persistent failure to provide such consultancy services shall comprise a material breach of this agreement .

2.3. The Consultant shall not, in the course of the consultancy, be required to undertake acts or to forego acts which could reasonably be expected to prejudice his own legal position but, notwithstanding the foregoing, shall at all times act honestly and ethically in his dealings with the Company.

3. COMPENSATION

3.1. For his services to the Company during the Term of this Agreement the Consultant shall receive from the Company a consulting fee of seven thousand and twenty US dollars (US\$7,020) per month, payable monthly.

- 3.2. The Consultant shall be entitled to a motor vehicle allowance of US\$750 per month during the Term of Consultancy.
- 3.3. Except as set forth in this clause 3, clause 4 below or as separately agreed in writing between the Company and the Consultant, no other compensation or benefits will be given to the Consultant for his services.

#### 4. EXPENSES AND ALLOWANCES

- 4.1. The Company shall reimburse the Consultant for reasonable out-of-pocket expenses incurred by the Consultant in connection with Company's business, provided, with respect to expenses in excess of US\$1,000, that the incurring of any such expenses is approved in advance by Louis Gries, Russell Chenu, Scott Barnett, any permanently appointed chief financial officer or any other executive officer of the Company delegated by a permanently appointed chief financial officer to approve such expenses and the Consultant provides the Company with such substantiating receipts or other documentation as the Company may reasonably require.
- 4.2. The Consultant shall be reimbursed for his reasonable expenses of attending conferences during October 2004 arranged while he was an employee of JHBPI.

#### 5. TERMINATION

- 5.1. Either party may terminate this Agreement prior to its expiration for material breach of this Agreement if the party who has committed the material breach of this Agreement fails to

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cure the breach within fourteen (14) days after receiving written notice specifying the nature of the breach. In the event of a termination by the Company for this reason, no further consulting fees will be payable in respect of that part of the term remaining after the date of termination.

- 5.2. The consultancy may be terminated by JHINV on 30 days' notice (but in such a case, JHINV shall pay within 14 days of the date of termination all accrued and unpaid consultancy fees owing at the date of termination and all future consultancy fees that in the absence of any termination would have fallen due for payment during the balance of the term unless the termination is effected by the Company in accordance with clause 5.1.
- 5.3. The consultancy may be terminated by the Consultant on 30 days' notice in the event of the insolvency of the Company or in the event of the Company taking any steps to place the Company into liquidation, or the Company being the subject of a court order for its liquidation or winding up.
- 5.4. The Agreement, and the Company's obligation to pay consulting fees (other than those fees which had accrued at the date of the Consultant's death), shall automatically terminate upon the Consultant's death.
- 5.5. The termination of this Agreement pursuant to this clause 5 shall not release either party from any accrued obligation to pay any sum to the other party (whether then or thereafter payable) or operate to discharge any liability incurred prior to the termination date. In addition, the Company obligations intended to survive the termination of this Agreement, including its indemnification obligations under clause 6.11, shall survive the termination of this Agreement.

#### 6. MISCELLANEOUS

##### 6.1. GOVERNING LAW AND JURISDICTION

All questions with respect to the construction of this Agreement and the rights and liabilities of the parties shall be governed by the laws of the State of California. Each of the parties submits to the jurisdiction of any state or federal court sitting in Orange County, California, in any action or proceeding arising out of or relating to this Agreement and agrees that all claims in respect of the action or proceeding may be heard and determined in any such court. Each party also agrees not to bring any action or proceeding arising out of or relating to this Agreement in any other court.

##### 6.2. SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and assigns.

##### 6.3. ENTIRE AGREEMENT

This Agreement contains all of the terms and conditions agreed upon by the parties, and supersedes any prior agreements or understandings with

respect to the consulting relationship between the Consultant and the Company to begin on the effective date set forth above. For the avoidance of doubt, this Agreement does not supersede or alter any indemnity agreements

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already in existence between the Consultant and members of the James Hardie group. The indemnification provided for in this Agreement is in addition to, and not in replacement of, the indemnification obligations contained in the Joint and Several Indemnity Agreement.

#### 6.4. AMENDMENT OR MODIFICATION OF AGREEMENT

This Agreement may be modified, altered or amended only by the written agreement of both the parties.

#### 6.5. COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be a valid original agreement.

#### 6.6. SEVERABILITY

If any provision of this Agreement or its application to any person or circumstances is held to be unenforceable or invalid by any court of competent jurisdiction, its other applications and the remaining provisions of this Agreement will be interpreted so as best reasonably to effect the intent of the parties.

#### 6.7. NOTICES

Any notice or other communication to a party pursuant to this Agreement will be deemed to have been duly given if given personally to the party or on the date of delivery in writing, addressed to the party, at the following address:

If to the Company:                   The Company Secretary  
James Hardie Industries NV  
4th Floor, Atrium  
Unit 04-07, Strawinskyiaan 3077, 1077  
Amsterdam, The Netherlands

With a Copy to:                   Senior Vice President Human Resources  
James Hardie, Inc.  
26300 La Alameda, Suite 100  
Mission Viejo, California 92691  
USA

Fax: (949) 348-4534

If to the Consultant:               Peter Shafron

Either party may change its or his address for purposes of this paragraph by giving the other party written notice of the new address in the manner set forth above.

#### 6.8. FURTHER ACTIONS

Each party agrees to execute and deliver any further documents and to do any additional acts reasonably required to carry out the terms of this Agreement.

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#### 6.9. WAIVERS

Any provision of this Agreement may be waived at any time by the party entitled to the benefit thereof by a written instrument executed by the party or by a duly authorized officer of the party. No waiver of any of the provisions of this Agreement will be deemed, or will constitute, a waiver of any other provision, whether or not similar, nor will any waiver constitute a continuing waiver.

#### 6.10. INDEPENDENT CONTRACTOR

(a) The Consultant is retained by the Company only for the purposes and to the extent set forth in this Agreement, and his relationship to the Company shall, during the term of this Agreement, be that of an independent contractor.

(b) The Consultant shall have no authority or right, express or implied, to assume or create any obligation or responsibility on behalf of



Signature

Louis Gries

- -----

Print Name

Interim CEO

- -----

Title

Signature

Print Name



## EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (this "AGREEMENT") is made and entered into as of the 1st day of SEPTEMBER, 2004 (the "EFFECTIVE DATE"), by and between JAMES HARDIE BUILDING PRODUCTS, INC., a California corporation (the "COMPANY") and LOUIS GRIES, a resident of California (the "EXECUTIVE").

## RECITALS

The Company and the Executive desire to enter into this Agreement to establish the terms and conditions of the Executive's employment by the Company during the term hereof.

The Executive will have responsibilities for activities in companies in the James Hardie group in addition to those owed to the Company - these companies together with the Company are referred to in this Agreement as the "Group".

## AGREEMENT

NOW, THEREFORE, in consideration of the covenants contained herein, the above recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and subject to the conditions and covenants contained herein the parties agree as follows:

ARTICLE I  
DUTIES

1.01 Duties. The Company hereby employs the Executive, and the Executive hereby accepts such employment, as the Company's Executive Vice President -- Operations upon the terms and subject to the conditions set forth in this Agreement. The Executive will report directly to the Chief Executive Officer. The Executive shall perform such other or different duties and functions consistent with his role as Executive Vice President -- Operations as may from time to time be assigned to him by the Company's Chief Executive Officer or Board of Directors.

## 1.02 Other Business.

(a) During the term of this Agreement, the Executive agrees that during the course of the Company's business hours, he will devote the whole of his time, attention and efforts to the performance of his duties and obligations hereunder. The Executive shall not, during the term of this Agreement, engage in any activity which materially interferes with his performance of duties assigned the Executive hereunder.

(b) The Executive shall not, during the term of this Agreement, without the written approval of the Chief Executive Officer and obtained in each instance, directly or indirectly (i) accept employment or receive any compensation for the performance of services from any business enterprise other than the Company or the Group, or (ii) enter into or be concerned or interested in any trade or business or public or private work (whether for profit or otherwise and whether as partner, principal shareholder or otherwise), which may, in the absolute discretion of the Chief Executive Officer, hinder or otherwise interfere with the performance by the Executive of his duties and obligations hereunder, except as a holder of not more than five percent (5%) of any class of stock or other securities in any company which is listed and or traded on any securities market. Nothing in this Section 1.02(b) prevents the Executive from carrying out up to 15 hours per week of unpaid employment with religious, not for profit or voluntary organizations.

ARTICLE II  
TERM OF AGREEMENT

The term of this Agreement shall commence on the Effective Date and shall continue in full force and effect until the Executive leaves employment with the Company for any reason, including but not limited to resignation, termination, death or disability. The provisions of Article V of the Agreement will continue in full force and effect after the termination of the Agreement in accordance with the provisions thereof.

ARTICLE III  
COMPENSATION

During the term of this Agreement, the Company shall pay, or cause to be paid to the Executive in cash in accordance with the normal payroll practices of the Company for senior executive officers (including deductions withholdings and collections as required by law), the following:

3.01 Annual Base Salary. An annual base salary ("ANNUAL BASE SALARY") will be paid equal to Four Hundred Sixty One Thousand Dollars (\$461,000) per year. Adjustments in Annual Base Salary, if any, shall be determined by the

Company in its sole and absolute discretion, based upon annual reviews prior to March 31 of each year of the scope of the Executive's duties and Executive's performance of such duties.

3.02 Annual Bonus. A cash bonus (the "ANNUAL BONUS") to be paid each year pursuant to the Company's Economic Profit Bonus Plan, subject to the achievement of goals agreed by the Chief Executive Officer in accordance with this Section 3.02, at the same time bonuses are generally paid to other senior executives of the Company for the relevant fiscal year. Each year of the term of this Agreement the Chief Executive Officer shall approve objective and quantifiable annual goals which shall be reduced to writing and presented to the Executive on or before the sixtieth (60th) day after the Effective Date or the commencement of the Company's fiscal year, as appropriate. The targeted annual bonus shall be ninety percent (90%) of the Executive's Annual Base Salary on March 31, 2005 from April 1, 2004 forward.

3.03 Gross Amounts. The Annual Base Salary and Annual Bonus set forth in this Article III shall be the gross amounts of such Annual Base Salary and Annual Bonus. The Executive is responsible for paying any and all taxes due on any amounts received by him as

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Annual Base Salary or Annual Bonus, including, but not limited to, any income tax, social security tax, Medicare tax or capital gains tax.

#### ARTICLE IV OTHER BENEFITS

4.01 Incentive Savings and Retirement Plans. The Executive shall be entitled to participate, during the term of this Agreement, in all incentive (including the Company's Equity Incentive Plan), savings and retirement plans, practices, policies and programs available to other senior executives of the Company. Any benefits received pursuant to this Section 4.01 shall be the gross amount of such benefits. The Executive is responsible for paying any and all taxes due on any benefits received pursuant to this Section 4.01, including, but not limited to, any income tax, social security tax, Medicare tax or capital gains tax.

4.02 Welfare Benefits. Immediately upon the Effective Date and throughout the term of this Agreement, the Executive and/or the Executive's family, as the case may be, shall be entitled to participate in, and shall receive all benefits under, all welfare benefit plans, practices, policies and programs provided by the Company (including without limitation, medical, prescription, dental, disability, salary continuance, employee life, group life, dependent life, accidental death and travel accident insurance plans and programs) in accordance with the applicable provisions thereof, at a level that is equal to other senior executives of the Company. For the avoidance of doubt, the Executive's Accident, Death and Dismemberment cover will be a minimum three times the Executive's annual base salary, or such higher amount as is agreed by the Company.

4.03 Fringe Benefits. Immediately upon the Effective Date and throughout the term of this Agreement, the Executive shall be entitled to participate in all appropriate fringe benefit programs provided by the Company to its senior executives at comparable levels.

4.04 Expenses. During the term of this Agreement, the Executive shall be entitled to receive prompt reimbursement for all reasonable and necessary travel and other business expenses incurred or paid by the Executive in connection with the performance of his services under this Agreement. The Executive shall be reimbursed upon the Company's receipt of accountings in accordance with practices, policies and procedures applicable to senior executives of the Company.

4.05 Vacation. The Executive shall be entitled to twenty (20) paid vacation days during each twelve (12) month period, beginning the Effective Date, during the term of this Agreement. Such paid vacation days shall accrue without cancellation, expiration or forfeiture.

4.06 Car Allowance. The Company will either lease an automobile for business and personal use by the Executive, or, in the alternative, the Executive will be entitled to an automobile lease allowance not to exceed Seven Hundred Fifty Dollars (\$750) per month during the term of this Agreement. Unused allowance or part thereof will be paid to the Executive. The Company shall be responsible for all costs relating thereto, including gasoline, repairs, maintenance and insurance. All automobile insurance policies for such automobile shall name

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the Company and the Executive as co-insureds. Personal taxation costs arising from the Executive's personal use of such automobile shall be the Executive's sole responsibility.

4.07 Annual Review. The Executive's benefits under this Article IV will

be reviewed annually during the review process provided in Section 3.01 above.

ARTICLE V  
RESTRICTIVE COVENANTS

5.01 Trade Secrets. Confidential and Proprietary Business Information.

(a) The Company has advised the Executive and the Executive has acknowledged that it is the policy of the Company to maintain as secret and confidential all Protected Information (as defined below), and that Protected Information has been and will be developed at substantial cost and effort to the Group. "Protected Information" means trade secrets, confidential and proprietary business information of the Group, any information of the Group other than information which has entered the public domain (unless such information entered the public domain through effects of or on account of the Executive), and all valuable and unique information and techniques acquired, developed or used by the Group relating to its business, operations, employees, customers and suppliers, which give the Group a competitive advantage over those who do not know the information and techniques and which are protected by the Group from unauthorized disclosure, including but not limited to, customer lists (including potential customers), sources of supply, processes, plans, materials, pricing information, internal memoranda, marketing plans, internal policies, and products and services which may be developed from time to time by the Group and any of their agents or employees.

(b) The Executive acknowledges that the Executive will acquire Protected Information with respect to the Group and its successors in interest, which information is a valuable, special and unique asset of the Group's business and operations and that disclosure of such Protected Information would cause irreparable damage to the Group.

(c) Either during or after termination of employment by the Company, the Executive shall not, directly or indirectly, divulge, furnish or make accessible to any person, firm, corporation, association or other entity (otherwise than as may be required in the regular course of the Executive's employment) nor use in any manner, any Protected Information, or cause any such information of the Group to enter the public domain.

5.02 Non-Competition

(a) The Executive agrees that the Executive shall not during the Executive's employment with the Company, and, in accordance with Sections 6.01(b), 6.02(b), and 6.03(c) for a period of at least two (2) years, and up to four (4) years at the Company's discretion (assuming exercise of the Company's rights under 7.01(b)), after the termination of this Agreement, directly or indirectly, in any capacity, engage or participate in, or become employed

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by or render advisory or consulting or other services in connection with any Prohibited Business as defined in Section 5.02(c).

(b) The Executive agrees that the Executive shall not during the Executive's employment with the Company, and, in accordance with Sections 6.01(b), 6.02(b), and 6.03(c) for a period of at least two years, and up to four (4) years at the Company's discretion (assuming exercise of the Company's rights under 7.01(b)), after the termination of this Agreement, make any financial investment, whether in the form of equity or debt, or own any interest, directly or indirectly, in any Prohibited Business. Nothing in this Section 5.02(b) shall, however, restrict the Executive from making any investment in any company whose stock is listed on a national securities exchange; provided that (i) such investment does not give the Executive the right or ability to control or influence the policy decisions of any Prohibited Business, and (ii) such investment does not create a conflict of interest between the Executive's duties hereunder and the Executive's interest in such investment.

(c) For purposes of this Section 5.02, "Prohibited Business" shall be defined as the business of:

- (i) marketing or selling of fiber cement products, where the marketing or selling of such products is a principal activity of the business;
- (ii) manufacturing or processing fiber cement products;
- (iii) building, assembling, operating or maintaining plant and equipment, where that plant and equipment is particular to the manufacturing or processing of fiber cement products;
- (iv) manufacturing or processing raw materials for fiber cement products where that manufacturing or processing is particular to the raw material used in fiber cement

products;

- (v) research or development activities relating to Section 5.02(c) (i)-(iv); and

and any branch, office or operation thereof, which is a competitor of the Company or which has established or seeks to establish contact, in whatever form (including, but not limited to solicitation of sales, or the receipt or submission of bids), with any entity who is at any time a client, customer or supplier of the Company (including but not limited to all subdivisions of the federal government.)

5.03 Non-Solicitation. From the date hereof until at least two (2) years and up to four (4) years at the Company's discretion after the Executive's termination of employment with the Company, the Executive shall not, directly or indirectly (a) encourage any employee or supplier of the Group or any of their successors in interest to leave his or her employment with the Group or any of their successors in interest, (b) employ, hire, solicit or cause to be employed, hired or solicited (other than by the Group or any of their successors in interest), or encourage others to employ or hire any person who within at least two (2) years, and up to four (4) years at the

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Company's discretion, prior thereto was employed by the Group or any of their successors in interest, or (c) establish a business with, or encourage others to establish a business with, any person who within at least two (2) years, and up to four (4) years at the Company's discretion, prior thereto was an employee or supplier of the Group or any of their successors in interest.

5.04 Disclosure of Employee-Created Trade Secrets Confidential and Proprietary Business Information. The Executive agrees to promptly disclose to the Company all Protected Information developed in whole or in part by the Executive during the Executive's employment with the Company and which relates to the Group's business. Such Protected Information is, and shall remain, the exclusive property of the Company. All writings created during the Executive's employment with the Company (excluding writings unrelated to the Company's business) are considered to be "works-for-hire" for the benefit of the Group and the Company shall own all rights in such writings.

#### 5.05 Survival of Undertakings and Injunctive Relief

(a) The provisions of Sections 5.01, 5.02, 5.03 and 5.04 of this Agreement shall survive both the termination of the Executive's employment with the Company and the termination of this Agreement irrespective of the reasons for such termination.

(b) The Executive acknowledges and agrees that the restrictions imposed upon the Executive by Sections 5.01, 5.02, 5.03 and 5.04 of this Agreement and the purpose of such restrictions are reasonable and are designed to protect the Protected Information and the continued success of the Company without unduly restricting the Executive's future employment by others. Furthermore, the Executive acknowledges that, in view of the Protected Information which the Executive has or will acquire or has or will have access to and in view of the necessity of the restrictions contained in Sections 5.01, 5.02, 5.03 and 5.04, any violation of any provision of Sections 5.01, 5.02, 5.03 and 5.04 hereof would cause irreparable injury to the Company and its successors in interest with respect to the resulting disruption in their operations. By reason of the foregoing the Executive consents and agrees that if the Executive violates any of the provisions of Sections 5.01, 5.02, 5.03 or 5.04 of this Agreement, the Company and its successors in interest as the case may be, shall be entitled, in addition to any other remedies that they may have, including money damages, to an injunction to be issued by a court of competent jurisdiction, restraining the Executive from committing or continuing any violation of such Sections of this Agreement.

In the event of any such violation of Sections 5.01, 5.02, 5.03 and 5.04 of this Agreement, the Executive further agrees that the time periods set forth in such Sections shall be extended by the period of such violation.

#### ARTICLE VI TERMINATION

#### 6.01 Termination of Employment by Voluntary Resignation /Death /Disability.

(a) The Executive's employment under this Agreement may be terminated:

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(i) Upon voluntary resignation by the Executive in accordance with the notification requirement provided in Article IX;

(ii) Upon the death of the Executive, this Agreement and the

Executive's employment hereunder shall terminate immediately and without notice by the Company; or

(iii) In the event of the inability of the Executive to perform his duties or responsibilities thereunder, as a result of a Permanent Disability (as defined below) upon written notice by the Company. A "Permanent Disability" occurs when for a period of ninety (90) consecutive calendar days, or an aggregate of one hundred twenty (120) calendar days during any calendar year (whether or not consecutive) the Executive is unable to perform his duties or responsibilities hereunder as a result of a mental or physical ailment or incapacity. Upon the occurrence of a Permanent Disability, the Company will evaluate the Executive's condition and determine whether or not to send written notice of such Executive's termination.

(b) Upon termination pursuant to this Section 6.01(a) (i), the Executive shall not be entitled to payment of any compensation other than salary under this Agreement earned up to the date of such termination, any accrued but unpaid vacation days, and any stock options, warrants or similar rights which have vested at the date of such termination. The Company and the Executive agree that the Company shall continue to pay the Executive his Annual Base Salary, in accordance with the Company's normal practices for other senior executives, for two (2) years after the Executive's voluntary resignation, and the Executive agrees not to violate the provisions of Section 5.02 for an equivalent period.

(c) Upon termination pursuant to this Section 6.01(a) (ii) above, the Company shall pay or grant, to such person as the Executive designates in a notice filed with the Company, or, if no such person shall be designated, to the Executive's estate as a lump sum death benefit, an amount equal to any compensation under this Agreement earned up to the date of such termination, including salary and any accrued but unpaid vacation days. In addition, any stock options or warrants which have vested at the time such termination will be exercisable by the Executive's estate in accordance with the Company's Equity Incentive Plan. The Executive's designated beneficiary or the executor of the Executive's estate, as the case may be, shall accept the payment provided for in this Paragraph 6.01(c) in full discharge and release of the Company of and from any further obligations under this Agreement.

(d) Upon termination pursuant to Section 6.01(a) (iii) above, the Executive shall be entitled to the benefit of disability or other relevant insurance or benefits provided pursuant to Section 4.02 above. The Executive shall not be entitled to payment of any compensation other than salary under this Agreement earned up to the date of such termination, any accrued but unpaid vacation days, and any stock options, warrants or similar rights which have vested at the date of such termination. The Company, in its sole and absolute discretion, may decide to continue to pay the Executive his Annual Base Salary, in accordance with the Company's normal practices for other senior executives, for two (2) years after the Executive's voluntary resignation, in return for the Executive not violating the provisions of Section 5.02 for

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an equivalent period and the Executive's execution, without revocation, of a Company Release of Claims upon the effective date of the termination of the Executive's employment.

6.02 Termination for Cause. (a) The Company may terminate the Executive's employment for Cause by giving the Executive written notice of such termination. For purposes of this Agreement, "Cause" for termination shall mean:

(i) the willful failure or refusal to carry out the reasonable directions of the Chief Executive Officer or Board of Directors, which directions are consistent with the Executive's duties as set forth under this Agreement;

(ii) a willful act by the Executive that constitutes gross negligence in the performance of the Executive's duties under this Agreement and which materially injures the Company. No act, or failure to act, by the Executive shall be considered "willful" unless committed without good faith and without a reasonable belief that the act or omission was in the Company's best interest; or

(iii) a conviction for a violation of a state or federal criminal law involving the commission of a felony or other crime involving moral turpitude.

(b) Upon termination for Cause, the Executive shall not be entitled to payment of any compensation other than salary under this Agreement earned up to the date of such termination, any accrued but unpaid vacation days, and any stock options, warrants or similar rights which have vested at the date of such termination. The Company and the Executive agree that the Company shall continue to pay the Executive his Annual Base Salary, in accordance with the Company's normal practices for other senior executives, for two (2) years after such termination for Cause, and the Executive agrees not to violate the provisions of Section 5.02 for an equivalent period and the Executive's execution, without revocation, of a Company Release of Claims upon the effective

date of the termination of the Executive's employment.

6.03 Termination Without Cause or Termination by Executive for Good Reason. Should the Executive's employment be terminated for a reason other than as specifically set forth in Sections 6.01 or 6.02 above, whether terminated by the Company or terminated by the Executive for Good Reason (as defined below):

(a) the Company shall pay the Executive an amount equal to 1.5 times the Annual Base Salary applying as at the date of termination, paid in accordance with Section 6.03(c) below.

(b) the Company shall pay the Executive an amount equal to 1.5 times the Average Annual Bonus actually paid to the Executive in accordance with Section 6.03(c) below. For purposes of this Section 6.03, Average Annual Bonus shall mean the aggregate Annual Bonus actually paid to the Executive by the Company, including the bonus bank amounts actually paid out to the Executive, over the last three years immediately preceding the year of such termination divided by three.

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(c) the Company shall pay the amounts specified in each of Sections 6.03(a) and (b) above in monthly installments, in accordance with the Company's normal payroll practices for other senior executives, for the period of eighteen months following such termination, in return for the Executive's execution, without revocation, of a Company Release of Claims upon the effective date of the termination of the Executive's employment. In addition, the Company and the Executive agree that the Company shall continue to pay the Executive additional amounts equal to his Annual Base Salary as of the date of termination of employment in accordance with the Company's normal practices for other senior executives, for up to two (2) years following the Executive's termination, and the Executive agrees not to violate the provisions of Section 5.02 above for an equivalent period and the Executive's execution, without revocation, of a Company Release of Claims at that time.

(d) all of the stock options, warrants, retirement benefits and other similar rights, if any, granted by the Company to the Executive which are vested at the date of the termination of the Executive's employment shall remain vested. All stock options that will vest between the date of such termination of employment and the completion of the Consulting Agreement addressed in Article VII of the Agreement (or violation of Section 5.02 above if that occurs), will continue to vest on the vest dates stipulated in the grant document. All stock options unvested as of the completion of the Consulting Agreement addressed in Article VII of the Agreement (or violation of Section 5.02 above if that occurs) will immediately expire. All stock options vested as of the completion of the Consulting Agreement addressed in Article VII of the Agreement (or violation of Section 5.02 above if that occurs) will remain exercisable until the earlier of (i) the date such Stock Options would expire in accordance with their terms, and (ii) 90 days after the date of completion of the Consulting Agreement and/or violation of Section 5.02 above.

(e) all health and medical benefits shall continue for the remainder of the term of this Agreement; and the Company will pay the Executive's premium for continued coverage for medical, dental and vision benefits, if applicable, under the Consolidated Omnibus Budget Reconciliation Act of 1986, as amended ("COBRA") for himself and, if applicable, his covered dependents for up to eighteen months following the date of the termination of Executive's employment, in accordance with the provisions of COBRA, for a period of up to eighteen months following the termination of the Executive's employment.

The term "Good Reason," in connection with the termination by the Executive of his employment with the Company shall mean:

(i) A diminution in the responsibilities, title or office of the Executive such that he does not serve as an executive officer of the Company (which diminution was not for Cause or the result of the Executive's disability); or

(ii) A reduction by the Company in the Executive's Annual Base Salary to less than (a) \$461,000, or (b) the Executive's Annual Base Salary at the time of such reduction.

6.04 No Mitigation. The Executive shall not be required to mitigate the amount of any payment provided for in Section 6.03 above by seeking other employment or otherwise, nor shall

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the amount of any payment provided for in Section 6.03 be reduced by any compensation earned by the Executive as a result of employment by another company, self-employment or otherwise.

- 7.01 In addition to the matters set forth in Article VI above, upon the termination of the Executive's employment, the Company and the Executive agree to:
- (a) Consult to the Company for two years for up to 100 hours/year and agrees not to violate Section 5.02 above, in exchange for the payment of the Executive's annual target bonus amount (paid in monthly installments), in accordance with the terms of the standard James Hardie Consulting Agreement, a copy of which is attached ("Consulting Agreement").
  - (b) Additionally, the Company may elect to extend this Consulting Agreement for an additional two years, and the Executive will agree to such extension, in exchange for the amount equal to the annual base salary and target bonus for each year of extension.

ARTICLE VIII  
RELEASE

8.1 As a material inducement for the Company to provide compensation and certain benefits described in the Agreement, Executive, on his own behalf and on behalf of his spouse, heirs, executors, administrators, successors, and assigns, hereby irrevocably and unconditionally releases, acquits and forever discharges the Group and each of their predecessors, successors, assigns, agents, directors, officers, employees, partners, attorneys, representatives, retirement benefit plans, welfare benefit plans, divisions, subsidiaries, parent companies, affiliates (and agents, directors, officers, employees, partners, attorneys, representatives, retirement benefit plans, and welfare benefit plans of such divisions, subsidiaries, parent companies and affiliates), and all persons acting by, through, under or in concert with any of them (collectively, "Releasees"), or any of them from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts and expenses (including attorneys' fees and costs actually incurred) (collectively, "Claims") of any nature whatsoever known or unknown, suspected or unsuspected, including but not limited to Claims arising under any compensation plan, welfare benefit plan, contract, agreement or understanding, whether express or implied, any tort or other cause of action, including but not limited to those arising under federal, state or local laws prohibiting age, sex, disability or other forms of discrimination, including but not limited to Title VII of the Civil Rights Act of 1964, as amended, the Employee Retirement Income Security Act of 1974, as amended, the Age Discrimination in Employment Act of 1967, as amended, the Americans With Disabilities Act of 1990, the Family and Medical Leave Act of 1993, the Fair Labor Standards Act of 1938, as amended, the Consolidated Omnibus Budget Reconciliation Act of 1986, as amended, the Fair Employment and Housing Act, any regulations thereunder, state or federal common law, or any other duty or obligation of any kind or description whether express or

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implied, which Claims relate to arise out of the Executive's change in role as set out in this Agreement, and which Executive now has, owns or holds or claims to have, own or hold or which Executive at any time heretofore has owned or held or claimed to have, own or hold or claim to have, own or hold against each or any of the Releasees, except claims arising under any applicable bonus plan, pension benefit plan, medical benefit plan, dental benefit plan, or vision benefit plan in which the Executive is participating as of the date of this Agreement. The foregoing provision in this Paragraph 8.1 shall not apply to activities that are permitted under applicable law, except that Executive acknowledges that he has irrevocably waived any right to recovery against the Releasees in connection with such activities, or otherwise. This Release is not intended to restrict either Executive's or the Company's rights and obligations to abide by and/or enforce the terms and conditions of this Agreement. For the avoidance of doubt, the release set out in this Article VIII applies solely to Claims which relate to arise out of the Executive's change in role as set out in this Agreement.

8.2 As a condition of this Release, Executive waives all rights arising under Section 1542 of the Civil Code of the State of California against Releasees. Section 1542 provides as follows:

A General Release does not extend to claims which a creditor does not know or suspect to exist in his favor as of the time of executing the Release which if known by him must have materially affected his settlement with the debtor.

Notwithstanding the provisions of Section 1542 and for the purpose of implementing the full and complete release and discharge of the liability of all Releasees described in Paragraph 8.1 above as of the effective date of the Agreement, Executive expressly acknowledges that the Release is intended to include and does include in its effect without limitation all Claims which Executive does not know or expect to exist in his favor against Releasees as of the time of the effective date of this Release and that this Release expressly contemplates the extinguishment of any such Claims, including attorneys' fees and costs.

8.3 Executive acknowledges that he has been encouraged to consult with an attorney before signing this Agreement, and that he may return the signed Agreement to the Company during the period beginning with his receipt of the Agreement and ending, without Executive's revocation, twenty-one (21) days from the date Executive receives it. If Executive does sign this Agreement, Executive acknowledges that he will have seven (7) days after he executes it to voluntarily decide to revoke it, and it will not become effective until seven (7) days has expired, without Executive's revocation, from the date Executive voluntarily chose to execute it. Executive further acknowledges that he has read this Article VIII carefully and that he knowingly and voluntarily agrees to accept the terms and conditions set forth in the Agreement, as consideration for the Release described herein. Executive further acknowledges that he was provided twenty-one (21) days within which to consider the terms of the Release, including seeking counsel, and that the consideration described within the Agreement is sufficient and adequate consideration for the Release as it reflects compensation and benefits above and beyond those to which Executive is entitled as of the date of this Release.

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ARTICLE IX  
MISCELLANEOUS

9.01 Assignment, Successors. This Agreement, or any right or interest herein, may not be assigned by either party hereto, whether by operation of law or otherwise, without the prior written consent of the other party. This Agreement shall be binding upon and inure to the benefit of the Executive and the Executive's estate and the Company and any assignee of or successor to the Company.

9.02 Severability. If all or any part of this Agreement is declared by any court or governmental authority to be unlawful or invalid, such unlawfulness or invalidity shall not serve to invalidate any portion of this Agreement not declared to be unlawful or invalid. Any paragraph or part of a paragraph so declared to be unlawful or invalid shall, if possible, be construed in a manner which will give effect to the terms of such paragraph or part of a paragraph to the fullest extent possible while remaining lawful and valid.

9.03 Amendment and Waiver. This Agreement shall not be altered, amended or modified except by written instrument executed by the Company and the Executive. A waiver of any term, covenant, agreement or condition contained in this Agreement shall not be deemed a waiver of any other term, covenant, agreement or condition and any waiver of any other term, covenant, agreement or condition, and any waiver of any default in any such term, covenant, agreement or condition shall not be deemed a waiver of any later default thereof or of any other term, covenant, agreement or condition.

9.04 Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given upon personal delivery, facsimile transmission (with confirmation of receipt), delivery by a reputable overnight courier service or five (5) days following deposit in the U.S. mail (if sent by registered or certified mail, return receipt requested, postage prepaid), in each case duly addressed to the party to whom such notice or communication is to be given as follows:

If to the Company:	JAMES HARDIE BUILDING PRODUCTS INC. Attn: CEO 26300 La Alameda, Suite 100 Mission Viejo, California 92691 Fax: (949) 367-1294
With a copy to:	VP HR 26300 La Alameda, Suite 100 Mission Viejo, California 92691 Fax: (949) 367-1294
If to the Executive:	LOUIS GRIES c/o James Hardie Building Products Inc. 26300 La Alameda, Suite 250 Mission Viejo, California 92614 Fax: (949) 367-1294

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Either party may from time to time designate a new address by notice given in accordance with this Section. Notice and communications shall be effective when actually received by the addressee.

9.05 Counterpart Originals. This Agreement may be executed in counterparts, each of which shall be deemed to be an original but all of which together will constitute one and the same instrument.

9.06 Entire Agreement. This Agreement forms the entire agreement between the parties hereto with respect to any severance payment and with respect to the subject matter contained in the Agreement.



9.07 Applicable Law. The provisions of this Agreement shall be interpreted and construed in accordance with the laws of the state of California, without regard to its choice of law principles.

9.08 Effect on Other Agreements. This Agreement shall terminate and supersede all prior agreements, promises and representations regarding the terms and conditions of the Executive's employment by the Company, James Hardie Industries N.V., or any of their subsidiaries or affiliates, and any severance or other payments contingent upon termination of employment, including but not limited to a certain Employment Agreement by and between the Company and the Executive, made and entered into as of the 25th day of February, 2003.

9.09 Extension or Renegotiation. The parties hereto agree that at any time prior to the expiration of this Agreement, they may extend or renegotiate this Agreement upon mutually agreeable terms and conditions.

9.10 Legal Fees; Arbitration. The parties hereto expressly agree that in the event of any dispute, controversy or claim by any party regarding this Agreement, the prevailing party shall be entitled to reimbursement by the other party to the proceeding of reasonable attorney's fees, expenses and costs incurred by the prevailing party. Any controversy, dispute or claim arising out of, in connection with, or in relation to the interpretation, performance or breach of this Agreement or otherwise arising out of the execution hereof, including any claim based on contract, tort or statute, shall be resolved, at the request of any party, by submission to binding arbitration at the Orange County, California offices of Judicial Arbitration & Mediation Services, Inc. ("JAMS"), and any judgment or award rendered by JAMS shall be final, binding and unappealable, and judgment may be entered by any state or federal court having jurisdiction thereof. Any party can initiate arbitration by sending written notice of intention to arbitrate (the "DEMAND") by registered or certified mail to all parties and to JAMS. The Demand shall contain a description of the dispute, the amount involved, and the remedy sought. The arbitrator shall be a retired or former judge agreed to between the parties from the JAMS' panel. If the parties are unable to agree, JAMS shall provide a list of three available judges and each party may strike one. The remaining judge shall serve as the arbitrator. Each party hereto intends that the provisions to arbitrate set forth herein be valid, enforceable and irrevocable. In her award, the

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arbitrator shall allocate, in her discretion, among the parties to the arbitration all costs of the arbitration, including the fees of the arbitrator and reasonable attorneys' fees, costs and expert witness expenses of the parties. The parties hereto agree to comply with any award made in any such arbitration proceedings that has become final and agree to the entry of a judgment in any jurisdiction upon any award rendered in such proceeding becoming final.

IN WITNESS WHEREOF the parties have executed this Employment Agreement on the date first written above.

JAMES HARDIE BUILDING PRODUCTS INC.,  
a California corporation

By: /s/ John Barr

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Name: John Barr

Title: Deputy Chairman of the Board

LOUIS GRIES, an individual

/s/ Louis Gries

-----

Louis Gries

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October 8, 2004

Re: Amended Secondment

Mr. James Chilcoff  
Rosehill, Australia

Dear Jamie:

Congratulations on your promotion to Executive Vice President - International. With this promotion, we offer you an Amended Secondment ("Agreement").

In light of the fact that you are now a member of the Group Management Team ("GMT"), James Hardie would like to amend your Secondment Agreement dated June 2, 2003 ("Secondment"), in consideration of the covenants contained herein, by providing you the terms set forth below.

For the purposes of this Agreement, the word "Company" collectively means James Hardie Building Products, Inc. ("JHBP") and James Hardie Building Products Pty Ltd, known as James Hardie Australia ("JHA"). In other words, JHBP and JHA are collectively referred to herein as "Company".

It is understood by you and the Company that this Agreement shall terminate and supersede all prior employment agreements, service agreements, or other agreements, promises and representations regarding the terms and conditions of your employment between you and the Company or any of its subsidiaries or affiliates, including but not limited to the Secondment, which is no longer of any force or effect.

It is further understood by you and the Company that the terms and conditions of your employment are otherwise governed by the policies and procedures of JHBP applicable to similarly-situated executives of JHBP when you are working in the United States, and by the policies and procedures of JHA applicable to similarly-situated executives of JHA when you are working on assignment for JHA in Australia.

It is a condition of the Agreement that you are granted a work permit for the duration of your work assignment in Australia.

#### WORK FOR JHA IN AUSTRALIA

##### LOCATION OF SERVICE

1.01 The position is presently located at our Rosehill Office. The location of your employment may be changed from time to time in accordance with the Company's business needs. In the event of this occurring any such change and the Company's relocation policy would first be discussed with you.

##### REPORTING RELATIONSHIP

2.01 You will report to Louis Gries, EVP Operations.

##### REMUNERATION

3.01 Your remuneration will be based on an annual salary of US\$250,000.

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3.02 On the basis that you will be living away from your usual place of residence, you will receive an additional taxable expatriate allowance of US\$20,000 per year.

3.03 Your total remuneration will be paid to you through your current USA payroll.

3.04 By remaining on the USA payroll, you will continue to be eligible to participate in the USA 401(k) plan, according to Company and plan policies. The Company currently matches your contribution \$1 for \$1 up to six percent of your salary up to the IRS maximum.

3.05 Salaries are reviewed on the basis of measured performance in July of each year, starting July 2005.

3.06 Your remuneration relies on the fact that you are living away from home and therefore you will be required to sign a declaration to that effect annually (see attached), which the Company will retain with its records.

##### PERFORMANCE BONUS

4.01 Your target bonus for FY 05 will be 45% of your March 31, 2005 base salary

for April 1, 2004 to August 15, 2004 and 55% of your March 31, 2005 base salary starting August 15, 2004. Your actual bonus will be calculated based on JH's EP bonus plan parameters and your achievements against agreed objectives and targets (IP). Your bonus will be split between EP results (80%) and Individual Performance (20%).

- 4.02 The terms and conditions surrounding the plan are subject to alteration at the discretion of the Company and participation is reviewed annually.

#### SHARE PLAN

- 5.01 You will be eligible to participate in the JHI NV Equity Incentive Plan and continue to be treated as a U.S. employee for this consideration. The decision on equity eligibility and amounts is made each year. For purposes of that decision, you will be treated as a US employee.

#### TAXATION ADVICE

- 6.01 The Company will provide a tax adviser through PWC to assist in the processing of tax returns and advice on tax matters associated with your employment in Australia.

#### LEAVE

- 7.01 Annual Leave You will continue to accrue annual leave under the U.S. vacation policy. Based on your tenure, you will accrue 3 weeks (120 hours) per annum. You may continue to accrue up to a maximum of 240 hours based on Company policies.

- 7.02 Home Leave JHBP will pay coach class return airfares to the USA for you and your family, twice per annum. These tickets may be exchanged for travel tickets elsewhere in the world but not for cash. They may also be used to fly family members to Australia to visit.

#### CAR

- 8.01 The Company will provide both you and your spouse with cars; the company will provide a car for your use consistent with the level of your current Company-provided vehicle, and provide a car equivalent to a Honda Accord or similar class car for your spouse's use. Auto insurance,

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routine maintenance and warranties associated with the costs for maintenance of the cars will be paid by the Company. Business gasoline costs will be reimbursed per local policy; expenses for personal mileage will not be reimbursed.

#### POLICIES

- 9.01 Other policies applicable to you during your secondment will be as per the JHA policies.

#### CONDITIONS OF RELOCATION TO AUSTRALIA

#### IMMIGRATION

- 10.01 Your employment in Australia will be dependant on successfully maintaining the immigration status necessary for you to work in Australia.

- 10.02 If, at any stage, you intend to change your residency status from temporary to permanent, you are to advise the Company.

#### PERSONAL ACCIDENT INSURANCE

- 11.01 JHBP provides 24-hour business travel accident insurance for all expatriates, in accordance with the provisions of the applicable JHBP insurance plan or insurance agreement.

#### MEDICAL / HOSPITAL INSURANCE

- 12.01 As an expatriate employee, you have the same Life, Medical, Dental, Vision and Disability benefits as U.S. employees of JHBP. Since the PPO (Preferred Provider) Medical Plan has no specific contracted providers in your region, your medical benefits will be paid at the PPO level of benefits for services rendered outside of the U.S.

#### WHEN APPROPRIATE, REMOVAL AND STORAGE CHARGES

- 13.01 The cost of packing, freight and insurance in transit of your personal effects (excluding items of unique high value (e.g. pianos) or animals) will be met by JHA.

- 13.02 Items of value that are not shipped may be placed in commercial storage at

the employee's home base. A reasonable cost of storage, removal into storage and insurance on storage items will be met by JHA.

#### ACCOMMODATION

##### 14.01 LONG-TERM ACCOMMODATION

To satisfy your long-term accommodation needs, JHA will continue to reimburse you AUD \$3,500 per month to cover the cost of a fully furnished apartment or house, while you are working for JHA in Australia. It is also agreed that JHA will pay this amount regardless of whether less or more than this amount is actually incurred. Where the actual housing cost is less than A\$3,500, the payment will be broken into two components:

- the payment/reimbursement of the actual rent; and
- the balance paid as a taxable cash allowance, in which the company will pay for the taxes.

#### EDUCATION FOR CHILDREN

15.01 JHA will continue to provide the costs associated with reasonable tuition and appropriate fees, which may apply for your school-aged children while you are working for JHA in Australia.

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#### LIABILITY FOR TAX PAYMENTS

16.01 You will continue to be tax equalized to the State of California for the period of your work assignment for JHA in Australia. Tax equalization is intended to equate the tax liability you incur during your overseas assignment with that of a domestic employee under similar economic circumstances. You will be reimbursed for any excess of U.S. or foreign taxes you are required to pay beyond the U.S. and California taxes you would have incurred on your base salary, bonus, if any, and imputed income from group life insurance, if you had not taken the overseas assignment.

16.02 While you are on assignment for JHA in Australia, you will pay a hypothetical tax in lieu of actual tax liabilities. The hypothetical tax is representative of your tax responsibilities while on assignment. We will have PricewaterhouseCoopers calculate the amount to be withheld.

#### GENERAL CONDITIONS

##### PERIOD OF NOTICE

17.01 Either party may terminate this Agreement by giving the other party thirty (30) days notice in writing. The Company may elect to make a payment in lieu of the whole or part of any period of notice given to the Company by you, or by the Company to you. Of course, the Company may terminate this Agreement immediately if it reasonably believes that you have engaged in conduct which violates Company policy, or otherwise constitutes dishonest activity, whether criminal or otherwise, including but not limited to fraud, misrepresentation, theft of Company property, embezzlement, larceny and misappropriation under applicable state and/or federal law.

##### TERMINATION OF JHA WORK ASSIGNMENT

18.01 In the event of termination of the JHA work assignment by JHA or you, JHA will pay reasonable repatriation costs for you, your family and your belongings to California, unless you were in breach of conditions applying to your employment. Repatriation would have to occur within six months of termination for this clause to apply.

18.02 Termination of employment by Redundancy, Resignation or other reason, will mean conclusion of the transfer and you will be assisted with relocation as described above, to California.

18.03 At the end of your JHA work assignment, JHBP will attempt to return you to a position in California in the US business and repatriate you to that location, unless you are released based on the Company's reasonable belief that you engaged in conduct which violates Company policy or otherwise constitutes dishonest activity, whether criminal or otherwise, including but not limited to fraud, misrepresentation, theft of Company property, embezzlement, larceny and misappropriation under applicable state and/or federal law. Refer to Repatriation Conditions section below.

##### CONFLICT OF INTEREST

19.01 You agree to declare any potential conflict of interest, which might affect the decisions of the Company in dealing with any third party, where either you or an associate or family member has an interest in that third party by way of employment or financial interest or any potential personal gain.

## CONFIDENTIALITY

- 20.01 In accepting this appointment, you agree that during or after your employment with the Company you will not disclose to anyone outside the Company, or use in any way other than in the Company's business, any information that may reasonably be said or understood to be confidential in relation to the Company's activities.
- 20.02 Further, you agree that on termination of employment you will give up and not take with you any material containing information, which may reasonably be understood to be confidential in relation to the Company's activities.

## REPATRIATION CONDITIONS

## REPATRIATION TO USA

- 21.01 Upon successful completion of your work assignment for JHA in Australia, JHA will pay reasonable repatriation costs for you and your family to return to California or location of JHBP assignment, including the return coach class airfare. JHA will also pay reasonable costs associated with the shipment of your belongings. In addition, JH will pay reasonable housing costs for a period of up to one (1) month upon return to California or location of JHBP assignment. You will also be provided with tax assistance in relation to your return to the USA.
- 21.02 JH will reimburse the costs associated with purchasing a house in the USA. The details of this will be addressed in a contract that moves you back to the U.S.

## CONDITIONS OF EMPLOYMENT

## POST-TERMINATION CONSULTING PERIOD

- 22.01 Upon the termination of your employment with JHBP, you agree to:
- (a) Consult to JHBP for two years for up to 100 hours/year. You agree to do this, as well as to not violate any of the TRADE SECRET/ RESTRICTIVE COVENANTS set forth in this Agreement or in its policies and procedures, in order to protect our Company's proprietary, confidential business and manufacturing information. In exchange for the payment of an amount equal to your annual base salary at the time of termination (paid in monthly installments), in accordance with the terms of a James Hardie Consulting Agreement, a format of which is attached as a copy, for your general consideration. The exact terms and conditions will be agreed upon when, and if, this Agreement is prepared for execution. The Company will prepare this Consulting Agreement, in final.
  - (b) Additionally, the Company may elect to extend the Consulting Agreement for an additional two years, and you will agree to such extension, in exchange for the amount equal to the annual base salary for each year of extension.

## RESTRICTIVE COVENANTS

- 23.01 Trade Secrets. Confidential and Proprietary Business Information.
- (a) The Company has advised you and you have acknowledged that it is the policy of the Company to maintain as secret and confidential all Protected Information (as defined below), and that Protected Information has been and will be developed at substantial cost and effort to the Company and other companies in the James Hardie group - these companies together with the Company are referred to in this Agreement as the "Group." "Protected Information" means trade secrets, confidential and proprietary

business information of the Group, any information of the Group other than information which has entered the public domain (unless such information entered the public domain through effects of or on account of you), and all valuable and unique information and techniques acquired, developed or used by the Group relating to its business, operations, employees, customers and suppliers, which give the Group a competitive advantage over those who do not know the information and techniques and which are protected by the Group from unauthorized disclosure, including but not limited to, customer lists (including potential customers), sources of supply, processes, plans, materials, pricing information, internal memoranda, marketing

plans, internal policies, and products and services which may be developed from time to time by the Group and any of their agents or employees.

- (b) You acknowledge that you have acquired and will acquire Protected Information with respect to the Group and its successors in interest, which information is a valuable, special and unique asset of the Group's business and operations and that disclosure of such Protected Information would cause irreparable damage to the Group.
- (c) Either during or after termination of employment by the Company, you shall not, directly or indirectly, divulge, furnish or make accessible to any person, firm, corporation, association or other entity (otherwise than as may be required in the regular course of your employment) nor use in any manner, any Protected Information, or cause any such information of the Group to enter the public domain.

#### 23.02 Non-Competition

- (a) You agree that you shall not during your employment with the Company, and, subject for a period of at least two (2) years, and up to four (4) years, at the Company's discretion (assuming it exercises its rights to have you engaged as a Consultant, as set forth above), after the termination of the Agreement, directly or indirectly, in any capacity, engage or participate in, or become employed by or render advisory or consulting or other services in connection with any Prohibited Business as defined in subsection (c).
- (b) You agree that you shall not, during your employment with the Company, and, for a period of at least two (2) years, and up to four (4) years at the Company's discretion (assuming it exercises its rights to have you engaged as a Consultant, as set forth above), after the termination of this Agreement, make any financial investment, whether in the form of equity or debt, or own any interest, directly or indirectly, in any Prohibited Business. Nothing shall, however, restrict you from making any investment in any company whose stock is listed on a national securities exchange; provided that (i) such investment does not give you the right or ability to control or influence the policy decisions of any Prohibited Business, and (ii) such investment does not create a conflict of interest between your duties hereunder and your interest in such investment.
- (c) "Prohibited Business" shall be defined as the business of:
  - (i) marketing or selling of fiber cement products, where the marketing or selling of such products is a principal activity of the business;
  - (ii) manufacturing or processing fiber cement products;
  - (iii) building, assembling, operating or maintaining plant and equipment, where that plant and equipment is particular to the manufacturing or processing of fiber cement products;
  - (iv) manufacturing or processing raw materials for fiber cement products where that manufacturing or processing is particular to the raw material used in fiber cement products;
  - (v) research or development activities relating to subsections (c) (i)-(iv); and

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any branch, office or operation thereof, which is a competitor of the Group or which has established or seeks to establish contact, in whatever form (including, but not limited to solicitation of sales, or the receipt or submission of bids), with any entity who is at any time a client, customer or supplier of the Group (including but not limited to all subdivisions of the federal government).

- #### 23.03 Non-Solicitation.
- From the date hereof until at least two (2) years, and up to four (4) years at the Company's discretion, after your termination of employment with the Company, you shall not, directly or indirectly (a) encourage any employee or supplier of the Group or any of their successors in interest to leave his or her employment with the Group or any of their successors in interest, (b) employ, hire, solicit or cause to be employed, hired or solicited (other than by the Group or any of their successors in interest), or encourage others to employ or hire any person who within at least two (2) years, and up to four (4) years at the Company's discretion, prior thereto was employed by the Group or any of their successors in interest, or (c) establish a business with, or encourage others to

establish a business with, any person who within at least two (2) years, and up to four (4) years at the Company's discretion, prior thereto was an employee or supplier of the Group or any of their successors in interest.

23.04 Disclosure of Employee-Created Trade Secrets Confidential and Proprietary Business Information. You agree to promptly disclose to the Company all Protected Information developed in whole or in part by you during your employment with the Company and which relates to the Group's business. Such Protected Information is, and shall remain, the exclusive property of the Company. All writings created during your employment with the Company (excluding writings unrelated to the Company's business) are considered to be "works-for-hire" for the benefit of the Group and the Company shall own all rights in such writings.

23.05 Survival of Undertakings and Injunctive Relief

- (a) The provisions of these RESTRICTIVE COVENANTS of this Agreement shall survive both the termination of your employment with the Company and the termination of the Agreement, irrespective of the reasons for such termination.
- (b) You acknowledge and agree that these RESTRICTIVE COVENANTS imposed upon you by this Agreement and the purpose of such restrictions are reasonable and are designed to protect the Protected Information and the continued success of the Company without unduly restricting your future employment by others. Furthermore, you acknowledge that, in view of the Protected Information which you have or will acquire or have or will have access to and in view of the necessity of these restrictions, any violation of them would cause irreparable injury to the Company and its successors in interest, with respect to the resulting disruption in their operations. By reason of the foregoing you consent and agree that if you violate any of these restrictions, or RESTRICTIVE COVENANTS, the Company and its successors in interest as the case may be, shall be entitled, in addition to any other remedies that they may have, including money damages, to an injunction to be issued by a court of competent jurisdiction, restraining you from committing or continuing any violation of such Sections of this Amendment.

In the event of any such violations of these RESTRICTIVE COVENANTS, you further agree that the time periods set forth in such Sections shall be extended by the period

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of such violation, and you consent to the jurisdiction of the Superior Court for the County of Orange, State of California, as the competent court to hear and to determine any action in equity or law filed by the Company against you with respect to its necessity to protect itself under these RESTRICTIVE COVENANTS.

#### TERMINATION

24.01 Termination of Employment by Voluntary Resignation /Death /Disability.

- (a) Your employment under the Agreement may be terminated:
  - (i) Upon your voluntary resignation in accordance with the notification requirement provided in the Agreement;
  - (ii) Upon your death, the Agreement, and your employment hereunder shall terminate immediately and without notice by the Company; or
  - (iii) In the event of your inability to perform your duties or responsibilities thereunder, as a result of a Permanent Disability (as defined below) upon written notice by the Company. A "Permanent Disability" occurs when for a period of ninety (90) consecutive calendar days, or an aggregate of one hundred twenty (120) calendar days during any calendar year (whether or not consecutive) you are unable to perform your duties or responsibilities hereunder as a result of a mental or physical ailment or incapacity. Upon the occurrence of a Permanent Disability, the Company will evaluate your condition and determine whether or not to send written notice of your termination.
- (b) Upon a voluntary resignation, you shall not be entitled to payment of any compensation other than salary under the Agreement, as amended, earned up to the date of such resignation, any accrued but unpaid vacation days, and any stock options, warrants or similar rights which have vested at the date of such resignation. The Company, in its sole and absolute discretion, may decide to continue to pay you your Annual Base Salary, for up to two (2) years after

your voluntary resignation, in return for you not violating the RESTRICTIVE COVENANTS and/or provisions therein, for an equivalent period.

- (c) Upon your death, the Company shall pay or grant, to such person as you designate in a notice filed with the Company, or, if no such person shall be designated, to your estate as a lump sum death benefit, an amount equal to any compensation under the Agreement, as amended, earned up to the date of your death, including salary and any accrued but unpaid vacation days. In addition, any stock options or warrants which have vested at the time of your death will be exercisable by your estate in accordance with the Company's Equity Incentive Plan. Your designated beneficiary or the executor of your estate, as the case may be, shall accept the payment provided for in this section, in full discharge and release of the Company of and from any further obligations under the Agreement, as amended.
- (d) Upon your permanent disability, you shall be entitled to the benefit of disability or other relevant insurance or benefits provided. You shall not be entitled to payment of any compensation other than salary under the Agreement, as amended, earned up to the date of such permanent disability, any accrued but unpaid vacation days, and any stock options, warrants or similar rights which have vested at the date of such termination. The Company, in its sole and absolute discretion, may decide to continue to pay you your Annual Base Salary, for up to two (2) years after your voluntary resignation, in return for you not violating the RESTRICTIVE COVENANTS

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for an equivalent period and your execution, without revocation, of a Company Release of Claims upon the effective date of the termination of your employment.

#### 24.02 Termination for Cause.

- (a) The Company may terminate your employment for Cause by giving you written notice of such termination. For purposes of the Agreement, as amended, "Cause" for termination shall mean:
  - (i) the willful failure or refusal to carry out the reasonable directions of the Chief Executive Officer or Board of Directors, which directions are consistent with your duties as set forth under the Agreement;
  - (ii) a willful act by you that constitutes gross negligence in the performance of your duties under the Agreement, as amended, and which materially injures the Company. No act, or failure to act, by you shall be considered "willful" unless committed without good faith and without a reasonable belief that the act or omission was in the Company's best interest; or
  - (iii) a conviction for a violation of a state or federal criminal law involving the commission of a felony or other crime involving moral turpitude.
- (b) Upon termination for Cause, you shall not be entitled to payment of any compensation other than salary under the Agreement earned up to the date of such termination, any accrued but unpaid vacation days, and any stock options, warrants or similar rights which have vested at the date of such termination. The Company, in its sole and absolute discretion, may decide to continue to pay you your Annual Base Salary, for up to two (2) years after such termination for Cause, in return for you not violating the RESTRICTIVE COVENANTS for an equivalent period and your execution, without revocation, of a Company Release of Claims upon the effective date of the termination of your employment.

#### 24.03 Termination Without Cause. Should your employment be terminated for a reason other than as specifically set forth above:

- (a) You shall be paid the salary earned up to the date of such termination under the Agreement any accrued but unpaid vacation days, and any stock options, warrants or similar rights which have vested at the date of such termination.
- (b) In addition, the Company, in its sole and absolute discretion, may decide to continue to pay you additional amounts (in monthly installments) equal to your Annual Base Salary as of the date of termination of employment in accordance with the Company's normal practices for other senior executives, for up to two (2) years following your termination, in return for you not violating the provisions of the RESTRICTIVE COVENANTS above, for an equivalent period and your execution, without revocation, of a Company Release



of Claims at that time.

- (c) All of the stock options, warrants, retirement benefits and other similar rights, if any, granted by the Company to you that are vested at the date of the termination of your employment, shall remain vested. All stock options that will vest between the date of such termination of employment and the completion of the Consulting Agreement will continue to vest on the vest dates stipulated in the grant document(s). All stock options unvested as of the completion of the Consulting Agreement will immediately expire. All stock options vested as of the completion of the Consulting Agreement will remain exercisable until the earlier of (i) the date such Stock Options would expire in accordance with their terms, and (ii) 90 days after the date of completion of the

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Consulting Agreement, unless terminated earlier per the terms of the Consulting Agreement.

24.04 No Mitigation. You shall not be required to mitigate the amount of any payment provided for in the Termination without Cause Section, above, by seeking other employment or otherwise, nor shall the amount of any payment provided for under this section be reduced by any compensation earned by you, as a result of employment by another company, self-employment or otherwise.

In acknowledgment of your agreement to the terms and conditions of this Agreement, please sign and return to Cathy McCutcheon, in Mission Viejo HR, the duplicate copy of this letter.

JAMES HARDIE BUILDING PRODUCTS, INC.,  
A California corporation

By: /s/ Louis Gries	Oct 13, 2004
- -----	-----
Louis Gries	date
Executive VP Operations	

James Chilcoff, an individual

/s/ James Chilcoff	Oct 19, 2004
- -----	-----
James Chilcoff	date

## EMPLOYMENT AGREEMENT TREASURY MANAGER

## THE UNDERSIGNED:

1. RCI NETHERLANDS INVESTMENTS B.V. TO BE RENAMED JAMES HARDIE INTERNATIONAL FINANCE BV, a company with limited liability, incorporated under the laws of The Netherlands, with its registered office at World Trade Center, Strawinskylaan 1725, 1077 XX Amsterdam, The Netherlands, hereinafter referred to as the "Company";

and

- 2 Folkert H Zwinkels, living at \_\_\_\_\_  
The Netherlands, hereinafter referred to as the "Employee".

## HAVE AGREED AS FOLLOWS:

## ARTICLE 1 - COMMENCEMENT AND DURATION

- 1.1 The Employee shall be employed by the Company as of 1 October 2001.
- 1.2 This employment agreement, hereinafter referred to as the "Employment Agreement", is entered into for an indefinite period of time.
- 1.3 The first two months as of 1 October 2001 form a probationary period in which either party may terminate the Employment Agreement automatically without giving prior notice.
- 1.4 1.4 The Company may terminate the Employment Agreement by giving 4 months notice and the Employee may terminate the Employment Agreement by giving 2 months notice, such term of notice to expire on the last day of any calendar month. Notice as aforesaid must be given in writing.
- 1.5 The Employment Agreement shall at any time terminate by operation of law, without any notice being required, on the last day of the calendar month in which the Employee reaches the pensionable age.

## ARTICLE 2 - FUNCTION

- 2.1 The Employee shall be employed in the position of Treasury Manager. The Employee shall perform to the best of his abilities all tasks and duties in accordance with the instructions of the Company and as laid down in the position description, which has been attached to the Employment Agreement as ANNEX 1. The Company reserves the right to give further instructions as regards the Employee's tasks and duties with the Company from time to time.
- 2.2 The Employee shall perform his activities in the office of the Company in Amsterdam. The Employee is expected to serve the Company or any affiliated company if deemed necessary.
- 2.3 The usual number of working hours shall be 40 per week. The Employee is expected to work reasonable overtime if and to the extent that the smooth conduct of business would require so. No compensation for work in overtime is provided, as it is deemed to be included in the salary and fringe benefits as determined in the Employment Agreement.

## ARTICLE 3 - SALARY AND HOLIDAY ALLOWANCE

- 3.1 The Employee's gross base annual salary shall amount to NLG 150.000,-- ("Gross Salary"). The Gross Salary shall be paid monthly in twelve equal instalments of NLG 12.500,-- gross.
- 3.2 The Employee shall be entitled to a holiday allowance, payable in the month of May, equal to 8% of the Gross Salary, earned over the preceding period June through May. In the event the employee has not been employed for twelve months in time of payment, the Employee shall receive a pro rata amount.

## ARTICLE 4 - HOLIDAYS

- 4.1. The Employee shall be entitled to 24 working days paid holiday per 12 months of service to be taken by the Employee in consultation with and after approval of the Company.

## ARTICLE 5 - EXPENSES

- 5.1. Approved business travel expenses and other expenses incurred in the interest of the Company shall be reimbursed against presentation of

receipts or other appropriate proof of such expenses.

#### ARTICLE 6 - VARIABLE REMUNERATION

##### Bonus

- 6.1 The Employee shall be entitled to participate in the James Hardie Economic Profit Bonus Plan with a annual target bonus of 15% of Gross Salary.
- 6.2 If a bonus is awarded in any year it will be paid in the month June.

#### ARTICLE 7 - COMPANY CAR

- 7.1 The Company shall make available to the Employee a company car of appropriate status and befitting his position, with a Dutch list price of approximately NLG 50.000,--. The Company and the Employee shall mutually agree upon the type and the list price of the company car. All reasonable expenses incidental to the professional use of the car shall be borne by the Company except of any personal tax and social security consequences (if any). The Employee shall be entitled to reasonable private use the company car.
- 7.2 The Company shall bear all reasonable costs of the company car to the extent these costs, at the sole discretion of the Company, are considered to be reasonable, except for any personal income tax to be paid for the private use of the car.

#### ARTICLE 8 - ILLNESS

- 8.1 In the event of illness, injury or any other incapacity of the Employee, the Company shall pay to the Employee 100% of the last gross monthly salary, during a maximum period of 12 months.
- 8.2 If the Employee is prevented from performing duties over 2 or more consecutive periods which succeed each other within 4 weeks, these periods shall be deemed to be one uninterrupted period.

#### ARTICLE 9 - PENSION

- 9.1 The Company shall introduce a pension arrangement for the benefit of the employees of the Company. The Employee shall be admitted to this pension arrangement, if all applicable conditions are met. The Company shall pay 100% of the premiums of such pension arrangement, such premiums to based on 12% of the Employee's gross annual salary

#### ARTICLE 10 - HEALTH CARE INSURANCE

- 10.1 The Company shall pay 50% of the premiums of the health care insurance of the Employee and his family . The Company and the Employee shall mutually agree upon which health care insurance shall be reasonable.
- 10.2 Dutch personal tax and social security consequences (if any), following Article 10.1 shall be for the account of the Employee.

#### ARTICLE 11 - SECRECY

- 11.1 The Employee shall not, during the term of the Employment Agreement and thereafter, disclose to any third party or use for his own benefit any information concerning the business of the Company, or any of its subsidiaries or affiliated companies which have become known to the Employee. "Information concerning the business" includes, without limitation, all business, organisational and technical knowledge, know-how, proprietary or confidential information, names or addresses of customers of the Company or any of its subsidiaries or affiliated companies and any other information which is known only to a limited number of persons and which is not intended to become known outside of the Company, or any of its subsidiaries or affiliated companies.
- 11.2 All written and other records and all tangibles concerning the Company, or any of its subsidiaries or affiliated companies and their businesses which are in the possession of the Employee shall be carefully kept and shall be immediately returned to the Company, or any of its subsidiaries or affiliated companies upon their request, and in any case upon the termination of the Employment Agreement. The Employee hereby waives any right of retention in respect of records such or tangibles mentioned herein.

#### ARTICLE 12 - PERSONAL GAIN

- 12.1 The Employee shall not, except with prior written approval of the Company, during the term of the Employment Agreement, accept or solicit any commission, allowance, gift or consideration whatsoever from (potential) customers, suppliers or competitors of the Company. Any unsolicited

consideration received by the Employee shall be returned immediately and the Employee shall forthwith inform the Company. Usual promotional gifts with

limited or no commercial value shall not be regarded as consideration of the purpose of this article. In case of doubt, the Employee shall always consult with the Company.

#### ARTICLE 13 - CONFLICT OF INTEREST

13.1 The Employee shall declare to the Company any potential conflict of interest which might affect the decisions of the Company in dealing with any third party, where either the Employee or an associate or a family member has an interest in that third party by way of employment or financial interest or any potential personal gain.

#### ARTICLE 14 - PENALTY

14.1 In the event of a breach of any of the provisions with respect to secrecy, personal gain, and/or conflict of interest, the Employee shall forfeit to the benefit of the Company, without any prior notice or judicial intervention being required, an immediately payable penalty of NLG 50.000,-- for any such breach and a penalty of NLG 1.000,-for each day or part of a day that any such breach shall continue, without the Company being required to prove any damage or loss and without prejudice to the right of the Company and of its subsidiaries or affiliated companies to demand damages instead.

#### ARTICLE 15 - WAIVER

15.1 The failure by either the Employee or the Company to require performance by the other with respect to any provision thereof shall not affect the right of such party to enforce such a provision or provisions, nor shall the waiver by the Employee or the Company in any breach hereunder be deemed a waiver of any succeeding breach of a modification of any of the terms thereof.

#### ARTICLE 16 - CANDIDATE FOR POSITION OF TREASURER

16.1 It is acknowledged that the Employee will be considered, after not less than 15 months of satisfactory performance (in the sole opinion of the Company), as a candidate for the position of Treasurer of the Company, based in The Netherlands (or such other location as the Company may determine), when that position is vacated by D E Cameron, the present incumbent.

#### ARTICLE 17 - GENERAL

17.1 Any amendments or additions to the Employment Agreement shall be agreed by the Employee and the Company in writing.

17.2 Should any provision of the Employment Agreement be or become invalid, the validity of the other provision(s) shall not be affected thereby.

17.3 The Employee shall advise the Company immediately of any change of address.

17.4 The Employment Agreement is governed by the laws of The Netherlands.

The Employment Agreement has been signed in duplicate.

/s/ DE Cameron

/s/ Folkert H Zwinkels

-----  
RCI Netherlands Investments B.V.

-----  
Folkert H Zwinkels

to be renamed

James Hardie International Finance B.V.

By: DE. Cameron

Title: Managing Director

Date: 25 July 2001

Date: 31 July 2001

ANNEX 1

JAMES HARDIE INTERNATIONAL FINANCE BV

POSITION DESCRIPTION

Date: 1 June 2001

Position: Treasury Manager

Reports to: Treasurer

## PRINCIPAL OBJECTIVES

### 1. Treasury Operations Management

To ensure that the day to day treasury operations of James Hardie are carried out in accordance with the policies and procedures defined in the Treasury Handbook.

### 2. Funding

To assist the Treasurer in the development, implementation and monitoring of systems, borrowing facilities, and strategies which allow James Hardie to raise and utilise funds under optimal terms and conditions.

### 3. Banking Relationships

To liaise with the banks on the operational aspects of the facilities used by James Hardie to ensure their smooth operation, at the same time representing James Hardie in a manner which positively promotes its image.

### 4. Internal Relationships

To assist and liaise with James Hardie's operating companies to optimise their day to day cash management and transactional banking requirements.

## RESPONSIBILITIES

The Treasury Manager is responsible for:

1. Running the day to day treasury operations and treasury administrative functions of James Hardie in an efficient and timely manner and in accordance with the Treasury Handbook and having regard to separation of duties issues.
2. Acting as the dealer for foreign exchange and interest rate transactions, for borrowing and investing to meet short term cash requirements and for operating company major foreign exchange transactions where necessary.
3. Ensuring that no speculative positions are taken in currency or futures markets.
4. Monitoring the daily cash position of the operating companies and, as necessary, investing short term surplus funds to optimise James Hardie's interest position.
5. Ensuring the timely payment of all interest, commitment and transaction fees and the provision of compliance certificates and other formal notifications under James Hardie's various borrowing facilities.
6. Maintaining effective and efficient treasury files, recording and reporting functions.
7. Providing monthly, quarterly and annual interest and exchange rate reports and forecasts as necessary to meet James Hardie's internal accounting and planning requirements.

F.H.Zwinkels

JAMES HARDIE INDUSTRIES N.V.

Unit 04-07, Atrium Building  
Strawinskylaan 3077  
1077 ZX Amsterdam  
The Netherlands

Telephone +31 20 3012988  
Fax +31 20 4042544

Chamber of Commerce 34106455

Amsterdam, May 18,2003

Attachment to the assignment letter of F.H. Zwinkels:

Relative to any termination of the employment agreement F.H. Zwinkels declares that (i) as per the date that he has given written notice to terminate the employment agreement between him and James Hardie International Finance B.V. dated October 1st, 2001 or the Supervisory Board of James Hardie Industries N.V. gives written notice to terminate his duties as managing director and/or in his capacity as treasurer of James Hardie International Finance B.V. he shall refrain from the performance of any duties regarding his capacity as managing director and/or treasurer of James Hardie International Finance N.V, and (ii) that as per the date that he has given written notice to terminate the employment agreement between him and James Hardie International Finance B.V. or the Supervisory Board of James Hardie Industries N.V. gives written notice that it no longer wishes him to serve in his capacity as member of the Board, he resigns as member of the Managing Board of James Hardie Industries N.V. and he resigns as member of the (Managing) Board of any subsidiary.

Thus agreed and signed May 18, 2003

On behalf of James Hardie Industries N.V.,

/s/ Folkert H. Zwinkels  
-----  
Folkert H. Zwinkels

/s/ Peter Macdonald  
-----  
Peter Macdonald

Ref: Addendum employment contract F. Zwinkels

Considering Folkert Zwinkels is currently employed as Treasurer with James Hardie International Finance B.V. and additionally has been appointed to the Managing Board of James Hardie Industries N.V. as from August 2003.

James Hardie Industries NV, legally represented by her CEO Peter Macdonald, intends to add the following articles to the current employment contract between James Hardie International Finance B.V. and Folkert Zwinkels;

Severance fee

1. If James Hardie International Finance B.V. gives notice of the termination or applies for the dissolution of the employment contract with Zwinkels, it will be required to pay Zwinkels a severance fee equivalent to 12 months' pre-tax salary. This fee will not be payable if the termination can be attributed exclusively to an act or omission or a series of acts or omissions or other performance related issues committed by Zwinkels in his position of Treasury Manager, or if the termination is based on urgent grounds as described in section 7:678 or section 7:685 of the Netherlands Civil Code.
2. Zwinkels will not be entitled to any other compensation for the termination of the employment contract aside from the fee referred to in the preceding paragraph. If any court awards a higher fee or compensation, Zwinkels hereby waives his entitlement to any sum in excess of 12 months' pre-tax salary.

Date: 6 August 2004

Duly signed and authorised by

For approval:

/s/ P. Macdonald  
-----  
P. Macdonald

/s/ F. Zwinkels  
-----  
F. Zwinkels

15 June, 2004

James Hardie Industries N.V.

Unit 04-07, Atrium Building  
Strawinskyiaan 3077  
1077 ZX Amsterdam  
The Netherlands

Telephone +31 20 3012988  
Fax +31 20 4042544

Chamber of Commerce 34106455

Dear Pim,

As discussed yesterday between you and Peter Shafron I herewith confirm in writing your contract of employment ending June 30th 2004 will be followed by a 6 months contract.

It will end automatically without notice 30-12-2004.

All other terms and conditions remain unchanged; in the month of November 2004 we aim to decide whether or not to transition into an indefinite contract.

It is our belief you will succeed in achieving the goals set out to you and we both would like to emphasise that you can count on our support.

Kind regards,

/s/ E. W. Bot  
-----  
E.W. Bot

HR Manager  
JH Industries NV

CONTRACT OF EMPLOYMENT

Between James Hardie Industries NV, 4th floor, Atrium Unit 04-07 Strawinskyiaan 30771077 ZX Amsterdam NETHERLANDS ("the Company") and Willem (Pim) Vlot ("the Employee")

1.0 Date of Employment: No later than January 1st,2004. No employment prior to this date shall be taken into account in calculating the period of your continuous employment.

2.0 Position and Function: The Employee is hereby appointed as Legal Counsel Europe, reporting to Norm Gritsch, Associate General Counsel

The Employee shall perform to the best of his abilities all tasks and duties in accordance with the instructions of the Company, including responsibility for European legal matters, company secretarial, global intellectual property management and potentially serving as a member of the managing board.

The Company reserves the right to give further instructions as regards the Employee's tasks and duties with the Company from time to time or to assign the Employee to another activity in accordance with the Employee's abilities and knowledge.

3.0 Probation, Term, Termination: The Contract of Employment is entered into for a fixed period of time of six (6) months from the date of employment.

The first (1) month of employment will constitute a probationary period in which either party may terminate the Contract of Employment automatically without giving prior notice.

The Company and the Employee may terminate the Contract of Employment by giving written notice in accordance with Article 7: 672 of the Dutch Civil Code, the term of such notice to expire on the last day of any calendar month.

The employment will end without notice on 30-06-2004



4.0 Salary: The Employee's basic gross monthly salary shall amount to (EURO) 7.083,33 payable twelve (12) times each year. It will be subject to such taxes and deductions as may be required by the law. The Company may review this salary on an annual basis but such review does not imply an increase.

In addition to the basic salary, the Employee will be eligible for participation in the Company incentive program based on the terms and conditions of the plan. The target bonus for this position will be 15% of the Employee's annual base salary, prorated from date of assignment. The actual bonus FY05 (fiscal year ending March 31, 2005) will be calculated based on the Company's bonus plan parameters and the Employee's achievement against agreed objectives and targets. The bonus will be fully based on Individual Performance.

The Employee shall be entitled to a holiday allowance, payable in the month of May, equal to 8% of the gross salary, earned over the preceding period June through May. If the Contract of Employment of the Employee starts and/or terminates during the year or the working hours change, the holiday allowance will be paid out pro rata.

The Company will at any time be entitled to recover any overpayment of salary (or any other sums) paid to the Employee by way of deduction from any salary or other payment due to him.

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5.0 Vehicle Allowance: The Employee shall use their personal vehicle during the course of business. The use of the Employee's personal car for business purposes, not including home-to-work travel, shall be reimbursed in accordance with the non taxable per kilometer allowance permitted by the Tax Authorities from time to time.

6.0 Hours of Work: The Employee's normal working hours will be forty (40) hours per workweek. The Employee is also required to work such additional hours as may be necessary for the proper performance of the duties. Remuneration for the time worked outside those normal working hours is included in the Employee's gross salary.

7.0 Place of Work/Travel: The main place of work for the Employee is located at Amsterdam. Given the nature of work, the Employee may be asked to perform his duties throughout the world.

Both parties agree that the place of work may change, at any moment, in accordance with the needs induced by the Company, or with career opportunities, without implying a modification of the present contract.

The Employee is required by the Company to travel in the normal performance of his duties throughout Europe and abroad. The Company shall reimburse the Employee, after receiving proof of expenses, for all reasonable subsistence and travelling expenses properly and necessarily incurred by the Employee in connection with the services rendered under this Contract of Employment.

8.0 Benefits: The Company may institute a benefit program, which the Employee will be eligible to participate in these plans based on the terms and conditions of the plans.

The Company shall provide a pension arrangement (pensioentoezegging) for the benefit of the employees of the Company. The pension arrangement may consist of a specific Company pension plan or, at its sole discretion, the Company may agree to pay the relevant premiums to an approved external pension fund or life insurance provider nominated by the Employee. The Employee shall be admitted to this pension arrangement, if all applicable conditions are met. The Company shall pay up to 6% of the Gross Salary actually paid to the Employee in any given year as its contribution to the premiums of such pension arrangement for the Employee provided the Employee

makes a personal contribution of the same amount.

The Company shall pay 50 % of the premiums of the health care insurance of the Employee. The Company and the Employee shall mutually agree upon which health care insurance shall be reasonable. The Employee must provide the Company with a copy of the Employee's health care insurance arrangement, prior to the Company making any payment. Dutch personal tax and social security consequences (if any), shall be for the account of the Employee.

9.0 Annual Holiday Entitlement:

The Employee will receive vacation benefits in the amount of twenty-four (24) days per twelve (12) months of service, (not including Saturdays, Sundays, or public holidays).

The Employee shall go on vacation only after due consideration of the business requirements of the Company and after consultation with his immediate Manager.

Vacation for the first and last calendar year in which the Employee is employed will be 2.0 days per complete month work.

On termination of employment the Employee will be entitled to payment for vacation accrued but not taken in accordance with statutory requirements. The company reserves the right to deduct from salary or any other payment due to the Employee, a sum equating to vacation taken but not accrued as of the date of termination. For these purposes a day's holiday pay is calculated as 1/365 of the Employee's annual salary at the time of termination.

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10.0 Sickness/- Disability:

The Employee shall observe the Company's policy pertaining to sickness, as determined by the Company.

The Employee must notify his immediate Manager within within one (1) hour of scheduled start time, on each morning of any day on which he is absent from work due to sickness or injury.

In the event of sickness injury, or any incapacity of the Employee, the Company shall pay to the Employee 100% of last Gross Salary as defined in article 4.0 up to a maximum of twelve (12) months as from the first day of sickness. The above applies, however; only if and to the extent that pursuant to the requirements of article 7:629 sub 3 through 7 and 9 of the Civil Code, the Company is under the obligation to pay salary in accordance with article 7:629, sub 1 of the Civil Code.

If the Employee is prevented from performing duties over 2 or more consecutive periods, which succeed each other within 4 weeks, these periods shall be deemed to be one uninterrupted period.

The Employee shall not be entitled to the salary payment referred to in paragraph 3 of this article if, and to the extent that, in connection with his sickness, he can validly claim damages from a third party as a result of loss of salary and if and to the extent that the payments by the Company set forth in paragraph 3 of this article exceed the minimum obligation referred to in article 7:629 sub 1 of the Civil Code. In this event, the Company shall satisfy payment solely by means of advanced payments on the compensation to be received from the third party and upon assignment by the Employee of his rights to damages vis-a-vis the third party concerned up to the total amount of advanced payments made. The advanced payments shall be set-off by the Company if the compensation is paid or, as the case may be, in proportion thereto.

11.0 Confidentiality:

The Employee will execute the Company Employee Confidentiality Agreement and abide by its terms and conditions.

The Employee shall not, during the term of the

Contract of Employment and thereafter, disclose to any third party or use for their own benefit any information concerning the business of the Company, or any of its subsidiaries or affiliated companies which have become known to the Employee. "Information concerning the business" includes, without limitation, all business, organizational and technical knowledge, know-how, proprietary or confidential information, names or addresses of customers of the Company or any of its subsidiaries or affiliated companies and any other information which is known only to a limited number of persons and which is not intended to become known outside of the Company, or any of its subsidiaries or affiliated companies.

All written and other records and all tangibles concerning the Company, or any of its subsidiaries or affiliated companies and their businesses which are in the possession of the Employee shall be carefully kept and shall be immediately returned to the Company, or any of its subsidiaries or affiliated companies upon their request, and in any case upon the termination of the Contract of Employment. The Employee hereby waives any right of retention in respect of records such or tangibles mentioned herein.

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12.0 Conflict of Interest:

The Employee shall not, except with prior written approval of the Company, during the term of the Contract of Employment, accept or solicit any commission, allowance, gift or consideration whatsoever from customers, suppliers or competitors of the Company or from potential customers, suppliers or competitors of the Company. Any unsolicited consideration received by the Employee shall be returned immediately and the Employee shall forthwith inform the Company. Usual promotional gifts with limited or no commercial value shall not be regarded as consideration of the purpose of this article. In case of doubt, the Employee shall always consult with the Company.

13.0 Exclusivity/Non-Compete:

The Employee shall throughout the duration of this agreement and for a period of two (2) years after termination hereof, not be engaged or involved in any manner, directly or indirectly, whether on the account of the Company or on the account of third parties, in any enterprise which conducts activities in a field similar to or otherwise competes with that of the Company, nor act, directly or indirectly, as intermediary in relation to such activities in whatever manner. This obligation applies solely to any work activities or involvement of the Company within Europe.

The Employee remains under the obligation to adhere to the non-competition clause referred to in paragraph 1 of this article with respect to the Company, if the Company or a part thereof is transferred by the Company to a third party within the meaning of article 7:662 and onwards of the Civil Code and this agreement terminates before or at the time of such transfer, while in the event of continuation of the Contract of Employment the Employee would have entered the employment of the acquirer by operation of law.

In the event of any breach by the Employee of any of the obligations referred to in paragraphs 1 and 2 of this article, the Employee shall, contrary to article 7:650 sub 3, 4 and 5 of the Civil Code, without notice of default being required, pay to the Company for each such breach, a penalty equal to an amount of (euro)20,000, plus a penalty of (euro)500 for each day such breach occurs and continues.

14.0 Copyright:

Any intellectual property rights and rights to Employee inventions arising from the Employee's activities hereunder, or, if ownership rights cannot be transferred under applicable law, any exploitation rights relating thereto, shall be transferred to the Company in accordance with applicable law. The remuneration pursuant to Section 4.0 of the Contract of Employment includes any and all compensation for such transfer of rights. If applicable law of a mandatory nature, which cannot be derogated by contract, requires additional compensation for such transfer of rights,

the Company shall have the option to request or not to request the transfer of rights concerned.

15.0 Consent to the Processing of Personal Data: The Employee hereby consents to the Company holding and processing both electronically and manually, personal data (including sensitive data) about the Employee, in the course of employment, for the purpose of the Company's operations, security, and management and for purposes of complying with applicable laws, regulations and procedures. The Employee also consents to the transfer, storage and processing of such data between the Company and affiliated Companies, worldwide.

16.0 Company Equipment: Unless the Employee has written consent of their immediate Manager, the Employee will not use any equipment or systems owned, rented or licensed by the Company for any purpose other than to carry out the duties of the position.

The Employee agrees that the Company may monitor, intercept, or record his use of office equipment including but not limited to e-mail, internet usage, telephone and mobile phone.

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17.0 Agreement: The Employee hereby undertakes and warrants that he is at liberty to enter into this Contract of Employment and perform all of the duties and obligations without limitation or breach of any obligations or duties which he may have a third party and he further agrees to defend, indemnify and render harmless from and against damages for any loss which the Company may incur, including damages and costs, in respect of any proceedings which may be brought against the Company by any third party who claims that the Employee is not so at liberty.

The employee undertakes to return, on the day he ceases his functions with the Company for what ever reason, all items and material made reliable to him by the Company, and all written or recorded documents containing confidential information.

18.0 Prior Agreements: These Terms and Conditions of Employment constitute the entire understanding between the Employee and the Company.

No variation or addition to it and on waiver of any provision will be valid unless in writing and signed on behalf of both parties.

Should a provision of this Contract of Employment be or become invalid, the validity of all other provisions shall be deemed to have been substituted by a legally valid provision, which achieves as closely as legally permissible what the invalid provision was intended to achieve. This shall apply as well to issues, which the parties fail to address in this Contract of Employment.

The decisive version of the Contract of Employment is the English version.

The Employee herewith confirms the receipt of a copy of this Contract of Employment executed by both parties.

19.0 Applicable Law: This Contract of Employment shall be governed by and interpreted in accordance with the laws of The Netherlands.

15 December 2003  
-----  
Date

/s/ Folkert Zwinkels  
-----  
The Company

/s/ Willem P. Vlot  
-----  
The Employee

<TABLE>
<S> QUEENSLAND LAND REGISTRY Land Title Act 1994, Land Act 1994 and Water Act 2000
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PRIVACY STATEMENT
The information from this form is collected under the authority of the Land Title Act 1994 the Land Act 1994 and the Water Act 2000 and is used for the purpose of maintaining the publicly searchable registers in the land registry and the water register

Table with 5 columns: TYPE/DEALING NO OF INSTRUMENT/DOCUMENT BEING AMENDED, COUNTY, PARISH, TITLE REFERENCE, LODGER (Name, address & phone number). Rows include details for instrument 1 (Lease, 706009811) and instrument 2 (Lot 108 on CP SL7249).

The parties identified in items 3 and 4 agree that the instrument/document in item 1 is amended in accordance with the attached schedule.

Each attorney executing this Deed states that he or she has no notice of revocation or suspension of his or her power of attorney.

EXECUTION DATE LESSOR'S SIGNATURE
Executed by AMACA PTY LIMITED
16/ 03 / 2004
/s/ Peter Edward John Jollie
Director Signature
Peter Edward John Jollie.....Full Name
/s/ Dennis John Cooper
Director/Secretary Signature
Dennis John Cooper..... Full Name

<TABLE>
<S> QUEENSLAND LAND REGISTRY Land Title Act 1994, Land Act 1994 and Water Act 2000
SCHEDULE/ENLARGED PANEL/ ADDITIONAL PAGE/DECLARATION
TITLE REFERENCE 15798160
PAGE 2 OF 58
FORM 20 Version 2
</TABLE>

EXECUTION DATE LESSEE'S SIGNATURE
Signed for JAMES HARDIE AUSTRALIA PTY LIMITED by its attorney under power of attorney registered No. 707644 dated 12 March 2004 in the presence of:
17/ 03 / 2004

/s/ Joanne Marchione

-----  
Attorney Signature

Joanne Marchione..... Full Name

/s/ Josie Hui

-----  
Witness Signature

Josie Hui..... Full Name

EXECUTION DATE

GUARANTOR'S SIGNATURE

17/ 03 / 2004

SIGNED for JAMES HARDIE INDUSTRIES N.V. by  
its attorney under power of attorney  
registered No. 707564412 dated 12 March  
2004 in the presence of:

/s/ Joanne Marchione

-----  
Attorney Signature

Joanne Marchione..... Print Name

/s/ Josie Hui

-----  
Witness Signature

Josie Hui..... Print Name

<TABLE>

<S>	<C>	<C>
QUEENSLAND LAND REGISTRY		FORM 20 Version 2
Land Title Act 1994, Land Act 1994	SCHEDULE/ENLARGED PANEL/	
and Water Act 2000	ADDITIONAL PAGE/DECLARATION	
	TITLE REFERENCE 15798160	PAGE 3 OF 58

</TABLE>

This is the Schedule referred to in the Form 13 Amendment dated 23 March 2004.

Lease 706009811 is varied as follows with effect from the Effective Date (as defined below).

1. delete pages 1-39 and Exhibits A and B;
2. insert annexures B to D of this Amendment as annexures B to D of the lease; and
3. insert the following as the Schedule.

SCHEDULE OF TERMS

OPERATIVE PROVISIONS

<TABLE>

<CAPTION>

ITEM	TERM	DEFINITION
<S>	<C>	<C>
1.	Lessor	Amaca Pty Limited (ACN 000 035 512) of 65 York Street, Sydney, NSW
2.	Lessee	James Hardie Australia Pty Limited (ACN 084 635 558) of 10 Colquhoun Street, Rosehill, NSW
3.	Land	Certificate of Title 15798160
4.	Premises	The Land, buildings and other improvements situated at the Corner of Cobalt and Silica Streets, Carole Park, QLD in the condition in which they exist as at the Effective Date and includes the Lessor's Fixtures.
5.	Term	20 Years 4 months and 23 days
6.	Commencing Date	1 November 1998
7.	Terminating Date	23 March 2019
8.	Further Term	2 further terms each of 10 years, the last expiring on 23 March 2039.
9.	Rent	\$1,000,000.00 per annum, payable as prescribed in clauses 4.1 and 4.2, and subject to review as specified in clauses 4.4, 4.5, 4.6 and 4.7.
10.	Review Dates	The Review Dates for review of the Rent are as follows:

(a) Fixed Review Dates shall be each anniversary of the Effective Date during

the Term other the Commencing Date of a Further Term; and

- (b) Market Review Dates shall be the seventh anniversary of the Effective Date.

11. Permitted Use Manufacture, warehousing, distribution and sales of fibre cement products and systems and all associated activities (including offices) and any other use for which the Lessee may lawfully use the Premises.

12. Public Risk Insurance \$50,000,000

</TABLE>

<TABLE>

<S>	<C>	<C>
QUEENSLAND LAND REGISTRY		FORM 20 Version 2
Land Title Act 1994, Land Act 1994 and Water Act 2000	SCHEDULE/ENLARGED PANEL/ ADDITIONAL PAGE/DECLARATION TITLE REFERENCE 15798160	PAGE 4 OF 58

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<TABLE>

<CAPTION>

ITEM	TERM	DEFINITION
<S>	<C>	<C>
13.	Review Dates for the Further Term	The Review Dates for the review of the Rent in each Further Term and the method of review shall be as follows.  (a) Fixed Review Dates shall be on each anniversary of the Commencing Date of that Further Term other than the Commencing Date of a Further Term; and  (b) Market Reviews Dates shall be the Commencing Date of that Further Term and the fifth anniversary of the Commencing Date of that Further Term.

14. Lessee's Proportion 100%

</TABLE>

<TABLE>

<S>	<C>	<C>
QUEENSLAND LAND REGISTRY	SCHEDULE/ENLARGED PANEL/ ADDITIONAL PAGE/DECLARATION TITLE REFERENCE 15798160	FORM 20 Version 2 PAGE 5 OF 58
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</TABLE>

## 1. INTERPRETATION

### 1.1 DEFINITIONS

The following definitions together with those in the Schedule apply unless the context requires otherwise.

APPURTENANCE includes any drain, basin, sink, toilet or urinal.

AUSTRALIAN INSTITUTE means the Australian Property Institute Inc. (Queensland Division).

AUTHORISATION includes any authorisation, approval, consent, licence, permit, franchise, permission, filing, registration, resolution, direction, declaration, or exemption.

AUTHORISED OFFICER means any director or secretary, or any person from time to time nominated as an Authorised Officer by a party by a notice to the other party accompanied by specimen signatures of all new persons so appointed.

AUTHORITY includes:

- (a) (GOVERNMENT) any government in any jurisdiction, whether federal, state, territorial or local;
- (b) (PUBLIC UTILITY) any provider of public utility services, whether statutory or not; and
- (c) (OTHER BODY) any other person, authority, instrumentality or body having jurisdiction, rights, powers, duties or responsibilities over the Premises or any part of them or anything in relation to them (including the Insurance Council of Australia Limited).

BUILDING means those improvements (if any) described or referred to in Item 4.

BUSINESS DAY means any day except Saturday or Sunday or a day that is a

public holiday throughout Queensland.

CLAIM includes any claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding, right of action, claim for compensation and claim for abatement of rent obligation.

COMPETITOR means any person engaged in the manufacture, distribution or sale of fibre cement products and underground drainage pipes made of concrete or fibre cement and:

- (a) includes persons engaged in the businesses known as or trading under names which include the words "Lafarge", "CSR" and "BGC"; but
- (b) excludes any third party logistics operator.

CONSENT means prior written consent.

COUNCIL means Ipswich City Council.

COST includes any reasonable cost, charge, expense, outgoing, payment or other expenditure of any nature (whether direct, indirect or consequential and whether accrued or paid) including where appropriate all rates and all reasonable legal fees.

EFFECTIVE DATE means 24 March 2004.

EMPLOYEES means employees, agents, invitees and contractors.

ENVIRONMENT means components of the earth, including:

- (a) land, air and water;

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- (b) any layer of the atmosphere;
- (c) any organic or inorganic matter and any living organism; and
- (d) human-made or modified structures and areas, and includes interacting natural ecosystems that include components referred to in paragraphs (a) to (c).

ENVIRONMENTAL LAW means a provision of Law, or a Law, which provision or Law relates to any aspect of the Environment, safety, health or the use of Substances or activities which may harm the Environment or be hazardous or otherwise harmful to health.

EVENT OF DEFAULT means any event referred to in clause 12.1.

FIXED REVIEW means a review of the Rent in accordance with clause 4.7.

FIXED REVIEW DATES means a date on which a Fixed Review is to occur as set out in Item 10.

FURTHER TERM means the further term or terms (as the case may be), specified in Item 8.

GST means the goods and services tax as imposed by the GST Law including, where relevant, any related interest, penalties, fines or other charge to the extent caused by any default or delay by the Lessee.

GST AMOUNT means, in relation to a Payment, an amount arrived at by multiplying the Payment (or the relevant part of a Payment if only part of a Payment is the consideration for a Taxable Supply) by the appropriate rate of GST (being 10% when the GST Law commenced).

GST LAW has the meaning given to that term in A New Tax System (Goods and Services Tax) Act 1999, or, if that Act is not valid or does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act.

GUARANTOR means James Hardie Industries N.V..

INITIAL TERM means the first 20 years 4 months and 23 days term of this Lease commencing on 1 November 1998.

INTEREST RATE means the minimum rate of interest charged by the



Commonwealth Bank of Australia, on an overdraft of \$100,000 plus 2%.

LAND means the land described in Item 3.

LAND TAX means land taxes or taxes in the nature of a tax on land.

LAW includes any requirement of any statute, rule, regulation, proclamation, ordinance or by-law, present or future, and whether state, federal or otherwise.

LEASE means this lease between the Lessor and the Lessee.

LEASE YEAR means every 12 month period commencing on and from the Commencing Date.

LESSEE means the party specified in Item 2, its successors and assigns.

LESSEE'S BUSINESS means the business carried on or entitled to be carried on in the Premises in compliance with the Permitted Use of the Premises.

LESSEE'S FITOUT AND FITTINGS means all fixtures, fittings, plant, equipment, partitions or other articles and chattels of all kinds (other than stock-in-trade) which satisfy all of the following:

- (a) they are owned by or leased by third parties to the Lessee; and
- (b) they are, at any time, in or attached to the Premises or the Licensed Area.

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LESSEE'S PROPORTION means that proportion which the Lettable Area of the Premises bears to the area of the Land determined in accordance with the Method of Measurement from time to time and which at the Commencing Date of the lease for the Initial Term is that proportion set out in Item 14.

LESSOR means the party specified in Item 1 or the party for the time being entitled to the reversion expectant upon expiration or prior determination of the Lease.

LESSOR'S ASSET REGISTER means the list of items in the Premises or the Licensed Area contained in Annexure B.

LESSOR'S FIXTURES means all fixtures in the Premises owned by the Lessor including the items listed in the Lessor's Asset Register and:

- (a) (GENERAL) all plant and equipment, mechanical or otherwise which forms part of the base Building, fittings, fixtures, furniture, furnishings of any kind, including window coverings, blinds and light fittings; and
- (b) (FIRE FIGHTING) all stop cocks, fire hoses, hydrants, other fire prevention aids and all fire fighting systems from time to time located in the Premises or which may service the Premises and be on the Land.

LETTABLE AREA means the gross lettable area determined in accordance with the Method of Measurement.

LIQUIDATION includes liquidation, official management, receivership, compromise, arrangement, amalgamation, administration, reconstruction, winding up, dissolution, assignment for the benefit of creditors, arrangement or compromise with creditors, bankruptcy or death.

MAKE GOOD BUILDINGS means the buildings and other improvements hatched on the plan in Annexure C.

MARKET RENT means the Rent which could be obtained with respect to the Premises as at a particular Market Review Date in an open market by a willing but not anxious Lessor assessed using the criteria in clause 4.5(g).

MARKET REVIEW means a review of the Rent in accordance with clause 4.4 and (if applicable) clauses 4.5 and 4.6.

MARKET REVIEW DATE means a date on which a Market Review is to occur as set out in Item 10.



PROPOSED WORK includes any proposed sign, work, alteration, addition or installation in or to the Premises, the Lessor's Fixtures and/or to the existing Lessee's Fitout and Fittings by the Lessee and/or by the Lessee's Employees.

RELATED BODY CORPORATE has the same meaning as given to that term in the Corporations Act 2001.

RENT means the rent specified in Item 9 as varied from time to time in accordance with this Lease.

REQUIREMENT includes any notice, order, direction, stipulation or similar notification received from or given by any Authority pursuant to and enforceable under any Law (including Environmental Law), whether in writing or otherwise, and regardless of to whom it is addressed or directed.

REVIEW DATE means a date on which either a CPI Review or a Market Review is to occur as set out in Item 10.

SERVICES means electricity, gas, sewerage, water and telephone services.

SUBSTANCE includes:

- (a) any form of organic or chemical matter whether solid, liquid or gas; and
- (b) radiation, radioactivity and magnetic activity.

TAX ACT means the Income Tax Assessment Act 1936 (Cth) and/or the Income Tax Assessment Act 1997 (Cth) (as the case may require).

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TERMINATING DATE means:

- (a) the date specified in Item 7;
- (b) any earlier date on which this Lease is determined;
- (c) the date of expiration or earlier termination of the Further Term or, if more than one, the last Further Term; or
- (d) the end of any period of holding over under clause 3.3,

as appropriate.

TERMINATION PAYMENT means:

- (a) in respect of clause 7.1(e) (i) (A), the net present value of the aggregate of:
  - (i) the Rent and the Lessee's Proportion of Outgoings payable for the balance of the Term calculated from the date of termination; and
  - (ii) the cost of compliance with the Lessee's obligations in clause 13,  
using the 10 year Commonwealth of Australia Government bond interest rate plus 115 basis points; and
- (b) in respect of clauses 7.1(e) (i) (B) and 7.1(e) (ii), the net present value of the aggregate of:
  - (i) the Rent and the Lessee's Proportion of Outgoings payable for the balance of the Term with respect to the proportionate area of the Premises surrendered calculated from the date of the surrender; and
  - (ii) the cost of compliance with the Lessee's obligations in clause 13,  
using the 10 year Commonwealth of Australia Government bond interest rate plus 115 basis points.

UMPIRE means a person who:

- (a) is at the relevant time a Valuer;
- (b) is appointed under clause 4.5;
- (c) accepts his appointment in writing; and
- (d) undertakes to hand down his determination of the Rent within 20 Business Days after being instructed to proceed.

VALUER means a person who:

- (a) is a full member of the Australian Institute and has been for the last 5 years;
- (b) holds a licence to practise as a valuer of premises of the kind leased by this Lease;
- (c) is active in the relevant market at the time of his appointment;
- (d) has at least 3 years experience in valuing premises of the kind leased by this Lease; and
- (e) undertakes to act promptly in accordance with the requirements of this Lease.

## 1.2 GENERAL

Headings are for convenience only and do not affect interpretation. The following rules of interpretation apply unless the context requires otherwise.

- (a) (PLURALS) The singular includes the plural and conversely.

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- (b) (GENDER) A gender includes all genders.
- (c) (OTHER GRAMMATICAL FORMS) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) (PERSON) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (e) (CLAUSE) "clause", "Paragraph", "Schedule" or "Annexure" refers to this Lease and "Item" refers to the Schedule of Terms forming part of this Lease.
- (f) (SUCCESSORS AND ASSIGNS) A reference to any party to this Lease or any other agreement or document includes the party's successors and substitutes or assigns.
- (g) (JOINT AND SEVERAL OBLIGATIONS) A reference to a right or obligation of any two or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally.
- (h) (EXTRINSIC TERMS) Subject to the provisions of any written material to which the Lessor and the Lessee are parties, the Lessor and the Lessee agree that:
  - (i) (WHOLE AGREEMENT) the terms contained in this Lease cover and comprise the whole of the agreement in respect of the Premises between the Lessor and the Lessee; and
  - (ii) (NO COLLATERAL AGREEMENT) no further terms, whether in respect of the Premises or otherwise, shall be implied or arise between the Lessor and the Lessee by way of collateral or other agreement made by or on behalf of the Lessor or by or on behalf of the Lessee on or before or after the execution of this Lease, and any implication or collateral or other agreement is excluded and negatived.
- (i) (AMENDMENTS AND VARIATIONS) A reference to an agreement or document (including this Lease) is to the agreement or document as amended, novated, supplemented, varied or replaced from time to time, except to the extent prohibited by this Lease.
- (j) (LEGISLATION) A reference to legislation or to a provision of legislation includes a modification, re-enactment of or substitution

for it and a regulation or statutory instrument issued under it.

- (k) (AUSTRALIAN CURRENCY) A reference to "dollars" or "\$" is to Australian currency.
- (l) (SCHEDULES AND ANNEXURES) Each schedule of/or annexure to this Lease forms part of it.
- (m) (CONDUCT) A reference to conduct includes any omission, statement or undertaking, whether or not in writing.
- (n) (WRITING) A reference to "writing" includes a facsimile transmission and any means of reproducing words in a tangible and permanently visible form.
- (o) (EVENT OF DEFAULT) An Event of Default "subsists" until it has been waived by or remedied to the reasonable satisfaction of the Lessor.
- (p) (INCLUDES) A reference to "includes" or "including" means "includes, without limitation," or "including, without limitation," respectively.
- (q) (WHOLE) Reference to the whole includes part.
- (r) (DUE AND PUNCTUAL) All obligations are taken to be required to be performed duly and punctually.
- (s) (PERMIT OR OMIT) Words importing "do" include do, permit or omit, or cause to be done or omitted.

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- (t) (BODIES AND AUTHORITIES)
  - (i) (SUCCESSORS) Where a reference is made to any person, body or Authority that reference, if the person, body or Authority has ceased to exist, will be to the person, body or Authority as then serves substantially the same objects as that person, body or Authority.
  - (ii) (PRESIDENT) Any reference to the President of that person, body or Authority, in the absence of a President, will be read as a reference to the senior officer for the time being of the person, body or Authority or any other person fulfilling the duties of President.
- (u) (CONSENT OF LESSOR) Unless stated otherwise in this Lease, where the Lessor has a discretion or its consent or approval is required for anything the Lessor:
  - (i) shall not unreasonably withhold, delay or condition its decision, consent or approval; and
  - (ii) must exercise its discretion acting reasonably.
- (v) (RELEVANT DATE) Where the day or last day for doing anything or on which an entitlement is due to arise is not a Business Day that day or last day will be the immediately following Business Day.
- (w) (MONTH) Month means calendar month.
- (x) (AREAS) Unless otherwise stated in this Lease or the context otherwise requires, where the area whether gross or net and whether the whole or part of the Land is to be calculated or measured for the purposes of this Lease, those calculations and measurements shall be in accordance with the Method of Measurement.
- (y) (THIRD PARTIES) Any clause which requires that a third party act or refrain from acting will be read (where the context permits) that the party to this Lease appointing or otherwise having control of that third party shall cause or procure that third party to act or refrain from acting.

## 2. EXCLUSION OF STATUTORY PROVISIONS

### 2.1 RELEVANT ACTS

To the extent permitted by Law or as may be contradicted by this Lease,

the covenants, powers and provisions (if any) implied in leases by virtue of any Law are expressly negatived.

3. TERM

3.1 TERM OF LEASE

Subject to this Lease the Lessor leases to the Lessee and the Lessee takes a lease of the Premises for the Term.

3.2 OPTION OF RENEWAL

(a) (GRANT OF FURTHER LEASE) If:

- (i) (FURTHER TERM) a Further Term is specified in Item 8;
- (ii) (LESSEE GIVES NOTICE) the Lessee notifies the Lessor not more than 12 months nor less than 9 months before the Terminating Date that it requires a further lease for the Further Term; and

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- (iii) (NO DEFAULT) at the date of that notice and at the Terminating Date there is no subsisting Event of Default by the Lessee of which the Lessee has been notified by the Lessor and:
  - (A) (IF CAPABLE OF REMEDY) which has not been remedied to the reasonable satisfaction of the Lessor within the time specified in a notice given under clause 12.1 or waived in writing by the Lessor; or
  - (B) (IF NOT CAPABLE OF REMEDY) if not capable of remedy, for which the Lessee has not paid the Lessor reasonable compensation,

the Lessor shall grant to the Lessee a lease of the Premises for the Further Term commencing on the day after the Terminating Date.

(b) (CONDITIONS OF FURTHER LEASE) That lease for a Further Term will be on the same conditions as this Lease except that:

- (i) (TERM) the term to be specified in Item 5 of the lease for the Further Term will be the relevant period specified in Item 8;
- (ii) (COMMENCING DATE) the date to be specified in Item 6 of the lease for the Further Term will be the day after the Terminating Date of the immediately preceding Term;
- (iii) (TERMINATING DATE) the date to be specified in Item 7 of the lease for each Further Term will be the last day of the term specified in Item 8 calculated from the commencing date of the lease for that Further Term determined under Paragraph (ii);
- (iv) (RENT) the amount of Rent to be specified in Item 9 of the lease for the Further Term will be as agreed under clause 3.2(c) or if no agreement is reached under that clause as determined under clauses 4.4, 4.5 and 4.6 as if the commencing date of the lease for the Further Term was a Market Review Date;
- (v) (REVIEW DATES) the Review Dates specified in Item 10 shall be omitted and replaced with the Review Dates specified in Item 13;
- (vi) (FURTHER OPTIONS) the number of Further Terms specified in Item 8 shall be reduced by one from the number specified in Item 8 of this Lease; and
- (vii) (LAST FURTHER LEASE) if in any lease for the Further Term the number of Further Terms specified in Item 8 would by the operation of Paragraph (vi) be zero, then Item 13 and this clause 3.2 will not be included in that further lease so that the last further lease will end on the last day of the last occurring Further Term specified in Item 8 of this Lease.

(c) (EARLY DETERMINATION OF MARKET RENT)

- (i) If the Lessee wishes to know the Rent for the first year of the Further Term prior to exercising its option for a Further Term, the Lessee may give notice to the Lessor seeking a determination of the Market Rent for the Further Term (such notice being given no earlier than 15 months and no later than 12 months prior to the Terminating Date of the Lease).
- (ii) The Lessor must give the Lessee a notice with the Lessor's assessment of the Market Rent to apply in the first year of the Further Term within 10 Business Days after the Lessee gives a notice under clause 3.2(c) (i).
- (iii) Upon receipt of the Lessor's assessment of Market Rent under clause 3.2(c) (ii), the parties agree to negotiate in good faith to agree upon the Market Rent to apply in the first year of the Further

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Term for a period of up to 3 months after the Lessor's notice of assessment of Market Rent is received by the Lessee.

- (iv) If the parties fail to reach agreement under clause 3.2(c) (iii), clause 3.2(b) (iv) continues to apply.

### 3.3 HOLDING OVER

If the Lessor does not indicate refusal to the Lessee continuing to occupy the Premises beyond the Terminating Date (otherwise than under a lease for a Further Term) then:

- (a) (MONTHLY TENANCY) the Lessee does so as a monthly tenant and shall pay Rent and Outgoings:
  - (i) monthly in advance, the first payment to be made on the day following the Terminating Date; and
  - (ii) equal to one-twelfth of the annual rate of Rent and Outgoings payable immediately prior to the Terminating Date;
- (b) (DETERMINATION) the monthly tenancy is determinable at any time by either the Lessor or the Lessee by one month's notice given to the other, to end on any date, but otherwise the tenancy will continue on the conditions of this Lease as far as they may apply to a monthly tenancy.

## 4. RENT

### 4.1 PAYMENT OF RENT

- (a) (RENT) The Lessee shall pay Rent to the Lessor at the relevant rate from time to time:
  - (i) (NO DEMAND) without demand;
  - (ii) (NO DEDUCTION) without any deduction, abatement, counterclaim or right of set-off except to the extent that it is expressly provided for in this Lease; and (iii) (INSTALMENTS) by equal monthly instalments (and proportionately for any part of a month) in advance on the first Business Day of each month.
- (b) (AS DIRECTED BY LESSOR) All instalments of Rent shall be paid to the place and in the manner directed by the Lessor from time to time provided at least 10 Business Days notice of any change in the place or manner of payment is given.

### 4.2 RENT COMMENCEMENT

The first instalment of Rent shall be paid on the Commencing Date.

### 4.3 DELETED

### 4.4 MARKET REVIEW OF RENT

Should the Lessor wish to review the Rent as at a Market Review Date, then not earlier than 3 months before and not later than 3 months after the Market Review Date (time being of the essence) the Lessor may notify the Lessee of the Lessor's assessment of the Market Rent for the Premises at

the particular Market Review Date. This assessment shall take into account the criteria contained in clause 4.5(g) which apply at that particular Market Review Date and, if applicable, clause 4.6.

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#### 4.5 LESSEE'S DISPUTE OF RENT

If the Lessee disagrees with the Lessor's assessment of the Market Rent and the Lessor and the Lessee are unable to agree on the Market Rent to apply from a particular Market Review Date then the following procedure applies.

- (a) (LESSEE TO GIVE NOTICE) The Lessee shall within 30 Business Days of being notified of the Lessor's assessment of the Market Rent (time being of the essence) notify the Lessor that the Lessee requires the Market Rent to be determined in accordance with this clause 4.5.
- (b)
  - (i) (NOMINATION OF VALUERS) Each of the Lessee and the Lessor shall, within 10 Business Days of service of the Lessee's notice under clause 4.5(a), by notice nominate a Valuer to the other and shall formally appoint that Valuer.
  - (ii) (NOMINATION OF UMPIRE) Where two Valuers have been nominated they shall, within 5 Business Days of the date of the later nomination and prior to making their determination as to the Market Rent for the Premises, agree upon and nominate an Umpire to determine any disagreement which may arise between them.
  - (iii) (FAILURE TO AGREE) If the Valuers cannot agree on or fail to nominate an Umpire within 5 Business Days of the date of the later nomination then either Valuer, the Lessor or the Lessee may request the President of the Australian Institute to nominate the Umpire.
- (c) (VALUER'S DETERMINATION) Subject to clauses 4.5(d), (e) and (f), the nominated Valuers shall within 20 Business Days of the later nomination jointly determine the Market Rent of the Premises having regard to clause 4.5(g) as at that particular Market Review Date.
- (d) (CONSEQUENCES OF LESSEE'S FAILURE) If the Lessee fails to nominate a Valuer in accordance with clause 4.5(b) within the time required:
  - (i) (DETERMINATION BY LESSOR'S VALUER) the determination of the Market Rent shall be made by the Lessor's Valuer within 20 Business Days after being nominated, and his determination will be final and binding on the parties as if he had been appointed by Consent; and
  - (ii) (COSTS) the Costs of the Lessor's Valuer's determination shall be apportioned equally between the Lessor and Lessee.
- (e) (CONSEQUENCES OF LESSOR'S FAILURE TO NOMINATE VALUER) If the Lessee nominates a Valuer under clause 4.5(b) within the time required, but the Lessor fails to do so:
  - (i) (DETERMINATION BY LESSEE'S VALUER) the determination of the Market Rent shall be made by the Lessee's Valuer within 20 Business Days after being nominated, and his determination will be final and binding on the parties as if he had been appointed by Consent; and
  - (ii) (COSTS) the Costs of the Lessee's Valuer's determination shall be apportioned equally between the Lessor and Lessee.
- (f)
  - (i) (PROCEDURE IN EVENT OF DISAGREEMENT BETWEEN VALUERS) Should the Valuers be unable to agree on the Market Rent for the Premises within the time required then the Market Rent shall be determined by the Umpire under clause 4.5(f) (iii).
  - (ii) (PROCEDURE WHERE VALUER FAILS TO ASSESS) If either or both of the Valuers for any reason fail to assess the Market Rent within the time required for them to make a determination, then either Valuer, the Lessor or the Lessee may request the Umpire to determine the Market Rent.



(iii) (UMPIRE'S DETERMINATION) If it becomes necessary for the Umpire to determine the Market Rent, his determination will be final and binding on the parties and:

- (A) (EVIDENCE OF VALUERS) in making his or her determination the Umpire shall have regard to any evidence submitted by the Valuers as to their assessments of the Market Rent;
- (B) (WRITTEN DETERMINATION) the Umpire shall give his determination and the reason for it in writing to the Lessor and the Lessee within 20 Business Days of request for it in accordance with this Lease by the Lessor, the Lessee or the Valuers (or any of them); and
- (C) (UMPIRE'S MAXIMUM) the Umpire's determination shall not be more than the highest Market Rent as assessed by either Valuer under this clause 4.5.

(g) (MARKET RENT CRITERIA) In determining the Market Rent each Valuer (including the Umpire) shall be taken to be acting as an expert and not as an arbitrator, and shall determine the Market Rent for the Premises as at the particular Market Review Date having regard to the terms of this Lease and shall:

(i) (EXCLUSIONS) disregard:

- (A) (GOODWILL) the value of any goodwill of the Lessee's Business, the Lessee's Fitout and Fittings and any other interest in the Premises created by this Lease; and
- (B) (MONEY FROM OCCUPATIONAL ARRANGEMENT) any sublease or other sub-tenancy agreement or occupational arrangement in respect of any part of the Land and any rental, fees or money payable under any of them; and

(ii) (CONSIDERATIONS) have regard to:

- (A) (LENGTH OF TERM) the length of the whole of the Term, disregarding the fact that part of the Term will have elapsed at the Market Review Date, and have regard to the provisions of any options for a Further Term;
- (B) (COMPARABLE PREMISES AND LOCATIONS) the rates of rent payable for comparable premises in comparable locations;
- (C) (ALL COVENANTS OBSERVED) all covenants on the part of the Lessee and the Lessor in this Lease and assume that all covenants on the part of the Lessee have been fully performed and observed on time; and
- (D) (OUTGOINGS) the Lessee's obligation to pay the Lessee's Proportion of Outgoings; and
- (E) (RENT REVIEW) the frequency of market and other Rent reviews; and

(iii) (ASSUMPTIONS) assume that:

- (A) the Premises are available for use for the primary purpose for which the Premises may be used in accordance with this Lease;
- (B) there has been no fair wear and tear of the Premises since the Effective Date; and
- (C) any buildings which have been removed pursuant to clause 7.11(d) have not been removed.

(h) (COSTS OF VALUERS) The Costs incurred in the determination of the Market Rent under this clause 4.5 shall be borne by the Lessor and by the Lessee in the following manner:

- (i) (VALUER) subject to clauses 4.5(d)(ii) and (e)(ii), for the Costs of each Valuer appointed by a party, by the party who appoints that Valuer; and

- (ii) (UMPIRE) for the Costs of the Umpire, by the parties equally.
- (i) (DATE OF EFFECT OF DETERMINATION OF MARKET RENT) Subject to clauses 4.5(j) and 4.6, any variation in the Rent resulting from a determination of the Market Rent under clause 4.4 and/or 4.5 (as appropriate) will be effective on and from that particular Market Review Date.
- (j) (PAYMENT OF RENT PENDING REVIEW) Where there is a dispute as to the Market Rent under clause 4.4 after the relevant Market Review Date or the revised Rent is not known at a Market Review Date then the amount of Rent payable by the Lessee from the Market Review Date pending the resolution of that dispute or the determination of the Market Rent shall be the Rent payable immediately before the relevant Market Review Date.
- (k) (ADJUSTMENT) On resolution of the dispute or the Market Rent being determined, if the Rent payable for the period commencing on the Market Review Date is determined to be greater than that paid by the Lessee since the Market Review Date, then the Lessee shall pay the deficiency to the Lessor within 10 Business Days of the date of determination of the Market Rent under clause 4.4 or the determination of the Market Rent by the Valuers or by the Umpire under this clause 4.5 (as the case may be).

#### 4.6 MAXIMUM INCREASE ON REVIEW

Despite any other provision of this Lease the annual Rent payable from any Review Date following a review of the Rent under clause 4.4 (and, if applicable, clause 4.5) shall in no circumstances be:

- (a) less than the annual Rent payable in the Lease Year immediately prior to that Review Date; or
- (b) in the case of a Market Review (other than at the Commencing Date of a Further Term):
- (i) greater than the Rent payable in the Lease Year immediately prior to the Market Review Date plus 10%; or
- (ii) less than the annual Rent determined under clause 4.7.

#### 4.7 FIXED REVIEW

On each Fixed Review Date, the Rent shall increase to 103% of the Rent payable immediately prior to that Fixed Review Date.

#### 5. OUTGOINGS

##### 5.1 SERVICES

- (a) (METERS) The Lessor shall ensure that all Services supplied to the Premises are separately metered.
- (b) (COSTS) The Lessee shall pay all Costs for all Services supplied to the Premises (but with respect to water, the obligation under this clause 5.1(b) is limited to water usage and consumption charges).

##### 5.2 CLEANING

The Lessee shall at its own Cost ensure that the Premises are kept clean.

##### 5.3 OUTGOINGS

The Lessee shall pay to the Lessor for each Lease Year an amount equal to the Lessee's Proportion of the Outgoings in accordance with this clause 5. This obligation shall not extend to any fines, penalties or interest on

the Outgoings which arise because of the Lessor's delay in payment or the Lessor's delay in providing relevant invoices and accounts to the Lessee for payment.

#### 5.4 LESSOR'S ESTIMATE

The Lessor may:

- (a) (NOTIFICATION OF ESTIMATE) before or during each Lease Year notify the Lessee of the Lessor's reasonable estimate of the Lessee's Proportion of Outgoings for that Lease Year; and
- (b) (ADJUSTMENT OF ESTIMATE) from time to time during that Lease Year by notice to the Lessee adjust the reasonable estimate of the Lessee's Proportion of Outgoings as may be appropriate to take account of changes in any of the Outgoings.

#### 5.5 PAYMENTS ON ACCOUNT

The Lessee shall pay on account the amount of the estimates of the Lessee's Proportion of Outgoings provided for in clause 5.4 by equal monthly instalments in advance on the same days and in the same manner as the Lessee is required to pay Rent.

#### 5.6 YEARLY ADJUSTMENT

- (a) (LESSOR'S NOTICE) As soon as practicable after the end of each Lease Year the Lessor shall give to the Lessee a notice with reasonable details and reasonable evidence of the Outgoings for that Lease Year.
- (b) (ADJUSTMENT OF PAYMENTS ON ACCOUNT) The Lessee shall within 10 Business Days after the date of the notice referred to in clause 5.6(a) pay to the Lessor or the Lessor shall pay to the Lessee (as appropriate) the difference between the amount paid on account of the Lessee's Proportion of Outgoings during that Lease Year and the amount actually payable in respect of it by the Lessee, so that the Lessee shall have paid the correct amount of the Lessee's Proportion of Outgoings for that Lease Year.
- (c) (AUDITED STATEMENT) If the Lessee disagrees with the details, amounts or calculations contained in the notice referred to in clause 5.6(a), the Lessee may require the Lessor to give the Lessee an audited statement of the Outgoings for that Lease Year prepared by a chartered accountant reasonably approved by the Lessee (or failing approval within 5 Business Days of the request for the statement, selected by the President of the Institute of Chartered Accountants at the request of either the Lessor or the Lessee). The Lessor shall have 20 Business Days after a request from the Lessee within which to provide the statement.
- (d) (READJUSTMENT) If the amounts shown in the audited statement are different from the amounts shown in the Lessor's notice given under clause 5.6(b), the amount of Outgoings shall be readjusted so that the Lessee shall have paid the correct amount of the Lessee's Proportion of Outgoings for that Lease Year.

#### 5.7 GST

- (a) (GENERAL) Capitalised expressions which are not defined in this clause but which have a defined meaning in the GST Law have the same meaning in this clause.
- (b) (PAYMENT OF GST) The parties agree that:
  - (i) all Payments have been set or determined without regard to the impact of GST;

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- (ii) if the whole or any part of a Payment is the consideration for a Taxable Supply for which the payee is liable for GST, the GST Amount in respect of the Payment must be paid to the payee as an additional amount, either concurrently with the Payment or as otherwise agreed in writing; and

(iii) the payee will provide to the payer a Tax Invoice.

- (c) (NET OF CREDITS) Despite any other provision of this lease, if a Payment due under this lease (including any contribution to Outgoings) is a reimbursement or indemnification by one party of an expense, loss or liability incurred or to be incurred by the other party, the Payment shall exclude any part of the amount to be reimbursed or indemnified for which the other party can claim an Input Tax Credit.
- (d) (TPA) Each party will comply with its obligations under the Trade Practices Act 1974 in respect of any Payment to which it is entitled under this lease.

6. USE OF PREMISES

6.1 PERMITTED USE

The Lessee shall:

- (a) (LESSEE'S BUSINESS) not without the Lessor's Consent use the Premises for any purpose other than those specified in Item 11;
- (b) (NON RESIDENCE) not use the Premises as a residence;
- (c) (NO ANIMALS OR BIRDS) not keep any animals or birds in the Premises; and
- (d) (PESTS AND VERMIN) at its own Cost keep the Premises free and clear of pests, insects and vermin.

6.2 OVERLOADING

The Lessee shall not during the Term place or store any heavy articles or materials on any of the floors of, the Premises or the Building in a manner significantly differently from that at the Effective Date, without the Lessor's consent.

6.3 OTHER ACTIVITIES BY LESSEE

The Lessee shall:

- (a) (APPURTENANCES) not use the Appurtenances in the Premises for any purpose other than those for which they were designed, and shall not place in the Appurtenances any substance which they were not designed to receive;
- (b) (AIR-CONDITIONING AND FIRE ALARM EQUIPMENT) where any air-conditioning or fire alarm system of the Lessor is installed in the Premises, not interfere (other than in accordance with clause 7.1) with that system nor obstruct or hinder access to it;
- (c) (NOT ACCUMULATE RUBBISH) keep the Premises reasonably clean;
- (d) (NOT THROW ITEMS FROM WINDOWS) not throw anything out of the windows or doors of the Building or down the lift shafts, passages or skylights or into the light areas of the Building (if they exist), or deposit waste paper or rubbish anywhere except in proper receptacles, or place anything on any sill, ledge or other similar part of the exterior of the Building; and
- (e) (INFECTIOUS DISEASES) if any infectious illness occurs in the Premises:

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- (i) (NOTIFY LESSOR) immediately notify the Lessor and all proper Authorities; and
- (ii) (FUMIGATE) where that illness is confined to the Premises, at its Cost thoroughly fumigate and disinfect the Premises to the satisfaction of the Lessor and all relevant Authorities.

6.4 FOR SALE/TO LET

The Lessor is entitled:

- (a) (ADVERTISING FOR LEASE) where the Lessee has not given notice under clause 3.2(a)(ii), but only during the last three months of the

Term, to place advertisements and signs on the part(s) of the Premises as are reasonably appropriate to indicate that the Premises are available for lease;

- (b) (INSPECTION BY PROSPECTIVE TENANTS) subject to the same limitations as in Paragraph (a), at all reasonable times and on reasonable notice (but where possible outside the usual trading hours of the Lessee) to show prospective tenants through the Premises;
- (c) (ADVERTISING FOR SALE) to place advertisements and signs on the part(s) of the Premises as it reasonably considers appropriate to indicate that the Premises are for sale; and
- (d) (INSPECTION BY PROSPECTIVE PURCHASERS) at all reasonable times and on reasonable notice (but where possible outside the usual trading hours of the Lessee), to show prospective purchasers through the Premises.

The Lessor may only exercise its rights under this clause 6.4 in the presence of a representative of the Lessee after signing and/or procuring signing by the Lessor's invitees of such confidentiality agreements as the Lessee may reasonably require. In exercise of those rights the Lessor must minimise any inconvenience or disruption to the Lessee or the Lessee's Business.

## 7. MAINTENANCE, REPAIRS, ALTERATIONS AND ADDITIONS

### 7.1 REPAIRING OBLIGATIONS

- (a) (GENERAL) The Lessee:
  - (i) must, during the Term and any extension or Further Term or any holding over, keep the Premises in good repair and condition including any structural or capital maintenance, replacement or repair having regard to their state of repair and condition at the Effective Date; and
  - (ii) acknowledges and agrees that subject to clauses 5.4, 5.6, 9.2, 11, 12.4, 15.2 and 15.5(b) and (c), the Lessor is not responsible for any costs and expenses in relation to the Premises during the Term and any extension or Further Term or any holding over.
- (b) (EXCLUSIONS) Despite clause 7.1, the Lessee has no obligation to carry out any works which relate to:
  - (i) (FAIR WEAR AND TEAR) fair wear and tear;
  - (ii) (INSURANCE) damage to the Premises caused by fire, storm or tempest or any other risk covered by any insurance taken out by the Lessor in respect of the Premises (other than where any insurance money is irrecoverable through the act, omission, neglect, default or misconduct of the Lessee or the Lessee's Employees);
  - (iii) (LESSOR'S ACT OR OMISSION) patent or latent damage to the Premises caused or contributed to by any wilful or negligent act or omission of the Lessor or its Employees;

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- (iv) (NON-MAKE GOOD BUILDING) any works to the Non Make Good Buildings, except to the extent required by clause 7.1(d) and clause 13.
- (c) (STRUCTURAL REPAIR) Subject to clauses 15.2 and 15.5(c), nothing in this Lease requires the Lessor to carry out any structural or capital maintenance, replacement or repair except where rendered necessary by any wilful or negligent act or omission of the Lessor or the Lessor's Employees, which maintenance, replacement or repair the Lessor must attend to promptly after notice from the Lessee.
- (d) (COMPLIANCE WITH LAWS AND REQUIREMENTS) The Lessee shall, during the Term, subject to clauses 7.1(b) (i), (ii) and (iii), 7.1(e), 7.11, 15.2 and 15.5(c), comply with any Law or Requirement affecting the Premises (including any underground storage tanks and any Environmental contamination associated with them), the Lessee's use of the Premises and the Lessee's Fitout and Fittings, except that

the Lessor must, at its Cost, promptly comply with these Laws or Requirements if:

- (i) the Lessor or the Lessor's Employees have taken action or refrained from taking action that directly or indirectly has a material effect in causing the Law or Requirement to apply, be issued or enforced;
- (ii) the Lessor or the Lessor's Employees have taken action or refrained from taking action that directly or indirectly has a material effect in causing the Law or Requirement to apply, be issued or enforced by doing works on the Land or any adjoining land; or
- (iii) the Lessor or the Lessor's Employees have taken action or refrained from taking action that directly or indirectly has a material effect in causing the Law or Requirement to apply, be issued or enforced because of any subdivision, re-configuration of other dealing with the Land.

However, the Lessor is not obliged to comply with the Law or Requirement where the Law or Requirement applies, is issued or enforced solely as a result of the Lessor or the Lessor's Employees making any applications to Authorities with respect to redevelopment of that part of the Land which is not or will no longer be included in the Premises as anticipated by the terms of this Lease or because of the terms of any consents, approvals or permits granted by those Authorities in response to those applications.

(E) (OPTIONS TO TERMINATE OR SURRENDER)

- (i) If there is a change in Law or a Requirement requiring the demolition or substantial upgrade of Buildings on the Premises, then the Lessee may at its option:
  - (A) terminate this Lease by giving notice to the Lessor together with the Termination Payment; or
  - (B) partially surrender this Lease by giving to the Lessor a surrender of lease in registrable form with respect to the relevant part of the Premises (and any ancillary areas) affected by the change in Law or Requirement together with the Termination Payment. Unless access can be provided to the surrendered area in accordance with clause 7.1(e) (iv) (B), in determining the area to be partially surrendered the Lessee must ensure that the surrendered area is not landlocked.
- (ii) At any time during the Term the Lessee may at its option and at its Cost:
  - (A) partially surrender this Lease by giving to the Lessor a surrender of lease in registrable form with respect to any Non-Make Good Buildings together with the Termination Payment; and
  - (B) in determining the area to be partially surrendered the Lessee must:

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- (1) ensure that there is 6 metres clearance from the perimeter of the surrendered area to the nearest building; and
  - (2) unless access can be provided to the surrendered area in accordance with clause 7.1(e) (iv) (B) ensure that the surrendered area is not landlocked.
- (iii) Neither party will have any further obligation to the other under this Lease following the date of service on the Lessor of the termination notice or partial surrender of lease and the relevant Termination Payment under clause 7.1(e) (i) or 7.1(e) (ii) (but limited with respect to the area of the Premises surrendered in the case of clauses 7.1(e) (i) (B) and 7.1(e) (ii)), except for any pre-existing breach.

(iv) If clause 7.1(e) (i) (B) or 7.1(e) (ii) applies:

- (A) the Rent and Outgoings under this Lease shall reduce proportionately by reference to the area of the Premises surrendered (with any dispute to be determined under clause 14) with effect from the date of service on the Lessor of the notice of termination or partial surrender of lease and the relevant Termination Payment (as the case may be);
- (B) the Lessee must permit the Lessor and persons authorised by it to have a reasonable means of access through the Premises to the surrendered area, so long as that means of access and the use of it do not have a material adverse impact on the Lessee's use or operation of the Premises; and
- (C) the definition of Outgoings will be amended to include reasonable security costs actually incurred by the Lessor arising from multiple occupancies of the Land.

#### 7.2 LESSOR'S RIGHT OF INSPECTION

The Lessor may in the presence of a responsible officer of the Lessee at all reasonable times on giving to the Lessee reasonable notice enter the Premises and view the state of repair and condition.

#### 7.3 ENFORCEMENT OF REPAIRING OBLIGATIONS

The Lessor may:

- (a) (SERVE NOTICE) notify the Lessee of any failure by the Lessee to carry out within the time allowed by this Lease any repair, replacement or cleaning of the Premises which the Lessee is obliged to do under this Lease; and/or
- (b) (CARRY OUT REPAIR) require the Lessee to carry out that repair, replacement or cleaning within a reasonable time. If the Lessee fails to do so within a reasonable time having regard to the nature of the defect complained of and the length of time reasonably required to remedy that defect, the Lessor may elect to carry out that repair, replacement or cleaning at the Lessee's Cost (but wherever possible outside the usual operating hours of the Lessee). The Lessee shall on demand reimburse the Lessor for those Costs. The Lessor in exercise of its rights under this clause 7.3(b) shall:
  - (i) sign and/or procure signing by the Lessor's invitees of such confidentiality agreements as the Lessee may reasonably require;
  - (ii) endeavour not to cause any undue inconvenience to the Lessee and the conduct of the Lessee's Business; and
  - (iii) make good any damage caused to the Premises without delay.

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#### 7.4 LESSOR MAY ENTER TO REPAIR, DECONTAMINATE

If:

- (a) (LESSOR WISHES TO REPAIR) the Lessor wishes to carry out any repairs to the Premises considered necessary or desirable by the Lessor or in relation to anything which the Lessor is obliged to do under this Lease; or
- (b) (REQUIREMENTS OF AUTHORITY) any Authority requires any repair or work to be undertaken on the Premises (including any decontamination, remediation or other cleanup) which the Lessor must or in its absolute discretion elects to do and for which the Lessee is not liable under this Lease,

then the Lessor, its architects, workmen and others authorised by the Lessor may at all reasonable times on giving to the Lessee reasonable notice enter and carry out any of those works and repairs. In so doing the Lessor shall:

- (c) sign and/or procure signing by the Lessor's Employees of such

confidentiality agreements as the Lessee may reasonably require;

- (d) endeavour not to cause undue inconvenience to the Lessee and the conduct of the Lessee's Business, and
- (e) make good any damage caused to the Premises without delay.

The Lessor shall indemnify the Lessee on demand in respect of all Claims incurred or suffered by the Lessee as a consequence of the carrying out of works under this clause 7.4.

7.5 DELETED

7.6 ALTERATIONS TO PREMISES

- (a) (NO CONSENT REQUIRED) The Lessee is entitled to carry out any Proposed Work on or to the Premises without the need to seek or obtain Lessor's Consent except that the Lessee must obtain the Lessor's Consent prior to carrying out any structural Proposed Works:
  - (i) on or to any Make Good Buildings; or
  - (ii) which materially increase the footprint of the Non-Make Good Buildings,such Consent not to be unreasonably withheld or delayed.
- (b) (DEEMED CONSENT) If the Lessor does not respond conclusively to a request for Consent within 20 Business Days of the written request being served on it, the Lessor is deemed to have Consented to the relevant request.
- (c) (APPROVALS) The Lessee shall obtain all necessary approvals or permits before carrying out the Proposed Work.
- (d) (LESSOR TO ASSIST) The Lessor shall at the Lessee's Cost without delay do all acts and sign all documents to enable the Lessee to obtain the approvals and permits referred to in clause 7.6(c) and otherwise to enable the Lessee to carry out any Proposed Work in accordance with this Lease.
- (e) (SPECIFIC PROPOSED WORKS) Despite clause 7.6(a), the Lessor gives its consent to Proposed Work which relates to installation and removal of the Lessee's plant and equipment, including bolting or affixing to the floors of the Premises, subject to clauses 6.2 and 13.

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- (f) (CONDITION) The Lessor, acting reasonably, may require the Lessee to carry out remediation works as a condition of the Lessor's Consent to Proposed Work where Consent is required under clause 7.6(a) if the Proposed Works will, if implemented:
  - (i) trigger a Requirement to carry out those remediation works; or
  - (ii) render the Premises unsuitable for the Permitted Use unless the remediation works are carried out with the Proposed Work.

7.7 NOTICE TO LESSOR OF DAMAGE, ACCIDENT ETC.

The Lessee shall notify the Lessor of any:

- (a) (ACCIDENT) accident to or in the Premises; and/or
- (b) (NOTICE) circumstances reasonably likely to cause any damage or injury to occur within the Premises,

of which the Lessee has actual notice.

7.8 MAINTENANCE CONTRACTS

The Lessee shall at its own Cost enter into maintenance contracts for the fire fighting services and equipment servicing the Premises with contractors approved by the Lessee and in a form and on terms (whether as to cost, standard of service or otherwise) reasonably acceptable to the Lessee.



7.9 DELETED

7.10 LESSEE'S FITOUT AND FITTINGS

The Lessee's Fitout and Fittings shall at all times be and remain the property of the Lessee (or the lessor of the Lessee's Fitout and Fittings, if applicable) despite any particular method of annexation to the Premises.

7.11 TIMING FOR WORKS AND COMPLIANCE WITH REQUIREMENTS

Despite any other provision of this Lease:

- (a) the Lessee may carry out any maintenance, repair or replacement or other works or comply with any Law or Requirement which it is required under this Lease to do or comply with at such time as the Lessee (acting reasonably) determines except that the Lessee must still comply with:
  - (i) the timetable set out in the relevant Requirement to which any works relate; and
  - (ii) clause 13; and
- (b) subject to clause 7.11(a)(i), the Lessor agrees that the mere issue of a Requirement or the existence of a non-compliance with Law does not of itself:
  - (i) trigger the Lessee's obligation to comply with it; or
  - (ii) constitute a timetable to do any works; or
  - (iii) constitute a breach of this Lease by the Lessee;
- (c) the Lessor cannot (and shall not) take any steps or exercise any rights under this Lease or otherwise to cause the Lessee to remedy the non-compliance with Law or comply with the Requirement (or do so itself under clause 7.3 or otherwise), unless:
  - (i) clauses 7.11(a)(i) or (ii) apply; or

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- (ii) the relevant Authority is taking active steps to require the Lessor to remedy the non-compliance or comply with the Requirement and the Lessor will be exposed to liability or Cost if it does not do so; and
- (d) the Lessee may, in its absolute discretion, elect to demolish any asbestos clad or roofed Buildings rather than comply with the relevant Law or Requirement but the Rent will not be reduced if the Lessee does so.

7.12 SET OFF PROCEDURE

- (a) (NOTICE) If the Lessee wishes to set off any amount against the Rent, the Outgoings or any other amounts under this Lease in exercise of its rights under this Lease to do so, then the Lessee must give notice to the Lessor of the amount involved, reasonable detail of what the set off relates to and the provision of this Lease with respect to which the right is proposed to be exercised.
- (b) (NO RESPONSE) If the Lessor does not respond to this notice within 20 Business Days of service of it (time being of the essence), the Lessee is entitled to exercise the set off rights referred to in the notice in accordance with this Lease.
- (c) (DISPUTE) If the Lessor by notice to the Lessee disputes the Lessee's notice given under clause 7.12(a) within 20 Business Days of service of it (time being of the essence) and that dispute is not resolved within 5 Business Days of service of the Lessor's notice, either party may refer the matter to an appropriate independent person for determination under clause 14. The Lessee may not exercise any set off rights until any dispute under this clause has been determined or resolved.

8. ASSIGNMENT AND SUB-LETTING

8.1 NO DISPOSAL OF LESSEE'S INTEREST WITHOUT CONSENT

- (a) The Lessee may assign, transfer, sublet, licence or otherwise deal with or part with possession of the Premises or this Lease or any part of or any interest in them with the Consent of the Lessor which shall not be unreasonably withheld.
- (b) The Lessor Consents to all sub-leases, sub-licences or other sub-rights to occupy the Premises which are in existence as at the Effective Date, whether or not those arrangements have been documented or disclosed.

8.2 LESSOR'S OBLIGATION TO CONSENT

The Lessor must give the Consent referred to in clauses 8.1 and 8.5 if the Lessee proves to the reasonable satisfaction of the Lessor that the incoming tenant is a respectable, responsible and solvent Person and, in the case of an assignment or transfer, who is reasonably capable of performing the Lessee's obligations under this Lease.

8.3 JAMES HARDIE INDUSTRIES N.V. PROVISIONS

Despite clause 8.1, whilst the Lessee is James Hardie Australia Pty Limited or James Hardie Industries N.V. or a Related Body Corporate of either of those companies:

- (a) (SUBLETTING) the Lessee may sublet, licence or otherwise part with possession of the Premises without obtaining the Lessor's Consent if the proposed sublessee or licensee is James Hardie Australia Pty Limited or James Hardie Industries N.V. or a Related Body Corporate of either of those companies. The Lessee shall notify the Lessor upon granting a sublease or licence of this nature;

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- (b) (ASSIGNMENT) the Lessee may assign this Lease to a Related Body Corporate of James Hardie Australia Pty Limited or James Hardie Industries N.V. or to either of those companies without obtaining the Lessor's Consent but notice of the assignment must be given to the Lessor;
- (c) (SALE OF BUSINESS) if there is a sale to a purchaser of the business carried on by James Hardie Australia Pty Limited or James Hardie Industries N.V. (as the case may be) then the Lessor gives its consent to an assignment of this Lease to the purchaser;
- (d) (SHORT TERM SUBLEASE OR LICENCE) the Lessee may sublet or licence up to 1,000m2 of the Premises without the Lessor's Consent where the term of that sublease or licence (excluding any renewal or holding over period) does not exceed 12 months; and
- (e) (NOVATION) the Lessee may novate this Lease to a Related Body Corporate of James Hardie Australia Pty Limited or James Hardies Industries N.V. as long as at the same time the novation occurs the Lessee procures that a guarantee of the obligations of the new tenant under this Lease is given by James Hardie Industries N.V. in a form satisfactory to the Lessor (acting reasonably).

8.4 DEED

If the Lessor requests it, the Lessee shall procure that any assignee or transferee of this Lease executes a direct covenant with the Lessor to observe the terms of this Lease in such forms as the Lessor may reasonably require including payment of reasonable legal costs.

8.5 CHANGE IN CONTROL

- (a) If:
  - (i) the Lessee is a company which is neither listed nor directly or indirectly wholly-owned by a company which is listed on any recognised Stock Exchange; and
  - (ii) there is a proposed change in the shareholding of the Lessee or its holding company so that a different person or group of people will control the composition of the board of directors or more than 50% of the shares giving a right to vote at

general meetings of the Lessee,

then that proposed change in control is treated as a proposed assignment of this Lease and the Lessor's Consent must be obtained prior to the change in control taking effect.

- (b) The Lessor agrees that clause 8.5(a) will not apply to a change in shareholding or control where James Hardie Australia Pty Limited or a Related Body Corporate of James Hardie Australia Pty Ltd or James Hardie Industries N.V. remains or becomes:
- (i) the owner or ultimate holding company of the Lessee; or
  - (ii) in control of the composition of the board of directors of the Lessee; or
  - (iii) in control of more than 50% of the shares giving a right to vote at general meetings of the Lessee.

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## 9. INSURANCE AND INDEMNITIES

### 9.1 INSURANCES TO BE TAKEN OUT BY LESSEE

The Lessee shall:

- (a) (PUBLIC RISK) keep current during the Term (including any extension or Further Term or holding over) a public risk insurance policy with respect to the Premises, such policy to be for an amount of not less than the amount specified in Item 12;
- (b) (APPROVED INSURERS) ensure that all insurance policies maintained for the purposes of clause 9.1(a):
  - (i) (INSURANCE COMPANY) are taken out with an independent and reputable insurer; and
  - (ii) (AMOUNT) are for amounts and contain conditions reasonably acceptable to or reasonably required by the Lessor and/or the Lessor's insurer(s); and
- (c) (EVIDENCE OF INSURANCE) in respect of any policy of insurance to be effected by the Lessee under this clause 9.1, whenever reasonably required by the Lessor (but not more than once annually), give to the Lessor a copy of the certificate of currency; and
- (d) (INTEREST OF LESSOR) in respect of the policy of insurance to be effected by the Lessee under clause 9.1(a), ensure that the interest of the Lessor is noted,

except that the Lessee will be deemed to have complied with clauses 9.1(a) to (d) if James Hardie Australia Pty Limited or James Hardie Industries N.V. or a Related Body Corporate of either of those companies is the Lessee and that Lessee is insured under the global insurance arrangements of either of those companies.

### 9.2 INSURANCES TO BE TAKEN OUT BY LESSOR

The Lessor shall:

- (a) (PROPERTY INSURANCE) keep current during the Term including any extension or Further Term or holding over the property insurance for the Premises including loss of rent cover (capped at 18 months) referred to in paragraph (e) of the definition of Outgoings;
- (b) (APPROVED INSURERS) ensure that all insurance policies maintained for the purposes of clause 9.2(a):
  - (i) (INSURANCE COMPANY) are taken out with an independent and reputable insurer; and
  - (ii) (AMOUNT) are for amounts and contain conditions reasonably acceptable to or reasonably required by the Lessee and/or the Lessee's insurer(s); and
- (c) (EVIDENCE OF INSURANCE) in respect of any policy of insurance to be effected by the Lessor under this clause 9.2, whenever reasonably

required by the Lessee (but not more than once annually), give to the Lessee a copy of the certificate of currency and reasonable details of the policy coverage; and

- (d) (INTEREST OF LESSEE) in respect of the policy of insurance to be effected by the Lessor under clause 9.2(a), ensure that any interest of the Lessee is noted.

### 9.3 DEDUCTIBLES

The Lessor will not object to any reasonable deductibles contained in any insurances effected or required to be effected by the Lessee pursuant to clause 9.1 provided that the Lessee will indemnify the Lessor to the extent of the deductible applicable under a Claim to which those insurances apply.

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### 9.4 INFLAMMABLE SUBSTANCES

The Lessee shall not:

- (a) (REASONABLE QUANTITIES) other than as is necessary for the Lessee's Business, store chemicals, inflammable liquids, acetylene gas or alcohol, volatile or explosive oils, compounds or substances on or in the Premises; or
- (b) (USE) use any of those substances or fluids in the Premises for any purpose other than the Lessee's Business.

This clause 9.4 does not apply to anything in underground storage tanks on the Premises which exist at the Effective Date.

### 9.5 EFFECT ON LESSOR'S INSURANCES

The Lessee shall not without the Lessor's Consent, do anything to or on the Premises which will or may:

- (a) (INCREASE THE RATE OF INSURANCE) increase the rate of any insurance on the Premises or on any property in them, of which the Lessee has been notified by the Lessor, without paying to the Lessor an amount equal to the amount of that increase; or
- (b) (AVOID INSURANCE) vitiate or render void or voidable any insurance, of which the Lessee has been notified by the Lessor, in respect of the Premises or any property in them.

### 9.6 INSURANCE PROPOSAL BY THE LESSEE

- (a) If the Lessee is of the opinion that the Lessee will be able to procure the same insurance required to be obtained by the Lessor under clause 9.2(a) at a more competitive premium or on better terms, the Lessee may by notice in writing to the Lessor propose that it take out a policy for the insurance referred to in clause 9.2(a), noting the Lessor's interests as landlord (INSURANCE PROPOSAL). The Lessee can only submit an Insurance Proposal once per year.
- (b) The insurer proposed must be either rated A or higher by S&P or Moodys or a global insurer with respect only to the industrial special risks component of the Insurance Proposal.
- (c) The Lessor must not unreasonably withhold, condition or delay its approval of an Insurance Proposal.
- (d) If the Lessor approves the Insurance Proposal, the Lessee must promptly take out the insurance policy proposed under the Insurance Proposal (or, if the Lessor has failed to effect insurance under clause 9.2(a), the Lessee may take out the insurance policy anticipated by that clause) noting the Lessor's interests as landlord and, if required by the Lessor in writing, must note the interest of any financier to the Lessor and any mortgagee of the Land.
- (e) If the Lessee effects insurance under clause 9.6(d) and the Lessor is not named as an insured party, the Lessee shall reimburse the Lessor for any premiums for "difference in cover" insurance the Lessor is required to effect as a result of the requirements of its

financiers, capped at 3% of the premiums payable by the Lessee under its Insurance Proposal.

## 9.7 INDEMNITIES

Even if:

- (a) (AUTHORISATION) a Claim results from something the Lessee may be authorised or obliged to do under this Lease; and/or

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- (b) (WAIVER) a waiver or other indulgence has been given to the Lessee in respect of an obligation of the Lessee under this clause 9.7,

the Lessee, except to the extent caused or contributed to by the Lessor or its Employees but only to the extent caused or contributed to by the Lessee or its Employees, shall indemnify the Lessor in respect of all Claims for which the Lessor will or may be or become liable, whether during or after the Term, in respect of or arising directly or indirectly from:

- (c) (INJURY TO PROPERTY OR PERSON) any loss, damage or injury to property or person, in on or near the Premises caused or contributed to by:
- (i) (NEGLIGENCE) any wilful or negligent act or omission;
  - (ii) (DEFAULT) any default under this Lease; and/or
  - (iii) (USE) the use of the Premises,
- by or on the part of the Lessee or the Lessee's Employees;
- (d) (ABUSE OF SERVICES) the negligent or careless use or neglect of the Services and facilities of the Premises or the Appurtenances by the Lessee or the Lessee's Employees or any other person claiming through or under the Lessee;
- (e) (WATER LEAKAGE) any overflow or leakage (including rain water or from any Service, Appurtenance or the Lessor's Fixtures) whether originating inside or outside the Premises; and
- (f) (PLATE GLASS) any loss, damage or injury relating to plate and other glass caused or contributed to by any act or omission on the part of the Lessee or the Lessee's Employees,

but excluding any consequential loss.

## 10. DAMAGE, DESTRUCTION AND RESUMPTION

### 10.1 DAMAGE TO OR DESTRUCTION OF PREMISES

If at any time the Premises or any part of them are damaged or destroyed so that the Premises or any part of them are wholly or substantially unfit for the occupation and use of the Lessee or (having regard to the nature and location of the Premises and the normal means of access) are wholly or substantially inaccessible then, save where such damage or destruction arises out of the wilful or negligent act or omission of the Lessee or its Employees:

- (a) (i) (RENT AND OUTGOINGS ABATEMENT) the Rent, the Outgoings and any other money payable periodically under this Lease, or a proportionate part of that Rent, the Lessee's Proportion of Outgoings or other moneys according to the nature and extent of the damage or destruction sustained, will abate; and
- (ii) (REMEDIES SUSPENDED) all remedies for recovery of Rent, the Lessee's Proportion of Outgoings and other moneys (or that proportionate part of them, as the case may be) falling due after that damage or destruction will be suspended,

until the Premises have been restored or made fit for the occupation and use or made accessible to a standard equivalent to that at the Effective Date and all Services, air conditioning and air ventilation systems and fire fighting services and equipment for the Premises have been repaired so that they operate at a standard not less than as at the Effective Date;

- (b) (TERMINATION BY LESSEE) if the Premises are substantially destroyed, damaged or rendered inaccessible due to the wilful or negligent act or omission of the Lessor or by default by the Lessor under the Lease, the Lessee shall have the right to terminate the Lease by notice to the Lessor and to claim damages;
- (c) (REINSTATEMENT BY LESSOR) unless:
- (i) (NO INSURANCE MONEYS) the Lessor's insurance policies have been invalidated or payment of insurance moneys under the policies refused because of some wilful act or omission of the Lessee or the Lessee's Employees;
- (ii) (LESSEE INSURES) if clause 9.6(d) applies, the Lessee does not make the proceeds of the insurance referred to in clause 9.2(a) available to the Lessor for reinstatement of the Premises; or
- (iii) (AGREEMENT) the parties agree otherwise,
- the Lessor shall proceed with all reasonable expedition and diligence to reinstate the Premises and/or make the Premises fit for the occupation and use of and/or accessible to the Lessee to the standard required by clause 10.1(a);
- (d) (DETERMINATION BY LESSEE) where it is required under clause 10.1(c), unless the Lessor obtains all necessary development consents to authorise the necessary works to be done and provides reasonable written evidence of that to the Lessee within 6 months of the destruction or damage first occurring, then the Lessee may terminate this Lease by giving not less than one month's notice to the Lessor. At the end of that notice period this Lease will be at an end;
- (e) (i) (DELAY IN REPAIR) if the Lessor is obliged under clause 10.1(c) to do so, but does not:
- (A) substantially commence the necessary works to make good the destruction or damage within 8 weeks, subject to any reasonable extension necessary to obtain approvals from any relevant Authority; and/or
- (B) complete the necessary works to make good the destruction or damage within 9 months, subject to any reasonable extension necessary to obtain approvals from any relevant Authority,
- of it first occurring, then the Lessee may (by notice to the Lessor) proceed to cause the necessary works to be carried out and the Lessor shall allow the Lessee, its Employees, contractors and workmen access to the Land for that purpose; and
- (ii) (COSTS) all Costs of any kind incurred by the Lessee under clause 10.1(e)(i) shall at the Lessee's option (but subject to clause 7.12):
- (A) (DEMAND) be payable by the Lessor to the Lessee on demand on a full indemnity basis;
- (B) (PROCEEDS) be paid from available proceeds of the insurance effected under clause 9.2(a), which the Lessor must promptly make available to the Lessee; or
- (C) (COMBINATION) be accounted for by a combination of the above in the Lessee's discretion,
- until all Costs incurred by the Lessee have been recovered; and
- (f) (NO OBLIGATION TO RE-INSTATE) if the circumstances in clauses 10.1(c)(i) or (ii) exist, then the Lessor shall be under no obligation to reinstate the Premises or the means of access to them. In that case, either party may terminate this Lease by giving not less than one month's notice to the other.

10.2 RESUMPTION OF PREMISES

If at any time the whole or any part of the Premises is resumed so that the residue of them is wholly or partially unfit for the occupation and use of the Lessee or (having regard to the nature and location of the Premises and the normal means of access) is wholly or partially inaccessible, then:

- (a) (RENT ABATEMENT) a proportionate part of the Rent, the Lessee's Proportion of Outgoings, and any other moneys payable periodically under this Lease, according to the nature and extent of the resumption and having regard to the resultant impact on the Lessee's trade and takings, will abate; and
- (b) (REMEDIES SUSPENDED) all remedies for recovery of that proportionate part of the Rent, the Lessee's Proportion of Outgoings, and other moneys falling due after that resumption will be suspended.

10.3 LIABILITY

Except under clause 10.1(b), neither the Lessor or the Lessee is liable because of the determination of this Lease under this clause 10. That determination will be without prejudice to the rights of either party in respect of any preceding breach or non-observance of this Lease.

10.4 DISPUTE

Any dispute-arising under clauses 10.1 or 10.2 shall be determined by an appropriate independent person under clause 14.

11. LESSOR'S COVENANTS AND WARRANTIES

11.1 QUIET ENJOYMENT

If the Lessee pays the Rent and other money payable under this Lease and observes and performs its obligations under this Lease, the Lessee may occupy and enjoy the Premises during the Term and any extension or Further Term or holding over without any interruption by the Lessor or by any person rightfully claiming through, under or in trust for the Lessor, or the Lessor's Employees.

11.2 OUTGOINGS

Without limiting the Lessor's rights of recovery under this Lease, and except where directly payable by the Lessee under this Lease, the Lessor shall pay all Outgoings promptly and, where applicable, by any due date for payment.

11.3 CONSENT OF MORTGAGEE

The Lessor warrants that it has obtained all Consents (including Consents from any mortgagee of the Land) necessary for it to enter into this Lease.

11.4 DELETED

11.5 ACCESS

The Lessor must provide the Lessee with access to the Premises 24 hours a day, 7 days a week.

11.6 MANAGEMENT OF LAND

The Lessor covenants with the Lessee that it will not subdivide or reconfigure the Land or create any easement, covenant or other right unless it obtains the Consent of the Lessee (which Consent shall not be unreasonably withheld). The Lessee may only withhold its Consent under this clause 11.6 if the actions proposed by the Lessor

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will have a material adverse impact on the Lessee's rights under this Lease or the Lessee's Business or the Lessee's use of the Premises or the Land. Any dispute under this Clause 11.6 may be referred by either party for determination under Clause 14.

11.7 CONSTRUCTION

The Lessee acknowledges that during the Term the Lessor may (if clauses 18.2(a) or 18.3(a) apply) redevelop parts of the Land which are no longer included in this Lease and that it may be disturbed by resulting construction dust and noise. However, during any construction or redevelopment on the Land, the Lessor must:

- (a) (ACCESS) do all things necessary to minimise disturbance to the Lessee in its access to, use and occupation of the Premises except that the Lessor may interrupt Services for a maximum period of 24 hours during non-shift time after consultation with and prior agreement of the Lessee or at other times as the Lessee may agree;
- (b) (BUSINESS) do all things necessary to minimise disruption to the Lessee's Business conducted in the Premises.

11.8 COMPETITORS

The Lessor covenants with the Lessee that it will not grant any lease or right of occupancy of or right to erect, install, affix, paint or otherwise display signage or advertising on any part of the Land or sell the Land or any part of it to any Competitor without the Consent of the Lessee.

11.9 BREACH OF WARRANTY OR COVENANT

If the Lessor breaches clauses 11.5, 11.6, 11.7 or 11.8 then, without prejudice to any other rights or remedies the Lessee may have, the Lessee at any time and in its absolute discretion shall be entitled to give the Lessor notice of an intention to terminate this Lease unless the Lessor satisfies the conditions contained in the notice within 20 Business Days or such longer period as may be reasonably required having regard to the nature of the breach and the time reasonably required to remedy the breach (the REMEDY PERIOD). If the conditions are not satisfied within the Remedy Period, the Lessee may in its absolute discretion terminate this Lease at any time after that.

12. DEFAULT AND DETERMINATION

12.1 DEFAULT

Each of the following is an Event of Default (whether or not it is in the control of the Lessee):

- (a) (RENT IN ARREARS) the Rent or any part of it or any other money is in arrears and unpaid for 15 Business Days after it is due and has been demanded;
- (b) (FAILURE TO PERFORM OTHER COVENANTS) subject to clause 7.11, the Lessee fails to perform or observe any of its other obligations under this Lease within 15 Business Days or such longer period that may be reasonable in the circumstances after service of a notice requiring performance of the covenants; and
- (c) (LIQUIDATION) the Liquidation of the Lessee.

12.2 FORFEITURE OF LEASE

If an Event of Default occurs the Lessor may, without prejudice to any other Claim which the Lessor has or may have or could otherwise have against the Lessee or any other person in respect of that default, at any time:

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- (a) (DETERMINATION BY RE-ENTRY) subject to any prior demand or notice as is required by Law and wherever possible, outside the normal trading hours of the Lessee, re-enter into and take possession of the Premises or any part of them (by force if necessary) and eject the Lessee and all other persons from them, in which event this Lease



will be at an end; and/or

- (b) (DETERMINATION BY NOTICE) by notice to the Lessee determine this Lease, and from the date of giving that notice this Lease will be at an end.

12.3 WAIVER

- (a) (WAIVER BY LESSOR) No consent or waiver express or implied by the Lessor to or of any breach of any covenant, condition, or duty of the Lessee shall be construed as a consent or waiver to or of any breach of the same or any other covenant, condition or duty.
- (b) (WAIVER BY LESSEE) No consent or waiver express or implied by the Lessee to or of any breach of any covenant, condition, or duty of the Lessor shall be construed as a consent or waiver to or of any breach of the same or any other covenant, condition or duty.

12.4 LESSOR TO MITIGATE DAMAGES

If the Lessee vacates the Premises, whether with or without the Lessor's Consent, or the Lessor terminates or forfeits this Lease, the Lessor shall take all reasonable steps to mitigate its loss and shall as soon as possible endeavour to re-let the Premises at a reasonable rent and on reasonable terms.

12.5 RECOVERY OF DAMAGES

- (a) (FUNDAMENTAL TERMS) The obligations contained in clauses 4.1, 4.2, 4.3, 4.4, 4.5, 5.3, 5.5, 6.1(a), 7.1(a) and (d), 7.6(a), 8.1, 9.1, 10.1 and 10.3 are agreed by the Lessor and the Lessee to be fundamental to this Lease.
- (b) (DAMAGES) If the Lessor determines this Lease pursuant to this clause 12 as a consequence of or in reliance upon a breach by the Lessee of one or more of the obligations contained in the provisions of this Lease referred to in clause 12.5(a) (whether alone or together with other obligations contained in this Lease) the Lessor shall, subject to clause 12.4, be entitled to damages for loss of the benefits which performance of all of the obligations and provisions of this Lease would, but for the determination, have conferred upon the Lessor, subject to the Lessor's duty to mitigate its loss.

12.6 INTEREST ON OVERDUE MONEY

- (a) (INTEREST) The Lessee shall pay to the Lessor interest at the Interest Rate on any Rent or other money due under this Lease (including money or Costs which are expressed to be payable or reimbursable to the Lessor on demand) but unpaid for 5 Business Days.
- (b) (CONDITIONS) That interest shall:
  - (i) (ACCRUAL) accrue on a daily basis and be calculated on daily rests;
  - (ii) (PAYMENT) be payable on demand or, if no earlier demand is made, on the first Business Day of each month where an amount arose in the preceding month or months;
  - (iii) (CALCULATION) be calculated from the due date for payment of the Rent or other money (as appropriate) or, in the case of an amount payable by way of reimbursement or indemnity, the date of outlay or loss, if earlier, until the date of actual payment; and

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- (iv) (RECOVERY) be recoverable in the same manner as Rent in arrears.

13. TERMINATION

13.1 YIELD UP

In relation to the Premises (other than the Non Make Good Buildings), the Lessee shall at the Terminating Date:

- (a) (YIELD UP) yield them up in the state of repair and condition described in and on the terms set out in clause 7.1 except that the Lessee is not obliged to remove any Proposed Work it has done during the Term nor to reinstate the Premises to their former condition unless that was a condition of the Lessor's Consent to that Proposed Work being carried out by the Lessee; and
- (b) (REMOVE LESSEE'S FITOUT AND FITTINGS) if the Lessor so requests or if the Lessee wishes to, remove from the Premises (other than the Non-Make Good Buildings) all the Lessee's Fitout and Fittings and any other property of the Lessee and repaint those parts of the Premises (other than the Non-Make Good Buildings) which were previously painted and recarpet those parts of the Premises (other than the Non-Make Good Buildings) which were carpeted at the Effective Date with carpet of such quality as was installed at the Effective Date.

13.2 NON MAKE GOOD BUILDINGS

In relation to the Non Make Good Buildings:

- (a) (REMOVE LESSEE'S FITOUT AND FITTINGS) if the Lessor so requests the Lessee shall or if the Lessee wishes to the Lessee may, remove from the Premises all the Lessee's Fitout and Fittings and any other property of the Lessee; and
- (b) (ANY CONDITION) the Lessee can deliver them up to the Lessor in any condition, subject to performance of the Lessee's obligations in clause 7.1(d) which are due to be performed prior to the Terminating Date and under clause 13.2(a).

13.3 LESSEE NOT TO CAUSE DAMAGE

The Lessee shall:

- (a) (NOT CAUSE DAMAGE) not cause or contribute to any damage to the Premises (other than the Non Make Good Buildings) in the removal of the Lessee's Fitout and Fittings and other property of the Lessee. If it does, however, it shall make good that damage; and
- (b) (LEAVE PREMISES IN GOOD STATE) leave the Premises in a clean state and Condition.

If the Lessee fails to comply with clauses 13.1, 13.2 and 13.3(a) and (b) within a reasonable time of the Terminating Date, the Lessor may make good and/or clean the Premises to the extent the Lessee was obliged to do so at the Cost of and as agent for the Lessee and recover from the Lessee the Cost to the Lessor of doing so as a liquidated debt payable on demand. The Lessee must also pay Rent and the Lessee's Proportion of Outgoings for any reasonable period in which the Lessor undertakes the Lessee's obligations under this clause 13.3.

13.4 FAILURE BY LESSEE TO REMOVE LESSEE'S FITOUT AND FITTINGS

If the Lessee fails to remove the Lessee's Fitout and Fittings and other property of the Lessee when required to do so under clauses 13.1 or 13.2 or following determination under clause 12.2, within 30 Business Days of notice to

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do so, the Lessor may cause the Lessee's Fitout and Fittings and other property of the Lessee to be removed and stored in such manner as the Lessor in its discretion thinks fit at the risk and Cost of the Lessee. The Lessee must also pay Rent and the Lessee's Proportion of Outgoings for any reasonable period in which the Lessor undertakes the Lessee's obligations under this clause 13.4.

13.5 FAILURE TO REMOVE

If the Lessee fails to remove the Lessee's Fitout and Fittings and other property of the Lessee by the Terminating Date under clauses 13.1 and 13.2 where the Lessor has not requested in writing that it do so, it shall then become the property of the Lessor.

14. DISPUTES

14.1 APPOINTMENT OF EXPERT

Any dispute arising under this Lease may at the request of either party be referred for determination by an appropriate independent person who is:

- (a) (AGREED BY PARTIES) agreed between the Lessor and the Lessee; or
- (b) (FAILING AGREEMENT) if they cannot agree, a member of a professional body nominated at the request of either the Lessor or the Lessee by the President of the Property Council of Australia Limited.

14.2 QUALIFICATIONS OF EXPERT

The appointed person:

- (a) (EXPERIENCE) must have substantial experience in relation to disputes in the nature of the matter in dispute and where appropriate, in relation to premises of a similar type within the area in which the Premises are located or other comparable areas; and
- (b) (EXPERT) in making his determination shall act as an expert and not as an arbitrator.

His determination will be final and binding on the parties.

14.3 COST OF DETERMINATION

The Cost of the appointed person's determination shall be borne by either or both of the parties (as determined by the appointed person) and if by both of the parties in the proportion between them as the person making the determination decides.

15. ENVIRONMENTAL CONTAMINATION

15.1 LESSEE'S RESPONSIBILITY

Despite any other provision of this Lease except clauses 15.4 and 15.5(b) and (c) and the Lessee's obligations with respect to underground storage tanks and any Environmental contamination associated with them under clause 7.1(d), the Lessee is not responsible for:

- (a) inground Environmental contamination of the Land or migrating onto or from the Land which exists at the Effective Date; or
- (b) for any Environmental contamination in, on, under or migrating onto or from the Land which occurs on and after the Effective Date which is not caused by the Lessee or its Employees.

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15.2 LESSOR'S OBLIGATIONS AND INDEMNITY

The Lessor shall:

- (a) (COMPLY) without delay, but subject to clauses 15.4 and 15.5(b) and (c):
  - (i) remediate any Environmental contamination referred to in clause 15.1 and which:
    - (A) any Authority requires remediated; or
    - (B) the parties agree or the expert under clause 14 determines is required pursuant to clause 15.2(c); and
  - (ii) comply with the Requirements of any Authority and the Law with respect to the Environmental contamination referred to in clause 15.1; and
- (b) (INDEMNIFY) indemnify the Lessee against all Claims arising from the matters set out in clause 15.2(a) including any Costs arising from any agreement negotiated by or with the consent of the Lessor acting reasonably with any Authority relating to the matters referred to in clause 15.2(a) except to the extent that:
  - (i) other than with respect to Environmental contamination which constitutes a health and safety risk which the Lessee is

required to notify to an Authority by Law, the Lessee or the Lessee's Employees have taken action with the intention of causing a Claim to be made or a notice or other Requirement issued and that action directly or indirectly has a material effect in causing the Claim to be made or the notice or other Requirement to be issued;

- (ii) the Claim relates to Remediation to a standard higher than that required for industrial use (which the parties agree is the standard appropriate for the Permitted Use) whether arising from a rezoning of the Premises or otherwise; and/or
- (iii) any disposition by the Lessee of a legal or equitable interest which the Lessee has in the Premises is made on terms which include an indemnity in respect of the Environment which is materially more advantageous to the person receiving that interest from the Lessee than the indemnity included in this clause 15.2, including in respect of the qualifications applicable to the indemnity contained in this clause 15.2(b).

- (c) (i) If there is any Environmental contamination referred to in clause 15.1 which:
  - (A) prevents the Lessee operating from the Premises in the manner used at the Effective Date; or
  - (B) otherwise constitutes a health and safety risk,

then the Lessee may give notice to the Lessor with reasonable details of the Environmental contamination and requesting that the Lessor remediate that contamination.

- (ii) If the Lessor disputes whether the remediation requested by the Lessee is reasonably necessary, it must give notice to the Lessee within 20 Business Days of the date of service of the Lessee's notice under paragraph (i).
- (iii) If the Lessor and the Lessee cannot agree on whether the remediation requested by the Lessee is reasonably necessary within 25 Business Days of the date of service of the Lessee's notice under paragraph (i) above, then either party may refer the matter for dispute resolution under clause 14.

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### 15.3 REMEDIATION BY THE LESSEE IF LESSOR DEFAULTS

If:

- (a) (LESSOR'S FAILURE) the Lessor fails to comply with clause 15.2(a) in accordance with the Requirements of any Authority and the Law (or, if no time is specified, within a reasonable time of notice from the Lessee, having regard to the nature of the remediation or the Law or Requirement and the period of time reasonably required to carry out the remediation or comply with the Law or Requirement); or
- (b) (EMERGENCY) any emergency arises which requires the immediate or urgent remediation of Environmental contamination or compliance with a Requirement or the Law which the Lessor is required to remediate or comply with under this Lease,

then the Lessee may remediate the Environmental contamination or comply with the Law or the Requirement and the Cost of so doing and of all Claims incurred by the Lessee in properly complying with that Law or Requirement or arising from the Lessor's failure to do so and any reasonable Costs arising from temporary relocation of all or part of the Lessee's Business shall, at the Lessee's option be (but subject to clause 7.12):

- (c) (ON DEMAND) payable by the Lessor to the Lessee on demand on a full indemnity basis;
- (d) (SET OFF) be set off against the Rent, the Lessee's Proportion of Outgoings and any other moneys payable by the Lessee under this Lease; or
- (e) (COMBINATION) accounted for by a combination of the above in the Lessee's discretion,

until all Costs incurred by the Lessee have been recovered.

#### 15.4 PRE-EXISTING UST'S

The Lessee must by the Terminating Date remove any underground storage tanks existing on the Land at the Effective Date or installed by the Lessee during the Term and remediate or otherwise deal with any Environmental contamination associated with them to the extent required to enable the Land to continue to be used for industrial purposes following the Terminating Date.

#### 15.5 SPECIFIC OBLIGATIONS

- (a) Subject to clause 7.11, the Lessee must effect and maintain all Environmental management plans relating to the Environmental condition of the Buildings on the Premises which are Required by Law or any Authority during the Term.
- (b) Subject to clauses 7.11 and 15.5(c), the Lessee shall contribute up to a maximum of \$40,000 per annum (increased by 3% per annum on each anniversary of the Effective Date) towards the Costs of:
  - (i) day to day repair and maintenance of the pumping out equipment (but not capital or structural Costs); and
  - (ii) any pumping out of mobile contaminants (including petroleum hydrocarbons) identified in the groundwater of that part of the Land included in the Premises,which is Required by Law or any Authority during the Term or any balance in excess of this amount per annum shall be payable by the Lessor within 5 Business Days of receipt of a tax invoice and reasonable details of the amount claimed.
- (c) The Lessor must pay all capital Costs associated with the purchase, commissioning and, subject to the Lessee performing the repair and maintenance obligation referred to in clause 15.5(b), replacement of the remediation equipment required for the purposes of pumping out from the Premises and which is

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Required by Law or any Authority during the Term, within 5 Business Days of receipt of a tax invoice and reasonable details of the amounts claimed.

#### 15.6 RECOVERY FROM POLLUTER

The Lessor must:

- (a) include any pumping out Costs paid by the Lessee under clause 15.5(b) in any Claim against the polluter; and
- (b) reimburse to the Lessee any of those Costs recovered from the polluter within 5 Business Days of receipt (capped at the amounts actually incurred by the Lessee).

#### 15.7 ACKNOWLEDGEMENT

Without limiting any other provision of this clause 15, the Lessee acknowledges that the Premises are at the Effective Date subject to Environmental contamination and accepts the Premises in that state.

#### 16. MISCELLANEOUS

##### 16.1 NOTICES

All notices, requests, demands, consents, approvals, agreements or other communications to or by a party to this Lease:

- (a) (WRITING) must be in writing;
- (b) (SIGNED) must be signed by the sender, or if a company, by its Authorised Officer; and
- (c) (SERVED) will be taken to have been served:
  - (i) (PERSONAL) in the case of delivery in person, when delivered

to or left at the address of the recipient shown in this Lease (as the case may be) or at any other address which the recipient may have notified to the sender;

(ii) (FAX) in the case of facsimile transmission, when recorded on the transmission result report unless:

- (A) within 24 hours of that time the recipient informs the sender that the transmission was received in an incomplete or garbled form; or
- (B) the transmission result report indicates a faulty or incomplete transmission; and

(d) (MAIL) in the case of mail, on the third Business Day after the date on which the notice is accepted for posting by the relevant postal authority,

but if service is on a day which is not a Business Day in the place to which the communication is sent or is later than 4.00pm (local time) on a Business Day, the notice will be taken to have been served on the next Business Day in that place.

#### 16.2 STAMP DUTY, COSTS AND REGISTRATION

- (a) (STAMP DUTY AND REGISTRATION FEES) The Lessee shall pay to the Lessor on demand all stamp duty (including penalties and fines other than those incurred due to the fault of the Lessor) and all registration fees (if applicable) with respect to this Lease.
- (b) (LEGAL COSTS) Each party shall pay their own legal Costs with respect to this Lease.

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(c) (LESSOR TO STAMP AND REGISTER) The Lessor shall (subject to receipt of necessary funds from the Lessee) attend to payment of stamp duty on and registration of this Lease at the Department of Natural Resources and Mines, Brisbane as soon as possible after the Effective Date.

#### 16.3 SEVERANCE

Any provision of this Lease which is prohibited or unenforceable in any jurisdiction will be ineffective in that jurisdiction to the extent of the prohibition or unenforceability. That will not invalidate the remaining provisions of this Lease nor affect the validity or enforceability of that provision in any other jurisdiction.

#### 16.4 ENTIRE AGREEMENT

This Lease contains all the contractual arrangements of the parties with respect to the transaction to which it relates. No representations or warranties made by either party with respect to the transaction to which this Lease relates shall be actionable or enforceable except to the extent that they are contained in this Lease.

#### 16.5 GOVERNING LAW

This Lease is governed by the laws of Queensland. The parties submit to the non-exclusive jurisdiction of courts exercising jurisdiction there.

#### 17. CONFIDENTIALITY

(a) (DUTY) Unless the parties otherwise agree in any particular instance, the provisions of this Lease and all information disclosed to or obtained by the parties in relation to each other and this Lease and which is not in public knowledge (or which is in public knowledge only as a consequence of a breach of this clause) must be kept confidential to the parties and may not be disclosed (unless otherwise required by Law) except to any bona fide consultants retained by a party in relation to this Lease, or to bona fide purchasers, financiers, assignees or sub occupants (as the case may be) and any such consultant or other person must be provided only with that information which he needs to know for the purposes of reviewing this Lease and he must undertake in writing to maintain the confidentiality of that information.

- (b) (INDEMNITY) The parties shall indemnify each other and must keep each other indemnified against all Claims suffered or incurred as a consequence of any breach of clause 17(a) by the Lessor or the Lessee or their respective Employees, consultants or other reasons for whom they are responsible.

## 18. SURRENDER OF LEASE

### 18.1 DEFINITIONS

AUSCO SUBLEASE means the sublease between the Lessee and Ausco Pty Limited which commenced on 1 March 2004, including the further term under the put and call option contained in that sublease.

AUSCO SUBLEASE EXPIRY DATE means 30 March 2010.

AUSCO SUBLEASE PREMISES means the premises subleased to Ausco Pty Limited pursuant to the Ausco Sublease.

DEVELOPMENT LAND means that part of the Premises hatched on the plan in Annexure D.

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### 18.2 PARTIAL SURRENDER

- (a) At any time after the Ausco Sublease Expiry Date, the Lessee may surrender its interest in this Lease with respect to the Ausco Sublease Premises by notice to the Lessor. The Lessee is released from all obligations with respect to the Ausco Sublease Premises which arise after the date of service of that notice, subject to clause 18.2(b) and (c).
- (b) Despite any other provision of this Lease, on the date of service of the notice referred to in clause 18.2(a), the Lessee's Proportion of Outgoings payable under this Lease shall be reduced by an amount equal to the outgoings payable under the Ausco Sublease but the Rent will not reduce.
- (c) If the Lessee has exercised its right under clause 18.2(a), the Rent shall reduce by the amount which is 50% of the per annum rent payable in the last year of the Ausco Sublease on the date of practical completion of a new building on all or any part of the Ausco Sublease Premises. The Lessor must promptly give notice to the Lessee when the new lease commences.
- (d) The parties shall promptly do all things necessary to prepare, execute and register any documentation relevant to the surrender referred to in clause 18.2(a) and the variations to the Lease arising under clause 18.2(b) and 18.2(c).
- (e) The parties agree that despite any other provision of this Lease, the Lessor's Consent to any holding over, renewal, extension or new lease to Ausco of all or any part of the Ausco Sublease Premises is not required.

### 18.3 REDUCTION IN AREA OF PREMISES

- (a) (REDUCTION IN AREA) If the Lessor proposes to redevelop the Development Land, the Lessor may at any time during the Term by giving not less than 3 months notice to the Lessee (such notice attaching the registrable form of partial surrender of lease) require the Lessee to surrender this Lease with respect to the Development Land.
- (b) (CONSEQUENCES) If the Lessor gives notice to the Lessee under clause 18.3(a):
- (i) the Lessee's Proportion of Outgoings will be reduced in proportion to the reduction in the area of the Premises from the date of expiry of the Lessor's notice given under clause 18.3(a) but the Rent will not reduce;
- (ii) the Lessee and the Lessor must promptly execute all documentation reasonably necessary to document the partial surrender of this Lease at the Lessor's reasonable Cost;
- (iii) the Lessor shall pay any stamp duty (including fines and

penalties) chargeable on the partial surrender of this Lease and any survey or registration fees payable to enable the registration of the partial surrender of this Lease at the Department of Natural Resources and the Lessor must promptly attend to registration of the surrender;

- (iv) clauses 13.2, 13.3 and 13.4 shall apply with respect to the area surrendered;
- (v) the Lessee must:
  - (A) use reasonable commercial endeavours (other than making any payments) to secure a reasonable means of access to the Development Land through the Ausco Sublease Premises; or
  - (B) if the Lessee cannot satisfy paragraph (A) by the date of expiry of the Lessor's notice under clause 18.3(a) or such longer period as the Lessor and the Lessee may agree, then

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the Lessee must permit the Lessor and persons authorised by it to have through the balance of the Premises a reasonable means of access to the Development Land, so long as that access and the use of it do not have a material adverse impact on the Lessee's use or operation of the Premises; and

- (vi) neither party shall have any further obligation to the other with respect to the Development Land except for any pre-existing breach and clauses 11.6, 11.7 and 11.8.

## 19. LIMITATION OF LIABILITY

### 19.1 CAPACITY OF LESSOR

Where the Lessor is a trustee of a trust (TRUST), the Lessor only enters into this Lease in its capacity as trustee of the Trust and in no other capacity. A liability arising under or in connection with this Lease is limited and can be enforced against the Lessor only to the extent to which it can be satisfied out of property of the Trust and for which the Lessor is actually indemnified for the liability. This limitation of the Lessor's liability applies despite any other provisions of this Lease (except clause 19.3 ("When limitation does not apply")) and extends to all liabilities and obligations of the Lessor in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Lease, any other document in connection with it, or the Trust.

### 19.2 PARTIES MAY NOT SUE

The parties may not sue the Lessor in any capacity other than as trustee of the Trust, including seeking the appointment of a receiver, a liquidator, an administrator or similar person to the Lessor or prove in any liquidation, administration or arrangement of or affecting the Lessor (except in relation to property of the Trust).

### 19.3 WHEN LIMITATION DOES NOT APPLY

Clauses 19.1 and 19.2 shall not apply to any obligation or liability of the Lessor to the extent that it is not satisfied because, under this Lease or any other document in connection with it, or by operation of law, there is a reduction in the extent of the Lessor's indemnification out of the assets of the Trust, as a result of the Lessor's fraud, negligence or breach of trust.

### 19.4 FAILURE BY THIRD PARTIES

It is acknowledged that the Lessor is responsible under this Lease and other documents in connection with it for performing a variety of obligations relating to the Trust. No act or omission of the Lessor will be considered fraud or negligence of the Lessor for the purposes of clauses 19.3 ("When limitation does not apply") or 19.5 ("Breach by the Lessor") to the extent to which the act or omission was caused by any failure by any person who provides services in respect of the Trust to fulfil its obligations relating to the Trust or by any other act or



omission of any person who provides services in respect of the Trust (other than employees and agents of the Lessor or a person who has been delegated or appointed by the Lessor).

#### 19.5 BREACH BY THE LESSOR

It is also acknowledged that a breach of an obligation imposed on, or a representation or warranty given by, the Lessor under or in connection with this Lease or any other document in connection with it will not be considered a breach of trust by the Lessor unless the Lessor has acted with negligence, or without good faith, in relation to the breach.

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#### 20. TRUST WARRANTIES

Where the Lessor is a trustee and/or responsible entity of a Trust, the Lessor warrants in its personal capacity that:

- (a) (TRUSTEE) it is the sole trustee of the Trust;
- (b) (POWER) it, in its capacity as trustee of the Trust, is entitled and competent and has absolute and complete authority, power and capacity to enter into and perform its obligations under this Lease and is not in breach of any Law or court order relating to its acting as trustee of the Trust;
- (c) (INDEMNITY) its right of indemnity out of, and lien over, the assets of the Trust has not been limited in any way and that right has priority over the right of the beneficiaries to the Trust assets;
- (d) (ENFORCEABLE) the deed establishing the Trust (TRUST DEED) is enforceable in accordance with the Law applicable to it;
- (e) (CONSENT) the consent of each of the beneficiaries, unitholders or other persons whose consent is required under the Trust Deed has been obtained;
- (f) (NO BREACH) the entry into this Lease by the Lessor does not conflict with or result in a breach of, or default under, any provision of the Trust Deed or any other agreement to which the Lessor is a party (whether in its capacity as trustee of the Trust or its personal capacity);
- (g) (TRUST EXTANT) the Trust has not at the Effective Date been terminated nor has the date or any event for the vesting of the assets subject to the Trust occurred.

#### 21. GUARANTEE AND INDEMNITY

##### 21.1 CONSIDERATION

The Guarantor gives this guarantee and indemnity in consideration of the Lessor agreeing to enter into this Lease at the request of the Guarantor. The Guarantor acknowledges the receipt of valuable consideration from the Lessor for the Guarantor incurring obligations and giving rights under this guarantee and indemnity.

##### 21.2 GUARANTEE

The Guarantor unconditionally and irrevocably guarantees to the Lessor the due and punctual performance and observance by the Lessee of its obligations:

- (a) under this Lease, even if this Lease is not registered or is found not to be a lease or is found to be a lease for a term less than the Term; and
- (b) in connection with its occupation of the Premises,

including the obligations to pay money.

##### 21.3 INDEMNITY

As a separate undertaking, the Guarantor unconditionally and irrevocably indemnifies the Lessor against all liability or loss arising from, and any costs, charges or expenses incurred in connection with:

- (a) the Lessee's breach of this Lease; or
  - (b) the Lessee's occupation of the Premises,
- including a breach of the obligations to pay money; or

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- (c) a representation or warranty by the Lessee in this Lease being incorrect or misleading when made or taken to be made; or
- (d) a liquidator disclaiming this Lease.

It is not necessary for the Lessor to incur expense or make payment before enforcing that right of indemnity.

#### 21.4 INTEREST

The Guarantor agrees to pay interest on any amount payable under this guarantee and indemnity from when the amount becomes due for payment until it is paid in full. The Guarantor must pay accumulated interest at the end of each month without demand. Interest is payable as set out in clause 12.6.

#### 21.5 ENFORCEMENT OF RIGHTS

The Guarantor waives any right it has of first requiring the Lessor to commence proceedings or enforce any other right against the Lessee or any other person before claiming under this guarantee and indemnity.

#### 21.6 CONTINUING SECURITY

This guarantee and indemnity is a continuing security and is not discharged by any one payment.

#### 21.7 GUARANTEE NOT AFFECTED

The liabilities of the Guarantor under this guarantee and indemnity as a guarantor, indemnifier or principal debtor and the rights of the Lessor under this guarantee and indemnity are not affected by anything which might otherwise affect them at law or in equity including, but not limited to, one or more of the following:

- (a) the Lessor granting time or other indulgence to, compounding or compromising with or releasing the Lessee or any other Guarantor;
- (b) acquiescence, delay, acts, omissions or mistakes on the part of the Lessor;
- (c) any transfer of a right of the Lessor;
- (d) the termination, surrender or expiry of, or any variation, assignment, subletting, licensing, extension or renewal of or any reduction or conversion of the Term of this Lease;
- (e) the invalidity or unenforceability of an obligation or liability of a person other than the Guarantor;
- (f) any change in the Lessee's occupation of the Premises;
- (g) this Lease not being registered;
- (h) this Lease not being effective as a lease;
- (i) this Lease not being effective as a lease for the Term;
- (j) any person named as Guarantor not executing or not executing effectively this guarantee and indemnity;
- (k) a liquidator disclaiming this Lease.

#### 21.8 SUSPENSION OF GUARANTOR'S RIGHTS

The Guarantor may not:

- (a) raise a set-off or counterclaim available to it or the Lessee against the Lessor in reduction of its liability under this guarantee and indemnity; or

</TABLE>

- (b) claim to be entitled by way of contribution, indemnity, subrogation, marshalling or otherwise to the benefit of any security or guarantee held by the Lessor in connection with this Lease; or
- (c) make a claim or enforce a right against the Lessee or its property; or
- (d) prove in competition with the Lessor if a liquidator, provisional liquidator, receiver, administrator or trustee in bankruptcy is appointed in respect of the Lessee or the Lessee is otherwise unable to pay its debts when they fall due,

until all money payable to the Lessor in connection with the lease or the Lessee's occupation of the Premises is paid.

#### 21.9 REINSTATEMENT OF GUARANTEE

If a claim that a payment to the Lessor in connection with this Lease or this guarantee and indemnity is void or voidable (including, but not limited to, a claim under laws relating to liquidation, administration, insolvency or protection of creditors) is upheld, conceded or compromised then the Lessor is entitled immediately as against the Guarantor to the rights to which it would have been entitled under this guarantee and indemnity if the payment had not occurred.

#### 21.10 COSTS

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

- (a) the Lessor's costs, charges and expenses in making, enforcing and doing anything in connection with this guarantee and indemnity including, but not limited to, legal costs and expenses on a full indemnity basis; and
- (b) all stamp duties, fees, taxes and charges which are payable in connection with this guarantee and indemnity or a payment, receipt or other transaction contemplated by it.

Money paid to the Lessor by the Guarantor must be applied first against payment of costs, charges and expenses under this clause 21.10 then against other obligations under this guarantee and indemnity.

#### 21.11 LESSOR MAY ASSIGN

The Lessor may assign its rights under this guarantee and indemnity to a purchaser or transferee of the Land.

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THIS IS ANNEXURE B OF 5 PAGES TO THE AMENDMENT BETWEEN AMACA PTY LIMITED (ACN 000 035 512) (LESSOR), JAMES HARDIE AUSTRALIA PTY LIMITED (ACN 084 635 558) (LESSEE) AND JAMES HARDIE INDUSTRIES N.V. (ARBN 097 829 895) (GUARANTOR) DATED 23 MARCH 2004

LESSOR'S ASSET REGISTER

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THIS IS ANNEXURE C OF 3 PAGES TO THE AMENDMENT BETWEEN AMACA PTY LIMITED (ACN 000 035 512) (LESSOR), JAMES HARDIE AUSTRALIA PTY LIMITED (ACN 084 635 558) (LESSEE) AND JAMES HARDIE INDUSTRIES N.V. (ARBN 097 829 895) (GUARANTOR) DATED 23 MARCH 2004

MAKE GOOD BUILDINGS AND NON MAKE GOOD BUILDINGS PLANS

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Form: 07VL  
 Release: 1  
 www.lpi.nsw.gov.au

VARIATION OF LEASE  
 New South Wales  
 Real Property Act 1900

PRIVACY NOTE: THIS INFORMATION IS LEGALLY REQUIRED AND WILL BECOME  
 PART OF THE PUBLIC RECORD

STAMP DUTY Office of State Revenue use only

(A) LAND Torrens Title  
 Folio Identifier 102/868623

(B) HEAD LEASE Number Torrens Title

(C) LODGED BY Delivery Name, Address or DX and Telephone  
 Box  
 46X ALLENS ARTHUR ROBINSON  
 DX 105, SYDNEY  
 Reference: 2403154 NSW

(D) LESSOR Amaca Pty Limited (ACN 000 035 512)

(E) LEASE VARIED 5595975C

(F) LESSEE James Hardie Australia Pty Limited (ACN 084 635 558)

(G) 1. The rent is increased to three million, five hundred thousand dollars  
 and \_\_ cents (\$3,500,000.00) per year on and as from 24 March 2004

2. THE TERM is increased to 17 years 4 months and 23 days so as to expire  
 on 23 March 2016

3. The PROVISIONS of the lease are varied as set out in annexures A-F  
 hereto

(H) DATE 23 March 2004

Certified correct for the purposes of the  
 Real Property Act 1900 by the corporation  
 named below the common seal of which was  
 affixed pursuant to the authority specified  
 and in the presence of the authorized  
 person(s) whose signature(s) appear(s)  
 below.

Corporation: Amaca Pty Limited  
 Authority: See Annexure A

Signature of authorised person: Signature of authorised person:

Name of authorised person: See Annexure A Name of authorised person: See  
 Office held: Annexure A  
 Office held:

Certified correct for the purposes of the  
 Real Property Act 1900 by the corporation  
 named below the common seal of which was  
 affixed pursuant to the authority specified  
 and in the presence of the authorised  
 person(s) whose signature(s) appear(s)  
 below.

Corporation: James Hardie Australia Pty Limited  
 Authority: See Annexure A

Signature of authorised person: Signature of authorised person:

Name of authorised person: See Annexure A Name of authorised person: See  
 Office held: Annexure A  
 Office held:

All handwriting must be in block capitals. LAND AND PROPERTY INFORMATION NSW

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Allens Arthur Robinson

THIS IS ANNEXURE A OF 54 PAGES TO THE VARIATION OF LEASE BETWEEN AMACA PTY  
 LIMITED (ACN 000 035 512) (LESSOR), JAMES HARDIE AUSTRALIA PTY LIMITED (ACN 084  
 635 558) (LESSEE) AND JAMES HARDIE INDUSTRIES N.V. (ARBN 097 829 895)  
 (GUARANTOR) DATED 23 MARCH 2004

Lease 5595957C (as varied by variation of lease 8106677U) is varied as follows, with effect from the Effective Date (as defined below):

1. by deleting pages (i)-(iii) and annexures A and B;
2. by inserting annexures B to F of this variation of lease as annexures B to F of the lease; and
3. by inserting the following as annexure A.

SCHEDULE OF TERMS  
OPERATIVE PROVISIONS

<TABLE> <CAPTION>	ITEM	TERM	DEFINITION
<S>	<C>	<C>	<C>
1.	Lessor		Amaca Pty Limited (ACN 000 035 512) of 65 York Street, Sydney, NSW
2.	Lessee		James Hardie Australia Pty Limited (ACN 084 635 558) of 10 Colquhoun Street, Rosehill, NSW
3.	Land		Certificate of Title Folio Identifier 102/868623
4.	Premises		Part of the Land being the buildings and other improvements hatched on the Plan situated at the Corner of Colquhoun and Devon Streets, Rosehill, NSW in the condition in which they exist as at the Effective Date and includes the Lessor's Fixtures.
5.	Term		17 Years 4 months and 23 days
6.	Commencing Date		1 November 1998
7.	Terminating Date		23 March 2016
8.	Further Term		2 further terms each of 10 years, the last expiring on 23 March 2036.
9.	Rent		\$3,500,000.00 per annum, payable as prescribed in clauses 4.1 and 4.2, and subject to review as specified in clauses 4.4, 4.5, 4.6 and 4.7.
10.	Review Dates		The Review Dates for review of the Rent are as follows:  (a) Fixed Review Dates shall be each anniversary of the Effective Date during the Term other than the Commencing Date of a Further Term; and

</TABLE>

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<TABLE> <CAPTION>	ITEM	TERM	DEFINITION
<S>	<C>	<C>	<C>
			(b) Market Review Dates shall be the sixth anniversary of the Effective Date.
11.	Permitted Use		Manufacture, warehousing, distribution and sales of fibre cement products and systems and all associated activities (including offices) and any other use for which the Lessee may lawfully use the Premises.
12.	Public Risk Insurance		\$50,000,000
13.	Review Dates for the Further Term		The Review Dates for the review of the Rent in each Further Term and the method of review shall be as follows.

- (a) Fixed Review Dates shall be on each anniversary of the Commencing Date of that Further Term other than the Commencing Date of a Further Term; and
- (b) Market Reviews Dates shall be the Commencing Date of that Further Term and the fifth anniversary of the Commencing Date of that Further Term.

14. Lessee's Proportion 90%  
</TABLE>

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## 1. INTERPRETATION

### 1.1 DEFINITIONS

The following definitions together with those in the Schedule apply unless the context requires otherwise.

APPURTENANCE includes any drain, basin, sink, toilet or urinal.

AUSTRALIAN INSTITUTE means the Australian Property Institute Inc. (New South Wales Division).

AUTHORISATION includes any authorisation, approval, consent, licence, permit, franchise, permission, filing, registration, resolution, direction, declaration, or exemption.

AUTHORISED OFFICER means any director or secretary, or any person from time to time nominated as an Authorised Officer by a party by a notice to the other party accompanied by specimen signatures of all new persons so appointed.

AUTHORITY includes:

- (a) (GOVERNMENT) any government in any jurisdiction, whether federal, state, territorial or local;
- (b) (PUBLIC UTILITY) any provider of public utility services, whether statutory or not; and
- (c) (OTHER BODY) any other person, authority, instrumentality or body having jurisdiction, rights, powers, duties or responsibilities over the Premises or any part of them or anything in relation to them (including the Insurance Council of Australia Limited).

BUILDING means those improvements (if any) described or referred to in Item 4.

BUSINESS DAY means any day except Saturday or Sunday or a day that is a public holiday throughout New South Wales.

CLAIM includes any claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding, right of action, claim for compensation and claim for abatement of rent obligation.

COMPETITOR means any person engaged in the manufacture, distribution or sale of fibre cement products and underground drainage pipes made of concrete or fibre cement and:

- (a) includes persons engaged in the businesses known as or trading under names which include the words "Lafarge", "CSR" and "BGC"; but
- (b) excludes any third party logistics operator.

CONSENT means prior written consent.

COUNCIL means Parramatta City Council.

COST includes any reasonable cost, charge, expense, outgoing, payment or other expenditure of any nature (whether direct, indirect or consequential and whether accrued or paid) including where appropriate all rates and all reasonable legal fees.

EFFECTIVE DATE means 24 March 2004.

EMPLOYEES means employees, agents, invitees and contractors.

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ENVIRONMENT means components of the earth, including:

- (a) land, air and water;
- (b) any layer of the atmosphere;
- (c) any organic or inorganic matter and any living organism; and
- (d) human-made or modified structures and areas, and includes interacting natural ecosystems that include components referred to in paragraphs (a) to (c).

ENVIRONMENTAL LAW means a provision of Law, or a Law, which provision or Law relates to any aspect of the Environment, safety, health or the use of Substances or activities which may harm the Environment or be hazardous or otherwise harmful to health.

EVENT OF DEFAULT means any event referred to in clause 12.1.

FIXED REVIEW means a review of the Rent in accordance with clause 4.7.

FIXED REVIEW DATES means a date on which a Fixed Review is to occur as set out in Item 10.

FURTHER TERM means the further term or terms (as the case may be), specified in Item 8.

GST means the goods and services tax as imposed by the GST Law including, where relevant, any related interest, penalties, fines or other charge to the extent caused by any default or delay by the Lessee.

GST AMOUNT means, in relation to a Payment, an amount arrived at by multiplying the Payment (or the relevant part of a Payment if only part of a Payment is the consideration for a Taxable Supply) by the appropriate rate of GST (being 10% when the GST Law commenced).

GST LAW has the meaning given to that term in A New Tax System (Goods and Services Tax) Act 1999, or, if that Act is not valid or does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act.

GUARANTOR means James Hardie Industries N.V.

INITIAL TERM means the first 17 years, 4 months, 23 days term of this Lease commencing on 1 November 1998.

INTEREST RATE means the minimum rate of interest charged by the Commonwealth Bank of Australia, on an overdraft of \$100,000 plus 2%.

IPLX PREMISES means the premises the subject of the lease by the Lessor to Iplex Pipelines Australia Pty Limited registered number AA317065 and any extension, renewal of or holding over under it.

LAND means the land described in Item 3.

LAND TAX means land taxes or taxes in the nature of a tax on land, calculated on the taxable value of the Land at the rate which would be payable by the Lessor if the Land were the only land owned by the Lessor in New South Wales and the land is not subject to a trust.

LAW includes any requirement of any statute, rule, regulation, proclamation, ordinance or by-law, present or future, and whether state, federal or otherwise.

LEASE means this lease between the Lessor and the Lessee.

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LEASE YEAR means every 12 month period commencing on and from the Commencing Date.

LESSEE means the party specified in Item 2, its successors and assigns.

LESSEE'S BUSINESS means the business carried on or entitled to be carried on in the Premises in compliance with the Permitted Use of the Premises.

LESSEE'S FITOUT AND FITTINGS means all fixtures, fittings, plant, equipment, partitions or other articles and chattels of all kinds (other than stock-in-trade) which satisfy all of the following:

- (a) they are owned by or leased by third parties to the Lessee; and

(b) they are, at any time, in or attached to the Premises or the Licensed Area.

LESSEE'S PROPORTION means:

- (a) in respect of items (a), (b), (c) and (e) in the definition of Outgoings, that proportion which the Lettable Area of the Premises bears to the area of the Land determined in accordance with the Method of Measurement from time to time and which at the Commencing Date of the lease for the Initial Term is that proportion set out in Item 14; and
- (b) in respect of item (d) in the definition of the Outgoings, 100%.

LESSOR means the party specified in Item 1 or the party for the time being entitled to the reversion expectant upon expiration or prior determination of the Lease.

LESSOR'S ASSET REGISTER means the list of items in the Premises or the Licensed Area contained in Annexure B.

LESSOR'S FIXTURES means all fixtures in the Premises owned by the Lessor including the items listed in the Lessor's Asset Register and:

- (a) (GENERAL) all plant and equipment, mechanical or otherwise which forms part of the base Building, fittings, fixtures, furniture, furnishings of any kind, including window coverings, blinds and light fittings; and
- (b) (FIRE FIGHTING) all stop cocks, fire hoses, hydrants, other fire prevention aids and all fire fighting systems from time to time located in the Premises or which may service the Premises and be on the Land.

LETTABLE AREA means the gross lettable area determined in accordance with the Method of Measurement.

LICENSED AREA means the area the subject of the licence granted under clause 18 being that part of the Land and the improvements hatched on the plan in Annexure D.

LIQUIDATION includes liquidation, official management, receivership, compromise, arrangement, amalgamation, administration, reconstruction, winding up, dissolution, assignment for the benefit of creditors, arrangement or compromise with creditors, bankruptcy or death.

MAKE GOOD BUILDINGS means the buildings and other improvements hatched on the plan in Annexure C.

MARKET RENT means the Rent which could be obtained with respect to the Premises as at a particular Market Review Date in an open market by a willing but not anxious Lessor assessed using the criteria in clause 4.5(g).

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MARKET REVIEW means a review of the Rent in accordance with clause 4.4 and (if applicable) clauses 4.5 and 4.6.

MARKET REVIEW DATE means a date on which a Market Review is to occur as set out in Item 10.

METHOD OF MEASUREMENT means the Method of Measurement of Buildings (1997 Revision) adopted by the Property Council of Australia Limited (formerly the Building Owners and Managers Association of Australia Limited). The Method of Measurement shall remain fixed for the term of this Lease and any Further Term despite any subsequent editions or variations which may be issued.

NON-MAKE GOOD BUILDINGS means the buildings and other improvements crosshatched on the plan in Annexure C.

OUTGOINGS means:

- (a) (LAND TAX) all Land Tax;
- (b) (COUNCIL RATES) all charges payable to the Council:
  - (i) levied or charged with respect to the Land or the Premises or their use or occupation;
  - (ii) for any services to the Land or the Premises of the type from time to time provided by the Council; and/or
  - (iii) for waste and general garbage removal from the Land or the Premises (including any excess);
- (c) (WATER RATES) all charges payable to an Authority;

- (i) levied or charged with respect to the Land or the Premises or their use or occupation; and
- (ii) for the provision, reticulation or discharge of water and/or sewerage and/or drainage (including meter rents) to the Land or the Premises;
- (d) (MANAGEMENT FEES) reasonable fees for management of the Premises capped at 1% of the Rent and Outgoings from time to time; and
- (e) (INSURANCES) where the Lessor has effected the policy, all insurance premiums payable in respect of insurances for the Premises for its full insurable or replacement value to cover damage by fire, storm, tempest, impact and other usually insured risks of that nature, including loss of rent insurance (capped at 18 months cover),

but excluding from this Paragraph any amount which is:

- (i) (ALREADY INCLUDED) already included by virtue of another Paragraph of this definition;
- (ii) (OTHERWISE PAYABLE) otherwise payable by the Lessee pursuant to the provisions of this Lease;
- (iii) (TAX) income tax and capital gains tax of any nature; or
- (iv) (PAYABLE BY THE LESSOR) otherwise payable by the Lessor with respect to its obligations under this Lease.

PAYMENT means:

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- (a) the amount of any monetary consideration (other than a GST Amount payable under this clause); and
  - (b) the GST Exclusive Market Value of any non-monetary consideration,
- paid or provided by the Lessee for this Lease or by the Lessor or the Lessee for any other Supply made under or in connection with this Lease and includes:
- (c) any Rent or contribution to Outgoings; and
  - (d) any amount payable by way of indemnity, reimbursement, compensation or damages.

PERMITTED USE means the use of the Premises specified in Item 11

PLAN means the plan forming Annexure B to lease registered number 5595975.

PREMISES means part of the Land being the buildings and other improvements specified in Item 4, and includes any of the Lessor's Fixtures from time to time in or on them.

PROPOSED WORK includes any proposed sign, work, alteration, addition or installation in or to the Premises, the Lessor's Fixtures and/or to the existing Lessee's Fitout and Fittings by the Lessee and/or by the Lessee's Employees.

RELATED BODY CORPORATE has the same meaning as given to that term in the Corporations Act 2001.

RENT means the rent specified in Item 9 as varied from time to time in accordance with this Lease.

REQUIREMENT includes any notice, order, direction, stipulation or similar notification received from or given by any Authority pursuant to and enforceable under any Law (including Environmental Law), whether in writing or otherwise, and regardless of to whom it is addressed or directed.

REVIEW DATE means a date on which either a CPI Review or a Market Review is to occur as set out in Item 10.

SECTION 28 NOTICE means the maintenance of remediation notice dated 12 April 1999 issued with respect to the Land by the Environmental Protection Authority of New South Wales under section 28 of the Contaminated Land Management Act 1997.

SERVICES means electricity, gas, sewerage, water and telephone services.

SUBSTANCE includes:

- (a) any form of organic or chemical matter whether solid, liquid or gas; and

(b) radiation, radioactivity and magnetic activity.

SURPLUS LICENSED AREA means that part of the Licensed Area hatched on the plan in Annexure F.

TAX ACT means the Income Tax Assessment Act 1936 (Cth) and/or the Income Tax Assessment Act 1997 (Cth) (as the case may require).

TERMINATING DATE means:

- (a) the date specified in Item 7;
- (b) any earlier date on which this Lease is determined;
- (c) the date of expiration or earlier termination of the Further Term or, if more than one, the last Further Term; or

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(d) the end of any period of holding over under clause 3.3,

as appropriate.

TERMINATION PAYMENT means:

- (a) in respect of clause 7.1(e) (i) (A), the net present value of the aggregate of:
  - (i) the Rent and the Lessee's Proportion of Outgoings payable for the balance of the Term calculated from the date of termination; and
  - (ii) the cost of compliance with the Lessee's obligations in clause 13, using the 10 year Commonwealth of Australia Government bond interest rate plus 115 basis points; and
- (b) in respect of clauses 7.1(e) (i) (B) and 7.1(e) (ii), the net present value of the aggregate of:
  - (i) the Rent and the Lessee's Proportion of Outgoings payable for the balance of the Term with respect to the proportionate area of the Premises surrendered calculated from the date of the surrender; and
  - (ii) the cost of compliance with the Lessee's obligations in clause 13, using the 10 year Commonwealth of Australia Government bond interest rate plus 115 basis points.

UMPIRE means a person who:

- (a) is at the relevant time a Valuer;
- (b) is appointed under clause 4.5;
- (c) accepts his appointment in writing; and
- (d) undertakes to hand down his determination of the Rent within 20 Business Days after being instructed to proceed.

VALUER means a person who:

- (a) is a full member of the Australian Institute and has been for the last 5 years;
- (b) holds a licence to practise as a valuer of premises of the kind leased by this Lease;
- (c) is active in the relevant market at the time of his appointment;
- (d) has at least 3 years experience in valuing premises of the kind leased by this Lease; and
- (e) undertakes to act promptly in accordance with the requirements of this Lease.

## 1.2 GENERAL

Headings are for convenience only and do not affect interpretation. The following rules of interpretation apply unless the context requires otherwise.

- (a) (PLURALS) The singular includes the plural and conversely.

- (b) (GENDER) A gender includes all genders.
- (c) (OTHER GRAMMATICAL FORMS) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.

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- (d) (PERSON) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (e) (CLAUSE) "clause", "Paragraph", "Schedule" or "Annexure" refers to this Lease and "Item" refers to the Schedule of Terms forming part of this Lease.
- (f) (SUCCESSORS AND ASSIGNS) A reference to any party to this Lease or any other agreement or document includes the party's successors and substitutes or assigns.
- (g) (JOINT AND SEVERAL OBLIGATIONS) A reference to a right or obligation of any two or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally.
- (h) (EXTRINSIC TERMS) Subject to the provisions of any written material to which the Lessor and the Lessee are parties, the Lessor and the Lessee agree that:
  - (i) (WHOLE AGREEMENT) the terms contained in this Lease cover and comprise the whole of the agreement in respect of the Premises between the Lessor and the Lessee; and
  - (ii) (NO COLLATERAL AGREEMENT) no further terms, whether in respect of the Premises or otherwise, shall be implied or arise between the Lessor and the Lessee by way of collateral or other agreement made by or on behalf of the Lessor or by or on behalf of the Lessee on or before or after the execution of this Lease, and any implication or collateral or other agreement is excluded and negated.
- (i) (AMENDMENTS AND VARIATIONS) A reference to an agreement or document (including this Lease) is to the agreement or document as amended, novated, supplemented, varied or replaced from time to time, except to the extent prohibited by this Lease.
- (j) (LEGISLATION) A reference to legislation or to a provision of legislation includes a modification, re-enactment of or substitution for it and a regulation or statutory instrument issued under it.
- (k) (AUSTRALIAN CURRENCY) A reference to "dollars" or "\$" is to Australian currency.
- (l) (SCHEDULES AND ANNEXURES) Each schedule of/or annexure to this Lease forms part of it.
- (m) (CONDUCT) A reference to conduct includes any omission, statement or undertaking, whether or not in writing.
- (n) (WRITING) A reference to "writing" includes a facsimile transmission and any means of reproducing words in a tangible and permanently visible form.
- (o) (EVENT OF DEFAULT) An Event of Default "subsists" until it has been waived by or remedied to the reasonable satisfaction of the Lessor.
- (p) (INCLUDES) A reference to "includes" or "including" means "includes, without limitation," or "including, without limitation," respectively.
- (q) (WHOLE) Reference to the whole includes part.

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- (r) (DUE AND PUNCTUAL) All obligations are taken to be required to be performed duly and punctually.
- (s) (PERMIT OR OMIT) Words importing "do" include do, permit or omit, or cause to be done or omitted.
- (t) (BODIES AND AUTHORITIES)
  - (i) (SUCCESSORS) Where a reference is made to any person, body or Authority that reference, if the person, body or Authority has ceased to exist, will be to the person, body or Authority as then



serves substantially the same objects as that person, body or Authority.

- (ii) (PRESIDENT) Any reference to the President of that person, body or Authority, in the absence of a President, will be read as a reference to the senior officer for the time being of the person, body or Authority or any other person fulfilling the duties of President.
- (u) (CONSENT OF LESSOR) Unless stated otherwise in this Lease, where the Lessor has a discretion or its consent or approval is required for anything the Lessor:
  - (i) shall not unreasonably withhold, delay or condition its decision, consent or approval; and
  - (ii) must exercise its discretion acting reasonably.
- (v) (RELEVANT DATE) Where the day or last day for doing anything or on which an entitlement is due to arise is not a Business Day that day or last day will be the immediately following Business Day.
- (w) (MONTH) Month means calendar month.
- (x) (AREAS) Unless otherwise stated in this Lease or the context otherwise requires, where the area whether gross or net and whether the whole or part of the Land is to be calculated or measured for the purposes of this Lease, those calculations and measurements shall be in accordance with the Method of Measurement.
- (y) (THIRD PARTIES) Any clause which requires that a third party act or refrain from acting will be read (where the context permits) that the party to this Lease appointing or otherwise having control of that third party shall cause or procure that third party to act or refrain from acting.

## 2. EXCLUSION OF STATUTORY PROVISIONS

### 2.1 RELEVANT ACTS

To the extent permitted by Law or as may be contradicted by this Lease, the covenants, powers and provisions (if any) implied in leases by virtue of any Law are expressly negated.

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## 3. TERM

### 3.1 TERM OF LEASE

Subject to this Lease the Lessor leases to the Lessee and the Lessee takes a lease of the Premises for the Term.

### 3.2 OPTION OF RENEWAL

- (a) (GRANT OF FURTHER LEASE) If:
  - (i) (FURTHER TERM) a Further Term is specified in Item 8;
  - (ii) (LESSEE GIVES NOTICE) the Lessee notifies the Lessor not more than 12 months nor less than 9 months before the Terminating Date that it requires a further lease for the Further Term; and
  - (iii) (NO DEFAULT) at the date of that notice and at the Terminating Date there is no subsisting Event of Default by the Lessee of which the Lessee has been notified by the Lessor and:
    - (A) (IF CAPABLE OF REMEDY) which has not been remedied to the reasonable satisfaction of the Lessor within the time specified in a notice given under clause 12.1 or waived in writing by the Lessor; or
    - (B) (IF NOT CAPABLE OF REMEDY) if not capable of remedy, for which the Lessee has not paid the Lessor reasonable compensation,

the Lessor shall grant to the Lessee a lease of the Premises for the Further Term commencing on the day after the Terminating Date.

- (b) (CONDITIONS OF FURTHER LEASE) That lease for a Further Term will be on the same conditions as this Lease except that:

- (i) (TERM) the term to be specified in Item 5 of the lease for the Further Term will be the relevant period specified in Item 8;
- (ii) (COMMENCING DATE) the date to be specified in Item 6 of the lease for the Further Term will be the day after the Terminating Date of the immediately preceding Term;
- (iii) (TERMINATING DATE) the date to be specified in Item 7 of the lease for each Further Term will be the last day of the term specified in Item 8 calculated from the commencing date of the lease for that Further Term determined under Paragraph (ii);
- (iv) (RENT) the amount of Rent to be specified in Item 9 of the lease for the Further Term will be as agreed under clause 3.2(c) or if no agreement is reached under that clause as determined under clauses 4.4, 4.5 and 4.6 as if the commencing date of the lease for the Further Term was a Market Review Date;
- (v) (REVIEW DATES) the Review Dates specified in Item 10 shall be omitted and replaced with the Review Dates specified in Item 13;

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- (vi) (FURTHER OPTIONS) the number of Further Terms specified in Item 8 shall be reduced by one from the number specified in Item 8 of this Lease; and
  - (vii) (LAST FURTHER LEASE) if in any lease for the Further Term the number of Further Terms specified in Item 8 would by the operation of Paragraph (vi) be zero, then Item 13 and this clause 3.2 will not be included in that further lease so that the last further lease will end on the last day of the last occurring Further Term specified in Item 8 of this Lease.
- (c) (EARLY DETERMINATION OF MARKET RENT)
- (i) If the Lessee wishes to know the Rent for the first year of the Further Term prior to exercising its option for a Further Term, the Lessee may give notice to the Lessor seeking a determination of the Market Rent for the Further Term (such notice being given no earlier than 15 months and no later than 12 months prior to the Terminating Date of the Lease).
  - (ii) The Lessor must give the Lessee a notice with the Lessor's assessment of the Market Rent to apply in the first year of the Further Term within 10 Business Days after the Lessee gives a notice under clause 3.2(c) (i).
  - (iii) Upon receipt of the Lessor's assessment of Market Rent under clause 3.2(c) (ii), the parties agree to negotiate in good faith to agree upon the Market Rent to apply in the first year of the Further Term for a period of up to 3 months after the Lessor's notice of assessment of Market Rent is received by the Lessee.
  - (iv) If the parties fail to reach agreement under clause 3.2(c) (iii), clause 3.2(b) (iv) continues to apply.

### 3.3 HOLDING OVER

If the Lessor does not indicate refusal to the Lessee continuing to occupy the Premises beyond the Terminating Date (otherwise than under a lease for a Further Term) then:

- (a) (MONTHLY TENANCY) the Lessee does so as a monthly tenant and shall pay Rent and Outgoings:
  - (i) monthly in advance, the first payment to be made on the day following the Terminating Date; and
  - (ii) equal to one-twelfth of the annual rate of Rent and Outgoings payable immediately prior to the Terminating Date;
- (b) (DETERMINATION) the monthly tenancy is determinable at any time by either the Lessor or the Lessee by one month's notice given to the other, to end on any date, but otherwise the tenancy will continue on the conditions of this Lease as far as they may apply to a monthly tenancy.

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4. RENT

4.1 PAYMENT OF RENT

- (a) (RENT) The Lessee shall pay Rent to the Lessor at the relevant rate from time to time:
  - (i) (NO DEMAND) without demand;
  - (ii) (NO DEDUCTION) without any deduction, abatement, counterclaim or right of set-off except to the extent that it is expressly provided for in this Lease; and
  - (iii) (INSTALMENTS) by equal monthly instalments (and proportionately for any part of a month) in advance on the first Business Day of each month.
- (b) (AS DIRECTED BY LESSOR) All instalments of Rent shall be paid to the place and in the manner directed by the Lessor from time to time provided at least 10 Business Days notice of any change in the place or manner of payment is given.

4.2 RENT COMMENCEMENT

The first instalment of Rent shall be paid on the Commencing Date.

4.3 DELETED

4.4 MARKET REVIEW OF RENT

Should the Lessor wish to review the Rent as at a Market Review Date, then not earlier than 3 months before and not later than 3 months after the Market Review Date (time being of the essence) the Lessor may notify the Lessee of the Lessor's assessment of the Market Rent for the Premises at the particular Market Review Date. This assessment shall take into account the criteria contained in clause 4.5(g) which apply at that particular Market Review Date and, if applicable, clause 4.6.

4.5 LESSEE'S DISPUTE OF RENT

If the Lessee disagrees with the Lessor's assessment of the Market Rent and the Lessor and the Lessee are unable to agree on the Market Rent to apply from a particular Market Review Date then the following procedure applies.

- (a) (LESSEE TO GIVE NOTICE) The Lessee shall within 30 Business Days of being notified of the Lessor's assessment of the Market Rent (time being of the essence) notify the Lessor that the Lessee requires the Market Rent to be determined in accordance with this clause 4.5.
- (b) (i) (NOMINATION OF VALUERS) Each of the Lessee and the Lessor shall, within 10 Business Days of service of the Lessee's notice under clause 4.5(a), by notice nominate a Valuer to the other and shall formally appoint that Valuer.
  - (ii) (NOMINATION OF UMPIRE) Where two Valuers have been nominated they shall, within 5 Business Days of the date of the later nomination and prior to making their determination as to the Market Rent for the Premises,

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agree upon and nominate an Umpire to determine any disagreement which may arise between them.

- (iii) (FAILURE TO AGREE) If the Valuers cannot agree on or fail to nominate an Umpire within 5 Business Days of the date of the later nomination then either Valuer, the Lessor or the Lessee may request the President of the Australian Institute to nominate the Umpire.
- (c) (VALUER'S DETERMINATION) Subject to clauses 4.5(d), (e) and (f), the nominated Valuers shall within 20 Business Days of the later nomination jointly determine the Market Rent of the Premises having regard to clause 4.5(g) as at that particular Market Review Date.
- (d) (CONSEQUENCES OF LESSEE'S FAILURE) If the Lessee fails to nominate a Valuer in accordance with clause 4.5(b) within the time required:
  - (i) (DETERMINATION BY LESSOR'S VALUER) the determination of the

Market Rent shall be made by the Lessor's Valuer within 20 Business Days after being nominated, and his determination will be final and binding on the parties as if he had been appointed by Consent; and

(ii) (COSTS) the Costs of the Lessor's Valuer's determination shall be apportioned equally between the Lessor and Lessee.

(e) (CONSEQUENCES OF LESSOR'S FAILURE TO NOMINATE VALUER) If the Lessee nominates a Valuer under clause 4.5(b) within the time required, but the Lessor fails to do so:

(i) (DETERMINATION BY LESSEE'S VALUER) the determination of the Market Rent shall be made by the Lessee's Valuer within 20 Business Days after being nominated, and his determination will be final and binding on the parties as if he had been appointed by Consent; and

(ii) (COSTS) the Costs of the Lessee's Valuer's determination shall be apportioned equally between the Lessor and Lessee.

(f) (i) (PROCEDURE IN EVENT OF DISAGREEMENT BETWEEN VALUERS) Should the Valuers be unable to agree on the Market Rent for the Premises within the time required then the Market Rent shall be determined by the Umpire under clause 4.5(f)(iii).

(ii) (PROCEDURE WHERE VALUER FAILS TO ASSESS) If either or both of the Valuers for any reason fail to assess the Market Rent within the time required for them to make a determination, then either Valuer, the Lessor or the Lessee may request the Umpire to determine the Market Rent.

(iii) (UMPIRE'S DETERMINATION) If it becomes necessary for the Umpire to determine the Market Rent, his determination will be final and binding on the parties and:

(A) (EVIDENCE OF VALUERS) in making his or her determination the Umpire shall have regard to any evidence submitted by the Valuers as to their assessments of the Market Rent;

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(B) (WRITTEN DETERMINATION) the Umpire shall give his determination and the reason for it in writing to the Lessor and the Lessee within 20 Business Days of request for it in accordance with this Lease by the Lessor, the Lessee or the Valuers (or any of them); and

(C) (UMPIRE'S MAXIMUM) the Umpire's determination shall not be more than the highest Market Rent as assessed by either Valuer under this clause 4.5.

(g) (MARKET RENT CRITERIA) In determining the Market Rent each Valuer (including the Umpire) shall be taken to be acting as an expert and not as an arbitrator, and shall determine the Market Rent for the Premises as at the particular Market Review Date having regard to the terms of this Lease and shall:

(i) (EXCLUSIONS) disregard:

(A) (GOODWILL) the value of any goodwill of the Lessee's Business, the Lessee's Fitout and Fittings and any other interest in the Premises created by this Lease; and

(B) (MONEY FROM OCCUPATIONAL ARRANGEMENT) any sublease or other sub-tenancy agreement or occupational arrangement in respect of any part of the Land and any rental, fees or money payable under any of them; and

(ii) (CONSIDERATIONS) have regard to:

(A) (LENGTH OF TERM) the length of the whole of the Term, disregarding the fact that part of the Term will have elapsed at the Market Review Date, and have regard to the provisions of any options for a Further Term;

(B) (COMPARABLE PREMISES AND LOCATIONS) the rates of rent payable for comparable premises in comparable locations;

(C) (ALL COVENANTS OBSERVED) all covenants on the part of the Lessee and the Lessor in this Lease and assume that all covenants on the part of the Lessee have been fully performed

and observed on time;

- (D) (OUTGOINGS) the Lessee's obligation to pay the Lessee's Proportion of Outgoings; and
- (E) (RENT REVIEW) the frequency of market and other Rent reviews; and

(iii) (ASSUMPTIONS) assume that:

- (A) the Premises are available for use for the primary purpose for which the Premises may be used in accordance with this Lease;
- (B) there has been no fair wear and tear of the Premises since the Effective Date; and

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- (C) any buildings which have been removed pursuant to clause 7.11(d) have not been removed.

(h) (COSTS OF VALUERS) The Costs incurred in the determination of the Market Rent under this clause 4.5 shall be borne by the Lessor and by the Lessee in the following manner:

- (i) (VALUER) subject to clauses 4.5(d)(ii) and (e)(ii), for the Costs of each Valuer appointed by a party, by the party who appoints that Valuer; and
- (ii) (UMPIRE) for the Costs of the Umpire, by the parties equally.

(i) (DATE OF EFFECT OF DETERMINATION OF MARKET RENT) Subject to clauses 4.5(j) and 4.6, any variation in the Rent resulting from a determination of the Market Rent under clause 4.4 and/or 4.5 (as appropriate) will be effective on and from that particular Market Review Date.

(j) (PAYMENT OF RENT PENDING REVIEW) Where there is a dispute as to the Market Rent under clause 4.4 after the relevant Market Review Date or the revised Rent is not known at a Market Review Date then the amount of Rent payable by the Lessee from the Market Review Date pending the resolution of that dispute or the determination of the Market Rent shall be the Rent payable immediately before the relevant Market Review Date.

(k) (ADJUSTMENT) On resolution of the dispute or the Market Rent being determined, if the Rent payable for the period commencing on the Market Review Date is determined to be greater than that paid by the Lessee since the Market Review Date, then the Lessee shall pay the deficiency to the Lessor within 10 Business Days of the date of determination of the Market Rent under clause 4.4 or the determination of the Market Rent by the Valuers or by the Umpire under this clause 4.5 (as the case may be).

#### 4.6 MAXIMUM INCREASE ON REVIEW

Despite any other provision of this Lease the annual Rent payable from any Review Date following a review of the Rent under clause 4.4 (and, if applicable, clause 4.5) shall in no circumstances be:

- (a) less than the annual Rent payable in the Lease Year immediately prior to that Review Date; or
- (b) in the case of a Market Review (other than at the Commencing Date of a Further Term):
  - (i) greater than the Rent payable in the Lease Year immediately prior to the Market Review Date plus 10%; or
  - (ii) less than the annual Rent determined under clause 4.7.

#### 4.7 FIXED REVIEW

On each Fixed Review Date, the Rent shall increase to 103% of the Rent payable immediately prior to that Fixed Review Date.

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### 5. OUTGOINGS

#### 5.1 SERVICES

- (a) (METERS) The Lessor shall ensure that all Services supplied to the Premises are separately metered.
- (b) (COSTS) The Lessee shall pay all Costs for all Services supplied to the Premises (but with respect to water, the obligation under this clause 5.1(b) is limited to water usage and consumption charges).

#### 5.2 CLEANING

The Lessee shall at its own Cost ensure that the Premises are kept clean.

#### 5.3 OUTGOINGS

The Lessee shall pay to the Lessor for each Lease Year an amount equal to the Lessee's Proportion of the Outgoings in accordance with this clause 5. This obligation shall not extend to any fines, penalties or interest on the Outgoings which arise because of the Lessor's delay in payment or the Lessor's delay in providing relevant invoices and accounts to the Lessee for payment.

#### 5.4 LESSOR'S ESTIMATE

The Lessor may:

- (a) (NOTIFICATION OF ESTIMATE) before or during each Lease Year notify the Lessee of the Lessor's reasonable estimate of the Lessee's Proportion of Outgoings for that Lease Year; and
- (b) (ADJUSTMENT OF ESTIMATE) from time to time during that Lease Year by notice to the Lessee adjust the reasonable estimate of the Lessee's Proportion of Outgoings as may be appropriate to take account of changes in any of the Outgoings.

#### 5.5 PAYMENTS ON ACCOUNT

The Lessee shall pay on account the amount of the estimates of the Lessee's Proportion of Outgoings provided for in clause 5.4 by equal monthly instalments in advance on the same days and in the same manner as the Lessee is required to pay Rent.

#### 5.6 YEARLY ADJUSTMENT

- (a) (LESSOR'S NOTICE) As soon as practicable after the end of each Lease Year the Lessor shall give to the Lessee a notice with reasonable details and reasonable evidence of the Outgoings for that Lease Year.
- (b) (ADJUSTMENT OF PAYMENTS ON ACCOUNT) The Lessee shall within 10 Business Days after the date of the notice referred to in clause 5.6(a) pay to the Lessor or the Lessor shall pay to the Lessee (as appropriate) the difference between the amount paid on account of the Lessee's Proportion of Outgoings during that Lease Year and the amount actually payable in respect of it by the Lessee, so that the

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Lessee shall have paid the correct amount of the Lessee's Proportion of Outgoings for that Lease Year.

- (c) (AUDITED STATEMENT) If the Lessee disagrees with the details, amounts or calculations contained in the notice referred to in clause 5.6(a), the Lessee may require the Lessor to give the Lessee an audited statement of the Outgoings for that Lease Year prepared by a chartered accountant reasonably approved by the Lessee (or failing approval within 5 Business Days of the request for the statement, selected by the President of the Institute of Chartered Accountants at the request of either the Lessor or the Lessee). The Lessor shall have 20 Business Days after a request from the Lessee within which to provide the statement.
- (d) (READJUSTMENT) If the amounts shown in the audited statement are different from the amounts shown in the Lessor's notice given under clause 5.6(b), the amount of Outgoings shall be readjusted so that the Lessee shall have paid the correct amount of the Lessee's Proportion of Outgoings for that Lease Year.

#### 5.7 GST

- (a) (GENERAL) Capitalised expressions which are not defined in this clause but which have a defined meaning in the GST Law have the same meaning in this clause.

- (b) (PAYMENT OF GST) The parties agree that:
- (i) all Payments have been set or determined without regard to the impact of GST;
  - (ii) if the whole or any part of a Payment is the consideration for a Taxable Supply for which the payee is liable for GST, the GST Amount in respect of the Payment must be paid to the payee as an additional amount, either concurrently with the Payment or as otherwise agreed in writing; and
  - (iii) the payee will provide to the payer a Tax Invoice.
- (c) (NET OF CREDITS) Despite any other provision of this lease, if a Payment due under this lease (including any contribution to Outgoings) is a reimbursement or indemnification by one party of an expense, loss or liability incurred or to be incurred by the other party, the Payment shall exclude any part of the amount to be reimbursed or indemnified for which the other party can claim an Input Tax Credit.
- (d) (TPA) Each party will comply with its obligations under the Trade Practices Act 1974 in respect of any Payment to which it is entitled under this lease.

## 6. USE OF PREMISES

### 6.1 PERMITTED USE

The Lessee shall:

- (a) (LESSEE'S BUSINESS) not without the Lessor's Consent use the Premises for any purpose other than those specified in Item 11;
- (b) (NON RESIDENCE) not use the Premises as a residence;

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- (c) (NO ANIMALS OR BIRDS) not keep any animals or birds in the Premises; and
- (d) (PESTS AND VERMIN) at its own Cost keep the Premises free and clear of pests, insects and vermin.

### 6.2 OVERLOADING

The Lessee shall not during the Term place or store any heavy articles or materials on any of the floors of, the Premises or the Building in a manner significantly differently from that at the Effective Date, without the Lessor's consent.

### 6.3 OTHER ACTIVITIES BY LESSEE

The Lessee shall:

- (a) (APPURTENANCES) not use the Appurtenances in the Premises for any purpose other than those for which they were designed, and shall not place in the Appurtenances any substance which they were not designed to receive;
- (b) (AIR-CONDITIONING AND FIRE ALARM EQUIPMENT) where any air-conditioning or fire alarm system of the Lessor is installed in the Premises, not interfere (other than in accordance with clause 7.1) with that system nor obstruct or hinder access to it;
- (c) (NOT ACCUMULATE RUBBISH) keep the Premises reasonably clean;
- (d) (NOT THROW ITEMS FROM WINDOWS) not throw anything out of the windows or doors of the Building or down the lift shafts, passages or skylights or into the light areas of the Building (if they exist), or deposit waste paper or rubbish anywhere except in proper receptacles, or place anything on any sill, ledge or other similar part of the exterior of the Building; and
- (e) (INFECTIOUS DISEASES) if any infectious illness occurs in the Premises:
  - (i) (NOTIFY LESSOR) immediately notify the Lessor and all proper Authorities; and
  - (ii) (FUMIGATE) where that illness is confined to the Premises, at its Cost thoroughly fumigate and disinfect the Premises to the satisfaction of the Lessor and all relevant Authorities.

6.4 FOR SALE/TO LET

The Lessor is entitled:

- (a) (ADVERTISING FOR LEASE) where the Lessee has not given notice under clause 3.2(a) (ii), but only during the last three months of the Term, to place advertisements and signs on the part(s) of the Premises as are reasonably appropriate to indicate that the Premises are available for lease;
- (b) (INSPECTION BY PROSPECTIVE TENANTS) subject to the same limitations as in Paragraph (a), at all reasonable times and on reasonable notice (but where possible outside the usual trading hours of the Lessee) to show prospective tenants through the Premises;

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- (c) (ADVERTISING FOR SALE) to place advertisements and signs on the part(s) of the Premises as it reasonably considers appropriate to indicate that the Premises are for sale; and
- (d) (INSPECTION BY PROSPECTIVE PURCHASERS) at all reasonable times and on reasonable notice (but where possible outside the usual trading hours of the Lessee), to show prospective purchasers through the Premises.

The Lessor may only exercise its rights under this clause 6.4 in the presence of a representative of the Lessee after signing and/or procuring signing by the Lessor's invitees of such confidentiality agreements as the Lessee may reasonably require. In exercise of those rights the Lessor must minimise any inconvenience or disruption to the Lessee or the Lessee's Business.

7. MAINTENANCE, REPAIRS, ALTERATIONS AND ADDITIONS

7.1 REPAIRING OBLIGATIONS

- (a) (GENERAL) The Lessee:
  - (i) must, during the Term and any extension or Further Term or any holding over, keep the Premises in good repair and condition including any structural or capital maintenance, replacement or repair having regard to their state of repair and condition at the Effective Date; and
  - (ii) acknowledges and agrees that subject to clauses 5.4, 5.6, 9.2, 11, 12.4, 15.2 and 15.5(b) and (c), the Lessor is not responsible for any costs and expenses in relation to the Premises during the Term and any extension or Further Term or any holding over.
- (b) (EXCLUSIONS) Despite clause 7.1, the Lessee has no obligation to carry out any works which relate to:
  - (i) (FAIR WEAR AND TEAR) fair wear and tear;
  - (ii) (INSURANCE) damage to the Premises caused by fire, storm or tempest or any other risk covered by any insurance taken out by the Lessor in respect of the Premises (other than where any insurance money is irrecoverable through the act, omission, neglect, default or misconduct of the Lessee or the Lessee's Employees);
  - (iii) (LESSOR'S ACT OR OMISSION) patent or latent damage to the Premises caused or contributed to by any wilful or negligent act or omission of the Lessor or its Employees; and
  - (iv) (NON-MAKE GOOD BUILDING) any works to the Non Make Good Buildings, except to the extent required by clause 7.1(d) and clause 13.
- (c) (STRUCTURAL REPAIR) Subject to clauses 15.2 and 15.5(c), nothing in this Lease requires the Lessor to carry out any structural or capital maintenance, replacement or repair except where rendered necessary by any wilful or negligent act or omission of the Lessor or the Lessor's Employees, which maintenance,

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replacement or repair the Lessor must attend to promptly after



notice from the Lessee.

(d) (COMPLIANCE WITH LAWS AND REQUIREMENTS)

The Lessee shall during the Term, subject to clauses 7.1(b) (i), (ii) and (iii), 7.1(e), 7.11, 15.2 and 15.5(c), comply with any Law or Requirement affecting the Premises (including any underground storage tanks and any Environmental contamination associated with them), the Lessee's use of the Premises and the Lessee's Fitout and Fittings except that the Lessor must, at its Cost, promptly comply with these Laws or Requirements:

- (i) if the Lessor or the Lessor's Employees have taken action or refrained from taking action that directly or indirectly has a material effect in causing the Law or Requirement to apply, be issued or enforced; or
- (ii) if the Lessor or the Lessor's Employees have taken action or refrained from taking action that directly or indirectly has a material effect in causing the Law or Requirement to apply, be issued or enforced by doing works on the Land or any adjoining land; or
- (iii) if the Lessor or the Lessor's Employees have taken action or refrained from taking action that directly or indirectly has a material effect in causing the Law or Requirement to apply, be issued or enforced because of any subdivision, re-configuration of other dealing with the Land.

However, the Lessor is not obliged to comply with the Law or Requirement where the Law or Requirement applies, is issued or enforced solely as a result of the Lessor or the Lessor's Employees making any applications to Authorities with respect to the redevelopment of that part of the Land which is not or will no longer be included in the Premises as anticipated by the terms of this Lease or because of the terms of any consents, approvals or permits granted by those Authorities in response to those applications.

(e) (OPTIONS TO TERMINATE OR SURRENDER)

- (i) If there is a change in Law or a Requirement requiring the demolition or substantial upgrade of Buildings on the Premises, then the Lessee may at its option:
  - (A) terminate this Lease by giving notice to the Lessor together with the Termination Payment; or
  - (B) partially surrender this Lease by giving to the Lessor a surrender of lease in registrable form with respect to the relevant part of the Premises (and any ancillary areas) affected by the change in Law or Requirement together with the Termination Payment. Unless access can be provided to the surrendered area in accordance with clause 7.1(e) (iv) (B), in determining the area to be partially surrendered the Lessee must ensure that the surrendered area is not landlocked.

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- (ii) At any time during the Term the Lessee may at its option and at its Cost:
  - (A) partially surrender this Lease by giving to the Lessor a surrender of lease in registrable form with respect to any Non-Make Good Buildings together with the Termination Payment; and
  - (B) in determining the area to be partially surrendered the Lessee must:
    - (1) ensure that there is 6 metres clearance from the perimeter of the surrendered area to the nearest building; and
    - (2) unless access can be provided to the surrendered area in accordance with clause 7.1(e) (iv) (B) ensure that the surrendered area is not landlocked.
- (iii) Neither party will have any further obligation to the other under this Lease following the date of service on the Lessor of the termination notice or partial surrender of lease and

the relevant Termination Payment under clause 7.1(e) (i) or 7.1(e)(ii) (but limited with respect to the area of the Premises surrendered in the case of clauses 7.1(e) (i) (B) and 7.1(e) (ii)), except for any pre-existing breach.

(iv) If clause 7.1(e) (i) (B) or 7.1(e) (ii) applies:

- (A) the Rent and Outgoings under this Lease shall reduce proportionately by reference to the area of the Premises surrendered (with any dispute to be determined under clause 14) with effect from the date of service on the Lessor of the notice of termination or partial surrender of lease and the relevant Termination Payment (as the case may be); and
- (B) the Lessee must permit the Lessor and persons authorised by it to have a reasonable means of access through the Premises to the surrendered area, so long as that means of access and the use of it do not have a material adverse impact on the Lessee's use or operation of the Premises; and
- (C) the definition of Outgoings will be amended to include reasonable security costs actually incurred by the Lessor arising from multiple occupancies of the Land.

#### 7.2 LESSOR'S RIGHT OF INSPECTION

The Lessor may in the presence of a responsible officer of the Lessee at all reasonable times on giving to the Lessee reasonable notice enter the Premises and view the state of repair and condition.

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#### 7.3 ENFORCEMENT OF REPAIRING OBLIGATIONS

The Lessor may:

- (a) (SERVE NOTICE) notify the Lessee of any failure by the Lessee to carry out within the time allowed by this Lease any repair, replacement or cleaning of the Premises which the Lessee is obliged to do under this Lease; and/or
- (b) (CARRY OUT REPAIR) require the Lessee to carry out that repair, replacement or cleaning within a reasonable time. If the Lessee fails to do so within a reasonable time having regard to the nature of the defect complained of and the length of time reasonably required to remedy that defect, the Lessor may elect to carry out that repair, replacement or cleaning at the Lessee's Cost (but wherever possible outside the usual operating hours of the Lessee). The Lessee shall on demand reimburse the Lessor for those Costs. The Lessor in exercise of its rights under this clause 7.3(b) shall:
  - (i) sign and/or procure signing by the Lessor's invitees of such confidentiality agreements as the Lessee may reasonably require;
  - (ii) endeavour not to cause any undue inconvenience to the Lessee and the conduct of the Lessee's Business; and
  - (iii) make good any damage caused to the Premises without delay.

#### 7.4 LESSOR MAY ENTER TO REPAIR, DECONTAMINATE

If:

- (a) (LESSOR WISHES TO REPAIR) the Lessor wishes to carry out any repairs to the Premises considered necessary or desirable by the Lessor or in relation to anything which the Lessor is obliged to do under this Lease; or
- (b) (REQUIREMENTS OF AUTHORITY) any Authority requires any repair or work to be undertaken on the Premises (including any decontamination, remediation or other cleanup) which the Lessor must or in its absolute discretion elects to do and for which the Lessee is not liable under this Lease,

then the Lessor, its architects, workmen and others authorised by the Lessor may at all reasonable times on giving to the Lessee reasonable notice enter and carry out any of those works and repairs. In so doing the Lessor shall:

- (c) sign and/or procure signing by the Lessor's Employees of such

confidentiality agreements as the Lessee may reasonably require;

- (d) endeavour not to cause undue inconvenience to the Lessee and the conduct of the Lessee's Business, and
- (e) make good any damage caused to the Premises without delay.

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The Lessor shall indemnify the Lessee on demand in respect of all Claims incurred or suffered by the Lessee as a consequence of the carrying out of works under this clause 7.4.

#### 7.5 DELETED

#### 7.6 ALTERATIONS TO PREMISES

- (a) (NO CONSENT REQUIRED) The Lessee is entitled to carry out any Proposed Work on or to the Premises without the need to seek or obtain Lessor's Consent except that the Lessee must obtain the Lessor's Consent prior to carrying out any structural Proposed Works:
  - (i) on or to any Make Good Buildings; or
  - (ii) which materially increase the footprint of the Non-Make Good Buildings,such Consent not to be unreasonably withheld or delayed.
- (b) (DEEMED CONSENT) If the Lessor does not respond conclusively to a request for Consent within 20 Business Days of the written request being served on it, the Lessor is deemed to have Consented to the relevant request.
- (c) (APPROVALS) The Lessee shall obtain all necessary approvals or permits before carrying out the Proposed Work.
- (d) (LESSOR TO ASSIST) The Lessor shall at the Lessee's Cost without delay do all acts and sign all documents to enable the Lessee to obtain the approvals and permits referred to in clause 7.6(c) and otherwise to enable the Lessee to carry out any Proposed Work in accordance with this Lease.
- (e) (SPECIFIC PROPOSED WORKS) Despite clause 7.6(a), the Lessor gives its consent to Proposed Work which relates to installation and removal of the Lessee's plant and equipment, including bolting or affixing to the floors of the Premises, subject to clauses 6.2 and 13; and
- (f) (CONDITION) The Lessor, acting reasonably, may require the Lessee to carry out remediation works as a condition of the Lessor's Consent to Proposed Work where Consent is required under clause 7.6(a) if the Proposed Works will, if implemented:
  - (i) trigger a Requirement to carry out those remediation works; or
  - (ii) render the Premises unsuitable for the Permitted Use unless the remediation works are carried out with the Proposed Work.

#### 7.7 NOTICE TO LESSOR OF DAMAGE, ACCIDENT ETC.

The Lessee shall notify the Lessor of any:

- (a) (ACCIDENT) accident to or in the Premises; and/or
- (b) (NOTICE) circumstances reasonably likely to cause any damage or injury to occur within the Premises,

of which the Lessee has actual notice.

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#### 7.8 MAINTENANCE CONTRACTS

The Lessee shall at its own Cost enter into maintenance contracts for the fire fighting services and equipment servicing the Premises with contractors approved by the Lessee and in a form and on terms (whether as to cost, standard of service or otherwise) reasonably acceptable to the Lessee.

7.9 DELETED

7.10 LESSEE'S FITOUT AND FITTINGS

The Lessee's Fitout and Fittings shall at all times be and remain the property of the Lessee (or the lessor of the Lessee's Fitout and Fittings, if applicable) despite any particular method of annexation to the Premises.

7.11 TIMING FOR WORKS AND COMPLIANCE WITH REQUIREMENTS

Despite any other provision of this Lease:

- (a) the Lessee may carry out any maintenance, repair or replacement or other works or comply with any Law or Requirement which it is required under this Lease to do or comply with at such time as the Lessee (acting reasonably) determines except that the Lessee must still comply with:
  - (i) the timetable set out in the relevant Requirement to which any works relate; and
  - (ii) clause 13; and
- (b) subject to clause 7.11(a)(i), the Lessor agrees that the mere issue of a Requirement or the existence of a non-compliance with Law does not of itself:
  - (i) trigger the Lessee's obligation to comply with it; or
  - (ii) constitute a timetable to do any works; or
  - (iii) constitute a breach of this Lease by the Lessee;
- (c) the Lessor cannot (and shall not) take any steps or exercise any rights under this Lease or otherwise to cause the Lessee to remedy the non-compliance with Law or comply with the Requirement (or do so itself under clause 7.3 or otherwise), unless:
  - (i) clauses 7.11(a)(i) or (ii) apply; or
  - (ii) the relevant Authority is taking active steps to require the Lessor to remedy the non-compliance or comply with the Requirement and the Lessor will be exposed to liability or Cost if it does not do so; and
- (d) the Lessee may, in its absolute discretion, elect to demolish any asbestos clad or roofed Buildings rather than comply with the relevant Law or Requirement but the Rent will not be reduced if the Lessee does so.

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7.12 SET OFF PROCEDURE

- (a) (NOTICE) If the Lessee wishes to set off any amount against the Rent, the Outgoings or any other amounts under this Lease in exercise of its rights under this Lease to do so, then the Lessee must give notice to the Lessor of the amount involved, reasonable detail of what the set off relates to and the provision of this Lease with respect to which the right is proposed to be exercised.
- (b) (NO RESPONSE) If the Lessor does not respond to this notice within 20 Business Days of service of it (time being of the essence), the Lessee is entitled to exercise the set off rights referred to in the notice in accordance with this Lease.
- (c) (DISPUTE) If the Lessor by notice to the Lessee disputes the Lessee's notice given under clause 7.12(a) within 20 Business Days of service of it (time being of the essence) and that dispute is not resolved within 5 Business Days of service of the Lessor's notice, either party may refer the matter to an appropriate independent person for determination under clause 14. The Lessee may not exercise any set off rights until any dispute under this clause has been determined or resolved.

8. ASSIGNMENT AND SUB-LETTING

8.1 NO DISPOSAL OF LESSEE'S INTEREST WITHOUT CONSENT

- (a) The Lessee may assign, transfer, sublet, licence or otherwise deal with or part with possession of the Premises or this Lease or any part of or any interest in them with the Consent of the Lessor which

shall not be unreasonably withheld.

- (b) The Lessor Consents to all sub-leases, sub-licences or other sub-rights to occupy the Premises which are in existence as at the Effective Date, whether or not those arrangements have been documented or disclosed.

#### 8.2 LESSOR'S OBLIGATION TO CONSENT

The Lessor must give the Consent referred to in clauses 8.1 and 8.5 if the Lessee proves to the reasonable satisfaction of the Lessor that the incoming tenant is a respectable, responsible and solvent Person and, in the case of an assignment or transfer, who is reasonably capable of performing the Lessee's obligations under this Lease.

#### 8.3 JAMES HARDIE INDUSTRIES N.V. PROVISIONS

Despite clause 8.1, whilst the Lessee is James Hardie Australia Pty Limited or James Hardie Industries N.V. or a Related Body Corporate of either of those companies:

- (a) (SUBLETTING) the Lessee may sublet, licence or otherwise part with possession of the Premises without obtaining the Lessor's Consent if the proposed sublessee or licensee is James Hardie Australia Pty Limited or James Hardie Industries N.V. or a Related Body Corporate of either of those companies. The Lessee shall notify the Lessor upon granting a sublease or licence of this nature;
- (b) (ASSIGNMENT) the Lessee may assign this Lease to a Related Body Corporate of James Hardie Australia Pty Limited or James Hardie Industries N.V. or to either of

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those companies without obtaining the Lessor's Consent but notice of the assignment must be given to the Lessor;

- (c) (SALE OF BUSINESS) if there is a sale to a purchaser of the business carried on by James Hardie Australia Pty Limited or James Hardie Industries N.V. (as the case may be) then the Lessor gives its consent to an assignment of this Lease to the purchaser;
- (d) (SHORT TERM SUBLEASE OR LICENCE) the Lessee may sublet or licence up to 1,000m<sup>2</sup> of the Premises without the Lessor's Consent where the term of that sublease or licence (excluding any renewal or holding over period) does not exceed 12 months; and
- (e) (NOVATION) the Lessee may novate this Lease to a Related Body Corporate of James Hardie Australia Pty Limited or James Hardies Industries N.V. as long as at the same time the novation occurs the Lessee procures that a guarantee of the obligations of the new tenant under this Lease is given by James Hardie Industries N.V. in a form satisfactory to the Lessor (acting reasonably).

#### 8.4 DEED

If the Lessor requests it, the Lessee shall procure that any assignee or transferee of this Lease executes a direct covenant with the Lessor to observe the terms of this Lease in such forms as the Lessor may reasonably require including payment of reasonable legal costs.

#### 8.5 CHANGE IN CONTROL

- (a) If:
  - (i) the Lessee is a company which is neither listed nor directly or indirectly wholly-owned by a company which is listed on any recognised Stock Exchange; and
  - (ii) there is a proposed change in the shareholding of the Lessee or its holding company so that a different person or group of people will control the composition of the board of directors or more than 50% of the shares giving a right to vote at general meetings of the Lessee,

then that proposed change in control is treated as a proposed assignment of this Lease and the Lessor's Consent must be obtained prior to the change in control taking effect.

- (b) The Lessor agrees that clause 8.5(a) will not apply to a change in shareholding or control where James Hardie Australia Pty Limited or a Related Body Corporate of James Hardie Australia Pty Ltd or James Hardie Industries N.V. remains or becomes:

- (i) the owner or ultimate holding company of the Lessee; or
- (ii) in control of the composition of the board of directors of the Lessee; or
- (iii) in control of more than 50% of the shares giving a right to vote at general meetings of the Lessee.

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## 9. INSURANCE AND INDEMNITIES

### 9.1 INSURANCES TO BE TAKEN OUT BY LESSEE

The Lessee shall:

- (a) (PUBLIC RISK) keep current during the Term (including any extension or Further Term or holding over) a public risk insurance policy with respect to the Premises, such policy to be for an amount of not less than the amount specified in Item 12;
- (b) (APPROVED INSURERS) ensure that all insurance policies maintained for the purposes of clause 9.1(a):
  - (i) (INSURANCE COMPANY) are taken out with an independent and reputable insurer; and
  - (ii) (AMOUNT) are for amounts and contain conditions reasonably acceptable to or reasonably required by the Lessor and/or the Lessor's insurer(s); and
- (c) (EVIDENCE OF INSURANCE) in respect of any policy of insurance to be effected by the Lessee under this clause 9.1, whenever reasonably required by the Lessor (but not more than once annually), give to the Lessor a copy of the certificate of currency; and
- (d) (INTEREST OF LESSOR) in respect of the policy of insurance to be effected by the Lessee under clause 9.1(a), ensure that the interest of the Lessor is noted,

except that the Lessee will be deemed to have complied with clauses 9.1(a) to (d) if James Hardie Australia Pty Limited or James Hardie Industries N.V. or a Related Body Corporate of either of those companies is the Lessee and that Lessee is insured under the global insurance arrangements of either of those companies.

### 9.2 INSURANCES TO BE TAKEN OUT BY LESSOR

The Lessor shall:

- (a) (PROPERTY INSURANCE) keep current during the Term including any extension or Further Term or holding over the property insurance for the Premises including loss of rent cover (capped at 18 months) referred to in paragraph (e) of the definition of Outgoings;
- (b) (APPROVED INSURERS) ensure that all insurance policies maintained for the purposes of clause 9.2(a):
  - (i) (INSURANCE COMPANY) are taken out with an independent and reputable insurer; and
  - (ii) (AMOUNT) are for amounts and contain conditions reasonably acceptable to or reasonably required by the Lessee and/or the Lessee's insurer(s); and
- (c) (EVIDENCE OF INSURANCE) in respect of any policy of insurance to be effected by the Lessor under this clause 9.2, whenever reasonably required by the Lessee (but not more than once annually), give to the Lessee a copy of the certificate of currency and reasonable details of the policy coverage; and

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- (d) (INTEREST OF LESSEE) in respect of the policy of insurance to be effected by the Lessor under clause 9.2(a), ensure that any interest of the Lessee is noted.

### 9.3 DEDUCTIBLES

The Lessor will not object to any reasonable deductibles contained in any

insurances effected or required to be effected by the Lessee pursuant to clause 9.1 provided that the Lessee will indemnify the Lessor to the extent of the deductible applicable under a Claim to which those insurances apply.

#### 9.4 INFLAMMABLE SUBSTANCES

The Lessee shall not:

- (a) (REASONABLE QUANTITIES) other than as is necessary for the Lessee's Business, store chemicals, inflammable liquids, acetylene gas or alcohol, volatile or explosive oils, compounds or substances on or in the Premises; or
- (b) (USE) use any of those substances or fluids in the Premises for any purpose other than the Lessee's Business.

This clause 9.4 does not apply to anything in underground storage tanks on the Premises which exist at the Effective Date.

#### 9.5 EFFECT ON LESSOR'S INSURANCES

The Lessee shall not without the Lessor's Consent, do anything to or on the Premises which will or may:

- (a) (INCREASE THE RATE OF INSURANCE) increase the rate of any insurance on the Premises or on any property in them, of which the Lessee has been notified by the Lessor, without paying to the Lessor an amount equal to the amount of that increase; or
- (b) (AVOID INSURANCE) vitiate or render void or voidable any insurance, of which the Lessee has been notified by the Lessor, in respect of the Premises or any property in them.

#### 9.6 INSURANCE PROPOSAL BY THE LESSEE

- (a) If the Lessee is of the opinion that the Lessee will be able to procure the same insurance required to be obtained by the Lessor under clause 9.2(a) at a more competitive premium or on better terms, the Lessee may by notice in writing to the Lessor propose that it take out a policy for the insurance referred to in clause 9.2(a), noting the Lessor's interests as landlord (INSURANCE PROPOSAL). The Lessee can only submit an Insurance Proposal once per year.
- (b) The insurer proposed must be either rated A or higher by S&P or Moodys or a global insurer with respect only to the industrial special risks component of the Insurance Proposal.
- (c) The Lessor must not unreasonably withhold, condition or delay its approval of an Insurance Proposal.

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- (d) If the Lessor approves the Insurance Proposal, the Lessee must promptly take out the insurance policy proposed under the Insurance Proposal (or, if the Lessor has failed to effect insurance under clause 9.2(a), the Lessee may take out the insurance policy anticipated by that clause) noting the Lessor's interests as landlord and, if required by the Lessor in writing, must note the interest of any financier to the Lessor and any mortgagee of the Land.
- (e) If the Lessee effects insurance under clause 9.6(d) and the Lessor is not named as an insured party, the Lessee shall reimburse the Lessor for any premiums for "difference in cover" insurance the Lessor is required to effect as a result of the requirements of its financiers, capped at 3% of the premiums payable by the Lessee under its Insurance Proposal.

#### 9.7 INDEMNITIES

Even if:

- (a) (AUTHORISATION) a Claim results from something the Lessee may be authorised or obliged to do under this Lease; and/or
- (b) (WAIVER) a waiver or other indulgence has been given to the Lessee in respect of an obligation of the Lessee under this clause 9.7,

the Lessee, except to the extent caused or contributed to by the Lessor or its Employees but only to the extent caused or contributed to by the Lessee or its Employees, shall indemnify the Lessor in respect of all

Claims for which the Lessor will or may be or become liable, whether during or after the Term, in respect of or arising directly or indirectly from:

- (c) (INJURY TO PROPERTY OR PERSON) any loss, damage or injury to property or person, in on or near the Premises caused or contributed to by:
  - (i) (NEGLIGENCE) any wilful or negligent act or omission;
  - (ii) (DEFAULT) any default under this Lease; and/or
  - (iii) (USE) the use of the Premises,by or on the part of the Lessee or the Lessee's Employees;
- (d) (ABUSE OF SERVICES) the negligent or careless use or neglect of the Services and facilities of the Premises or the Appurtenances by the Lessee or the Lessee's Employees or any other person claiming through or under the Lessee;
- (e) (WATER LEAKAGE) any overflow or leakage (including rain water or from any Service, Appurtenance or the Lessor's Fixtures) whether originating inside or outside the Premises; and
- (f) (PLATE GLASS) any loss, damage or injury relating to plate and other glass caused or contributed to by any act or omission on the part of the Lessee or the Lessee's Employees,

but excluding any consequential loss.

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## 10. DAMAGE, DESTRUCTION AND RESUMPTION

### 10.1 DAMAGE TO OR DESTRUCTION OF PREMISES

If at any time the Premises or any part of them are damaged or destroyed so that the Premises or any part of them are wholly or substantially unfit for the occupation and use of the Lessee or (having regard to the nature and location of the Premises and the normal means of access) are wholly or substantially inaccessible then, save where such damage or destruction arises out of the wilful or negligent act or omission of the Lessee or its Employees:

- (a) (i) (RENT AND OUTGOINGS ABATEMENT) the Rent, the Outgoings and any other money payable periodically under this Lease, or a proportionate part of that Rent, the Lessee's Proportion of Outgoings or other moneys according to the nature and extent of the damage or destruction sustained, will abate; and
- (ii) (REMEDIES SUSPENDED) all remedies for recovery of Rent, the Lessee's Proportion of Outgoings and other moneys (or that proportionate part of them, as the case may be) falling due after that damage or destruction will be suspended,

until the Premises have been restored or made fit for the occupation and use or made accessible to a standard equivalent to that at the Effective Date and all Services, air conditioning and air ventilation systems and fire fighting services and equipment for the Premises have been repaired so that they operate at a standard not less than as at the Effective Date;

- (b) (TERMINATION BY LESSEE) if the Premises are substantially destroyed, damaged or rendered inaccessible due to the wilful or negligent act or omission of the Lessor or by default by the Lessor under the Lease, the Lessee shall have the right to terminate the Lease by notice to the Lessor and to claim damages;
- (c) (REINSTATEMENT BY LESSOR) unless:
  - (i) (NO INSURANCE MONEYS) the Lessor's insurance policies have been invalidated or payment of insurance moneys under the policies refused because of some wilful act or omission of the Lessee or the Lessee's Employees;
  - (ii) (LESSEE INSURES) if clause 9.6(d) applies, the Lessee does not make the proceeds of the insurance referred to in clause 9.2(a) available to the Lessor for reinstatement of the Premises; or
  - (iii) (AGREEMENT) the parties agree otherwise,



the Lessor shall proceed with all reasonable expedition and diligence to reinstate the Premises and/or make the Premises fit for the occupation and use of and/or accessible to the Lessee to the standard required by clause 10.1(a);

- (d) (DETERMINATION BY LESSEE) where it is required under clause 10.1(c), unless the Lessor obtains all necessary development consents to authorise the necessary

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works to be done and provides reasonable written evidence of that to the Lessee within 6 months of the destruction or damage first occurring, then the Lessee may terminate this Lease by giving one month's notice to the Lessor. At the end of that notice period this Lease will be at an end;

- (e) (i) (DELAY IN REPAIR) if the Lessor is obliged under clause 10.1(c) to do so, but does not:
- (A) substantially commence the necessary works to make good the destruction or damage within 8 weeks, subject to any reasonable extension necessary to obtain approvals from any relevant Authority; and/or
  - (B) complete the necessary works to make good the destruction or damage within 9 months, subject to any reasonable extension necessary to obtain approvals from any relevant Authority,
- of it first occurring, then the Lessee may (by notice to the Lessor) proceed to cause the necessary works to be carried out and the Lessor shall allow the Lessee, its Employees, contractors and workmen access to the Land for that purpose; and
- (ii) (COSTS) all Costs of any kind incurred by the Lessee under clause 10.1(e)(i) shall at the Lessee's option (but subject to clause 7.12):
- (A) (DEMAND) be payable by the Lessor to the Lessee on demand on a full indemnity basis;
  - (B) (PROCEEDS) be paid from available proceeds of the insurance effected under clause 9.2(a), which the Lessor must promptly make available to the Lessee; or
  - (C) (COMBINATION) be accounted for by a combination of the above in the Lessee's discretion,
- until all Costs incurred by the Lessee have been recovered; and
- (f) (NO OBLIGATION TO RE-INSTATE) if the circumstances in clauses 10.1(c)(i) or (ii) exist, then the Lessor shall be under no obligation to reinstate the Premises or the means of access to them. In that case, either party may terminate this Lease by giving not less than one month's notice to the other.

## 10.2 RESUMPTION OF PREMISES

If at any time the whole or any part of the Premises is resumed so that the residue of them is wholly or partially unfit for the occupation and use of the Lessee or (having regard to the nature and location of the Premises and the normal means of access) is wholly or partially inaccessible, then:

- (a) (RENT ABATEMENT) a proportionate part of the Rent, the Lessee's Proportion of Outgoings, and any other moneys payable periodically under this Lease, according to the nature and extent of the resumption and having regard to the resultant impact on the Lessee's trade and takings, will abate; and

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- (b) (REMEDIES SUSPENDED) all remedies for recovery of that proportionate, part of the Rent, the Lessee's Proportion of Outgoings, and other moneys falling due after that resumption will be suspended.

## 10.3 LIABILITY

Except under clause 10.1(b), neither the Lessor or the Lessee is liable because of the determination of this Lease under this clause 10. That determination will be without prejudice to the rights of either party in respect of any preceding breach or non-observance of this Lease.

#### 10.4 DISPUTE

Any dispute-arising under clauses 10.1 or 10.2 shall be determined by an appropriate independent person under clause 14.

#### 11. LESSOR'S COVENANTS AND WARRANTIES

##### 11.1 QUIET ENJOYMENT

If the Lessee pays the Rent and other money payable under this Lease and observes and performs its obligations under this Lease, the Lessee may occupy and enjoy the Premises during the Term and any extension or Further Term or holding over without any interruption by the Lessor or by any person rightfully claiming through, under or in trust for the Lessor, or the Lessor's Employees.

##### 11.2 OUTGOINGS

Without limiting the Lessor's rights of recovery under this Lease, and except where directly payable by the Lessee under this Lease, the Lessor shall pay all Outgoings promptly and, where applicable, by any due date for payment.

##### 11.3 CONSENT OF MORTGAGEE

The Lessor warrants that it has obtained all Consents (including Consents from any mortgagee of the Land) necessary for it to enter into this Lease.

##### 11.4 DELETED

##### 11.5 ACCESS

The Lessor must provide the Lessee with access to the Premises 24 hours a day, 7 days a week.

##### 11.6 MANAGEMENT OF LAND

The Lessor covenants with the Lessee that it will not subdivide or reconfigure the Land or create any easement, covenant or other right unless it obtains the Consent of the Lessee (which Consent shall not be unreasonably withheld). The Lessee may only withhold its Consent under this clause 11.6 if the actions proposed by the Lessor will have a material adverse impact on the Lessee's rights under this Lease or the Lessee's Business or the

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Lessee's use of the Premises or the Land. Any dispute under this Clause 11.6 may be referred by either party for determination under Clause 14.

##### 11.7 CONSTRUCTION

The Lessee acknowledges that during the Term the Lessor may redevelop the Surplus Licensed Area and that it may be disturbed by resulting construction dust and noise. However, during any construction or redevelopment on the Surplus Licensed Area, the Lessor must:

- (a) (ACCESS) do all things necessary to minimise disturbance to the Lessee in its access to, use and occupation of the Premises and the Licensed Area except that the Lessor may interrupt Services for a maximum period of 24 hours during non-shift time after consultation with and prior agreement of the Lessee or at other times as the Lessee may agree;
- (b) (BUSINESS) do all things necessary to minimise disruption to the Lessee's Business conducted in the Premises and the Licensed Area.

##### 11.8 COMPETITORS

The Lessor covenants with the Lessee that it will not grant any lease or right of occupancy of or right to erect, install, affix, paint or otherwise display signage or advertising on any part of the Land or sell the Land or any part of it to any Competitor without the Consent of the Lessee.

##### 11.9 BREACH OF WARRANTY OR COVENANT

If the Lessor breaches clauses 11.5, 11.6, 11.7 or 11.8 then, without prejudice to any other rights or remedies the Lessee may have, the Lessee at any time and in its absolute discretion shall be entitled to give the Lessor notice of an intention to terminate this Lease unless the Lessor satisfies the conditions contained in the notice within 20 Business Days or such longer period as may be reasonably required having regard to the nature of the breach and the time reasonably required to remedy the breach (the REMEDY PERIOD). If the conditions are not satisfied within the Remedy Period, the Lessee may in its absolute discretion terminate this Lease at any time after that.

## 12. DEFAULT AND DETERMINATION

### 12.1 DEFAULT

Each of the following is an Event of Default (whether or not it is in the control of the Lessee):

- (a) (RENT IN ARREARS) the Rent or any part of it or any other money is in arrears and unpaid for 15 Business Days after it is due and has been demanded;
- (b) (FAILURE TO PERFORM OTHER COVENANTS) subject to clause 7.11, the Lessee fails to perform or observe any of its other obligations under this Lease within 15 Business Days or such longer period that may be reasonable in the circumstances after service of a notice requiring performance of the covenants; and

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- (c) (LIQUIDATION) the Liquidation of the Lessee.

### 12.2 FORFEITURE OF LEASE

If an Event of Default occurs the Lessor may, without prejudice to any other Claim which the Lessor has or may have or could otherwise have against the Lessee or any other person in respect of that default, at any time:

- (a) (DETERMINATION BY RE-ENTRY) subject to any prior demand or notice as is required by Law and wherever possible, outside the normal trading hours of the Lessee, re-enter into and take possession of the Premises or any part of them (by force if necessary) and eject the Lessee and all other persons from them, in which event this Lease will be at an end; and/or
- (b) (DETERMINATION BY NOTICE) by notice to the Lessee determine this Lease, and from the date of giving that notice this Lease will be at an end.

### 12.3 WAIVER

- (a) (WAIVER BY LESSOR) No consent or waiver express or implied by the Lessor to or of any breach of any covenant, condition, or duty of the Lessee shall be construed as a consent or waiver to or of any breach of the same or any other covenant, condition or duty.
- (b) (WAIVER BY LESSEE) No consent or waiver express or implied by the Lessee to or of any breach of any covenant, condition, or duty of the Lessor shall be construed as a consent or waiver to or of any breach of the same or any other covenant, condition or duty.

### 12.4 LESSOR TO MITIGATE DAMAGES

If the Lessee vacates the Premises, whether with or without the Lessor's Consent, or the Lessor terminates or forfeits this Lease, the Lessor shall take all reasonable steps to mitigate its loss and shall as soon as possible endeavour to re-let the Premises at a reasonable rent and on reasonable terms.

### 12.5 RECOVERY OF DAMAGES

- (a) (FUNDAMENTAL TERMS) The obligations contained in clauses 4.1, 4.2, 4.3, 4.4, 4.5, 5.3, 5.5, 6.1(a), 7.1(a) and (d), 7.6(a), 8.1, 9.1, 10.1 and 10.3 are agreed by the Lessor and the Lessee to be fundamental to this Lease.
- (b) (DAMAGES) If the Lessor determines this Lease pursuant to this clause 12 as a consequence of or in reliance upon a breach by the Lessee of one or more of the obligations contained in the provisions of this Lease referred to in clause 12.5(a) (whether alone or together with other obligations contained in this Lease) the Lessor shall, subject to clause 12.4, be entitled to damages for loss of

the benefits which performance of all of the obligations and provisions of this Lease would, but for the determination, have conferred upon the Lessor, subject to the Lessor's duty to mitigate its loss.

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#### 12.6 INTEREST ON OVERDUE MONEY

- (a) (INTEREST) The Lessee shall pay to the Lessor interest at the Interest Rate on any Rent or other money due under this Lease (including money or Costs which are expressed to be payable or reimbursable to the Lessor on demand) but unpaid for 5 Business Days.
- (b) (CONDITIONS) That interest shall:
  - (i) (ACCRUAL) accrue on a daily basis and be calculated on daily rests;
  - (ii) (PAYMENT) be payable on demand or, if no earlier demand is made, on the first Business Day of each month where an amount arose in the preceding month or months;
  - (iii) (CALCULATION) be calculated from the due date for payment of the Rent or other money (as appropriate) or, in the case of an amount payable by way of reimbursement or indemnity, the date of outlay or loss, if earlier, until the date of actual payment; and
  - (iv) (RECOVERY) be recoverable in the same manner as Rent in arrears.

#### 13. TERMINATION

##### 13.1 YIELD UP

In relation to the Premises (other than the Non Make Good Buildings), the Lessee shall at the Terminating Date:

- (a) (YIELD UP) yield them up in the state of repair and condition described in and on the terms set out in clause 7.1 except that the Lessee is not obliged to remove any Proposed Work it has done during the Term nor to reinstate the Premises to their former condition unless that was a condition of the Lessor's Consent to that Proposed Work being carried out by the Lessee; and
- (b) (REMOVE LESSEE'S FITOUT AND FITTINGS) if the Lessor so requests or if the Lessee wishes to, remove from the Premises (other than the Non-Make Good Buildings) all the Lessee's Fitout and Fittings and any other property of the Lessee and repaint those parts of the Premises (other than the Non-Make Good Buildings) which were previously painted and recarpet those parts of the Premises (other than the Non-Make Good Buildings) which were carpeted at the Effective Date with carpet of such quality as was installed at the Effective Date.

##### 13.2 NON MAKE GOOD BUILDINGS

In relation to the Non Make Good Buildings:

- (a) (REMOVE LESSEE'S FITOUT AND FITTINGS) if the Lessor so requests the Lessee shall or if the Lessee wishes to the Lessee may, remove from the Premises all the Lessee's Fitout and Fittings and any other property of the Lessee; and

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- (b) (ANY CONDITION) the Lessee can deliver them up to the Lessor in any condition, subject to performance of the Lessee's obligations in clause 7.1(d) which are due to be performed prior to the Terminating Date and under clause 13.2(a);

##### 13.3 LESSEE NOT TO CAUSE DAMAGE

The Lessee shall:

- (a) (NOT CAUSE DAMAGE) not cause or contribute to any damage to the Premises (other than the Non Make Good Buildings) in the removal of the Lessee's Fitout and Fittings and other property of the Lessee. If it does, however, it shall make good that damage; and

- (b) (LEAVE PREMISES IN GOOD STATE) leave the Premises in a clean state and Condition.

If the Lessee fails to comply with clauses 13.1, 13.2 and 13.3(a) and (b) within a reasonable time of the Terminating Date, the Lessor may make good and/or clean the Premises to the extent the Lessee was obliged to do so at the Cost of and as agent for the Lessee and recover from the Lessee the Cost to the Lessor of doing so as a liquidated debt payable on demand. The Lessee must also pay Rent and the Lessee's Proportion of Outgoings for any reasonable period in which the Lessor undertakes the Lessee's obligations under this clause 13.3.

13.4 FAILURE BY LESSEE TO REMOVE LESSEE'S FITOUT AND FITTINGS

If the Lessee fails to remove the Lessee's Fitout and Fittings and other property of the Lessee when required to do so under clauses 13.1 or 13.2 or following determination under clause 12.2, within 30 Business Days of notice to do so, the Lessor may cause the Lessee's Fitout and Fittings and other property of the Lessee to be removed and stored in such manner as the Lessor in its discretion thinks fit at the risk and Cost of the Lessee. The Lessee must also pay Rent and the Lessee's Proportion of Outgoings for any reasonable period in which the Lessor undertakes the Lessee's obligations under this clause 13.4.

13.5 FAILURE TO REMOVE

If the Lessee fails to remove the Lessee's Fitout and Fittings and other property of the Lessee by the Terminating Date under clauses 13.1 and 13.2 where the Lessor has not requested in writing that it do so, it shall then become the property of the Lessor.

14. DISPUTES

14.1 APPOINTMENT OF EXPERT

Any dispute arising under this Lease may at the request of either party be referred for determination by an appropriate independent person who is:

- (a) (AGREED BY PARTIES) agreed between the Lessor and the Lessee; or

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- (b) (FAILING AGREEMENT) if they cannot agree, a member of a professional body nominated at the request of either the Lessor or the Lessee by the President of the Property Council of Australia Limited.

14.2 QUALIFICATIONS OF EXPERT

The appointed person:

- (a) (EXPERIENCE) must have substantial experience in relation to disputes in the nature of the matter in dispute and where appropriate, in relation to premises of a similar type within the area in which the Premises are located or other comparable areas; and
- (b) (EXPERT) in making his determination shall act as an expert and not as an arbitrator.

His determination will be final and binding on the parties.

14.3 COST OF DETERMINATION

The Cost of the appointed person's determination shall be borne by either or both of the parties (as determined by the appointed person) and if by both of the parties in the proportion between them as the person making the determination decides.

15. ENVIRONMENTAL CONTAMINATION

15.1 LESSEE'S RESPONSIBILITY

Despite any other provision of this Lease except clauses 15.4 and 15.5(a) and (b) and the Lessee's obligations with respect to underground storage tanks and any Environmental contamination associated with them under clause 7.1(d), the Lessee is not responsible for:

- (a) inground Environmental contamination of the Land or migrating onto or from the Land which exists at the Effective Date except that, subject to clause 7.11, the Lessee must comply with the terms of the Section 28 Notice to the extent only that it relates to the Premises; or

- (b) for any Environmental contamination in, on, under or migrating onto or from the Land which occurs on and after the Effective Date which is not caused by the Lessee or its Employees.

## 15.2 LESSOR'S OBLIGATIONS AND INDEMNITY

The Lessor shall:

- (a) (COMPLY) without delay, but subject to clauses 15.4 and 15.5(b) and (c):
  - (i) remediate any Environmental contamination referred to in clause 15.1 and which:
    - (A) any Authority requires remediated; or
    - (B) the parties agree or the expert under clause 14 determines is required pursuant to clause 15.2(c); and
  - (ii) comply with the Requirements of any Authority and the Law with respect to the Environmental contamination referred to in clause 15.1; and
- (b) (INDEMNIFY) indemnify the Lessee against all Claims arising from the matters set out in clause 15.2(a) including any Costs arising from any agreement negotiated by or with the consent of the Lessor acting reasonably with any Authority relating to the matters referred to in clause 15.2(a) except to the extent that:
  - (i) other than with respect to Environmental contamination which constitutes a health and safety risk which the Lessee is required to notify to an Authority by Law, the Lessee or the Lessee's Employees have taken action with the intention of causing a Claim to be made or a notice or other Requirement issued and that action directly or indirectly has a material effect in causing the Claim to be made or the notice or other Requirement to be issued;
  - (ii) the Claim relates to Remediation to a standard higher than that required for industrial use (which the parties agree is the standard appropriate for the Permitted Use) whether arising from a rezoning of the Premises or otherwise; and/or
  - (iii) any disposition by the Lessee of a legal or equitable interest which the Lessee has in the Premises is made on terms which include an indemnity in respect of the Environment which is materially more advantageous to the person receiving that interest from the Lessee than the indemnity included in this clause 15.2, including in respect of the qualifications applicable to the indemnity contained in this clause 15.2(b).
- (c) (i) If there is any Environmental contamination referred to in clause 15.1 which:
  - (A) prevents the Lessee operating from the Premises in the manner used at the Effective Date; or
  - (B) otherwise constitutes a health and safety risk,then the Lessee may give notice to the Lessor with reasonable details of the Environmental contamination and requesting that the Lessor remediate that contamination.
  - (ii) If the Lessor disputes whether the remediation requested by the Lessee is reasonably necessary, it must give notice to the Lessee within 20 Business Days of the date of service of the Lessee's notice under paragraph (i).
  - (iii) If the Lessor and the Lessee cannot agree on whether the remediation requested by the Lessee is reasonably necessary within 25 Business Days of the date of service of the Lessee's notice under paragraph (i) above, then either party may refer the matter for dispute resolution under clause 14.

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## 15.3 REMEDIATION BY THE LESSEE IF LESSOR DEFAULTS

If:

- (a) (LESSOR'S FAILURE) the Lessor fails to comply with clause 15.2(a) in accordance with the Requirements of any Authority and the Law (or, if no time is specified, within a reasonable time of notice from the Lessee, having regard to the nature of the remediation or the Law or Requirement and the period of time reasonably required to carry out the remediation or comply with the Law or Requirement); or
- (b) (EMERGENCY) any emergency arises which requires the immediate or urgent remediation of Environmental contamination or compliance with a Requirement or the Law which the Lessor is required to remediate or comply with under this Lease,

then the Lessee may remediate the Environmental contamination or comply with the Law or the Requirement and the Cost of so doing and of all Claims incurred by the Lessee in properly complying with that Law or Requirement or arising from the Lessor's failure to do so and any reasonable Costs arising from temporary relocation of all or part of the Lessee's Business shall, at the Lessee's option be (but subject to clause 7.12):

- (c) (ON DEMAND) payable by the Lessor to the Lessee on demand on a full indemnity basis;
- (d) (SET OFF) be set off against the Rent, the Lessee's Proportion of Outgoings and any other moneys payable by the Lessee under this Lease; or
- (e) (COMBINATION) accounted for by a combination of the above in the Lessee's discretion,

until all Costs incurred by the Lessee have been recovered.

#### 15.4 PRE-EXISTING UST'S

The Lessee must by the Terminating Date remove any underground storage tanks existing on the Land at the Effective Date or installed by the Lessee during the Term and remediate or otherwise deal with any Environmental contamination associated with them to the extent required to enable the Land to continue to be used for industrial purposes following the Terminating Date.

#### 15.5 SPECIFIC OBLIGATIONS

- (a) Subject to clause 7.11, the Lessee must effect and maintain all Environmental management plans relating to the Environmental condition of the Buildings on the Premises which are Required by Law or any Authority during the Term.
- (b) Subject to clauses 7.11 and 15.5(c), the Lessee shall contribute up to a maximum of \$120,000 per annum (increased by 3% per annum on each anniversary of the Effective Date) towards the Costs of:
  - (i) day to day repair and maintenance of the pumping out equipment (but not capital or structural Costs); and

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- (ii) any pumping out of mobile contaminants (including petroleum hydrocarbons) identified in the groundwater of that part of the Land included in the Premises,

which is Required by Law or any Authority during the Term and any balance in excess of this amount per annum shall be payable by the Lessor within 5 Business Days of receipt of a tax invoice and reasonable details of the amount claimed.

- (c) The Lessor must pay all capital Costs associated with the purchase, commissioning and, subject to the Lessee performing the repair and maintenance obligation referred to in clause 15.5(b), replacement of the remediation equipment required for the purposes of pumping out from the Premises and which is Required by Law or any Authority during the Term, within 5 Business Days of receipt of a tax invoice and reasonable details of the amounts claimed.

#### 15.6 RECOVERY FROM POLLUTER

The Lessor must:

- (a) include any pumping out Costs paid by the Lessee under clause 15.5(b) in any Claim against the polluter; and
- (b) reimburse to the Lessee any of those Costs recovered from the

polluter within 5 Business Days of receipt (capped at the amounts actually incurred by the Lessee).

#### 15.7 ACKNOWLEDGEMENT

Without limiting any other provision of this clause 15, the Lessee acknowledges that the Premises are at the Effective Date subject to Environmental contamination and accepts the Premises in that state.

#### 16. MISCELLANEOUS

##### 16.1 NOTICES

All notices, requests, demands, consents, approvals, agreements or other communications to or by a party to this Lease:

- (a) (WRITING) must be in writing;
- (b) (SIGNED) must be signed by the sender, or if a company, by its Authorised Officer; and
- (c) (SERVED) will be taken to have been served:
  - (i) (PERSONAL) in the case of delivery in person, when delivered to or left at the address of the recipient shown in this Lease (as the case may be) or at any other address which the recipient may have notified to the sender;
  - (ii) (FAX) in the case of facsimile transmission, when recorded on the transmission result report unless:

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- (A) within 24 hours of that time the recipient informs the sender that the transmission was received in an incomplete or garbled form; or
- (B) the transmission result report indicates a faulty or incomplete transmission; and
- (d) (MAIL) in the case of mail, on the third Business Day after the date on which the notice is accepted for posting by the relevant postal authority,

but if service is on a day which is not a Business Day in the place to which the communication is sent or is later than 4.00pm (local time) on a Business Day, the notice will be taken to have been served on the next Business Day in that place.

##### 16.2 STAMP DUTY, COSTS AND REGISTRATION

- (a) (STAMP DUTY AND REGISTRATION FEES) The Lessee shall pay to the Lessor on demand all stamp duty (including penalties and fines other than those incurred due to the fault of the Lessor) and all registration fees (if applicable) with respect to this Lease.
- (b) (LEGAL COSTS) Each party shall pay their own legal Costs with respect to this Lease.
- (c) (LESSOR TO STAMP AND REGISTER) The Lessor shall (subject to receipt of necessary funds from the Lessee) attend to payment of stamp duty on and registration of this Lease at Land and Property Information, Sydney as soon as possible after the Effective Date.

##### 16.3 SEVERANCE

Any provision of this Lease which is prohibited or unenforceable in any jurisdiction will be ineffective in that jurisdiction to the extent of the prohibition or unenforceability. That will not invalidate the remaining provisions of this Lease nor affect the validity or enforceability of that provision in any other jurisdiction.

##### 16.4 ENTIRE AGREEMENT

This Lease contains all the contractual arrangements of the parties with respect to the transaction to which it relates. No representations or warranties made by either party with respect to the transaction to which this Lease relates shall be actionable or enforceable except to the extent that they are contained in this Lease.

##### 16.5 GOVERNING LAW

This Lease is governed by the laws of New South Wales. The parties submit



to the non-exclusive jurisdiction of courts exercising jurisdiction there.

17. CONFIDENTIALITY

- (a) (DUTY) Unless the parties otherwise agree in any particular instance, the provisions of this Lease and all information disclosed to or obtained by the parties in relation to each other and this Lease and which is not in public knowledge (or which is in

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public knowledge only as a consequence of a breach of this clause) must be kept confidential to the parties and may not be disclosed (unless otherwise required by Law) except to any bona fide consultants retained by a party in relation to this Lease, or to bona fide purchasers, financiers, assignees or sub occupants (as the case may be) and any such consultant or other person must be provided only with that information which he needs to know for the purposes of reviewing this Lease and he must undertake in writing to maintain the confidentiality of that information. (b) (INDEMNITY) The parties shall indemnify each other and must keep each other indemnified against all Claims suffered or incurred as a consequence of any breach of clause 17(a) by the Lessor or the Lessee or their respective Employees, consultants or other reasons for whom they are responsible.

18. LICENCE OF LICENSED AREA

18.1 GRANT OF LICENCE

The Lessor grants to the Lessee a non-exclusive licence to use the Licensed Area for purposes associated with the Permitted Use.

18.2 LESSOR TO RETAIN LEGAL POSSESSION

This clause 18 does not give the Lessee any interest in the Licensed Area or any part of it and the legal possession and control of it is at all times vested in the registered proprietor for the time being of the Licensed Area.

18.3 TERM

- (a) The term of the licence is from the Commencing Date to the Terminating Date.
- (b) Despite clause 18.3(a), either party may terminate the licence with respect to the Surplus Licensed Area at any time after the day following the Effective Date by giving (in the case of the Lessor) not less than 2 months and (in the case of the Lessee) not less than 5 Business Days written notice to the other party. Neither party shall have any further obligation to the other with respect to the Surplus Licensed Area arising after the date of service of the notice under this clause 18.3, except for any pre-existing breach of this clause 18 and clauses 11.6, 11.7 and 11.8.
- (c) Despite any other provision of this Lease, on the date of termination of the licence of the Surplus Licensed Area under clause 18.3(b), the Lessee's Proportion of Outgoings payable under this Lease shall be reduced proportionately to reflect the area of the Licensed Area surrendered.
- (d) The parties shall promptly do all things necessary to prepare and execute any documentation relevant to the termination referred to in clause 18.3(b) and the variations to the Lease arising under clause 18.3(c).

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18.4 OTHER CONDITIONS

- (a) The Lessee shall not be required to pay any licence fee with respect to the Licensed Area in addition to the Rent.
- (b) The Lessee shall indemnify the Lessor on demand against all Claims which the Lessor may sustain or incur in relation to:
- (i) the Lessee's use of the Licensed Area; and
  - (ii) any breach of this clause 18 by the Lessee,
- except to the extent that any such Claim is caused or contributed to

by any act or omission on the part of the Lessor or its Employees.

- (c) The terms of this Lease (other than clauses 4 and 5.3 to 5.6) apply to the licence of the Licensed Area granted under this clause 18.

#### 18.5 ON SALE

If the Lessor sells the Land, it shall procure from the Purchaser prior to completion of the sale deed in favour of the Lessee to observe and perform the provisions of this clause 18. This clause will only apply to the extent that the Lessee has or will have an interest in the Licensed Area at the date of completion of the sale.

#### 19. STEAM SUPPLY

##### 19.1 GRANT OF EASEMENT

The Lessor grants to the Lessee during the Term, any Further Term and any holding over with respect to the area shown on the plan in Annexure E (EASEMENT AREA) an easement to run gas, steam, water and other fluids through pipes and other equipment within the Easement Area and to do any thing reasonably necessary for that purpose, including:

- (a) entering the Easement Area at reasonable times and on reasonable notice (except in an emergency when no notice shall be required);
- (b) taking anything onto the Easement Area;
- (c) using any existing line of pipes; and
- (d) carrying out works, such as constructing, replacing, repairing or maintaining pipes, pumps and other equipment.

##### 19.2 EXERCISE OF RIGHTS

In exercising those powers, the Lessee must:

- (a) ensure all work is done properly;
- (b) cause as little inconvenience as is practicable to the Lessor and any occupier of the Easement Area;
- (c) cause as little damage as is practicable to the Easement Area and any improvement on it; and
- (d) make good any collateral damage.

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##### 19.3 IPLEX CONSENT

The Lessor is not obliged to (but the Lessee must at its Cost) obtain all consents required from Iplex Pipelines Australia Pty Limited to the grant and registration of the easement referred to in clause 19.1.

#### 20. LIMITATION OF LIABILITY

##### 20.1 CAPACITY OF LESSOR

Where the Lessor is a trustee of a trust (TRUST), the Lessor only enters into this Lease in its capacity as trustee of the Trust and in no other capacity. A liability arising under or in connection with this Lease is limited and can be enforced against the Lessor only to the extent to which it can be satisfied out of property of the Trust and for which the Lessor is actually indemnified for the liability. This limitation of the Lessor's liability applies despite any other provisions of this Lease (except clause 20.3 ("When limitation does not apply")) and extends to all liabilities and obligations of the Lessor in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Lease, any other document in connection with it, or the Trust.

##### 20.2 PARTIES MAY NOT SUE

The parties may not sue the Lessor in any capacity other than as trustee of the Trust, including seeking the appointment of a receiver, a liquidator, an administrator or similar person to the Lessor or prove in any liquidation, administration or arrangement of or affecting the Lessor (except in relation to property of the Trust).

##### 20.3 WHEN LIMITATION DOES NOT APPLY

Clauses 20.1 and 20.2 shall not apply to any obligation or liability of

the Lessor to the extent that it is not satisfied because, under this Lease or any other document in connection with it, or by operation of law, there is a reduction in the extent of the Lessor's indemnification out of the assets of the Trust, as a result of the Lessor's fraud, negligence or breach of trust.

#### 20.4 FAILURE BY THIRD PARTIES

It is acknowledged that the Lessor is responsible under this Lease and other documents in connection with it for performing a variety of obligations relating to the Trust. No act or omission of the Lessor will be considered fraud or negligence of the Lessor for the purposes of clauses 20.3 ("When limitation does not apply") or 20.5 ("Breach by the Lessor") to the extent to which the act or omission was caused by any failure by any person who provides services in respect of the Trust to fulfil its obligations relating to the Trust or by any other act or omission of any person who provides services in respect of the Trust (other than employees and agents of the Lessor or a person who has been delegated or appointed by the Lessor).

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#### 20.5 BREACH BY THE LESSOR

It is also acknowledged that a breach of an obligation imposed on, or a representation or warranty given by, the Lessor under or in connection with this Lease or any other document in connection with it will not be considered a breach of trust by the Lessor unless the Lessor has acted with negligence, or without good faith, in relation to the breach.

#### 21. TRUST WARRANTIES

Where the Lessor is a trustee and/or responsible entity of a Trust, the Lessor warrants in its personal capacity that:

- (a) (TRUSTEE) it is the sole trustee of the Trust;
- (b) (POWER) it, in its capacity as trustee of the Trust, is entitled and competent and has absolute and complete authority, power and capacity to enter into and perform its obligations under this Lease and is not in breach of any Law or court order relating to its acting as trustee of the Trust;
- (c) (INDEMNITY) its right of indemnity out of, and lien over, the assets of the Trust has not been limited in any way and that right has priority over the right of the beneficiaries to the Trust assets;
- (d) (ENFORCEABLE) the deed establishing the Trust (TRUST DEED) is enforceable in accordance with the Law applicable to it;
- (e) (CONSENT) the consent of each of the beneficiaries, unitholders or other persons whose consent is required under the Trust Deed has been obtained;
- (f) (NO BREACH) the entry into this Lease by the Lessor does not conflict with or result in a breach of, or default under, any provision of the Trust Deed or any other agreement to which the Lessor is a party (whether in its capacity as trustee of the Trust or its personal capacity);
- (g) (TRUST EXTANT) the Trust has not at the Effective Date been terminated nor has the date or any event for the vesting of the assets subject to the Trust occurred.

#### 22. GUARANTEE AND INDEMNITY

##### 22.1 CONSIDERATION

The Guarantor gives this guarantee and indemnity in consideration of the Lessor agreeing to enter into this Lease at the request of the Guarantor. The Guarantor acknowledges the receipt of valuable consideration from the Lessor for the Guarantor incurring obligations and giving rights under this guarantee and indemnity.

##### 22.2 GUARANTEE

The Guarantor unconditionally and irrevocably guarantees to the Lessor the due and punctual performance and observance by the Lessee of its obligations:

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- (a) under this Lease, even if this Lease is not registered or is found not to be a lease or is found to be a lease for a term less than the Term; and
  - (b) in connection with its occupation of the Premises,
- including the obligations to pay money.

#### 22.3 INDEMNITY

As a separate undertaking, the Guarantor unconditionally and irrevocably indemnifies the Lessor against all liability or loss arising from, and any costs, charges or expenses incurred in connection with:

- (a) the Lessee's breach of this Lease; or
  - (b) the Lessee's occupation of the Premises,
- including a breach of the obligations to pay money; or
- (c) a representation or warranty by the Lessee in this Lease being incorrect or misleading when made or taken to be made; or
  - (d) a liquidator disclaiming this Lease.

It is not necessary for the Lessor to incur expense or make payment before enforcing that right of indemnity.

#### 22.4 INTEREST

The Guarantor agrees to pay interest on any amount payable under this guarantee and indemnity from when the amount becomes due for payment until it is paid in full. The Guarantor must pay accumulated interest at the end of each month without demand. Interest is payable as set out in clause 12.6.

#### 22.5 ENFORCEMENT OF RIGHTS

The Guarantor waives any right it has of first requiring the Lessor to commence proceedings or enforce any other right against the Lessee or any other person before claiming under this guarantee and indemnity.

#### 22.6 CONTINUING SECURITY

This guarantee and indemnity is a continuing security and is not discharged by any one payment.

#### 22.7 GUARANTEE NOT AFFECTED

The liabilities of the Guarantor under this guarantee and indemnity as a guarantor, indemnifier or principal debtor and the rights of the Lessor under this guarantee and indemnity are not affected by anything which might otherwise affect them at law or in equity including, but not limited to, one or more of the following:

- (a) the Lessor granting time or other indulgence to, compounding or compromising with or releasing the Lessee or any other Guarantor;
- (b) acquiescence, delay, acts, omissions or mistakes on the part of the Lessor;

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- (c) any transfer of a right of the Lessor;
- (d) the termination, surrender or expiry of, or any variation, assignment, subletting, licensing, extension or renewal of or any reduction or conversion of the Term of this Lease;
- (e) the invalidity or unenforceability of an obligation or liability of a person other than the Guarantor;
- (f) any change in the Lessee's occupation of the Premises;
- (g) this Lease not being registered;
- (h) this Lease not being effective as a lease;
- (i) this Lease not being effective as a lease for the Term;
- (j) any person named as Guarantor not executing or not executing effectively this guarantee and indemnity;

(k) a liquidator disclaiming this Lease.

## 22.8 SUSPENSION OF GUARANTOR'S RIGHTS

The Guarantor may not:

- (a) raise a set-off or counterclaim available to it or the Lessee against the Lessor in reduction of its liability under this guarantee and indemnity; or
- (b) claim to be entitled by way of contribution, indemnity, subrogation, marshalling or otherwise to the benefit of any security or guarantee held by the Lessor in connection with this Lease; or
- (c) make a claim or enforce a right against the Lessee or its property; or
- (d) prove in competition with the Lessor if a liquidator, provisional liquidator, receiver, administrator or trustee in bankruptcy is appointed in respect of the Lessee or the Lessee is otherwise unable to pay its debts when they fall due,

until all money payable to the Lessor in connection with the lease or the Lessee's occupation of the Premises is paid.

## 22.9 REINSTATEMENT OF GUARANTEE

If a claim that a payment to the Lessor in connection with this Lease or this guarantee and indemnity is void or voidable (including, but not limited to, a claim under laws relating to liquidation, administration, insolvency or protection of creditors) is upheld, conceded or compromised then the Lessor is entitled immediately as against the Guarantor to the rights to which it would have been entitled under this guarantee and indemnity if the payment had not occurred.

## 22.10 COSTS

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

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- (a) the Lessor's costs, charges and expenses in making, enforcing and doing anything in connection with this guarantee and indemnity including, but not limited to, legal costs and expenses on a full indemnity basis; and
- (b) all stamp duties, fees, taxes and charges which are payable in connection with this guarantee and indemnity or a payment, receipt or other transaction contemplated by it.

Money paid to the Lessor by the Guarantor must be applied first against payment of costs, charges and expenses under this clause 22.10 then against other obligations under this guarantee and indemnity.

## 22.11 LESSOR MAY ASSIGN

The Lessor may assign its rights under this guarantee and indemnity to a purchaser or transferee of the Land.

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EXECUTED as a Deed in Sydney.

Each attorney executing this Deed states that he or she has no notice of revocation or suspension of his or her power of attorney.

EXECUTED by AMACA PTY LIMITED:

/s/ Peter Edward John Jollie  
-----  
Director Signature

Peter Edward John Jollie  
-----  
Print Name

/s/ Dennis John Cooper  
-----  
Director/Secretary Signature

Dennis John Cooper  
-----  
Print Name

SIGNED SEALED AND DELIVERED for JAMES HARDIE AUSTRALIA PTY LIMITED by its attorney under power of attorney registered book 4419 No 817 dated 12 March 2004 in the presence of::

/s/ Josie Hui  
-----  
Witness Signature

Josie Hui  
-----  
Print Name

/s/ Joanne Marchione  
-----  
Attorney Signature

Joanne Marchione  
-----  
Print Name

SIGNED SEALED AND DELIVERED for JAMES HARDIE INDUSTRIES N.V. by its attorney under power of attorney registered book 4419 No 863 dated in the presence of::

/s/ Josie Hui  
-----  
Witness Signature

Josie Hui  
-----  
Print Name

/s/ Joanne Marchione  
-----  
Attorney Signature

Joanne Marchione  
-----  
Print Name

Aliens Arthur Robinson

THIS IS ANNEXURE B OF 7 PAGES TO THE VARIATION OF LEASE BETWEEN AMACA PTY LIMITED (ACN 000 035 512) (LESSOR), JAMES HARDIE AUSTRALIA PTY LIMITED (ACN 084 635 558) (LESSEE) AND JAMES HARDIE INDUSTRIES N.V. (ARBN 097 829 895) (GUARANTOR) DATED 23 MARCH 2004

LESSOR'S ASSET REGISTER

Aliens Arthur Robinson

THIS IS ANNEXURE C OF 3 PAGES TO THE VARIATION OF LEASE BETWEEN AMACA PTY LIMITED (ACN 000 035 512) (LESSOR), JAMES HARDIE AUSTRALIA PTY LIMITED (ACN 084 635 558) (LESSEE) AND JAMES HARDIE INDUSTRIES N.V. (ARBN 097 829 895) (GUARANTOR) DATED 23 MARCH 2004

MAKE GOOD AND NON MAKE GOOD BUILDINGS PLANS

Aliens Arthur Robinson

THIS IS ANNEXURE D OF 2 PAGES TO THE VARIATION OF LEASE BETWEEN AMACA PTY LIMITED (ACN 000 035 512) (LESSOR), JAMES HARDIE AUSTRALIA PTY LIMITED (ACN 084 635 558) (LESSEE) AND JAMES HARDIE INDUSTRIES N.V. (ARBN 097 829 895) (GUARANTOR) DATED 23 MARCH 2004

PLAN OF LICENSED AREA

Aliens Arthur Robinson

THIS IS ANNEXURE E OF 2 PAGES TO THE VARIATION OF LEASE BETWEEN AMACA PTY LIMITED (ACN 000 035 512) (LESSOR), JAMES HARDIE AUSTRALIA PTY LIMITED (ACN 084 635 558) (LESSEE) AND JAMES HARDIE INDUSTRIES N.V. (ARBN 097 829 895) (GUARANTOR) DATED 23 MARCH 2004

EASEMENT PLAN



Aliens Arthur Robinson

THIS IS ANNEXURE F OF 2 PAGES TO THE VARIATION OF LEASE BETWEEN AMACA PTY LIMITED (ACN 000 035 512) (LESSOR), JAMES HARDIE AUSTRALIA PTY LIMITED (ACN 084 635 558) (LESSEE) AND JAMES HARDIE INDUSTRIES N.V. (ARBN 097 829 895) (GUARANTOR) DATED 23 MARCH 2004

SURPLUS LICENSED AREA PLAN

FORM E 2

FORM APPROVED  
NO. B2900

WESTERN AUSTRALIA  
TRANSFER OF LAND ACT 1893 AS AMENDED

EXTENSION OF LEASE

<TABLE>  
<CAPTION>

LEASE NUMBER	DESCRIPTION OF LAND (Note 1)	EXTENT	VOLUME	FOLIO
<S>	<C>	<C>	<C>	<C>
H195573	Lot 55 on Plan 14360	Whole	1660	385
	Lot 53 on Plan 12387	Whole	1770	067

</TABLE>

LESSOR-REGISTERED PROPRIETOR OF LAND (Note 2)  
-----  
Amaca Pty Limited (ACN 000 035 512) of Suite 906, Level 9, MLC Centre, 19-29  
Martin Place, Sydney, NSW

LESSEE-REGISTERED PROPRIETOR OF LEASE (Note 3)  
-----  
James Hardie Australia Pty Limited (ACN 084 635 558) of 10 Colquihoun Street,  
Rosehill, NSW

LIMITATIONS, INTERESTS, ENCUMBRANCES and NOTIFICATIONS (Note 3)  
-----  
Nil

The LESSOR HEREBY EXTENDS the above lease for the term of                    See Annexure A  
-----  
from the [    ] day of [    ] Year [    ] upon the terms and conditions and subject  
to the covenants contained therein with the variation following. (Note 5)

See Annexure A.

Dated this                    23                    day of                    March                    Year 2004

LESSOR/S SIGN HERE (Note 5)                    LESSEE/S SIGN HERE (Note 5)

See Annexure A                    See Annexure A

-----  
This extension shall not affect any dealing registered subsequent to the above  
Lease unless the person in whose favour such dealing was registered consents.

(C)State of Western Australia, Produced under License by the 21st Century Legal  
Services c/-Michael Paterson & Associates tel: 9443 5383, fax: 9443 5390

INSTRUCTIONS

1. If insufficient space in any section, Additional Sheet, Form B1, should be used with appropriate headings. The boxed sections should only contain the words "see page ..."
2. Additional Sheets shall be numbered consecutively and bound to this document by staples along the left margin prior to execution by the parties.
3. No alteration should be made by erasure. The words rejected should be

scored through and those substituted typed or written above them, the alteration being initialled by the persons signing this document and their witnesses.

4. Duplicate Lease to be produced.
5. Where issued, the Duplicate Certificate of Title is required to be produced or if held by another party then arrangements must be made for its production.

NOTES

1. DESCRIPTION OF LAND

Lot and Diagram/Plan/Strata/Survey-Strata Plan number or Location name and number to be stated.

Extent - Whole, part or balance of the land comprised in the Certificate of Title to be stated.

The Volume and Folio number, to be stated.

2. LESSOR

State full name and address of the Lessor/Lessors (Registered Proprietor) as shown on Certificate of Title and the address/addresses to which future notices can be sent.

3. LESSEE

State full name of the Lessee/Lessees (Registered Proprietors of Lease) and the address/addresses to which future notices can be sent.

4. LIMITATIONS, INTERESTS, ENCUMBRANCES AND NOTIFICATIONS

In this panel show (subject to the next paragraph) those Limitations, interests, encumbrances and notifications affecting the leased land recorded after the lease:

- (a) On the certificate(s) of title:
  - (i) In the Second Schedule; or
  - (ii) If no Second Schedule, that are encumbrances;

AND

- (b) On the lease, that are encumbrances not recorded on the certificate(s) of title (unless to be removed by action or document before registration hereof).

Do not show any:

- (a) Easement Benefits or Restrictive/Covenant Benefits; or
- (b) Subsidiary interests or changes affecting a limitation, etc, that is to be entered in the panel (eg, if a mortgage is shown, do not show any partial discharges or any document affecting either).

The documents shown are to be identified by nature and number. The plan/diagram encumbrances shown are to be identified by nature and plan/diagram number. Strata/survey-strata plan encumbrances are to be described as "interests on strata/survey-strata plan". If none show "nil".

5. TERM AND VARIATIONS

Term to be stated in years, months and days or as the case may be. State variation in the panel provided.

6. LESSORS, LESSEES EXECUTION

A separate attestation is required for every person signing this document. Each signature should be separately witnessed by an Adult Person. The address and occupation of witnesses must be stated.

-----  
EXAMINED

-----  
OFFICE USE ONLY  
-----

<TABLE>



3.	Land	Certificates of Title Volume 1660 Folio 385 and Volume 1770 Folio 067
4.	Premises	The Land, buildings and other improvements situated at Lots 53 and 55 Rutland Avenue, Welshpool, WA in the condition in which they exist as at the Effective Date and includes the Lessor's Fixtures.
5.	Term	7 Years 4 months, 23 days
6.	Commencing Date	1 November 1998
7.	Terminating Date	23 March 2006
8.	Further Term	2 further terms each of 5 years, the last expiring on 23 March 2016.
9.	Rent	\$470,000.00 per annum, payable as prescribed in clauses 4.1 and 4.2, and subject to review as specified in clauses 4.4, 4.5, 4.6 and 4.7.
10.	Review Dates	The Review Dates for review of the Rent are as follows:  (a) Fixed Review Dates shall be each anniversary of the Effective Date during the Term other than the Commencing Date of a Further Term; and

</TABLE>

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<TABLE>  
<CAPTION>

ITEM	TERM	DEFINITION
<S>	<C>	<C>
		(b) Market Review Dates shall be the Commencing Date of each Further Term.
11.	Permitted Use	Manufacture, warehousing, distribution and sales of fibre cement products and systems and all associated activities (including offices) and any other use for which the Lessee may lawfully use the Premises.
12.	Public Risk Insurance	\$50,000,000
13.	Review Dates for the Further Term	The Review Dates for the review of the Rent in each Further Term and the method of review shall be as follows.  (a) Fixed Review Dates shall be on each anniversary of the Commencing Date of that Further Term other than the Commencing Date of a Further Term; and  (b) Market Review Dates shall only occur on the Commencing Date of the Further Term.
14.	Lessee's Proportion	100%

</TABLE>

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#### INTERPRETATION

##### 1.1 DEFINITIONS

The following definitions together with those in the Schedule apply unless the context requires otherwise.

APPURTENANCE includes any drain, basin, sink, toilet or urinal.

AUSTRALIAN INSTITUTE means the Australian Property Institute Inc. (Western Australia Division).

AUTHORISATION includes any authorisation, approval, consent, licence, permit, franchise, permission, filing, registration, resolution, direction, declaration, or exemption.

AUTHORISED OFFICER means any director or secretary, or any person from time to time nominated as an Authorised Officer by a party by a notice to the other party accompanied by specimen signatures of all new persons so appointed.

AUTHORITY includes:

- (a) (GOVERNMENT) any government in any jurisdiction, whether federal, state, territorial or local;

- (b) (PUBLIC UTILITY) any provider of public utility services, whether statutory or not; and
- (c) (OTHER BODY) any other person, authority, instrumentality or body having jurisdiction, rights, powers, duties or responsibilities over the Premises or any part of them or anything in relation to them (including the Insurance Council of Australia Limited).

BUILDING means those improvements (if any) described or referred to in Item 4.

BUSINESS DAY means any day except Saturday or Sunday or a day that is a public holiday throughout Western Australia.

CLAIM includes any claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding, right of action, claim for compensation and claim for abatement of rent obligation.

COMPETITOR means any person engaged in the manufacture, distribution or sale of fibre cement products and underground drainage pipes made of concrete or fibre cement and:

- (a) includes persons engaged in the businesses known as or trading under names which include the words "Lafarge", "CSR" and "BGC"; but
- (b) excludes any third party logistics operator.

CONSENT means prior written consent.

COUNCIL means the City of Canning Council and Town of Victoria Park.

COST includes any reasonable cost, charge, expense, outgoing, payment or other expenditure of any nature (whether direct, indirect or consequential and whether accrued or paid) including where appropriate all rates and all reasonable legal fees.

EFFECTIVE DATE means 24 March 2004.

EMPLOYEES means employees, agents, invitees and contractors.

ENVIRONMENT means components of the earth, including:

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- (a) land, air and water;
- (b) any layer of the atmosphere;
- (c) any organic or inorganic matter and any living organism; and
- (d) human-made or modified structures and areas, and includes interacting natural ecosystems that include components referred to in paragraphs (a) to (c).

ENVIRONMENTAL LAW means a provision of Law, or a Law, which provision or Law relates to any aspect of the Environment, safety, health or the use of Substances or activities which may harm the Environment or be hazardous or otherwise harmful to health.

EVENT OF DEFAULT means any event referred to in clause 12.1.

FIXED REVIEW means a review of the Rent in accordance with clause 4.7.

FIXED REVIEW DATES means a date on which a Fixed Review is to occur as set out in Item 10.

FURTHER TERM means the further term or terms (as the case may be), specified in Item 8.

GST means the goods and services tax as imposed by the GST Law including, where relevant, any related interest, penalties, fines or other charge to the extent caused by any default or delay by the Lessee.

GST AMOUNT means, in relation to a Payment, an amount arrived at by multiplying the Payment (or the relevant part of a Payment if only part of a Payment is the consideration for a Taxable Supply) by the appropriate rate of GST (being 10% when the GST Law commenced).

GST LAW has the meaning given to that term in A New Tax System (Goods and Services Tax) Act 1999, or, if that Act is not valid or does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act.

GUARANTOR means James Hardie Industries N.V..

INITIAL TERM means the first 7 years, 4 months and 23 days term of this Lease commencing on 1 November 1998.

INTEREST RATE means the minimum rate of interest charged by the Commonwealth Bank of Australia, on an overdraft of \$100,000 plus 2%.

LAND means the land described in Item 3.

LAND TAX means land taxes or taxes in the nature of a tax on land, calculated on the taxable value of the Land at the rate which would be payable by the Lessor if the Land were the only land owned by the Lessor in Western Australia and the land is not subject to a trust.

LAW includes any requirement of any statute, rule, regulation, proclamation, ordinance or by-law, present or future, and whether state, federal or otherwise.

LEASE means this lease between the Lessor and the Lessee.

LEASE YEAR means every 12 month period commencing on and from the Commencing Date.

LESSEE means the party specified in Item 2, its successors and assigns.

LESSEE'S BUSINESS means the business carried on or entitled to be carried on in the Premises in compliance with the Permitted Use of the Premises.

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LESSEE'S FITOUT AND FITTINGS means all fixtures, fittings, plant, equipment, partitions or other articles and chattels of all kinds (other than stock-in-trade) which satisfy all of the following:

- (a) they are owned by or leased by third parties to the Lessee; and
- (b) they are, at any time, in or attached to the Premises.

LESSEE'S PROPORTION means that proportion which the Lettable Area of the Premises bears to the area of the Land determined in accordance with the Method of Measurement from time to time and which at the Commencing Date of the lease for the Initial Term is that proportion set out in Item 14.

LESSOR means the party specified in Item 1 or the party for the time being entitled to the reversion expectant upon expiration or prior determination of the Lease.

LESSOR'S ASSET REGISTER means the list of items in the Premises contained in Annexure B.

LESSOR'S FIXTURES means all fixtures in the Premises owned by the Lessor including the items listed in the Lessor's Asset Register and:

- (a) (GENERAL) all plant and equipment, mechanical or otherwise which forms part of the base Building, fittings, fixtures, furniture, furnishings of any kind, including window coverings, blinds and light fittings; and
- (b) (FIRE FIGHTING) all stop cocks, fire hoses, hydrants, other fire prevention aids and all fire fighting systems from time to time located in the Premises or which may service the Premises and be on the Land.

LETTABLE AREA means the gross lettable area determined in accordance with the Method of Measurement.

LIQUIDATION includes liquidation, official management, receivership, compromise, arrangement, amalgamation, administration, reconstruction, winding up, dissolution, assignment for the benefit of creditors, arrangement or compromise with creditors, bankruptcy or death.

MARKET RENT means the Rent which could reasonably be obtained with respect to the Premises as at a particular Market Review Date in an open market by a willing but not anxious Lessor assessed using the criteria in clause 4.5(g).

MARKET REVIEW means a review of the Rent in accordance with clause 4.4 and (if applicable) clauses 4.5 and 4.6.

MARKET REVIEW DATE means a date on which a Market Review is to occur as set out in Item 10.

METHOD OF MEASUREMENT means the Method of Measurement of Buildings (1997 Revision) adopted by the Property Council of Australia Limited (formerly the

Building Owners and Managers Association of Australia Limited). The Method of Measurement shall remain fixed for the term of this Lease and any Further Term despite any subsequent editions or variations which may be issued.

OUTGOINGS means:

- (a) (LAND TAX) all Land Tax;
- (b) (COUNCIL RATES) all charges payable to the Council:
  - (i) levied or charged with respect to the Land or the Premises or their use or occupation;

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- (ii) for any services to the Land or the Premises of the type from time to time provided by the Council; and/or
  - (iii) for waste and general garbage removal from the Land or the Premises (including any excess);
- (c) (WATER RATES) all charges payable to an Authority:
  - (i) levied or charged with respect to the Land or the Premises or their use or occupation; and
  - (ii) for the provision, reticulation or discharge of water and/or sewerage and/or drainage (including meter rents) to the Land or the Premises;
- (d) (MANAGEMENT FEES) reasonable fees for management of the Premises capped at 1% of the Rent and Outgoings from time to time; and
- (e) (INSURANCES) where the Lessor has effected the policy, all insurance premiums payable in respect of insurances for the Premises for its full insurable or replacement value to cover damage by fire, storm, tempest, impact and other usually insured risks of that nature, including loss of rent insurance (capped at 18 months cover),

but excluding from this Paragraph any amount which is:

- (i) (ALREADY INCLUDED) already included by virtue of another Paragraph of this definition;
- (ii) (OTHERWISE PAYABLE) otherwise payable by the Lessee pursuant to the provisions of this Lease;
- (iii) (TAX) income tax and capital gains tax of any nature; or
- (iv) (PAYABLE BY THE LESSOR) otherwise payable by the Lessor with respect to its obligations under this Lease.

PAYMENT means:

- (a) the amount of any monetary consideration (other than a GST Amount payable under this clause); and
- (b) the GST Exclusive Market Value of any non-monetary consideration,

paid or provided by the Lessee for this Lease or by the Lessor or the Lessee for any other Supply made under or in connection with this Lease and includes:

- (c) any Rent or contribution to Outgoings; and
- (d) any amount payable by way of indemnity, reimbursement, compensation or damages.

PERMITTED USE means the use of the Premises specified in Item 11

PREMISES means the Land, buildings and other improvements specified in Item 4, and includes any of the Lessor's Fixtures from time to time in or on them.

PROPOSED WORK includes any proposed sign, work, alteration, addition or installation in or to the Premises, the Lessor's Fixtures and/or to the existing Lessee's Fitout and Fittings by the Lessee and/or by the Lessee's Employees.

RELATED BODY CORPORATE has the same meaning as given to that term in the Corporations Act 2001.

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RENT means the rent specified in Item 9 as varied from time to time in accordance with this Lease.

REQUIREMENT includes any notice, order, direction, stipulation or similar notification received from or given by any Authority pursuant to and enforceable under any Law (including Environmental Law), whether in writing or otherwise, and regardless of to whom it is addressed or directed.

REVIEW DATE means a date on which either a CPI Review or a Market Review is to occur as set out in Item 10.

SERVICES means electricity, gas, sewerage, water and telephone services.

SUBSTANCE includes:

- (a) any form of organic or chemical matter whether solid, liquid or gas; and
- (b) radiation, radioactivity and magnetic activity.

TAX ACT means the Income Tax Assessment Act 1936 (Cth) and/or the Income Tax Assessment Act 1997 (Cth) (as the case may require).

TERMINATING DATE means:

- (a) the date specified in Item 7;
- (b) any earlier date on which this Lease is determined;
- (c) the date of expiration or earlier termination of the Further Term or, if more than one, the last Further Term; or
- (d) the end of any period of holding over under clause 3.3,

as appropriate.

TERMINATION PAYMENT means:

- (a) in respect of clause 7.1(e)(i)(A), the net present value of the aggregate of:
  - (i) the Rent and the Lessee's Proportion of Outgoings payable for the balance of the Term calculated from the date of termination; and
  - (ii) the cost of compliance with the Lessee's obligations in clause 13, using the 10 year Commonwealth of Australia Government bond interest rate plus 115 basis points; and
- (b) in respect of clauses 7.1(e)(i)(B) and 7.1(e)(ii), the net present value of the aggregate of:
  - (i) the Rent and the Lessee's Proportion of Outgoings payable for the balance of the Term with respect to the proportionate area of the Premises surrendered calculated from the date of the surrender; and
  - (ii) the cost of compliance with the Lessee's obligations in clause 13, using the 10 year Commonwealth of Australia Government bond interest rate plus 115 basis points.

UMPIRE means a person who:

- (a) is at the relevant time a Valuer;
- (b) is appointed under clause 4.5;

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- (c) accepts his appointment in writing; and
- (d) undertakes to hand down his determination of the Rent within 20 Business Days after being instructed to proceed.

VALUER means a person who:

- (a) is a full member of the Australian Institute and has been for the last 5 years;
- (b) holds a licence to practise as a valuer of premises of the kind leased by this Lease;

- (c) is active in the relevant market at the time of his appointment;
- (d) has at least 3 years experience in valuing premises of the kind leased by this Lease; and
- (e) undertakes to act promptly in accordance with the requirements of this Lease.

1.2 GENERAL

Headings are for convenience only and do not affect interpretation. The following rules of interpretation apply unless the context requires otherwise.

- (a) (PLURALS) The singular includes the plural and conversely.
- (b) (GENDER) A gender includes all genders.
- (c) (OTHER GRAMMATICAL FORMS) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) (PERSON) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (e) (CLAUSE) "clause", "Paragraph", "Schedule" or "Annexure" refers to this Lease and "Item" refers to the Schedule of Terms forming part of this Lease.
- (f) (SUCCESSORS AND ASSIGNS) A reference to any party to this Lease or any other agreement or document includes the party's successors and substitutes or assigns.
- (g) (JOINT AND SEVERAL OBLIGATIONS) A reference to a right or obligation of any two or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally.
- (h) (EXTRINSIC TERMS) Subject to the provisions of any written material to which the Lessor and the Lessee are parties, the Lessor and the Lessee agree that:
  - (i) (WHOLE AGREEMENT) the terms contained in this Lease cover and comprise the whole of the agreement in respect of the Premises between the Lessor and the Lessee; and
  - (ii) (NO COLLATERAL AGREEMENT) no further terms, whether in respect of the Premises or otherwise, shall be implied or arise between the Lessor and the Lessee by way of collateral or other agreement made by or on behalf of the Lessor or by or on behalf of the Lessee on or before or after the execution of this Lease, and any implication or collateral or other agreement is excluded and negated.

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- (i) (AMENDMENTS AND VARIATIONS) A reference to an agreement or document (including this Lease) is to the agreement or document as amended, novated, supplemented, varied or replaced from time to time, except to the extent prohibited by this Lease.
- (j) (LEGISLATION) A reference to legislation or to a provision of legislation includes a modification, re-enactment of or substitution for it and a regulation or statutory instrument issued under it.
- (k) (AUSTRALIAN CURRENCY) A reference to "dollars" or "\$" is to Australian currency.
- (l) (SCHEDULES AND ANNEXURES) Each schedule of/or annexure to this Lease forms part of it.
- (m) (CONDUCT) A reference to conduct includes any omission, statement or undertaking, whether or not in writing.
- (n) (WRITING) A reference to "writing" includes a facsimile transmission and any means of reproducing words in a tangible and permanently visible form.
- (o) (EVENT OF DEFAULT) An Event of Default "subsists" until it has been waived by or remedied to the reasonable satisfaction of the Lessor.
- (p) (INCLUDES) A reference to "includes" or "including" means "includes, without limitation," or "including, without limitation,"

respectively.

- (q) (WHOLE) Reference to the whole includes part.
- (r) (DUE AND PUNCTUAL) All obligations are taken to be required to be performed duly and punctually.
- (s) (PERMIT OR OMIT) Words importing "do" include do, permit or omit, or cause to be done or omitted.
- (t) (BODIES AND AUTHORITIES)
  - (i) (SUCCESSORS) Where a reference is made to any person, body or Authority that reference, if the person, body or Authority has ceased to exist, will be to the person, body or Authority as then serves substantially the same objects as that person, body or Authority.
  - (ii) (PRESIDENT) Any reference to the President of that person, body or Authority, in the absence of a President, will be read as a reference to the senior officer for the time being of the person, body or Authority or any other person fulfilling the duties of President.
- (u) (CONSENT OF LESSOR) Unless stated otherwise in this Lease, where the Lessor has a discretion or its consent or approval is required for anything the Lessor:
  - (i) shall not unreasonably withhold, delay or condition its decision, consent or approval; and
  - (ii) must exercise its discretion acting reasonably.

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- (v) (RELEVANT DATE) Where the day or last day for doing anything or on which an entitlement is due to arise is not a Business Day that day or last day will be the immediately following Business Day.
- (W) (MONTH) Month means calendar month.
- (x) (AREAS) Unless otherwise stated in this Lease or the context otherwise requires, where the area whether gross or net and whether the whole or part of the Land is to be calculated or measured for the purposes of this Lease, those calculations and measurements shall be in accordance with the Method of Measurement.
- (y) (THIRD PARTIES) Any clause which requires that a third party act or refrain from acting will be read (where the context permits) that the party to this Lease appointing or otherwise having control of that third party shall cause or procure that third party to act or refrain from acting.

## 2. EXCLUSION OF STATUTORY PROVISIONS

### 2.1 RELEVANT ACTS

To the extent permitted by Law or as may be contradicted by this Lease, the covenants, powers and provisions (if any) implied in leases by virtue of any Law are expressly negated.

## 3. TERM

### 3.1 TERM OF LEASE

Subject to this Lease the Lessor leases to the Lessee and the Lessee takes a lease of the Premises for the Term.

### 3.2 OPTION OF RENEWAL

- (a) (GRANT OF FURTHER LEASE) If:
  - (i) (FURTHER TERM) a Further Term is specified in Item 8;
  - (ii) (LESSEE GIVES NOTICE) the Lessee notifies the Lessor not more than 12 months nor less than 9 months before the Terminating Date that it requires a further lease for the Further Term; and
  - (iii) (NO DEFAULT) at the date of that notice and at the Terminating Date there is no subsisting Event of Default by the Lessee of which the Lessee has been notified by the Lessor and:

- (A) (IF CAPABLE OF REMEDY) which has not been remedied to the reasonable satisfaction of the Lessor within the time specified in a notice given under clause 12.1 or waived in writing by the Lessor; or
- (B) (IF NOT CAPABLE OF REMEDY) if not capable of remedy, for which the Lessee has not paid the Lessor reasonable compensation,

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the Lessor shall grant to the Lessee a lease of the Premises for the Further Term commencing on the day after the Terminating Date.

- (b) (CONDITIONS OF FURTHER LEASE) That lease for a Further Term will be on the same conditions as this Lease except that:
  - (i) (TERM) the term to be specified in Item 5 of the lease for the Further Term will be the relevant period specified in Item 8;
  - (ii) (COMMENCING DATE) the date to be specified in Item 6 of the lease for the Further Term will be the day after the Terminating Date of the immediately preceding Term;
  - (iii) (TERMINATING DATE) the date to be specified in Item 7 of the lease for each Further Term will be the last day of the term specified in Item 8 calculated from the commencing date of the lease for that Further Term determined under Paragraph (ii);
  - (iv) (RENT) the amount of Rent to be specified in Item 9 of the lease for the Further Term will be as agreed under clause 3.2(c) or if no agreement is reached under that clause as determined under clauses 4.4, 4.5 and 4.6 as if the commencing date of the lease for the Further Term was a Market Review Date;
  - (v) (REVIEW DATES) the Review Dates specified in Item 10 shall be omitted and replaced with the Review Dates specified in Item 13;
  - (vi) (FURTHER OPTIONS) the number of Further Terms specified in Item 8 shall be reduced by one from the number specified in Item 8 of this Lease; and
  - (vii) (LAST FURTHER LEASE) if in any lease for the Further Term the number of Further Terms specified in Item 8 would by the operation of Paragraph (vi) be zero, then Item 13 and this clause 3.2 will not be included in that further lease so that the last further lease will end on the last day of the last occurring Further Term specified in Item 8 of this Lease.
- (c) (EARLY DETERMINATION OF MARKET RENT)
  - (i) If the Lessee wishes to know the Rent for the first year of the Further Term prior to exercising its option for a Further Term, the Lessee may give notice to the Lessor seeking a determination of the Market Rent for the Further Term (such notice being given no earlier than 15 months and no later than 12 months prior to the Terminating Date of the Lease).
  - (ii) The Lessor must give the Lessee a notice with the Lessor's assessment of the Market Rent to apply in the first year of the Further Term within 10 Business Days after the Lessee gives a notice under clause 3.2(c) (i).
  - (iii) Upon receipt of the Lessor's assessment of Market Rent under clause 3.2(c) (ii), the parties agree to negotiate in good faith to agree upon the Market Rent to apply in the first year of the Further Term for a period of up to 3 months after the Lessor's notice of assessment of Market Rent is received by the Lessee.

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- (iv) If the parties fail to reach agreement under clause 3.2(c) (iii), clause 3.2(b) (iv) continues to apply.

If the Lessor does not indicate refusal to the Lessee continuing to occupy the Premises beyond the Terminating Date (otherwise than under a lease for a Further Term) then:

- (a) (MONTHLY TENANCY) the Lessee does so as a monthly tenant and shall pay Rent and Outgoings:
  - (i) monthly in advance, the first payment to be made on the day following the Terminating Date; and
  - (ii) equal to one-twelfth of the annual rate of Rent and Outgoings payable immediately prior to the Terminating Date;
- (b) (DETERMINATION) the monthly tenancy is determinable at any time by either the Lessor or the Lessee by one month's notice given to the other, to end on any date, but otherwise the tenancy will continue on the conditions of this Lease as far as they may apply to a monthly tenancy.

#### 4. RENT

##### 4.1 PAYMENT OF RENT

- (a) (RENT) The Lessee shall pay Rent to the Lessor at the relevant rate from time to time:
  - (i) (NO DEMAND) without demand;
  - (ii) (NO DEDUCTION) without any deduction, abatement, counterclaim or right of set-off except to the extent that it is expressly provided for in this Lease; and
  - (iii) (INSTALMENTS) by equal monthly instalments (and proportionately for any part of a month) in advance on the first Business Day of each month.
- (b) (AS DIRECTED BY LESSOR) All instalments of Rent shall be paid to the place and in the manner directed by the Lessor from time to time provided at least 10 Business Days notice of any change in the place or manner of payment is given.

##### 4.2 RENT COMMENCEMENT

The first instalment of Rent shall be paid on the Commencing Date.

##### 4.3 DELETED

##### 4.4 MARKET REVIEW OF RENT

Should the Lessor wish to review the Rent as at a Market Review Date, then not earlier than 3 months before and not later than 3 months after the Market Review Date (time being of the essence) the Lessor may notify the Lessee of the Lessor's assessment of the Market Rent for the Premises at the particular Market Review Date. This assessment shall take

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into account the criteria contained in clause 4.5(g) which apply at that particular Market Review Date and, if applicable, clause 4.6.

##### 4.5 LESSEE'S DISPUTE OF RENT

If the Lessee disagrees with the Lessor's assessment of the Market Rent and the Lessor and the Lessee are unable to agree on the Market Rent to apply from a particular Market Review Date then the following procedure applies.

- (a) (LESSEE TO GIVE NOTICE) The Lessee shall within 30 Business Days of being notified of the Lessor's assessment of the Market Rent (time being of the essence) notify the Lessor that the Lessee requires the Market Rent to be determined in accordance with this clause 4.5.
- (b) (i) (NOMINATION OF VALUERS) Each of the Lessee and the Lessor shall, within 10 Business Days of service of the Lessee's notice under clause 4.5(a), by notice nominate a Valuer to the other and shall formally appoint that Valuer.
  - (ii) (NOMINATION OF UMPIRE) Where two Valuers have been nominated they shall, within 5 Business Days of the date of the later nomination and prior to making their determination as to the Market Rent for the Premises, agree upon and nominate an

Umpire to determine any disagreement which may arise between them.

- (iii) (FAILURE TO AGREE) If the Valuers cannot agree on or fail to nominate an Umpire within 5 Business Days of the date of the later nomination then either Valuer, the Lessor or the Lessee may request the President of the Australian Institute to nominate the Umpire.
- (c) (VALUER'S DETERMINATION) Subject to clauses 4.5(d), (e) and (f), the nominated Valuers shall within 20 Business Days of the later nomination jointly determine the Market Rent of the Premises having regard to clause 4.5(g) as at that particular Market Review Date.
- (d) (CONSEQUENCES OF LESSEE'S FAILURE) If the Lessee fails to nominate a Valuer in accordance with clause 4.5(b) within the time required:
  - (i) (DETERMINATION BY LESSOR'S VALUER) the determination of the Market Rent shall be made by the Lessor's Valuer within 20 Business Days after being nominated, and his determination will be final and binding on the parties as if he had been appointed by Consent; and
  - (ii) (COSTS) the Costs of the Lessor's Valuer's determination shall be apportioned equally between the Lessor and Lessee.
- (e) (CONSEQUENCES OF LESSOR'S FAILURE TO NOMINATE VALUER) If the Lessee nominates a Valuer under clause 4.5(b) within the time required, but the Lessor fails to do so:
  - (i) (DETERMINATION BY LESSEE'S VALUER) the determination of the Market Rent shall be made by the Lessee's Valuer within 20 Business Days after being nominated, and his determination will be final and binding on the parties as if he had been appointed by Consent; and

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- (ii) (COSTS) the Costs of the Lessee's Valuer's determination shall be apportioned equally between the Lessor and Lessee.
- (f) (i) (PROCEDURE IN EVENT OF DISAGREEMENT BETWEEN VALUERS) Should the Valuers be unable to agree on the Market Rent for the Premises within the time required then the Market Rent shall be determined by the Umpire under clause 4.5(f)(iii).
- (ii) (PROCEDURE WHERE VALUER FAILS TO ASSESS) If either or both of the Valuers for any reason fail to assess the Market Rent within the time required for them to make a determination, then either Valuer, the Lessor or the Lessee may request the Umpire to determine the Market Rent.
- (iii) (UMPIRE'S DETERMINATION) If it becomes necessary for the Umpire to determine the Market Rent, his determination will be final and binding on the parties and:
  - (A) (EVIDENCE OF VALUERS) in making his or her determination the Umpire shall have regard to any evidence submitted by the Valuers as to their assessments of the Market Rent;
  - (B) (WRITTEN DETERMINATION) the Umpire shall give his determination and the reason for it in writing to the Lessor and the Lessee within 20 Business Days of request for it in accordance with this Lease by the Lessor, the Lessee or the Valuers (or any of them); and
  - (C) (UMPIRE'S MAXIMUM) the Umpire's determination shall not be more than the highest Market Rent as assessed by either Valuer under this clause 4.5.
- (g) (MARKET RENT CRITERIA) In determining the Market Rent each Valuer (including the Umpire) shall be taken to be acting as an expert and not as an arbitrator, and shall determine the Market Rent for the Premises as at the particular Market Review Date having regard to the terms of this Lease and shall:
  - (i) (EXCLUSIONS) disregard:
    - (A) (GOODWILL) the value of any goodwill of the Lessee's Business, the Lessee's Fitout and Fittings and any other interest in the Premises created by this Lease; and

- (B) (MONEY FROM OCCUPATIONAL ARRANGEMENT) any sublease or other sub-tenancy agreement or occupational arrangement in respect of any part of the Land and any rental, fees or money payable under any of them; and

(ii) (CONSIDERATIONS) have regard to:

- (A) (LENGTH OF TERM) the length of the whole of the Term, disregarding the fact that part of the Term will have elapsed at the Market Review Date, and have regard to the provisions of any options for a Further Term;

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- (B) (COMPARABLE PREMISES AND LOCATIONS) the rates of rent payable for comparable premises in comparable locations;
- (C) (ALL COVENANTS OBSERVED) all covenants on the part of the Lessee and the Lessor in this Lease and assume that all covenants on the part of the Lessee have been fully performed and observed on time; and
- (D) (OUTGOINGS) the Lessee's obligation to pay the Lessee's Proportion of Outgoings; and
- (E) (RENT REVIEW) the frequency of market and other Rent reviews; and

(iii) (ASSUMPTION) assume that:

- (A) the Premises are available for use for the primary purpose for which the Premises may be used in accordance with this Lease;
- (B) there has been no fair wear and tear of the Premises since the Effective Date; and
- (C) any buildings which have been removed pursuant to clause 7.11(d) have not been removed.

(h) (COSTS OF VALUERS) The Costs incurred in the determination of the Market Rent under this clause 4.5 shall be borne by the Lessor and by the Lessee in the following manner:

- (i) (VALUER) subject to clauses 4.5(d)(ii) and (e)(ii), for the Costs of each Valuer appointed by a party, by the party who appoints that Valuer; and
- (ii) (UMPIRE) for the Costs of the Umpire, by the parties equally.

(i) (DATE OF EFFECT OF DETERMINATION OF MARKET RENT) Subject to clauses 4.5(j) and 4.6, any variation in the Rent resulting from a determination of the Market Rent under clause 4.4 and/or 4.5 (as appropriate) will be effective on and from that particular Market Review Date.

(j) (PAYMENT OF RENT PENDING REVIEW) Where there is a dispute as to the Market Rent under clause 4.4 after the relevant Market Review Date or the revised Rent is not known at a Market Review Date then the amount of Rent payable by the Lessee from the Market Review Date pending the resolution of that dispute or the determination of the Market Rent shall be the Rent payable immediately before the relevant Market Review Date.

(k) (ADJUSTMENT) On resolution of the dispute or the Market Rent being determined, if the Rent payable for the period commencing on the Market Review Date is determined to be greater than that paid by the Lessee since the Market Review Date, then the Lessee shall pay the deficiency to the Lessor within 10 Business Days of the date of determination of the Market Rent under clause 4.4 or the determination of the Market Rent by the Valuers or by the Umpire under this clause 4.5 (as the case may be).

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#### 4.6 MAXIMUM INCREASE ON REVIEW

Despite any other provision of this Lease the annual Rent payable from any

Market Review Date following a review of the Rent under clause 4.4 (and, if applicable, clause 4.5) shall in no circumstances be less than the annual Rent payable in the Lease Year immediately prior to that Review Date.

#### 4.7 FIXED REVIEW

On each Fixed Review Date, the Rent shall increase to 103% of the Rent payable immediately prior to that Fixed Review Date.

#### 5. OUTGOINGS

##### 5.1 SERVICES

- (a) (METERS) The Lessor shall ensure that all Services supplied to the Premises are separately metered.
- (b) (COSTS) The Lessee shall pay all Costs for all Services supplied to the Premises (but with respect to water, the obligation under this clause 5.1(b) is limited to water usage and consumption charges).

##### 5.2 CLEANING

The Lessee shall at its own Cost ensure that the Premises are kept clean.

##### 5.3 OUTGOINGS

The Lessee shall pay to the Lessor for each Lease Year an amount equal to the Lessee's Proportion of the Outgoings in accordance with this clause 5. This obligation shall not extend to any fines, penalties or interest on the Outgoings which arise because of the Lessor's delay in payment or the Lessor's delay in providing relevant invoices and accounts to the Lessee for payment.

##### 5.4 LESSOR'S ESTIMATE

The Lessor may:

- (a) (NOTIFICATION OF ESTIMATE) before or during each Lease Year notify the Lessee of the Lessor's reasonable estimate of the Lessee's Proportion of Outgoings for that Lease Year; and
- (b) (ADJUSTMENT OF ESTIMATE) from time to time during that Lease Year by notice to the Lessee adjust the reasonable estimate of the Lessee's Proportion of Outgoings as may be appropriate to take account of changes in any of the Outgoings.

##### 5.5 PAYMENTS ON ACCOUNT

The Lessee shall pay on account the amount of the estimates of the Lessee's Proportion of Outgoings provided for in clause 5.4 by equal monthly instalments in advance on the same days and in the same manner as the Lessee is required to pay Rent.

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##### 5.6 YEARLY ADJUSTMENT

- (a) (LESSOR'S NOTICE) As soon as practicable after the end of each Lease Year the Lessor shall give to the Lessee a notice with reasonable details and reasonable evidence of the Outgoings for that Lease Year.
- (b) (ADJUSTMENT OF PAYMENTS ON ACCOUNT) The Lessee shall within 10 Business Days after the date of the notice referred to in clause 5.6(a) pay to the Lessor or the Lessor shall pay to the Lessee (as appropriate) the difference between the amount paid on account of the Lessee's Proportion of Outgoings during that Lease Year and the amount actually payable in respect of it by the Lessee, so that the Lessee shall have paid the correct amount of the Lessee's Proportion of Outgoings for that Lease Year.
- (c) (AUDITED STATEMENT) If the Lessee disagrees with the details, amounts or calculations contained in the notice referred to in clause 5.6(a), the Lessee may require the Lessor to give the Lessee an audited statement of the Outgoings for that Lease Year prepared by a chartered accountant reasonably approved by the Lessee (or failing approval within 5 Business Days of the request for the statement, selected by the President of the Institute of Chartered Accountants at the request of either the Lessor or the Lessee). The Lessor shall have 20 Business Days after a request from the Lessee within which to provide the statement.



- (d) (READJUSTMENT) If the amounts shown in the audited statement are different from the amounts shown in the Lessor's notice given under clause 5.6(b), the amount of Outgoings shall be readjusted so that the Lessee shall have paid the correct amount of the Lessee's Proportion of Outgoings for that Lease Year.

## 5.7 GST

- (a) (GENERAL) Capitalised expressions which are not defined in this clause but which have a defined meaning in the GST Law have the same meaning in this clause.
- (b) (PAYMENT OF GST) The parties agree that:
- (i) all Payments have been set or determined without regard to the impact of GST;
  - (ii) if the whole or any part of a Payment is the consideration for a Taxable Supply for which the payee is liable for GST, the GST Amount in respect of the Payment must be paid to the payee as an additional amount, either concurrently with the Payment or as otherwise agreed in writing; and
  - (iii) the payee will provide to the payer a Tax Invoice.
- (c) (NET OF CREDITS) Despite any other provision of this lease, if a Payment due under this lease (including any contribution to Outgoings) is a reimbursement or indemnification by one party of an expense, loss or liability incurred or to be incurred by the other party, the Payment shall exclude any part of the amount to be reimbursed or indemnified for which the other party can claim an Input Tax Credit.
- (d) (TPA) Each party will comply with its obligations under the Trade Practices Act 1974 in respect of any Payment to which it is entitled under this lease.

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## 6. USE OF PREMISES

### 6.1 PERMITTED USE

The Lessee shall:

- (a) (LESSEE'S BUSINESS) not without the Lessor's Consent use the Premises for any purpose other than those specified in Item 11;
- (b) (NON RESIDENCE) not use the Premises as a residence;
- (c) (NO ANIMALS OR BIRDS) not keep any animals or birds in the Premises; and
- (d) (PESTS AND VERMIN) at its own Cost keep the Premises free and clear of pests, insects and vermin.

### 6.2 OVERLOADING

The Lessee shall not during the Term place or store any heavy articles or materials on any of the floors of, the Premises or the Building in a manner significantly differently from that at the Effective Date, without the Lessor's consent.

### 6.3 OTHER ACTIVITIES BY LESSEE

The Lessee shall:

- (a) (APPURTENANCES) not use the Appurtenances in the Premises for any purpose other than those for which they were designed, and shall not place in the Appurtenances any substance which they were not designed to receive;
- (b) (AIR-CONDITIONING AND FIRE ALARM EQUIPMENT) where any air-conditioning or fire alarm system of the Lessor is installed in the Premises, not interfere (other than in accordance with clause 7.1) with that system nor obstruct or hinder access to it;
- (c) (NOT ACCUMULATE RUBBISH) keep the Premises reasonably clean;
- (d) (NOT THROW ITEMS FROM WINDOWS) not throw anything out of the windows or doors of the Building or down the lift shafts, passages or

skylights or into the light areas of the Building (if they exist), or deposit waste paper or rubbish anywhere except in proper receptacles, or place anything on any sill, ledge or other similar part of the exterior of the Building; and

- (e) (INFECTIOUS DISEASES) if any infectious illness occurs in the Premises:
  - (i) (NOTIFY LESSOR) immediately notify the Lessor and all proper Authorities; and
  - (ii) (FUMIGATE) where that illness is confined to the Premises, at its Cost thoroughly fumigate and disinfect the Premises to the satisfaction of the Lessor and all relevant Authorities.

#### 6.4 FOR SALE/TO LET

The Lessor is entitled:

- (a) (ADVERTISING FOR LEASE) where the Lessee has not given notice under clause 3.2(a)(ii), but only during the last three months of the Term, to place

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advertisements and signs on the part(s) of the Premises as are reasonably appropriate to indicate that the Premises are available for lease;

- (b) (INSPECTION BY PROSPECTIVE TENANTS) subject to the same limitations as in Paragraph (a), at all reasonable times and on reasonable notice (but where possible outside the usual trading hours of the Lessee) to show prospective tenants through the Premises;
- (c) (ADVERTISING FOR SALE) to place advertisements and signs on the part(s) of the Premises as it reasonably considers appropriate to indicate that the Premises are for sale; and
- (d) (INSPECTION BY PROSPECTIVE PURCHASERS) at all reasonable times and on reasonable notice (but where possible outside the usual trading hours of the Lessee), to show prospective purchasers through the Premises.

The Lessor may only exercise its rights under this clause 6.4 in the presence of a representative of the Lessee after signing and/or procuring signing by the Lessor's invitees of such confidentiality agreements as the Lessee may reasonably require. In exercise of those rights the Lessor must minimise any inconvenience or disruption to the Lessee or the Lessee's Business.

#### 7. MAINTENANCE, REPAIRS, ALTERATIONS AND ADDITIONS

##### 7.1 REPAIRING OBLIGATIONS

- (a) (GENERAL) The Lessee:
  - (i) must, during the Term and any extension or Further Term or any holding over, keep the Premises in good repair and condition including any structural or capital maintenance, replacement or repair having regard to their state of repair and condition at the Effective Date, to the extent required by clauses 7.1(d) and 13; and
  - (ii) acknowledges and agrees that subject to clauses 5.4, 5.6, 9.2, 11, 12.4, 15.2 and 15.4, the Lessor is not responsible for any costs and expenses in relation to the Premises during the Term and any extension or Further Term or any holding over.
- (b) (EXCLUSIONS) Despite clause 7.1, the Lessee has no obligation to carry out any works which relate to:
  - (i) (FAIR WEAR AND TEAR) fair wear and tear;
  - (ii) (INSURANCE) damage to the Premises caused by fire, storm or tempest or any other risk covered by any insurance taken out by the Lessor in respect of the Premises (other than where any insurance money is irrecoverable through the act, omission, neglect, default or misconduct of the Lessee or the Lessee's Employees); and

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(iii) (LESSOR'S ACT OR OMISSION) patent or latent damage to the Premises caused or contributed to by any wilful or negligent act or omission of the Lessor or its Employees.

(c) (STRUCTURAL REPAIR) Subject to clauses 15.2, nothing in this Lease requires the Lessor to carry out any structural or capital maintenance, replacement or repair except where rendered necessary by any wilful or negligent act or omission of the Lessor or the Lessor's Employees, which maintenance, replacement or repair the Lessor must attend to promptly after notice from the Lessee.

(d) (COMPLIANCE WITH LAWS AND REQUIREMENTS)

The Lessee shall during the Term, subject to clauses 7.1(b) (i), (ii) and (iii), 7.1(e), 7.11, 15.2 and 15.4, comply with any Law or Requirement affecting the Premises (including any underground storage tanks and any Environmental contamination associated with them), the Lessee's use of the Premises and the Lessee's Fitout and Fittings except that the Lessor must, at its Cost, promptly comply with these Laws or Requirements:

- (i) if the Lessor or the Lessor's Employees have taken action or refrained from taking action that directly or indirectly has a material effect in causing the Law or Requirement to apply, be issued or enforced; or
- (ii) if the Lessor or the Lessor's Employees have taken action or refrained from taking action that directly or indirectly has a material effect in causing the Law or Requirement to apply, be issued or enforced by doing works on the Land or any adjoining land; or
- (iii) if the Lessor or the Lessor's Employees have taken action or refrained from taking action that directly or indirectly has a material effect in causing the Law or Requirement to apply, be issued or enforced because of any subdivision, re-configuration of other dealing with the Land.

(e) (OPTIONS TO TERMINATE OR SURRENDER)

- (i) If there is a change in Law or a Requirement requiring the demolition or substantial upgrade of Buildings on the Premises, then the Lessee may at its option:
  - (A) terminate this Lease by giving notice to the Lessor together with the Termination Payment; or
  - (B) partially surrender this Lease by giving to the Lessor a surrender of lease in a registrable form with respect to the relevant part of the Premises (and any ancillary areas) affected by the change in Law or Requirement together with the Termination Payment. Unless access can be provided to the surrendered area in accordance with clause 7.1(e) (iv) (B), in determining the area to be partially surrendered the Lessee must ensure that the surrendered area is not landlocked.

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- (ii) At any time during the Term the Lessee may at its option and at its Cost:
  - (A) partially surrender this Lease by giving to the Lessor a surrender of lease in registrable form with respect to the relevant part of the Premises together with the Termination Payment; and
  - (B) in determining the area to be partially surrendered the Lessee must:
    - (1) ensure that there is 6 metres clearance from the perimeter of the surrendered area to the nearest building; and
    - (2) unless access can be provided to the surrendered area in accordance with clause 7.1(e) (iv) (B) ensure that the surrendered area is not landlocked.

(iii) Neither party will have any further obligation to the other under this Lease following the date of service on the Lessor of the termination notice or partial surrender of lease and the relevant Termination Payment under clause 7.1(e) (i) or 7.1(e) (ii) (but limited with respect to the area of the Premises surrendered in the case of clauses 7.1(e) (i) (B) and 7.1(e) (ii)), except for any pre-existing breach.

(iii) If clause 7.1(e) (i) (B) or 7.1(e) (ii) applies:

- (A) the Rent and Outgoings under this Lease shall reduce proportionately by reference to the area of the Premises surrendered (with any dispute to be determined under clause 14) with effect from the date of service on the Lessor of the notice of termination or partial surrender of lease and the relevant Termination Payment (as the case may be);
- (B) the Lessee must permit the Lessor and persons authorised by it to have a reasonable means of access through the Premises to the surrendered area, so long as that means of access and the use of it do not have a material adverse impact on the Lessee's use or operation of the Premises; and
- (C) the definition of Outgoings will be amended to include reasonable security costs actually incurred by the Lessor arising from multiple occupancies of the Land.

## 7.2 LESSOR'S RIGHT OF INSPECTION

The Lessor may in the presence of a responsible officer of the Lessee at all reasonable times on giving to the Lessee reasonable notice enter the Premises and view the state of repair and condition.

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## 7.3 ENFORCEMENT OF REPAIRING OBLIGATIONS

The Lessor may:

- (a) (SERVE NOTICE) notify the Lessee of any failure by the Lessee to carry out within the time allowed by this Lease any repair, replacement or cleaning of the Premises which the Lessee is obliged to do under this Lease; and/or
- (b) (CARRY OUT REPAIR) require the Lessee to carry out that repair, replacement or cleaning within a reasonable time. If the Lessee fails to do so within a reasonable time having regard to the nature of the defect complained of and the length of time reasonably required to remedy that defect, the Lessor may elect to carry out that repair, replacement or cleaning at the Lessee's Cost (but wherever possible outside the usual operating hours of the Lessee). The Lessee shall on demand reimburse the Lessor for those Costs. The Lessor in exercise of its rights under this clause 7.3(b) shall:
  - (i) sign and/or procure signing by the Lessor's invitees of such confidentiality agreements as the Lessee may reasonably require;
  - (ii) endeavour not to cause any undue inconvenience to the Lessee and the conduct of the Lessee's Business; and
  - (iii) make good any damage caused to the Premises without delay.

## 7.4 LESSOR MAY ENTER TO REPAIR, DECONTAMINATE

If:

- (a) (LESSOR WISHES TO REPAIR) the Lessor wishes to carry out any repairs to the Premises considered necessary or desirable by the Lessor or in relation to anything which the Lessor is obliged to do under this Lease; or
- (b) (REQUIREMENTS OF AUTHORITY) any Authority requires any repair or work to be undertaken on the Premises (including any decontamination, remediation or other cleanup) which the Lessor must or in its absolute discretion elects to do and for which the Lessee is not liable under this Lease,

then the Lessor, its architects, workmen and others authorised by the Lessor may at all reasonable times on giving to the Lessee reasonable

notice enter and carry out any of those works and repairs. In so doing the Lessor shall:

- (c) sign and/or procure signing by the Lessor's Employees of such confidentiality agreements as the Lessee may reasonably require;
- (d) endeavour not to cause undue inconvenience to the Lessee and the conduct of the Lessee's Business, and
- (e) make good any damage caused to the Premises without delay.

The Lessor shall indemnify the Lessee on demand in respect of all Claims incurred or suffered by the Lessee as a consequence of the carrying out of works under this clause 7.4.

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7.5 DELETED

7.6 ALTERATIONS TO PREMISES

- (a) (NO CONSENT REQUIRED) The Lessee is entitled to carry out any Proposed Work on or to the Premises without the need to seek or obtain Lessor's Consent except that the Lessee must obtain the Lessor's Consent prior to carrying out any structural Proposed Works which materially increase the footprint of the Buildings on the Premises, such Consent not to be unreasonably withheld or delayed.
- (b) (DEEMED CONSENT) If the Lessor does not respond conclusively to a request for Consent within 20 Business Days of the written request being served on it, the Lessor is deemed to have Consented to the relevant request.
- (c) (APPROVALS) The Lessee shall obtain all necessary approvals or permits before carrying out the Proposed Work.
- (d) (LESSOR TO ASSIST) The Lessor shall at the Lessee's Cost without delay do all acts and sign all documents to enable the Lessee to obtain the approvals and permits referred to in clause 7.6(c) and otherwise to enable the Lessee to carry out any Proposed Work in accordance with this Lease.
- (e) (SPECIFIC PROPOSED WORKS) Despite clause 7.6(a), the Lessor gives its consent to Proposed Work which relates to installation and removal of the Lessee's plant and equipment, including bolting or affixing to the floors of the Premises, subject to clauses 6.2 and 13.
- (f) (CONDITION) The Lessor, acting reasonably, may require the Lessee to carry out remediation works as a condition of the Lessor's Consent to Proposed Work where Consent is required under clause 7.6(a) if the Proposed Works will, if implemented:
  - (i) trigger a Requirement to carry out those remediation works; or
  - (ii) render the Premises unsuitable for the Permitted Use unless the remediation works are carried out with the Proposed Work.

7.7 NOTICE TO LESSOR OF DAMAGE, ACCIDENT ETC.

The Lessee shall notify the Lessor of any:

- (a) (ACCIDENT) accident to or in the Premises; and/or
- (b) (NOTICE) circumstances reasonably likely to cause any damage or injury to occur within the Premises,

of which the Lessee has actual notice.

7.8 MAINTENANCE CONTRACTS

The Lessee shall at its own Cost enter into maintenance contracts for the fire fighting services and equipment servicing the Premises with contractors approved by the Lessee and in a form and on terms (whether as to cost, standard of service or otherwise) reasonably acceptable to the Lessee.

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7.9 DELETED

7.10 LESSEE'S FITOUT AND FITTINGS

The Lessee's Fitout and Fittings shall at all times be and remain the property of the Lessee (or the lessor of the Lessee's Fitout and Fittings, if applicable) despite any particular method of annexation to the Premises.

7.11 TIMING FOR WORKS AND COMPLIANCE WITH REQUIREMENTS

Despite any other provision of this Lease:

- (a) the Lessee may carry out any maintenance, repair or replacement or other works or comply with any Law or Requirement which it is required under this Lease to do or comply with at such time as the Lessee (acting reasonably) determines except that the Lessee must still comply with:
  - (i) the timetable set out in the relevant Requirement to which any works relate; and
  - (ii) clause 13;
- (b) subject to clause 7.11(a)(i), the Lessor agrees that the mere issue of a Requirement or the existence of a non-compliance with Law does not of itself:
  - (i) trigger the Lessee's obligation to comply with it; or
  - (ii) constitute a timetable to do any works; or
  - (iii) constitute a breach of this Lease by the Lessee;
- (c) the Lessor cannot (and shall not) take any steps or exercise any rights under this Lease or otherwise to cause the Lessee to remedy the non-compliance with Law or comply with the Requirement (or do so itself under clause 7.3 or otherwise), unless:
  - (i) clause 7.11(a)(i) or (ii) apply; or
  - (ii) the relevant Authority is taking active steps to require the Lessor to remedy the non-compliance or comply with the Requirement and the Lessor will be exposed to liability or Cost if it does not do so; and
- (d) the Lessee may, in its absolute discretion, elect to demolish any asbestos clad or roofed Buildings rather than comply with the relevant Law or Requirement but the Rent will not be reduced if the Lessee does so.

7.12 SET OFF PROCEDURE

- (a) (NOTICE) If the Lessee wishes to set off any amount against the Rent, the Outgoings or any other amounts under this Lease in exercise of its rights under this Lease to do so, then the Lessee must give notice to the Lessor of the amount involved, reasonable detail of what the set off relates to and the provision of this Lease with respect to which the right is proposed to be exercised.

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- (b) (NO RESPONSE) If the Lessor does not respond to this notice within 20 Business Days of service of it (time being of the essence), the Lessee is entitled to exercise the set off rights referred to in the notice in accordance with this Lease.
- (c) (DISPUTE) If the Lessor by notice to the Lessee disputes the Lessee's notice given under clause 7.12(a) within 20 Business Days of service of it (time being of the essence) and that dispute is not resolved within 5 Business Days of service of the Lessor's notice, either party may refer the matter to an appropriate independent person for determination under clause 14. The Lessee may not exercise any set off rights until any dispute under this clause has been determined or resolved.

8. ASSIGNMENT AND SUB-LETTING

8.1 NO DISPOSAL OF LESSEE'S INTEREST WITHOUT CONSENT

- (a) The Lessee may assign, transfer, sublet, licence or otherwise deal with or part with possession of the Premises or this Lease or any

part of or any interest in them with the Consent of the Lessor which shall not be unreasonably withheld.

- (b) The Lessor Consents to all sub-leases, sub-licences or other sub-rights to occupy the Premises which are in existence as at the Effective Date, whether or not those arrangements have been documented or disclosed.

## 8.2 LESSOR'S OBLIGATION TO CONSENT

The Lessor must give the Consent referred to in clauses 8.1 and 8.5 if the Lessee proves to the reasonable satisfaction of the Lessor that the incoming tenant is a respectable, responsible and solvent Person and, in the case of an assignment or transfer, who is reasonably capable of performing the Lessee's obligations under this Lease.

## 8.3 JAMES HARDIE INDUSTRIES N.V. PROVISIONS

Despite clause 8.1, whilst the Lessee is James Hardie Australia Pty Limited or James Hardie Industries N.V. or a Related Body Corporate of either of those companies:

- (a) (SUBLETTING) the Lessee may sublet, licence or otherwise part with possession of the Premises without obtaining the Lessor's Consent if the proposed sublessee or licensee is James Hardie Australia Pty Limited or James Hardie Industries N.V. or a Related Body Corporate of either of those companies. The Lessee shall notify the Lessor upon granting a sublease or licence of this nature;
- (b) (ASSIGNMENT) the Lessee may assign this Lease to a Related Body Corporate of James Hardie Australia Pty Limited or James Hardie Industries N.V. or to either of those companies without obtaining the Lessor's Consent but notice of the assignment must be given to the Lessor;
- (c) (SALE OF BUSINESS) if there is a sale to a purchaser of the business carried on by James Hardie Australia Pty Limited or James Hardie Industries N.V. (as the case may be) then the Lessor gives its consent to an assignment of this Lease to the purchaser;

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- (d) (SHORT TERM SUBLEASE OR LICENCE) the Lessee may sublet or licence up to 1,000m<sup>2</sup> of the Premises without the Lessor's Consent where the term of that sublease or licence (excluding any renewal or holding over period) does not exceed 12 months; and
- (e) (NOVATION) the Lessee may novate this Lease to a Related Body Corporate of James Hardie Australia Pty Limited or James Hardies Industries N.V. as long as at the same time the novation occurs the Lessee procures that a guarantee of the obligations of the new tenant under this Lease is given by James Hardie Industries N.V. in a form satisfactory to the Lessor (acting reasonably).

## 8.4 DEED

If the Lessor requests it, the Lessee shall procure that any assignee or transferee of this Lease executes a direct covenant with the Lessor to observe the terms of this Lease in such forms as the Lessor may reasonably require including payment of reasonable legal costs.

## 8.5 CHANGE IN CONTROL

- (a) If:
  - (i) the Lessee is a company which is neither listed nor directly or indirectly wholly-owned by a company which is listed on any recognised Stock Exchange; and
  - (ii) there is a proposed change in the shareholding of the Lessee or its holding company so that a different person or group of people will control the composition of the board of directors or more than 50% of the shares giving a right to vote at general meetings of the Lessee,

then that proposed change in control is treated as a proposed assignment of this Lease and the Lessor's Consent must be obtained prior to the change in control taking effect.

- (b) The Lessor agrees that clause 8.5(a) will not apply to a change in shareholding or control where James Hardie Australia Pty Limited or a Related Body Corporate of James Hardie Australia Pty Ltd or James

Hardie Industries N.V. remains or becomes:

- (i) the owner or ultimate holding company of the Lessee; or
- (ii) in control of the composition of the board of directors of the Lessee; or
- (iii) in control of more than 50% of the shares giving a right to vote at general meetings of the Lessee.

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9. INSURANCE AND INDEMNITIES

9.1 INSURANCES TO BE TAKEN OUT BY LESSEE

The Lessee shall:

- (a) (PUBLIC RISK) keep current during the Term (including any extension or Further Term or holding over) a public risk insurance policy with respect to the Premises, such policy to be for an amount of not less than the amount specified in Item 12;
- (b) (APPROVED INSURERS) ensure that all insurance policies maintained for the purposes of clause 9.1(a):
  - (i) (INSURANCE COMPANY) are taken out with an independent and reputable insurer; and
  - (ii) (AMOUNT) are for amounts and contain conditions reasonably acceptable to or reasonably required by the Lessor and/or the Lessor's insurer(s); and
- (c) (EVIDENCE OF INSURANCE) in respect of any policy of insurance to be effected by the Lessee under this clause 9.1, whenever reasonably required by the Lessor (but not more than once annually), give to the Lessor a copy of the certificate of currency; and
- (d) (INTEREST OF LESSOR) in respect of the policy of insurance to be effected by the Lessee under clause 9.1(a), ensure that the interest of the Lessor is noted,

except that the Lessee will be deemed to have complied with clauses 9.1(a) to (d) if James Hardie Australia Pty Limited or James Hardie Industries N.V. or a Related Body Corporate of either of those companies is the Lessee and that Lessee is insured under the global insurance arrangements of either of those companies.

9.2 INSURANCES TO BE TAKEN OUT BY LESSOR

The Lessor shall:

- (a) (PROPERTY INSURANCE) keep current during the Term including any extension or Further Term or holding over the property insurance for the Premises including loss of rent cover (capped at 18 months) referred to in paragraph (e) of the definition of Outgoings;
- (b) (APPROVED INSURERS) ensure that all insurance policies maintained for the purposes of clause 9.2(a):
  - (i) (INSURANCE COMPANY) are taken out with an independent and reputable insurer; and
  - (ii) (AMOUNT) are for amounts and contain conditions reasonably acceptable to or reasonably required by the Lessee and/or the Lessee's insurer(s); and
- (c) (EVIDENCE OF INSURANCE) in respect of any policy of insurance to be effected by the Lessor under this clause 9.2, whenever reasonably required by the Lessee (but not more than once annually), give to the Lessee a copy of the certificate of currency and reasonable details of the policy coverage; and

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- (d) (INTEREST OF LESSEE) in respect of the policy of insurance to be effected by the Lessor under clause 9.2(a), ensure that any interest of the Lessee is noted.



### 9.3 DEDUCTIBLES

The Lessor will not object to any reasonable deductibles contained in any insurances effected or required to be effected by the Lessee pursuant to clause 9.1 provided that the Lessee will indemnify the Lessor to the extent of the deductible applicable under a Claim to which those insurances apply.

### 9.4 INFLAMMABLE SUBSTANCES

The Lessee shall not:

- (a) (REASONABLE QUANTITIES) other than as is necessary for the Lessee's Business, store chemicals, inflammable liquids, acetylene gas or alcohol, volatile or explosive oils, compounds or substances on or in the Premises; or
- (b) (USE) use any of those substances or fluids in the Premises for any purpose other than the Lessee's Business.

This clause 9.4 does not apply to anything in underground storage tanks on the Premises which exist at the Effective Date.

### 9.5 EFFECT ON LESSOR'S INSURANCES

The Lessee shall not without the Lessor's Consent, do anything to or on the Premises which will or may:

- (a) (INCREASE THE RATE OF INSURANCE) increase the rate of any insurance on the Premises or on any property in them, of which the Lessee has been notified by the Lessor, without paying to the Lessor an amount equal to the amount of that increase; or
- (b) (AVOID INSURANCE) vitiate or render void or voidable any insurance, of which the Lessee has been notified by the Lessor, in respect of the Premises or any property in them.

### 9.6 INSURANCE PROPOSAL BY THE LESSEE

- (a) If the Lessee is of the opinion that the Lessee will be able to procure the same insurance required to be obtained by the Lessor under clause 9.2(a) at a more competitive premium or on better terms, the Lessee may by notice in writing to the Lessor propose that it take out a policy for the insurance referred to in clause 9.2(a), noting the Lessor's interests as landlord (INSURANCE PROPOSAL). The Lessee can only submit an Insurance Proposal once per year.
- (b) The insurer proposed must be either rated A or higher by S&P or Moodys or a global insurer with respect only to the industrial special risks component of the Insurance Proposal.
- (c) The Lessor must not unreasonably withhold, condition or delay its approval of an Insurance Proposal.

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- (d) If the Lessor approves the Insurance Proposal, the Lessee must promptly take out the insurance policy proposed under the Insurance Proposal (or, if the Lessor has failed to effect insurance under clause 9.2(a), the Lessee may take out the insurance policy anticipated by that clause) noting the Lessor's interests as landlord and, if required by the Lessor in writing, must note the interest of any financier to the Lessor and any mortgagee of the Land.
- (e) If the Lessee effects insurance under clause 9.6(d) and the Lessor is not named as an insured party, the Lessee shall reimburse the Lessor for any premiums for "difference in cover" insurance the Lessor is required to effect as a result of the requirements of its financiers, capped at 3% of the premiums payable by the Lessee under its Insurance Proposal.

### 9.7 INDEMNITIES

Even if:

- (a) (AUTHORISATION) a Claim results from something the Lessee may be authorised or obliged to do under this Lease; and/or
- (b) (WAIVER) a waiver or other indulgence has been given to the

Lessee in respect of an obligation of the Lessee under this clause 9.7,

the Lessee, except to the extent caused or contributed to by the Lessor or its Employees but only to the extent caused or contributed to by the Lessee or its Employees, shall indemnify the Lessor in respect of all Claims for which the Lessor will or may be or become liable, whether during or after the Term, in respect of or arising directly or indirectly from:

- (c) (INJURY TO PROPERTY OR PERSON) any loss, damage or injury to property or person, in on or near the Premises caused or contributed to by:
  - (i) (NEGLIGENCE) any wilful or negligent act or omission;
  - (ii) (DEFAULT) any default under this Lease; and/or
  - (iii) (USE) the use of the Premises,by or on the part of the Lessee or the Lessee's Employees;
- (d) (ABUSE OF SERVICES) the negligent or careless use or neglect of the Services and facilities of the Premises or the Appurtenances by the Lessee or the Lessee's Employees or any other person claiming through or under the Lessee;
- (e) (WATER LEAKAGE) any overflow or leakage (including rain water or from any Service, Appurtenance or the Lessor's Fixtures) whether originating inside or outside the Premises; and
- (f) (PLATE GLASS) any loss, damage or injury relating to plate and other glass caused or contributed to by any act or omission on the part of the Lessee or the Lessee's Employees,

but excluding any consequential loss.

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10. DAMAGE, DESTRUCTION AND RESUMPTION

10.1 DAMAGE TO OR DESTRUCTION OF PREMISES

If at any time the Premises or any part of them are damaged or destroyed so that the Premises or any part of them are wholly or substantially unfit for the occupation and use of the Lessee or (having regard to the nature and location of the Premises and the normal means of access) are wholly or substantially inaccessible then, save where such damage or destruction arises out of the wilful or negligent act or omission of the Lessee or its Employees:

- (a) (i) (RENT AND OUTGOINGS ABATEMENT) the Rent, the Outgoings and any other money payable periodically under this Lease, or a proportionate part of that Rent, the Lessee's Proportion of Outgoings or other moneys according to the nature and extent of the damage or destruction sustained, will abate; and
- (i) (REMEDIES SUSPENDED) all remedies for recovery of Rent, the Lessee's Proportion of Outgoings and other moneys (or that proportionate part of them, as the case may be) falling due after that damage or destruction will be suspended,

until the Premises have been restored or made fit for the occupation and use or made accessible to a standard equivalent to that at the Effective Date and all Services, air conditioning and air ventilation systems and fire fighting services and equipment for the Premises have been repaired so that they operate at a standard not less than as at the Effective Date;

- (b) (TERMINATION BY LESSEE) if the Premises are substantially destroyed, damaged or rendered inaccessible due to the wilful or negligent act or omission of the Lessor or by default by the Lessor under the Lease, the Lessee shall have the right to terminate the Lease by notice to the Lessor and to claim damages;
- (c) (REINSTATEMENT BY LESSOR) unless:
  - (i) (NO INSURANCE MONEYS) the Lessor's insurance policies

have been invalidated or payment of insurance moneys under the policies refused because of some wilful act or omission of the Lessee or the Lessee's Employees;

(ii) (LESSEE INSURES) if clause 9.6(d) applies, the Lessee does not make the proceeds of the insurance referred to in clause 9.2(a) available to the Lessor for reinstatement of the Premises, or

(iii) (AGREEMENT) the parties agree otherwise,

the Lessor shall proceed with all reasonable expedition and diligence to reinstate the Premises and/or make the Premises fit for the occupation and use of and/or accessible to the Lessee to the standard required by clause 10.1(a);

(d) (DETERMINATION BY LESSEE) where it is required under clause 10.1(c), unless the Lessor obtains all necessary development consents to authorise the necessary

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works to be done and provides reasonable written evidence of that to the Lessee within 6 months of the destruction or damage first occurring, then the Lessee may terminate this Lease by giving one month's notice to the Lessor. At the end of that notice period this Lease will be at an end;

(e) (i) (DELAY IN REPAIR) if the Lessor is obliged under clause 10.1(c) to do so, but does not:

(A) substantially commence the necessary works to make good the destruction or damage within 8 weeks, subject to any reasonable extension necessary to obtain approvals from any relevant Authority; and/or

(B) complete the necessary works to make good the destruction or damage within 9 months, subject to any reasonable extension necessary to obtain approvals from any relevant Authority,

of it first occurring, then the Lessee may (by notice to the Lessor) proceed to cause the necessary works to be carried out and the Lessor shall allow the Lessee, its Employees, contractors and workmen access to the Land for that purpose; and

(ii) (COSTS) all Costs of any kind incurred by the Lessee under clause 10.1(e)(i) shall at the Lessee's option (but subject to clause 7.12):

(A) (DEMAND) be payable by the Lessor to the Lessee on demand on a full indemnity basis;

(B) (PROCEEDS) be paid from available proceeds of the insurance effected under clause 9.2(a), which the Lessor must promptly make available to the Lessee; or

(C) (COMBINATION) be accounted for by a combination of the above in the Lessee's discretion,

until all Costs incurred by the Lessee have been recovered; and

(f) (NO OBLIGATION TO RE-INSTATE) if the circumstances in clauses 10.1(c)(i) or (ii) exist, then the Lessor shall be under no obligation to reinstate the Premises or the means of access to them. In that case, either party may terminate this Lease by giving not less than one month's notice to the other.

## 10.2 RESUMPTION OF PREMISES

If at any time the whole or any part of the Premises is resumed so that the residue of them is wholly or partially unfit for the occupation and use of the Lessee or (having regard to the nature and location of the Premises and the normal means of access) is wholly or partially inaccessible, then:

- (a) (RENT ABATEMENT) a proportionate part of the Rent, the Lessee's Proportion of Outgoings, and any other moneys payable periodically under this Lease, according to the nature and extent of the resumption and having regard to the resultant impact on the Lessee's trade and takings, will abate; and

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- (b) (REMEDIES SUSPENDED) all remedies for recovery of that proportionate, part of the Rent, the Lessee's Proportion of Outgoings, and other moneys falling due after that resumption will be suspended.

### 10.3 LIABILITY

Except under clause 10.1(b), neither the Lessor or the Lessee is liable because of the determination of this Lease under this clause 10. That determination will be without prejudice to the rights of either party in respect of any preceding breach or non-observance of this Lease.

### 10.4 DISPUTE

Any dispute-arising under clauses 10.1 or 10.2 shall be determined by an appropriate independent person under clause 14.

## 11. LESSOR'S COVENANTS AND WARRANTIES

### 11.1 QUIET ENJOYMENT

If the Lessee pays the Rent and other money payable under this Lease and observes and performs its obligations under this Lease, the Lessee may occupy and enjoy the Premises during the Term and any extension or Further Term or holding over without any interruption by the Lessor or by any person rightfully claiming through, under or in trust for the Lessor, or the Lessor's Employees.

### 11.2 OUTGOINGS

Without limiting the Lessor's rights of recovery under this Lease, and except where directly payable by the Lessee under this Lease, the Lessor shall pay all Outgoings promptly and, where applicable, by any due date for payment.

### 11.3 CONSENT OF MORTGAGEE

The Lessor warrants that it has obtained all Consents (including Consents from any mortgagee of the Land) necessary for it to enter into this Lease.

### 11.4 DELETED

### 11.5 ACCESS

The Lessor must provide the Lessee with access to the Premises 24 hours a day, 7 days a week.

### 11.6 MANAGEMENT OF LAND

The Lessor covenants with the Lessee that it will not subdivide or reconfigure the Land or create any easement, covenant or other right unless it obtains the Consent of the Lessee (which Consent shall not be unreasonably withheld). The Lessee may only withhold its Consent under this clause 11.6 if the actions proposed by the Lessor will have a material adverse impact on the Lessee's rights under this Lease or the Lessee's Business or the

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Lessee's use of the Premises or the Land. Any dispute under this Clause 11.6 may be referred by either party for determination under Clause 14.

### 11.7 CONSTRUCTION

The Lessee acknowledges that during the Term the Lessor may by agreement with the Lessee redevelop parts of the Land which are no longer included in this Lease and that it may be disturbed by resulting construction or redevelopment, dust and noise. However, during any construction on the Land, the Lessor must:

- (a) (ACCESS) do all things necessary to minimise disturbance to the Lessee in its access to, use and occupation of the Premises except that the Lessor may interrupt Services for a maximum period of 24 hours during non-shift time after consultation with and prior agreement of the Lessee or at other times as the Lessee may agree;
- (b) (BUSINESS) do all things necessary to minimise disruption to the Lessee's Business conducted in the Premises.

#### 11.8 COMPETITORS

The Lessor covenants with the Lessee that it will not grant any lease or right of occupancy of or right to erect, install, affix, paint or otherwise display signage or advertising on any part of the Land or sell the Land or any part of it to any Competitor without the Consent of the Lessee.

#### 11.9 BREACH OF WARRANTY OR COVENANT

If the Lessor breaches clauses 11.5, 11.6, 11.7 or 11.8 then, without prejudice to any other rights or remedies the Lessee may have, the Lessee at any time and in its absolute discretion shall be entitled to give the Lessor notice of an intention to terminate this Lease unless the Lessor satisfies the conditions contained in the notice within 20 Business Days or such longer period as may be reasonably required having regard to the nature of the breach and the time reasonably required to remedy the breach (the REMEDY PERIOD). If the conditions are not satisfied within the Remedy Period, the Lessee may in its absolute discretion terminate this Lease at any time after that.

#### 12. DEFAULT AND DETERMINATION

##### 12.1 DEFAULT

Each of the following is an Event of Default (whether or not it is in the control of the Lessee):

- (a) (RENT IN ARREARS) the Rent or any part of it or any other money is in arrears and unpaid for 15 Business Days after it is due and has been demanded;
- (b) (FAILURE TO PERFORM OTHER COVENANTS) subject to clause 7.11, the Lessee fails to perform or observe any of its other obligations under this Lease within 15 Business Days or such longer period that may be reasonable in the circumstances after service of a notice requiring performance of the covenants; and

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- (c) (LIQUIDATION) the Liquidation of the Lessee.

##### 12.2 FORFEITURE OF LEASE

If an Event of Default occurs the Lessor may, without prejudice to any other Claim which the Lessor has or may have or could otherwise have against the Lessee or any other person in respect of that default, at any time:

- (a) (DETERMINATION BY RE-ENTRY) subject to any prior demand or notice as is required by Law and wherever possible, outside the normal trading hours of the Lessee, re-enter into and take possession of the Premises or any part of them (by force if necessary) and eject the Lessee and all other persons from them, in which event this Lease will be at an end; and/or
- (b) (DETERMINATION BY NOTICE) by notice to the Lessee determine this Lease, and from the date of giving that notice this Lease will be at an end.

##### 12.3 WAIVER

- (a) (WAIVER BY LESSOR) No consent or waiver express or implied by the Lessor to or of any breach of any covenant, condition, or duty of the Lessee shall be construed as a consent or waiver to or of any breach of the same or any other covenant, condition or duty.
- (b) (WAIVER BY LESSEE) No consent or waiver express or implied by the Lessee to or of any breach of any covenant, condition, or duty of the Lessor shall be construed as a consent or waiver

to or of any breach of the same or any other covenant, condition or duty.

12.4 LESSOR TO MITIGATE DAMAGES

If the Lessee vacates the Premises, whether with or without the Lessor's Consent, or the Lessor terminates or forfeits this Lease, the Lessor shall take all reasonable steps to mitigate its loss and shall as soon as possible endeavour to re-let the Premises at a reasonable rent and on reasonable terms.

12.5 RECOVERY OF DAMAGES

- (a) (FUNDAMENTAL TERMS) The obligations contained in clauses 4.1, 4.2, 4.3, 4.4, 4.5, 5.3, 5.5, 6.1(a), 7.1(a) and (d), 7.6(a), 8.1, 9.1, 10.1 and 10.3 are agreed by the Lessor and the Lessee to be fundamental to this Lease.
- (b) (DAMAGES) If the Lessor determines this Lease pursuant to this clause 12 as a consequence of or in reliance upon a breach by the Lessee of one or more of the obligations contained in the provisions of this Lease referred to in clause 12.5(a) (whether alone or together with other obligations contained in this Lease) the Lessor shall, subject to clause 12.4, be entitled to damages for loss of the benefits which performance of all of the obligations and provisions of this Lease would, but for the determination, have conferred upon the Lessor, subject to the Lessor's duty to mitigate its loss.

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12.6 INTEREST ON OVERDUE MONEY

- (a) (INTEREST) The Lessee shall pay to the Lessor interest at the Interest Rate on any Rent or other money due under this Lease (including money or Costs which are expressed to be payable or reimbursable to the Lessor on demand) but unpaid for 5 Business Days.
- (b) (CONDITIONS) That interest shall:
  - (i) (ACCRUAL) accrue on a daily basis and be calculated on daily rests;
  - (ii) (PAYMENT) be payable on demand or, if no earlier demand is made, on the first Business Day of each month where an amount arose in the preceding month or months;
  - (iii) (CALCULATION) be calculated from the due date for payment of the Rent or other money (as appropriate) or, in the case of an amount payable by way of reimbursement or indemnity, the date of outlay or loss, if earlier, until the date of actual payment; and
  - (iv) (RECOVERY) be recoverable in the same manner as Rent in arrears.

13. TERMINATION

13.1 YIELD UP

In relation to the Premises, at the Terminating Date:

- (a) (REMOVE LESSEE'S FITOUT AND FITTINGS) if the Lessor so requests the Lessee shall or if the Lessee wishes to, the Lessee may remove from the Premises all the Lessee's Fitout and Fittings and any other property of the Lessee; and
- (b) (ANY CONDITION) the Lessee can deliver them up to the Lessor in any condition, subject to performance of the Lessee's obligations in clause 7.1(d) which are due to be performed prior to the Terminating Date and under clause 13.1(a).

13.2 FAILURE BY LESSEE TO REMOVE LESSEE'S FITOUT AND FITTINGS

If the Lessee fails to remove the Lessee's Fitout and Fittings and other property of the Lessee when required to do so under clause 13.1 or following determination under clause 12.2, within 30 Business Days of notice to do so, the Lessor may cause the Lessee's Fitout and Fittings and other property of the Lessee to be removed and stored in

such manner as the Lessor in its discretion thinks fit at the risk and Cost of the Lessee. The Lessee must also pay Rent and Lessee's Proportion of Outgoings for any reasonable period in which the Lessor undertakes the Lessee's obligations under this clause 13.2.

13.3 FAILURE TO REMOVE

If the Lessee fails to remove the Lessee's Fitout and Fittings and other property of the Lessee by the Terminating Date under clause 13.1 where the Lessor has not requested in writing that it do so, it shall then become the property of the Lessor.

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14. DISPUTES

14.1 APPOINTMENT OF EXPERT

Any dispute arising under this Lease may at the request of either party be referred for determination by an appropriate independent person who is:

- (a) (AGREED BY PARTIES) agreed between the Lessor and the Lessee; or
- (b) (FAILING AGREEMENT) if they cannot agree, a member of a professional body nominated at the request of either the Lessor or the Lessee by the President of the Property Council of Australia Limited.

14.2 QUALIFICATIONS OF EXPERT

The appointed person:

- (a) (EXPERIENCE) must have substantial experience in relation to disputes in the nature of the matter in dispute and where appropriate, in relation to premises of a similar type within the area in which the Premises are located or other comparable areas; and
- (b) (EXPERT) in making his determination shall act as an expert and not as an arbitrator.

His determination will be final and binding on the parties.

14.3 COST OF DETERMINATION

The Cost of the appointed person's determination shall be borne by either or both of the parties (as determined by the appointed person) and if by both of the parties in the proportion between them as the person making the determination decides.

15. ENVIRONMENTAL CONTAMINATION

15.1 LESSEE'S RESPONSIBILITY

Despite any other provision of this Lease except clause 15.5, the Lessee is not responsible for:

- (a) inground Environmental contamination of the Land or migrating onto or from the Land which exists at the Effective Date; or
- (b) for any Environmental contamination in, on, under or migrating onto or from the Land which occurs on and after the Effective Date which is not caused by the Lessee or its Employees.

15.2 LESSOR'S OBLIGATIONS AND INDEMNITY

The Lessor shall:

- (a) (COMPLY) without delay but subject to clause 15.5:
  - (i) remediate any Environmental contamination referred to in clause 15.1 and which:
    - (A) any Authority requires remediated; or

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- (B) the parties agree or the expert under clause 14 determines is required pursuant to clause 15.2(c); and
  - (ii) comply with the Requirements of any Authority and the Law with respect to the Environmental contamination referred to in clause 15.1; and
- (b) (INDEMNIFY) indemnify the Lessee against all Claims arising from the matters set out in clause 15.2(a) including any Costs arising from any agreement negotiated by or with the consent of the Lessor acting reasonably with any Authority relating to the matters referred to in clause 15.2(a) except to the extent that:
- (i) other than with respect to Environmental contamination which constitutes a health and safety risk which the Lessee is required to notify to an Authority by Law, the Lessee or the Lessee's Employees have taken action with the intention of causing a Claim to be made or a notice or other Requirement issued and that action directly or indirectly has a material effect in causing the Claim to be made or the notice or other Requirement to be issued;
  - (ii) the Claim relates to Remediation to a standard higher than that required for industrial use (which the parties agree is the standard appropriate for the Permitted Use) whether arising from a rezoning of the Premises or otherwise; and/or
  - (iii) any disposition by the Lessee of a legal or equitable interest which the Lessee has in the Premises is made on terms which include an indemnity in respect of the Environment which is materially more advantageous to the person receiving that interest from the Lessee than the indemnity included in this clause 15.2, including in respect of the qualifications applicable to the indemnity contained in this clause 15.2(b).
- (c) (i) If there is any Environmental contamination referred to in clause 15.1 which:
- (A) prevents the Lessee operating from the Premises in the manner used at the Effective Date; or
  - (B) otherwise constitutes a health and safety risk,
- then the Lessee may give notice to the Lessor with reasonable details of the Environmental contamination and requesting that the Lessor remediate that contamination.
- (ii) If the Lessor disputes whether the remediation requested by the Lessee is reasonably necessary, it must give notice to the Lessee within 20 Business Days of the date of service of the Lessee's notice under paragraph (i).
  - (iii) If the Lessor and the Lessee cannot agree on whether the remediation requested by the Lessee is reasonably necessary within 25 Business Days of the date of service of the Lessee's notice under paragraph (i) above, then either party may refer the matter for dispute resolution under clause 14.

### 15.3 REMEDIATION BY THE LESSEE IF LESSOR DEFAULTS

If:

- (a) (LESSOR'S FAILURE) the Lessor fails to comply with clause 15.2(a) in accordance with the Requirements of any Authority and the Law (or, if no time is specified, within a reasonable time of notice from the Lessee, having regard to the nature of the remediation or the Law or Requirement and the period of time reasonably required to carry out the remediation or comply with the Law or Requirement); or



- (b) (EMERGENCY) any emergency arises which requires the immediate or urgent remediation of Environmental contamination or compliance with a Requirement or the Law which the Lessor is required to remediate or comply with under this Lease,

then the Lessee may remediate the Environmental contamination or comply with the Law or the Requirement and the Cost of so doing and of all Claims incurred by the Lessee in properly complying with that Law or Requirement or arising from the Lessor's failure to do so and any reasonable Costs arising from temporary relocation of all or part of the Lessee's Business shall, at the Lessee's option be (but subject to clause 7.12):

- (c) (ON DEMAND) payable by the Lessor to the Lessee on demand on a full indemnity basis;
- (d) (SET OFF) be set off against the Rent, the Lessee's Proportion of Outgoings and any other moneys payable by the Lessee under this Lease; or
- (e) (COMBINATION) accounted for by a combination of the above in the Lessee's discretion,

until all Costs incurred by the Lessee have been recovered.

#### 15.4 PRE-EXISTING UST'S

Despite any other provision of this Lease, the Lessee has no obligation to empty, decommission, remediate or remove any underground storage tanks existing on the Land at the Effective Date or to remediate or otherwise deal with any Environmental contamination associated with them.

#### 15.5 SPECIFIC OBLIGATIONS

Subject to clause 7.11, the Lessee must effect and maintain all Environmental management plans relating to the Environmental condition of the Buildings on the Premises which are Required by Law or any Authority during the Term.

#### 15.6 ACKNOWLEDGEMENT

Without limiting any other provision of this clause 15, the Lessee acknowledges that the Premises are at the Effective Date subject to Environmental contamination and accepts the Premises in that state.

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#### 16. MISCELLANEOUS

##### 16.1 NOTICES

All notices, requests, demands, consents, approvals, agreements or other communications to or by a party to this Lease:

- (a) (WRITING) must be in writing;
- (b) (SIGNED) must be signed by the sender, or if a company, by its Authorised Officer; and
- (c) (SERVED) will be taken to have been served:
- (i) (PERSONAL) in the case of delivery in person, when delivered to or left at the address of the recipient shown in this Lease (as the case may be) or at any other address which the recipient may have notified to the sender;
- (ii) (FAX) in the case of facsimile transmission, when recorded on the transmission result report unless:
- (A) within 24 hours of that time the recipient informs the sender that the transmission was received in an incomplete or garbled form; or
- (B) the transmission result report indicates a faulty or incomplete transmission; and
- (d) (MAIL) in the case of mail, on the third Business Day after the date on which the notice is accepted for posting by the

relevant postal authority,

but if service is on a day which is not a Business Day in the place to which the communication is sent or is later than 4.00pm (local time) on a Business Day, the notice will be taken to have been served on the next Business Day in that place.

#### 16.2 STAMP DUTY, COSTS AND REGISTRATION

- (a) (STAMP DUTY AND REGISTRATION FEES) The Lessee shall pay to the Lessor on demand all stamp duty (including penalties and fines other than those incurred due to the fault of the Lessor) and all registration fees (if applicable) with respect to this Lease.
- (b) (LEGAL COSTS) Each party shall pay their own legal Costs with respect to this Lease.
- (c) (LESSOR TO STAMP AND REGISTER) The Lessor shall (subject to receipt of necessary funds from the Lessee) attend to payment of stamp duty on and registration of this Lease at the Department of Land Information, Perth as soon as possible after the Effective Date.

#### 16.3 SEVERANCE

Any provision of this Lease which is prohibited or unenforceable in any jurisdiction will be ineffective in that jurisdiction to the extent of the prohibition or unenforceability. That will not invalidate the remaining provisions of this Lease nor affect the validity or enforceability of that provision in any other jurisdiction.

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#### 16.4 ENTIRE AGREEMENT

This Lease contains all the contractual arrangements of the parties with respect to the transaction to which it relates. No representations or warranties made by either party with respect to the transaction to which this Lease relates shall be actionable or enforceable except to the extent that they are contained in this Lease.

#### 16.5 GOVERNING LAW

This Lease is governed by the laws of Western Australia. The parties submit to the non-exclusive jurisdiction of courts exercising jurisdiction there.

#### 17. CONFIDENTIALITY

- (a) (DUTY) Unless the parties otherwise agree in any particular instance, the provisions of this Lease and all information disclosed to or obtained by the parties in relation to each other and this Lease and which is not in public knowledge (or which is in public knowledge only as a consequence of a breach of this clause) must be kept confidential to the parties and may not be disclosed (unless otherwise required by Law) except to any bona fide consultants retained by a party in relation to this Lease, or to bona fide purchasers, financiers, assignees or sub occupants (as the case may be) and any such consultant or other person must be provided only with that information which he needs to know for the purposes of reviewing this Lease and he must undertake in writing to maintain the confidentiality of that information.
- (b) (INDEMNITY) The parties shall indemnify each other and must keep each other indemnified against all Claims suffered or incurred as a consequence of any breach of clause 17(a) by the Lessor or the Lessee or their respective Employees, consultants or other reasons for whom they are responsible.

#### 18. LIMITATION OF LIABILITY

##### 18.1 CAPACITY OF LESSOR

Where the Lessor is a trustee of a trust (TRUST), the Lessor only enters into this Lease in its capacity as trustee of the Trust and in no other capacity. A liability arising under or in connection with this Lease is limited and can be enforced against the Lessor only to the extent to which it can be satisfied out of property of the Trust and for which the Lessor is actually indemnified for the liability. This limitation of the Lessor's liability applies despite any other

provisions of this Lease (except clause 18.3 ("When limitation does not apply")) and extends to all liabilities and obligations of the Lessor in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Lease, any other document in connection with it, or the Trust.

#### 18.2 PARTIES MAY NOT SUE

The parties may not sue the Lessor in any capacity other than as trustee of the Trust, including seeking the appointment of a receiver, a liquidator, an administrator or similar

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person to the Lessor or prove in any liquidation, administration or arrangement of or affecting the Lessor (except in relation to property of the Trust).

#### 18.3 WHEN LIMITATION DOES NOT APPLY

Clauses 18.1 and 18.2 shall not apply to any obligation or liability of the Lessor to the extent that it is not satisfied because, under this Lease or any other document in connection with it, or by operation of law, there is a reduction in the extent of the Lessor's indemnification out of the assets of the Trust, as a result of the Lessor's fraud, negligence or breach of trust.

#### 18.4 FAILURE BY THIRD PARTIES

It is acknowledged that the Lessor is responsible under this Lease and other documents in connection with it for performing a variety of obligations relating to the Trust. No act or omission of the Lessor will be considered fraud or negligence of the Lessor for the purposes of clauses 18.3 ("When limitation does not apply") or 18.5 ("Breach by the Lessor") to the extent to which the act or omission was caused by any failure by any person who provides services in respect of the Trust to fulfil its obligations relating to the Trust or by any other act or omission of any person who provides services in respect of the Trust (other than employees and agents of the Lessor or a person who has been delegated or appointed by the Lessor).

#### 18.5 BREACH BY THE LESSOR

It is also acknowledged that a breach of an obligation imposed on, or a representation or warranty given by, the Lessor under or in connection with this Lease or any other document in connection with it will not be considered a breach of trust by the Lessor unless the Lessor has acted with negligence, or without good faith, in relation to the breach.

#### 19. TRUST WARRANTIES

Where the Lessor is a trustee and/or responsible entity of a Trust, the Lessor warrants in its personal capacity that:

- (a) (TRUSTEE) it is the sole trustee of the Trust;
- (b) (POWER) it, in its capacity as trustee of the Trust, is entitled and competent and has absolute and complete authority, power and capacity to enter into and perform its obligations under this Lease and is not in breach of any Law or court order relating to its acting as trustee of the Trust;
- (c) (INDEMNITY) its right of indemnity out of, and lien over, the assets of the Trust has not been limited in any way and that right has priority over the right of the beneficiaries to the Trust assets;
- (d) (ENFORCEABLE) the deed establishing the Trust (TRUST DEED) is enforceable in accordance with the Law applicable to it;
- (e) (CONSENT) the consent of each of the beneficiaries, unitholders or other persons whose consent is required under the Trust Deed has been obtained;

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- (f) (NO BREACH) the entry into this Lease by the Lessor does not conflict with or result in a breach of, or default under, any provision of the Trust Deed or any other agreement to which the Lessor is a party (whether in its capacity as trustee of

the Trust or its personal capacity);

- (g) (TRUST EXTANT) the Trust has not at the Effective Date been terminated nor has the date or any event for the vesting of the assets subject to the Trust occurred.

20. GUARANTEE AND INDEMNITY

20.1 CONSIDERATION

The Guarantor gives this guarantee and indemnity in consideration of the Lessor agreeing to enter into this Lease at the request of the Guarantor. The Guarantor acknowledges the receipt of valuable consideration from the Lessor for the Guarantor incurring obligations and giving rights under this guarantee and indemnity.

20.2 GUARANTEE

The Guarantor unconditionally and irrevocably guarantees to the Lessor the due and punctual performance and observance by the Lessee of its obligations:

- (a) under this Lease, even if this Lease is not registered or is found not to be a lease or is found to be a lease for a term less than the Term; and
- (b) in connection with its occupation of the Premises, including the obligations to pay money.

20.3 INDEMNITY

As a separate undertaking, the Guarantor unconditionally and irrevocably indemnifies the Lessor against all liability or loss arising from, and any costs, charges or expenses incurred in connection with:

- (a) the Lessee's breach of this Lease; or
- (b) the Lessee's occupation of the Premises, including a breach of the obligations to pay money; or
- (c) a representation or warranty by the Lessee in this Lease being incorrect or misleading when made or taken to be made; or
- (d) a liquidator disclaiming this Lease.

It is not necessary for the Lessor to incur expense or make payment before enforcing that right of indemnity.

20.4 INTEREST

The Guarantor agrees to pay interest on any amount payable under this guarantee and indemnity from when the amount becomes due for payment until it is paid in full. The Guarantor must pay accumulated interest at the end of each month without demand. Interest is payable as set out in clause 12.6.

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20.5 ENFORCEMENT OF RIGHTS

The Guarantor waives any right it has of first requiring the Lessor to commence proceedings or enforce any other right against the Lessee or any other person before claiming under this guarantee and indemnity.

20.6 CONTINUING SECURITY

This guarantee and indemnity is a continuing security and is not discharged by any one payment.

20.7 GUARANTEE NOT AFFECTED

The liabilities of the Guarantor under this guarantee and indemnity as a guarantor, indemnifier or principal debtor and the rights of the Lessor under this guarantee and indemnity are not affected by anything which might otherwise affect them at law or in equity including, but not limited to, one or more of the following:

- (a) the Lessor granting time or other indulgence to, compounding or compromising with or releasing the Lessee or any other

Guarantor;

- (b) acquiescence, delay, acts, omissions or mistakes on the part of the Lessor;
- (c) any transfer of a right of the Lessor;
- (d) the termination, surrender or expiry of, or any variation, assignment, subletting, licensing, extension or renewal of or any reduction or conversion of the Term of this Lease;
- (e) the invalidity or unenforceability of an obligation or liability of a person other than the Guarantor;
- (f) any change in the Lessee's occupation of the Premises;
- (g) this Lease not being registered;
- (h) this Lease not being effective as a lease;
- (i) this Lease not being effective as a lease for the Term;
- (j) any person named as Guarantor not executing or not executing effectively this guarantee and indemnity;
- (k) a liquidator disclaiming this Lease.

#### 20.8 SUSPENSION OF GUARANTOR'S RIGHTS

The Guarantor may not:

- (a) raise a set-off or counterclaim available to it or the Lessee against the Lessor in reduction of its liability under this guarantee and indemnity; or
- (b) claim to be entitled by way of contribution, indemnity, subrogation, marshalling or otherwise to the benefit of any security or guarantee held by the Lessor in connection with this Lease; or
- (c) make a claim or enforce a right against the Lessee or its property; or

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- (d) prove in competition with the Lessor if a liquidator, provisional liquidator, receiver, administrator or trustee in bankruptcy is appointed in respect of the Lessee or the Lessee is otherwise unable to pay its debts when they fall due,

until all money payable to the Lessor in connection with the lease or the Lessee's occupation of the Premises is paid.

#### 20.9 REINSTATEMENT OF GUARANTEE

If a claim that a payment to the Lessor in connection with this Lease or this guarantee and indemnity is void or voidable (including, but not limited to, a claim under laws relating to liquidation, administration, insolvency or protection of creditors) is upheld, conceded or compromised then the Lessor is entitled immediately as against the Guarantor to the rights to which it would have been entitled under this guarantee and indemnity if the payment had not occurred.

#### 20.10 COSTS

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

- (a) the Lessor's costs, charges and expenses in making, enforcing and doing anything in connection with this guarantee and indemnity including, but not limited to, legal costs and expenses on a full indemnity basis; and
- (b) all stamp duties, fees, taxes and charges which are payable in connection with this guarantee and indemnity or a payment, receipt or other transaction contemplated by it.

Money paid to the Lessor by the Guarantor must be applied first against payment of costs, charges and expenses under this clause 20.10 then against other obligations under this guarantee and indemnity.

#### 20.11 LESSOR MAY ASSIGN

The Lessor may assign its rights under this guarantee and indemnity to a purchaser or transferee of the Land.

21. REDUCTION OF AREA OF PREMISES

21.1 REDUCTION OF AREA

If the Lessor and the Lessee enter into an agreement for lease for development of new premises on the Land for the Lessee, the Lessor may by giving not less than 3 months notice to the Lessee (such notice attaching the registrable form of partial surrender of lease) require the Lessee to surrender this Lease with respect to that part of the Land the subject of the agreement for lease (DEVELOPMENT LAND).

21.2 CONSEQUENCES

If the Lessor gives notice to the Lessee under clause 21.1:

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- (a) the Lessee's Proportion of Outgoings will be reduced in proportion to the reduction in the area of the Premises from the date of expiry of the Lessor's notice given under clause 21.2 but the Rent will not reduce;
- (b) the Lessee and the Lessor must promptly execute all documentation reasonably necessary to document the partial surrender of this Lease at the Lessor's reasonable Cost;
- (c) the Lessor shall pay any stamp duty (including fines and penalties) chargeable on the partial surrender of this Lease and any survey or registration fees payable to enable the registration of the partial surrender of this Lease at the Department of Natural Resources and the Lessor must promptly attend to registration of the surrender; and
- (d) clauses 13.1, 13.2 and 13.3 shall apply with respect to the area surrendered; and
- (e) neither party shall have any further obligation to the other with respect to the Development Land except for any pre-existing breach and clauses 11.6, 11.7 and 11.8.

21.3 PARTIAL SURRENDER

If this Lease has not expired by the time the new lease of the Development Land commences:

- (a) the Lessee may surrender its interest in this Lease by notice to the Lessor and the Lessee is released from all obligations with respect to the Premises which arise after the date of service of that notice; and
- (b) the parties shall promptly do all things necessary to prepare, execute and register any documentation relevant to the surrender referred to in clause 21.3(a).

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EXECUTED as a Deed in Sydney

Each attorney executing this Deed states that he or she has no notice of revocation or suspension of his or her power of attorney.

EXECUTED for and on behalf of AMACA PTY LIMITED by:

/s/ Peter Edward John Jollie  
-----  
Director Signature

Peter Edward John Jollie  
-----  
Print Name

/s/ Dennis John Cooper  
-----  
Director/Secretary Signature

Dennis John Cooper  
-----  
Print Name

SIGNED SEALED AND DELIVERED for JAMES



HARDIE AUSTRALIA PTY LIMITED by its  
attorney under power of attorney  
registered book No in the presence of:

/s/ Josie Hui  
-----  
Witness Signature

Josie Hui  
-----  
Print Name

SIGNED SEALED AND DELIVERED for JAMES  
HARDIE INDUSTRIES N.V. by its attorney  
under power of attorney registered book  
No in the presence of:

/s/ Josie Hui  
-----  
Witness Signature

Josie Hui  
-----  
Print Name

/s/ Joanne Marchione  
-----  
Attorney Signature

Joanne Marchione  
-----  
Print Name

/s/ Joanne Marchione  
-----  
Attorney Signature

Joanne Marchione  
-----  
Print Name

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Allens Arthur Robinson

THIS IS ANNEXURE B OF 5 PAGES TO THE EXTENSION OF LEASE BETWEEN AMACA PTY  
LIMITED (ACN 000 035 512) (LESSOR), JAMES HARDIE AUSTRALIA PTY LIMITED (ACN 084  
635 558) (LESSEE) AND JAMES HARDIE INDUSTRIES N.V.  
(ARBN 097 829 895) (GUARANTOR) DATED 23 MARCH 2004

LESSOR'S ASSET REGISTER

Page 52 of 56



Joanne Marchione..... Full Name

/s/ Josie Hui  
-----

Witness Signature

Josie Hui..... Full Name

EXECUTION DATE      GUARANTOR'S SIGNATURE

17/ 03 / 2004      SIGNED for JAMES HARDIE INDUSTRIES N.V. by  
its attorney under power of attorney  
registered No. 707564412 dated 12 March 2004  
in the presence of:

/s/ Joanne Marchione  
-----

Attorney Signature

Joanne Marchione.....Print Name

/s/ Josie Hui  
-----

Witness Signature

Josie Hui.....Print Name

SCHEDULE/ENLARGED PANEL/  
ADDITIONAL PAGE/DECLARATION  
TITLE REFERENCE 15944054 AND 17103067

This is the Schedule to the Form 13 Amendment dated 23 March 2004.

Lease 706009769 (as varied by Amendment 706009780) is varied as follows, with effect from the Effective Date (as defined below).

1. delete pages 1-39 and Exhibits A and B;
2. insert annexure B of this Amendment as annexure B of the lease; and
3. insert the following as the Schedule to the lease.

SCHEDULE OF TERMS

OPERATIVE PROVISIONS

<TABLE>

<CAPTION>

ITEM <S>	TERM <C>	DEFINITION <C>
1.	Lessor	Amaca Pty Limited (ACN 000 035 512) of 65 York Street, Sydney, NSW
2.	Lessee	James Hardie Australia Pty Limited (ACN 084 635 558) of 10 Colquhoun Street, Rosehill, NSW
3.	Land	Certificates of Title 15944054 and 17103067
4.	Premises	The Land, buildings and other improvements situated at 46 Randle Road, Meeandah, QLD in the condition in which they exist as at the Effective Date and includes the Lessor's Fixtures.
5.	Term	20 Years 4 months and 23 days
6.	Commencing Date	1 November 1998
7.	Terminating Date	23 March 2019
8.	Further Term	2 further terms each of 10 years, the last expiring on 23 March 2039.
9.	Rent	\$400,000.00 per annum, payable as prescribed in clauses 4.1 and 4.2, and subject to review as specified in clauses 4.4, 4.5, 4.6 and 4.7.
10.	Review Dates	The Review Dates for review of the Rent are as follows:  (a) Fixed Review Dates shall be each anniversary of the Effective Date during the Term other than the Commencing Date of a Further Term; and  (b) Market Review Dates shall be the seventh anniversary of the Effective Date.
11.	Permitted Use	Manufacture, warehousing, distribution and sales of fibre cement

products and systems and all associated activities (including offices) and any other use for which the Lessee may lawfully use the Premises.

12. Public Risk Insurance \$50,000,000

</TABLE>

QUEENSLAND LAND REGISTRY  
Land Title Act 1994, Land Act 1994  
and Water Act 2000

FORM 20 Version 2

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SCHEDULE/ENLARGED PANEL/  
ADDITIONAL PAGE/DECLARATION  
TITLE REFERENCE 15944054 AND 17103067

<TABLE>  
<CAPTION>

ITEM	TERM	DEFINITION
<S>	<C>	<C>
13.	Review Dates for the review	The Review Dates for the review of the Rent in each Further Term and the method of review
	Further Term	shall be as follows.
		(a) Fixed Review Dates shall be on each anniversary of the Commencing Date of that Further Term other than the Commencing Date of a Further Term; and
fifth		(b) Market Reviews Dates shall be the Commencing Date of that Further Term and the anniversary of the Commencing Date of that Further Term.

14. Lessee's Proportion 100%

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QUEENSLAND LAND REGISTRY  
Land Title Act 1994, Land Act 1994  
and Water Act 2000

FORM 20 Version 2

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SCHEDULE/ENLARGED PANEL/  
ADDITIONAL PAGE/DECLARATION  
TITLE REFERENCE 15944054 AND 17103067

1. INTERPRETATION

1.1 DEFINITIONS

The following definitions together with those in the Schedule apply unless the context requires otherwise.

APPURTENANCE includes any drain, basin, sink, toilet or urinal.

AUSTRALIAN INSTITUTE means the Australian Property Institute Inc. (Queensland Division).

AUTHORISATION includes any authorisation, approval, consent, licence, permit, franchise, permission, filing, registration, resolution, direction, declaration, or exemption.

AUTHORISED OFFICER means any director or secretary, or any person from time to time nominated as an Authorised Officer by a party by a notice to the other party accompanied by specimen signatures of all new persons so appointed.

AUTHORITY includes:

(a) (GOVERNMENT) any government in any jurisdiction, whether federal, state, territorial or local;

(b) (PUBLIC UTILITY) any provider of public utility services, whether statutory or not; and

(c) (OTHER BODY) any other person, authority, instrumentality or body having jurisdiction, rights, powers, duties or responsibilities over the Premises or any part of them or anything in relation to them (including the Insurance Council of Australia Limited).

BUILDING means those improvements (if any) described or referred to in Item 4.

BUSINESS DAY means any day except Saturday or Sunday or a day that is a public holiday throughout Queensland.

CLAIM includes any claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding, right of action, claim for

compensation and claim for abatement of rent obligation.

COMPETITOR means any person engaged in the manufacture, distribution or sale of fibre cement products and underground drainage pipes made of concrete or fibre cement and:

(a) includes persons engaged in the businesses known as or trading under names which include the words "Lafarge", "CSR" and "BGC"; but

(b) excludes any third party logistics operator.

CONSENT means prior written consent.

COUNCIL means Brisbane City Council.

COST includes any reasonable cost, charge, expense, outgoing, payment or other expenditure of any nature (whether direct, indirect or consequential and whether accrued or paid) including where appropriate all rates and all reasonable legal fees.

EFFECTIVE DATE means 24 March 2004.

EMPLOYEES means employees, agents, invitees and contractors.

ENVIRONMENT means components of the earth, including:

(a) land, air and water;

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(b) any layer of the atmosphere;

(c) any organic or inorganic matter and any living organism; and

(d) human-made or modified structures and areas, and includes interacting natural ecosystems that include components referred to in paragraphs (a) to (c).

ENVIRONMENTAL LAW means a provision of Law, or a Law, which provision or Law relates to any aspect of the Environment, safety, health or the use of Substances or activities which may harm the Environment or be hazardous or otherwise harmful to health.

EVENT OF DEFAULT means any event referred to in clause 12.1.

FIXED REVIEW means a review of the Rent in accordance with clause 4.7.

FIXED REVIEW DATES means a date on which a Fixed Review is to occur as set out in Item 10.

FURTHER TERM means the further term or terms (as the case may be), specified in Item 8.

GST means the goods and services tax as imposed by the GST Law including, where relevant, any related interest, penalties, fines or other charge to the extent caused by any default or delay by the Lessee.

GST AMOUNT means, in relation to a Payment, an amount arrived at by multiplying the Payment (or the relevant part of a Payment if only part of a Payment is the consideration for a Taxable Supply) by the appropriate rate of GST (being 10% when the GST Law commenced).

GST LAW has the meaning given to that term in A New Tax System (Goods and Services Tax) Act 1999, or, if that Act is not valid or does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act.

GUARANTOR means James Hardie Industries N.V.

INITIAL TERM means the first 20 years 4 months and 23 days term of this Lease commencing on 1 November 1998.

INTEREST RATE means the minimum rate of interest charged by the Commonwealth Bank of Australia, on an overdraft of \$100,000 plus 2%.

LAND means the land described in Item 3.

LAND TAX means land taxes or taxes in the nature of a tax on land.

LAW includes any requirement of any statute, rule, regulation, proclamation, ordinance or by-law, present or future, and whether state, federal or otherwise.

LEASE means this lease between the Lessor and the Lessee.

LEASE YEAR means every 12 month period commencing on and from the Commencing Date.

LESSEE means the party specified in Item 2, its successors and assigns.

LESSEE'S BUSINESS means the business carried on or entitled to be carried on in the Premises in compliance with the Permitted Use of the Premises.

LESSEE'S FITOUT AND FITTINGS means all fixtures, fittings, plant, equipment, partitions or other articles and chattels of all kinds (other than stock-in-trade) which satisfy all of the following:

- (a) they are owned by or leased by third parties to the Lessee; and
- (b) they are, at any time, in or attached to the Premises.

LESSEE'S PROPORTION means that proportion which the Lettable Area of the Premises bears to the area of the Land determined in accordance with the Method of Measurement from time to time and which at the Commencing Date of the lease for the Initial Term is that proportion set out in Item 14.

LESSOR means the party specified in Item 1 or the party for the time being entitled to the reversion expectant upon expiration or prior determination of the Lease.

LESSOR'S ASSET REGISTER means the list of items in the Premises contained in Annexure B.

LESSOR'S FIXTURES means all fixtures in the Premises owned by the Lessor including the items listed in the Lessor's Asset Register and:

- (a) (GENERAL) all plant and equipment, mechanical or otherwise which forms part of the base Building, fittings, fixtures, furniture, furnishings of any kind, including window coverings, blinds and light fittings; and
- (b) (FIRE FIGHTING) all stop cocks, fire hoses, hydrants, other fire prevention aids and all fire fighting systems from time to time located in the Premises or which may service the Premises and be on the Land.

LETTABLE AREA means the gross lettable area determined in accordance with the Method of Measurement.

LIQUIDATION includes liquidation, official management, receivership, compromise, arrangement, amalgamation, administration, reconstruction, winding up, dissolution, assignment for the benefit of creditors, arrangement or compromise with creditors, bankruptcy or death.

MARKET RENT means the Rent which could be obtained with respect to the Premises as at a particular Market Review Date in an open market by a willing but not anxious Lessor assessed using the criteria in clause 4.5(g).

MARKET REVIEW means a review of the Rent in accordance with clause 4.4 and (if applicable) clauses 4.5 and 4.6.

MARKET REVIEW DATE means a date on which a Market Review is to occur as set out in Item 10.

METHOD OF MEASUREMENT means the Method of Measurement of Buildings (1997 Revision) adopted by the Property Council of Australia Limited (formerly the Building Owners and Managers Association of Australia Limited). The Method of Measurement shall remain fixed for the term of this Lease and any Further Term despite any subsequent editions or variations which may be issued.

OUTGOINGS means:

- (a) (COUNCIL RATES) all charges payable to the Council:
  - (i) levied or charged with respect to the Land or the Premises or their use or occupation;
  - (ii) for any services to the Land or the Premises of the type from time to time provided by the Council; and/or
  - (iii) for waste and general garbage removal from the Land or the Premises (including any excess);
- (b) (WATER RATES) all charges payable to an Authority:
  - (i) levied or charged with respect to the Land or the Premises or their use or occupation; and
  - (ii) for the provision, reticulation or discharge of water and/or sewerage and/or drainage (including meter rents) to the Land or the Premises;
- (c) (MANAGEMENT FEES) reasonable fees for management of the Premises capped at 1% of the Rent and Outgoings from time to time; and
- (d) (INSURANCES) where the Lessor has effected the policy, all insurance premiums payable in respect of insurances for the Premises for its full insurable or replacement value to cover damage by fire, storm,

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tempest, impact and other usually insured risks of that nature, including loss of rent insurance (capped at 18 months cover),

but excluding from this Paragraph any amount which is:

- (i) (ALREADY INCLUDED) already included by virtue of another Paragraph of this definition;
- (ii) (OTHERWISE PAYABLE) otherwise payable by the Lessee pursuant to the provisions of this Lease;
- (iii) (TAX) Land Tax, income tax and capital gains tax of any nature; or
- (iv) (PAYABLE BY THE LESSOR) otherwise payable by the Lessor with respect to its obligations under this Lease.

PAYMENT means:

- (a) the amount of any monetary consideration (other than a GST Amount payable under this clause); and
- (b) the GST Exclusive Market Value of any non-monetary consideration,

paid or provided by the Lessee for this Lease or by the Lessor or the Lessee for any other Supply made under or in connection with this Lease and includes:

- (c) any Rent or contribution to Outgoings; and
- (d) any amount payable by way of indemnity, reimbursement, compensation or damages.

PERMITTED USE means the use of the Premises specified in Item 11

PREMISES means part of the Land being the buildings and other improvements specified in Item 4, and includes any of the Lessor's Fixtures from time to time in or on them.

PROPOSED WORK includes any proposed sign, work, alteration, addition or

installation in or to the Premises, the Lessor's Fixtures and/or to the existing Lessee's Fitout and Fittings by the Lessee and/or by the Lessee's Employees.

RELATED BODY CORPORATE has the same meaning as given to that term in the Corporations Act 2001.

RENT means the rent specified in Item 9 as varied from time to time in accordance with this Lease.

REQUIREMENT includes any notice, order, direction, stipulation or similar notification received from or given by any Authority pursuant to and enforceable under any Law (including Environmental Law), whether in writing or otherwise, and regardless of to whom it is addressed or directed.

REVIEW DATE means a date on which either a CPI Review or a Market Review is to occur as set out in Item 10.

SERVICES means electricity, gas, sewerage, water and telephone services.

SUBSTANCE includes:

- (a) any form of organic or chemical matter whether solid, liquid or gas; and
- (b) radiation, radioactivity and magnetic activity.

TAX ACT means the Income Tax Assessment Act 1936 (Cth) and/or the Income Tax Assessment Act 1997 (Cth) (as the case may require).

TERMINATING DATE means:

- (a) the date specified in Item 7;
- (b) any earlier date on which this Lease is determined;

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- (c) the date of expiration or earlier termination of the Further Term or, if more than one, the last Further Term; or
- (d) the end of any period of holding over under clause 3.3,

as appropriate.

TERMINATION PAYMENT means:

- (a) in respect of clause 7.1(e)(i)(A), the net present value of the aggregate of:
  - (i) the Rent and the Lessee's Proportion of Outgoings payable for the balance of the Term calculated from the date of termination; and
  - (ii) the cost of compliance with the Lessee's obligations in clause 13,  
using the 10 year Commonwealth of Australia Government bond interest rate plus 115 basis points; and
- (b) in respect of clauses 7.1(e)(i)(B) and 7.1(e)(ii), the net present value of the aggregate of:
  - (iii) the Rent and the Lessee's Proportion of Outgoings payable for the balance of the Term with respect to the proportionate area of the Premises surrendered calculated from the date of the surrender; and
  - (iv) the cost of compliance with the Lessee's obligations in clause 13,  
using the 10 year Commonwealth of Australia Government bond interest rate plus 115 basis points.

UMPIRE means a person who:



- (a) is at the relevant time a Valuer;
- (b) is appointed under clause 4.5;
- (c) accepts his appointment in writing; and
- (d) undertakes to hand down his determination of the Rent within 20 Business Days after being instructed to proceed.

VALUER means a person who:

- (a) is a full member of the Australian Institute and has been for the last 5 years;
- (b) holds a licence to practise as a valuer of premises of the kind leased by this Lease;
- (c) is active in the relevant market at the time of his appointment;
- (d) has at least 3 years experience in valuing premises of the kind leased by this Lease; and
- (e) undertakes to act promptly in accordance with the requirements of this Lease.

## 1.2 GENERAL

Headings are for convenience only and do not affect interpretation. The following rules of interpretation apply unless the context requires otherwise.

- (a) (PLURALS) The singular includes the plural and conversely.
- (b) (GENDER) A gender includes all genders.
- (c) (OTHER GRAMMATICAL FORMS) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.

- (d) (PERSON) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (e) (CLAUSE) "clause", "Paragraph", "Schedule" or "Annexure" refers to this Lease and "Item" refers to the Schedule of Terms forming part of this Lease.
- (f) (SUCCESSORS AND ASSIGNS) A reference to any party to this Lease or any other agreement or document includes the party's successors and substitutes or assigns.
- (g) (JOINT AND SEVERAL OBLIGATIONS) A reference to a right or obligation of any two or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally.
- (h) (EXTRINSIC TERMS) Subject to the provisions of any written material to which the Lessor and the Lessee are parties, the Lessor and the Lessee agree that:
  - (i) (WHOLE AGREEMENT) the terms contained in this Lease cover and comprise the whole of the agreement in respect of the Premises between the Lessor and the Lessee; and
  - (ii) (NO COLLATERAL AGREEMENT) no further terms, whether in respect of the Premises or otherwise, shall be implied or arise between the Lessor and the Lessee by way of collateral or other agreement made by or on behalf of the Lessor or by or on behalf of the Lessee on or before or after the execution of this Lease, and any implication or collateral or other agreement is excluded and negatived.
- (i) (AMENDMENTS AND VARIATIONS) A reference to an agreement or document (including this Lease) is to the agreement or

document as amended, novated, supplemented, varied or replaced from time to time, except to the extent prohibited by this Lease.

- (j) (LEGISLATION) A reference to legislation or to a provision of legislation includes a modification, re-enactment of or substitution for it and a regulation or statutory instrument issued under it.
- (k) (AUSTRALIAN CURRENCY) A reference to "dollars" or "\$" is to Australian currency. (1) (SCHEDULES AND ANNEXURES) Each schedule of/or annexure to this Lease forms part of it.
- (m) (CONDUCT) A reference to conduct includes any omission, statement or undertaking, whether or not in writing.
- (n) (WRITING) A reference to "writing" includes a facsimile transmission and any means of reproducing words in a tangible and permanently visible form.
- (o) (EVENT OF DEFAULT) An Event of Default "subsists" until it has been waived by or remedied to the reasonable satisfaction of the Lessor.
- (p) (INCLUDES) A reference to "includes" or "including" means "includes, without limitation," or "including, without limitation," respectively.
- (q) (WHOLE) Reference to the whole includes part.
- (r) (DUE AND PUNCTUAL) All obligations are taken to be required to be performed duly and punctually.
- (s) (PERMIT OR OMIT) Words importing "do" include do, permit or omit, or cause to be done or omitted.
- (t) (BODIES AND AUTHORITIES)

- (i) (SUCCESSORS) Where a reference is made to any person, body or Authority that reference, if the person, body or Authority has ceased to exist, will be to the person, body or Authority as then serves substantially the same objects as that person, body or Authority.
- (ii) (PRESIDENT) Any reference to the President of that person, body or Authority, in the absence of a President, will be read as a reference to the senior officer for the time being of the person, body or Authority or any other person fulfilling the duties of President.
- (u) (CONSENT OF LESSOR) Unless stated otherwise in this Lease, where the Lessor has a discretion or its consent or approval is required for anything the Lessor:
  - (i) shall not unreasonably withhold, delay or condition its decision, consent or approval; and
  - (ii) must exercise its discretion acting reasonably.
- (v) (RELEVANT DATE) Where the day or last day for doing anything or on which an entitlement is due to arise is not a Business Day that day or last day will be the immediately following Business Day.
- (w) (MONTH) Month means calendar month.
- (x) (AREAS) Unless otherwise stated in this Lease or the context otherwise requires, where the area whether gross or net and whether the whole or part of the Land is to be calculated or measured for the purposes of this Lease, those calculations and measurements shall be in accordance with the Method of Measurement.

- (y) (THIRD PARTIES) Any clause which requires that a third party act or refrain from acting will be read (where the context permits) that the party to this Lease appointing or otherwise having control of that third party shall cause or procure that third party to act or refrain from acting.

2. EXCLUSION OF STATUTORY PROVISIONS

2.1 RELEVANT ACTS

To the extent permitted by Law or as may be contradicted by this Lease, the covenants, powers and provisions (if any) implied in leases by virtue of any Law are expressly negated.

3. TERM

3.1 TERM OF LEASE

Subject to this Lease the Lessor leases to the Lessee and the Lessee takes a lease of the Premises for the Term.

3.2 OPTION OF RENEWAL

(a) (GRANT OF FURTHER LEASE) If:

- (i) (FURTHER TERM) a Further Term is specified in Item 8;
- (ii) (LESSEE GIVES NOTICE) the Lessee notifies the Lessor not more than 12 months nor less than 9 months before the Terminating Date that it requires a further lease for the Further Term; and
- (iii) (NO DEFAULT) at the date of that notice and at the Terminating Date there is no subsisting Event of Default by the Lessee of which the Lessee has been notified by the Lessor and:

- (A) (IF CAPABLE OF REMEDY) which has not been remedied to the reasonable satisfaction of the Lessor within the time specified in a notice given under clause 12.1 or waived in writing by the Lessor; or
- (B) (IF NOT CAPABLE OF REMEDY) if not capable of remedy, for which the Lessee has not paid the Lessor reasonable compensation,

the Lessor shall grant to the Lessee a lease of the Premises for the Further Term commencing on the day after the Terminating Date.

(b) (CONDITIONS OF FURTHER LEASE) That lease for a Further Term will be on the same conditions as this Lease except that:

- (i) (TERM) the term to be specified in Item 5 of the lease for the Further Term will be the relevant period specified in Item 8;
- (ii) (COMMENCING DATE) the date to be specified in Item 6 of the lease for the Further Term will be the day after the Terminating Date of the immediately preceding Term;
- (iii) (TERMINATING DATE) the date to be specified in Item 7 of the lease for each Further Term will be the last day of the term specified in Item 8 calculated from the commencing date of the lease for that Further Term determined under Paragraph (ii);
- (iv) (RENT) the amount of Rent to be specified in Item 9 of the lease for the Further Term will be as agreed under clause 3.2(c) or if no agreement is reached under that clause as determined under clauses 4.4, 4.5 and 4.6 as if the commencing date of the lease for the Further Term was a Market Review Date;

- (v) (REVIEW DATES) the Review Dates specified in Item 10 shall be omitted and replaced with the Review Dates specified in Item 13;
  - (vi) (FURTHER OPTIONS) the number of Further Terms specified in Item 8 shall be reduced by one from the number specified in Item 8 of this Lease; and
  - (vii) (LAST FURTHER LEASE) if in any lease for the Further Term the number of Further Terms specified in Item 8 would by the operation of Paragraph (vi) be zero, then Item 13 and this clause 3.2 will not be included in that further lease so that the last further lease will end on the last day of the last occurring Further Term specified in Item 8 of this Lease.
- (c) (EARLY DETERMINATION OF MARKET RENT)
- (i) If the Lessee wishes to know the Rent for the first year of the Further Term prior to exercising its option for a Further Term, the Lessee may give notice to the Lessor seeking a determination of the Market Rent for the Further Term (such notice being given no earlier than 15 months and no later than 12 months prior to the Terminating Date of the Lease).
  - (ii) The Lessor must give the Lessee a notice with the Lessor's assessment of the Market Rent to apply in the first year of the Further Term within 10 Business Days after the Lessee gives a notice under clause 3.2(c)(i).
  - (iii) Upon receipt of the Lessor's assessment of Market Rent under clause 3.2(c)(ii), the parties agree to negotiate in good faith to agree upon the Market Rent to apply in the first year of the Further Term for a period of up to 3 months after the Lessor's notice of assessment of Market Rent is received by the Lessee.

- (iv) If the parties fail to reach agreement under clause 3.2(c)(iii), clause 3.2(b)(iv) continues to apply.

### 3.3 HOLDING OVER

If the Lessor does not indicate refusal to the Lessee continuing to occupy the Premises beyond the Terminating Date (otherwise than under a lease for a Further Term) then:

- (a) (MONTHLY TENANCY) the Lessee does so as a monthly tenant and shall pay Rent and Outgoings:
  - (i) monthly in advance, the first payment to be made on the day following the Terminating Date; and
  - (ii) equal to one-twelfth of the annual rate of Rent and Outgoings payable immediately prior to the Terminating Date;
- (b) (DETERMINATION) the monthly tenancy is determinable at any time by either the Lessor or the Lessee by one month's notice given to the other, to end on any date, but otherwise the tenancy will continue on the conditions of this Lease as far as they may apply to a monthly tenancy.

## 4. RENT

### 4.1 PAYMENT OF RENT

- (a) (RENT) The Lessee shall pay Rent to the Lessor at the relevant rate from time to time:
  - (i) (NO DEMAND) without demand;
  - (ii) (NO DEDUCTION) without any deduction, abatement, counterclaim or right of set-off except to the extent that it is expressly provided for in this Lease; and

(iii) (INSTALMENTS) by equal monthly instalments (and proportionately for any part of a month) in advance on the first Business Day of each month.

(b) (AS DIRECTED BY LESSOR) All instalments of Rent shall be paid to the place and in the manner directed by the Lessor from time to time provided at least 10 Business Days notice of any change in the place or manner of payment is given.

#### 4.2 RENT COMMENCEMENT

The first instalment of Rent shall be paid on the Commencing Date.

#### 4.3 DELETED

#### 4.4 MARKET REVIEW OF RENT

Should the Lessor wish to review the Rent as at a Market Review Date, then not earlier than 3 months before and not later than 3 months after the Market Review Date (time being of the essence) the Lessor may notify the Lessee of the Lessor's assessment of the Market Rent for the Premises at the particular Market Review Date. This assessment shall take into account the criteria contained in clause 4.5(g) which apply at that particular Market Review Date and, if applicable, clause 4.6.

#### 4.5 LESSEE'S DISPUTE OF RENT

If the Lessee disagrees with the Lessor's assessment of the Market Rent and the Lessor and the Lessee are unable to agree on the Market Rent to apply from a particular Market Review Date then the following procedure applies.

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(a) (LESSEE TO GIVE NOTICE) The Lessee shall within 30 Business Days of being notified of the Lessor's assessment of the Market Rent (time being of the essence) notify the Lessor that the Lessee requires the Market Rent to be determined in accordance with this clause 4.5.

(b) (i) (NOMINATION OF VALUERS) Each of the Lessee and the Lessor shall, within 10 Business Days of service of the Lessee's notice under clause 4.5(a), by notice nominate a Valuer to the other and shall formally appoint that Valuer.

(ii) (NOMINATION OF UMPIRE) Where two Valuers have been nominated they shall, within 5 Business Days of the date of the later nomination and prior to making their determination as to the Market Rent for the Premises, agree upon and nominate an Umpire to determine any disagreement which may arise between them.

(iii) (FAILURE TO AGREE) If the Valuers cannot agree on or fail to nominate an Umpire within 5 Business Days of the date of the later nomination then either Valuer, the Lessor or the Lessee may request the President of the Australian Institute to nominate the Umpire.

(c) (VALUER'S DETERMINATION) Subject to clauses 4.5(d), (e) and (f), the nominated Valuers shall within 20 Business Days of the later nomination jointly determine the Market Rent of the Premises having regard to clause 4.5(g) as at that particular Market Review Date.

(d) (CONSEQUENCES OF LESSEE'S FAILURE) If the Lessee fails to nominate a Valuer in accordance with clause 4.5(b) within the time required:

(i) (DETERMINATION BY LESSOR'S VALUER) the determination of the Market Rent shall be made by the Lessor's Valuer within 20 Business Days after being nominated, and his determination will be final and binding on the parties as if he had been appointed by Consent; and

- (ii) (COSTS) the Costs of the Lessor's Valuer's determination shall be apportioned equally between the Lessor and Lessee.
- (e) (CONSEQUENCES OF LESSOR'S FAILURE TO NOMINATE VALUER) If the Lessee nominates a Valuer under clause 4.5(b) within the time required, but the Lessor fails to do so:
  - (i) (DETERMINATION BY LESSEE'S VALUER) the determination of the Market Rent shall be made by the Lessee's Valuer within 20 Business Days after being nominated, and his determination will be final and binding on the parties as if he had been appointed by Consent; and
  - (ii) (COSTS) the Costs of the Lessee's Valuer's determination shall be apportioned equally between the Lessor and Lessee.
- (f) (i) (PROCEDURE IN EVENT OF DISAGREEMENT BETWEEN VALUERS) Should the Valuers be unable to agree on the Market Rent for the Premises within the time required then the Market Rent shall be determined by the Umpire under clause 4.5(f)(iii).
- (ii) (PROCEDURE WHERE VALUER FAILS TO ASSESS) If either or both of the Valuers for any reason fail to assess the Market Rent within the time required for them to make a determination, then either Valuer, the Lessor or the Lessee may request the Umpire to determine the Market Rent.
- (iii) (UMPIRE'S DETERMINATION) If it becomes necessary for the Umpire to determine the Market Rent, his determination will be final and binding on the parties and:
  - (A) (EVIDENCE OF VALUERS) in making his or her determination the Umpire shall have regard to any evidence submitted by the Valuers as to their assessments of the Market Rent;

- (B) (WRITTEN DETERMINATION) the Umpire shall give his determination and the reason for it in writing to the Lessor and the Lessee within 20 Business Days of request for it in accordance with this Lease by the Lessor, the Lessee or the Valuers (or any of them); and
- (C) (UMPIRE'S MAXIMUM) the Umpire's determination shall not be more than the highest Market Rent as assessed by either Valuer under this clause 4.5.
- (g) (MARKET RENT CRITERIA) In determining the Market Rent each Valuer (including the Umpire) shall be taken to be acting as an expert and not as an arbitrator, and shall determine the Market Rent for the Premises as at the particular Market Review Date having regard to the terms of this Lease and shall:
  - (i) (EXCLUSIONS) disregard:
    - (A) (GOODWILL) the value of any goodwill of the Lessee's Business, the Lessee's Fitout and Fittings and any other interest in the Premises created by this Lease; and
    - (B) (MONEY FROM OCCUPATIONAL ARRANGEMENT) any sublease or other sub-tenancy agreement or occupational arrangement in respect of any part of the Land and any rental, fees or money payable under any of them; and
  - (ii) (CONSIDERATIONS) have regard to:

- (A) (LENGTH OF TERM) the length of the whole of the Term, disregarding the fact that part of the Term will have elapsed at the Market Review Date, and have regard to the provisions of any options for a Further Term;
  - (B) (COMPARABLE PREMISES AND LOCATIONS) the rates of rent payable for comparable premises in comparable locations;
  - (C) (ALL COVENANTS OBSERVED) all covenants on the part of the Lessee and the Lessor in this Lease and assume that all covenants on the part of the Lessee have been fully performed and observed on time; and
  - (D) (OUTGOINGS) the Lessee's obligation to pay the Lessee's Proportion of Outgoings; and
  - (E) (RENT REVIEW) the frequency of market and other Rent reviews; and
- (iii) (ASSUMPTION) assume that:
- (A) the Premises are available for use for the primary purpose for which the Premises may be used in accordance with this Lease;
  - (B) there has been no fair wear and tear of the Premises since the Effective Date; and
  - (C) any buildings which have been removed pursuant to clause 7.11(d) have not been removed.
- (h) (COSTS OF VALUERS) The Costs incurred in the determination of the Market Rent under this clause 4.5 shall be borne by the Lessor and by the Lessee in the following manner:
- (i) (VALUER) subject to clauses 4.5(d) (ii) and (e) (ii), for the Costs of each Valuer appointed by a party, by the party who appoints that Valuer; and
  - (ii) (UMPIRE) for the Costs of the Umpire, by the parties equally.
- (i) (DATE OF EFFECT OF DETERMINATION OF MARKET RENT) Subject to clauses 4.5(j) and 4.6, any variation in the Rent resulting from a determination of the Market Rent under clause 4.4 and/or 4.5 (as appropriate) will be effective on and from that particular Market Review Date.

- (j) (PAYMENT OF RENT PENDING REVIEW) Where there is a dispute as to the Market Rent under clause 4.4 after the relevant Market Review Date or the revised Rent is not known at a Market Review Date then the amount of Rent payable by the Lessee from the Market Review Date pending the resolution of that dispute or the determination of the Market Rent shall be the Rent payable immediately before the relevant Market Review Date.
- (k) (ADJUSTMENT) On resolution of the dispute or the Market Rent being determined, if the Rent payable for the period commencing on the Market Review Date is determined to be greater than that paid by the Lessee since the Market Review Date, then the Lessee shall pay the deficiency to the Lessor within 10 Business Days of the date of determination of the Market Rent under clause 4.4 or the determination of the Market Rent by the Valuers or by the Umpire under this clause 4.5 (as the case may be).

#### 4.6 MAXIMUM INCREASE ON REVIEW

Despite any other provision of this Lease the annual Rent payable from any Review Date following a review of the Rent under clause 4.4 (and,

if applicable, clause 4.5) shall in no circumstances be:

- (a) less than the annual Rent payable in the Lease Year immediately prior to that Review Date; or
- (b) in the case of a Market Review (other than at the Commencing Date of a Further Term):
  - (i) greater than the Rent payable in the Lease Year immediately prior to the Market Review Date plus 10%; or
  - (ii) less than the annual Rent determined under clause 4.7.

#### 4.7 FIXED REVIEW

On each Fixed Review Date, the Rent shall increase to 103% of the Rent payable immediately prior to that Fixed Review Date.

#### 5. OUTGOINGS

##### 5.1 SERVICES

- (a) (METERS) The Lessor shall ensure that all Services supplied to the Premises are separately metered.
- (b) (COSTS) The Lessee shall pay all Costs for all Services supplied to the Premises (but with respect to water, the obligation under this clause 5.1(b) is limited to water usage and consumption charges).

##### 5.2 CLEANING

The Lessee shall at its own Cost ensure that the Premises are kept clean.

##### 5.3 OUTGOINGS

The Lessee shall pay to the Lessor for each Lease Year an amount equal to the Lessee's Proportion of the Outgoings in accordance with this clause 5. This obligation shall not extend to any fines, penalties or interest on the Outgoings which arise because of the Lessor's delay in payment or the Lessor's delay in providing relevant invoices and accounts to the Lessee for payment.

##### 5.4 LESSOR'S ESTIMATE

The Lessor may:

- (a) (NOTIFICATION OF ESTIMATE) before or during each Lease Year notify the Lessee of the Lessor's reasonable estimate of the Lessee's Proportion of Outgoings for that Lease Year; and
- (b) (ADJUSTMENT OF ESTIMATE) from time to time during that Lease Year by notice to the Lessee adjust the reasonable estimate of the Lessee's Proportion of Outgoings as may be appropriate to take account of changes in any of the Outgoings.

##### 5.5 PAYMENTS ON ACCOUNT

The Lessee shall pay on account the amount of the estimates of the Lessee's Proportion of Outgoings provided for in clause 5.4 by equal monthly instalments in advance on the same days and in the same manner as the Lessee is required to pay Rent.

##### 5.6 YEARLY ADJUSTMENT

- (a) (LESSOR'S NOTICE) As soon as practicable after the end of each Lease Year the Lessor shall give to the Lessee a notice with reasonable details and reasonable evidence of the Outgoings for that Lease Year.
- (b) (ADJUSTMENT OF PAYMENTS ON ACCOUNT) The Lessee shall within 10 Business Days after the date of the notice referred to in clause 5.6(a) pay to the Lessor or the Lessor shall pay to the



Lessee (as appropriate) the difference between the amount paid on account of the Lessee's Proportion of Outgoings during that Lease Year and the amount actually payable in respect of it by the Lessee, so that the Lessee shall have paid the correct amount of the Lessee's Proportion of Outgoings for that Lease Year.

- (c) (AUDITED STATEMENT) If the Lessee disagrees with the details, amounts or calculations contained in the notice referred to in clause 5.6(a), the Lessee may require the Lessor to give the Lessee an audited statement of the Outgoings for that Lease Year prepared by a chartered accountant reasonably approved by the Lessee (or failing approval within 5 Business Days of the request for the statement, selected by the President of the Institute of Chartered Accountants at the request of either the Lessor or the Lessee). The Lessor shall have 20 Business Days after a request from the Lessee within which to provide the statement.
- (d) (READJUSTMENT) If the amounts shown in the audited statement are different from the amounts shown in the Lessor's notice given under clause 5.6(b), the amount of Outgoings shall be readjusted so that the Lessee shall have paid the correct amount of the Lessee's Proportion of Outgoings for that Lease Year.

5.7 GST

- (a) (GENERAL) Capitalised expressions which are not defined in this clause but which have a defined meaning in the GST Law have the same meaning in this clause.
- (b) (PAYMENT OF GST) The parties agree that:
  - (i) all Payments have been set or determined without regard to the impact of GST;
  - (ii) if the whole or any part of a Payment is the consideration for a Taxable Supply for which the payee is liable for GST, the GST Amount in respect of the Payment must be paid to the payee as an additional amount, either concurrently with the Payment or as otherwise agreed in writing; and
  - (iii) the payee will provide to the payer a Tax Invoice.

- (c) (NET OF CREDITS) Despite any other provision of this lease, if a Payment due under this lease (including any contribution to Outgoings) is a reimbursement or indemnification by one party of an expense, loss or liability incurred or to be incurred by the other party, the Payment shall exclude any part of the amount to be reimbursed or indemnified for which the other party can claim an Input Tax Credit.
- (d) (TPA) Each party will comply with its obligations under the Trade Practices Act 1974 in respect of any Payment to which it is entitled under this lease.

6. USE OF PREMISES

6.1 PERMITTED USE

The Lessee shall:

- (a) (LESSEE'S BUSINESS) not without the Lessor's Consent use the Premises for any purpose other than those specified in Item 11;
- (b) (NON RESIDENCE) not use the Premises as a residence;
- (c) (NO ANIMALS OR BIRDS) not keep any animals or birds in the Premises; and
- (d) (PESTS AND VERMIN) at its own Cost keep the Premises free and clear of pests, insects and vermin.

6.2 OVERLOADING

The Lessee shall not during the Term place or store any heavy articles or materials on any of the floors of, the Premises or the Building in a manner significantly differently from that at the Effective Date, without the Lessor's consent.

6.3 OTHER ACTIVITIES BY LESSEE

The Lessee shall:

- (a) (APPURTENANCES) not use the Appurtenances in the Premises for any purpose other than those for which they were designed, and shall not place in the Appurtenances any substance which they were not designed to receive;
- (b) (AIR-CONDITIONING AND FIRE ALARM EQUIPMENT) where any air-conditioning or fire alarm system of the Lessor is installed in the Premises, not interfere (other than in accordance with clause 7.1) with that system nor obstruct or hinder access to it;
- (c) (NOT ACCUMULATE RUBBISH) keep the Premises reasonably clean;
- (d) (NOT THROW ITEMS FROM WINDOWS) not throw anything out of the windows or doors of the Building or down the lift shafts, passages or skylights or into the light areas of the Building (if they exist), or deposit waste paper or rubbish anywhere except in proper receptacles, or place anything on any sill, ledge or other similar part of the exterior of the Building; and
- (e) (INFECTIOUS DISEASES) if any infectious illness occurs in the Premises:
  - (i) (NOTIFY LESSOR) immediately notify the Lessor and all proper Authorities; and
  - (ii) (FUMIGATE) where that illness is confined to the Premises, at its Cost thoroughly fumigate and disinfect the Premises to the satisfaction of the Lessor and all relevant Authorities.

6.4 FOR SALE/TO LET

The Lessor is entitled:

- (a) (ADVERTISING FOR LEASE) where the Lessee has not given notice under clause 3.2(a)(ii), but only during the last three months of the Term, to place advertisements and signs on the part(s) of the Premises as are reasonably appropriate to indicate that the Premises are available for lease;
- (b) (INSPECTION BY PROSPECTIVE TENANTS) subject to the same limitations as in Paragraph (a), at all reasonable times and on reasonable notice (but where possible outside the usual trading hours of the Lessee) to show prospective tenants through the Premises;
- (c) (ADVERTISING FOR SALE) to place advertisements and signs on the part(s) of the Premises as it reasonably considers appropriate to indicate that the Premises are for sale; and
- (d) (INSPECTION BY PROSPECTIVE PURCHASERS) at all reasonable times and on reasonable notice (but where possible outside the usual trading hours of the Lessee), to show prospective purchasers through the Premises.

The Lessor may only exercise its rights under this clause 6.4 in the presence of a representative of the Lessee after signing and/or procuring signing by the Lessor's invitees of such confidentiality agreements as the Lessee may reasonable require. In exercise of those rights the Lessor must minimise any inconvenience or disruption to the Lessee or the Lessee's Business.

7. MAINTENANCE, REPAIRS, ALTERATIONS AND ADDITIONS

7.1 REPAIRING OBLIGATIONS

- (a) (GENERAL) The Lessee:
- (i) must, during the Term and any extension or Further Term or any holding over, keep the Premises in good repair and condition including any structural or capital maintenance, replacement or repair having regard to their state of repair and condition at the Effective Date, to the extent required by clauses 7.1(d) and 13; and
  - (ii) acknowledges and agrees that subject to clauses 5.4, 5.6, 9.2, 11, 12.4, 15.2 and 15.5(b) and (c), the Lessor is not responsible for any costs and expenses in relation to the Premises during the Term and any extension or Further Term or any holding over.
- (b) (EXCLUSIONS) Despite clause 7.1, the Lessee has no obligation to carry out any works which relate to:
- (i) (FAIR WEAR AND TEAR) fair wear and tear;
  - (ii) (INSURANCE) damage to the Premises caused by fire, storm or tempest or any other risk covered by any insurance taken out by the Lessor in respect of the Premises (other than where any insurance money is irrecoverable through the act, omission, neglect, default or misconduct of the Lessee or the Lessee's Employees);
  - (iii) (LESSOR'S ACT OR OMISSION) patent or latent damage to the Premises caused or contributed to by any wilful or negligent act or omission of the Lessor or its Employees; and
- (c) (STRUCTURAL REPAIR) Subject to clauses 15.2 and 15.5(c), nothing in this Lease requires the Lessor to carry out any structural or capital maintenance, replacement or repair except where rendered necessary by any

wilful or negligent act or omission of the Lessor or the Lessor's Employees, which maintenance, replacement or repair the Lessor must attend to promptly after notice from the Lessee.

- (d) (COMPLIANCE WITH LAWS AND REQUIREMENTS)
- The Lessee shall during the Term, subject to clauses 7.1(b)(i), (ii) and (iii), 7.1(e), 7.11, 15.2 and 15.5(c), comply with any Law or Requirement affecting the Premises (including any underground storage tanks and any Environmental contamination associated with them), the Lessee's use of the Premises and the Lessee's Fitout and Fittings except that the Lessor must, at its Cost, promptly comply with these Laws or Requirements:
- (i) if the Lessor or the Lessor's Employees have taken action or refrained from taking action that directly or indirectly has a material effect in causing the Law or Requirement to apply, be issued or enforced; or
  - (ii) if the Lessor or the Lessor's Employees have taken action or refrained from taking action that directly or indirectly has a material effect in causing the Law or Requirement to apply, be issued or enforced by doing works on the Land or any adjoining land; or
  - (iii) if the Lessor or the Lessor's Employees have taken action or refrained from taking action that directly or indirectly has a material effect in causing the Law or Requirement to apply, be issued or enforced because of any subdivision, re-configuration of other dealing with the Land.

- (e) (OPTIONS TO TERMINATE OR SURRENDER)
- (i) If there is a change in Law or a Requirement requiring the demolition or substantial upgrade of Buildings on the Premises, then the Lessee may at its option:
- (A) terminate this Lease by giving notice to the Lessor together with the Termination Payment; or
- (B) partially surrender this Lease by giving to the Lessor a surrender of lease in registrable form with respect to the relevant part of the Premises (and any ancillary areas) affected by the change in Law or Requirement together with the Termination Payment. Unless access can be provided to the surrendered area in accordance with clause 7.1(e) (iv) (B), in determining the area to be partially surrendered the Lessee must ensure that the surrendered area is not landlocked.
- (ii) At any time during the Term the Lessee may at its option and at its Cost:
- (A) partially surrender this Lease by giving to the Lessor a surrender of lease in registrable form with respect to the relevant part of the Premises together with the Termination Payment; and
- (B) in determining the area to be partially surrendered the Lessee must:
- (1) ensure that there is 6 metres clearance from the perimeter of the surrendered area to the nearest building; and
- (2) unless access can be provided to the surrendered area in accordance with clause 7.1(e) (iv) (B) ensure that the surrendered area is not landlocked.
- (iii) Neither party will have any further obligation to the other under this Lease following the date of service on the Lessor of the termination notice or partial surrender of lease and the relevant Termination Payment under clause 7.1(e) (i) or 7.1(e) (ii) (but limited with respect to the area of the

Premises surrendered in the case of clauses 7.1(e) (i) (B) and 7.1(e) (ii)), except for any pre-existing breach.

- (iv) If clause 7.1(e) (i) (B) or 7.1(e) (ii) applies:
- (A) the Rent and Outgoings under this Lease shall reduce proportionately by reference to the area of the Premises surrendered (with any dispute to be determined under clause 14) with effect from the date of service on the Lessor of the notice of termination or partial surrender of lease and the relevant Termination Payment (as the case may be);
- (B) the Lessee must permit the Lessor and persons authorised by it to have a reasonable means of access through the Premises to the surrendered area, so long as that means of access and the use of it do not have a material adverse impact on the

Lessee's use or operation of the Premises;  
and

- (C) the definition of Outgoings will be amended to include reasonable security costs actually incurred by the Lessor arising from multiple occupancies of the Land.

#### 7.2 LESSOR'S RIGHT OF INSPECTION

The Lessor may in the presence of a responsible officer of the Lessee at all reasonable times on giving to the Lessee reasonable notice enter the Premises and view the state of repair and condition.

#### 7.3 ENFORCEMENT OF REPAIRING OBLIGATIONS

The Lessor may:

- (a) (SERVE NOTICE) notify the Lessee of any failure by the Lessee to carry out within the time allowed by this Lease any repair, replacement or cleaning of the Premises which the Lessee is obliged to do under this Lease; and/or
- (b) (CARRY OUT REPAIR) require the Lessee to carry out that repair, replacement or cleaning within a reasonable time. If the Lessee fails to do so within a reasonable time having regard to the nature of the defect complained of and the length of time reasonably required to remedy that defect, the Lessor may elect to carry out that repair, replacement or cleaning at the Lessee's Cost (but wherever possible outside the usual operating hours of the Lessee). The Lessee shall on demand reimburse the Lessor for those Costs. The Lessor in exercise of its rights under this clause 7.3(b) shall:
- (i) sign and/or procure signing by the Lessor's invitees of such confidentiality agreements as the Lessee may reasonably require;
- (ii) endeavour not to cause any undue inconvenience to the Lessee and the conduct of the Lessee's Business; and
- (iii) make good any damage caused to the Premises without delay.

#### 7.4 LESSOR MAY ENTER TO REPAIR, DECONTAMINATE

If:

- (a) (LESSOR WISHES TO REPAIR) the Lessor wishes to carry out any repairs to the Premises considered necessary or desirable by the Lessor or in relation to anything which the Lessor is obliged to do under this Lease; or

- (b) (REQUIREMENTS OF AUTHORITY) any Authority requires any repair or work to be undertaken on the Premises (including any decontamination, remediation or other cleanup) which the Lessor must or in its absolute discretion elects to do and for which the Lessee is not liable under this Lease,

then the Lessor, its architects, workmen and others authorised by the Lessor may at all reasonable times on giving to the Lessee reasonable notice enter and carry out any of those works and repairs. In so doing the Lessor shall:

- (c) sign and/or procure signing by the Lessor's Employees of such confidentiality agreements as the Lessee may reasonably require;
- (d) endeavour not to cause undue inconvenience to the Lessee and the conduct of the Lessee's Business, and
- (e) make good any damage caused to the Premises without delay.

The Lessor shall indemnify the Lessee on demand in respect of all Claims incurred or suffered by the Lessee as a consequence of the carrying out of works under this clause 7.4.

7.5 DELETED

7.6 ALTERATIONS TO PREMISES

- (a) (NO CONSENT REQUIRED) The Lessee is entitled to carry out any Proposed Work on or to the Premises without the need to seek or obtain Lessor's Consent except that the Lessee must obtain the Lessor's Consent prior to carrying out any structural Proposed Works which materially increase the footprint of the Buildings on the Premises, such Consent not to be unreasonably withheld or delayed.
  - (b) (DEEMED CONSENT) If the Lessor does not respond conclusively to a request for Consent within 20 Business Days of the written request being served on it, the Lessor is deemed to have Consented to the relevant request.
  - (c) (APPROVALS) The Lessee shall obtain all necessary approvals or permits before carrying out the Proposed Work.
  - (d) (LESSOR TO ASSIST) The Lessor shall at the Lessee's Cost without delay do all acts and sign all documents to enable the Lessee to obtain the approvals and permits referred to in clause 7.6(c) and otherwise to enable the Lessee to carry out any Proposed Work in accordance with this Lease.
  - (e) (SPECIFIC PROPOSED WORKS) Despite clause 7.6(a), the Lessor gives its consent to Proposed Work:
    - (i) which relates to installation and removal of the Lessee's plant and equipment, including bolting or affixing to the floors of the Premises, subject to clauses 6.2 and 13; and
    - (ii) which involves the Lessee installing the following items:
      - (A) inverted box culvert sections along the western drain within the Premises;
      - (B) block retaining wall; and
      - (C) sprayed concrete drain batter lining,
- and the Lessee agrees to do this work promptly after the Effective Date.

- (f) (CONDITION) The Lessor, acting reasonably, may require the Lessee to carry out remediation works as a condition of the Lessor's Consent to Proposed Work where Consent is required under clause 7.6(a) if the Proposed Works will, if implemented:
  - (i) trigger a Requirement to carry out those remediation works; or
  - (ii) render the Premises unsuitable for the Permitted Use unless the remediation works are carried out with the Proposed Work.

7.7 NOTICE TO LESSOR OF DAMAGE, ACCIDENT ETC.

The Lessee shall notify the Lessor of any:

- (a) (ACCIDENT) accident to or in the Premises; and/or
- (b) (NOTICE) circumstances reasonably likely to cause any damage or injury to occur within the Premises,

of which the Lessee has actual notice.

7.8 MAINTENANCE CONTRACTS

The Lessee shall at its own Cost enter into maintenance contracts for the fire fighting services and equipment servicing the Premises with

contractors approved by the Lessee and in a form and on terms (whether as to cost, standard of service or otherwise) reasonably acceptable to the Lessee.

7.9 DELETED

7.10 LESSEE'S FITOUT AND FITTINGS

The Lessee's Fitout and Fittings shall at all times be and remain the property of the Lessee (or the lessor of the Lessee's Fitout and Fittings, if applicable) despite any particular method of annexation to the Premises.

7.11 TIMING FOR WORKS AND COMPLIANCE WITH REQUIREMENTS

Despite any other provision of this Lease:

- (a) the Lessee may carry out any maintenance, repair or replacement or other works or comply with any Law or Requirement which it is required under this Lease to do or comply with at such time as the Lessee (acting reasonably) determines except that the Lessee must still comply with the timetable set out in the relevant Requirement to which any works relate; and
- (b) subject to clause 7.11(a), the Lessor agrees that the mere issue of a Requirement or the existence of a non-compliance with Law does not of itself:
  - (i) trigger the Lessee's obligation to comply with it; or
  - (ii) constitute a timetable to do any works; or
  - (iii) constitute a breach of this Lease by the Lessee;
- (c) the Lessor cannot (and shall not) take any steps or exercise any rights under this Lease or otherwise to cause the Lessee to remedy the non-compliance with Law or comply with the Requirement (or do so itself under clause 7.3 or otherwise), unless:
  - (i) clauses 7.11(a) applies; or

- (ii) the relevant Authority is taking active steps to require the Lessor to remedy the non-compliance or comply with the Requirement and the Lessor will be exposed to liability or Cost if it does not do so; and
- (d) the Lessee may, in its absolute discretion, elect to demolish any asbestos clad or roofed Buildings rather than comply with the relevant Law or Requirement but the Rent will not be reduced if the Lessee does so.

7.12 SET OFF PROCEDURE

- (a) (NOTICE) If the Lessee wishes to set off any amount against the Rent, the Outgoings or any other amounts under this Lease in exercise of its rights under this Lease to do so, then the Lessee must give notice to the Lessor of the amount involved, reasonable detail of what the set off relates to and the provision of this Lease with respect to which the right is proposed to be exercised.
- (b) (NO RESPONSE) If the Lessor does not respond to this notice within 20 Business Days of service of it (time being of the essence), the Lessee is entitled to exercise the set off rights referred to in the notice in accordance with this Lease.
- (c) (DISPUTE) If the Lessor by notice to the Lessee disputes the Lessee's notice given under clause 7.12(a) within 20 Business Days of service of it (time being of the essence) and that dispute is not resolved within 5 Business Days of service of the Lessor's notice, either party may refer the matter to an appropriate independent person for determination under clause

14. The Lessee may not exercise any set off rights until any dispute under this clause has been determined or resolved.

8. ASSIGNMENT AND SUB-LETTING

8.1 NO DISPOSAL OF LESSEE'S INTEREST WITHOUT CONSENT

- (a) The Lessee may assign, transfer, sublet, licence or otherwise deal with or part with possession of the Premises or this Lease or any part of or any interest in them with the Consent of the Lessor which shall not be unreasonably withheld.
- (b) The Lessor Consents to all sub-leases, sub-licences or other sub-rights to occupy the Premises which are in existence as at the Effective Date, whether or not those arrangements have been documented or disclosed.

8.2 LESSOR'S OBLIGATION TO CONSENT

The Lessor must give the Consent referred to in clauses 8.1 and 8.5 if the Lessee proves to the reasonable satisfaction of the Lessor that the incoming tenant is a respectable, responsible and solvent Person and, in the case of an assignment or transfer, who is reasonably capable of performing the Lessee's obligations under this Lease.

8.3 JAMES HARDIE INDUSTRIES N.V. PROVISIONS

Despite clause 8.1, whilst the Lessee is James Hardie Australia Pty Limited or James Hardie Industries N.V. or a Related Body Corporate of either of those companies:

- (a) (SUBLETTING) the Lessee may sublet, licence or otherwise part with possession of the Premises without obtaining the Lessor's Consent if the proposed sublessee or licensee is James Hardie Australia Pty Limited or James Hardie Industries N.V. or a Related Body Corporate of either of those companies. The Lessee shall notify the Lessor upon granting a sublease or licence of this nature;

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- (b) (ASSIGNMENT) the Lessee may assign this Lease to a Related Body Corporate of James Hardie Australia Pty Limited or James Hardie Industries N.V. or to either of those companies without obtaining the Lessor's Consent but notice of the assignment must be given to the Lessor;
- (c) (SALE OF BUSINESS) if there is a sale to a purchaser of the business carried on by James Hardie Australia Pty Limited or James Hardie Industries N.V. (as the case may be) then the Lessor gives its consent to an assignment of this Lease to the purchaser;
- (d) (SHORT TERM SUBLEASE OR LICENCE) the Lessee may sublet or licence up to 1,000m2 of the Premises without the Lessor's Consent where the term of that sublease or licence (excluding any renewal or holding over period) does not exceed 12 months; and
- (e) (NOVATION) the Lessee may novate this Lease to a Related Body Corporate of James Hardie Australia Pty Limited or James Hardies Industries N.V. as long as at the same time the novation occurs the Lessee procures that a guarantee of the obligations of the new tenant under this Lease is given by James Hardie Industries N.V. in a form satisfactory to the Lessor (acting reasonably).

8.4 DEED

If the Lessor requests it, the Lessee shall procure that any assignee or transferee of this Lease executes a direct covenant with the Lessor to observe the terms of this Lease in such forms as the Lessor may reasonably require including payment of reasonable legal costs.

8.5 CHANGE IN CONTROL

- (a) If:



- (i) the Lessee is a company which is neither listed nor directly or indirectly wholly-owned by a company which is listed on any recognised Stock Exchange; and
- (ii) there is a proposed change in the shareholding of the Lessee or its holding company so that a different person or group of people will control the composition of the board of directors or more than 50% of the shares giving a right to vote at general meetings of the Lessee,

then that proposed change in control is treated as a proposed assignment of this Lease and the Lessor's Consent must be obtained prior to the change in control taking effect.

- (b) The Lessor agrees that clause 8.5(a) will not apply to a change in shareholding or control where James Hardie Australia Pty Limited or a Related Body Corporate of James Hardie Australia Pty Ltd or James Hardie Industries N.V. remains or becomes:

- (i) the owner or ultimate holding company of the Lessee; or
- (ii) in control of the composition of the board of directors of the Lessee; or
- (iii) in control of more than 50% of the shares giving a right to vote at general meetings of the Lessee.

9. INSURANCE AND INDEMNITIES

9.1 INSURANCES TO BE TAKEN OUT BY LESSEE

The Lessee shall:

- (a) (PUBLIC RISK) keep current during the Term (including any extension or Further Term or holding over) a public risk insurance policy with respect to the Premises, such policy to be for an amount of not less than the amount specified in Item 12;
- (b) (APPROVED INSURERS) ensure that all insurance policies maintained for the purposes of clause 9.1(a):
  - (i) (INSURANCE COMPANY) are taken out with an independent and reputable insurer; and
  - (ii) (AMOUNT) are for amounts and contain conditions reasonably acceptable to or reasonably required by the Lessor and/or the Lessor's insurer(s); and
- (c) (EVIDENCE OF INSURANCE) in respect of any policy of insurance to be effected by the Lessee under this clause 9.1, whenever reasonably required by the Lessor (but not more than once annually), give to the Lessor a copy of the certificate of currency; and
- (d) (INTEREST OF LESSOR) in respect of the policy of insurance to be effected by the Lessee under clause 9.1(a), ensure that the interest of the Lessor is noted,

except that the Lessee will be deemed to have complied with clauses 9.1(a) to (d) if James Hardie Australia Pty Limited or James Hardie Industries N.V. or a Related Body Corporate of either of those companies is the Lessee and that Lessee is insured under the global insurance arrangements of either of those companies.

9.2 INSURANCES TO BE TAKEN OUT BY LESSOR

The Lessor shall:

- (a) (PROPERTY INSURANCE) keep current during the Term including any extension or Further Term or holding over the property insurance for the Premises including loss of rent cover (capped at 18 months) referred to in paragraph (e) of the

definition of Outgoings;

- (b) (APPROVED INSURERS) ensure that all insurance policies maintained for the purposes of clause 9.2(a):
  - (i) (INSURANCE COMPANY) are taken out with an independent and reputable insurer; and
  - (ii) (AMOUNT) are for amounts and contain conditions reasonably acceptable to or reasonably required by the Lessee and/or the Lessee's insurer(s); and
- (c) (EVIDENCE OF INSURANCE) in respect of any policy of insurance to be effected by the Lessor under this clause 9.2, whenever reasonably required by the Lessee (but not more than once annually), give to the Lessee a copy of the certificate of currency and reasonable details of the policy coverage; and
- (d) (INTEREST OF LESSEE) in respect of the policy of insurance to be effected by the Lessor under clause 9.2(a), ensure that any interest of the Lessee is noted.

### 9.3 DEDUCTIBLES

The Lessor will not object to any reasonable deductibles contained in any insurances effected or required to be effected by the Lessee pursuant to clause 9.1 provided that the Lessee will indemnify the Lessor to the extent of the deductible applicable under a Claim to which those insurances apply.

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### 9.4 INFLAMMABLE SUBSTANCES

The Lessee shall not:

- (a) (REASONABLE QUANTITIES) other than as is necessary for the Lessee's Business, store chemicals, inflammable liquids, acetylene gas or alcohol, volatile or explosive oils, compounds or substances on or in the Premises; or
- (b) (USE) use any of those substances or fluids in the Premises for any purpose other than the Lessee's Business.

This clause 9.4 does not apply to anything in underground storage tanks on the Premises which exist at the Effective Date.

### 9.5 EFFECT ON LESSOR'S INSURANCES

The Lessee shall not without the Lessor's Consent, do anything to or on the Premises which will or may:

- (a) (INCREASE THE RATE OF INSURANCE) increase the rate of any insurance on the Premises or on any property in them, of which the Lessee has been notified by the Lessor, without paying to the Lessor an amount equal to the amount of that increase; or
- (b) (AVOID INSURANCE) vitiate or render void or voidable any insurance, of which the Lessee has been notified by the Lessor, in respect of the Premises or any property in them.

### 9.6 INSURANCE PROPOSAL BY THE LESSEE

- (a) If the Lessee is of the opinion that the Lessee will be able to procure the same insurance required to be obtained by the Lessor under clause 9.2(a) at a more competitive premium or on better terms, the Lessee may by notice in writing to the Lessor propose that it take out a policy for the insurance referred to in clause 9.2(a), noting the Lessor's interests as landlord (INSURANCE PROPOSAL). The Lessee can only submit an Insurance Proposal once per year.
- (b) The insurer proposed must be either rated A or higher by S&P or Moodys or a global insurer with respect only to the industrial special risks component of the Insurance Proposal.

- (c) The Lessor must not unreasonably withhold, condition or delay its approval of an Insurance Proposal.
- (d) If the Lessor approves the Insurance Proposal, the Lessee must promptly take out the insurance policy proposed under the Insurance Proposal (or, if the Lessor has failed to effect insurance under clause 9.2(a), the Lessee may take out the insurance policy anticipated by that clause) noting the Lessor's interests as landlord and, if required by the Lessor in writing, must note the interest of any financier to the Lessor and any mortgagee of the Land.
- (e) If the Lessee effects insurance under clause 9.6(d) and the Lessor is not named as an insured party, the Lessee shall reimburse the Lessor for any premiums for "difference in cover" insurance the Lessor is required to effect as a result of the requirements of its financiers, capped at 3% of the premiums payable by the Lessee under its Insurance Proposal.

9.7 INDEMNITIES

Even if:

- (a) (AUTHORISATION) a Claim results from something the Lessee may be authorised or obliged to do under this Lease; and/or

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- (b) (WAIVER) a waiver or other indulgence has been given to the Lessee in respect of an obligation of the Lessee under this clause 9.7,

the Lessee, except to the extent caused or contributed to by the Lessor or its Employees but only to the extent caused or contributed to by the Lessee or its Employees, shall indemnify the Lessor in respect of all Claims for which the Lessor will or may be or become liable, whether during or after the Term, in respect of or arising directly or indirectly from:

- (c) (INJURY TO PROPERTY OR PERSON) any loss, damage or injury to property or person, in on or near the Premises caused or contributed to by:
  - (i) (NEGLIGENCE) any wilful or negligent act or omission;
  - (ii) (DEFAULT) any default under this Lease; and/or
  - (iii) (USE) the use of the Premises,
 by or on the part of the Lessee or the Lessee's Employees;
- (d) (ABUSE OF SERVICES) the negligent or careless use or neglect of the Services and facilities of the Premises or the Appurtenances by the Lessee or the Lessee's Employees or any other person claiming through or under the Lessee;
- (e) (WATER LEAKAGE) any overflow or leakage (including rain water or from any Service, Appurtenance or the Lessor's Fixtures) whether originating inside or outside the Premises; and
- (f) (PLATE GLASS) any loss, damage or injury relating to plate and other glass caused or contributed to by any act or omission on the part of the Lessee or the Lessee's Employees,

but excluding any consequential loss.

10. DAMAGE, DESTRUCTION AND RESUMPTION

10.1 DAMAGE TO OR DESTRUCTION OF PREMISES

If at any time the Premises or any part of them are damaged or destroyed so that the Premises or any part of them are wholly or substantially unfit for the occupation and use of the Lessee or (having regard to the nature and location of the Premises and the normal means of access) are wholly or substantially inaccessible then, save where such damage or destruction arises out of the wilful or negligent act or omission of the Lessee or its Employees:

- (a) (i) (RENT AND OUTGOINGS ABATEMENT) the Rent, the Outgoings and any other money payable periodically under this Lease, or a proportionate part of that Rent, the Lessee's Proportion of Outgoings or other moneys according to the nature and extent of the damage or destruction sustained, will abate; and
- (ii) (REMEDIES SUSPENDED) all remedies for recovery of Rent, the Lessee's Proportion of Outgoings and other moneys (or that proportionate part of them, as the case may be) falling due after that damage or destruction will be suspended,

until the Premises have been restored or made fit for the occupation and use or made accessible to a standard equivalent to that at the Effective Date and all Services, air conditioning and air ventilation systems and fire fighting services and equipment for the Premises have been repaired so that they operate at a standard not less than as at the Effective Date;

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- (b) (TERMINATION BY LESSEE) if the Premises are substantially destroyed, damaged or rendered inaccessible due to the wilful or negligent act or omission of the Lessor or by default by the Lessor under the Lease, the Lessee shall have the right to terminate the Lease by notice to the Lessor and to claim damages;
- (c) (REINSTATEMENT BY LESSOR) unless:
- (i) (NO INSURANCE MONEYS) the Lessor's insurance policies have been invalidated or payment of insurance moneys under the policies refused because of some wilful act or omission of the Lessee or the Lessee's Employees;
- (ii) (LESSEE INSURES) if clause 9.6(d) applies, the Lessee does not make the proceeds of the insurance referred to in clause 9.2(a) available to the Lessor for reinstatement of the Premises; or
- (iii) (AGREEMENT) the parties agree otherwise,

the Lessor shall proceed with all reasonable expedition and diligence to reinstate the Premises and/or make the Premises fit for the occupation and use of and/or accessible to the Lessee to the standard required by clause 10.1(a);

- (d) (DETERMINATION BY LESSEE) where it is required under clause 10.1(c), unless the Lessor obtains all necessary development consents to authorise the necessary works to be done and provides reasonable written evidence of that to the Lessee within 6 months of the destruction or damage first occurring, then the Lessee may terminate this Lease by giving one month's notice to the Lessor. At the end of that notice period this Lease will be at an end;
- (e) (i) (DELAY IN REPAIR) if the Lessor is obliged under clause 10.1(c) to do so, but does not:
- (A) substantially commence the necessary works to make good the destruction or damage within 8 weeks, subject to any reasonable extension necessary to obtain approvals from any relevant Authority; and/or
- (B) complete the necessary works to make good the destruction or damage within 9 months, subject to any reasonable extension necessary to obtain approvals from any relevant Authority,

of it first occurring, then the Lessee may (by notice to the Lessor) proceed to cause the necessary works to be carried out and the Lessor shall allow the Lessee, its Employees, contractors and workmen access to the Land for that purpose; and

(ii) (COSTS) all Costs of any kind incurred by the Lessee under clause 10.1(e) (i) shall at the Lessee's option (but subject to clause 7.12):

(A) (DEMAND) be payable by the Lessor to the Lessee on demand on a full indemnity basis;

(B) (PROCEEDS) be paid from available proceeds of the insurance effected under clause 9.2(a), which the Lessor must promptly make available to the Lessee; or

(C) (COMBINATION) be accounted for by a combination of the above in the Lessee's discretion,

until all Costs incurred by the Lessee have been recovered; and

(f) (NO OBLIGATION TO RE-INSTATE) if the circumstances in clauses 10.1(c) (i) or (ii) exist, then the Lessor shall be under no obligation to reinstate the Premises or the means of access to them. In that case, either party may terminate this Lease by giving not less than one month's notice to the other.

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10.2 RESUMPTION OF PREMISES

If at any time the whole or any part of the Premises is resumed so that the residue of them is wholly or partially unfit for the occupation and use of the Lessee or (having regard to the nature and location of the Premises and the normal means of access) is wholly or partially inaccessible, then:

(a) (RENT ABATEMENT) a proportionate part of the Rent, the Lessee's Proportion of Outgoings, and any other moneys payable periodically under this Lease, according to the nature and extent of the resumption and having regard to the resultant impact on the Lessee's trade and takings, will abate; and

(b) (REMEDIES SUSPENDED) all remedies for recovery of that proportionate, part of the Rent, the Lessee's Proportion of Outgoings, and other moneys falling due after that resumption will be suspended.

10.3 LIABILITY

Except under clause 10.1(b), neither the Lessor or the Lessee is liable because of the determination of this Lease under this clause 10. That determination will be without prejudice to the rights of either party in respect of any preceding breach or non-observance of this Lease.

10.4 DISPUTE

Any dispute-arising under clauses 10.1 or 10.2 shall be determined by an appropriate independent person under clause 14.

11. LESSOR'S COVENANTS AND WARRANTIES

11.1 QUIET ENJOYMENT

If the Lessee pays the Rent and other money payable under this Lease and observes and performs its obligations under this Lease, the Lessee may occupy and enjoy the Premises during the Term and any extension or Further Term or holding over without any interruption by the Lessor or by any person rightfully claiming through, under or in trust for the Lessor, or the Lessor's Employees.

11.2 OUTGOINGS

Without limiting the Lessor's rights of recovery under this Lease, and except where directly payable by the Lessee under this Lease, the Lessor shall pay all Outgoings promptly and, where applicable, by any due date for payment.

11.3 CONSENT OF MORTGAGEE

The Lessor warrants that it has obtained all Consents (including Consents from any mortgagee of the Land) necessary for it to enter into this Lease.

11.4 DELETED

11.5 ACCESS

The Lessor must provide the Lessee with access to the Premises 24 hours a day, 7 days a week.

11.6 MANAGEMENT OF LAND

The Lessor covenants with the Lessee that it will not subdivide or reconfigure the Land or create any easement, covenant or other right unless it obtains the Consent of the Lessee (which Consent shall not be unreasonably withheld). The Lessee may only withhold its Consent under this clause 11.6 if the actions proposed by the Lessor

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will have a material adverse impact on the Lessee's rights under this Lease or the Lessee's Business or the Lessee's use of the Premises or the Land. Any dispute under this Clause 11.6 may be referred by either party for determination under Clause 14.

11.7 CONSTRUCTION

During any construction on the Land, the Lessor must:

- (a) (ACCESS) do all things necessary to minimise disturbance to the Lessee in its access to, use and occupation of the Premises;
- (b) (BUSINESS) do all things necessary to minimise disruption to the Lessee's Business conducted in the Premises.

11.8 COMPETITORS

The Lessor covenants with the Lessee that it will not grant any lease or right of occupancy of or right to erect, install, affix, paint or otherwise display signage or advertising on any part of the Land or sell the Land or any part of it to any Competitor without the Consent of the Lessee.

11.9 BREACH OF WARRANTY OR COVENANT

If the Lessor breaches clauses 11.5, 11.6, 11.7 or 11.8 then, without prejudice to any other rights or remedies the Lessee may have, the Lessee at any time and in its absolute discretion shall be entitled to give the Lessor notice of an intention to terminate this Lease unless the Lessor satisfies the conditions contained in the notice within 20 Business Days or such longer period as may be reasonably required having regard to the nature of the breach and the time reasonably required to remedy the breach (the REMEDY PERIOD). If the conditions are not satisfied within the Remedy Period, the Lessee may in its absolute discretion terminate this Lease at any time after that.

12. DEFAULT AND DETERMINATION

12.1 DEFAULT

Each of the following is an Event of Default (whether or not it is in the control of the Lessee):

- (a) (RENT IN ARREARS) the Rent or any part of it or any other money is in arrears and unpaid for 15 Business Days after it is due and has been demanded;
- (b) (FAILURE TO PERFORM OTHER COVENANTS) subject to clause 7.11, the Lessee fails to perform or observe any of its other obligations under this Lease within 15 Business Days or such longer period that may be reasonable in the circumstances after service of a notice requiring performance of the covenants; and
- (c) (LIQUIDATION) the Liquidation of the Lessee.

12.2 FORFEITURE OF LEASE

If an Event of Default occurs the Lessor may, without prejudice to any other Claim which the Lessor has or may have or could otherwise have against the Lessee or any other person in respect of that default, at any time:

- (a) (DETERMINATION BY RE-ENTRY) subject to any prior demand or notice as is required by Law and wherever possible, outside the normal trading hours of the Lessee, re-enter into and take possession of the Premises or any part of them (by force if necessary) and eject the Lessee and all other persons from them, in which event this Lease will be at an end; and/or

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- (b) (DETERMINATION BY NOTICE) by notice to the Lessee determine this Lease, and from the date of giving that notice this Lease will be at an end.

12.3 WAIVER

- (a) (WAIVER BY LESSOR) No consent or waiver express or implied by the Lessor to or of any breach of any covenant, condition, or duty of the Lessee shall be construed as a consent or waiver to or of any breach of the same or any other covenant, condition or duty.
- (b) (WAIVER BY LESSEE) No consent or waiver express or implied by the Lessee to or of any breach of any covenant, condition, or duty of the Lessor shall be construed as a consent or waiver to or of any breach of the same or any other covenant, condition or duty.

12.4 LESSOR TO MITIGATE DAMAGES

If the Lessee vacates the Premises, whether with or without the Lessor's Consent, or the Lessor terminates or forfeits this Lease, the Lessor shall take all reasonable steps to mitigate its loss and shall as soon as possible endeavour to re-let the Premises at a reasonable rent and on reasonable terms.

12.5 RECOVERY OF DAMAGES

- (a) (FUNDAMENTAL TERMS) The obligations contained in clauses 4.1, 4.2, 4.3, 4.4, 4.5, 5.3, 5.5, 6.1(a), 7.1(a) and (d), 7.6(a), 8.1, 9.1, 10.1 and 10.3 are agreed by the Lessor and the Lessee to be fundamental to this Lease.
- (b) (DAMAGES) If the Lessor determines this Lease pursuant to this clause 12 as a consequence of or in reliance upon a breach by the Lessee of one or more of the obligations contained in the provisions of this Lease referred to in clause 12.5(a) (whether alone or together with other obligations contained in this Lease) the Lessor shall, subject to clause 12.4, be entitled to damages for loss of the benefits which performance of all of the obligations and provisions of this Lease would, but for the determination, have conferred upon the Lessor, subject to the Lessor's duty to mitigate its loss.

12.6 INTEREST ON OVERDUE MONEY

- (a) (INTEREST) The Lessee shall pay to the Lessor interest at the Interest Rate on any Rent or other money due under this Lease (including money or Costs which are expressed to be payable or reimbursable to the Lessor on demand) but unpaid for 5 Business Days.
- (b) (CONDITIONS) That interest shall:
  - (i) (ACCRUAL) accrue on a daily basis and be calculated on daily rests;
  - (ii) (PAYMENT) be payable on demand or, if no earlier demand is made, on the first Business Day of each month where an amount arose in the preceding month or

months;

- (iii) (CALCULATION) be calculated from the due date for payment of the Rent or other money (as appropriate) or, in the case of an amount payable by way of reimbursement or indemnity, the date of outlay or loss, if earlier, until the date of actual payment; and
- (iv) (RECOVERY) be recoverable in the same manner as Rent in arrears.

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13. TERMINATION

13.1 YIELD UP

In relation to the Premises, at the Terminating Date:

- (a) (REMOVE LESSEE'S FITOUT AND FITTINGS) if the Lessor so requests the Lessee shall or if the Lessee wishes to, the Lessee may remove from the Premises all the Lessee's Fitout and Fittings and any other property of the Lessee; and
- (b) (REMOVE BUILDINGS) where, after removal of the Lessee's Fitout and Fittings, 50% or less of the relevant Building to which the Lessee's Fitout and Fittings was attached remains, the Lessee must demolish the balance of the affected Building and remove any debris from the Premises; and
- (c) (ANY CONDITION) the Lessee can deliver them up to the Lessor in any condition, subject to performance of the Lessee's obligations in clause 7.1(d) which are due to be performed prior to the Terminating Date and under clause 13.1(a) and (b).

13.2 FAILURE BY LESSEE TO REMOVE LESSEE'S FITOUT AND FITTINGS

If the Lessee fails to remove the Lessee's Fitout and Fittings and other property of the Lessee when required to do so under clause 13.1 or following determination under clause 12.2, within 30 Business Days of notice to do so, the Lessor may cause the Lessee's Fitout and Fittings and other property of the Lessee to be removed and stored in such manner as the Lessor in its discretion thinks fit at the risk and Cost of the Lessee. The Lessee must also pay Rent and the Lessee's Proportion of Outgoings for any reasonable period in which the Lessor undertakes the Lessee's obligations under this clause 13.2.

13.3 FAILURE TO REMOVE

If the Lessee fails to remove the Lessee's Fitout and Fittings and other property of the Lessee by the Terminating Date under clause 13.1 where the Lessor has not requested in writing that it do so, it shall then become the property of the Lessor.

14. DISPUTES

14.1 APPOINTMENT OF EXPERT

Any dispute arising under this Lease may at the request of either party be referred for determination by an appropriate independent person who is:

- (a) (AGREED BY PARTIES) agreed between the Lessor and the Lessee; or
- (b) (FAILING AGREEMENT) if they cannot agree, a member of a professional body nominated at the request of either the Lessor or the Lessee by the President of the Property Council of Australia Limited.

14.2 QUALIFICATIONS OF EXPERT

The appointed person:

- (a) (EXPERIENCE) must have substantial experience in relation to disputes in the nature of the matter in dispute and where



appropriate, in relation to premises of a similar type within the area in which the Premises are located or other comparable areas; and

- (b) (EXPERT) in making his determination shall act as an expert and not as an arbitrator.

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His determination will be final and binding on the parties.

14.3 COST OF DETERMINATION

The Cost of the appointed person's determination shall be borne by either or both of the parties (as determined by the appointed person) and if by both of the parties in the proportion between them as the person making the determination decides.

15. ENVIRONMENTAL CONTAMINATION

15.1 LESSEE'S RESPONSIBILITY

Despite any other provision of this Lease except clauses 15.4 and 15.5(a) and (b) and the Lessee's obligations with respect to underground storage tanks and any Environmental contamination associated with them under clause 7.1(d), the Lessee is not responsible for:

- (a) inground Environmental contamination of the Land or migrating onto or from the Land which exists at the Effective Date; or
- (b) for any Environmental contamination in, on, under or migrating onto or from the Land which occurs on and after the Effective Date which is not caused by the Lessee or its Employees.

15.2 LESSOR'S OBLIGATIONS AND INDEMNITY

The Lessor shall:

- (a) (COMPLY) without delay, but subject to clauses 15.4 and 15.5(b) and (c):
- (i) remediate any Environmental contamination referred to in clause 15.1 and which:
- (A) any Authority requires remediated; or
- (B) the parties agree or the expert under clause 14 determines is required pursuant to clause 15.2(c); and
- (ii) comply with the Requirements of any Authority and the Law with respect to the Environmental contamination referred to in clause 15.1; and
- (b) (INDEMNIFY) indemnify the Lessee against all Claims arising from the matters set out in clause 15.2(a) including any Costs arising from any agreement

negotiated by or with the consent of the Lessor acting reasonably with any Authority relating to the matters referred to in clause 15.2(a) except to the extent that:

- (i) other than with respect to Environmental contamination which constitutes a health and safety risk which the Lessee is required to notify to an Authority by Law, the Lessee or the Lessee's Employees have taken action with the intention of causing a Claim to be made or a notice or other Requirement issued and that action directly or indirectly has a material effect in causing the Claim to be made or the notice or other Requirement to be issued;
- (ii) the Claim relates to Remediation to a standard higher than that required for industrial use (which the parties agree is the standard appropriate for the Permitted Use) whether arising from a rezoning of the

Premises or otherwise; and/or

- (iii) any disposition by the Lessee of a legal or equitable interest which the Lessee has in the Premises is made on terms which include an indemnity in respect of the Environment which is materially more advantageous to the person receiving that interest from the Lessee than the

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indemnity included in this clause 15.2, including in respect of the qualifications applicable to the indemnity contained in this clause 15.2(b).

- (c) (i) If there is any Environmental contamination referred to in clause 15.1 which:
  - (A) prevents the Lessee operating from the Premises in the manner used at the Effective Date; or
  - (B) otherwise constitutes a health and safety risk,

then the Lessee may give notice to the Lessor with reasonable details of the Environmental contamination and requesting that the Lessor remediate that contamination.

- (ii) If the Lessor disputes whether the remediation requested by the Lessee is reasonably necessary, it must give notice to the Lessee within 20 Business Days of the date of service of the Lessee's notice under paragraph (i).
- (iii) If the Lessor and the Lessee cannot agree on whether the remediation requested by the Lessee is reasonably necessary within 25 Business Days of the date of service of the Lessee's notice under paragraph (i) above, then either party may refer the matter for dispute resolution under clause 14.

15.3 REMEDIATION BY THE LESSEE IF LESSOR DEFAULTS

If:

- (a) (LESSOR'S FAILURE) the Lessor fails to comply with clause 15.2(a) in accordance with the Requirements of any Authority and the Law (or, if no time is specified, within a reasonable time of notice from the Lessee, having regard to the nature of the remediation or the Law or Requirement and the period of time reasonably required to carry out the remediation or comply with the Law or Requirement); or
- (b) (EMERGENCY) any emergency arises which requires the immediate or urgent remediation of Environmental contamination or compliance with a Requirement or the Law which the Lessor is required to remediate or comply with under this Lease,

then the Lessee may remediate the Environmental contamination or comply with the Law or the Requirement and the Cost of so doing and of all Claims incurred by the Lessee in properly complying with that Law or Requirement or arising from the Lessor's failure to do so and any reasonable Costs arising from temporary relocation of all or part of the Lessee's Business shall, at the Lessee's option be (but subject to clause 7.12):

- (c) (ON DEMAND) payable by the Lessor to the Lessee on demand on a full indemnity basis;
- (d) (SET OFF) be set off against the Rent, the Lessee's Proportion of Outgoings and any other moneys payable by the Lessee under this Lease; or
- (e) (COMBINATION) accounted for by a combination of the above in the Lessee's discretion,

until all Costs incurred by the Lessee have been recovered.

15.4 PRE-EXISTING UST'S

The Lessee must by the Terminating Date remove any underground storage tanks existing on the Land at the Effective Date or installed by the Lessee during the Term and remediate or otherwise deal with any Environmental contamination associated with them to the extent required to enable the Land to continue to be used for industrial purposes following the Terminating Date.

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15.5 SPECIFIC OBLIGATIONS

- (a) Subject to clause 7.11, the Lessee must effect and maintain all Environmental management plans relating to the Environmental condition of the Buildings on the Premises which are Required by Law or any Authority during the Term.
- (b) Subject to clauses 7.11 and 15.5(c), the Lessee shall contribute up to a maximum of \$40,000 per annum (increased by 3% per annum on each anniversary of the Effective Date) towards the Costs of:
  - (i) day to day repair and maintenance of the pumping out equipment (but not capital or structural Costs); and
  - (ii) any pumping out of mobile contaminants (including petroleum hydrocarbons) identified in the groundwater of that part of the Land included in the Premises,which is Required by Law or any Authority during the Term and any balance in excess of this amount per annum shall be payable by the Lessor within 5 Business Days of receipt of a tax invoice and reasonable details of the amount claimed.
- (c) The Lessor must pay all capital Costs associated with the purchase, commissioning and, subject to the Lessee performing the repair and maintenance obligation referred to in clause 15.5(b), replacement of the remediation equipment required for the purposes of pumping out from the Premises and which is Required by Law or any Authority during the Term, within 5 Business Days of receipt of a tax invoice and reasonable details of the amounts claimed.

15.6 RECOVERY FROM POLLUTER

The Lessor must:

- (a) include any pumping out Costs paid by the Lessee under clause 15.5(b) in any Claim against the polluter; and
- (b) reimburse to the Lessee any of those Costs recovered from the polluter within 5 Business Days of receipt (capped at the amounts actually incurred by the Lessee).

15.7 ACKNOWLEDGEMENT

Without limiting any other provision of this clause 15, the Lessee acknowledges that the Premises are at the Effective Date subject to Environmental contamination and accepts the Premises in that state.

16. MISCELLANEOUS

16.1 NOTICES

All notices, requests, demands, consents, approvals, agreements or other communications to or by a party to this Lease:

- (a) (WRITING) must be in writing;
- (b) (SIGNED) must be signed by the sender, or if a company, by its Authorised Officer; and
- (c) (SERVED) will be taken to have been served:
  - (i) (PERSONAL) in the case of delivery in person, when

delivered to or left at the address of the recipient shown in this Lease (as the case may be) or at any other address which the recipient may have notified to the sender;

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- (ii) (FAX) in the case of facsimile transmission, when recorded on the transmission result report unless:
  - (A) within 24 hours of that time the recipient informs the sender that the transmission was received in an incomplete or garbled form; or
  - (B) the transmission result report indicates a faulty or incomplete transmission; and
- (d) (MAIL) in the case of mail, on the third Business Day after the date on which the notice is accepted for posting by the relevant postal authority,

but if service is on a day which is not a Business Day in the place to which the communication is sent or is later than 4.00pm (local time) on a Business Day, the notice will be taken to have been served on the next Business Day in that place.

16.2 STAMP DUTY, COSTS AND REGISTRATION

- (a) (STAMP DUTY AND REGISTRATION FEES) The Lessee shall pay to the Lessor on demand all stamp duty (including penalties and fines other than those incurred due to the fault of the Lessor) and all registration fees (if applicable) with respect to this Lease.
- (b) (LEGAL COSTS) Each party shall pay their own legal Costs with respect to this Lease.
- (c) (LESSOR TO STAMP AND REGISTER) The Lessor shall (subject to receipt of necessary funds from the Lessee) attend to payment of stamp duty on and registration of this Lease at the Department of Natural Resources and Mines, Brisbane as soon as possible after the Effective Date.

16.3 SEVERANCE

Any provision of this Lease which is prohibited or unenforceable in any jurisdiction will be ineffective in that jurisdiction to the extent of the prohibition or unenforceability. That will not invalidate the remaining provisions of this Lease nor affect the validity or enforceability of that provision in any other jurisdiction.

16.4 ENTIRE AGREEMENT

This Lease contains all the contractual arrangements of the parties with respect to the transaction to which it relates. No representations or warranties made by either party with respect to the transaction to which this Lease relates shall be actionable or enforceable except to the extent that they are contained in this Lease.

16.5 GOVERNING LAW

This Lease is governed by the laws of Queensland. The parties submit to the non-exclusive jurisdiction of courts exercising jurisdiction there.

17. CONFIDENTIALITY

- (a) (DUTY) Unless the parties otherwise agree in any particular instance, the provisions of this Lease and all information disclosed to or obtained by the parties in relation to each other and this Lease and which is not in public knowledge (or which is in public knowledge only as a consequence of a breach of this clause) must be kept confidential to the parties and may not be disclosed (unless otherwise required by Law) except to any bona fide consultants retained by a party in relation to this Lease, or to bona fide purchasers, financiers, assignees or sub occupants (as the case may be) and any such consultant or

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other person must be provided only with that information which he needs to know for the purposes of reviewing this Lease and he must undertake in writing to maintain the confidentiality of that information.

- (b) (INDEMNITY) The parties shall indemnify each other and must keep each other indemnified against all Claims suffered or incurred as a consequence of any breach of clause 17(a) by the Lessor or the Lessee or their respective Employees, consultants or other reasons for whom they are responsible.

18. LIMITATION OF LIABILITY

18.1 CAPACITY OF LESSOR

Where the Lessor is a trustee of a trust (TRUST), the Lessor only enters into this Lease in its capacity as trustee of the Trust and in no other capacity. A liability arising under or in connection with this Lease is limited and can be enforced against the Lessor only to the extent to which it can be satisfied out of property of the Trust and for which the Lessor is actually indemnified for the liability. This limitation of the Lessor's liability applies despite any other provisions of this Lease (except clause 18.3 ("When limitation does not apply")) and extends to all liabilities and obligations of the Lessor in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Lease, any other document in connection with it, or the Trust.

18.2 PARTIES MAY NOT SUE

The parties may not sue the Lessor in any capacity other than as trustee of the Trust, including seeking the appointment of a receiver, a liquidator, an administrator or similar person to the Lessor or prove in any liquidation, administration or arrangement of or affecting the Lessor (except in relation to property of the Trust).

18.3 WHEN LIMITATION DOES NOT APPLY

Clauses 18.1 and 18.2 shall not apply to any obligation or liability of the Lessor to the extent that it is not satisfied because, under this Lease or any other document in connection with it, or by operation of law, there is a reduction in the extent of the Lessor's indemnification out of the assets of the Trust, as a result of the Lessor's fraud, negligence or breach of trust.

18.4 FAILURE BY THIRD PARTIES

It is acknowledged that the Lessor is responsible under this Lease and other documents in connection with it for performing a variety of obligations relating to the Trust. No act or omission of the Lessor will be considered fraud or negligence of the Lessor for the purposes of clauses 18.3 ("When limitation does not apply") or 18.5 ("Breach by the Lessor") to the extent to which the act or omission was caused by any failure by any person who provides services in respect of the Trust to fulfil its obligations relating to the Trust or by any other act or omission of any person who provides services in respect of the Trust (other than employees and agents of the Lessor or a person who has been delegated or appointed by the Lessor).

18.5 BREACH BY THE LESSOR

It is also acknowledged that a breach of an obligation imposed on, or a representation or warranty given by, the Lessor under or in connection with this Lease or any other document in connection with it will not be considered a breach of trust by the Lessor unless the Lessor has acted with negligence, or without good faith, in relation to the breach.

19. TRUST WARRANTIES

Where the Lessor is a trustee and/or responsible entity of a Trust, the Lessor warrants in its personal capacity that:

- (a) (TRUSTEE) it is the sole trustee of the Trust;
- (b) (POWER) it, in its capacity as trustee of the Trust, is entitled and competent and has absolute and complete authority, power and capacity to enter into and perform its obligations under this Lease and is not in breach of any Law or court order relating to its acting as trustee of the Trust;
- (c) (INDEMNITY) its right of indemnity out of, and lien over, the assets of the Trust has not been limited in any way and that right has priority over the right of the beneficiaries to the Trust assets;
- (d) (ENFORCEABLE) the deed establishing the Trust (TRUST DEED) is enforceable in accordance with the Law applicable to it;
- (e) (CONSENT) the consent of each of the beneficiaries, unitholders or other persons whose consent is required under the Trust Deed has been obtained;
- (f) (NO BREACH) the entry into this Lease by the Lessor does not conflict with or result in a breach of, or default under, any provision of the Trust Deed or any other agreement to which the Lessor is a party (whether in its capacity as trustee of the Trust or its personal capacity);
- (g) (TRUST EXTANT) the Trust has not at the Effective Date been terminated nor has the date or any event for the vesting of the assets subject to the Trust occurred.

20. GUARANTEE AND INDEMNITY

20.1 CONSIDERATION

The Guarantor gives this guarantee and indemnity in consideration of the Lessor agreeing to enter into this Lease at the request of the Guarantor. The Guarantor acknowledges the receipt of valuable consideration from the Lessor for the Guarantor incurring obligations and giving rights under this guarantee and indemnity.

20.2 GUARANTEE

The Guarantor unconditionally and irrevocably guarantees to the Lessor the due and punctual performance and observance by the Lessee of its obligations:

- (a) under this Lease, even if this Lease is not registered or is found not to be a lease or is found to be a lease for a term less than the Term; and
- (b) in connection with its occupation of the Premises, including the obligations to pay money.

20.3 INDEMNITY

As a separate undertaking, the Guarantor unconditionally and irrevocably indemnifies the Lessor against all liability or loss arising from, and any costs, charges or expenses incurred in connection with:

- (a) the Lessee's breach of this Lease; or
- (b) the Lessee's occupation of the Premises,

including a breach of the obligations to pay money; or

- (c) a representation or warranty by the Lessee in this Lease being incorrect or misleading when made or taken to be made; or
- (d) a liquidator disclaiming this Lease.

It is not necessary for the Lessor to incur expense or make payment before enforcing that right of indemnity.

20.4 INTEREST

The Guarantor agrees to pay interest on any amount payable under this guarantee and indemnity from when the amount becomes due for payment until it is paid in full. The Guarantor must pay accumulated interest at the end of each month without demand. Interest is payable as set out in clause 12.6.

20.5 ENFORCEMENT OF RIGHTS

The Guarantor waives any right it has of first requiring the Lessor to commence proceedings or enforce any other right against the Lessee or any other person before claiming under this guarantee and indemnity.

20.6 CONTINUING SECURITY

This guarantee and indemnity is a continuing security and is not discharged by any one payment.

20.7 GUARANTEE NOT AFFECTED

The liabilities of the Guarantor under this guarantee and indemnity as a guarantor, indemnifier or principal debtor and the rights of the Lessor under this guarantee and indemnity are not affected by anything which might otherwise affect them at law or in equity including, but not limited to, one or more of the following:

- (a) the Lessor granting time or other indulgence to, compounding or compromising with or releasing the Lessee or any other Guarantor;
- (b) acquiescence, delay, acts, omissions or mistakes on the part of the Lessor;
- (c) any transfer of a right of the Lessor;
- (d) the termination, surrender or expiry of, or any variation, assignment, subletting, licensing, extension or renewal of or any reduction or conversion of the Term of this Lease;
- (e) the invalidity or unenforceability of an obligation or liability of a person other than the Guarantor;
- (f) any change in the Lessee's occupation of the Premises;
- (g) this Lease not being registered;
- (h) this Lease not being effective as a lease;
- (i) this Lease not being effective as a lease for the Term;
- (j) any person named as Guarantor not executing or not executing effectively this guarantee and indemnity;
- (k) a liquidator disclaiming this Lease.

20.8 SUSPENSION OF GUARANTOR'S RIGHTS

The Guarantor may not:

- (a) raise a set-off or counterclaim available to it or the Lessee against the Lessor in reduction of its liability under this guarantee and indemnity; or

- (b) claim to be entitled by way of contribution, indemnity, subrogation, marshalling or otherwise to the benefit of any security or guarantee held by the Lessor in connection with this Lease; or
- (c) make a claim or enforce a right against the Lessee or its property; or

(d) prove in competition with the Lessor if a liquidator, provisional liquidator, receiver, administrator or trustee in bankruptcy is appointed in respect of the Lessee or the Lessee is otherwise unable to pay its debts when they fall due,

until all money payable to the Lessor in connection with the lease or the Lessee's occupation of the Premises is paid.

#### 20.9 REINSTATEMENT OF GUARANTEE

If a claim that a payment to the Lessor in connection with this Lease or this guarantee and indemnity is void or voidable (including, but not limited to, a claim under laws relating to liquidation, administration, insolvency or protection of creditors) is upheld, conceded or compromised then the Lessor is entitled immediately as against the Guarantor to the rights to which it would have been entitled under this guarantee and indemnity if the payment had not occurred.

#### 20.10 COSTS

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

- (a) the Lessor's costs, charges and expenses in making, enforcing and doing anything in connection with this guarantee and indemnity including, but not limited to, legal costs and expenses on a full indemnity basis; and
- (b) all stamp duties, fees, taxes and charges which are payable in connection with this guarantee and indemnity or a payment, receipt or other transaction contemplated by it.

Money paid to the Lessor by the Guarantor must be applied first against payment of costs, charges and expenses under this clause 20.10 then against other obligations under this guarantee and indemnity.

#### 20.11 LESSOR MAY ASSIGN

The Lessor may assign its rights under this guarantee and indemnity to a purchaser or transferee of the Land.

SCHEDULE/ENLARGED PANEL/  
ADDITIONAL PAGE/DECLARATION  
TITLE REFERENCE 15944054 AND 17103067

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THIS IS ANNEXURE B OF 5 PAGES TO THE AMENDMENT BETWEEN AMACA PTY LIMITED (ACN 000 035 512) (LESSOR), JAMES HARDIE AUSTRALIA PTY LIMITED (ACN 084 635 558) (LESSEE) AND JAMES HARDIE INDUSTRIES N.V. (ARBN 097 829 895) (GUARANTOR) DATED MARCH 2004

LESSOR'S ASSET REGISTER

Lease Intended for Use in Conjunction with Memorandum

LEASE

Land Transfer Act 1952

If there is not enough space in any of the panels below, cross-reference to and use the approved Annexure Schedule: no other format will be received.

Land Registration District NORTH AUCKLAND

Certificate of Title No. All or Part? Area and legal description - Insert only when part of Stratum, CT SEE ANNEXURE SCHEDULE

Lessor Surnames must be underlined or in CAPITALS

STUDORP LIMITED

Lessee Surnames must be underlined or in CAPITALS

JAMES HARDIE NEW ZEALAND LIMITED

Estate or Interest: Insert e.g. Fee simple; Leasehold in Lease No. etc FEE SIMPLE

Term SEE ANNEXURE SCHEDULE

Rental SEE ANNEXURE SCHEDULE

Operative Clause SEE ANNEXURE SCHEDULE

Dated this 23 DAY OF MARCH 2004

Attestation Signed in my presence by Lessor by its attorney

Signature of Witness

/s/ Alan Kneeshaw

WITNESS TO COMPLETE IN BLOCK LETTERS (unless typewritten or legibly stamped) Witness name ALAN KNEESHAW Occupation ACCOUNTANT NSW JUSTICE OF THE PEACE 9102809

/s/ Joanne Marchione - Attorney Signature, or common seal of Lessor JOANNE MARCHIONE - ATTORNEY

Address 3rd floor 22 Pitt Street, Sydney 2000

Signed in my presence by Lessee by its attorney

Signature of Witness

/s/ Alan Kneeshaw

WITNESS TO COMPLETE IN BLOCK LETTERS (unless typewritten or legibly stamped) Witness name ALAN KNEESHAW Occupation ACCOUNTANT NSW JUSTICE OF THE PEACE 9102809

/s/ Joanne Marchione - Attorney Signature, or common seal of Lessor JOANNE MARCHIONE - ATTORNEY

Address 3rd floor 22 Pitt Street, Sydney 2000

Certified correct for purposes of the Land Transfer Act of 1952

/s/ Nicholas Cowie Solicitor for the Lessee

Annexure Schedule

NA79D/497	All
NA694/161	All
NA1058/269	All
NA1563/65	All

Continuation of `Operative Clause`

The Lessor leases to the Lessee, and the Lessee takes on lease, the Premises for the Term at the Rent and in accordance with the provisions of the lease as set out in Annexures A and B.

Continuation of attestation:

James Hardie Industries N.V.

as Guarantor by its attorney: /s/ Joanne Marchione  
 -----  
 JOANNE MARCHIONE - ATTORNEY

In the presence of:

Name: ALAN KNEESHAW  
 Occupation: ACCOUNTANT NSW JP9102809  
 Address: 3rd FLOOR 22 PITT ST, SYDNEY 2000

This Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or their solicitors must put their signatures or initials here.

JM, AK, NC

Allens Arthur Robinson

THIS IS ANNEXURE A OF 47 PAGES TO THE LEASE BETWEEN STUDORP LIMITED (LESSOR), JAMES HARDIE NEW ZEALAND LIMITED (LESSEE) AND JAMES HARDIE INDUSTRIES N.V. (GUARANTOR) DATED 23 MARCH 2004

SCHEDULE OF TERMS  
 OPERATIVE PROVISIONS

ITEM	TERM	DEFINITION
1.	Lessor	Studorp Limited of 50 O'Rorke Road, Penrose, Auckland
2.	Lessee	James Hardie New Zealand Limited of 50 O'Rorke Road, Penrose, Auckland
3.	Land	Lot 1 on DP135335 as contained in Certificate of Title 79D/497, DP27312 as contained in Certificate of Title 694/161, Allotment 35 Section 17 Suburbs of Auckland as contained in Certificate of Title 1058/269 and Allotment 36 Section 17 Suburbs of Auckland as contained in Certificate of Title 1563/65 (North Auckland Registry).
4.	Premises	The Land, buildings and other improvements situated at the Corner of O'Rorke and Station Roads, Penrose, Auckland, New Zealand in the condition in which they exist as at the Commencing Date and includes the Lessor's Fixtures.
5.	Term	12 Years
6.	Commencing Date	23 March 2004
7.	Terminating Date	22 March 2016
8.	Further	Term 2 further terms each of 10 years, the last expiring on 22 March 2036.
9.	Rent	\$440,000.00 per annum, payable as prescribed in clauses 4.1 and 4.2, and subject to review as specified in clauses 4.4, 4.5, 4.6 and 4.7.
10.	Review Dates	The Review Dates for review of the Rent are as follows:

- (a) Fixed Review Dates shall be each anniversary of the Commencing Date during the Term other than the Commencing Date of a Further Term; and
- (b) Market Review Dates shall be the sixth anniversary of the Commencing Date.

11. Permitted Use Manufacture, warehousing, distribution and sales of fibre cement products and systems and all associated activities (including offices) and any other use for which the Lessee may lawfully use the Premises.

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Term	Term	Definition	Allens Arthur Robinson
12.	Public Insurance	Risk \$50,000,000	
13.	Review Dates for the Further Term	The Review Dates for the review of the Rent in each Further Term and the method of review shall be as follows.	
		(a) Fixed Review Dates shall be on each anniversary of the Commencing Date of that Further Term other than the Commencing Date of a Further Term; and	
		(b) Market Reviews Dates shall be the Commencing Date of that Further Term and the sixth anniversary of the Commencing Date of that Further Term.	

14. Lessee's Proportion 100%

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1. INTERPRETATION

1.1 DEFINITIONS

The following definitions together with those in the Schedule apply unless the context requires otherwise.

APPURTENANCE includes any drain, basin, sink, toilet or urinal.

AUTHORISATION includes any authorisation, approval, consent, licence, permit, franchise, permission, filing, registration, resolution, direction, declaration, or exemption.

AUTHORISED PERSON means any director or secretary, or any person from time to time nominated as an Authorised Person by a party by a notice to the other party accompanied by specimen signatures of all new persons so appointed.

AUTHORITY includes:

- (a) (GOVERNMENT) any local body or government in any jurisdiction;
- (b) (PUBLIC UTILITY) any provider of public utility services, whether statutory or not; and
- (c) (OTHER BODY) any other person, authority, instrumentality or body having jurisdiction, rights, powers, duties or responsibilities over the Premises or any part of them or anything in relation to them (including the Insurance Council of New Zealand Limited).

BUILDING means those improvements (if any) described or referred to in Item 4.

BUSINESS DAY means any day except Saturday or Sunday or a day that is a public holiday throughout Auckland.

CLAIM includes any claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding, right of action, claim for compensation and claim for abatement of rent obligation.

COMPETITOR means any person engaged in the manufacture, distribution or sale of

fibre cement products and underground drainage pipes made of concrete fibre cement and:

- (a) includes persons engaged in the businesses known as or trading under names which include the words "Lafarge", "CSR" and "BGC"; but
- (b) excludes any third party logistics operator.

CONSENT means prior written consent.

COUNCIL means Auckland City Council and Auckland Regional Council.

COST includes any reasonable cost, charge, expense, outgoing, payment or other expenditure of any nature (whether direct, indirect or consequential and whether accrued or paid) including where appropriate all rates and all reasonable legal fees.

EMPLOYEES means employees, agents, invitees and contractors.

ENVIRONMENT means components of the earth, including:

- (a) land, air and water;
- (b) any layer of the atmosphere;

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- (c) any organic or inorganic matter and any living organism; and
- (d) human-made or modified structures and areas, and includes interacting natural ecosystems that include components referred to in paragraphs (a) to (c).

ENVIRONMENTAL LAW means a provision of Law, or a Law, which provision or Law relates to any aspect of the Environment, safety, health or the use of Substances or activities which may harm the Environment or be hazardous or otherwise harmful to health.

EVENT OF DEFAULT means any event referred to in clause 12.1.

FIXED REVIEW means a review of the Rent in accordance with clause 4.7.

FIXED REVIEW DATES means a date on which a Fixed Review is to occur as set out in Item 10.

FURTHER TERM means the further term or terms (as the case may be), specified in Item 8.

GUARANTOR means James Hardie Industries N.V.

GST means tax charged under the GST Act together with any related interest, penalties, fines or other charge in respect of that tax to the extent caused by any default or delay by the Lessee.

GST ACT means the Goods and Services Tax Act 1985 (New Zealand).

INPUT TAX has the meaning given to that term under the GST Law.

INITIAL TERM means the first 12 year term of this Lease commencing on 23 March 2004.

INTEREST RATE means the minimum rate of interest charged by the Bank of New Zealand Limited, on an overdraft of \$100,000 plus 2%.

LAND means the land described in Item 3.

LAW includes any requirement of any statute, rule, regulation, proclamation, ordinance, by-law, or other enactment, present or future.

LEASE means this lease between the Lessor and the Lessee.

LEASE YEAR means every 12 month period commencing on and from the Commencing Date.

LESSEE means the party specified in Item 2, its successors and assigns.

LESSEE'S BUSINESS means the business carried on or entitled to be carried on in the Premises in compliance with the Permitted Use of the Premises.

LESSEE'S FITOUT AND FITTINGS means all fixtures, fittings, plant, equipment, partitions or other articles and chattels of all kinds (other than stock-in-trade) which satisfy all of the following:



(a) they are owned by or leased by third parties to the Lessee; and

(b) they are, at any time, in or attached to the Premises.

LESSEE'S PROPORTION means that proportion which the Lettable Area of the Premises bears to the area of the Land determined in accordance with the Method of Measurement from time to time and which at the Commencing Date of the lease for the Initial Term is that proportion set out in Item 14.

LESSOR means the party specified in Item 1 or the party for the time being entitled to the reversion expectant upon expiration or prior determination of the Lease.

LESSOR'S ASSET REGISTER means those items in the list of items contained in Annexure B which are located on the Premises or on the Land.

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LESSOR'S FIXTURES means all fixtures in the Premises owned by the Lessor including the items listed in the Lessor's Asset Register and:

- (a) (GENERAL) all plant and equipment, mechanical or otherwise which forms part of the base Building, fittings, fixtures, furniture, furnishings of any kind, including window coverings, blinds and light fittings; and
- (b) (FIRE FIGHTING) all stop cocks, fire hoses, hydrants, other fire prevention aids and all fire fighting systems from time to time located in the Premises or which may service the Premises and be on the Land.

LETTABLE AREA means the gross lettable area determined in accordance with the Method of Measurement.

LIQUIDATION includes liquidation, statutory management, receivership, entry into a scheme of arrangement or compromise with creditors, amalgamation, administration, assignment for the benefit of creditors, arrangement or compromise with creditors, bankruptcy or death.

MARKET RENT means the Rent which could be obtained with respect to the Premises as at a particular Market Review Date in an open market by a willing but not anxious Lessor assessed using the criteria in clause 4.5(g).

MARKET REVIEW means a review of the Rent in accordance with clause 4.4 and (if applicable) clauses 4.5 and 4.6.

MARKET REVIEW DATE means a date on which a Market Review is to occur as set out in Item 10.

METHOD OF MEASUREMENT means the Method of Measurement set down by the Property Council of New Zealand, Inc and the New Zealand Property Institute in their Guide for Measurement of Rentable Areas for buildings which are similar to the Premises. The Method of Measurement shall remain fixed for the term of this Lease and any Further Term despite any subsequent editions or variations which may be issued.

NEW ZEALAND INSTITUTE means the New Zealand Property Institute.

OUTGOINGS means:

- (a) (COUNCIL RATES) all charges payable to the Council:
  - (i) levied or charged with respect to the Land or the Premises or their use or occupation;
  - (ii) for any services to the Land or the Premises of the type from time to time provided by the Council; and/or
  - (iii) for waste and general garbage removal from the Land or the Premises (including any excess);
- (b) (WATER RATES) all charges payable to an Authority:
  - (i) levied or charged with respect to the Land or the Premises or their use or occupation; and
  - (ii) for the provision, reticulation or discharge of water and/or sewerage and/or drainage (including meter rents) to the Land or the Premises;

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(c) (MANAGEMENT FEES) reasonable fees for management of the Premises,

capped at 1% of the Rent and Outgoings from time to time; and

- (d) (INSURANCES) where the Lessor has effected the policy, all insurance premiums payable in respect of insurances for the Premises for its full insurable or replacement value to cover damage by fire, storm, tempest, impact and other usually insured risks of that nature, including loss of rent insurance (capped at 18 months cover),

but excluding from this Paragraph any amount which is:

- (i) (ALREADY INCLUDED) already included by virtue of another Paragraph of this definition;
- (ii) (OTHERWISE PAYABLE) otherwise payable by the Lessee pursuant to the provisions of this Lease;
- (iii) (TAX) income tax and capital gains tax of any nature; or
- (iv) (PAYABLE BY THE LESSOR) otherwise payable by the Lessor with respect to its obligations under this Lease.

PERMITTED USE means the use of the Premises specified in Item 11

PREMISES means the Land, buildings and other improvements specified in Item 4, and includes any of the Lessor's Fixtures from time to time in or on them.

PROPOSED WORK includes any proposed sign, work, alteration, addition or installation in or to the Premises, the Lessor's Fixtures and/or to the existing Lessee's Fitout and Fittings by the Lessee and/or by the Lessee's Employees.

RELATED BODY CORPORATE has the same meaning as given to:

- (a) that term in the Corporations Act 2001 (Cth of Australia); and
- (b) the term "related company" in the Companies Act 1993 (New Zealand).

RENT means the rent specified in Item 9 as varied from time to time in accordance with this Lease.

REQUIREMENT includes any notice, order, direction, stipulation or similar notification received from or given by any Authority pursuant to and enforceable under any Law (including Environmental Law), whether in writing or otherwise, and regardless of to whom it is addressed or directed.

REVIEW DATE means a date on which either a CPI Review or a Market Review is to occur as set out in Item 10.

SERVICES means electricity, gas, sewerage, water and telephone services.

SUBSTANCE includes:

- (a) any form of organic or chemical matter whether solid, liquid or gas; and
- (b) radiation, radioactivity and magnetic activity.

TAX INVOICE has the meaning given to that term in the GST Act.

TAXABLE SUPPLY has the meaning given to that term in the GST Act.

TERMINATING DATE means:

- (a) the date specified in Item 7;
- (b) any earlier date on which this Lease is determined;

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- (c) the date of expiration or earlier termination of the Further Term or, if more than one, the last Further Term; or
- (d) the end of any period of holding over under clause 3.3,

as appropriate.

TERMINATION PAYMENT means:

- (a) in respect of clause 7.1(e)(i)(A), the net present value of the aggregate of:
- (i) the Rent and the Lessee's Proportion of Outgoings payable for the balance of the Term calculated from the date of termination; and

(ii) the cost of compliance with the Lessee's obligations in clause 13,

using the 10 year Commonwealth of Australia Government bond interest rate plus 115 basis points; and

(b) in respect of clauses 7.1(e)(i)(B) and 7.1(e)(ii), the net present value of the aggregate of:

(i) the Rent and the Lessee's Proportion of Outgoings payable for the balance of the Term with respect to the proportionate area of the Premises surrendered calculated from the date of the surrender; and

(ii) the cost of compliance with the Lessee's obligations in clause 13,

using the 10 year Commonwealth of Australia Government bond interest rate plus 115 basis points.

UMPIRE means a person who:

- (a) is at the relevant time a Valuer;
- (b) is appointed under clause 4.5;
- (c) accepts his appointment in writing; and
- (d) undertakes to hand down his determination of the Rent within 20 Business Days after being instructed to proceed.

VALUER means a person who:

- (a) is a full member of the New Zealand Institute of Valuers and has been for the last 5 years;
- (b) holds a licence to practise as a valuer of premises of the kind leased by this Lease;
- (c) is active in the relevant market at the time of his appointment;
- (d) has at least 3 years experience in valuing premises of the kind leased by this Lease; and
- (e) undertakes to act promptly in accordance with the requirements of this Lease.

## 1.2 GENERAL

Headings are for convenience only and do not affect interpretation. The following rules of interpretation apply unless the context requires otherwise.

- (a) (PLURALS) The singular includes the plural and conversely.
- (b) (GENDER) A gender includes all genders.

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- (c) (OTHER GRAMMATICAL FORMS) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) (PERSON) A reference to a person, company, trust, partnership, unincorporated body or other entity includes any of them.
- (e) (CLAUSE) "clause", "Paragraph", "Schedule" or "Annexure" refers to this Lease and "Item" refers to the Schedule of Terms forming part of this Lease.
- (f) (SUCCESSORS AND ASSIGNS) A reference to any party to this Lease or any other agreement or document includes the party's successors and substitutes or assigns.
- (g) (JOINT AND SEVERAL OBLIGATIONS) A reference to a right or obligation of any two or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally.
- (h) (EXTRINSIC TERMS) Subject to the provisions of any written material to which the Lessor and the Lessee are parties, the Lessor and the Lessee agree that:

- (i) (WHOLE AGREEMENT) the terms contained in this Lease cover and comprise the whole of the agreement in respect of the Premises between the Lessor and the Lessee; and
- (ii) (NO COLLATERAL AGREEMENT) no further terms, whether in respect of the Premises or otherwise, shall be implied or arise between the Lessor and the Lessee by way of collateral or other agreement made by or on behalf of the Lessor or by or on behalf of the Lessee on or before or after the execution of this Lease, and any implication or collateral or other agreement is excluded and negatived.
- (i) (AMENDMENTS AND VARIATIONS) A reference to an agreement or document (including this Lease) is to the agreement or document as amended, novated, supplemented, varied or replaced from time to time, except to the extent prohibited by this Lease.
- (j) (LEGISLATION) A reference to legislation or to a provision of legislation includes a modification, re-enactment of or substitution for it and a regulation or statutory instrument issued under it.
- (k) (NEW ZEALAND CURRENCY) A reference to "dollars" or "\$" is to New Zealand currency.
- (l) (SCHEDULES AND ANNEXURES) Each schedule of/or annexure to this Lease forms part of it.
- (m) (CONDUCT) A reference to conduct includes any omission, statement or undertaking, whether or not in writing.
- (n) (WRITING) A reference to "writing" includes a facsimile transmission and any means of reproducing words in a tangible and permanently visible form.
- (o) (EVENT OF DEFAULT) An Event of Default "subsists" until it has been waived by or remedied to the reasonable satisfaction of the Lessor.

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- (p) (INCLUDES) A reference to "includes" or "including" means "includes, without limitation," or "including, without limitation," respectively.
- (q) (WHOLE) Reference to the whole includes part.
- (r) (DUE AND PUNCTUAL) All obligations are taken to be required to be performed duly and punctually.
- (s) (PERMIT OR OMIT) Words importing "do" include do, permit or omit, or cause to be done or omitted.
- (t) (BODIES AND AUTHORITIES)
  - (i) (SUCCESSORS) Where a reference is made to any person, body or Authority that reference, if the person, body or Authority has ceased to exist, will be to the person, body or Authority as then serves substantially the same objects as that person, body or Authority.
  - (ii) (PRESIDENT) Any reference to the President of that person, body or Authority, in the absence of a President, will be read as a reference to the senior officer for the time being of the person, body or Authority or any other person fulfilling the duties of President.
- (u) (CONSENT OF LESSOR) Unless stated otherwise in this Lease, where the Lessor has a discretion or its consent or approval is required for anything the Lessor:
  - (i) shall not unreasonably withhold, delay or condition its decision, consent or approval; and
  - (ii) must exercise its discretion acting reasonably.
- (v) (RELEVANT DATE) Where the day or last day for doing anything or on which an entitlement is due to arise is not a Business

Day that day or last day will be the immediately following Business Day.

- (W) (MONTH) Month means calendar month.
- (x) (AREAS) Unless otherwise stated in this Lease or the context otherwise requires, where the area whether gross or net and whether the whole or part of the Land is to be calculated or measured for the purposes of this Lease, those calculations and measurements shall be in accordance with the Method of Measurement.
- (y) (THIRD PARTIES) Any clause which requires that a third party act or refrain from acting will be read (where the context permits) that the party to this Lease appointing or otherwise having control of that third party shall cause or procure that third party to act or refrain from acting.

## 2. EXCLUSION OF STATUTORY PROVISIONS

### 2.1 RELEVANT ACTS

To the extent permitted by Law or as may be contradicted by this Lease, the covenants, powers and provisions (if any) implied in leases by virtue of any Law are expressly negated.

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## 3. TERM

### 3.1 TERM OF LEASE

Subject to this Lease the Lessor leases to the Lessee and the Lessee takes a lease of the Premises for the Term.

### 3.2 OPTION OF RENEWAL

- (a) (GRANT OF FURTHER LEASE) If:
  - (i) (FURTHER TERM) a Further Term is specified in Item 8;
  - (ii) (LESSEE GIVES NOTICE) the Lessee notifies the Lessor not more than 12 months nor less than 9 months before the Terminating Date that it requires a further lease for the Further Term; and
  - (iii) (NO DEFAULT) at the date of that notice and at the Terminating Date there is no subsisting Event of Default by the Lessee of which the Lessee has been notified by the Lessor and:
    - (A) (IF CAPABLE OF REMEDY) which has not been remedied to the reasonable satisfaction of the Lessor within the time specified in a notice given under clause 12.1 or waived in writing by the Lessor; or
    - (B) (IF NOT CAPABLE OF REMEDY) if not capable of remedy, for which the Lessee has not paid the Lessor reasonable compensation,

the Lessor shall grant to the Lessee a lease of the Premises for the Further Term commencing on the day after the Terminating Date.

- (b) (CONDITIONS OF FURTHER LEASE) That lease for a Further Term will be on the same conditions as this Lease except that:
  - (i) (TERM) the term to be specified in Item 5 of the lease for the Further Term will be the relevant period specified in Item 8;
  - (ii) (COMMENCING DATE) the date to be specified in Item 6 of the lease for the Further Term will be the day after the Terminating Date of the immediately preceding Term;
  - (iii) (TERMINATING DATE) the date to be specified in Item 7 of the lease for each Further Term will be the last day of the term specified in Item 8 calculated from the commencing date of the lease for that Further Term determined under Paragraph (ii);

- (iv) (RENT) the amount of Rent to be specified in Item 9 of the lease for the Further Term will be as agreed under clause 3.2(c) or if no agreement is reached under that clause as determined under clauses 4.4, 4.5 and 4.6 as if the commencing date of the lease for the Further Term was a Market Review Date;
- (v) (REVIEW DATES) the Review Dates specified in Item 10 shall be omitted and replaced with the Review Dates specified in Item 13;

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- (vi) (FURTHER OPTIONS) the number of Further Terms specified in Item 8 shall be reduced by one from the number specified in Item 8 of this Lease; and
  - (vii) (LAST FURTHER LEASE) if in any lease for the Further Term the number of Further Terms specified in Item 8 would by the operation of Paragraph (vi) be zero, then Item 13 and this clause 3.2 will not be included in that further lease so that the last further lease will end on the last day of the last occurring Further Term specified in Item 8 of this Lease.
- (c) (EARLY DETERMINATION OF MARKET RENT)
- (i) If the Lessee wishes to know the Rent for the first year of the Further Term prior to exercising its option for a Further Term, the Lessee may give notice to the Lessor seeking a determination of the Market Rent for the Further Term (such notice being given no earlier than 15 months and no later than 12 months prior to the Terminating Date of the Lease).
  - (ii) The Lessor must give the Lessee a notice with the Lessor's assessment of the Market Rent to apply in the first year of the Further Term within 10 Business Days after the Lessee gives a notice under clause 3.2(c)(i).
  - (iii) Upon receipt of the Lessor's assessment of Market Rent under clause 3.2(c)(ii), the parties agree to negotiate in good faith to agree upon the Market Rent to apply in the first year of the Further Term for a period of up to 3 months after the Lessor's notice of assessment of Market Rent is received by the Lessee.
  - (iv) If the parties fail to reach agreement under clause 3.2(c)(iii), clause 3.2(b)(iv) continues to apply.

### 3.3 HOLDING OVER

If the Lessor does not indicate refusal to the Lessee continuing to occupy the Premises beyond the Terminating Date (otherwise than under a lease for a Further Term) then:

- (a) (MONTHLY TENANCY) the Lessee does so as a monthly tenant and shall pay Rent and Outgoings:
  - (i) monthly in advance, the first payment to be made on the day following the Terminating Date; and
  - (ii) equal to one-twelfth of the annual rate of Rent and Outgoings payable immediately prior to the Terminating Date;
- (b) (DETERMINATION) the monthly tenancy is determinable at any time by either the Lessor or the Lessee by one month's notice given to the other, to end on any date, but otherwise the tenancy will continue on the conditions of this Lease as far as they may apply to a monthly tenancy.

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### 4. RENT 4.1 PAYMENT OF RENT

- (a) (RENT) The Lessee shall pay Rent to the Lessor at the relevant rate from time to time:
  - (i) (NO DEMAND) without demand;

- (ii) (NO DEDUCTION) without any deduction, abatement, counterclaim or right of set-off except to the extent that it is expressly provided for in this Lease; and
  - (iii) (INSTALMENTS) by equal monthly instalments (and proportionately for any part of a month) in advance on the first Business Day of each month.
- (b) (AS DIRECTED BY LESSOR) All instalments of Rent shall be paid to the place and in the manner directed by the Lessor from time to time provided at least 10 Business Days notice of any change in the place or manner of payment is given.

4.2 RENT COMMENCEMENT

The first instalment of Rent shall be paid on the Commencing Date.

4.3 DELETED

4.4 MARKET REVIEW OF RENT

Should the Lessor wish to review the Rent as at a Market Review Date, then not earlier than 3 months before and not later than 3 months after the Market Review Date (time being of the essence) the Lessor may notify the Lessee of the Lessor's assessment of the Market Rent for the Premises at the particular Market Review Date. This assessment shall take into account the criteria contained in clause 4.5(g) which apply at that particular Market Review Date and, if applicable, clause 4.6.

4.5 LESSEE'S DISPUTE OF RENT

If the Lessee disagrees with the Lessor's assessment of the Market Rent and the Lessor and the Lessee are unable to agree on the Market Rent to apply from a particular Market Review Date then the following procedure applies.

- (a) (LESSEE TO GIVE NOTICE) The Lessee shall within 30 Business Days of being notified of the Lessor's assessment of the Market Rent (time being of the essence) notify the Lessor that the Lessee requires the Market Rent to be determined in accordance with this clause 4.5.
- (b) (i) (NOMINATION OF VALUERS) Each of the Lessee and the Lessor shall, within 10 Business Days of service of the Lessee's notice under clause 4.5(a), by notice nominate a Valuer to the other and shall formally appoint that Valuer.
- (ii) (NOMINATION OF UMPIRE) Where two Valuers have been nominated they shall, within 5 Business Days of the date of the later nomination and prior to making their determination as to the Market Rent for the Premises,

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agree upon and nominate an Umpire to determine any disagreement which may arise between them.

- (iii) (FAILURE TO AGREE) If the Valuers cannot agree on or fail to nominate an Umpire within 5 Business Days of the date of the later nomination then either Valuer, the Lessor or the Lessee may request the President of the New Zealand Institute of Valuers to nominate the Umpire.
- (c) (VALUER'S DETERMINATION) Subject to clauses 4.5(d), (e) and (f), the nominated Valuers shall within 20 Business Days of the later nomination jointly determine the Market Rent of the Premises having regard to clause 4.5(g) as at that particular Market Review Date.
- (d) (CONSEQUENCES OF LESSEE'S FAILURE) If the Lessee fails to nominate a Valuer in accordance with clause 4.5(b) within the time required:
  - (i) (DETERMINATION BY LESSOR'S VALUER) the determination of the Market Rent shall be made by the Lessor's Valuer within 20 Business Days after being nominated, and his determination will be final and binding on the parties as if he had been appointed by Consent; and

- (ii) (COSTS) the Costs of the Lessor's Valuer's determination shall be apportioned equally between the Lessor and Lessee.
- (e) (CONSEQUENCES OF LESSOR'S FAILURE TO NOMINATE VALUER) If the Lessee nominates a Valuer under clause 4.5(b) within the time required, but the Lessor fails to do so:
- (i) (DETERMINATION BY LESSEE'S VALUER) the determination of the Market Rent shall be made by the Lessee's Valuer within 20 Business Days after being nominated, and his determination will be final and binding on the parties as if he had been appointed by Consent; and
  - (ii) (COSTS) the Costs of the Lessee's Valuer's determination shall be apportioned equally between the Lessor and Lessee.
- (f) (i) (PROCEDURE IN EVENT OF DISAGREEMENT BETWEEN VALUERS) Should the Valuers be unable to agree on the Market Rent for the Premises within the time required then the Market Rent shall be determined by the Umpire under clause 4.5(f) (iii).
- (ii) (PROCEDURE WHERE VALUER FAILS TO ASSESS) If either or both of the Valuers for any reason fail to assess the Market Rent within the time required for them to make a determination, then either Valuer, the Lessor or the Lessee may request the Umpire to determine the Market Rent.
- (iii) (UMPIRE'S DETERMINATION) If it becomes necessary for the Umpire to determine the Market Rent, his determination will be final and binding on the parties and:
- (A) (EVIDENCE OF VALUERS) in making his or her determination the Umpire shall have regard to any evidence submitted by the Valuers as to their assessments of the Market Rent;
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- (B) (WRITTEN DETERMINATION) the Umpire shall give his determination and the reason for it in writing to the Lessor and the Lessee within 20 Business Days of request for it in accordance with this Lease by the Lessor, the Lessee or the Valuers (or any of them); and
  - (C) (UMPIRE'S MAXIMUM) the Umpire's determination shall not be more than the highest Market Rent as assessed by either Valuer under this clause 4.5.
- (g) (MARKET RENT CRITERIA) In determining the Market Rent each Valuer (including the Umpire) shall be taken to be acting as an expert and not as an arbitrator, and shall determine the Market Rent for the Premises as at the particular Market Review Date having regard to the terms of this Lease and shall:
- (i) (EXCLUSIONS) disregard:
    - (A) (GOODWILL) the value of any goodwill of the Lessee's Business, the Lessee's Fitout and Fittings and any other interest in the Premises created by this Lease; and
    - (B) (MONEY FROM OCCUPATIONAL ARRANGEMENT) any sublease or other sub-tenancy agreement or occupational arrangement in respect of any part of the Land and any rental, fees or money payable under any of them; and
  - (ii) (CONSIDERATIONS) have regard to:
    - (A) (LENGTH OF TERM) the length of the whole of the Term, disregarding the fact that part of the Term will have elapsed at the Market



Review Date, and have regard to the provisions of any options for a Further Term;

- (B) (COMPARABLE PREMISES AND LOCATIONS) the rates of rent payable for comparable premises in comparable locations;
  - (C) (ALL COVENANTS OBSERVED) all covenants on the part of the Lessee and the Lessor in this Lease and assume that all covenants on the part of the Lessee have been fully performed and observed on time; and
  - (D) (OUTGOINGS) the Lessee's obligation to pay the Lessee's Proportion of Outgoings;
  - (E) (RENT REVIEW) the frequency of market and other Rent reviews; and
- (iii) (ASSUMPTIONS) assume that:
- (A) the Premises are available for use for the primary purpose for which the Premises may be used in accordance with this Lease;
  - (B) that there has been no fair wear and tear of the Premises since the Commencing Date of the Lease for the Initial Term; and
  - (C) any buildings which have been removed pursuant to clause 7.11(d) have not been removed.
- (h) (COSTS OF VALUERS) The Costs incurred in the determination of the Market Rent under this clause 4.5 shall be borne by the Lessor and by the Lessee in the following manner:
- (i) (VALUER) subject to clauses 4.5(d) (ii) and (e) (ii), for the Costs of each Valuer appointed by a party, by the party who appoints that Valuer; and
  - (ii) (UMPIRE) for the Costs of the Umpire, by the parties equally.
- (i) (DATE OF EFFECT OF DETERMINATION OF MARKET RENT) Subject to clauses 4.5(j) and 4.6, any variation in the Rent resulting from a determination of the Market Rent under clause 4.4 and/or 4.5 (as appropriate) will be effective on and from that particular Market Review Date.
- (j) (PAYMENT OF RENT PENDING REVIEW) Where there is a dispute as to the Market Rent under clause 4.4 after the relevant Market Review Date or the revised Rent is not known at a Market Review Date then the amount of Rent payable by the Lessee from the Market Review Date pending the resolution of that dispute or the determination of the Market Rent shall be the Rent payable immediately before the relevant Market Review Date.
- (k) (ADJUSTMENT) On resolution of the dispute or the Market Rent being determined, if the Rent payable for the period commencing on the Market Review Date is determined to be greater than that paid by the Lessee since the Market Review Date, then the Lessee shall pay the deficiency to the Lessor within 10 Business Days of the date of determination of the Market Rent under clause 4.4 or the determination of the Market Rent by the Valuers or by the Umpire under this clause 4.5 (as the case may be).

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#### 4.6 MAXIMUM INCREASE ON REVIEW

Despite any other provision of this Lease the annual Rent payable from any Review Date following a review of the Rent under clause 4.4 (and, if applicable, clause 4.5) shall in no circumstances be:

- (a) less than the annual Rent payable in the Lease Year immediately prior to that Review Date; or
- (b) in the case of a Market Review (other than at the Commencing Date of a Further Term):

- (i) greater than the Rent payable in the Lease Year immediately prior to the Market Review Date plus 10%; or
- (ii) less than the annual Rent determined under clause 4.7.

4.7 FIXED REVIEW

On each Fixed Review Date, the Rent shall increase to 103% of the Rent payable immediately prior to that Fixed Review Date.

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5. OUTGOINGS

5.1 SERVICES

- (a) (METERS) The Lessor shall ensure that all Services supplied to the Premises are separately metered.
- (b) (COSTS) The Lessee shall pay all Costs for all Services supplied to the Premises (but with respect to water, the obligation under this clause 5.1(b) is limited to water usage and consumption charges).

5.2 CLEANING

The Lessee shall at its own Cost ensure that the Premises are kept clean.

5.3 OUTGOINGS

The Lessee shall pay to the Lessor for each Lease Year an amount equal to the Lessee's Proportion of the Outgoings in accordance with this clause 5. This obligation shall not extend to any fines, penalties or interest on the Outgoings which arise because of the Lessor's delay in payment or the Lessor's delay in providing relevant invoices and accounts to the Lessee for payment.

5.4 LESSOR'S ESTIMATE

The Lessor may:

- (a) (NOTIFICATION OF ESTIMATE) before or during each Lease Year notify the Lessee of the Lessor's reasonable estimate of the Lessee's Proportion of Outgoings for that Lease Year; and
- (b) (ADJUSTMENT OF ESTIMATE) from time to time during that Lease Year by notice to the Lessee adjust the reasonable estimate of the Lessee's Proportion of Outgoings as may be appropriate to take account of changes in any of the Outgoings.

5.5 PAYMENTS ON ACCOUNT

The Lessee shall pay on account the amount of the estimates of the Lessee's Proportion of Outgoings provided for in clause 5.4 by equal monthly instalments in advance on the same days and in the same manner as the Lessee is required to pay Rent.

5.6 YEARLY ADJUSTMENT

- (a) (LESSOR'S NOTICE) As soon as practicable after the end of each Lease Year the Lessor shall give to the Lessee a notice with reasonable details and reasonable evidence of the Outgoings for that Lease Year.
- (b) (ADJUSTMENT OF PAYMENTS ON ACCOUNT) The Lessee shall within 10 Business Days after the date of the notice referred to in clause 5.6(a) pay to the Lessor or the Lessor shall pay to the Lessee (as appropriate) the difference between the amount paid on account of the Lessee's Proportion of Outgoings during that Lease Year and the amount actually payable in respect of it by the Lessee, so that the

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Lessee shall have paid the correct amount of the Lessee's Proportion of Outgoings for that Lease Year.

- (c) (AUDITED STATEMENT) If the Lessee disagrees with the details,

amounts or calculations contained in the notice referred to in clause 5.6(a), the Lessee may require the Lessor to give the Lessee an audited statement of the Outgoings for that Lease Year prepared by a chartered accountant reasonably approved by the Lessee (or failing approval within 5 Business Days of the request for the statement, selected by the President of the Institute of Chartered Accountants at the request of either the Lessor or the Lessee). The Lessor shall have 20 Business Days after a request from the Lessee within which to provide the statement.

- (d) (READJUSTMENT) If the amounts shown in the audited statement are different from the amounts shown in the Lessor's notice given under clause 5.6(b), the amount of Outgoings shall be readjusted so that the Lessee shall have paid the correct amount of the Lessee's Proportion of Outgoings for that Lease Year.

#### 5.7 GST

- (a) (PAYMENT OF GST) The parties agree that where any amount payable under or pursuant to this Lease (the GST-EXCLUSIVE AMOUNT) by a party (the RECIPIENT) is consideration for a Taxable Supply by another party (the SUPPLIER) then the Recipient will pay to the Supplier in addition to and at the same time as the GST-Exclusive Amount, an amount equal to the GST payable by the Supplier in respect of that Taxable Supply and the Supplier will provide a Tax Invoice to the Recipient for that supply.
- (b) (INPUT TAX) Despite any other provision of this Lease, for the purposes of determining the amount of any reimbursement or indemnification payable by one party (including any contribution to Outgoings) in respect of an expense, loss or liability incurred or to be incurred by the other party (the PAYEE), the amount of the expense, loss or liability incurred or to be incurred by the Payee will be reduced by the amount of any Input Tax that the Payee is entitled to claim in respect of that expense, loss or liability.

#### 6. USE OF PREMISES

##### 6.1 PERMITTED USE

The Lessee shall:

- (a) (LESSEE'S BUSINESS) not without the Lessor's Consent use the Premises for any purpose other than those specified in Item 11;
- (b) (NON RESIDENCE) not use the Premises as a residence;
- (c) (NO ANIMALS OR BIRDS) not keep any animals or birds in the Premises; and
- (d) (PESTS AND VERMIN) at its own Cost keep the Premises free and clear of pests, insects and vermin.

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##### 6.2 OVERLOADING

The Lessee shall not during the Term place or store any heavy articles or materials on any of the floors of, the Premises or the Building in a manner significantly differently from that at the Commencing Date of the Lease for the Initial Term, without the Lessor's consent.

##### 6.3 OTHER ACTIVITIES BY LESSEE

The Lessee shall:

- (a) (APPURTENANCES) not use the Appurtenances in the Premises for any purpose other than those for which they were designed, and shall not place in the Appurtenances any substance which they were not designed to receive;
- (b) (AIR-CONDITIONING AND FIRE ALARM EQUIPMENT) where any air-conditioning or fire alarm system of the Lessor is installed in the Premises, not interfere (other than in accordance with clause 7.1) with that system nor obstruct or hinder access to it;
- (c) (NOT ACCUMULATE RUBBISH) keep the Premises reasonably clean;

- (d) (NOT THROW ITEMS FROM WINDOWS) not throw anything out of the windows or doors of the Building or down the lift shafts, passages or skylights or into the light areas of the Building (if they exist), or deposit waste paper or rubbish anywhere except in proper receptacles, or place anything on any sill, ledge or other similar part of the exterior of the Building; and
- (e) (INFECTIOUS DISEASES) if any infectious illness occurs in the Premises:
  - (i) (NOTIFY LESSOR) immediately notify the Lessor and all proper Authorities; and
  - (ii) (FUMIGATE) where that illness is confined to the Premises, at its Cost thoroughly fumigate and disinfect the Premises to the satisfaction of the Lessor and all relevant Authorities.

#### 6.4 FOR SALE/TO LET

The Lessor is entitled:

- (a) (ADVERTISING FOR LEASE) where the Lessee has not given notice under clause 3.2(a)(ii), but only during the last three months of the Term, to place advertisements and signs on the part(s) of the Premises as are reasonably appropriate to indicate that the Premises are available for lease;
- (b) (INSPECTION BY PROSPECTIVE TENANTS) subject to the same limitations as in Paragraph (a), at all reasonable times and on reasonable notice (but where possible outside the usual trading hours of the Lessee) to show prospective tenants through the Premises;
- (c) (ADVERTISING FOR SALE) to place advertisements and signs on the part(s) of the Premises as it reasonably considers appropriate to indicate that the Premises are for sale; and

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- (d) (INSPECTION BY PROSPECTIVE PURCHASERS) at all reasonable times and on reasonable notice (but where possible outside the usual trading hours of the Lessee), to show prospective purchasers through the Premises.

The Lessor may only exercise its rights under this clause 6.4 in the presence of a representative of the Lessee after signing and/or procuring signing by the Lessor's invitees of such confidentiality agreements as the Lessee may reasonable require. In exercise of those rights the Lessor must minimise any inconvenience or disruption to the Lessee or the Lessee's Business.

#### 7. MAINTENANCE, REPAIRS, ALTERATIONS AND ADDITIONS

##### 7.1 REPAIRING OBLIGATIONS

- (a) (GENERAL) The Lessee:
  - (i) must, during the Term and any extension or Further Term or any holding over, keep the Premises in good repair and condition including any structural or capital maintenance, replacement or repair having regard to their state of repair and condition at the Commencing Date of the Lease for the Initial Term, to the extent required by clauses 7.1(d) and 13; and
  - (ii) acknowledges and agrees that subject to clauses 5.4, 5.6, 9.2, 11, 12.4 and 15.2, the Lessor is not responsible for any costs and expenses in relation to the Premises during the Term and any extension or Further Term or any holding over.
- (b) (EXCLUSIONS) Despite clause 7.1, the Lessee has no obligation to carry out any works which relate to:
  - (i) (FAIR WEAR AND TEAR) fair wear, and tear;
  - (ii) (INSURANCE) damage to the Premises caused by fire, storm or tempest or any other risk covered by any insurance taken out by the Lessor in respect of the Premises (other than where any insurance money is

irrecoverable through the act, omission, neglect, default or misconduct of the Lessee or the Lessee's Employees);

- (iii) (LESSOR'S ACT OR OMISSION) patent or latent damage to the Premises caused or contributed to by any wilful or negligent act or omission of the Lessor or its Employees.
- (c) (STRUCTURAL REPAIR) Subject to clause 15.2, nothing in this Lease requires the Lessor to carry out any structural or capital maintenance, replacement or repair except where rendered necessary by any wilful or negligent act or omission of the Lessor or the Lessor's Employees, which maintenance, replacement or repair the Lessor must attend to promptly after notice from the Lessee.
- (d) (COMPLIANCE WITH LAWS AND REQUIREMENTS)
- The Lessee shall during the Term, subject to clauses 7.1(b)(i), (ii) and (iii), 7.1(e), 7.11 and 15.2, comply with any Law or Requirement:

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- (i) affecting the Premises (including any underground storage tanks and any Environmental contamination associated with them);
  - (ii) affecting the Lessee's use of the Premises and the Lessee's Fitout and Fittings; and
  - (iii) in relation to asbestos contamination in sewerage and stormwater drains, gutters and soakaways both on the Premises and running from the Premises,
- except that the Lessor must, at its Cost, promptly comply with these Laws or Requirements:
- (iv) if the Lessor or the Lessor's Employees have taken action or refrained from taking action that directly or indirectly has a material effect in causing the Law or Requirement to apply, be issued or enforced; or
  - (v) if the Lessor or the Lessor's Employees have taken action or refrained from taking action that directly or indirectly has a material effect in causing the Law or Requirement to apply, be issued or enforced by doing works on the Land or any adjoining land; or
  - (vi) if the Lessor or the Lessor's Employees have taken action or refrained from taking action that directly or indirectly has a material effect in causing the Law or Requirement to apply, be issued or enforced because of any subdivision, re-configuration of other dealing with the Land.
- (e) (OPTIONS TO TERMINATE OR SURRENDER)
- (i) If there is a change in Law or a Requirement requiring the demolition or substantial upgrade of Buildings on the Premises, then the Lessee may at its option:
    - (A) terminate this Lease by giving notice to the Lessor together with the Termination Payment; or
    - (B) partially surrender this Lease by giving to the Lessor a surrender of lease in a registrable form with respect to the relevant part of the Premises (and any ancillary areas) affected by the change in Law or Requirement together with the Termination Payment. Unless access can be provided to the surrendered area in accordance with clause 7.1(e)(iv)(B), in determining the area to be partially surrendered the Lessee must ensure that the surrendered area is not landlocked.
  - (ii) At any time during the Term the Lessee may at its

option and at its Cost:

- (A) partially surrender this Lease by giving to the Lessor a surrender of lease in registrable form with respect to the relevant part of the Premises together with the Termination Payment; and
- (B) in determining the area to be partially surrendered the Lessee must:

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- (1) ensure that there is 6 metres clearance from the perimeter of the surrendered area to the nearest building; and
  - (2) unless access can be provided to the surrendered area in accordance with clause 7.1(e) (iv) (B) ensure that the surrendered area is not landlocked.
- (iii) Neither party will have any further obligation to the other under this Lease following the date of service on the Lessor of the termination notice or partial surrender of lease and the relevant Termination Payment under clause 7.1(e) (i) or 7.1(e) (ii) (but limited with respect to the area of the Premises surrendered in the case of clauses 7.1(e) (i) (B) and 7.1(e) (ii)), except for any pre-existing breach.
- (iii) If clause 7.1(e) (i) (B) or 7.1(e) (ii) applies:
- (A) the Rent and Outgoings under this Lease shall reduce proportionately by reference to the area of the Premises surrendered (with any dispute to be determined under clause 14) with effect from the date of service on the Lessor of the notice of termination or partial surrender of lease and the relevant Termination Payment (as the case may be);
  - (B) the Lessee must permit the Lessor and persons authorised by it to have a reasonable means of access through the Premises to the surrendered area, so long as that means of access and the use of it do not have a material adverse impact on the Lessee's use or operation of the Premises; and
  - (C) the definition of Outgoings will be amended to include reasonable security costs actually incurred by the Lessor arising from multiple occupancies of the Land.

## 7.2 LESSOR'S RIGHT OF INSPECTION

The Lessor may in the presence of a responsible officer of the Lessee at all reasonable times on giving to the Lessee reasonable notice enter the Premises and view the state of repair and condition.

## 7.3 ENFORCEMENT OF REPAIRING OBLIGATIONS

The Lessor may:

- (a) (SERVE NOTICE) notify the Lessee of any failure by the Lessee to carry out within the time allowed by this Lease any repair, replacement or cleaning of the Premises which the Lessee is obliged to do under this Lease; and/or
- (b) (CARRY OUT REPAIR) require the Lessee to carry out that repair, replacement or cleaning within a reasonable time. If the Lessee fails to do so within a reasonable time having regard to the nature of the defect complained of and the length of time reasonably required to remedy that defect, the Lessor may elect to carry out that repair, replacement or cleaning at the Lessee's Cost (but wherever possible

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outside the usual operating hours of the Lessee). The Lessee shall on demand reimburse the Lessor for those Costs. The Lessor in exercise of its rights under this clause 7.3(b) shall:

- (i) sign and/or procure signing by the Lessor's invitees of such confidentiality agreements as the Lessee may reasonably require;
- (ii) endeavour not to cause any undue inconvenience to the Lessee and the conduct of the Lessee's Business; and
- (iii) make good any damage caused to the Premises without delay.

7.4 LESSOR MAY ENTER TO REPAIR, DECONTAMINATE

If:

- (a) (LESSOR WISHES TO REPAIR) the Lessor wishes to carry out any repairs to the Premises considered necessary or desirable by the Lessor or in relation to anything which the Lessor is obliged to do under this Lease; or
- (b) (REQUIREMENTS OF AUTHORITY) any Authority requires any repair or work to be undertaken on the Premises (including any decontamination, remediation or other cleanup) which the Lessor must or in its absolute discretion elects to do and for which the Lessee is not liable under this Lease,

then the Lessor, its architects, workmen and others authorised by the Lessor may at all reasonable times on giving to the Lessee reasonable notice enter and carry out any of those works and repairs. In so doing the Lessor shall:

- (c) sign and/or procure signing by the Lessor's Employees of such confidentiality agreements as the Lessee may reasonably require;
- (d) endeavour not to cause undue inconvenience to the Lessee and the conduct of the Lessee's Business, and
- (e) make good any damage caused to the Premises without delay.

The Lessor shall indemnify the Lessee on demand in respect of all Claims incurred or suffered by the Lessee as a consequence of the carrying out of works under this clause 7.4.

7.5 DELETED

7.6 ALTERATIONS TO PREMISES

- (a) (NO CONSENT REQUIRED) The Lessee is entitled to carry out any Proposed Work on or to the Premises without the need to seek or obtain Lessor's Consent except that the Lessee must obtain the Lessor's Consent prior to carrying out any structural Proposed Works which materially increase the footprint of the Buildings on the Premises, such Consent not to be unreasonably withheld or delayed.
- (b) (DEEMED CONSENT) If the Lessor does not respond conclusively to a request for Consent within 20 Business Days of the written request being served on it, the Lessor is deemed to have Consented to the relevant request.

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- (c) (APPROVALS) The Lessee shall obtain all necessary approvals or consents before carrying out the Proposed Work.
- (d) (LESSOR TO ASSIST) The Lessor shall at the Lessee's Cost without delay do all acts and sign all documents to enable the Lessee to obtain the approvals and consents referred to in clause 7.6(c) and otherwise to enable the Lessee to carry out any Proposed Work in accordance with this Lease.
- (e) (SPECIFIC PROPOSED WORKS) Despite clause 7.6(a), the Lessor gives its consent to Proposed Work which relates to installation and removal of the Lessee's plant and equipment, including bolting or affixing to the floors of the Premises, subject to clauses 6.2 and 13.

- (f) (CONDITION) The Lessor, acting reasonably, may require the Lessee to carry out remediation works as a condition of the Lessor's Consent to Proposed Work where Consent is required under clause 7.6(a) if the Proposed Works will, if implemented:
- (i) trigger a Requirement to carry out those remediation works; or
  - (ii) render the Premises unsuitable for the Permitted Use unless the remediation works are carried out with the Proposed Work.

7.7 NOTICE TO LESSOR OF DAMAGE, ACCIDENT ETC.

The Lessee shall notify the Lessor of any:

- (a) (ACCIDENT) accident to or in the Premises; and/or
- (b) (NOTICE) circumstances reasonably likely to cause any damage or injury to occur within the Premises,

of which the Lessee has actual notice.

7.8 MAINTENANCE CONTRACTS

The Lessee shall at its own Cost enter into maintenance contracts for the fire fighting services and equipment servicing the Premises with contractors approved by the Lessee and in a form and on terms (whether as to cost, standard of service or otherwise) reasonably acceptable to the Lessee.

7.9 DELETED

7.10 LESSEE'S FITOUT AND FITTINGS

The Lessee's Fitout and Fittings shall at all times be and remain the property of the Lessee (or the lessor of the Lessee's Fitout and Fittings, if applicable) despite any particular method of annexation to the Premises.

7.11 TIMING FOR WORKS AND COMPLIANCE WITH REQUIREMENTS

Despite any other provision of this Lease:

- (a) the Lessee may carry out any maintenance, repair or replacement or other works or comply with any Law or Requirement which it is required under this Lease to do

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or comply with at such time as the Lessee (acting reasonably) determines except that the Lessee must still comply with:

- (i) the timetable set out in the relevant Requirement to which any works relate; and
  - (ii) clause 13; and
- (b) subject to clause 7.11(a) (i), the Lessor agrees that the mere issue of a Requirement or the existence of a non-compliance with Law does not of itself:
- (i) trigger the Lessee's obligation to comply with it; or
  - (ii) constitute a timetable to do any works; or
  - (iii) constitute a breach of this Lease by the Lessee; and
- (c) the Lessor cannot (and shall not) take any steps or exercise any rights under this Lease or otherwise to cause the Lessee to remedy the non-compliance with Law or comply with the Requirement (or do so itself under clause 7.3 or otherwise), unless:
- (i) clauses 7.11(a) (i) or (ii) apply; or
  - (ii) the relevant Authority is taking active steps to require the Lessor to remedy the non-compliance or comply with the Requirement and the Lessor will be exposed to liability or Cost if it does not do so; and



- (d) the Lessee may, in its absolute discretion, elect to demolish any asbestos clad or roofed Buildings rather than comply with the relevant Law or Requirement but the Rent will not be reduced if the Lessee does so.

#### 7.12 SET OFF PROCEDURE

- (a) (NOTICE) If the Lessee wishes to set off any amount against the Rent, the Outgoings or any other amounts under this Lease in exercise of its rights under this Lease to do so, then the Lessee must give notice to the Lessor of the amount involved, reasonable detail of what the set off relates to and the provision of this Lease with respect to which the right is proposed to be exercised.
- (b) (NO RESPONSE) If the Lessor does not respond to this notice within 20 Business Days of service of it (time being of the essence), the Lessee is entitled to exercise the set off rights referred to in the notice in accordance with this Lease.
- (c) (DISPUTE) If the Lessor by notice to the Lessee disputes the Lessee's notice given under clause 7.12(a) within 20 Business Days of service of it (time being of the essence) and that dispute is not resolved within 5 Business Days of service of the Lessor's notice, either party may refer the matter to an appropriate independent person for determination under clause 14. The Lessee may not exercise any set off rights until any dispute under this clause has been determined or resolved.

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#### 8. ASSIGNMENT AND SUB-LETTING

##### 8.1 NO DISPOSAL OF LESSEE'S INTEREST WITHOUT CONSENT

- (a) The Lessee may assign, transfer, sublet, licence or otherwise deal with or part with possession of the Premises or this Lease or any part of or any interest in them with the Consent of the Lessor which shall not be unreasonably withheld.
- (b) The Lessor Consents to all sub-leases, sub-licences or other sub-rights to occupy the Premises which are in existence as at the Commencing Date of the Lease for the Initial Term, whether or not those arrangements have been documented or disclosed.

##### 8.2 LESSOR'S OBLIGATION TO CONSENT

The Lessor must give the Consent referred to in clauses 8.1 and 8.5 if the Lessee proves to the reasonable satisfaction of the Lessor that the incoming tenant is a respectable, responsible and solvent Person and, in the case of an assignment or transfer, who is reasonably capable of performing the Lessee's obligations under this Lease.

##### 8.3 JAMES HARDIE INDUSTRIES N.V. PROVISIONS

Despite clause 8.1, whilst the Lessee is James Hardie New Zealand Limited or James Hardie Industries N.V. or a Related Body Corporate of either of those companies:

- (a) (SUBLETTING) the Lessee may sublet, licence or otherwise part with possession of the Premises without obtaining the Lessor's Consent if the proposed sublessee or licensee is James Hardie New Zealand Limited or James Hardie Industries N.V. or a Related Body Corporate of either of those companies. The Lessee shall notify the Lessor upon granting a sublease or licence of this nature;
- (b) (ASSIGNMENT) the Lessee may assign this Lease to a Related Body Corporate of James Hardie New Zealand Limited or James Hardie Industries N.V. or to either of those companies without obtaining the Lessor's Consent but notice of the assignment must be given to the Lessor;
- (c) (SALE OF BUSINESS) if there is a sale to a purchaser of the business carried on by James Hardie New Zealand Limited or James Hardie Industries N.V. (as the case may be) then the Lessor gives its consent to an assignment of this Lease to the purchaser;
- (d) (SHORT TERM SUBLEASE OR LICENCE) the Lessee may sublet or licence up to 1,000m<sup>2</sup> of the Premises without the Lessor's

Consent where the term of that sublease or licence (excluding any renewal or holding over period) does not exceed 12 months; and

- (e) (NOVATION) the Lessee may novate this Lease to a Related Body Corporate of James Hardie New Zealand Limited or James Hardies Industries NV as long as at the same time the novation occurs the Lessee procures that a guarantee of the obligations of the new tenant under this Lease is given by James Hardie Industries N.V. in a form satisfactory to the Lessor (acting reasonably).

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#### 8.4 DEED

If the Lessor requests it, the Lessee shall procure that any assignee or transferee of this Lease executes a direct covenant with the Lessor to observe the terms of this Lease in such forms as the Lessor may reasonably require including payment of reasonable legal costs.

#### 8.5 CHANGE IN CONTROL

- (a) If:
  - (i) the Lessee is a company which is neither listed nor directly or indirectly wholly-owned by a company which is listed on any recognised Stock Exchange; and
  - (ii) there is a proposed change in the shareholding of the Lessee or its holding company so that a different person or group of people will control the composition of the board of directors or more than 50% of the shares giving a right to vote at general meetings of the Lessee,then that proposed change in control is treated as a proposed assignment of this Lease and the Lessor's Consent must be obtained prior to the change in control taking effect.
- (b) The Lessor agrees that clause 8.5(a) will not apply to a change in shareholding or control where James Hardie Australia Pty Limited or a Related Body Corporate of James Hardie Australia Pty Ltd or James Hardie Industries N.V. remains or becomes:
  - (i) the owner or ultimate holding company of the Lessee; or
  - (ii) in control of the composition of the board of directors of the Lessee; or
  - (iii) in control of more than 50% of the shares giving a right to vote at general meetings of the Lessee.

#### 9. INSURANCE AND INDEMNITIES

##### 9.1 INSURANCES TO BE TAKEN OUT BY LESSEE

The Lessee shall:

- (a) (PUBLIC RISK) keep current during the Term (including any extension or Further Term or holding over) a public risk insurance policy with respect to the Premises, such policy to be for an amount of not less than the amount specified in Item 12;
- (b) (APPROVED INSURERS) ensure that all insurance policies maintained for the purposes of clause 9.1(a):
  - (i) (INSURANCE COMPANY) are taken out with an independent and reputable insurer; and
  - (ii) (AMOUNT) are for amounts and contain conditions reasonably acceptable to or reasonably required by the Lessor and/or the Lessor's insurer(s); and

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- (c) (EVIDENCE OF INSURANCE) in respect of any policy of insurance to be effected by the Lessee under this clause 9.1, whenever

reasonably required by the Lessor (but not more than once annually), give to the Lessor a copy of the certificate of currency; and

- (d) (INTEREST OF LESSOR) in respect of the policy of insurance to be effected by the Lessee under clause 9.1(a), ensure that the interest of the Lessor is noted,

except that the Lessee will be deemed to have complied with clauses 9.1(a) to (d) if James Hardie New Zealand Limited or James Hardie Industries N.V. or a Related Body Corporate of either of those companies is the Lessee and that Lessee is insured under the global insurance arrangements of either of those companies.

## 9.2 INSURANCES TO BE TAKEN OUT BY LESSOR

The Lessor shall:

- (a) (PROPERTY INSURANCE) keep current during the Term including any extension or Further Term or holding over the property insurance for the Premises including loss of rent cover (capped at 18 months) referred to in paragraph (e) of the definition of Outgoings;
- (b) (APPROVED INSURERS) ensure that all insurance policies maintained for the purposes of clause 9.2(a):
- (i) (INSURANCE COMPANY) are taken out with an independent and reputable insurer; and
- (ii) (AMOUNT) are for amounts and contain conditions reasonably acceptable to or reasonably required by the Lessee and/or the Lessee's insurer(s); and
- (c) (EVIDENCE OF INSURANCE) in respect of any policy of insurance to be effected by the Lessor under this clause 9.2, whenever reasonably required by the Lessee (but not more than once annually), give to the Lessee a copy of the certificate of currency and reasonable details of the policy coverage; and
- (d) (INTEREST OF LESSEE) in respect of the policy of insurance to be effected by the Lessor under clause 9.2(a), ensure that any interest of the Lessee is noted.

## 9.3 DEDUCTIBLES

The Lessor will not object to any reasonable deductibles contained in any insurances effected or required to be effected by the Lessee pursuant to clause 9.1 provided that the Lessee will indemnify the Lessor to the extent of the deductible applicable under a Claim to which those insurances apply.

## 9.4 INFLAMMABLE SUBSTANCES

The Lessee shall not:

- (a) (REASONABLE QUANTITIES) other than as is necessary for the Lessee's Business, store chemicals, inflammable liquids, acetylene gas or alcohol, volatile or explosive oils, compounds or substances on or in the Premises; or

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- (b) (USE) use any of those substances or fluids in the Premises for any purpose other than the Lessee's Business.

This clause 9.4 does not apply to anything in underground storage tanks on the Premises which exist at the Commencing Date of the Lease for the Initial Term.

## 9.5 EFFECT ON LESSOR'S INSURANCES

The Lessee shall not without the Lessor's Consent, do anything to or on the Premises which will or may:

- (a) (INCREASE THE RATE OF INSURANCE) increase the rate of any insurance on the Premises or on any property in them, of which the Lessee has been notified by the Lessor, without paying to the Lessor an amount equal to the amount of that increase; or
- (b) (AVOID INSURANCE) vitiate or render void or voidable any insurance, of which the Lessee has been notified by the Lessor, in respect of the Premises or any property in them.

9.6 INSURANCE PROPOSAL BY THE LESSEE

- (a) If the Lessee is of the opinion that the Lessee will be able to procure the same insurance required to be obtained by the Lessor under clause 9.2(a) at a more competitive premium or on better terms, the Lessee may by notice in writing to the Lessor propose that it take out a policy for the insurance referred to in clause 9.2(a), noting the Lessor's interests as landlord (INSURANCE PROPOSAL). The Lessee can only submit an Insurance Proposal once per year.
- (b) The insurer proposed must be either rated A or higher by S&P or Moodys or a global insurer with respect only to the industrial special risks component of the Insurance Proposal.
- (c) The Lessor must not unreasonably withhold, condition or delay its approval of an Insurance Proposal.
- (d) If the Lessor approves the Insurance Proposal, the Lessee must promptly take out the insurance policy proposed under the Insurance Proposal (or, if the Lessor has failed to effect insurance under clause 9.2(a), the Lessee may take out the insurance policy anticipated by that clause) noting the Lessor's interests as landlord and, if required by the Lessor in writing, must note the interest of any financier to the Lessor and any mortgagee of the Land.
- (e) If the Lessee effects insurance under clause 9.6(d) and the Lessor is not named as an insured party, the Lessee shall reimburse the Lessor for any premiums for "difference in cover" insurance the Lessor is required to effect as a result of the requirements of its financiers, capped at 3% of the premiums payable by the Lessee under its Insurance Proposal.

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9.7 INDEMNITIES

Even if:

- (a) (AUTHORISATION) a Claim results from something the Lessee may be authorised or obliged to do under this Lease; and/or
- (b) (WAIVER) a waiver or other indulgence has been given to the Lessee in respect of an obligation of the Lessee under this clause 9.7,

the Lessee, except to the extent caused or contributed to by the Lessor or its Employees but only to the extent caused or contributed to by the Lessee or its Employees, shall indemnify the Lessor in respect of all Claims for which the Lessor will or may be or become liable, whether during or after the Term, in respect of or arising directly or indirectly from:

- (c) (INJURY TO PROPERTY OR PERSON) any loss, damage or injury to property or person, in on or near the Premises caused or contributed to by:
  - (i) (NEGLIGENCE) any wilful or negligent act or omission;
  - (ii) (DEFAULT) any default under this Lease; and/or
  - (iii) (USE) the use of the Premises,

by or on the part of the Lessee or the Lessee's Employees;

- (d) (ABUSE OF SERVICES) the negligent or careless use or neglect of the Services and facilities of the Premises or the Appurtenances by the Lessee or the Lessee's Employees or any other person claiming through or under the Lessee;
- (e) (WATER LEAKAGE) any overflow or leakage (including rain water or from any Service, Appurtenance or the Lessor's Fixtures) whether originating inside or outside the Premises; and
- (f) (PLATE GLASS) any loss, damage or injury relating to plate and other glass caused or contributed to by any act or omission on the part of the Lessee or the Lessee's Employees,

but excluding any consequential loss.

10. DAMAGE, DESTRUCTION AND RESUMPTION

If at any time the Premises or any part of them are damaged or destroyed so that the Premises or any part of them are wholly or substantially unfit for the occupation and use of the Lessee or (having regard to the nature and location of the Premises and the normal means of access) are wholly or substantially inaccessible then, save where such damage or destruction arises out of the wilful or negligent act or omission of the Lessee or its Employees:

- (a) (i) (RENT AND OUTGOINGS ABATEMENT) the Rent, the Outgoings and any other money payable periodically under this Lease, or a proportionate part of that Rent, the Lessee's Proportion of Outgoings or other moneys according to

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the nature and extent of the damage or destruction sustained, will abate; and

- (i) (REMEDIES SUSPENDED) all remedies for recovery of Rent, the Lessee's Proportion of Outgoings and other moneys (or that proportionate part of them, as the case may be) falling due after that damage or destruction will be suspended,

until the Premises have been restored or made fit for the occupation and use or made accessible to a standard equivalent to that at the Commencing Date of the Lease for the Initial Term and all Services, air conditioning and air ventilation systems and fire fighting services and equipment for the Premises have been repaired so that they operate at a standard not less than as at the Commencing Date of the Lease for the Initial Term;

- (b) (TERMINATION BY LESSEE) if the Premises are substantially destroyed, damaged or rendered inaccessible due to the wilful or negligent act or omission of the Lessor or by default by the Lessor under the Lease, the Lessee shall have the right to terminate the Lease by notice to the Lessor and to claim damages;

- (c) (REINSTATEMENT BY LESSOR) unless:

- (i) (NO INSURANCE MONEYS) the Lessor's insurance policies have been invalidated or payment of insurance moneys under the policies refused because of some wilful act or omission of the Lessee or the Lessee's Employees; or

- (ii) (LESSEE INSURES) if clause 9.6(d) applies, the Lessee does not make the proceeds of the insurance referred to in clause 9.2(a) available to the Lessor for reinstatement of the Premises; or

- (iii) (AGREEMENT) the parties agree otherwise,

the Lessor shall proceed with all reasonable expedition and diligence to reinstate the Premises and/or make the Premises fit for the occupation and use of and/or accessible to the Lessee to the standard required by clause 10.1(a);

- (d) (DETERMINATION BY LESSEE) where it is required under clause 10.1(c), unless the Lessor obtains all necessary development consents to authorise the necessary works to be done and provides reasonable written evidence of that to the Lessee within 6 months of the destruction or damage first occurring, then the Lessee may terminate this Lease by giving one month's notice to the Lessor. At the end of that notice period this Lease will be at an end;

- (e) (i) (DELAY IN REPAIR) if the Lessor is obliged under clause 10.1(c) to do so, but does not:

- (A) substantially commence the necessary works to make good the destruction or damage within 8 weeks, subject to any reasonable extension necessary to obtain consents from any relevant Authority; and/or

(B) complete the necessary works to make good the destruction or damage within 9 months, subject to any reasonable extension necessary to obtain consents from any relevant Authority,

of it first occurring, then the Lessee may (by notice to the Lessor) proceed to cause the necessary works to be carried out and the Lessor shall allow the Lessee, its Employees, contractors and workmen access to the Land for that purpose; and

(ii) (COSTS) all Costs of any kind incurred by the Lessee under clause 10.1(e) (i) shall at the Lessee's option (but subject to clause 7.12):

(A) (DEMAND) be payable by the Lessor to the Lessee on demand on a full indemnity basis;

(B) (PROCEEDS) be paid from available proceeds of the insurance effected under clause 9.2(a), which the Lessor must promptly make available to the Lessee; or

(C) (COMBINATION) be accounted for by a combination of the above in the Lessee's discretion,

until all Costs incurred by the Lessee have been recovered; and

(f) (NO OBLIGATION TO RE-INSTATE) if the circumstances in clauses 10.1(c) (i) or (ii) exist, then the Lessor shall be under no obligation to reinstate the Premises or the means of access to them. In that case, either party may terminate this Lease by giving not less than one month's notice to the other.

#### 10.2 RESUMPTION OF PREMISES

If at any time the whole or any part of the Premises is resumed so that the residue of them is wholly or partially unfit for the occupation and use of the Lessee or (having regard to the nature and location of the Premises and the normal means of access) is wholly or partially inaccessible, then:

(a) (RENT ABATEMENT) a proportionate part of the Rent, the Lessee's Proportion of Outgoings, and any other moneys payable periodically under this Lease, according to the nature and extent of the resumption and having regard to the resultant impact on the Lessee's trade and takings, will abate; and

(b) (REMEDIES SUSPENDED) all remedies for recovery of that proportionate, part of the Rent, the Lessee's Proportion of Outgoings, and other moneys falling due after that resumption will be suspended.

#### 10.3 LIABILITY

Except under clause 10.1(b), neither the Lessor or the Lessee is liable because of the determination of this Lease under this clause 10. That determination will be without prejudice to the rights of either party in respect of any preceding breach or non-observance of this Lease.

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#### 10.4 DISPUTE

Any dispute arising under clauses 10.1 or 10.2 shall be determined by an appropriate independent person under clause 14.

#### 11. LESSOR'S COVENANTS AND WARRANTIES

##### 11.1 QUIET ENJOYMENT

If the Lessee pays the Rent and other money payable under this Lease and observes and performs its obligations under this Lease, the Lessee may occupy and enjoy the Premises during the Term and any extension or Further Term or holding over without any interruption by the Lessor or by any person rightfully claiming through, under or in trust for the Lessor, or the Lessor's Employees.

11.2 OUTGOINGS

Without limiting the Lessor's rights of recovery under this Lease, and except where directly payable by the Lessee under this Lease, the Lessor shall pay all Outgoings promptly and, where applicable, by any due date for payment.

11.3 CONSENT OF MORTGAGEE

The Lessor warrants that it has obtained all Consents (including Consents from any mortgagee of the Land) necessary for it to enter into this Lease.

11.4 DELETED

11.5 ACCESS

The Lessor must provide the Lessee with access to the Premises 24 hours a day, 7 days a week.

11.6 MANAGEMENT OF LAND

The Lessor covenants with the Lessee that it will not subdivide or reconfigure the Land or create any easement, covenant or other right unless it obtains the Consent of the Lessee (which Consent shall not be unreasonably withheld). The Lessee may only withhold its Consent under this clause 11.6 if the actions proposed by the Lessor will have a material adverse impact on the Lessee's rights under this Lease or the Lessee's Business or the Lessee's use of the Premises or the Land. Any dispute under this Clause 11.6 may be referred by either party for determination under Clause 14.

11.7 CONSTRUCTION

During any construction on the Land, the Lessor must:

- (a) (ACCESS) do all things necessary to minimise disturbance to the Lessee in its access to, use and occupation of the Premises;
- (b) (BUSINESS) do all things necessary to minimise disruption to the Lessee's Business conducted in the Premises.

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11.8 COMPETITORS

The Lessor covenants with the Lessee that it will not grant any lease or right of occupancy of or right to erect, install, affix, paint or otherwise display signage or advertising on any part of the Land or sell the Land or any part of it to any Competitor without the Consent of the Lessee.

11.9 BREACH OF WARRANTY OR COVENANT

If the Lessor breaches clauses 11.5, 11.6, 11.7 or 11.8 then, without prejudice to any other rights or remedies the Lessee may have, the Lessee at any time and in its absolute discretion shall be entitled to give the Lessor notice of an intention to terminate this Lease unless the Lessor satisfies the conditions contained in the notice within 20 Business Days or such longer period as may be reasonably required having regard to the nature of the breach and the time reasonably required to remedy the breach (the REMEDY PERIOD). If the conditions are not satisfied within the Remedy Period, the Lessee may in its absolute discretion terminate this Lease at any time after that.

12. DEFAULT AND DETERMINATION 12.1 DEFAULT

Each of the following is an Event of Default (whether or not it is in the control of the Lessee):

- (a) (RENT IN ARREARS) the Rent or any part of it or any other money is in arrears and unpaid for 15 Business Days after it is due and has been demanded;
- (b) (FAILURE TO PERFORM OTHER COVENANTS) subject to clause 7.11, the Lessee fails to perform or observe any of its other obligations under this Lease within 15 Business Days or such longer period that may be reasonable in the circumstances after service of a notice requiring performance of the covenants; and

(c) (LIQUIDATION) the Liquidation of the Lessee.

## 12.2 FORFEITURE OF LEASE

If an Event of Default occurs the Lessor may, without prejudice to any other Claim which the Lessor has or may have or could otherwise have against the Lessee or any other person in respect of that default, at any time:

- (a) (DETERMINATION BY RE-ENTRY) subject to any prior demand or notice as is required by Law and wherever possible, outside the normal trading hours of the Lessee, re-enter into and take possession of the Premises or any part of them (by force if necessary) and eject the Lessee and all other persons from them, in which event this Lease will be at an end; and/or
- (b) (DETERMINATION BY NOTICE) by notice to the Lessee determine this Lease, and from the date of giving that notice this Lease will be at an end.

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## 12.3 WAIVER

- (a) (WAIVER BY LESSOR) No consent or waiver express or implied by the Lessor to or of any breach of any covenant, condition, or duty of the Lessee shall be construed as a consent or waiver to or of any breach of the same or any other covenant, condition or duty.
- (b) (WAIVER BY LESSEE) No consent or waiver express or implied by the Lessee to or of any breach of any covenant, condition, or duty of the Lessor shall be construed as a consent or waiver to or of any breach of the same or any other covenant, condition or duty.

## 12.4 LESSOR TO MITIGATE DAMAGES

If the Lessee vacates the Premises, whether with or without the Lessor's Consent, or the Lessor terminates or forfeits this Lease, the Lessor shall take all reasonable steps to mitigate its loss and shall as soon as possible endeavour to re-let the Premises at a reasonable rent and on reasonable terms.

## 12.5 RECOVERY OF DAMAGES

- (a) (FUNDAMENTAL TERMS) The obligations contained in clauses 4.1, 4.2, 4.3, 4.4, 4.5, 5.3, 5.5, 6.1(a), 7.1(a) and (d), 7.6(a), 8.1, 9.1, 10.1 and 10.3 are agreed by the Lessor and the Lessee to be fundamental to this Lease.
- (b) (DAMAGES) If the Lessor determines this Lease pursuant to this clause 12 as a consequence of or in reliance upon a breach by the Lessee of one or more of the obligations contained in the provisions of this Lease referred to in clause 12.5(a) (whether alone or together with other obligations contained in this Lease) the Lessor shall, subject to clause 12.4, be entitled to damages for loss of the benefits which performance of all of the obligations and provisions of this Lease would, but for the determination, have conferred upon the Lessor, subject to the Lessor's duty to mitigate its loss.

## 12.6 INTEREST ON OVERDUE MONEY

- (a) (INTEREST) The Lessee shall pay to the Lessor interest at the Interest Rate on any Rent or other money due under this Lease (including money or Costs which are expressed to be payable or reimbursable to the Lessor on demand) but unpaid for 5 Business Days.
- (b) (CONDITIONS) That interest shall:
  - (i) (ACCRUAL) accrue on a daily basis and be calculated on daily rests;
  - (ii) (PAYMENT) be payable on demand or, if no earlier demand is made, on the first Business Day of each month where an amount arose in the preceding month or months;
  - (iii) (CALCULATION) be calculated from the due date for payment of the Rent or other money (as appropriate) or, in the case of an amount payable by way of



reimbursement or indemnity, the date of outlay or loss, if earlier, until the date of actual payment; and

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- (iv) (RECOVERY) be recoverable in the same manner as Rent in arrears.

13. TERMINATION

13.1 YIELD UP

In relation to the Premises, the Lessee shall at the Terminating Date:

- (a) (REMOVE LESSEE'S FITOUT AND FITTINGS) if the Lessor so requests or if the Lessee wishes to, remove from the Premises all the Lessee's Fitout and Fittings and any other property of the Lessee; and
- (b) (ANY CONDITION) the Lessee can deliver them up to the Lessor in any condition, subject to performance of the Lessee's obligations in clause 7.1(d) which are due to be performed prior to the Terminating Date and under clause 13.1(a).

13.2 FAILURE BY LESSEE TO REMOVE LESSEE'S FITOUT AND FITTINGS

If the Lessee fails to remove the Lessee's Fitout and Fittings and other property of the Lessee when required to do so under clause 13.1 or following determination under clause 12.2, within 30 Business Days of notice to do so, the Lessor may cause the Lessee's Fitout and Fittings and other property of the Lessee to be removed and stored in such manner as the Lessor in its discretion thinks fit at the risk and Cost of the Lessee. The Lessee must also pay Rent and Lessee's Proportion of Outgoings for any reasonable period in which the Lessor undertakes the Lessee's obligations under this clause 13.2.

13.3 FAILURE TO REMOVE

If the Lessee fails to remove the Lessee's Fitout and Fittings and other property of the Lessee by the Terminating Date under clause 13.1 where the Lessor has not requested in writing that it do so, it shall then become the property of the Lessor.

14. DISPUTES

14.1 APPOINTMENT OF EXPERT

Any dispute arising under this Lease may at the request of either party be referred for determination by an appropriate independent person who is:

- (a) (AGREED BY PARTIES) agreed between the Lessor and the Lessee; or
- (b) (FAILING AGREEMENT) if they cannot agree, a member of a professional body nominated at the request of either the Lessor or the Lessee by the President of the Property Council of New Zealand, Inc.

14.2 QUALIFICATIONS OF EXPERT

The appointed person:

- (a) (EXPERIENCE) must have substantial experience in relation to disputes in the nature of the matter in dispute and where appropriate, in relation to premises of a similar

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type within the area in which the Premises are located or other comparable areas; and

- (b) (EXPERT) in making his determination shall act as an expert and not as an arbitrator.

His determination will be final and binding on the parties.

14.3 COST OF DETERMINATION

The Cost of the appointed person's determination shall be borne by

either or both of the parties (as determined by the appointed person) and if by both of the parties in the proportion between them as the person making the determination decides.

15. ENVIRONMENTAL CONTAMINATION

15.1 LESSEE'S RESPONSIBILITY

Despite any other provision of this Lease except clauses 15.4 and 15.5 and the Lessee's obligations with respect to underground storage tanks and any Environmental contamination associated with them under clause 7.1(d), the Lessee is not responsible for:

- (a) inground Environmental contamination of the Land or migrating onto or from the Land which exists at the Commencing Date of the Lease for the Initial Term; or
- (b) for any Environmental contamination in, on, under or migrating onto or from the Land which occurs on and after the Commencing Date of the Lease for the Initial Term which is not caused by the Lessee or its Employees.

15.2 LESSOR'S OBLIGATIONS AND INDEMNITY

The Lessor shall:

- (a) (COMPLY) without delay, but subject to clauses 15.4 and 15.5:
  - (i) remediate any Environmental contamination referred to in clause 15.1 and which:
    - (A) any Authority requires remediated; or
    - (B) the parties agree or the expert under clause 14 determines is required pursuant to clause 15.2(c); and
  - (ii) comply with the Requirements of any Authority and the Law with respect to the Environmental contamination referred to in clause 15.1; and
- (b) (INDEMNIFY) indemnify the Lessee against all Claims arising from the matters set out in clause 15.2(a) including any Costs arising from any agreement negotiated by or with the Consent of the Lessor acting reasonably with any Authority relating to the matters referred to in clause 15.2(a), except to the extent that:
  - (i) other than with respect to Environmental contamination which constitutes a health and safety risk which the Lessee is required to notify an Authority by Law, the Lessee or the Lessee's Employees have taken action with the intention of causing a Claim to be made or a notice or other Requirement

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issued and that action directly or indirectly has a material effect in causing the Claim to be made or the notice or other Requirement to be issued;

- (ii) the Claim relates to Remediation to a standard higher than that required for industrial use (which the parties agree is the standard appropriate for the Permitted Use) whether arising from a rezoning of the Premises or otherwise; and/or
  - (iii) any disposition by the Lessee of a legal or equitable interest which the Lessee has in the Premises is made on terms which include an indemnity in respect of the Environment which is materially more advantageous to the person receiving that interest from the Lessee than the indemnity included in this clause 15.2, including in respect of the qualifications applicable to the indemnity contained in this clause 15.2(b).
- (c) (i) If there is any Environmental contamination referred to in clause 15.1 which:
    - (A) prevents the Lessee operating from the Premises in the manner used at the Effective Date; or

(B) otherwise constitutes a health and safety risk,

then the Lessee may give notice to the Lessor with reasonable details of the Environmental contamination and requesting that the Lessor remediate that contamination.

- (ii) If the Lessor disputes whether the remediation requested by the Lessee is reasonably necessary, it must give notice to the Lessee within 20 Business Days of the date of service of the Lessee's notice under paragraph (i).
- (iii) If the Lessor and the Lessee cannot agree on whether the remediation requested by the Lessee is reasonably necessary within 25 Business Days of the date of service of the Lessee's notice under paragraph (i) above, then either party may refer the matter for dispute resolution under clause 14.

#### 15.3 REMEDIATION BY THE LESSEE IF LESSOR DEFAULTS

If:

- (a) (LESSOR'S FAILURE) the Lessor fails to comply with clause 15.2(a) in accordance with the Requirements of any Authority and the Law (or, if no time is specified, within a reasonable time of notice from the Lessee, having regard to the nature of the remediation or the Law or Requirement and the period of time reasonably required to carry out the remediation or comply with the Law or Requirement); or
- (b) (EMERGENCY) any emergency arises which requires the immediate or urgent remediation of Environmental contamination or compliance with a Requirement or the Law which the Lessor is required to remediate or comply with under this Lease,

then the Lessee may remediate the Environmental contamination or comply with the Law or the Requirement and the Cost of so doing and of all Claims incurred by the Lessee in

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properly complying with that Law or Requirement or arising from the Lessor's failure to do so and any reasonable Costs arising from temporary relocation of all or part of the Lessee's Business shall, at the Lessee's option be (but subject to clause 7.12):

- (c) (ON DEMAND) payable by the Lessor to the Lessee on demand on a full indemnity basis;
- (d) (SET OFF) be set off against the Rent, the Lessee's Proportion of Outgoings and any other moneys payable by the Lessee under this Lease; or
- (e) (COMBINATION) accounted for by a combination of the above in the Lessee's discretion,

until all Costs incurred by the Lessee have been recovered.

#### 15.4 PRE-EXISTING UST'S

The Lessee must by the Terminating Date remove any underground storage tanks existing on the Land at the Commencing Date of the Lease for the Initial Term or installed by the Lessee during the Term and remediate or otherwise deal with any Environmental contamination associated with them to the extent required to enable the Land to continue to be used for industrial purposes following the Terminating Date.

#### 15.5 SPECIFIC OBLIGATIONS

- (a) Subject to clause 7.11, the Lessee must effect and maintain all Environmental management plans relating to the Environmental condition of the Buildings on the Premises which are Required by Law or any Authority during the Term.
- (b) The Lessee agrees to contribute towards the costs of remediation of the asbestos contamination referred to in clause 7.1(d) (iii) in accordance with the terms of any agreement negotiated between the Lessee and the relevant Authority.

15.6 ACKNOWLEDGEMENT

Without limiting any other provision of this clause 15, the Lessee acknowledges that the Premises are at the Commencing Date of the Lease for the Initial Term subject to Environmental contamination and accepts the Premises in that state.

16. MISCELLANEOUS

16.1 NOTICES

All notices, requests, demands, consents, approvals, agreements or other communications to or by a party to this Lease:

- (a) (WRITING) must be in writing;
- (b) (SIGNED) must be signed by the sender, or if a company, by its Authorised Person; and
- (c) (SERVED) will be taken to have been served:

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- (i) (PERSONAL) in the case of delivery in person, when delivered to or left at the address of the recipient shown in this Lease (as the case may be) or at any other address which the recipient may have notified to the sender;
- (ii) (FAX) in the case of facsimile transmission, when recorded on the transmission result report unless:
  - (A) within 24 hours of that time the recipient informs the sender that the transmission was received in an incomplete or garbled form; or
  - (B) the transmission result report indicates a faulty or incomplete transmission; and
- (d) (MAIL) in the case of mail, on the third Business Day after the date on which the notice is accepted for posting by the relevant postal authority,

but if service is on a day which is not a Business Day in the place to which the communication is sent or is later than 4.00pm (local time) on a Business Day, the notice will be taken to have been served on the next Business Day in that place.

16.2 COSTS AND REGISTRATION

- (a) (REGISTRATION FEES) The Lessee shall pay to the Lessor on demand registration fees (if applicable) with respect to this Lease.
- (b) (LEGAL COSTS) Each party shall pay their own legal Costs with respect to this Lease.
- (c) (LESSOR TO STAMP AND REGISTER) The Lessor shall (subject to receipt of necessary funds from the Lessee) attend to the registration of this Lease at Land Information New Zealand as soon as possible after the Commencing Date.

16.3 SEVERANCE

Any provision of this Lease which is prohibited or unenforceable in any jurisdiction will be ineffective in that jurisdiction to the extent of the prohibition or unenforceability. That will not invalidate the remaining provisions of this Lease nor affect the validity or enforceability of that provision in any other jurisdiction.

16.4 ENTIRE AGREEMENT

This Lease contains all the contractual arrangements of the parties with respect to the transaction to which it relates. No representations or warranties made by either party with respect to the transaction to which this Lease relates shall be actionable or enforceable except to the extent that they are contained in this Lease.

16.5 GOVERNING LAW

This Lease is governed by the laws of New Zealand. The parties submit

17. CONFIDENTIALITY

- (a) (DUTY) Unless the parties otherwise agree in any particular instance, the provisions of this Lease and all information disclosed to or obtained by the parties in relation to each other and this Lease and which is not in public knowledge (or which is in public knowledge only as a consequence of a breach of this clause) must be kept confidential to the parties and may not be disclosed (unless otherwise required by Law) except to any bona fide consultants retained by a party in relation to this Lease, or to bona fide purchasers, financiers, assignees or sub occupants (as the case may be) and any such consultant or other person must be provided only with that information which he needs to know for the purposes of reviewing this Lease and he must undertake in writing to maintain the confidentiality of that information.
- (b) (INDEMNITY) The parties shall indemnify each other and must keep each other indemnified against all Claims suffered or incurred as a consequence of any breach of clause 17(a) by the Lessor or the Lessee or their respective Employees, consultants or other persons for whom they are responsible.

18. LIMITATION OF LIABILITY

18.1 CAPACITY OF LESSOR

Where the Lessor is a trustee of a trust (TRUST), the Lessor only enters into this Lease in its capacity as trustee of the Trust and in no other capacity. A liability arising under or in connection with this Lease is limited and can be enforced against the Lessor only to the extent to which it can be satisfied out of property of the Trust and for which the Lessor is actually indemnified for the liability. This limitation of the Lessor's liability applies despite any other provisions of this Lease (except clause 18.3 ("When limitation does not apply")) and extends to all liabilities and obligations of the Lessor in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Lease, any other document in connection with it, or the Trust.

18.2 PARTIES MAY NOT SUE

The parties may not sue the Lessor in any capacity other than as trustee of the Trust, including seeking the appointment of a receiver, a liquidator, an administrator or similar person to the Lessor or prove in any liquidation, administration or arrangement of or affecting the Lessor (except in relation to property of the Trust).

18.3 WHEN LIMITATION DOES NOT APPLY

Clauses 18.1 and 18.2 shall not apply to any obligation or liability of the Lessor to the extent that it is not satisfied because, under this Lease or any other document in connection with it, or by operation of law, there is a reduction in the extent of the Lessor's indemnification out of the assets of the Trust, as a result of the Lessor's fraud, negligence or breach of trust.

18.4 FAILURE BY THIRD PARTIES

It is acknowledged that the Lessor is responsible under this Lease and other documents in connection with it for performing a variety of obligations relating to the Trust. No act or omission of the Lessor will be considered fraud or negligence of the Lessor for the purposes of clauses 18.3 ("When limitation does not apply") or 18.5 ("Breach by the Lessor") to the extent to which the act or omission was caused by any failure by any person who provides services in respect of the Trust to fulfil its obligations relating to the Trust or by any other act or omission of any person who provides services in respect of the Trust (other than employees and agents of the Lessor or a person who has been delegated or appointed by the Lessor).

18.5 BREACH BY THE LESSOR

It is also acknowledged that a breach of an obligation imposed on, or a

representation or warranty given by, the Lessor under or in connection with this Lease or any other document in connection with it will not be considered a breach of trust by the Lessor unless the Lessor has acted with negligence, or without good faith, in relation to the breach.

19. TRUST WARRANTIES

Where the Lessor is a trustee and/or responsible entity of a Trust, the Lessor warrants in its personal capacity that:

- (a) (TRUSTEE) it is the sole trustee of the Trust;
- (b) (POWER) it, in its capacity as trustee of the Trust, is entitled and competent and has absolute and complete authority, power and capacity to enter into and perform its obligations under this Lease and is not in breach of any Law or court order relating to its acting as trustee of the Trust;
- (c) (INDEMNITY) its right of indemnity out of, and lien over, the assets of the Trust has not been limited in any way and that right has priority over the right of the beneficiaries to the Trust assets;
- (d) (ENFORCEABLE) the deed establishing the Trust (TRUST DEED) is enforceable in accordance with the Law applicable to it;
- (e) (CONSENT) the consent of each of the beneficiaries, unitholders or other persons whose consent is required under the Trust Deed has been obtained;
- (f) (NO BREACH) the entry into this Lease by the Lessor does not conflict with or result in a breach of, or default under, any provision of the Trust Deed or any other agreement to which the Lessor is a party (whether in its capacity as trustee of the Trust or its personal capacity);
- (g) (TRUST EXTANT) the Trust has not at the Commencing Date of the Lease for the Initial Term been terminated nor has the date or any event for the vesting of the assets subject to the Trust occurred.

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20. GUARANTEE AND INDEMNITY

20.1 CONSIDERATION

The Guarantor gives this guarantee and indemnity in consideration of the Lessor agreeing to enter into this Lease at the request of the Guarantor. The Guarantor acknowledges the receipt of valuable consideration from the Lessor for the Guarantor incurring obligations and giving rights under this guarantee and indemnity.

20.2 GUARANTEE

The Guarantor unconditionally and irrevocably guarantees to the Lessor the due and punctual performance and observance by the Lessee of its obligations:

- (a) under this Lease, even if this Lease is not registered or is found not to be a lease or is found to be a lease for a term less than the Term; and
- (b) in connection with its occupation of the Premises, including the obligations to pay money.

20.3 INDEMNITY

As a separate undertaking, the Guarantor unconditionally and irrevocably indemnifies the Lessor against all liability or loss arising from, and any costs, charges or expenses incurred in connection with:

- (a) the Lessee's breach of this Lease; or
- (b) the Lessee's occupation of the Premises,

including a breach of the obligations to pay money; or

- (c) a representation or warranty by the Lessee in this Lease being incorrect or misleading when made or taken to be made; or
- (d) a liquidator disclaiming this Lease.

It is not necessary for the Lessor to incur expense or make payment before enforcing that right of indemnity.

20.4 INTEREST

The Guarantor agrees to pay interest on any amount payable under this guarantee and indemnity from when the amount becomes due for payment until it is paid in full. The Guarantor must pay accumulated interest at the end of each month without demand. Interest is payable as set out in clause 12.6.

20.5 ENFORCEMENT OF RIGHTS

The Guarantor waives any right it has of first requiring the Lessor to commence proceedings or enforce any other right against the Lessee or any other person before claiming under this guarantee and indemnity.

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20.6 CONTINUING SECURITY

This guarantee and indemnity is a continuing security and is not discharged by any one payment.

20.7 GUARANTEE NOT AFFECTED

The liabilities of the Guarantor under this guarantee and indemnity as a guarantor, indemnifier or principal debtor and the rights of the Lessor under this guarantee and indemnity are not affected by anything which might otherwise affect them at law or in equity including, but not limited to, one or more of the following:

- (a) the Lessor granting time or other indulgence to, compounding or compromising with or releasing the Lessee or any other Guarantor;
- (b) acquiescence, delay, acts, omissions or mistakes on the part of the Lessor;
- (c) any transfer of a right of the Lessor;
- (d) the termination, surrender or expiry of, or any variation, assignment, subletting, licensing, extension or renewal of or any reduction or conversion of the Term of this Lease;
- (e) the invalidity or unenforceability of an obligation or liability of a person other than the Guarantor;
- (f) any change in the Lessee's occupation of the Premises;
- (g) this Lease not being registered;
- (h) this Lease not being effective as a lease;
- (i) this Lease not being effective as a lease for the Term;
- (j) any person named as Guarantor not executing or not executing effectively this guarantee and indemnity;
- (k) a liquidator disclaiming this Lease.

20.8 SUSPENSION OF GUARANTOR'S RIGHTS

The Guarantor may not:

- (a) raise a set-off or counterclaim available to it or the Lessee against the Lessor in reduction of its liability under this guarantee and indemnity; or
- (b) claim to be entitled by way of contribution, indemnity, subrogation, marshalling or otherwise to the benefit of any security or guarantee held by the Lessor in connection with this Lease; or
- (c) make a claim or enforce a right against the Lessee or its property; or
- (d) prove in competition with the Lessor if a liquidator, provisional liquidator, receiver, administrator or trustee in bankruptcy is appointed in respect of the Lessee or the Lessee is otherwise unable to pay its debts when they fall due,

until all money payable to the Lessor in connection with the lease or the Lessee's occupation of the Premises is paid.

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20.9 REINSTATEMENT OF GUARANTEE

If a claim that a payment to the Lessor in connection with this Lease or this guarantee and indemnity is void or voidable (including, but not limited to, a claim under laws relating to liquidation, administration, insolvency or protection of creditors) is upheld, conceded or compromised then the Lessor is entitled immediately as against the Guarantor to the rights to which it would have been entitled under this guarantee and indemnity if the payment had not occurred.

20.10 COSTS

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

- (a) the Lessor's costs, charges and expenses in making, enforcing and doing anything in connection with this guarantee and indemnity including, but not limited to, legal costs and expenses on a full indemnity basis; and
- (b) all stamp duties, fees, taxes and charges which are payable in connection with this guarantee and indemnity or a payment, receipt or other transaction contemplated by it.

Money paid to the Lessor by the Guarantor must be applied first against payment of costs, charges and expenses under this clause 20.10 then against other obligations under this guarantee and indemnity.

20.11 LESSOR MAY ASSIGN

The Lessor may assign its rights under this guarantee and indemnity to a purchaser or transferee of the Land.

21. CONCURRENCY

This Lease is concurrent with any tenancy, subtenancy, or other occupancies in existence at the Commencing Date.

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JAMES HARDIE NEW ZEALAND LIMITED (LESSEE) AND JAMES HARDIE INDUSTRIES N.V.  
(GUARANTOR) DATED 23 MARCH 2004

LESSOR'S ASSET REGISTER

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Lease Intended for Use in Conjunction with Memorandum

LEASE  
Land Transfer Act 1952

If there is not enough space in any of the panels below, cross-reference to and use the approved Annexure Schedule: no other format will be received.

Land Registration District NORTH AUCKLAND

Certificate of Title No. All or Part? Area and legal description - Insert only when part of Stratum, CT NA52A/1447. ALL

Lessor Surnames must be underlined or in CAPITALS  
STUDORP LIMITED

Lessee Surnames must be underlined or in CAPITALS  
JAMES HARDIE NEW ZEALAND LIMITED

Estate or Interest: Insert e.g. Fee simple; Leasehold in Lease No. etc FEE SIMPLE

Term SEE ANNEXURE SCHEDULE

Rental SEE ANNEXURE SCHEDULE

Operative Clause SEE ANNEXURE SCHEDULE

Dated this 23 DAY OF MARCH 2004

Attestation Signed in my presence by Lessor by its attorney

Signature of Witness  
/s/ Alan Kneeshaw  
-----

WITNESS TO COMPLETE IN BLOCK LETTERS  
(unless typewritten or legibly stamped)  
Witness name ALAN KNEESHAW  
Occupation ACCOUNTANT NSW  
JUSTICE OF THE PEACE 9102809  
Address 3rd floor 22 Pitt Street, Sydney  
2000

/s/ Joanne Marchione - Attorney  
-----  
Signature, or common seal of Lessor  
JOANNE MARCHIONE - ATTORNEY

Signed in my presence by Lessee by its attorney

Signature of Witness  
/s/ Alan Kneeshaw  
-----

WITNESS TO COMPLETE IN BLOCK LETTERS  
(unless typewritten or legibly stamped)  
Witness name ALAN KNEESHAW  
Occupation ACCOUNTANT NSW  
JUSTICE OF THE PEACE 9102809  
Address 3rd floor 22 Pitt Street, Sydney  
2000

/s/ Joanne Marchione - Attorney  
-----  
Signature, or common seal of Lessor  
JOANNE MARCHIONE - ATTORNEY

Certified correct for purposes of the Land Transfer Act of 1952 /s/ Nicholas Cowie  
-----  
Solicitor for the Lessee

Annexure Schedule

LEASE Dated 23 March 2004 Page 1 of 1

Additional Lease Details

Continuation of `Operative Clause`

The Lessor leases to the Lessee, and the Lessee takes on lease, the Premises for the Term at the Rent and in accordance with the provisions of the lease as set out in Annexures A and B.

Continuation of attestation:

James Hardie Industries N.V.  
as Guarantor by its attorney: /s/ Joanne Marchione  
-----

In the presence of:

Name: ALAN KNEESHAW  
 Occupation: ACCOUNTANT NSW JP9102809  
 Address: 3rd FLOOR 22 PITT ST, SYDNEY 2000

This Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or their solicitors must put their signatures or initials here.

JM, AK, NC

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THIS IS ANNEXURE A OF 48 PAGES TO THE LEASE BETWEEN STUDORP LIMITED (LESSOR), JAMES HARDIE NEW ZEALAND LIMITED (LESSEE) AND JAMES HARDIE INDUSTRIES N.V. (GUARANTOR) DATED 23 MARCH 2004

SCHEDULE OF TERMS

OPERATIVE PROVISIONS

<TABLE>		
<CAPTION>		
ITEM	TERM	DEFINITION
<S>	<C>	<C>
1.	Lessor	Studorp Limited of 50 O'Rorke Road, Penrose, Auckland
2.	Lessee	James Hardie New Zealand Limited of 50 O'Rorke Road, Penrose, Auckland
3.	Land	Lot 1 on DP96439 as contained in Certificate of Title 52A/1447 (North Auckland Registry).
4.	Premises	The Land, buildings and other improvements situated at 44-74 O'Rorke Road, Penrose, Auckland, New Zealand in the condition in which they exist as at the Commencing Date and includes the Lessor's Fixtures.
5.	Term	12 Years
6.	Commencing Date	23 March 2004
7.	Terminating Date	22 March 2016
8.	Further Term	2 further terms each of 10 years, the last expiring on 22 March 2036.
9.	Rent	\$1,371,000 per annum, payable as prescribed in clauses 4.1 and 4.2, and subject to review as specified in clauses 4.4, 4.5, 4.6 and 4.7.
10.	Review Dates	The Review Dates for review of the Rent are as follows: (a) Fixed Review Dates shall be each anniversary of the Commencing Date during the Term other the Commencing Date of a Further Term; and (b) Market Review Dates shall be the sixth anniversary of the Commencing Date.
11.	Permitted Use	Manufacture, warehousing, distribution and sales of fibre cement products and systems and all associated activities (including offices) and any other use for which the Lessee may lawfully use the Premises.
12.	Public Risk Insurance	\$50,000,000

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<TABLE>		
<CAPTION>		
ITEM	TERM	DEFINITION
<S>	<C>	<C>
13.	Review Dates for the Further Term	The Review Dates for the review of the Rent in each Further Term and the method of review shall be as follows. (a) Fixed Review Dates shall be on each anniversary of the Commencing Date of that Further Term other than

the Commencing Date of a Further Term; and

- (b) Market Reviews Dates shall be the Commencing Date of that Further Term and the fifth anniversary of the Commencing Date of that Further Term.

14. Lessee's Proportion 100%  
</TABLE>

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1. INTERPRETATION

1.1 DEFINITIONS

The following definitions together with those in the Schedule apply unless the context requires otherwise.

APPURTENANCE includes any drain, basin, sink, toilet or urinal.

AUTHORISATION includes any authorisation, approval, consent, licence, permit, franchise, permission, filing, registration, resolution, direction, declaration, or exemption.

AUTHORISED PERSON means any director or secretary, or any person from time to time nominated as an Authorised Person by a party by a notice to the other party accompanied by specimen signatures of all new persons so appointed.

AUTHORITY includes:

- (a) (GOVERNMENT) any local body or government in any jurisdiction;
- (b) (PUBLIC UTILITY) any provider of public utility services, whether statutory or not; and
- (c) (OTHER BODY) any other person, authority, instrumentality or body having jurisdiction, rights, powers, duties or responsibilities over the Premises or any part of them or anything in relation to them (including the Insurance Council of New Zealand Limited).

BUILDING means those improvements (if any) described or referred to in Item 4.

BUSINESS DAY means any day except Saturday or Sunday or a day that is a public holiday throughout Auckland.

CLAIM includes any claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding, right of action, claim for compensation and claim for abatement of rent obligation.

COMPETITOR means any person engaged in the manufacture, distribution or sale of fibre cement products and underground drainage pipes made of concrete fibre cement and:

- (a) includes persons engaged in the businesses known as or trading under names which include the words "Lafarge", "CSR" and "BGC"; but
- (b) excludes any third party logistics operator.

CONSENT means prior written consent.

COUNCIL means Auckland City Council and Auckland Regional Council.

COST includes any reasonable cost, charge, expense, outgoing, payment or other expenditure of any nature (whether direct, indirect or consequential and whether accrued or paid) including where appropriate all rates and all reasonable legal fees.

EMPLOYEES means employees, agents, invitees and contractors.

ENVIRONMENT means components of the earth, including:

- (a) land, air and water;
- (b) any layer of the atmosphere;

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- (c) any organic or inorganic matter and any living organism; and
- (d) human-made or modified structures and areas, and includes interacting natural ecosystems that include components referred to in paragraphs

(a) to (c).

ENVIRONMENTAL LAW means a provision of Law, or a Law, which provision or Law relates to any aspect of the Environment, safety, health or the use of Substances or activities which may harm the Environment or be hazardous or otherwise harmful to health.

EVENT OF DEFAULT means any event referred to in clause 12.1.

FIXED REVIEW means a review of the Rent in accordance with clause 4.7.

FIXED REVIEW DATES means a date on which a Fixed Review is to occur as set out in Item 10.

FURTHER TERM means the further term or terms (as the case may be), specified in Item 8.

GUARANTOR means James Hardie Industries N.V.

GST means tax charged under the GST Act together with any related interest, penalties, fines or other charge in respect of that tax to the extent caused by any default or delay by the Lessee.

GST ACT means the Goods and Services Tax Act 1985 (New Zealand).

INPUT TAX has the meaning given to that term under the GST Law.

INITIAL TERM means the first 12 year term of this Lease commencing on 23 March 2004.

INTEREST RATE means the minimum rate of interest charged by the Bank of New Zealand Limited, on an overdraft of \$100,000 plus 2%.

LAND means the land described in Item 3.

LAW includes any requirement of any statute, rule, regulation, proclamation, ordinance, by-law, or other enactment, present or future.

LEASE means this lease between the Lessor and the Lessee.

LEASE YEAR means every 12 month period commencing on and from the Commencing Date.

LESSEE means the party specified in Item 2, its successors and assigns.

LESSEE'S BUSINESS means the business carried on or entitled to be carried on in the Premises in compliance with the Permitted Use of the Premises.

LESSEE'S FITOUT AND FITTINGS means all fixtures, fittings, plant, equipment, partitions or other articles and chattels of all kinds (other than stock-in-trade) which satisfy all of the following:

- (a) they are owned by or leased by third parties to the Lessee; and
- (b) they are, at any time, in or attached to the Premises.

LESSEE'S PROPORTION means that proportion which the Lettable Area of the Premises bears to the area of the Land determined in accordance with the Method of Measurement from time to time and which at the Commencing Date of the lease for the Initial Term is that proportion set out in Item 14.

LESSOR means the party specified in Item 1 or the party for the time being entitled to the reversion expectant upon expiration or prior determination of the Lease.

LESSOR'S ASSET REGISTER means those items in the list of items contained in Annexure B which are located on the Premises or on the Land.

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LESSOR'S FIXTURES means all fixtures in the Premises owned by the Lessor including the items listed in the Lessor's Asset Register and:

- (a) (GENERAL) all plant and equipment, mechanical or otherwise which forms part of the base Building, fittings, fixtures, furniture, furnishings of any kind, including window coverings, blinds and light fittings; and
- (b) (FIRE FIGHTING) all stop cocks, fire hoses, hydrants, other fire prevention aids and all fire fighting systems from time to time located in the Premises or which may service the Premises and be on the Land.

LETTABLE AREA means the gross lettable area determined in accordance with the Method of Measurement.

LIQUIDATION includes liquidation, statutory management, receivership, entry into a scheme of arrangement or compromise with creditors, amalgamation, administration, assignment for the benefit of creditors, arrangement or compromise with creditors, bankruptcy or death.

MAKE GOOD BUILDINGS means the buildings and other improvements hatched on the plan in Annexure C.

MARKET RENT means the Rent which could be obtained with respect to the Premises as at a particular Market Review Date in an open market by a willing but not anxious Lessor assessed using the criteria in clause 4.5(g).

MARKET REVIEW means a review of the Rent in accordance with clause 4.4 and (if applicable) clauses 4.5 and 4.6.

MARKET REVIEW DATE means a date on which a Market Review is to occur as set out in Item 10.

METHOD OF MEASUREMENT means the Method of Measurement set down by the Property Council of New Zealand, Inc and the New Zealand Property Institute in their Guide for Measurement of Rentable Areas for buildings which are similar to the Premises. The Method of Measurement shall remain fixed for the term of this Lease and any Further Term despite any subsequent editions or variations which may be issued.

NEW ZEALAND INSTITUTE means the New Zealand Property Institute.

NON-MAKE GOOD BUILDINGS means the buildings and other improvements crosshatched on the plan in Annexure C.

OUTGOINGS means:

- (a) (COUNCIL RATES) all charges payable to the Council:
  - (i) levied or charged with respect to the Land or the Premises or their use or occupation;
  - (ii) for any services to the Land or the Premises of the type from time to time provided by the Council; and/or
  - (iii) for waste and general garbage removal from the Land or the Premises (including any excess);
- (b) (WATER RATES) all charges payable to an Authority:

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- (i) levied or charged with respect to the Land or the Premises or their use or occupation; and
- (ii) for the provision, reticulation or discharge of water and/or sewerage and/or drainage (including meter rents) to the Land or the Premises;
- (c) (MANAGEMENT FEES) reasonable fees for management of the Premises, capped at 1% of the Rent and Outgoings from time to time; and
- (d) (INSURANCES) where the Lessor has effected the policy, all insurance premiums payable in respect of insurances for the Premises for its full insurable or replacement value to cover damage by fire, storm, tempest, impact and other usually insured risks of that nature, including loss of rent insurance (capped at 18 months cover),

but excluding from this Paragraph any amount which is:

- (i) (ALREADY INCLUDED) already included by virtue of another Paragraph of this definition;
- (ii) (OTHERWISE PAYABLE) otherwise payable by the Lessee pursuant to the provisions of this Lease;
- (iii) (TAX) income tax and capital gains tax of any nature; or
- (iv) (PAYABLE BY THE LESSOR) otherwise payable by the Lessor with respect to its obligations under this Lease.

PERMITTED USE means the use of the Premises specified in Item 11

PREMISES means the Land, buildings and other improvements specified in Item 4, and includes any of the Lessor's Fixtures from time to time in or on them.

PROPOSED WORK includes any proposed sign, work, alteration, addition or

installation in or to the Premises, the Lessor's Fixtures and/or to the existing Lessee's Fitout and Fittings by the Lessee and/or by the Lessee's Employees.

RELATED BODY CORPORATE has the same meaning as given to:

- (a) that term in the Corporations Act 2001 (Cth of Australia); and
- (b) the term "related company" in the Companies Act 1993 (New Zealand).

RENT means the rent specified in Item 9 as varied from time to time in accordance with this Lease.

REQUIREMENT includes any notice, order, direction, stipulation or similar notification received from or given by any Authority pursuant to and enforceable under any Law (including Environmental Law), whether in writing or otherwise, and regardless of to whom it is addressed or directed.

REVIEW DATE means a date on which either a CPI Review or a Market Review is to occur as set out in Item 10.

SERVICES means electricity, gas, sewerage, water and telephone services.

SUBSTANCE includes:

- (a) any form of organic or chemical matter whether solid, liquid or gas; and
- (b) radiation, radioactivity and magnetic activity.

TAX INVOICE has the meaning given to that term in the GST Act.

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TAXABLE SUPPLY has the meaning given to that term in the GST Act.

TERMINATING DATE means:

- (a) the date specified in Item 7;
- (b) any earlier date on which this Lease is determined;
- (c) the date of expiration or earlier termination of the Further Term or, if more than one, the last Further Term; or
- (d) the end of any period of holding over under clause 3.3,

as appropriate.

TERMINATION PAYMENT means

- (a) in respect of clause 7.1(e)(i)(A), the net present value of the aggregate of:
  - (i) the Rent and the Lessee's Proportion of Outgoings payable for the balance of the Term calculated from the date of termination; and
  - (ii) the cost of compliance with the Lessee's obligations in clause 13, using the 10 year Commonwealth of Australia Government bond interest rate plus 115 basis points; and
- (b) in respect of clauses 7.1(e)(i)(B) and 7.1(e)(ii), the net present value of the aggregate of:
  - (i) the Rent and the Lessee's Proportion of Outgoings payable for the balance of the Term with respect to the proportionate area of the Premises surrendered calculated from the date of the surrender; and
  - (ii) the cost of compliance with the Lessee's obligations in clause 13, using the 10 year Commonwealth of Australia Government bond interest rate plus 115 basis points.

UMPIRE means a person who:

- (a) is at the relevant time a Valuer;
- (b) is appointed under clause 4.5;



- (c) accepts his appointment in writing; and
- (d) undertakes to hand down his determination of the Rent within 20 Business Days after being instructed to proceed.

VALUER means a person who:

- (a) is a full member of the New Zealand Institute of Valuers and has been for the last 5 years;
- (b) holds a licence to practise as a valuer of premises of the kind leased by this Lease;
- (c) is active in the relevant market at the time of his appointment;
- (d) has at least 3 years experience in valuing premises of the kind leased by this Lease; and
- (e) undertakes to act promptly in accordance with the requirements of this Lease.

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## 1.2 GENERAL

Headings are for convenience only and do not affect interpretation. The following rules of interpretation apply unless the context requires otherwise.

- (a) (PLURALS) The singular includes the plural and conversely.
- (b) (GENDER) A gender includes all genders.
- (c) (OTHER GRAMMATICAL FORMS) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) (PERSON) A reference to a person, company, trust, partnership, unincorporated body or other entity includes any of them.
- (e) (CLAUSE) "clause", "Paragraph", "Schedule" or "Annexure" refers to this Lease and "Item" refers to the Schedule of Terms forming part of this Lease.
- (f) (SUCCESSORS AND ASSIGNS) A reference to any party to this Lease or any other agreement or document includes the party's successors and substitutes or assigns.
- (g) (JOINT AND SEVERAL OBLIGATIONS) A reference to a right or obligation of any two or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally.
- (h) (EXTRINSIC TERMS) Subject to the provisions of any written material to which the Lessor and the Lessee are parties, the Lessor and the Lessee agree that:
  - (i) (WHOLE AGREEMENT) the terms contained in this Lease cover and comprise the whole of the agreement in respect of the Premises between the Lessor and the Lessee; and
  - (ii) (NO COLLATERAL AGREEMENT) no further terms, whether in respect of the Premises or otherwise, shall be implied or arise between the Lessor and the Lessee by way of collateral or other agreement made by or on behalf of the Lessor or by or on behalf of the Lessee on or before or after the execution of this Lease, and any implication or collateral or other agreement is excluded and negatived.
- (i) (AMENDMENTS AND VARIATIONS) A reference to an agreement or document (including this Lease) is to the agreement or document as amended, novated, supplemented, varied or replaced from time to time, except to the extent prohibited by this Lease.
- (j) (LEGISLATION) A reference to legislation or to a provision of legislation includes a modification, re-enactment of or substitution for it and a regulation or statutory instrument issued under it.
- (k) (NEW ZEALAND CURRENCY) A reference to "dollars" or "\$" is to New Zealand currency.
- (l) (SCHEDULES AND ANNEXURES) Each schedule of/or annexure to this

Allens Arthur Robinson

- (m) (CONDUCT) A reference to conduct includes any omission, statement or undertaking, whether or not in writing.
- (n) (WRITING) A reference to "writing" includes a facsimile transmission and any means of reproducing words in a tangible and permanently visible form.
- (o) (EVENT OF DEFAULT) An Event of Default "subsists" until it has been waived by or remedied to the reasonable satisfaction of the Lessor.
- (p) (INCLUDES) A reference to "includes" or "including" means "includes, without limitation," or "including, without limitation," respectively.
- (q) (WHOLE) Reference to the whole includes part.
- (r) (DUE AND PUNCTUAL) All obligations are taken to be required to be performed duly and punctually.
- (s) (PERMIT OR OMIT) Words importing "do" include do, permit or omit, or cause to be done or omitted.
- (t) (BODIES AND AUTHORITIES)
  - (i) (SUCCESSORS) Where a reference is made to any person, body or Authority that reference, if the person, body or Authority has ceased to exist, will be to the person, body or Authority as then serves substantially the same objects as that person, body or Authority.
  - (ii) (PRESIDENT) Any reference to the President of that person, body or Authority, in the absence of a President, will be read as a reference to the senior officer for the time being of the person, body or Authority or any other person fulfilling the duties of President.
- (u) (CONSENT OF LESSOR) Unless stated otherwise in this Lease, where the Lessor has a discretion or its consent or approval is required for anything the Lessor:
  - (i) shall not unreasonably withhold, delay or condition its decision, consent or approval; and
  - (ii) must exercise its discretion acting reasonably.
- (v) (RELEVANT DATE) Where the day or last day for doing anything or on which an entitlement is due to arise is not a Business Day that day or last day will be the immediately following Business Day.
- (W) (MONTH) Month means calendar month.
- (x) (AREAS) Unless otherwise stated in this Lease or the context otherwise requires, where the area whether gross or net and whether the whole or part of the Land is to be calculated or measured for the purposes of this Lease, those calculations and measurements shall be in accordance with the Method of Measurement.
- (y) (THIRD PARTIES) Any clause which requires that a third party act or refrain from acting will be read (where the context permits) that the party to this Lease appointing or otherwise having control of that third party shall cause or procure that third party to act or refrain from acting.

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## 2. EXCLUSION OF STATUTORY PROVISIONS

### 2.1 RELEVANT ACTS

To the extent permitted by Law or as may be contradicted by this Lease, the covenants, powers and provisions (if any) implied in leases by virtue of any Law are expressly negated.

3. TERM

3.1 TERM OF LEASE

Subject to this Lease the Lessor leases to the Lessee and the Lessee takes a lease of the Premises for the Term.

3.2 OPTION OF RENEWAL

(a) (GRANT OF FURTHER LEASE) If:

- (i) (FURTHER TERM) a Further Term is specified in Item 8;
- (ii) (LESSEE GIVES NOTICE) the Lessee notifies the Lessor not more than 12 months nor less than 9 months before the Terminating Date that it requires a further lease for the Further Term; and
- (iii) (NO DEFAULT) at the date of that notice and at the Terminating Date there is no subsisting Event of Default by the Lessee of which the Lessee has been notified by the Lessor and:
  - (A) (IF CAPABLE OF REMEDY) which has not been remedied to the reasonable satisfaction of the Lessor within the time specified in a notice given under clause 12.1 or waived in writing by the Lessor; or
  - (B) (IF NOT CAPABLE OF REMEDY) if not capable of remedy, for which the Lessee has not paid the Lessor reasonable compensation,

the Lessor shall grant to the Lessee a lease of the Premises for the Further Term commencing on the day after the Terminating Date.

(b) (CONDITIONS OF FURTHER LEASE) That lease for a Further Term will be on the same conditions as this Lease except that:

- (i) (TERM) the term to be specified in Item 5 of the lease for the Further Term will be the relevant period specified in Item 8;
- (ii) (COMMENCING DATE) the date to be specified in Item 6 of the lease for the Further Term will be the day after the Terminating Date of the immediately preceding Term;
- (iii) (TERMINATING DATE) the date to be specified in Item 7 of the lease for each Further Term will be the last day of the term specified in Item 8 calculated from the commencing date of the lease for that Further Term determined under Paragraph (ii);

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- (iv) (RENT) the amount of Rent to be specified in Item 9 of the lease for the Further Term will be as agreed under clause 3.2(c) or if no agreement is reached under that clause as determined under clauses 4.4, 4.5 and 4.6 as if the commencing date of the lease for the Further Term was a Market Review Date;
- (v) (REVIEW DATES AND DELETIONS) the Review Dates specified in Item 10 shall be omitted and replaced with the Review Dates specified in Item 13;
- (vi) (FURTHER OPTIONS) the number of Further Terms specified in Item 8 shall be reduced by one from the number specified in Item 8 of this Lease; and
- (vii) (LAST FURTHER LEASE) if in any lease for the Further Term the number of Further Terms specified in Item 8 would by the operation of Paragraph (vi) be zero, then Item 13 and this clause 3.2 will not be included in that further lease so that the last further lease will end on the last day of the last occurring Further Term specified in Item 8 of this Lease.

(c) (EARLY DETERMINATION OF MARKET RENT)

- (i) If the Lessee wishes to know the Rent for the first year of the Further Term prior to exercising its option for a Further Term, the Lessee may give notice to the Lessor seeking a determination of the Market Rent for the Further Term (such notice being given no earlier than 15 months and no later than 12 months prior to the Terminating Date of the Lease).
- (ii) The Lessor must give the Lessee a notice with the Lessor's assessment of the Market Rent to apply in the first year of the Further Term within 10 Business Days after the Lessee gives a notice under clause 3.2(c)(i).
- (iii) Upon receipt of the Lessor's assessment of Market Rent under clause 3.2(c)(ii), the parties agree to negotiate in good faith to agree upon the Market Rent to apply in the first year of the Further Term for a period of up to 3 months after the Lessor's notice of assessment of Market Rent is received by the Lessee.
- (iv) If the parties fail to reach agreement under clause 3.2(c)(iii), clause 3.2(b)(iv) continues to apply.

### 3.3 HOLDING OVER

If the Lessor does not indicate refusal to the Lessee continuing to occupy the Premises beyond the Terminating Date (otherwise than under a lease for a Further Term) then:

- (a) (MONTHLY TENANCY) the Lessee does so as a monthly tenant and shall pay Rent and Outgoings:
  - (i) monthly in advance, the first payment to be made on the day following the Terminating Date; and
  - (ii) equal to one-twelfth of the annual rate of Rent and Outgoings payable immediately prior to the Terminating Date;

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- (b) (DETERMINATION) the monthly tenancy is determinable at any time by either the Lessor or the Lessee by one month's notice given to the other, to end on any date, but otherwise the tenancy will continue on the conditions of this Lease as far as they may apply to a monthly tenancy.

## 4. RENT

### 4.1 PAYMENT OF RENT

- (a) (RENT) The Lessee shall pay Rent to the Lessor at the relevant rate from time to time:
  - (i) (NO DEMAND) without demand;
  - (ii) (NO DEDUCTION) without any deduction, abatement, counterclaim or right of set-off except to the extent that it is expressly provided for in this Lease; and
  - (iii) (INSTALMENTS) by equal monthly instalments (and proportionately for any part of a month) in advance on the first Business Day of each month.
- (b) (AS DIRECTED BY LESSOR) All instalments of Rent shall be paid to the place and in the manner directed by the Lessor from time to time provided at least 10 Business Days notice of any change in the place or manner of payment is given.

### 4.2 RENT COMMENCEMENT

The first instalment of Rent shall be paid on the Commencing Date.

### 4.3 DELETED

### 4.4 MARKET REVIEW OF RENT

Should the Lessor wish to review the Rent as at a Market Review Date, then not earlier than 3 months before and not later than 3 months after the Market Review Date (time being of the essence) the Lessor may notify the Lessee of the Lessor's assessment of the Market Rent for the Premises at the particular Market Review Date. This assessment shall

take into account the criteria contained in clause 4.5(g) which apply at that particular Market Review Date and, if applicable, clause 4.6.

#### 4.5 LESSEE'S DISPUTE OF RENT

If the Lessee disagrees with the Lessor's assessment of the Market Rent and the Lessor and the Lessee are unable to agree on the Market Rent to apply from a particular Market Review Date then the following procedure applies.

(a) (LESSEE TO GIVE NOTICE) The Lessee shall within 30 Business Days of being notified of the Lessor's assessment of the Market Rent (time being of the essence) notify the Lessor that the Lessee requires the Market Rent to be determined in accordance with this clause 4.5.

(b) (i) (NOMINATION OF VALUERS) Each of the Lessee and the Lessor shall, within 10 Business Days of service of the Lessee's notice under clause 4.5(a), by notice

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nominate a Valuer to the other and shall formally appoint that Valuer.

(ii) (NOMINATION OF UMPIRE) Where two Valuers have been nominated they shall, within 5 Business Days of the date of the later nomination and prior to making their determination as to the Market Rent for the Premises, agree upon and nominate an Umpire to determine any disagreement which may arise between them.

(iii) (FAILURE TO AGREE) If the Valuers cannot agree on or fail to nominate an Umpire within 5 Business Days of the date of the later nomination then either Valuer, the Lessor or the Lessee may request the President of the New Zealand Institute of Valuers to nominate the Umpire.

(c) (VALUER'S DETERMINATION) Subject to clauses 4.5(d), (e) and (f), the nominated Valuers shall within 20 Business Days of the later nomination jointly determine the Market Rent of the Premises having regard to clause 4.5(g) as at that particular Market Review Date.

(d) (CONSEQUENCES OF LESSEE'S FAILURE) If the Lessee fails to nominate a Valuer in accordance with clause 4.5(b) within the time required:

(i) (DETERMINATION BY LESSOR'S VALUER) the determination of the Market Rent shall be made by the Lessor's Valuer within 20 Business Days after being nominated, and his determination will be final and binding on the parties as if he had been appointed by Consent; and

(ii) (COSTS) the Costs of the Lessor's Valuer's determination shall be apportioned equally between the Lessor and Lessee.

(e) (CONSEQUENCES OF LESSOR'S FAILURE TO NOMINATE VALUER) If the Lessee nominates a Valuer under clause 4.5(b) within the time required, but the Lessor fails to do so:

(i) (DETERMINATION BY LESSEE'S VALUER) the determination of the Market Rent shall be made by the Lessee's Valuer within 20 Business Days after being nominated, and his determination will be final and binding on the parties as if he had been appointed by Consent; and

(ii) (COSTS) the Costs of the Lessee's Valuer's determination shall be apportioned equally between the Lessor and Lessee.

(f) (i) (PROCEDURE IN EVENT OF DISAGREEMENT BETWEEN VALUERS) Should the Valuers be unable to agree on the Market Rent for the Premises within the time required then the Market Rent shall be determined by the Umpire under clause 4.5(f)(iii).

(ii) (PROCEDURE WHERE VALUER FAILS TO ASSESS) If either or

both of the Valuers for any reason fail to assess the Market Rent within the time required for them to make a determination, then either Valuer, the Lessor or the Lessee may request the Umpire to determine the Market Rent.

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- (iii) (UMPIRE'S DETERMINATION) If it becomes necessary for the Umpire to determine the Market Rent, his determination will be final and binding on the parties and:
  - (A) (EVIDENCE OF VALUERS) in making his or her determination the Umpire shall have regard to any evidence submitted by the Valuers as to their assessments of the Market Rent;
  - (B) (WRITTEN DETERMINATION) the Umpire shall give his determination and the reason for it in writing to the Lessor and the Lessee within 20 Business Days of request for it in accordance with this Lease by the Lessor, the Lessee or the Valuers (or any of them); and
  - (C) (UMPIRE'S MAXIMUM) the Umpire's determination shall not be more than the highest Market Rent as assessed by either Valuer under this clause 4.5.
- (g) (MARKET RENT CRITERIA) In determining the Market Rent each Valuer (including the Umpire) shall be taken to be acting as an expert and not as an arbitrator, and shall determine the Market Rent for the Premises as at the particular Market Review Date having regard to the terms of this Lease and shall:
  - (i) (EXCLUSIONS) disregard:
    - (A) (GOODWILL) the value of any goodwill of the Lessee's Business, the Lessee's Fitout and Fittings and any other interest in the Premises created by this Lease; and
    - (B) (MONEY FROM OCCUPATIONAL ARRANGEMENT) any sublease or other sub-tenancy agreement or occupational arrangement in respect of any part of the Land and any rental, fees or money payable under any of them; and
  - (ii) (CONSIDERATIONS) have regard to:
    - (A) (LENGTH OF TERM) the length of the whole of the Term, disregarding the fact that part of the Term will have elapsed at the Market Review Date, and have regard to the provisions of any options for a Further Term;
    - (B) (COMPARABLE PREMISES AND LOCATIONS) the rates of rent payable for comparable premises in comparable locations;
    - (C) (ALL COVENANTS OBSERVED) all covenants on the part of the Lessee and the Lessor in this Lease and assume that all covenants on the part of the Lessee have been fully performed and observed on time; and
    - (D) (OUTGOINGS) the Lessee's obligation to pay the Lessee's Proportion of Outgoings;
    - (E) (RENT REVIEW) the frequency of market and other Rent reviews; and

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- (iii) (ASSUMPTIONS) assume that:
  - (A) the Premises are available for use for the

primary purpose for which the Premises may be used in accordance with this Lease;

- (B) that there has been no fair wear and tear of the Premises since the Commencing Date of the Lease for the Initial Term; and
- (C) any buildings which have been removed pursuant to clause 7.11(d) have not been removed.

- (h) (COSTS OF VALUERS) The Costs incurred in the determination of the Market Rent under this clause 4.5 shall be borne by the Lessor and by the Lessee in the following manner:
  - (i) (VALUER) subject to clauses 4.5(d)(ii) and (e)(ii), for the Costs of each Valuer appointed by a party, by the party who appoints that Valuer; and
  - (ii) (UMPIRE) for the Costs of the Umpire, by the parties equally.
- (i) (DATE OF EFFECT OF DETERMINATION OF MARKET RENT) Subject to clauses 4.5(j) and 4.6, any variation in the Rent resulting from a determination of the Market Rent under clause 4.4 and/or 4.5 (as appropriate) will be effective on and from that particular Market Review Date.
- (j) (PAYMENT OF RENT PENDING REVIEW) Where there is a dispute as to the Market Rent under clause 4.4 after the relevant Market Review Date or the revised Rent is not known at a Market Review Date then the amount of Rent payable by the Lessee from the Market Review Date pending the resolution of that dispute or the determination of the Market Rent shall be the Rent payable immediately before the relevant Market Review Date.
- (k) (ADJUSTMENT) On resolution of the dispute or the Market Rent being determined, if the Rent payable for the period commencing on the Market Review Date is determined to be greater than that paid by the Lessee since the Market Review Date, then the Lessee shall pay the deficiency to the Lessor within 10 Business Days of the date of determination of the Market Rent under clause 4.4 or the determination of the Market Rent by the Valuers or by the Umpire under this clause 4.5 (as the case may be).

#### 4.6 MAXIMUM INCREASE ON REVIEW

Despite any other provision of this Lease the annual Rent payable from any Review Date following a review of the Rent under clause 4.4 (and, if applicable, clause 4.5) shall in no circumstances be

- (a) less than the annual Rent payable in the Lease Year immediately prior to that Review Date; or
- (b) in the case of a Market Review (other than at the Commencing Date of a Further Term):
  - (i) greater than the Rent payable in the Lease Year immediately prior to the Market Review Date plus 10%; or
  - (ii) less than the annual Rent determined under clause 4.7.

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#### 4.7 FIXED REVIEW

On each Fixed Review Date, the Rent shall increase to 103% of the Rent payable immediately prior to that Fixed Review Date.

#### 5. OUTGOINGS

##### 5.1 SERVICES

- (a) (METERS) The Lessor shall ensure that all Services supplied to the Premises are separately metered.
- (b) (COSTS) The Lessee shall pay all Costs for all Services supplied to the Premises (but with respect to water, the obligation under this clause 5.1(b) is limited to water usage and consumption charges).

5.2 CLEANING

The Lessee shall at its own Cost ensure that the Premises are kept clean.

5.3 OUTGOINGS

The Lessee shall pay to the Lessor for each Lease Year an amount equal to the Lessee's Proportion of the Outgoings in accordance with this clause 5. This obligation shall not extend to any fines, penalties or interest on the Outgoings which arise because of the Lessor's delay in payment or the Lessor's delay in providing relevant invoices and accounts to the Lessee for payment.

5.4 LESSOR'S ESTIMATE

The Lessor may:

- (a) (NOTIFICATION OF ESTIMATE) before or during each Lease Year notify the Lessee of the Lessor's reasonable estimate of the Lessee's Proportion of Outgoings for that Lease Year; and
- (b) (ADJUSTMENT OF ESTIMATE) from time to time during that Lease Year by notice to the Lessee adjust the reasonable estimate of the Lessee's Proportion of Outgoings as may be appropriate to take account of changes in any of the Outgoings.

5.5 PAYMENTS ON ACCOUNT

The Lessee shall pay on account the amount of the estimates of the Lessee's Proportion of Outgoings provided for in clause 5.4 by equal monthly instalments in advance on the same days and in the same manner as the Lessee is required to pay Rent.

5.6 YEARLY ADJUSTMENT

- (a) (LESSOR'S NOTICE) As soon as practicable after the end of each Lease Year the Lessor shall give to the Lessee a notice with reasonable details and reasonable evidence of the Outgoings for that Lease Year.

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- (b) (ADJUSTMENT OF PAYMENTS ON ACCOUNT) The Lessee shall within 10 Business Days after the date of the notice referred to in clause 5.6(a) pay to the Lessor or the Lessor shall pay to the Lessee (as appropriate) the difference between the amount paid on account of the Lessee's Proportion of Outgoings during that Lease Year and the amount actually payable in respect of it by the Lessee, so that the Lessee shall have paid the correct amount of the Lessee's Proportion of Outgoings for that Lease Year.
- (c) (AUDITED STATEMENT) If the Lessee disagrees with the details, amounts or calculations contained in the notice referred to in clause 5.6(a), the Lessee may require the Lessor to give the Lessee an audited statement of the Outgoings for that Lease Year prepared by a chartered accountant reasonably approved by the Lessee (or failing approval within 5 Business Days of the request for the statement, selected by the President of the Institute of Chartered Accountants at the request of either the Lessor or the Lessee). The Lessor shall have 20 Business Days after a request from the Lessee within which to provide the statement.
- (d) (READJUSTMENT) If the amounts shown in the audited statement are different from the amounts shown in the Lessor's notice given under clause 5.6(b), the amount of Outgoings shall be readjusted so that the Lessee shall have paid the correct amount of the Lessee's Proportion of Outgoings for that Lease Year.

5.7 GST

- (a) (PAYMENT OF GST) The parties agree that where any amount payable under or pursuant to this Lease (the GST-EXCLUSIVE AMOUNT) by a party (the RECIPIENT) is consideration for a Taxable Supply by another party (the SUPPLIER) then the Recipient will pay to the Supplier in addition to and at the same time as the GST-Exclusive Amount, an amount equal to the GST payable by the Supplier in respect of that Taxable Supply and the Supplier will provide a Tax Invoice to the Recipient



for that supply.

- (b) (INPUT TAX) Despite any other provision of this Lease, for the purposes of determining the amount of any reimbursement or indemnification payable by one party (including any contribution to Outgoings) in respect of an expense, loss or liability incurred or to be incurred by the other party (the PAYEE), the amount of the expense, loss or liability incurred or to be incurred by the Payee will be reduced by the amount of any Input Tax that the Payee is entitled to claim in respect of that expense, loss or liability.

6. USE OF PREMISES 6.1 PERMITTED USE

The Lessee shall:

- (a) (LESSEE'S BUSINESS) not without the Lessor's Consent use the Premises for any purpose other than those specified in Item 11;
- (b) (NON RESIDENCE) not use the Premises as a residence;

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- (c) (NO ANIMALS OR BIRDS) not keep any animals or birds in the Premises; and
- (d) (PESTS AND VERMIN) at its own Cost keep the Premises free and clear of pests, insects and vermin.

6.2 OVERLOADING

The Lessee shall not during the Term place or store any heavy articles or materials on any of the floors of, the Premises or the Building in a manner significantly differently from that at the Commencing Date of the Lease for the Initial Term, without the Lessor's consent.

6.3 OTHER ACTIVITIES BY LESSEE

The Lessee shall:

- (a) (APPURTENANCES) not use the Appurtenances in the Premises for any purpose other than those for which they were designed, and shall not place in the Appurtenances any substance which they were not designed to receive;
- (b) (AIR-CONDITIONING AND FIRE ALARM EQUIPMENT) where any air-conditioning or fire alarm system of the Lessor is installed in the Premises, not interfere (other than in accordance with clause 7.1) with that system nor obstruct or hinder access to it;
- (c) (NOT ACCUMULATE RUBBISH) keep the Premises reasonably clean;
- (d) (NOT THROW ITEMS FROM WINDOWS) not throw anything out of the windows or doors of the Building or down the lift shafts, passages or skylights or into the light areas of the Building (if they exist), or deposit waste paper or rubbish anywhere except in proper receptacles, or place anything on any sill, ledge or other similar part of the exterior of the Building; and
- (e) (INFECTIOUS DISEASES) if any infectious illness occurs in the Premises:
  - (i) (NOTIFY LESSOR) immediately notify the Lessor and all proper Authorities; and
  - (ii) (FUMIGATE) where that illness is confined to the Premises, at its Cost thoroughly fumigate and disinfect the Premises to the satisfaction of the Lessor and all relevant Authorities.

6.4 FOR SALE/TO LET

The Lessor is entitled:

- (a) (ADVERTISING FOR LEASE) where the Lessee has not given notice under clause 3.2(a)(ii), but only during the last three months of the Term, to place advertisements and signs on the part(s) of the Premises as are reasonably appropriate to indicate that the Premises are available for lease;

- (b) (INSPECTION BY PROSPECTIVE TENANTS) subject to the same limitations as in Paragraph (a), at all reasonable times and on reasonable notice (but where possible outside the usual trading hours of the Lessee) to show prospective tenants through the Premises;

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- (c) (ADVERTISING FOR SALE) to place advertisements and signs on the part(s) of the Premises as it reasonably considers appropriate to indicate that the Premises are for sale; and
- (d) (INSPECTION BY PROSPECTIVE PURCHASERS) at all reasonable times and on reasonable notice (but where possible outside the usual trading hours of the Lessee), to show prospective purchasers through the Premises.

The Lessor may only exercise its rights under this clause 6.4 in the presence of a representative of the Lessee after signing and/or procuring signing by the Lessor's invitees of such confidentiality agreements as the Lessee may reasonable require. In exercise of those rights the Lessor must minimise any inconvenience or disruption to the Lessee or the Lessee's Business.

7. MAINTENANCE, REPAIRS, ALTERATIONS AND ADDITIONS 7.1 REPAIRING OBLIGATIONS

- (a) (GENERAL) The Lessee:
- (i) must, during the Term and any extension or Further Term or any holding over, keep the Premises in good repair and condition including any structural or capital maintenance, replacement or repair having regard to their state of repair and condition at the Commencing Date of the Lease for the Initial Term; and
  - (ii) acknowledges and agrees that subject to clauses 5.4, 5.6, 9.2, 11, 12.4 and 15.2, the Lessor is not responsible for any costs and expenses in relation to the Premises during the Term and any extension or Further Term or any holding over.
- (b) (EXCLUSIONS) Despite clause 7.1, the Lessee has no obligation to carry out any works which relate to:
- (i) (FAIR WEAR AND TEAR) fair wear, and tear;
  - (ii) (INSURANCE) damage to the Premises caused by fire, storm or tempest or any other risk covered by any insurance taken out by the Lessor in respect of the Premises (other than where any insurance money is irrecoverable through the act, omission, neglect, default or misconduct of the Lessee or the Lessee's Employees);
  - (iii) (LESSOR'S ACT OR OMISSION) patent or latent damage to the Premises caused or contributed to by any wilful or negligent act or omission of the Lessor or its Employees; and
  - (iv) (NON-MAKE GOOD BUILDING) any works to the Non Make Good Buildings, except to the extent required by clause 7.1(d) and clause 13.
- (c) (STRUCTURAL REPAIR) Subject to clause 15.2, nothing in this Lease requires the Lessor to carry out any structural or capital maintenance, replacement or repair except where rendered necessary by any wilful or negligent act or omission

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of the Lessor or the Lessor's Employees, which maintenance, replacement or repair the Lessor must attend to promptly after notice from the Lessee.

- (d) (COMPLIANCE WITH LAWS AND REQUIREMENTS) The Lessee shall during the Term, subject to clauses 7.1(b)(i) (ii) and (iii), 7.1(e), 7.11 and 15.2, comply with any Law or Requirement:
- (i) affecting the Premises (including any underground

storage tanks and any Environmental contamination associated with them);

- (ii) affecting the Lessee's use of the Premises and the Lessee's Fitout and Fittings; and
- (iii) in relation to asbestos contamination in sewerage and stormwater drains, gutters and soakaways both on the Premises and running from the Premises,

except that the Lessor must, at its Cost, promptly comply with these Laws or Requirements:

- (iv) if the Lessor or the Lessor's Employees have taken action or refrained from taking action that directly or indirectly has a material effect in causing the Law or Requirement to apply, be issued or enforced; or
- (v) if the Lessor or the Lessor's Employees have taken action or refrained from taking action that directly or indirectly has a material effect in causing the Law or Requirement to apply, be issued or enforced by doing works on the Land or any adjoining land; or
- (vi) if the Lessor or the Lessor's Employees have taken action or refrained from taking action that directly or indirectly has a material effect in causing the Law or Requirement to apply, be issued or enforced because of any subdivision, re-configuration of other dealing with the Land.

(e) (OPTIONS TO TERMINATE OR SURRENDER)

- (i) If there is a change in Law or a Requirement requiring the demolition or substantial upgrade of Buildings on the Premises, then the Lessee may at its option:
  - (A) terminate this Lease by giving notice to the Lessor together with the Termination Payment; or
  - (B) partially surrender this Lease by giving to the Lessor a surrender of lease in registrable form with respect to the relevant part of the Premises (and any ancillary areas) affected by the change in Law or Requirement together with the Termination Payment. Unless access can be provided to the surrendered area in accordance with clause 7.1(e) (iv) (B), in determining the area to be partially surrendered the Lessee must ensure that the surrendered area is not landlocked.

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- (ii) At any time during the Term the Lessee may at its option and at its Cost:
  - (A) partially surrender this Lease by giving to the Lessor a surrender of lease in registrable form with respect to any Non-Make Good Buildings together with the Termination Payment; and
  - (B) in determining the area to be partially surrendered the Lessee must:
    - (1) ensure that there is 6 metres clearance from the perimeter of the surrendered area to the nearest building; and
    - (2) unless access can be provided to the surrendered area in accordance with clause 7.1(e) (iv) (B) ensure that the surrendered area is not landlocked.

- (iii) Neither party will have any further obligation to the other under this Lease following the date of service

on the Lessor of the termination notice or partial surrender of lease and the relevant Termination Payment under clause 7.1(e) (i) or 7.1(e) (ii) (but limited with respect to the area of the Premises surrendered in the case of clauses 7.1(e) (i) (B) and 7.1(e) (ii)), except for any pre-existing breach.

- (iv) If clause 7.1(e) (i) (B) or 7.1(e) (ii) applies:
- (A) the Rent and Outgoings under this Lease shall reduce proportionately by reference to the area of the Premises surrendered (with any dispute to be determined under clause 14) with effect from the date of service on the Lessor of the notice of termination or partial surrender of lease and the relevant Termination Payment (as the case may be);
  - (B) the Lessee must permit the Lessor and persons authorised by it to have a reasonable means of access through the Premises to the surrendered area, so long as that means of access and the use of it do not have a material adverse impact on the Lessee's use or operation of the Premises; and
  - (C) the definition of Outgoings will be amended to include reasonable security costs actually incurred by the Lessor arising from multiple occupancies of the Land.

## 7.2 LESSOR'S RIGHT OF INSPECTION

The Lessor may in the presence of a responsible officer of the Lessee at all reasonable times on giving to the Lessee reasonable notice enter the Premises and view the state of repair and condition.

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## 7.3 ENFORCEMENT OF REPAIRING OBLIGATIONS

The Lessor may:

- (a) (SERVE NOTICE) notify the Lessee of any failure by the Lessee to carry out within the time allowed by this Lease any repair, replacement or cleaning of the Premises which the Lessee is obliged to do under this Lease; and/or
- (b) (CARRY OUT REPAIR) require the Lessee to carry out that repair, replacement or cleaning within a reasonable time. If the Lessee fails to do so within a reasonable time having regard to the nature of the defect complained of and the length of time reasonably required to remedy that defect, the Lessor may elect to carry out that repair, replacement or cleaning at the Lessee's Cost (but wherever possible outside the usual operating hours of the Lessee). The Lessee shall on demand reimburse the Lessor for those Costs. The Lessor in exercise of its rights under this clause 7.3(b) shall:
  - (i) sign and/or procure signing by the Lessor's invitees of such confidentiality agreements as the Lessee may reasonably require;
  - (ii) endeavour not to cause any undue inconvenience to the Lessee and the conduct of the Lessee's Business; and
  - (iii) make good any damage caused to the Premises without delay.

## 7.4 LESSOR MAY ENTER TO REPAIR, DECONTAMINATE

If:

- (a) (LESSOR WISHES TO REPAIR) the Lessor wishes to carry out any repairs to the Premises considered necessary or desirable by the Lessor or in relation to anything which the Lessor is obliged to do under this Lease; or
- (b) (REQUIREMENTS OF AUTHORITY) any Authority requires any repair or work to be undertaken on the Premises (including any decontamination, remediation or other cleanup) which the Lessor must or in its absolute discretion elects to do and for

which the Lessee is not liable under this Lease,

then the Lessor, its architects, workmen and others authorised by the Lessor may at all reasonable times on giving to the Lessee reasonable notice enter and carry out any of those works and repairs. In so doing the Lessor shall:

- (c) sign and/or procure signing by the Lessor's Employees of such confidentiality agreements as the Lessee may reasonably require;
- (d) endeavour not to cause undue inconvenience to the Lessee and the conduct of the Lessee's Business, and
- (e) make good any damage caused to the Premises without delay.

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The Lessor shall indemnify the Lessee on demand in respect of all Claims incurred or suffered by the Lessee as a consequence of the carrying out of works under this clause 7.4.

7.5 DELETED

7.6 ALTERATIONS TO PREMISES

- (a) (NO CONSENT REQUIRED) The Lessee is entitled to carry out any Proposed Work on or to the Premises without the need to seek or obtain Lessor's Consent except that the Lessee must obtain the Lessor's Consent prior to carrying out any structural Proposed Works:
  - (i) on or to any Make Good Buildings; or
  - (ii) which materially increase the footprint of the Non-Make Good Buildings, such Consent not to be unreasonably withheld or delayed.
- (b) (DEEMED CONSENT) If the Lessor does not respond conclusively to a request for Consent within 20 Business Days of the written request being served on it, the Lessor is deemed to have Consented to the relevant request.
- (c) (APPROVALS) The Lessee shall obtain all necessary approvals or consents before carrying out the Proposed Work.
- (d) (LESSOR TO ASSIST) The Lessor shall at the Lessee's Cost without delay do all acts and sign all documents to enable the Lessee to obtain the approvals and consents referred to in clause 7.6(c) and otherwise to enable the Lessee to carry out any Proposed Work in accordance with this Lease.
- (e) (SPECIFIC PROPOSED WORKS) Despite clause 7.6(a), the Lessor gives its consent to Proposed Work which relates to installation and removal of the Lessee's plant and equipment, including bolting or affixing to the floors of the Premises, subject to clauses 6.2 and 13.
- (f) (CONDITION) The Lessor, acting reasonably, may require the Lessee to carry out remediation works as a condition of the Lessor's Consent to Proposed Work where Consent is required under clause 7.6(a) if the Proposed Works will, if implemented:
  - (i) trigger a Requirement to carry out those remediation works; or
  - (ii) render the Premises unsuitable for the Permitted Use unless the remediation works are carried out with the Proposed Work.

7.7 NOTICE TO LESSOR OF DAMAGE, ACCIDENT ETC.

The Lessee shall notify the Lessor of any:

- (a) (ACCIDENT) accident to or in the Premises; and/or
- (b) (NOTICE) circumstances reasonably likely to cause any damage or injury to occur within the Premises,

of which the Lessee has actual notice.

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7.8 MAINTENANCE CONTRACTS

The Lessee shall at its own Cost enter into maintenance contracts for the fire fighting services and equipment servicing the Premises with contractors approved by the Lessee and in a form and on terms (whether as to cost, standard of service or otherwise) reasonably acceptable to the Lessee.

7.9 DELETED

7.10 LESSEE'S FITOUT AND FITTINGS

The Lessee's Fitout and Fittings shall at all times be and remain the property of the Lessee (or the lessor of the Lessee's Fitout and Fittings, if applicable) despite any particular method of annexation to the Premises.

7.11 TIMING FOR WORKS AND COMPLIANCE WITH REQUIREMENTS

Despite any other provision of this Lease:

- (a) the Lessee may carry out any maintenance, repair or replacement or other works or comply with any Law or Requirement which it is required under this Lease to do or comply with at such time as the Lessee (acting reasonably) determines except that the Lessee must still comply with:
  - (i) the timetable set out in the relevant Requirement to which any works relate; and
  - (ii) clause 13; and
- (b) subject to clause 7.11(a)(i), the Lessor agrees that the mere issue of a Requirement or the existence of a non-compliance with Law does not of itself:
  - (i) trigger the Lessee's obligation to comply with it; or
  - (ii) constitute a timetable to do any works; or
  - (iii) constitute a breach of this Lease by the Lessee; and
- (c) the Lessor cannot (and shall not) take any steps or exercise any rights under this Lease or otherwise to cause the Lessee to remedy the non-compliance with Law or comply with the Requirement (or do so itself under clause 7.3 or otherwise), unless:
  - (i) clauses 7.11(a)(i) or (ii) apply; or
  - (ii) the relevant Authority is taking active steps to require the Lessor to remedy the non-compliance or comply with the Requirement and the Lessor will be exposed to liability or Cost if it does not do so; and
- (d) the Lessee may, in its absolute discretion, elect to demolish any asbestos clad or roofed Buildings rather than comply with the relevant Law or Requirement but the Rent will not be reduced if the Lessee does so.

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7.12 SET OFF PROCEDURE

- (a) (NOTICE) If the Lessee wishes to set off any amount against the Rent, the Outgoings or any other amounts under this Lease in exercise of its rights under this Lease to do so, then the Lessee must give notice to the Lessor of the amount involved, reasonable detail of what the set off relates to and the provision of this Lease with respect to which the right is proposed to be exercised.
- (b) (NO RESPONSE) If the Lessor does not respond to this notice within 20 Business Days of service of it (time being of the essence), the Lessee is entitled to exercise the set off rights referred to in the notice in accordance with this Lease.
- (c) (DISPUTE) If the Lessor by notice to the Lessee disputes the

Lessee's notice given under clause 7.12(a) within 20 Business Days of service of it (time being of the essence) and that dispute is not resolved within 5 Business Days of service of the Lessor's notice, either party may refer the matter to an appropriate independent person for determination under clause 14. The Lessee may not exercise any set off rights until any dispute under this clause has been determined or resolved.

8. ASSIGNMENT AND SUB-LETTING

8.1 NO DISPOSAL OF LESSEE'S INTEREST WITHOUT CONSENT

- (a) The Lessee may assign, transfer, sublet, licence or otherwise deal with or part with possession of the Premises or this Lease or any part of or any interest in them with the Consent of the Lessor which shall not be unreasonably withheld.
- (b) The Lessor Consents to all sub-leases, sub-licences or other sub-rights to occupy the Premises which are in existence as at the Commencing Date of the Lease for the Initial Term, whether or not those arrangements have been documented or disclosed.

8.2 LESSOR'S OBLIGATION TO CONSENT

The Lessor must give the Consent referred to in clauses 8.1 and 8.5 if the Lessee proves to the reasonable satisfaction of the Lessor that the incoming tenant is a respectable, responsible and solvent Person and, in the case of an assignment or transfer, who is reasonably capable of performing the Lessee's obligations under this Lease.

8.3 JAMES HARDIE INDUSTRIES N.V. PROVISIONS

Despite clause 8.1, whilst the Lessee is James Hardie New Zealand Limited or James Hardie Industries N.V. or a Related Body Corporate of either of those companies:

- (a) (SUBLETTING) the Lessee may sublet, licence or otherwise part with possession of the Premises without obtaining the Lessor's Consent if the proposed sublessee or licensee is James Hardie New Zealand Limited or James Hardie Industries N.V. or a Related Body Corporate of either of those companies. The Lessee shall notify the Lessor upon granting a sublease or licence of this nature;

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- (b) (ASSIGNMENT) the Lessee may assign this Lease to a Related Body Corporate of James Hardie New Zealand Limited or James Hardie Industries N.V. or to either of those companies without obtaining the Lessor's Consent but notice of the assignment must be given to the Lessor;
- (c) (SALE OF BUSINESS) if there is a sale to a purchaser of the business carried on by James Hardie New Zealand Limited or James Hardie Industries N.V. (as the case may be) then the Lessor gives its consent to an assignment of this Lease to the purchaser;
- (d) (SHORT TERM SUBLEASE OR LICENCE) the Lessee may sublet or licence up to 1,000m<sup>2</sup> of the Premises without the Lessor's Consent where the term of that sublease or licence (excluding any renewal or holding over period) does not exceed 12 months; and
- (e) (NOVATION) the Lessee may novate this Lease to a Related Body Corporate of James Hardie New Zealand Limited or James Hardies Industries NV as long as at the same time the novation occurs the Lessee procures that a guarantee of the obligations of the new tenant under this Lease is given by James Hardie Industries N.V. in a form satisfactory to the Lessor (acting reasonably).

8.4 DEED

If the Lessor requests it, the Lessee shall procure that any assignee or transferee of this Lease executes a direct covenant with the Lessor to observe the terms of this Lease in such forms as the Lessor may reasonably require including payment of reasonable legal costs.

8.5 CHANGE IN CONTROL

- (a) If:

- (i) the Lessee is a company which is neither listed nor directly or indirectly wholly-owned by a company which is listed on any recognised Stock Exchange; and
- (ii) there is a proposed change in the shareholding of the Lessee or its holding company so that a different person or group of people will control the composition of the board of directors or more than 50% of the shares giving a right to vote at general meetings of the Lessee,

then that proposed change in control is treated as a proposed assignment of this Lease and the Lessor's Consent must be obtained prior to the change in control taking effect.

- (b) The Lessor agrees that clause 8.5(a) will not apply to a change in shareholding or control where James Hardie Australia Pty Limited or a Related Body Corporate of James Hardie Australia Pty Ltd or James Hardie Industries N.V. remains or becomes:

- (i) the owner or ultimate holding company of the Lessee; or
- (ii) in control of the composition of the board of directors of the Lessee; or

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- (iii) in control of more than 50% of the shares giving a right to vote at general meetings of the Lessee.

## 9. INSURANCE AND INDEMNITIES

### 9.1 INSURANCES TO BE TAKEN OUT BY LESSEE

The Lessee shall:

- (a) (PUBLIC RISK) keep current during the Term (including any extension or Further Term or holding over) a public risk insurance policy with respect to the Premises, such policy to be for an amount of not less than the amount specified in Item 12;
- (b) (APPROVED INSURERS) ensure that all insurance policies maintained for the purposes of clause 9.1(a):
  - (i) (INSURANCE COMPANY) are taken out with an independent and reputable insurer; and
  - (ii) (AMOUNT) are for amounts and contain conditions reasonably acceptable to or reasonably required by the Lessor and/or the Lessor's insurer(s); and
- (c) (EVIDENCE OF INSURANCE) in respect of any policy of insurance to be effected by the Lessee under this clause 9.1, whenever reasonably required by the Lessor (but not more than once annually), give to the Lessor a copy of the certificate of currency; and
- (d) (INTEREST OF LESSOR) in respect of the policy of insurance to be effected by the Lessee under clause 9.1(a), ensure that the interest of the Lessor is noted,

except that the Lessee will be deemed to have complied with clauses 9.1(a) to (d) if James Hardie New Zealand Limited or James Hardie Industries N.V. or a Related Body Corporate of either of those companies is the Lessee and that Lessee is insured under the global insurance arrangements of either of those companies.

### 9.2 INSURANCES TO BE TAKEN OUT BY LESSOR

The Lessor shall:

- (a) (PROPERTY INSURANCE) keep current during the Term including any extension or Further Term or holding over the property insurance for the Premises including loss of rent cover (capped at 18 months) referred to in paragraph (e) of the definition of Outgoings;
- (b) (APPROVED INSURERS) ensure that all insurance policies maintained for the purposes of clause 9.2(a):
  - (i) (INSURANCE COMPANY) are taken out with an independent and reputable insurer; and



- (ii) (AMOUNT) are for amounts and contain conditions reasonably acceptable to or reasonably required by the Lessee and/or the Lessee's insurer(s); and

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- (c) (EVIDENCE OF INSURANCE) in respect of any policy of insurance to be effected by the Lessor under this clause 9.2, whenever reasonably required by the Lessee (but not more than once annually), give to the Lessee a copy of the certificate of currency and reasonable details of the policy coverage; and
- (d) (INTEREST OF LESSEE) in respect of the policy of insurance to be effected by the Lessor under clause 9.2(a), ensure that any interest of the Lessee is noted.

#### 9.3 DEDUCTIBLES

The Lessor will not object to any reasonable deductibles contained in any insurances effected or required to be effected by the Lessee pursuant to clause 9.1 provided that the Lessee will indemnify the Lessor to the extent of the deductible applicable under a Claim to which those insurances apply.

#### 9.4 INFLAMMABLE SUBSTANCES

The Lessee shall not:

- (a) (REASONABLE QUANTITIES) other than as is necessary for the Lessee's Business, store chemicals, inflammable liquids, acetylene gas or alcohol, volatile or explosive oils, compounds or substances on or in the Premises; or
- (b) (USE) use any of those substances or fluids in the Premises for any purpose other than the Lessee's Business.

This clause 9.4 does not apply to anything in underground storage tanks on the Premises which exist at the Commencing Date of the Lease for the Initial Term.

#### 9.5 EFFECT ON LESSOR'S INSURANCES

The Lessee shall not without the Lessor's Consent, do anything to or on the Premises which will or may:

- (a) (INCREASE THE RATE OF INSURANCE) increase the rate of any insurance on the Premises or on any property in them, of which the Lessee has been notified by the Lessor, without paying to the Lessor an amount equal to the amount of that increase; or
- (b) (AVOID INSURANCE) vitiate or render void or voidable any insurance, of which the Lessee has been notified by the Lessor, in respect of the Premises or any property in them.

#### 9.6 INSURANCE PROPOSAL BY THE LESSEE

- (a) If the Lessee is of the opinion that the Lessee will be able to procure the same insurance required to be obtained by the Lessor under clause 9.2(a) at a more competitive premium or on better terms, the Lessee may by notice in writing to the Lessor propose that it take out a policy for the insurance referred to in clause 9.2(a), noting the Lessor's interests as landlord (INSURANCE PROPOSAL). The Lessee can only submit an Insurance Proposal once per year.

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- (b) The insurer proposed must be either rated A or higher by S&P or Moodys or a global insurer with respect only to the industrial special risks component of the Insurance Proposal.
- (c) The Lessor must not unreasonably withhold, condition or delay its approval of an Insurance Proposal.
- (d) If the Lessor approves the Insurance Proposal, the Lessee must promptly take out the insurance policy proposed under the Insurance Proposal (or, if the Lessor has failed to effect insurance under clause 9.2(a), the Lessee may take out the insurance policy anticipated by that clause) noting the Lessor's interests as

landlord and, if required by the Lessor in writing, must note the interest of any financier to the Lessor and any mortgagee of the Land.

- (e) If the Lessee effects insurance under clause 9.6(d) and the Lessor is not named as an insured party, the Lessee shall reimburse the Lessor for any premiums for "difference in cover" insurance the Lessor is required to effect as a result of the requirements of its financiers, capped at 3% of the premiums payable by the Lessee under its Insurance Proposal.

#### 9.7 INDEMNITIES

Even if:

- (a) (AUTHORISATION) a Claim results from something the Lessee may be authorised or obliged to do under this Lease; and/or
- (b) (WAIVER) a waiver or other indulgence has been given to the Lessee in respect of an obligation of the Lessee under this clause 9.7,

the Lessee, except to the extent caused or contributed to by the Lessor or its Employees but only to the extent caused or contributed to by the Lessee or its Employees, shall indemnify the Lessor in respect of all Claims for which the Lessor will or may be or become liable, whether during or after the Term, in respect of or arising directly or indirectly from:

- (c) (INJURY TO PROPERTY OR PERSON) any loss, damage or injury to property or person, in on or near the Premises caused or contributed to by:
  - (i) (NEGLIGENCE) any wilful or negligent act or omission;
  - (ii) (DEFAULT) any default under this Lease; and/or
  - (iii) (USE) the use of the Premises,by or on the part of the Lessee or the Lessee's Employees;
- (d) (ABUSE OF SERVICES) the negligent or careless use or neglect of the Services and facilities of the Premises or the Appurtenances by the Lessee or the Lessee's Employees or any other person claiming through or under the Lessee;
- (e) (WATER LEAKAGE) any overflow or leakage (including rain water or from any Service, Appurtenance or the Lessor's Fixtures) whether originating inside or outside the Premises; and

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- (f) (PLATE GLASS) any loss, damage or injury relating to plate and other glass caused or contributed to by any act or omission on the part of the Lessee or the Lessee's Employees,

but excluding any consequential loss.

#### 10. DAMAGE, DESTRUCTION AND RESUMPTION

##### 10.1 DAMAGE TO OR DESTRUCTION OF PREMISES

If at any time the Premises or any part of them are damaged or destroyed so that the Premises or any part of them are wholly or substantially unfit for the occupation and use of the Lessee or (having regard to the nature and location of the Premises and the normal means of access) are wholly or substantially inaccessible then, save where such damage or destruction arises out of the wilful or negligent act or omission of the Lessee or its Employees:

- (a) (i) (RENT AND OUTGOINGS ABATEMENT) the Rent, the Outgoings and any other money payable periodically under this Lease, or a proportionate part of that Rent, the Lessee's Proportion of Outgoings or other moneys according to the nature and extent of the damage or destruction sustained, will abate; and
- (i) (REMEDIES SUSPENDED) all remedies for recovery of Rent, the Lessee's Proportion of Outgoings and other moneys (or that proportionate part of them, as the case may be) falling due after that damage or destruction will be suspended,

until the Premises have been restored or made fit for the occupation and use or made accessible to a standard equivalent to that at the

Commencing Date of the Lease for the Initial Term and all Services, air conditioning and air ventilation systems and fire fighting services and equipment for the Premises have been repaired so that they operate at a standard not less than as at the Commencing Date of the Lease for the Initial Term;

- (b) (TERMINATION BY LESSEE) if the Premises are substantially destroyed, damaged or rendered inaccessible due to the wilful or negligent act or omission of the Lessor or by default by the Lessor under the Lease, the Lessee shall have the right to terminate the Lease by notice to the Lessor and to claim damages;
- (c) (REINSTATEMENT BY LESSOR) unless:
  - (i) (NO INSURANCE MONEYS) the Lessor's insurance policies have been invalidated or payment of insurance moneys under the policies refused because of some wilful act or omission of the Lessee or the Lessee's Employees; or
  - (ii) (LESSEE INSURES) if clause 9.6(d) applies, the Lessee does not make the proceeds of the insurance referred to in clause 9.2(a) available to the Lessor for reinstatement of the Premises; or

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(iii) (AGREEMENT) the parties agree otherwise,

the Lessor shall proceed with all reasonable expedition and diligence to reinstate the Premises and/or make the Premises fit for the occupation and use of and/or accessible to the Lessee to the standard required by clause 10.1(a);

- (d) (DETERMINATION BY LESSEE) where it is required under clause 10.1(c), unless the Lessor obtains all necessary development consents to authorise the necessary works to be done and provides reasonable written evidence of that to the Lessee within 6 months of the destruction or damage first occurring, then the Lessee may terminate this Lease by giving one month's notice to the Lessor. At the end of that notice period this Lease will be at an end;
- (e) (i) (DELAY IN REPAIR) if the Lessor is obliged under clause 10.1(c) to do so, but does not:
  - (A) substantially commence the necessary works to make good the destruction or damage within 8 weeks, subject to any reasonable extension necessary to obtain consents from any relevant Authority; and/or
  - (B) complete the necessary works to make good the destruction or damage within 9 months, subject to any reasonable extension necessary to obtain consents from any relevant Authority,of it first occurring, then the Lessee may (by notice to the Lessor) proceed to cause the necessary works to be carried out and the Lessor shall allow the Lessee, its Employees, contractors and workmen access to the Land for that purpose; and
- (ii) (COSTS) all Costs of any kind incurred by the Lessee under clause 10.1(e)(i) shall at the Lessee's option (but subject to clause 7.12):
  - (A) (DEMAND) be payable by the Lessor to the Lessee on demand on a full indemnity basis;
  - (B) (PROCEEDS) be paid from available proceeds of the insurance effected under clause 9.2(a), which the Lessor must promptly make available to the Lessee; or
  - (C) (COMBINATION) be accounted for by a combination of the above in the Lessee's discretion,until all Costs incurred by the Lessee have been recovered; and
- (f) (NO OBLIGATION TO RE-INSTATE) if the circumstances in clauses 10.1(c)(i) or (ii) exist, then the Lessor shall be under no obligation to reinstate the Premises or the means of access to them. In that case, either party may terminate this Lease by giving not less than one month's notice to the other.

## 10.2 RESUMPTION OF PREMISES

If at any time the whole or any part of the Premises is resumed so that the residue of them is wholly or partially unfit for the occupation and use of the Lessee or (having regard to the

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nature and location of the Premises and the normal means of access) is wholly or partially inaccessible, then:

- (a) (RENT ABATEMENT) a proportionate part of the Rent, the Lessee's Proportion of Outgoings, and any other moneys payable periodically under this Lease, according to the nature and extent of the resumption and having regard to the resultant impact on the Lessee's trade and takings, will abate; and
- (b) (REMEDIES SUSPENDED) all remedies for recovery of that proportionate part of the Rent, the Lessee's Proportion of Outgoings, and other moneys falling due after that resumption will be suspended.

## 10.3 LIABILITY

Except under clause 10.1(b), neither the Lessor or the Lessee is liable because of the determination of this Lease under this clause 10. That determination will be without prejudice to the rights of either party in respect of any preceding breach or non-observance of this Lease.

## 10.4 DISPUTE

Any dispute arising under clauses 10.1 or 10.2 shall be determined by an appropriate independent person under clause 14.

## 11. LESSOR'S COVENANTS AND WARRANTIES

### 11.1 QUIET ENJOYMENT

If the Lessee pays the Rent and other money payable under this Lease and observes and performs its obligations under this Lease, the Lessee may occupy and enjoy the Premises during the Term and any extension or Further Term or holding over without any interruption by the Lessor or by any person rightfully claiming through, under or in trust for the Lessor, or the Lessor's Employees.

### 11.2 OUTGOINGS

Without limiting the Lessor's rights of recovery under this Lease, and except where directly payable by the Lessee under this Lease, the Lessor shall pay all Outgoings promptly and, where applicable, by any due date for payment.

### 11.3 CONSENT OF MORTGAGEE

The Lessor warrants that it has obtained all Consents (including Consents from any mortgagee of the Land) necessary for it to enter into this Lease.

### 11.4 DELETED

### 11.5 ACCESS

The Lessor must provide the Lessee with access to the Premises 24 hours a day, 7 days a week.

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### 11.6 MANAGEMENT OF LAND

The Lessor covenants with the Lessee that it will not subdivide or reconfigure the Land or create any easement, covenant or other right unless it obtains the Consent of the Lessee (which Consent shall not be unreasonably withheld). The Lessee may only withhold its Consent under this clause 11.6 if the actions proposed by the Lessor will have a material adverse impact on the Lessee's rights under this Lease or the Lessee's Business or the Lessee's use of the Premises or the Land. Any dispute under this Clause 11.6 may be referred by either party for determination under Clause 14.

## 11.7 CONSTRUCTION

During any construction on the Land, the Lessor must:

- (a) (ACCESS) do all things necessary to minimise disturbance to the Lessee in its access to, use and occupation of the Premises;
- (b) (BUSINESS) do all things necessary to minimise disruption to the Lessee's Business conducted in the Premises.

## 11.8 COMPETITORS

The Lessor covenants with the Lessee that it will not grant any lease or right of occupancy of or right to erect, install, affix, paint or otherwise display signage or advertising on any part of the Land or sell the Land or any part of it to any Competitor without the Consent of the Lessee.

## 11.9 BREACH OF WARRANTY OR COVENANT

If the Lessor breaches clauses 11.5, 11.6, 11.7 or 11.8 then, without prejudice to any other rights or remedies the Lessee may have, the Lessee at any time and in its absolute discretion shall be entitled to give the Lessor notice of an intention to terminate this Lease unless the Lessor satisfies the conditions contained in the notice within 20 Business Days or such longer period as may be reasonably required having regard to the nature of the breach and the time reasonably required to remedy the breach (the REMEDY PERIOD). If the conditions are not satisfied within the Remedy Period, the Lessee may in its absolute discretion terminate this Lease at any time after that.

## 12. DEFAULT AND DETERMINATION

### 12.1 DEFAULT

Each of the following is an Event of Default (whether or not it is in the control of the Lessee):

- (a) (RENT IN ARREARS) the Rent or any part of it or any other money is in arrears and unpaid for 15 Business Days after it is due and has been demanded;
- (b) (FAILURE TO PERFORM OTHER COVENANTS) subject to clause 7.11, the Lessee fails to perform or observe any of its other obligations under this Lease within 15 Business Days or such longer period that may be reasonable in the circumstances after service of a notice requiring performance of the covenants; and

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- (c) (LIQUIDATION) the Liquidation of the Lessee.

### 12.2 FORFEITURE OF LEASE

If an Event of Default occurs the Lessor may, without prejudice to any other Claim which the Lessor has or may have or could otherwise have against the Lessee or any other person in respect of that default, at any time:

- (a) (DETERMINATION BY RE-ENTRY) subject to any prior demand or notice as is required by Law and wherever possible, outside the normal trading hours of the Lessee, re-enter into and take possession of the Premises or any part of them (by force if necessary) and eject the Lessee and all other persons from them, in which event this Lease will be at an end; and/or
- (b) (DETERMINATION BY NOTICE) by notice to the Lessee determine this Lease, and from the date of giving that notice this Lease will be at an end.

### 12.3 WAIVER

- (a) (WAIVER BY LESSOR) No consent or waiver express or implied by the Lessor to or of any breach of any covenant, condition, or duty of the Lessee shall be construed as a consent or waiver to or of any breach of the same or any other covenant, condition or duty.
- (b) (WAIVER BY LESSEE) No consent or waiver express or implied by the Lessee to or of any breach of any covenant, condition, or duty of the Lessor shall be construed as a consent or waiver to or of any breach of the same or any other covenant, condition or duty.

#### 12.4 LESSOR TO MITIGATE DAMAGES

If the Lessee vacates the Premises, whether with or without the Lessor's Consent, or the Lessor terminates or forfeits this Lease, the Lessor shall take all reasonable steps to mitigate its loss and shall as soon as possible endeavour to re-let the Premises at a reasonable rent and on reasonable terms.

#### 12.5 RECOVERY OF DAMAGES

- (a) (FUNDAMENTAL TERMS) The obligations contained in clauses 4.1, 4.2, 4.3, 4.4, 4.5, 5.3, 5.5, 6.1(a), 7.1(a) and (d), 7.6(a), 8.1, 9.1, 10.1 and 10.3 are agreed by the Lessor and the Lessee to be fundamental to this Lease.
- (b) (DAMAGES) If the Lessor determines this Lease pursuant to this clause 12 as a consequence of or in reliance upon a breach by the Lessee of one or more of the obligations contained in the provisions of this Lease referred to in clause 12.5(a) (whether alone or together with other obligations contained in this Lease) the Lessor shall, subject to clause 12.4, be entitled to damages for loss of the benefits which performance of all of the obligations and provisions of this Lease would, but for the determination, have conferred upon the Lessor, subject to the Lessor's duty to mitigate its loss.

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#### 12.6 INTEREST ON OVERDUE MONEY

- (a) (INTEREST) The Lessee shall pay to the Lessor interest at the Interest Rate on any Rent or other money due under this Lease (including money or Costs which are expressed to be payable or reimbursable to the Lessor on demand) but unpaid for 5 Business Days.
- (b) (CONDITIONS) That interest shall:
  - (i) (ACCRUAL) accrue on a daily basis and be calculated on daily rests;
  - (ii) (PAYMENT) be payable on demand or, if no earlier demand is made, on the first Business Day of each month where an amount arose in the preceding month or months;
  - (iii) (CALCULATION) be calculated from the due date for payment of the Rent or other money (as appropriate) or, in the case of an amount payable by way of reimbursement or indemnity, the date of outlay or loss, if earlier, until the date of actual payment; and
  - (iv) (RECOVERY) be recoverable in the same manner as Rent in arrears.

#### 13. TERMINATION

##### 13.1 YIELD UP

In relation to the Premises (other than the Non Make Good Buildings), the Lessee shall at the Terminating Date:

- (a) (YIELD UP) yield them up in the state of repair and condition described in and on the terms set out in clause 7.1 except that the Lessee is not obliged to remove any Proposed Work it has done during the Term nor to reinstate the Premises to their former condition unless that was a condition of the Lessor's Consent to that Proposed Work being carried out by the Lessee; and
- (b) (REMOVE LESSEE'S FITOUT AND FITTINGS) if the Lessor so requests or if the Lessee wishes to, remove from the Premises (other than the Non-Make Good Buildings) all the Lessee's Fitout and Fittings and any other property of the Lessee and repaint those parts of the Premises (other than the Non-Make Good Buildings) which were previously painted and recarpet those parts of the Premises (other than the Non-Make Good Buildings) which were carpeted at the Commencing Date of the Lease for the Initial Term with carpet of such quality as was installed at the Commencing Date of the Lease for the Initial Term.

##### 13.2 NON MAKE GOOD BUILDINGS

In relation to the Non Make Good Buildings:

- (a) (REMOVE LESSEE'S FITOUT AND FITTINGS) if the Lessor so requests the Lessee shall or if the Lessee wishes to the Lessee may, remove from the Premises all the Lessee's Fitout and Fittings and any other property of the Lessee; and

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- (b) (ANY CONDITION) the Lessee can deliver them up to the Lessor in any condition, subject to performance of the Lessee's obligations in clause 7.1(d) which are due to be performed prior to the Terminating Date and under clause 13.2(a).

### 13.3 LESSEE NOT TO CAUSE DAMAGE

The Lessee shall:

- (a) (NOT CAUSE DAMAGE) not cause or contribute to any damage to the Premises (other than the Non Make Good Buildings) in the removal of the Lessee's Fitout and Fittings and other property of the Lessee. If it does, however, it shall make good that damage; and
- (b) (LEAVE PREMISES IN GOOD STATE) leave the Premises in a clean state and Condition.

If the Lessee fails to comply with clauses 13.1, 13.2 and 13.3(a) and (b) within a reasonable time of the Terminating Date, the Lessor may make good and/or clean the Premises to the extent the Lessee was obliged to do so at the Cost of and as agent for the Lessee and recover from the Lessee the Cost to the Lessor of doing so as a liquidated debt payable on demand. The Lessee must also pay Rent and Lessee's Proportion of Outgoings for any reasonable period in which the Lessor undertakes the Lessee's obligations under this clause 13.3.

### 13.4 FAILURE BY LESSEE TO REMOVE LESSEE'S FITOUT AND FITTINGS

If the Lessee fails to remove the Lessee's Fitout and Fittings and other property of the Lessee when required to do so under clauses 13.1 or 13.2 or following determination under clause 12.2, within 30 Business Days of notice to do so, the Lessor may cause the Lessee's Fitout and Fittings and other property of the Lessee to be removed and stored in such manner as the Lessor in its discretion thinks fit at the risk and Cost of the Lessee. The Lessee must also pay Rent and Lessee's Proportion of Outgoings for any reasonable period in which the Lessor undertakes the Lessee's obligations under this clause 13.4.

### 13.5 FAILURE TO REMOVE

If the Lessee fails to remove the Lessee's Fitout and Fittings and other property of the Lessee by the Terminating Date under clauses 13.1 and 13.2 where the Lessor has not requested in writing that it do so, it shall then become the property of the Lessor.

## 14. DISPUTES

### 14.1 APPOINTMENT OF EXPERT

Any dispute arising under this Lease may at the request of either party be referred for determination by an appropriate independent person who is:

- (a) (AGREED BY PARTIES) agreed between the Lessor and the Lessee; or
- (b) (FAILING AGREEMENT) if they cannot agree, a member of a professional body nominated at the request of either the Lessor or the Lessee by the President of the Property Council of New Zealand, Inc.

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### 14.2 QUALIFICATIONS OF EXPERT

The appointed person:

- (a) (EXPERIENCE) must have substantial experience in relation to disputes in the nature of the matter in dispute and where appropriate, in relation to premises of a similar type within the area in which the Premises are located or other comparable areas; and
- (b) (EXPERT) in making his determination shall act as an expert and not

as an arbitrator.

His determination will be final and binding on the parties.

#### 14.3 COST OF DETERMINATION

The Cost of the appointed person's determination shall be borne by either or both of the parties (as determined by the appointed person) and if by both of the parties in the proportion between them as the person making the determination decides.

#### 15. ENVIRONMENTAL CONTAMINATION

##### 15.1 LESSEE'S RESPONSIBILITY

Despite any other provision of this Lease except clause 15.4 and the Lessee's obligations with respect to underground storage tanks and any Environmental contamination associated with them under clause 7.1(d), the Lessee is not responsible for:

- (a) inground Environmental contamination of the Land or migrating onto or from the Land which exists at the Commencing Date of the Lease for the Initial Term; or
- (b) for any Environmental contamination in, on, under or migrating onto or from the Land which occurs on and after the Commencing Date of the Lease for the Initial Term which is not caused by the Lessee or its Employees.

##### 15.2 LESSOR'S OBLIGATIONS AND INDEMNITY

The Lessor shall:

- (a) (COMPLY) without delay, but subject to clause 15.4:
  - (i) remediate any Environmental contamination referred to in clause 15.1 and which:
    - (A) any Authority requires remediated; or
    - (B) the parties agree or the expert under clause 14 determines is required pursuant to clause 15.2(c); and
  - (ii) comply with the Requirements of any Authority and the Law with respect to the Environmental contamination referred to in clause 15.1; and
- (b) (INDEMNIFY) indemnify the Lessee against all Claims arising from the matters set out in clause 15.2(a) including any Costs arising from any agreement negotiated by or with the Consent of the Lessor acting reasonably with any Authority relating to the matters referred to in clause 15.2(a), except to the extent that:

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- (i) other than with respect to Environmental contamination which constitutes a health and safety risk which the Lessee is required to notify an Authority by Law, the Lessee or the Lessee's Employees have taken action with the intention of causing a Claim to be made or a notice or other Requirement issued and that action directly or indirectly has a material effect in causing the Claim to be made or the notice or other Requirement to be issued;
  - (ii) the Claim relates to Remediation to a standard higher than that required for industrial use (which the parties agree is the standard appropriate for the Permitted Use) whether arising from a rezoning of the Premises or otherwise; and/or
  - (iii) any disposition by the Lessee of a legal or equitable interest which the Lessee has in the Premises is made on terms which include an indemnity in respect of the Environment which is materially more advantageous to the person receiving that interest from the Lessee than the indemnity included in this clause 15.2, including in respect of the qualifications applicable to the indemnity contained in this clause 15.2(b).
- (c) (i) If there is any Environmental contamination referred to in clause 15.1 which:
    - (A) prevents the Lessee operating from the Premises in the manner used at the Effective Date; or



(B) otherwise constitutes a health and safety risk,

then the Lessee may give notice to the Lessor with reasonable details of the Environmental contamination and requesting that the Lessor remediate that contamination.

- (ii) If the Lessor disputes whether the remediation requested by the Lessee is reasonably necessary, it must give notice to the Lessee within 20 Business Days of the date of service of the Lessee's notice under paragraph (i).
- (iii) If the Lessor and the Lessee cannot agree on whether the remediation requested by the Lessee is reasonably necessary within 25 Business Days of the date of service of the Lessee's notice under paragraph (i) above, then either party may refer the matter for dispute resolution under clause 14.

#### 15.3 REMEDIATION BY THE LESSEE IF LESSOR DEFAULTS

If:

- (a) (LESSOR'S FAILURE) the Lessor fails to comply with clause 15.2(a) in accordance with the Requirements of any Authority and the Law (or, if no time is specified, within a reasonable time of notice from the Lessee, having regard to the nature of the remediation or the Law or Requirement and the period of time reasonably required to carry out the remediation or comply with the Law or Requirement); or

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- (b) (EMERGENCY) any emergency arises which requires the immediate or urgent remediation of Environmental contamination or compliance with a Requirement or the Law which the Lessor is required to remediate or comply with under this Lease,

then the Lessee may remediate the Environmental contamination or comply with the Law or the Requirement and the Cost of so doing and of all Claims incurred by the Lessee in properly complying with that Law or Requirement or arising from the Lessor's failure to do so and any reasonable Costs arising from temporary relocation of all or part of the Lessee's Business shall, at the Lessee's option be (but subject to clause 7.12):

- (c) (ON DEMAND) payable by the Lessor to the Lessee on demand on a full indemnity basis;
- (d) (SET OFF) be set off against the Rent, the Lessee's Proportion of Outgoings and any other moneys payable by the Lessee under this Lease; or
- (e) (COMBINATION) accounted for by a combination of the above in the Lessee's discretion,

until all Costs incurred by the Lessee have been recovered.

#### 15.4 PRE-EXISTING UST'S

The Lessee must by the Terminating Date remove any underground storage tanks existing on the Land at the Commencing Date of the Lease for the Initial Term or installed by the Lessee during the Term and remediate or otherwise deal with any Environmental contamination associated with them to the extent required to enable the Land to continue to be used for industrial purposes following the Terminating Date.

#### 15.5 SPECIFIC OBLIGATIONS

- (a) Subject to clause 7.11, the Lessee must effect and maintain all Environmental management plans relating to the Environmental condition of the Buildings on the Premises which are Required by Law or any Authority during the Term.
- (b) The Lessee agrees to contribute towards the costs of remediation of the asbestos contamination referred to in clause 7.1(d) (iii) in accordance with the terms of any agreement negotiated between the Lessee and the relevant Authority.

#### 15.6 ACKNOWLEDGEMENT

Without limiting any other provision of this clause 15, the Lessee acknowledges that the Premises are at the Commencing Date of the Lease for the Initial Term subject to Environmental contamination and accepts the Premises in that state.

16. MISCELLANEOUS

16.1 NOTICES

All notices, requests, demands, consents, approvals, agreements or other communications to or by a party to this Lease:

(a) (WRITING) must be in writing;

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(b) (SIGNED) must be signed by the sender, or if a company, by its Authorised Person; and

(c) (SERVED) will be taken to have been served:

(i) (PERSONAL) in the case of delivery in person, when delivered to or left at the address of the recipient shown in this Lease (as the case may be) or at any other address which the recipient may have notified to the sender;

(ii) (FAX) in the case of facsimile transmission, when recorded on the transmission result report unless:

(A) within 24 hours of that time the recipient informs the sender that the transmission was received in an incomplete or garbled form; or

(B) the transmission result report indicates a faulty or incomplete transmission; and

(d) (MAIL) in the case of mail, on the third Business Day after the date on which the notice is accepted for posting by the relevant postal authority,

but if service is on a day which is not a Business Day in the place to which the communication is sent or is later than 4.00pm (local time) on a Business Day, the notice will be taken to have been served on the next Business Day in that place.

16.2 COSTS AND REGISTRATION

(a) (REGISTRATION FEES) The Lessee shall pay to the Lessor on demand registration fees (if applicable) with respect to this Lease.

(b) (LEGAL COSTS) Each party shall pay their own legal Costs with respect to this Lease.

(c) (LESSOR TO STAMP AND REGISTER) The Lessor shall (subject to receipt of necessary funds from the Lessee) attend to the registration of this Lease at Land Information New Zealand as soon as possible after the Commencing Date.

16.3 SEVERANCE

Any provision of this Lease which is prohibited or unenforceable in any jurisdiction will be ineffective in that jurisdiction to the extent of the prohibition or unenforceability. That will not invalidate the remaining provisions of this Lease nor affect the validity or enforceability of that provision in any other jurisdiction.

16.4 ENTIRE AGREEMENT

This Lease contains all the contractual arrangements of the parties with respect to the transaction to which it relates. No representations or warranties made by either party with respect to the transaction to which this Lease relates shall be actionable or enforceable except to the extent that they are contained in this Lease.

16.5 GOVERNING LAW

This Lease is governed by the laws of New Zealand. The parties submit to the non-exclusive jurisdiction of courts exercising jurisdiction there.

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17. CONFIDENTIALITY

- (a) (DUTY) Unless the parties otherwise agree in any particular instance, the provisions of this Lease and all information disclosed to or obtained by the parties in relation to each other and this Lease and which is not in public knowledge (or which is in public knowledge only as a consequence of a breach of this clause) must be kept confidential to the parties and may not be disclosed (unless otherwise required by Law) except to any bona fide consultants retained by a party in relation to this Lease, or to bona fide purchasers, financiers, assignees or sub occupants (as the case may be) and any such consultant or other person must be provided only with that information which he needs to know for the purposes of reviewing this Lease and he must undertake in writing to maintain the confidentiality of that information.
- (b) (INDEMNITY) The parties shall indemnify each other and must keep each other indemnified against all Claims suffered or incurred as a consequence of any breach of clause 17(a) by the Lessor or the Lessee or their respective Employees, consultants or other persons for whom they are responsible.

## 18. LIMITATION OF LIABILITY

### 18.1 CAPACITY OF LESSOR

Where the Lessor is a trustee of a trust (TRUST), the Lessor only enters into this Lease in its capacity as trustee of the Trust and in no other capacity. A liability arising under or in connection with this Lease is limited and can be enforced against the Lessor only to the extent to which it can be satisfied out of property of the Trust and for which the Lessor is actually indemnified for the liability. This limitation of the Lessor's liability applies despite any other provisions of this Lease (except clause 18.3 ("When limitation does not apply")) and extends to all liabilities and obligations of the Lessor in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Lease, any other document in connection with it, or the Trust.

### 18.2 PARTIES MAY NOT SUE

The parties may not sue the Lessor in any capacity other than as trustee of the Trust, including seeking the appointment of a receiver, a liquidator, an administrator or similar person to the Lessor or prove in any liquidation, administration or arrangement of or affecting the Lessor (except in relation to property of the Trust).

### 18.3 WHEN LIMITATION DOES NOT APPLY

Clauses 18.1 and 18.2 shall not apply to any obligation or liability of the Lessor to the extent that it is not satisfied because, under this Lease or any other document in connection with it, or by operation of law, there is a reduction in the extent of the Lessor's indemnification out of the assets of the Trust, as a result of the Lessor's fraud, negligence or breach of trust.

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### 18.4 FAILURE BY THIRD PARTIES

It is acknowledged that the Lessor is responsible under this Lease and other documents in connection with it for performing a variety of obligations relating to the Trust. No act or omission of the Lessor will be considered fraud or negligence of the Lessor for the purposes of clauses 18.3 ("When limitation does not apply") or 18.5 ("Breach by the Lessor") to the extent to which the act or omission was caused by any failure by any person who provides services in respect of the Trust to fulfil its obligations relating to the Trust or by any other act or omission of any person who provides services in respect of the Trust (other than employees and agents of the Lessor or a person who has been delegated or appointed by the Lessor).

### 18.5 BREACH BY THE LESSOR

It is also acknowledged that a breach of an obligation imposed on, or a representation or warranty given by, the Lessor under or in connection with this Lease or any other document in connection with it will not be considered a breach of trust by the Lessor unless the Lessor has acted with negligence, or without good faith, in relation to the breach.

## 19. TRUST WARRANTIES

Where the Lessor is a trustee and/or responsible entity of a Trust, the Lessor warrants in its personal capacity that:

- (a) (TRUSTEE) it is the sole trustee of the Trust;
- (b) (POWER) it, in its capacity as trustee of the Trust, is entitled and competent and has absolute and complete authority, power and capacity to enter into and perform its obligations under this Lease and is not in breach of any Law or court order relating to its acting as trustee of the Trust;
- (c) (INDEMNITY) its right of indemnity out of, and lien over, the assets of the Trust has not been limited in any way and that right has priority over the right of the beneficiaries to the Trust assets;
- (d) (ENFORCEABLE) the deed establishing the Trust (TRUST DEED) is enforceable in accordance with the Law applicable to it;
- (e) (CONSENT) the consent of each of the beneficiaries, unitholders or other persons whose consent is required under the Trust Deed has been obtained;
- (f) (NO BREACH) the entry into this Lease by the Lessor does not conflict with or result in a breach of, or default under, any provision of the Trust Deed or any other agreement to which the Lessor is a party (whether in its capacity as trustee of the Trust or its personal capacity);
- (g) (TRUST EXTANT) the Trust has not at the Commencing Date of the Lease for the Initial Term been terminated nor has the date or any event for the vesting of the assets subject to the Trust occurred.

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## 20. GUARANTEE AND INDEMNITY

### 20.1 CONSIDERATION

The Guarantor gives this guarantee and indemnity in consideration of the Lessor agreeing to enter into this Lease at the request of the Guarantor. The Guarantor acknowledges the receipt of valuable consideration from the Lessor for the Guarantor incurring obligations and giving rights under this guarantee and indemnity.

### 20.2 GUARANTEE

The Guarantor unconditionally and irrevocably guarantees to the Lessor the due and punctual performance and observance by the Lessee of its obligations:

- (a) under this Lease, even if this Lease is not registered or is found not to be a lease or is found to be a lease for a term less than the Term; and
  - (b) in connection with its occupation of the Premises,
- including the obligations to pay money.

### 20.3 INDEMNITY

As a separate undertaking, the Guarantor unconditionally and irrevocably indemnifies the Lessor against all liability or loss arising from, and any costs, charges or expenses incurred in connection with:

- (a) the Lessee's breach of this Lease; or
  - (b) the Lessee's occupation of the Premises,
- including a breach of the obligations to pay money; or
- (c) a representation or warranty by the Lessee in this Lease being incorrect or misleading when made or taken to be made; or
  - (d) a liquidator disclaiming this Lease.

It is not necessary for the Lessor to incur expense or make payment before enforcing that right of indemnity.

### 20.4 INTEREST

The Guarantor agrees to pay interest on any amount payable under this guarantee and indemnity from when the amount becomes due for payment until it is paid in full. The Guarantor must pay accumulated interest at the end of each month without demand. Interest is payable as set out in clause

20.5 ENFORCEMENT OF RIGHTS

The Guarantor waives any right it has of first requiring the Lessor to commence proceedings or enforce any other right against the Lessee or any other person before claiming under this guarantee and indemnity.

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20.6 CONTINUING SECURITY

This guarantee and indemnity is a continuing security and is not discharged by any one payment.

20.7 GUARANTEE NOT AFFECTED

The liabilities of the Guarantor under this guarantee and indemnity as a guarantor, indemnifier or principal debtor and the rights of the Lessor under this guarantee and indemnity are not affected by anything which might otherwise affect them at law or in equity including, but not limited to, one or more of the following:

- (a) the Lessor granting time or other indulgence to, compounding or compromising with or releasing the Lessee or any other Guarantor;
- (b) acquiescence, delay, acts, omissions or mistakes on the part of the Lessor;
- (c) any transfer of a right of the Lessor;
- (d) the termination, surrender or expiry of, or any variation, assignment, subletting, licensing, extension or renewal of or any reduction or conversion of the Term of this Lease;
- (e) the invalidity or unenforceability of an obligation or liability of a person other than the Guarantor;
- (f) any change in the Lessee's occupation of the Premises;
- (g) this Lease not being registered;
- (h) this Lease not being effective as a lease;
- (i) this Lease not being effective as a lease for the Term;
- (j) any person named as Guarantor not executing or not executing effectively this guarantee and indemnity;
- (k) a liquidator disclaiming this Lease.

20.8 SUSPENSION OF GUARANTOR'S RIGHTS

The Guarantor may not:

- (a) raise a set-off or counterclaim available to it or the Lessee against the Lessor in reduction of its liability under this guarantee and indemnity; or
- (b) claim to be entitled by way of contribution, indemnity, subrogation, marshalling or otherwise to the benefit of any security or guarantee held by the Lessor in connection with this Lease; or
- (c) make a claim or enforce a right against the Lessee or its property; or
- (d) prove in competition with the Lessor if a liquidator, provisional liquidator, receiver, administrator or trustee in bankruptcy is appointed in respect of the Lessee or the Lessee is otherwise unable to pay its debts when they fall due,

until all money payable to the Lessor in connection with the lease or the Lessee's occupation of the Premises is paid.

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20.9 REINSTATEMENT OF GUARANTEE

If a claim that a payment to the Lessor in connection with this Lease or

this guarantee and indemnity is void or voidable (including, but not limited to, a claim under laws relating to liquidation, administration, insolvency or protection of creditors) is upheld, conceded or compromised then the Lessor is entitled immediately as against the Guarantor to the rights to which it would have been entitled under this guarantee and indemnity if the payment had not occurred.

#### 20.10 COSTS

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

- (a) the Lessor's costs, charges and expenses in making, enforcing and doing anything in connection with this guarantee and indemnity including, but not limited to, legal costs and expenses on a full indemnity basis; and
- (b) all stamp duties, fees, taxes and charges which are payable in connection with this guarantee and indemnity or a payment, receipt or other transaction contemplated by it.

Money paid to the Lessor by the Guarantor must be applied first against payment of costs, charges and expenses under this clause 20.10 then against other obligations under this guarantee and indemnity.

#### 20.11 LESSOR MAY ASSIGN

The Lessor may assign its rights under this guarantee and indemnity to a purchaser or a transferee of the Land.

#### 21. CONCURRENCY

This Lease is concurrent with any tenancy, subtenancy, or other occupancies in existence at the Commencing Date.

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THIS IS ANNEXURE B OF 8 PAGES TO THE LEASE BETWEEN STUDORP LIMITED (LESSOR),  
 JAMES HARDIE NEW ZEALAND LIMITED (LESSEE) AND JAMES HARDIE INDUSTRIES N.V.  
 (GUARANTOR) DATED 23 MARCH 2004

LESSOR'S ASSET REGISTER

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THIS IS ANNEXURE C OF 3 PAGES TO THE LEASE BETWEEN STUDORP LIMITED (LESSOR),  
 JAMES HARDIE NEW ZEALAND LIMITED (LESSEE) AND JAMES HARDIE INDUSTRIES N.V.  
 (GUARANTOR) DATED 23 MARCH 2004

MAKE GOOD AND NON MAKE GOOD BUILDINGS PLANS

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EXHIBIT 8.1

LIST OF SIGNIFICANT SUBSIDIARIES

The table below sets forth our significant subsidiaries, all of which are 100% owned by James Hardie Industries N.V., either directly or indirectly.

<TABLE>

<CAPTION>

NAME OF COMPANY	JURISDICTION OF ESTABLISHMENT
-----	-----
<S>	<C>
James Hardie Aust Holdings Pty Ltd	Australia
James Hardie Aust Investco Services Pty Ltd	Australia
James Hardie Aust Investments No. 1 Pty Ltd	Australia
James Hardie Austgroup Pty Ltd	Australia
James Hardie Australia Management Pty Ltd	Australia
James Hardie Australia Pty Ltd	Australia
James Hardie Building Products Inc.	United States
James Hardie Fibre Cement Pty Ltd	Australia
James Hardie International Finance B.V.	Netherlands
James Hardie N.V.	Netherlands
James Hardie NZ Holdings Trust	New Zealand
James Hardie Philippines Inc	Philippines
James Hardie Research (Holdings) Pty Ltd	Australia
James Hardie Research Pty Ltd	Australia
N.V. Technology Holdings A Limited Partnership	Australia
RCI Pty Ltd	Australia

</TABLE>

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We hereby consent to the incorporation by reference in the Registration Statement on Form S-8 (No. 333-14036) of James Hardie Industries N.V. and Subsidiaries of our report dated June 24, 2004, except for Note 14, as to which the date is November 19, 2004 relating to the consolidated financial statements, which appears in this Form 20-F.

/s/PricewaterhouseCoopers LLP  
PricewaterhouseCoopers LLP

Los Angeles, California  
November 19, 2004

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER  
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Louis Gries, certify that:

1. I have reviewed this annual report on Form 20-F of James Hardie Industries N.V.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the company as of, and for, the periods presented in this report;
4. The company's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the company and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the company, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Evaluated the effectiveness of the company's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - c) Disclosed in this report any change in the company's internal control over financial reporting that occurred during the period covered by the annual report that has materially affected, or is reasonably likely to materially affect, the company's internal control over financial reporting; and
5. The company's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the company's auditors and the audit committee of the company's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the company's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the company's internal control over financial reporting.

/s/ Louis Gries

---

Louis Gries  
*Interim Chief Executive Officer*

Date: November 22, 2004

**CERTIFICATION OF CHIEF FINANCIAL OFFICER  
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Russell Chenu, certify that:

1. I have reviewed this annual report on Form 20-F of James Hardie Industries N.V.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the company as of, and for, the periods presented in this report;
4. The company's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the company and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the company, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Evaluated the effectiveness of the company's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - c) Disclosed in this report any change in the company's internal control over financial reporting that occurred during the period covered by the annual report that has materially affected, or is reasonably likely to materially affect, the company's internal control over financial reporting; and
5. The company's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the company's auditors and the audit committee of the company's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the company's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the company's internal control over financial reporting.

/s/ Russell Chenu

---

Russell Chenu  
*Interim Chief Financial Officer*

Date: November 22, 2004

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

Each of the undersigned hereby certifies, in his capacity as an officer of James Hardie Industries, N.V. (the "Company"), for purposes of 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to the best of his knowledge:

- the Annual Report of the Company on Form 20-F for the fiscal year ended March 31, 2004 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- the information contained in such report fairly presents, in all material respects, the financial condition and results of operation of the Company.

Dated: November 22, 2004

/s/ Louis Gries

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Louis Gries  
*Interim Chief Executive Officer*

/s/ Russell Chenu

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Russell Chenu  
*Interim Chief Financial Officer*