

ANNEXURE O

This is a copy of Exhibit 1, Volume 6, Tab 60

Deed of Covenant and Indemnity

James Hardie Industries Limited

James Hardie & Coy Pty Limited

Jsekarb Pty Limited

Allen Allen & Hemsley
The Chifley Tower
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Sydney NSW 2000
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Date	February 2001
Parties	<ol style="list-style-type: none">1. James Hardie Industries Limited ABN 60 000 009 263 of Level 8, 65 York Street, Sydney, NSW 2000 (<i>JHIL</i>);2. James Hardie & Coy Pty Ltd ABN 49 000 035 512 of Level 8, 65 York Street, Sydney, NSW 2000 (<i>Coy</i>); and3. Jsekarb Pty Limited ABN 98 000 387 342 of Level 8, 65 York Street, Sydney, NSW 2000 (<i>Jsekarb</i>).
Recitals	<p>A JHIL has agreed to pay certain sums to each of Coy and Jsekarb, as more particularly described in clause 3, in consideration for Coy and Jsekarb covenanting not to make any claim against any JHIL Party in the terms of clause 3.</p> <p>B JHIL has also agreed to pay certain further sums to each of Coy and Jsekarb, as more particularly described in clause 4, in consideration for Coy and Jsekarb granting an indemnity to each JHIL Party in the terms of clause 4.</p> <p>C The respective amounts to be paid to Coy and Jsekarb have been calculated by reference to the parties' best estimate of the value of future claims against Coy and Jsekarb based on the expected relative claims profile of those companies. In the event that those calculations are inaccurate, JHIL has required that Coy and Jsekarb establish the risk-sharing arrangement in the terms of clause 7.</p>

IT IS AGREED as follows.

1. Definitions and Interpretation

1.1 Definitions

The following definitions apply unless the context requires otherwise:

Allowable Deduction means, in respect of any Applicable Losses, that portion (if any) of the Applicable Losses which the relevant JHIL Party is entitled to deduct under section 8-1 and 8-5 of the Income Tax Assessment Act 1997 or, if that Act does not exist for any reason, the equivalent section or sections in relation to any subsequent Act enacted for the purposes of calculating taxable income;

Applicable Corporate Tax Rate means the Corporate Tax Rate applicable to a JHIL Party for the financial year in which the relevant Applicable Losses were suffered or incurred by that JHIL Party;

Applicable Losses means Losses suffered or incurred by a JHIL Party which give rise to an Indemnity Amount;

Business Day means a day on which banks are generally open for business in New South Wales, other than a Saturday or Sunday;

Claim means any claim, demand, action, cause of action or proceeding (whether based in contract, tort, statute, at law or otherwise howsoever) whether arising in Australia or in any other part of the world and whether or not substantiated;

Completion means completion of the sale of the JHIL Shares;

Consideration has the meaning given to that term by the GST Law;

Corporate Tax Rate means, in respect of a corporation, the rate at which that corporation is to be taxed under the Commonwealth *Income Tax Rates Act 1986*;

Coy's Bank Account means account no. (012 003) 7751 66786 held at the ANZ Bank, Pitt & Hunter Streets, Sydney Branch, NSW or such other account as is notified by Coy to JHIL and Jsekarb in writing from time to time;

Discount Factor means the 10 year Australian Government bond rate expressed on a yield basis;

Effective Date means the date of this Deed;

Establishment Letter means the deed poll letter of JHIL to Medical Research and Compensation Foundation dated on or about the date of this Deed;

GST means the goods and services tax as imposed by the GST Law together with any related interest, penalties, fines or other charges;

GST Amount means any Payment (or the relevant part of that Payment) multiplied by the appropriate rate of GST (currently 10%);

GST Law has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999*, or, if that Act 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;

Indemnity Amount means an amount payable by Coy or Jsekarb pursuant to the indemnity in clause 4.1(a) and (b) respectively;

Input Tax Credit has the meaning given to that term by the GST Law;

Interest Rate means the base rate charged by the relevant payee's principal banker to corporate customers from time to time for overdraft facilities in excess of \$100,000 calculated on a daily basis and a year of 365 days;

JHIL Party means JHIL and each Related Body Corporate of JHIL other than Coy and Jsekarb (including bodies corporate, whether now or previously in existence, which were, at any time prior to the date of this Deed, Related Bodies Corporate of JHIL) and each of their respective present or past directors, officers, employees and agents from time to time;

JHIL Shareholder means the person, if any, who is the sole registered holder of the JHIL Shares from time to time;

JHIL Shares means all of the issued ordinary shares in JHIL from time to time;

Jsekarb's Bank Account means account no. (012 003) 7753 82171 held with the ANZ Bank, Pitt & Hunter Streets, Sydney branch, NSW or such other account as is notified by Jsekarb to Coy and JHIL in writing from time to time;

Loan Agreement means the loan deed entered into between JHIL and Coy on or about the date of this Deed;

Loss means any loss, liability, cost (whether or not the subject of a court order), expense or damage;

Net Indemnity Amount means, in respect of an Indemnity Amount, the Indemnity Amount less such portion of the Applicable Losses to which the Indemnity Amount relates as are an Allowable Deduction for the JHIL Party which suffered or incurred the Applicable Losses;

Payment means any amount payable under or in connection with this Deed including any amount payable by way of indemnity, reimbursement or otherwise and includes the provision of any non-monetary consideration;

Prescribed Period means the period commencing on the Effective Date and expiring on the 15th anniversary of the Effective Date;

Recognised Tax Adviser means:

- (a) (unless (b) applies) an independent firm of accountants appointed by the relevant JHIL Party with notice in writing to Coy and Jsekarb of such appointment; or
- (b) should Coy or Jsekarb dispute the appointment of the firm referred to in paragraph (a) above by notice in writing to the relevant JHIL Party within 15 days of receipt of notice of the appointment, a firm of accountants appointed, on the application of either Coy or Jsekarb (as appropriate) or the relevant JHIL Party, by the President of the Institute of Chartered Accountants in Australia;

Related Body Corporate means, in relation to a body corporate, a body corporate which is related to it within the meaning of section 50 of the Corporations Law;

Related Transaction means any payment contemplated by this Deed, the Loan Agreement or the Establishment Letter;

Schedule 3 Notice has the meaning given in Clause 5.1;

Security Interest includes any mortgage, pledge, lien or charge or any security or preferential interest or arrangement of any kind including but not limited to retention of title or any deposit by way of security;

Supplies has the meaning given to that term by the GST Law;

Tax Invoice has the meaning given to that term by the GST Law; and

Taxable Supply has the meaning given to that term by the GST Law.

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules of interpretation apply unless the context requires otherwise:

- (a) The singular includes the plural and conversely;
- (b) A gender includes all genders;
- (c) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) A reference to a person includes a body corporate, an unincorporated body or other entity and conversely;
- (e) A reference to a clause or schedule is to a clause of or schedule to this Deed;
- (f) A reference to any party to this Deed or any other agreement or document includes the party's successors and permitted assigns;
- (g) mentioning anything after include, includes or including does not limit what else might be included;
- (h) A reference to conduct includes any omission, representation, statement or undertaking, whether or not in writing.

2. Payment by JHIL

2.1 First Payment

Further to clauses 3.2(a) and 4.2(a):

- (a) Coy acknowledges the receipt of a total of \$5,296,250 from JHIL, being payment in full of payment number 1 in each of Schedules 1 and 2; and
- (b) Jsekarb acknowledges the receipt of a total of \$278,750 from JHIL, being payment in full of payment number 1 in each of Schedules 3 and 4.

2.2 No admission by JHIL

The parties agree that no payment made by JHIL in accordance with this Deed is an admission of liability by JHIL or any other JHIL Party to Coy, Jsekarb or any other person in respect of any matter whatsoever including without limitation the matters referred to in this Deed.

Method of Payment

Each payment to be made by JHIL under this Deed:

- (a) if to Coy, shall be made by telegraphic transfer to Coy's Bank Account or such other means as Coy and JHIL may agree; and
- (b) if to Jsekarb, shall be made by telegraphic transfer to Jsekarb's Bank Account or such other means as Jsekarb and JHIL may agree.

3. Covenant

Covenant

In consideration of the payment by JHIL of the amounts set out in Schedules 1 and 3, subject to clauses 3.3 and 4A, to Coy and Jsekarb respectively, each of Coy and Jsekarb severally covenants and undertakes not to make any Claim (subject to clauses 3.2 and 3.4) against any JHIL Party in connection with, arising from or incidental to, whether directly or indirectly, past or present, the marketing, manufacture, processing, purchase, sale, distribution or importation of asbestos or products containing asbestos or the payment of moneys by Coy and/or Jsekarb to any JHIL Party whether by way of dividend, distribution, management fees or otherwise.

3.2 Payment for Covenant

- (a) JHIL agrees to pay to Coy and Jsekarb respectively, in the manner provided in clause 2.3 and subject to clauses 3.3 and 4A, each amount set out, in the case of Coy, in column 2 of Schedule 1 by the date stipulated for payment in column 3 of Schedule 1 and, in the case of Jsekarb, in column 2 of Schedule 3 by the date stipulated for payment in column 3 of Schedule 3, provided that, if JHIL does not pay any such amount by that date, then:
 - (i) JHIL shall pay interest to Coy or Jsekarb (as the case may be) on the amount in question on a daily basis from the date the amount was due for payment until the date of actual payment, at the Interest Rate plus 250 basis points; and
 - (ii) notwithstanding any failure by JHIL to pay the amount by the date stipulated for payment in column 3 of Schedule 1 or column 3 of Schedule 3, each JHIL Party shall still benefit from the covenant and undertaking given by Coy or Jsekarb (as the case may be) in clause 3.1 provided that JHIL pays to Coy the overdue amount (plus default interest calculated in accordance with clause 3.2(a)(i)), within one month of receiving a written notice from Coy or Jsekarb (as the case may be) requesting payment.
- (b) Without prejudice to the generality of clause 3.1, each payment to Coy as set out in Schedule 1, and to Jsekarb as set out in Schedule 3, is to be treated as consideration for the provision by Coy and Jsekarb respectively of the covenant and undertaking in clause 3.1 for a 12 month period commencing on the date stipulated for payment of that

payment in column 3 of Schedules 1 and 3 respectively, save that the foregoing shall not apply in respect of:

- (i) the payment by JHIL of payment number 42 set out in each of Schedules 1 and 3, being the last payments to be made in accordance with clause 3.2;
- (ii) the payment by JHIL of the total sum of \$36,500,000 in accordance with clause 3.3;
- (iii) the payment by JHIL of the amount, following a demand by Coy, determined in accordance with clause 4A1; or
- (iv) the payment by JHIL of the amount, following a demand by Jsekarb, determined in accordance with clause 4A2,

so that each JHIL Party shall be entitled forever under a continuing covenant and undertaking of Coy or Jsekarb, as applicable:

- (A) in the case of (i) or (ii) above, provided such payment is made in full in accordance with clause 3.2 or 3.3 (as appropriate), to the benefit of the covenants and undertakings given by both Coy and Jsekarb in clause 3.1 from the date stipulated for such payments in accordance with clause 3.2 or 3.3 (as appropriate);
- (B) in the case of (iii) above, provided such payment is made in accordance with clause 4A1, to the benefit of the covenant and undertaking given by Coy in clause 3.1 from the date of such payment in accordance with clause 4A1; or
- (C) in the case of (iv) above, provided such payment is made in accordance with clause 4A2, to the benefit of the covenant and undertaking given by Jsekarb in clause 3.1 from the date of such payment in accordance with clause 4A2.

3.3 JHIL Option

The parties agree that JHIL may elect, by notice in writing to Coy and Jsekarb, instead of making the payments numbered 8 to 42 in each of Schedules 1 and 3, to pay to Coy and Jsekarb the sums of \$34,675,000 and \$1,825,000 respectively by the date specified for payment of payment number 8 in each of Schedules 1 and 3, namely 15 February 2008.

3.4 Lapse of Covenant

- (a) If JHIL not only fails to pay an amount, to Coy as set out in column 2 of Schedule 1, or to Jsekarb as set out in column 2 of Schedule 3, by the stipulated date but also fails to pay the overdue amount by the date determined in accordance with clause 3.2(a)(ii), then the covenant and undertaking given by Coy or Jsekarb (as the case may be) in clause 3.1 shall lapse from the date, determined in accordance with clause 3.2(a)(ii), by which the overdue amount is to be paid.
- (b) For the avoidance of doubt, Clause 3.4(a) shall not apply either:

- (i) where JHIL has elected to pay, and has paid, to Coy and Jsekarb the sums set out in, and in accordance with, clause 3.3; or
 - (ii) (in respect of the covenant and undertaking given by Coy) where JHIL has paid the amount in full, following a demand by Coy, determined in accordance with clause 4A1; or
 - (iii) (in respect of the covenant and undertaking given by Jsekarb) where JHIL has paid the amount in full, following a demand by Jsekarb, determined in accordance with clause 4A2.
- (c) Notwithstanding clauses 3.2(a) and 3.4(a) and for the avoidance of doubt, a failure by JHIL to pay to Coy or Jsekarb an amount set out in column 2 of Schedule 1 or 3 (as the case may be) by the stipulated date and/or a failure to pay the overdue amount to Coy or Jsekarb by the date determined in accordance with clause 3.2(a)(ii), shall not affect the continued validity and effectiveness of the covenant and undertaking given by Jsekarb (in the case of a failure to pay Coy) or Coy (in the case of a failure to pay Jsekarb) to each JHIL Party under clause 3.1.

4. Indemnity

4.1 Indemnity by Coy and Jsekarb

- (a) In consideration of the payment by JHIL to Coy of the amounts set out in Schedule 2, subject to clauses 4.3 and 4A1, Coy shall (subject to clauses 4.2, 4.4 and 4.5), to the greatest extent permitted by law, indemnify and hold harmless each JHIL Party in respect of:
- (i) all Claims which any person may bring or make against such JHIL Party whenever arising and whenever alleged; and
 - (ii) all Losses suffered or incurred by such JHIL Party whenever suffered,
- in each case arising from, in connection with or incidental to, whether directly or indirectly, the marketing, manufacture, processing, purchase, sale, distribution or importation by Coy, at any time before the date of this Deed, of asbestos or products containing asbestos.
- (b) In consideration of the payment by JHIL to Jsekarb of the amounts set out in Schedule 4, subject to clause 4.3 and 4A2, Jsekarb shall (subject to clauses 4.2, 4.4 and 4.5), to the greatest extent permitted by law, indemnify and hold harmless each JHIL Party in respect of:
- (i) all Claims which any person may bring or make against such JHIL Party whenever arising and whenever alleged; and
 - (ii) all Losses suffered or incurred by such JHIL Party whenever suffered,
- in each case arising from, in connection with or incidental to, whether directly or indirectly, the marketing, manufacture, processing,

purchase, sale, distribution or importation by Jsekarb, at any time before the date of this Deed, of asbestos or products containing asbestos.

4.2 Payment for and Duration of Indemnity

- (a) JHIL agrees to pay to Coy and Jsekarb respectively, in the manner provided in clause 2.3 and subject to clauses 4.3 and 4A, each amount set out, in the case of Coy, in column 2 of Schedule 2 by the date stipulated for payment in column 3 of Schedule 2 and, in the case of Jsekarb, in column 2 of Schedule 4 by the date stipulated for payment in column 3 of Schedule 4, provided that, if JHIL does not pay any such amount by that date, then:
- (i) JHIL shall pay interest to Coy or Jsekarb (as the case may be) on the amount in question on a daily basis from the date the amount was due for payment until the date of actual payment, at the Interest Rate plus 250 basis points; and
 - (ii) notwithstanding any failure by JHIL to pay the amount by the date stipulated for payment in column 3 of Schedule 2 or column 3 of Schedule 4, each JHIL Party shall still benefit from the indemnity given by Coy or Jsekarb (as the case may be) in clause 4.1 relating to such amount provided that JHIL pays to Coy or Jsekarb (as the case may be) the overdue amount (plus default interest calculated in accordance with clause 4.2(a)(i), within one month of receiving a written notice from Coy or Jsekarb (as the case may be) requesting payment.
- (b) Without prejudice to the generality of clause 4.1, each payment, to Coy as set out in Schedule 2, and to Jsekarb as set out in Schedule 4, is to be treated as consideration for the provision by Coy and Jsekarb of the indemnity in clause 4.1(a) and (b) respectively for a 12 month period commencing on the date stipulated for payment of that payment in column 3 of Schedules 2 and 4 respectively, save that the foregoing shall not apply in respect of:
- (i) the payment by JHIL of payment number 42 set out in each of Schedules 2 and 4, being the last payments to be made in accordance with clause 4.2;
 - (ii) the payment by JHIL of the total sum of \$36,500,000 in accordance with clause 4.3;
 - (iii) the payment by JHIL of the amount, following a demand by Coy, determined in accordance with clause 4A1; or
 - (iv) the payment by JHIL of the amount, following a demand by Jsekarb, determined in accordance with clause 4A2,
- so that each JHIL Party shall be entitled forever under a continuing obligation of Coy or Jsekarb, as applicable:
- (A) in the case of (i) or (ii) above, provided such payment is made in full in accordance with clause 4.2 or 4.3 (as appropriate), to the benefit of the indemnity given by

both Coy and Jsekarb in clause 4.1 from the date stipulated for such payment in accordance with clause 4.2 or 4.3 (as appropriate);

- (B) in the case of (iii) above, provided such payment is made in full in accordance with clause 4A1, to the benefit of the indemnity given by Coy in clause 4.1(a) from the date of such payment in accordance with clause 4A1; or
- (C) in the case of (iv) above, provided such payment is made in full in accordance with clause 4A2, to the benefit of the indemnity given by Jsekarb in clause 4.1(b) from the date of such payment in accordance with clause 4A2.

4.3 JHIL Option

The parties agree that JHIL may elect, by notice in writing to Coy and Jsekarb, instead of making the payments numbered 8 to 42 in each of Schedules 2 and 4, to pay to Coy and Jsekarb the sums of \$34,675,000 and \$1,825,000 respectively by the date specified for payment of payment number 8 in each of Schedules 2 and 4, namely 15 February 2008.

4.4 Lapse of Indemnity

- (a) If JHIL not only fails to pay an amount, to Coy as set out in column 2 of Schedule 2, or to Jsekarb as set out in column 2 of Schedule 4, by the stipulated date but also fails to pay the overdue amount by the date determined in accordance with clause 4.2(a)(ii), then:
 - (i) the indemnity given by Coy or Jsekarb (as the case may be) in clause 4.1 shall lapse from the date, determined in accordance with clause 4.2(a)(ii), by which the overdue amount is to be paid; but
 - (ii) notwithstanding such lapse, each JHIL Party shall be entitled to the continued benefit of the indemnity in clause 4.1 in respect of any Losses suffered or incurred by that JHIL Party following such lapse, but only:
 - (A) to the extent that such Losses relate to a Claim brought or made against the JHIL Party prior to the lapse of the indemnity given by Coy or Jsekarb (as the case may be) in clause 4.1; and
 - (B) provided that the JHIL Party notified Coy and Jsekarb in writing of the Claim prior to the lapse of the indemnity given by Coy or Jsekarb (as the case may be) in clause 4.1.
- (b) For the avoidance of doubt, clause 4.4(a) shall not apply either:
 - (i) where JHIL has elected to pay, and has paid, to Coy and Jsekarb the sums set out in, and in accordance with, clause 4.3; or

- (ii) (in respect of the indemnity given by Coy) where JHIL has paid the amount, following a demand by Coy, determined in accordance with clause 4A1; or
 - (iii) (in respect of the indemnity given by Jsekarb) where JHIL has paid the amount, following a demand by Jsekarb, determined in accordance with clause 4A2.
- (c) Notwithstanding clauses 4.2(a) and 4.4(a), a failure by JHIL to pay to Coy or Jsekarb an amount set out in column 2 of Schedule 2 or 4 (as the case may be) by the stipulated date and/or a failure to pay the overdue amount to Coy or Jsekarb by the date determined in accordance with clause 4.2(a)(ii), shall not affect the continued validity and effectiveness of the indemnity given by Jsekarb (in the case of a failure to pay Coy) or Coy (in the case of a failure to pay Jsekarb) to each JHIL Party under clause 4.1.

4.5 Insurance

Neither Coy nor Jsekarb will be liable to indemnify and hold harmless any JHIL Party in respect of any Loss suffered or incurred by the JHIL Party which would otherwise be covered by the indemnity in clause 4.1(a) or (b) to the extent that the JHIL Party recovers (or, but for this Deed, would be entitled to recover) that Loss or any part of that Loss under any insurance policy. To this effect, if a JHIL Party suffers or incurs a Loss covered by the indemnity in clause 4.1(a) or (b):

- (a) the JHIL Party shall be entitled to require Coy (if relating to the indemnity in clause 4.1(a)) or Jsekarb (if relating to the indemnity in clause 4.1(b)) to advance forthwith to the JHIL Party the Loss or any part of the Loss pending payment (if any) by the relevant insurer;
- (b) subject to compliance by Coy or Jsekarb (as the case may be) with clause 4.5(a), the JHIL Party shall thereafter use its reasonable endeavours, if the Loss is or may be entitled to be recovered under the terms of any insurance policy of or applicable to it, to recover the same from the relevant insurer; and
- (c) to the extent the JHIL Party recovers the Loss in accordance with clause 4.5(b), it shall repay to Coy or Jsekarb (as the case may be) an equivalent amount not exceeding the amount advanced by Coy or Jsekarb (as the case may be) in accordance with clause 4.5(a).

4.6 Taxation

- (a) Where Coy or Jsekarb is required to pay an Indemnity Amount, the total amount payable by Coy or Jsekarb (as the case may be) shall be the sum of "x" plus "y", where:

x = the Indemnity Amount;

$$y = \left[\frac{z}{1 - \text{Applicable Corporate Tax Rate}} \right] - z; \text{ and}$$

z = the Net Indemnity Amount.

- (b) In calculating the Net Indemnity Amount for the purposes of clause 4.6(a), the relevant JHIL Party shall be assumed to be entitled to an Allowable Deduction in respect of the entirety of the relevant Applicable Losses, unless that JHIL Party furnishes a written opinion of a Recognised Tax Adviser to the effect that the JHIL Party is not so entitled, or that it is only entitled to an Allowable Deduction in respect of part of the relevant Applicable Losses, in which case the JHIL Party shall, subject to clause 4.6(c), be deemed for the purposes of calculating the Net Indemnity Amount to be entitled only to an Allowable Deduction to the extent, if at all, determined in accordance with such opinion.
- (c) The opinion of a Recognised Tax Adviser obtained in accordance with clause 4.6(b) shall be final in calculating the Net Indemnity Amount for the purposes of clause 4.6(a), save in the case of manifest error in respect of the facts on which the opinion was based, in which case clause 12 shall apply.

Coy and Jsekarb Option

Coy Option

The parties agree that if, at any time after the date of this Deed, the total amount (as recorded in the accounting records of Coy) equal to:

- (i) all amounts paid by Coy to any person (including any JHIL Party under this Deed) in respect of asbestos-related Claims (including legal costs and expenses) and which are not recovered by Coy under any insurance contract; less
- (ii) the amount of monies paid under the litigation management contract executed by Coy on or about the date of this Deed (or any similar such contract),

since the date of this Deed, is greater than \$142,500,000, then Coy shall have the right to demand payment from JHIL (to be paid within one month of demand) in one lump sum of the net present value as at the date of payment (calculated by reference to the Discount Factor as at the date of payment) of all amounts referred to in Schedules 1 and 2 which have a date for payment falling after the date of the demand, provided that Coy shall not be entitled to demand such payment if JHIL has previously paid to Coy the amounts of \$34,675,000 and \$34,675,000 in accordance with clauses 3.3 and 4.3.

4A.2 Jsekarb Option

The parties agree that if, at any time after the date of this Deed, the total amount (as recorded in the accounting records of Jsekarb) equal to:

- (i) all amounts paid by Jsekarb to any person (including any JHIL Party under this Deed) in respect of asbestos-related Claims (including legal costs and expenses) and which are not recovered by Jsekarb under any insurance contract; less
- (ii) the amount of monies paid under the litigation management contract executed by Jsekarb on or about the date of this Deed (or any similar such contract),

since the date of this Deed, is greater than \$7,500,000, then Jsekarb shall have the right to demand payment from JHIL (to be paid within one month of demand) in one lump sum of the net present value as at the date of payment (calculated by reference to the Discount Factor as at the date of payment) of all amounts referred to in Schedules 1 and 2 which have a date for payment falling after the date of the demand, provided that Jsekarb shall not be entitled to demand such payment if JHIL has previously paid to Jsekarb the amounts of \$1,825,000 and \$1,825,000 in accordance with clauses 3.3 and 4.3.

5. Covenant to acquire JHIL Shares

5.1 Covenant to acquire

Coy hereby covenants to the JHIL Shareholder that Coy shall, on receipt of a notice from the JHIL Shareholder in the form of Schedule 3 (*Schedule 3 Notice*), acquire the JHIL Shares in whole and in one lot.

5.2 Exercise

The JHIL Shareholder may require Coy to acquire the JHIL Shares by giving to Coy a Schedule 3 Notice at any time during the Prescribed Period.

5.3 Sale

- (a) When the Schedule 3 Notice is given, the JHIL Shareholder shall transfer the JHIL Shares to Coy for a nominal consideration of \$10.00.

5.4 Completion

- (a) Completion of the sale of the JHIL Shares shall take place:
 - (i) at Coy's offices or another place agreed in writing; and
 - (ii) on the second Business Day after receipt of a Schedule 3 Notice or a later date agreed in writing between the parties.
- (b) On Completion, the JHIL Shareholder shall deliver to Coy:
 - (i) all certificates issued by JHIL in respect of the JHIL Shares; and

- (ii) duly completed instruments of transfer in respect of the JHIL Shares executed by the JHIL Shareholder as transferor in favour of Coy or its nominee as transferee.
- (c) On Completion, Coy shall pay to the JHIL Shareholder the purchase price for the sale of the JHIL Shares by bank cheque.

5.5 Warranties

The JHIL Shareholder warrants to Coy, with effect as at Completion, that:

- (i) it is the beneficial owner of and registered or entitled to be registered as the holder of the JHIL Shares;
- (ii) there is no Security Interest on, over or affecting the JHIL Shares and there is no agreement or arrangement to give or create any such Security Interest;
- (iii) it is entitled to sell and transfer the JHIL Shares without the consent of any third parties; and
- (iv) on Completion the transferee shall receive valid title to the JHIL Shares.

6. Representations, Warranties and Acknowledgements

6.1 Mutual Representations and Warranties

Each party makes the following representations and warranties to each other party as at the date of this Deed:

- (a) **(Status)** it is a corporation validly existing under the laws of the place of its incorporation specified in this Deed.
- (b) **(Power)** it has the power to enter into and perform its obligations under this Deed and to carry out the transactions contemplated by this Deed.
- (c) **(Corporate authorisations)** it has taken all necessary corporate action to authorise the entry into and performance of this Deed.
- (d) **(Documents binding)** this Deed is its valid and binding obligation enforceable in accordance with its terms.
- (e) **(Transactions permitted)** the execution and performance by it of this Deed and each transaction contemplated under this Deed will not violate in any respect a provision of:
 - (i) a law or treaty or a judgement, ruling, order or decree of a governmental, judicial or regulatory entity or authority binding on it;
 - (ii) its constitution or other constituent documents; or
 - (iii) any other document or agreement which is binding on it or its assets.

6.2 Acknowledgement by Coy and Jsekarb

Each of Coy and Jsekarb acknowledges that, other than under a Related Transaction, no JHIL Party has any liability to it for any amount.

7. Recovery between Coy and Jsekarb

- (a) If the directors of Coy or Jsekarb believe at any time, on reasonable grounds, that the company of which they are directors is insolvent (within the meaning of section 95A of the Corporations Law) or is likely for whatever reason to become insolvent at some future time, Coy or Jsekarb (as the case may be) may instruct the other company to pay it such amount and over such period of time as the directors of the first company believe, on reasonable grounds, is necessary to enable them to be satisfied that the company can pay its debts as and when they fall due and will not be likely to become insolvent at some future time.
- (b) Where Jsekarb or Coy (as the case may be) receives an instruction under clause 7(a), that company will only be required to comply with that instruction if and to the extent that its directors believe, on reasonable grounds, that following any such payment the company will remain able to pay its debts as and when they fall due and will not be likely to become insolvent at some future time.

8. Goods and Services Tax (GST)

The parties agree that:

- (a) all Payments in Consideration for Supplies made under this Deed have been calculated without regard to GST;
- (b) each party will comply with its obligations under the *Trade Practices Act 1974* when calculating the amount of any Payment and the amount of any relevant Payments will be adjusted accordingly;
- (c) if the whole or any part of any Payment is the consideration for a Taxable Supply for which the party making the Taxable Supply is liable to GST, the payer must pay to the party making the Taxable Supply an additional amount equal to the GST Amount, either concurrently with that Payment or as otherwise agreed in writing;
- (d) any reference to a cost or expense in this Deed excludes any amount in respect of GST forming part of the relevant cost or expense when incurred by the relevant party for which that party can claim an Input Tax Credit;
- (e) despite any other provision of this Deed, if a Payment due under this Deed is a reimbursement or indemnification by one party of an expense, loss or liability incurred or to be incurred by the other party:

- (i) 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; and
- (ii) the other party will be assumed to be entitled to full Input Tax Credits in respect of Taxable Supplies made to it unless it can establish otherwise; and
- (f) the party making the Taxable Supply will provide to the payer a Tax Invoice in respect of a Taxable Supply.

9. Other Beneficiaries

- (a) Each of Coy and Jsekarb covenants with JHIL (both for itself and as trustee for each other JHIL Party) and with each other JHIL Party that it will, when requested by a JHIL Party (other than JHIL but including without limitation a JHIL Party acting in its capacity as JHIL Shareholder under clause 5), enter into a deed with the JHIL Party on substantially the same terms as this Deed including without limitation covenanting, undertaking and indemnifying it in the same terms as clauses 3.1, 4.1 and 5.
- (b) Any JHIL Party (other than JHIL but including without limitation a JHIL Party acting in its capacity as JHIL Shareholder under clause 5) may at any time make itself a party to this Deed for the purposes of enforcing the provisions of this Deed, including without limitation clauses 3.1, 4.1 and 5, by executing and delivering to each of Coy and Jsekarb a copy of this Deed.
- (c) If either of clauses 9(a) or 9(b) is invoked by any JHIL Party (other than JHIL but including without limitation a JHIL Party acting in its capacity as JHIL Shareholder under clause 5), this Deed (including without limitation clauses 3, 4 and 5) shall be taken to have effect in relation to that JHIL Party, and that JHIL Party shall have the benefit of this Deed, on and from the Effective Date (save that, for the avoidance of doubt, no payments shall be owed by that JHIL Party under or in connection with this Deed).

10. Further Assurances

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

11. Confidentiality

Undertaking

Subject to clause 11.2, each party shall keep confidential the existence and terms of this Deed and any discussions between the parties or their representatives and advisers in relation to it.

Exceptions

A party may make any disclosure of the terms of this Deed that it thinks necessary to:

- (a) any auditors and lawyers on a need to know basis and on receipt of an undertaking from that person to keep the terms confidential;
- (b) comply with any law or requirement of any regulatory body (including any relevant stock exchange); or
- (c) any JHIL Party (other than JHIL) on receipt of an undertaking from that person to keep the terms confidential.

12. Alternative Dispute Resolution

- (a) If a dispute arises between any parties to this Deed, including but not limited to a dispute which arises out of or relates to this Deed (including any dispute as to breach or termination of the Deed or as to any claim in tort, in equity or pursuant to any statute), a party to the Deed may not commence any court or arbitration proceedings relating to the dispute unless it has complied with the following paragraphs of this clause except where the party seeks urgent interlocutory relief.
- (b) A party to this Deed claiming that a dispute of the type referred to in clause 12(a) (*Dispute*) has arisen must give written notice to the other parties to this Deed specifying the nature of the Dispute.
- (c) On receipt of that notice by those other parties, the parties to this Deed (*the Parties*) must endeavour in good faith to resolve the Dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or determination or similar techniques agreed by them.
- (d) If the Parties do not agree within seven (7) days of receipt of the notice (or such further period as agreed in writing by them) as to:
 - (i) the dispute resolution technique and procedures to be adopted;
 - (ii) the timetable for all steps in those procedures; and
 - (iii) the selection and compensation of the independent person required for such technique,

the Parties must mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales and the Chair of

LEADR or the Chair's nominee will select the mediator and determine the mediator's remuneration.

13. Conduct of Claims

- (a) If a JHIL Party (the *Indemnified Party*) receives notice of any act, matter or thing which in the opinion of the Indemnified Party may give rise to a Claim against it in relation to which Coy or Jsekarb would be required to indemnify it under clause 4.1, it shall notify Coy or Jsekarb (as the case may be) (the *Indemnifier*) of the act, matter or thing (giving reasonable details so far as is practicable), and the Indemnifier shall, subject to clause 13(b), be required to conduct, at the sole cost of the Indemnifier, the defence of such Claim and, for that purpose, to institute all necessary legal and other proceedings in the name of and on behalf of the Indemnified Party. For the avoidance of doubt, a failure to notify in accordance with this clause 13(a) shall not nullify or affect the indemnity in clause 4.1. However, if there is a failure to notify in respect of a Claim that increases the cost of the Claim to Coy or Jsekarb (as the case may be), that party may reduce the amount paid by it under clause 4.1 in respect of that Claim by the amount of that increase.
- (b) If clause 13(a) applies in respect of a Claim, the Indemnifier must:
- (i) not make any admission of liability of the Indemnified Party of fact or law, in any proceedings, settlement or correspondence, without the prior written approval of the Indemnified Party;
 - (ii) keep the Indemnified Party regularly and fully informed regarding the conduct and progress of the defence of the Claim;
 - (iii) promptly take such reasonable action as the Indemnified Party requests to avoid, dispute, resist, appeal, compromise or defend the Claim; and
 - (iv) use the same degree of care, attention, skill and judgment in defending the Claim that it uses in the defence of asbestos-related Claims brought against it.
- (c) If clause 13(a) applies in respect of a Claim, the Indemnified Party shall in a timely manner render all reasonable assistance and co-operation to the Indemnifier in the conduct of the relevant proceedings.

14. Entire Agreement

This Deed contains the entire agreement between the parties with respect to its subject matter. It sets out the only conduct relied on by the parties and, to the full extent permissible by law, supersedes all earlier conduct made by or existing between the parties with respect to its subject matter. JHIL

acknowledges that, but for the representation made by it in this clause, Coy and Jsekarb would not have executed this Deed. Each of Coy and Jsekarb acknowledges that but for the representation made by it in this clause, JHIL would not have executed this Deed.

15. Acknowledgement

- (a) The parties acknowledge that they enter into this Deed fully and voluntarily on their own information and investigation. Each party to this Deed acknowledges that it is aware that it or its advisers, agents or lawyers may discover facts different from or in addition to the facts that they now know or believe to be true with respect to the subject matter of this Deed and that the discovery of such facts shall not affect or prejudice in any way the validity of this Deed.
- (b) The parties acknowledge that each of them obtained independent legal advice in relation to this Deed before each of them executed a copy of this Deed.

16. Stamp Duty and Costs

Each party shall bear its own costs arising out of the preparation of this Deed but JHIL shall bear any stamp duty (including fines and penalties) chargeable on this Deed, or any instruments entered into under this Deed and any transaction evidenced by it. JHIL shall indemnify Coy and Jsekarb on demand against any liability for that stamp duty (including fines and penalties).

17. No Waiver

No failure to exercise and no delay in exercising any right, power or remedy under this Deed will operate as a waiver. Nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy.

18. No Merger

The rights and obligations of the parties will not merge on completion of any transaction under this Deed. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing any transaction.

19. Assignment

No party shall be entitled to assign or transfer any or all of its rights or obligations under this Deed.

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20. Notices

- (a) **(Method of Notice)** A notice, approval, consent or other communication in connection with this Deed:
- (i) must be in writing; and
 - (ii) must be left at the address of the addressee, or sent by prepaid ordinary post (airmail if posted to or from a place outside Australia) to the address of the addressee which is specified in this clause 20 or if the addressee notifies another address then to that address.

The address of each party is:

JHIL:

Address: The registered office of JHIL for the time being.

Attn: Company Secretary

with a copy to the Managing Partner for the time being of Allen Allen & Hemsley, The Chifley Tower, 2 Chifley Square, NSW 2000

Coy:

Address: The registered office of Coy for the time being.

Attn: Company Secretary

Jsekarb:

Address: The registered office of Jsekarb for the time being.

Attn: Company Secretary

- (b) **(Effective Date)** A notice, approval, consent or other communication takes effect from the time it is received unless a later time is specified in it.
- (c) **(Deemed Receipt)** A letter is taken to be received on the third (seventh, if posted to or from a place outside Australia) day after posting.

21. Counterparts

This Deed may be executed in any number of counterparts. All counterparts taken together will be taken to constitute one agreement.

Deed of Covenant and Indemnity

Allen Allen & Hemsley

22. Governing Law

This Deed is governed by the laws of New South Wales. The parties submit to the non-exclusive jurisdiction of courts exercising jurisdiction there.

EXECUTED and delivered as a deed in Sydney.

Each attorney executing this Deed states that he has no notice of revocation or suspension of his power of attorney.

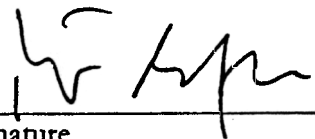
SIGNED SEALED and DELIVERED)
on behalf of)
JAMES HARDIE INDUSTRIES)
LIMITED)
by its attorney under power of attorney)
in the presence of:)



Witness

JULIAN BLANCHARD

Print name



Signature
P. J. Shafran

Print name

JH & COY PTY LTD)

Signature

D E CAMERON

Print name

ATTORNEY

Office held



Signature

PHILLIP MORLEY

Print name

ATTORNEY

Office held

Deed of Covenant and Indemnity

Allen Allen & Hemsley

JSEKARB PTY LIMITED)
)



Signature

D E CAMERON

ATTORNEY

Office held



Signature

PHILLIP MOORE

Print name

ATTORNEY

Office held

Deed of Covenant and Indemnity

Allen Allen & Hemsley

Schedule 1

Payment to Coy for Covenant and Undertaking in Clause 3.1

Payment No	Amount Payable to Coy	Date for Payment
1.	\$2,648,125	15 February 2001
2.	\$2,648,125	15 February 2002
3.	\$2,648,125	15 February 2003
4.	\$2,648,125	15 February 2004
5.	\$2,648,125	15 February 2005
6.	\$2,648,125	15 February 2006
7.	\$2,648,125	15 February 2007
8.	\$2,648,125	15 February 2008
9.	\$2,648,125	15 February 2009
10.	\$2,648,125	15 February 2010
11.	\$2,648,125	15 February 2011
12.	\$2,648,125	15 February 2012
13.	\$2,648,125	15 February 2013
14.	\$2,648,125	15 February 2014
15.	\$2,648,125	15 February 2015
16.	\$2,648,125	15 February 2016
17.	\$2,648,125	15 February 2017
18.	\$2,648,125	15 February 2018
19.	\$2,648,125	15 February 2019
20.	\$2,648,125	15 February 2020
21.	\$2,648,125	15 February 2021
22.	\$2,648,125	15 February 2022
23.	\$2,648,125	15 February 2023
24.	\$2,648,125	15 February 2024
25.	\$2,648,125	15 February 2025
26.	\$2,648,125	15 February 2026

Deed of Covenant and Indemnity

Allen Allen & Hemsley

27.	\$2,648,125	15 February 2027
28.	\$2,648,125	15 February 2028
29.	\$2,648,125	15 February 2029
30.	\$2,648,125	15 February 2030
31.	\$2,648,125	15 February 2031
32.	\$2,648,125	15 February 2032
33.	\$2,648,125	15 February 2033
34.	\$2,648,125	15 February 2034
35.	\$2,648,125	15 February 2035
36.	\$2,648,125	15 February 2036
37.	\$2,648,125	15 February 2037
38.	\$2,648,125	15 February 2038
39.	\$2,648,125	15 February 2039
40.	\$2,648,125	15 February 2040
41.	\$2,648,125	15 February 2041
42.	\$2,648,125	15 February 2042

Deed of Covenant and Indemnity

Allen Allen & Hemsley

Schedule 2

Payment to Coy for Indemnity in Clause 4.1

Payment No	Amount Payable to Coy	Date for Payment
1.	\$2,648,125	15 February 2001
2.	\$2,648,125	15 February 2002
3.	\$2,648,125	15 February 2003
4.	\$2,648,125	15 February 2004
5.	\$2,648,125	15 February 2005
6.	\$2,648,125	15 February 2006
7.	\$2,648,125	15 February 2007
8.	\$2,648,125	15 February 2008
9.	\$2,648,125	15 February 2009
10.	\$2,648,125	15 February 2010
11.	\$2,648,125	15 February 2011
12.	\$2,648,125	15 February 2012
13.	\$2,648,125	15 February 2013
14.	\$2,648,125	15 February 2014
15.	\$2,648,125	15 February 2015
16.	\$2,648,125	15 February 2016
17.	\$2,648,125	15 February 2017
18.	\$2,648,125	15 February 2018
19.	\$2,648,125	15 February 2019
20.	\$2,648,125	15 February 2020
21.	\$2,648,125	15 February 2021
22.	\$2,648,125	15 February 2022
23.	\$2,648,125	15 February 2023
24.	\$2,648,125	15 February 2024
25.	\$2,648,125	15 February 2025
26.	\$2,648,125	15 February 2026

Deed of Covenant and Indemnity

Allen Allen & Hemsley

27.	\$2,648,125	15 February 2027
28.	\$2,648,125	15 February 2028
29.	\$2,648,125	15 February 2029
30.	\$2,648,125	15 February 2030
31.	\$2,648,125	15 February 2031
32.	\$2,648,125	15 February 2032
33.	\$2,648,125	15 February 2033
34.	\$2,648,125	15 February 2034
35.	\$2,648,125	15 February 2035
36.	\$2,648,125	15 February 2036
37.	\$2,648,125	15 February 2037
38.	\$2,648,125	15 February 2038
39.	\$2,648,125	15 February 2039
40.	\$2,648,125	15 February 2040
41.	\$2,648,125	15 February 2041
42.	\$2,648,125	15 February 2042

Deed of Covenant and Indemnity

Allen Allen & Hemsley

Schedule 3

Payment to Jsekarb for Covenant and Undertaking in Clause 3.1

Payment No	Amount Payable to Jsekarb	Date for Payment
1.	\$139,375	15 February 2001
2.	\$139,375	15 February 2002
3.	\$139,375	15 February 2003
4.	\$139,375	15 February 2004
5.	\$139,375	15 February 2005
6.	\$139,375	15 February 2006
7.	\$139,375	15 February 2007
8.	\$139,375	15 February 2008
9.	\$139,375	15 February 2009
10.	\$139,375	15 February 2010
11.	\$139,375	15 February 2011
12.	\$139,375	15 February 2012
13.	\$139,375	15 February 2013
14.	\$139,375	15 February 2014
15.	\$139,375	15 February 2015
16.	\$139,375	15 February 2016
17.	\$139,375	15 February 2017
18.	\$139,375	15 February 2018
19.	\$139,375	15 February 2019
20.	\$139,375	15 February 2020
21.	\$139,375	15 February 2021
22.	\$139,375	15 February 2022
23.	\$139,375	15 February 2023
24.	\$139,375	15 February 2024
25.	\$139,375	15 February 2025
26.	\$139,375	15 February 2026

Deed of Covenant and Indemnity

Allen Allen & Hemsley

27.	\$139,375	15 February 2027
28.	\$139,375	15 February 2028
29.	\$139,375	15 February 2029
30.	\$139,375	15 February 2030
31.	\$139,375	15 February 2031
32.	\$139,375	15 February 2032
33.	\$139,375	15 February 2033
34.	\$139,375	15 February 2034
35.	\$139,375	15 February 2035
36.	\$139,375	15 February 2036
37.	\$139,375	15 February 2037
38.	\$139,375	15 February 2038
39.	\$139,375	15 February 2039
40.	\$139,375	15 February 2040
41.	\$139,375	15 February 2041
42.	\$139,375	15 February 2042

Schedule 4

Payment to Jsekarb for Indemnity in Clause 4.1

Payment No	Amount Payable to Jsekarb	Date for Payment
1.	\$139,375	15 February 2001
2.	\$139,375	15 February 2002
3.	\$139,375	15 February 2003
4.	\$139,375	15 February 2004
5.	\$139,375	15 February 2005
6.	\$139,375	15 February 2006
7.	\$139,375	15 February 2007
8.	\$139,375	15 February 2008
9.	\$139,375	15 February 2009
10.	\$139,375	15 February 2010
11.	\$139,375	15 February 2011
12.	\$139,375	15 February 2012
13.	\$139,375	15 February 2013
14.	\$139,375	15 February 2014
15.	\$139,375	15 February 2015
16.	\$139,375	15 February 2016
17.	\$139,375	15 February 2017
18.	\$139,375	15 February 2018
19.	\$139,375	15 February 2019
20.	\$139,375	15 February 2020
21.	\$139,375	15 February 2021
22.	\$139,375	15 February 2022
23.	\$139,375	15 February 2023
24.	\$139,375	15 February 2024
25.	\$139,375	15 February 2025
26.	\$139,375	15 February 2026

Deed of Covenant and Indemnity

Allen Allen & Hemsley

27.	\$139,375	15 February 2027
28.	\$139,375	15 February 2028
29.	\$139,375	15 February 2029
30.	\$139,375	15 February 2030
31.	\$139,375	15 February 2031
32.	\$139,375	15 February 2032
33.	\$139,375	15 February 2033
34.	\$139,375	15 February 2034
35.	\$139,375	15 February 2035
36.	\$139,375	15 February 2036
37.	\$139,375	15 February 2037
38.	\$139,375	15 February 2038
39.	\$139,375	15 February 2039
40.	\$139,375	15 February 2040
41.	\$139,375	15 February 2041
42.	\$139,375	15 February 2042

Schedule 5

Notice of instruction to acquire

TO: James Hardie & Coy Pty Ltd (ABN 49 000 035 512) (*Grantor*)

Take notice that Name of grantee (*Grantee*) instructs the Grantor, as contemplated in the Deed of Covenant and Indemnity (*Deed*) between the Grantor, James Hardie Industries Limited (ABN 60 000 009 263) (*JHIL*) and Jsekarb Pty Limited (ABN 98 000 387 342) dated [*] February 2001, to acquire in accordance with the Deed all of the ordinary shares issued by JHIL.

Description of number and class of shares:

DATED: [*]

duly authorised signatory

Name of grantee

