

DATED 23 FEBRUARY

2011

**BORDER CONSTRUCTION LIMITED (1)**

**and**

**MANSELL CONSTRUCTION SERVICES LIMITED (2)**

**and**

**BALFOUR BEATTY FIRE AND RESCUE NW LIMITED (3)**

**COLLATERAL WARRANTY**

**relating to North West Fire and Rescue PFI Project**

**Ashfords**  
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THIS DEED is made on 23 FEBRUARY

2011

BETWEEN:-

- (1) BORDER CONSTRUCTION LIMITED (Company Number 00654704) whose registered office is at Marconi Road, Burgh Road Industrial Estate, Carlisle, Cumbria, CA2 7NA ("**Border**");
- (2) MANSELL CONSTRUCTION SERVICES LIMITED incorporated in England and Wales under company number 01197246 whose registered office is at Roman House, Grant Road, Croydon, Surrey, CR9 6BU (the "**Sub-Contractor**"); and
- (3) BALFOUR BEATTY FIRE AND RESCUE NW LIMITED incorporated in England and Wales under company number 07403391 whose registered office is at 6th Floor, 350 Euston Road, Regent's Place, London, NW1 3AX (the "**Contractor**").

BACKGROUND

- (A) By a design and build contract dated on or about the date of this Deed (the "**Building Contract**") the Contractor has appointed the Sub-Contractor to carry out in relation to the Sites the design and construction of the Works.
- (B) Border has been appointed by the Sub-Contractor under a contract dated February 2011 (the "**Sub-Contract**") to provide certain elements of the Works (the "**Sub-Contract Works**").
- (C) Border is obliged under the Sub-Contract to give a warranty in this form in favour of the Contractor.

**1. DEFINITIONS AND INTERPRETATIONS**

- 1.1 In this Deed unless the context otherwise requires, the following expressions shall have the following meanings:-

"**Lender(s)**" means any organisation providing funding to the Contractor in connection with the carrying out of the Works.

- 1.2 Unless expressly defined otherwise in this Deed, any defined term in this Deed shall have the same meaning given to such term in the Building Contract.

**2. OPERATIVE PROVISIONS**

In consideration of the payment of one pound (£1.00) by the Contractor to Border, receipt of which Border acknowledges:-

**3. BORDER'S WARRANTY AND LIABILITY**

- 3.1 Border warrants to the Contractor that it has carried out and will continue to carry out its duties under the Sub-Contract in accordance with the Sub-Contract and that it has exercised and will continue to exercise, in carrying out the design of the Sub-Contract Works, the level of skill and care reasonably to be expected from an appropriately qualified and competent professional designer providing those

services in relation to a project of a similar size and scope to the Sub-Contract Works. In particular and without limiting the generality of the foregoing, it covenants with the Contractor that it has carried out and will carry out and complete the Sub-Contract Works in accordance with the Sub-Contract and duly observe and perform all its duties and obligations thereunder.

3.2 Border shall be entitled in any action or proceedings by the Contractor to raise equivalent rights in defence of liability (except for set off or counterclaim as it would have against the Sub-Contractor under the Sub-Contract). Upon the expiration of twelve (12) years from the date of completion of the Sub-Contract Works in accordance with the Sub-Contract, the liability of Border under this Deed shall cease and determine, save in relation to any claims made by the Contractor against Border and notified by the Contractor to Border in writing prior thereto.

#### **4. PROJECT DATA**

4.1 Border hereby grants (or, if such grant cannot legally take place until a later date, agrees to grant) to the Contractor with effect from the date of this Deed or in the case of Project Data not yet in existence with effect from the creation thereof, a royalty free non-exclusive licence (such licence to remain in full force and effect notwithstanding completion of the Border's obligations under the Sub-Contract or the termination of the Sub-Contract or the determination of Border's engagement under it or any dispute thereunder or hereunder) to use and to reproduce all Project Data for any purpose whatsoever connected with the Sub-Contract Works and such other purposes as are reasonably foreseeable including, but without limitation, the execution, completion, maintenance, letting, advertisement, modification, extension, reinstatement and repair of the Sub-Contract Works, and such licence will carry the right to grant sub-licences and will be transferable to third parties. The Contractor will not hold Border liable for any use they may make of the Project Data for any purpose other than that for which they were originally provided by it and other than for such other uses as are reasonably foreseeable unless Border authorises such use and confirms the Project Data is suitable for it. Border will not grant to any third party the right to use any of the Project Data save under any warranty it is obliged to give under the Sub-Contract or hereunder or as otherwise required to enable it to fulfil its obligations under the Sub-Contract.

4.2 Border agrees on reasonable request at any time and following reasonable written prior notice to give the Contractor or those authorised by it access to the Project Data and to provide copies (including copy negatives and CAD disks) thereof at the Contractor's expense.

4.3 Border warrants to the Contractor that it has used the standard of skill, care and diligence as set out in clause 3.1 to see that the Project Data (save to the extent duly appointed sub-contractors have been used to prepare the same) are its own original work and that in any event their use in connection with the Sub-Contract Works will not infringe the rights of any third party.

#### **5. INSURANCE**

Border hereby covenants with the Contractor to:-

5.1 take out Professional Indemnity Insurance cover with a limit of indemnity of not less than ten million pounds (£10,000,000) for any one (1) occurrence or series of occurrences arising out of any one (1) event in relation to the Sub-Contract Works and that it will maintain such insurance with reputable insurers carrying on business

in the European Union from the date hereof until twelve (12) years after practical completion of the Sub-Contract Works, provided that such insurance is generally available in the market to members of Border's profession at commercially reasonable rates and (for the avoidance of doubt), provided further that payment of any increased or additional premiums required by insurers by reason of Border's own claims record or other acts, omissions, matters or things peculiar to Border will be deemed to be within the reasonable rates;

5.2 provide evidence (as and when reasonably required by the Contractor) satisfactory to the Contractor of the Professional Indemnity Insurance (referred to in clause 3.1) being in full force and effect from the date of the Sub-Contract (such evidence to include details of the cover);

5.3 not used;

5.4 provide the Contractor with notice of:-

5.4.1 any cancellation of the Professional Indemnity Insurance (referred to in clause 5.1) not less than thirty (30) days prior to the relevant cancellation date;

5.4.2 any material changes to or suspension of cover relevant to the Sub-Contract Works;

5.4.3 any event of which it becomes aware, or of which it could reasonably be expected to become aware, which may vitiate the Professional Indemnity Insurance;

5.4.4 any act, omission or event which may adversely affect the terms and the scope of the Professional Indemnity Insurance relevant to the Sub-Contract Works or invalidate or render it unenforceable;

5.4.5 any claim under the Professional Indemnity Insurance (referred to in clause 5.1) with a value in excess of £100,000.00 as soon as reasonably practicable following submission of the relevant claim;

5.5 provide such information to the Contractor as the Contractor may reasonably require in relation to any claim or circumstance notified to it under the Professional Indemnity Insurance in respect of the Sub-Contract Works and any potential breach to the aggregate limit of the policy; and

5.6 disclose to the relevant insurers any matters which could reasonably be expected to be material in the context of the Sub-Contract Works or any part of the Sub-Contract Works.

## 6. NOTICES

Any notice to be given by any party hereunder will be sufficiently served if sent by hand, by facsimile transmission or by post to the registered office or if there is none the last known address of the party to be served. Any notice sent by hand will be deemed to be served on the date of delivery and any notice sent by facsimile transmission will be deemed to be served in full at the time recorded on the facsimile report sheet, provided that if any notice sent by hand or facsimile is sent after 4.45pm on any day it will be deemed to be served on the next Business Day. Any notice sent by post will be deemed to have been duly served at the expiration of

forty eight (48) hours after the time of posting if the end of that period falls before 4.45pm on a Business Day and otherwise on the next Business Day.

**7. ASSIGNMENT**

The benefit of and the rights of the Contractor under this Deed may be assigned without the consent of Border on two (2) occasions only and the Contractor will notify Border in writing following any such assignment specifying the name and address of the assignee and the date of the assignment. Border will not contend that any such assignee is precluded from recovering any loss resulting from any breach of this Deed (whatever the date of such breach) by reason only that that person is an assignee and not the original beneficiary hereunder or by reason that the original beneficiary or any intermediate beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the Site or that the original beneficiary or any intermediate beneficiary has not suffered any, or as much, loss.

**8. CONTRACTOR'S REMEDIES**

The rights and benefits conferred upon the Contractor by this Deed are in addition to any other rights and remedies they may have against Border including without prejudice to the generality of the foregoing any remedies in negligence.

**9. INSPECTION OF PROJECT DATA**

Border's liabilities under this Deed will not be in any way reduced or extinguished by reason of any inspection or approval of the Project Data or attendance at site meetings or other enquiry or inspection which the Contractor may make or procure to be made for its benefit or on its behalf.

**10. STEP-IN RIGHTS IN FAVOUR OF THE CONTRACTOR**

10.1 Border will not exercise or seek to exercise any right which may be or become available to it to terminate or treat as terminated or repudiated the Sub-Contract or its engagement under it or discontinue or suspend the performance of any duties or obligations thereunder without first giving to the Contractor not less than thirty (30) days' prior written notice specifying Border's ground for terminating or treating as terminated or repudiated the Sub-Contract or its engagement under it or discontinuing or suspending its performance thereof and stating the amount (if any) of monies outstanding under the Sub-Contract. Within such period of notice:-

10.1.1 the Contractor may give written notice to Border that the Contractor will thenceforth become the Sub-Contractor under the Sub-Contract to the exclusion of the Sub-Contractor and thereupon Border will admit that the Contractor is the Sub-Contractor under the Sub-Contract and the Sub-Contract will be and remain in full force and effect notwithstanding any of the said grounds;

10.1.2 if the Contractor has given such notice as aforesaid or under clause 10.3 below, the Contractor shall accept liability for the Sub-Contractor's obligations under the Sub-Contract and will as soon as practicable thereafter remedy any outstanding breach by the previous client which properly has been included in Border's specified grounds and which is capable of remedy by the Contractor; and

- 10.1.3 if the Contractor has given such notice as aforesaid or under clause 10.3 below, the Contractor will from the service of such notice become responsible for all sums properly payable to Border under the Sub-Contract accruing due after the service of such notice but the Contractor will in paying such sums be entitled to the same rights of set-off and deduction as would have applied to the previous client under the Sub-Contract.
- 10.2 Notwithstanding anything contained in this Deed and notwithstanding any payments which may be made by the Contractor to Border, the Contractor will not be under any obligation to Border nor will Border have any claim or cause of action against the Contractor unless and until the Contractor has given written notice to Border pursuant to clause 10.1.1 or clause 10.3 of this Deed.
- 10.3 Border further covenants with the Contractor that if the Building Contract is terminated by the Contractor, Border, if requested by the Contractor by notice in writing and subject to clause 10.1.2 and clause 10.1.3, will accept the instructions of the Contractor to the exclusion of the Sub-Contractor in respect of its duties under the Sub-Contract upon the terms and conditions of the Sub-Contract and will if so requested in writing enter into a novation agreement whereby the Contractor is substituted for the Sub-Contractor under the Sub-Contract.
- 10.4 If two (2) or more valid notices are received on the same day any notice served by the Lender(s) shall be deemed to have first priority. Only the notice deemed to have first priority shall take effect and no other relevant notice will bind Border.
- 10.5 The Sub-Contractor acknowledges that Border will be entitled to rely on a notice given to Border by the Contractor under clause 10.3 as conclusive evidence that the Building Contract has been terminated by the Contractor.
- 10.6 The Contractor may by notice in writing to Border appoint another person to exercise their rights under this clause 10 subject to the Contractor remaining liable to Border as guarantor for their appointee in respect of their obligations under this Deed.
- 10.7 Upon request by the Contractor, Border agrees to co-operate with the Contractor in determining the duties performed or to be performed by Border and to provide a copy of the Sub-Contract and any variations thereto and details of all monies paid and due under the Sub-Contract.

## **11. STANDARD OF PRODUCTS AND MATERIALS**

- 11.1 Border warrants that it has exercised and will exercise reasonable skill, care and diligence in accordance with this Deed to see that it has not specified for use and it will not specify for use and (as appropriate) it has not authorised or approved and it will not authorise or approve the specification or use by others, of any products or materials not in conformity with relevant British or European Union Standards or Codes of Practice or which at the time of specification are widely known to members of the construction industry within the European Union to be deleterious to health and safety or to the durability of buildings and/or other structures and/or finishes and/or plant and machinery in the particular circumstances in which they are used.
- 11.2 If in the performance of its duties under the Sub-Contract, Border becomes aware that it or any other person has specified or used, or authorised or approved the

specification or use by others of any such products or materials Border will notify the Contractor in writing forthwith. This clause does not create any additional duty for Border to inspect or check the work of others which is not required by the Appointment.

**12. APPLICABLE LAW AND JURISDICTION**

This Deed and any non-contractual obligations arising out of or in connection with it will be construed in accordance with English law and be in all respects subject to the exclusive jurisdiction of the English courts.

**13. THIRD PARTY RIGHTS**

This Deed and any non-contractual obligations arising out of or in connection with it is enforceable by the original parties to it and by their successors in title and permitted assignees. Any rights of any person to enforce the terms of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999 are excluded.

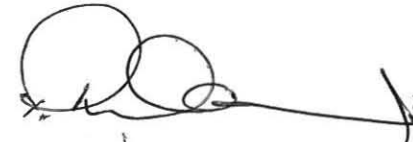
IN WITNESS of which this document is executed as a Deed and is delivered on the date first before written

EXECUTED AS A DEED by BORDER CONSTRUCTION LIMITED acting by a Director and its Secretary/two Directors:-

Director

Director/Secretary

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C. A. Dean

EXECUTED AS A DEED by MANSELL CONSTRUCTION SERVICES LIMITED acting by its duly appointed attorney:-

Attorney

In the presence of:

)  
)  
)

  
Ashfords  
BRIAN GARRELL  
SOLICITOR

**Ashfords LLP**  
Solicitors  
Tower Wharf  
Cheese Lane  
Bristol BS2 0JJ

EXECUTED AS A DEED by BALFOUR BEATTY FIRE AND RESCUE NW LIMITED acting by its duly appointed attorney:-

Attorney

In the presence of:

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)  
)



 , BRIAN GARRELL  
SOLICITOR,  
**Ashfords LLP.**  
Solicitors  
Tower Wharf  
Cheese Lane  
Bristol BS2 0JJ