

DATED 23 FEBRUARY 2011

**BALFOUR BEATTY FIRE AND RESCUE NW LIMITED**  
and

**BALFOUR BEATTY INVESTMENT HOLDINGS LIMITED**

**BUILDING CONTRACTOR PARALLEL LOAN AGREEMENT**

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THIS AGREEMENT is made as a deed on the 23 day of FEBRUARY 2011

**BETWEEN:**

- (1) **BALFOUR BEATTY FIRE AND RESCUE NW LIMITED** incorporated in England and Wales (company registration number 07403391) whose registered office is at 6<sup>th</sup> Floor, 350 Euston Road, Regent's Place, London NW1 3AX (the **Contractor**); and
- (2) **BALFOUR BEATTY INVESTMENT HOLDINGS LIMITED** incorporated in England and Wales (company registration number 01198315) whose registered office is at Fourth Floor, 130 Wilton Road, London SW1V 1LQ (the **Lender**).

**WHEREAS:**

- (A) The Contractor has entered or is about to enter into an agreement (the **Project Agreement**) with Cumbria County Council, Lancashire Combined Fire Authority and Merseyside Fire and Rescue Authority (together the **Authorities**) to carry out certain works and to perform certain services at the Sites under the Private Finance Initiative (the **Project**).
- (B) The Contractor and Mansell Construction Services Limited (the **Building Contractor**) have or are about to enter into an agreement (the **Building Contract**) under which the Building Contractor will supply and perform certain services to be supplied by the Contractor to the Authorities pursuant to the Project Agreement.
- (C) The Contractor has entered into or is about to enter into certain financing agreements in connection with the Project (the **Financing Agreements**).
- (D) The Lender has agreed, in certain circumstances, to make advances to the Contractor on the terms and subject to the conditions set out in this Agreement.

**NOW IT IS HEREBY AGREED** as follows:

**1.** Definitions and Interpretation

**1.1 Definitions**

Unless otherwise defined in this Agreement, terms defined in the Building Contract shall have the same meaning when used in this Agreement.

**Secured Creditors** has the meaning given to it in the Security Trust and Intercreditor Deed (as referred to in Schedule 16 Part 2 of the Project Agreement).

**Senior Finance Liabilities Discharge Date** has the meaning given to it in the Security Trust and Intercreditor Deed (as referred to in Schedule 16 Part 2 of the Project Agreement).

**Senior Finance Liabilities** has the meaning given to it in the Security Trust and Intercreditor Deed (as referred to in Schedule 16 Part 2 of the Project Agreement).

## 1.2 Interpretation

- (a) This Agreement shall consist of the recitals and the clauses.
- (b) In the event of inconsistencies between the terms of this Agreement and the terms of the Building Contract the terms of this Agreement shall prevail.
- (c) Any reference to a clause shall mean a clause of this Agreement, unless otherwise stated.
- (d) The clause titles or headings appearing in this Agreement are for reference only and shall not affect its construction or interpretation.

## 2. COMMENCEMENT AND DURATION

This Agreement shall become effective on the date hereof and shall continue until all amounts repayable hereunder have been discharged in full and the Contractor has no actual or contingent liabilities under clause 93 of the Building Contract.

## 3. THE LOAN

### 3.1 If:

- (a) at any time the Building Contractor has claimed or received payment from the Contractor of any sum of money (the **Original Sum**):
  - (i) by way of a Building Contractor Entitlement in accordance with the Building Contract; and/ or
  - (ii) pursuant to any other provision of the Building Contract which says that the Building Contractor is only entitled to be paid when and/or to the extent that the Contractor is entitled to be paid when and/or to the extent that the Contractor is entitled to Equivalent Project Relief from a third party,

and the Building Contractor has insisted on its claim for payment in circumstances where the Contractor has not received funds in respect of the payment from the Authorities, the FM Contractor or from any provider of any of the Insurances to enable it to discharge its obligation to the Building Contractor,

then:

- (b) at the same time as the Original Sum becomes payable to the Building Contractor, the Lender shall advance to the Contractor a sum equal to the amount demanded, claimed or received (as the case may be) by the Building Contractor (the **Advance**).

### 3.2 Any Advance made pursuant to clause 3.1(b):

- (a) shall be unsecured;
- (b) subject to clause 5.3, shall not bear interest; and

- (c) shall, subject to clause 7, be repayable immediately by the Contractor to the Lender if (but only if) and to the extent that the conditions precedent in clause 93.5 of the Building Contract are met and the Building Contractor would be entitled to payment of the same pursuant to clause 93.5 of the Building Contract.

#### **4. UNDERTAKING OF THE LENDER**

4.1 In respect of any Advances outstanding (but which are not due for repayment pursuant to clause 3.2(c)) the Lender shall not:

- (a) assign or purport to assign to any person the whole or any part of any such Advances;
- (b) purport to set off at any time any amount of such Advances against any amount payable by it to the Contractor;
- (c) attempt to obtain repayment or prepayment of such Advance otherwise than in accordance with the terms of this Agreement;
- (d) ask, demand, accelerate, sue, claim or prove for, take or receive from the Contractor in any manner whatsoever the whole or any part of such Advance other than in accordance with the terms of this Agreement; or
- (e) in respect of such Advance petition for, or vote in favour of, any resolution or take any other action whatsoever for, or which may lead, to the administration, winding-up or dissolution of the Contractor or the termination of the Building Contract.

4.2 The Lender acknowledges that a failure to make any Advance in accordance with this Agreement may cause the Contractor to suffer or incur Losses. For the avoidance of doubt, such Losses shall be recoverable to the maximum extent of the Advance demanded by the Contractor from the Lender (subject to the application of the usual principles of mitigation of loss).

#### **5. PAYMENTS**

5.1 On each date on which this Agreement requires an amount to be paid by any party, that party shall make the same available to the other party by payment in sterling and in immediately available, freely transferable, cleared funds to such account of such other party as such other party shall from time to time have specified for this purpose.

5.2 All payments required to be made by either party hereunder shall be calculated without reference to any set-off or counterclaim and shall be made free and clear of and without any deduction for or on account of any set-off or counterclaim.

5.3 In the event of failure of the Contractor to make payment pursuant to clause 3.2(c) the Contractor shall pay interest upon the amount due or on any outstanding balance thereof at 3% above the Prescribed Rate.

#### **6. BENEFIT OF AGREEMENT**

This Agreement shall be binding upon and enure to the benefit of each party hereto and its successors and assignees provided always that neither party shall assign or

transfer all or any of its rights and obligations hereunder without the prior written consent of the other save that:

- (a) the Contractor shall be entitled to assign its rights and interest in this Agreement to the Secured Creditors in security of its obligations under the Financing Agreements; and
- (b) in the event that the Contractor assigns its rights and interest in the Building Contract to a third party (hereinafter the Assignee), the Contractor and the Lender shall enter into a new loan agreement on the same terms as this Agreement with the Assignee.

## **7. SUBORDINATION**

7.1 Until the Senior Finance Liabilities Discharge Date, if:

- (a) any resolution is passed or order made for the winding-up, liquidation, dissolution or administration of the Contractor;
- (b) the Contractor assigns its assets for the benefit of its creditors or enters into any arrangement with its creditors generally, or any arrangement whereby its affairs and/or assets are submitted to the control of, or are protected from, its creditors is ordered to be declared;
- (c) the Contractor becomes subject to any insolvency, bankruptcy, reorganisation, receivership (whether relating to all or only some of its assets and whether or not resulting from the enforcement of any of the Financing Agreements), liquidation, dissolution or other proceeding whether voluntary or involuntary (and whether or not involving insolvency);
- (d) the Contractor becomes subject to any mandatory distribution of its assets or has a receiver appointed with respect to any of its assets (whether or not resulting from the enforcement of the Financing Agreements); or
- (e) any event analogous to any of the foregoing occurs in any country or territory in which the Contractor is incorporated or carries on any business,

the following provisions of this clause 7 shall apply.

7.2 While any of the circumstances mentioned in clause 7.1 is subsisting before the Senior Finance Liabilities Discharge Date, the indebtedness of the Contractor to the Lender pursuant to this Agreement will be subordinated in right of payment to the Senior Finance Liabilities.

7.3 The subordination provisions in this Agreement constitute subordination of sums due for repayment under this Agreement to the Senior Finance Liabilities until the Senior Finance Liabilities Discharge Date regardless of any intermediate payment or discharge of the Senior Finance Liabilities in whole or in part.

## **8. LAW**

This Agreement and all non-contractual obligations arising in connection with it shall be governed by and construed in all respects in accordance with English law and the English courts shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement.

**IN WITNESS WHEREOF** the parties have executed this Agreement as a Deed the day and year first above written.

Signatories

**The Contractor**

**EXECUTED** as a **DEED** by

**BALFOUR BEATTY FIRE AND RESCUE NW LIMITED**  
acting by its duly appointed attorney

)  
) *[Signature]*  
)

in the presence of:

Witness Name:

*BRIAN GARRELL*

Witness Signature:

*[Signature]*

Witness Address:

ASHFORDS LLP, EXETER, EX1 3LH

Witness  
Occupation:

SOLICITOR.

**The Lender**

**EXECUTED** as a **DEED** by

**BALFOUR BEATTY INVESTMENT HOLDINGS LIMITED**  
acting by its duly appointed attorney

)  
) *[Signature]*  
)

in the presence of:

Witness Name: *JONATHAN CROLEY*

Witness Signature: *J. Croley*

Witness Address:

**Ashfords LLP**  
Solicitors

Witness

**Tower Wharf  
Cheese Lane**

Occupation: *SOLICITOR* **Bristol BS2 0JJ**