

DATED 09 December 2021

- (1) AJ CLADDING LIMITED
- (2) 20:20 HOUSE (RESIDENTIAL MANAGEMENT)  
LIMITED
- (3) BALLYMORE CIVILS LIMITED

**SUB-CONTRACTOR'S WARRANTY**  
in favour of Employer  
in respect of a development at  
20:20 Building, Skinner Lane, Leeds



**GOWLING WLG**

**BETWEEN**

- (1) **AJ CLADDING LIMITED** (company registration number SC227453) whose registered office is at 60 Clove Myll Wynd, Larkhall, Scotland ML9 1NT ("the Sub-Contractor")
- (2) **20:20 HOUSE (RESIDENTIAL MANAGEMENT) LIMITED** (Company registration number 06770847) whose registered office is at Management Office Twenty Twenty, Skinner Lane, Leeds, LS7 1BB ("the Company")
- (3) **BALLYMORE CIVILS LIMITED** (Company registration number NI615559) whose registered office is at 3 Gortrush Business Centre, 27 Gortrush Industrial Estate, Great Northern Rd, Omagh BT78 5EJ ("the Contractor")

**IN CONSIDERATION** of the sum of one pound (£1.00) paid by the Company to the Sub-Contractor (receipt of which is hereby acknowledged) **THIS DEED WITNESSETH** as follows:

**1. DEFINITIONS INTERPRETATION AND CIRCUMSTANCES**

**1.1 Definitions**

In this deed unless the context otherwise requires the following expressions shall have the following meanings :

"Building Contract"	the JCT Design and Build Contract 2016 as amended by a bespoke schedule of amendments and entered into or to be entered into by the Company and the Contractor for the carrying out and completion of the Works and includes any subsequent agreement varying or supplementing such contract
"Group Company"	any subsidiary company or holding company of the Company or another subsidiary or holding company of such company as subsidiary and holding company are defined in s1159 Companies Act 2006
"Moral Rights"	moral rights under Chapter IV of Part 1 of the Copyright Designs and Patents Act 1988
"Practical Completion"	practical completion of the Works under the Building Contract
"Public Holiday"	Christmas Day Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday
"Site"	20:20 Building, Skinner Lane, Leeds LS7 1BB
"Sub-Contract"	the sub-contract for the Sub-Contract Works entered into or to be entered into between the Contractor and the Sub-Contractor

"Sub-Contract Works"	the cladding works carried out and/or to be carried out by the Sub-Contractor under the Sub-Contract
"Sub-Contractor's Design Documents"	all drawings plans models specifications reports calculations charts diagrams sketches (including without limitation any such items retained on or in any computer software or other electronic medium) and other works prepared conceived or developed by or on behalf of the Sub-Contractor in the course of or as a result of carrying out the Sub-Contract Works whether in existence or to be made or produced and including all amendments additions and all designs ideas concepts and inventions contained in them
"Working Day"	any day which is not a Saturday, Sunday or Public Holiday
"Works"	the works performed and/or to be performed by the Contractor under the Building Contract

## **1.2 Interpretation**

- 1.2.1 The clause headings in this deed are for the convenience of the parties only and do not affect its interpretation.
- 1.2.2 Words importing the singular meaning include where the context so allows the plural meaning and vice versa.
- 1.2.3 Words of one gender include both other genders and words denoting natural persons include firms and companies and all are to be construed interchangeably in that manner.
- 1.2.4 References to "liability" include where the context so allows claims demands proceedings losses costs and expenses.
- 1.2.5 A reference to any statute or statutory instrument shall include a reference to any modification extension or re-enactment of it.

## **1.3 Circumstances**

- 1.3.1 By the Building Contract the Company employed the Contractor to carry out the Works.
- 1.3.2 By the Sub-Contract the Contractor employed the Sub-Contractor to carry out the Sub-Contract Works.
- 1.3.3 It is a term of the Building Contract that the Contractor procures that the Sub-Contractor enters into this deed for the benefit of the Company and its permitted assigns.

## **2. DUTY OF CARE**

The Sub-Contractor warrants and undertakes to the Company that:



- 2.1 it has performed and will continue to perform its duties to the Contractor under the Sub-Contract;
- 2.2 the design of the Sub-Contract Works has been and will be carried out using all the reasonable skill care and diligence to be expected of a design sub-contractor acting in the capacity of the Sub-Contractor and experienced in the provision of the Sub-Contract Works for developments and projects of the same size scope complexity, nature and timescale as the Works.

### **3. PROHIBITED MATERIALS**

- 3.1 The Sub-Contractor has not and shall not specify nor use nor authorise cause or allow to be used within or in relation to the Works any materials:
  - 3.1.1 where it is known or there are reasonable grounds for suspecting that such materials might in themselves or as a result of the manner of their use pose a hazard to health and in particular to the health of persons involved in the installation construction or maintenance of the Works or the completed Works or to the eventual occupants of the Works; or
  - 3.1.2 not in conformity with any relevant British or European Standards or Codes of Practice;
  - 3.1.3 which at the time the Works are being carried out are generally accepted as (or are reasonably suspected of):
    - 3.1.3.1 being deleterious in themselves; or
    - 3.1.3.2 becoming deleterious in a particular situation or in combination with other materials; or
    - 3.1.3.3 becoming deleterious without a level of maintenance which is higher than that which would normally be expected in a building of a comparable type; or
    - 3.1.3.4 being damaged by or causing damage to the structure in which they are incorporated or to which they are affixed.
- 3.2 For the purposes of clause 3.1 a material or combination of materials shall be regarded as being deleterious if its use would or might have the effect of reducing the normal life expectancy of:
  - 3.2.1 the material itself; or
  - 3.2.2 any material to which it is affixed; or
  - 3.2.3 the structure in which it is incorporated or to which it is affixed; or
  - 3.2.4 the Works or any part the Worksto a period less than that specified or which would normally be expected.
- 3.3 The Sub-Contractor warrants that it shall comply with and have regard to the guide entitled "Good Practice in the Selection of Construction Materials 2011" published by the British Council for Offices or such other version of such publication current

at the time of use in assessing whether or not an intended material is deleterious in the terms set out in clause 3.

- 3.4 The Sub-Contractor will as soon as reasonably practicable notify the Company if it becomes aware of any proposed or actual use in the Works of any materials not compliant with clause 3.1.

**4. RESTRAINTS ON THE SUB-CONTRACTOR**

The Sub-Contractor may not exercise any rights of set-off or counterclaim which may be permissible against his liability under the Sub-Contract against any claim or entitlement of the Company under this deed.

**5. INSTRUCTIONS**

The Company has no authority to issue any direction or instruction to the Sub-Contractor in relation to performance of the Sub-Contractor's duties under the Sub-Contract unless and until the Company has given notice under clause 7.2 or clause 7.3.

**6. LIABILITY FOR PAYMENT**

The Company has no liability to the Sub-Contractor in respect of fees and expenses under the Sub-Contract unless and until the Company has given notice under clause 7.1 or clause 7.3.

**7. STEP-IN RIGHTS**

- 7.1 The Sub-Contractor agrees that it will not without first giving the Company previous notice in writing exercise any right it may have to terminate or suspend the Sub-Contract or to treat the same as having been repudiated by the Contractor. Such notice to the Company shall:

- 7.1.1 if the grounds are that a sum which is due has not been paid by the final date for payment and no effective notice to pay less has been given be given no less than 7 days before the Sub-Contractor exercises any such right; otherwise

- 7.1.2 be given no less than 15 Working Days before the Sub-Contractor exercises any such right.

- 7.2 The right of the Sub-Contractor to terminate or suspend the Sub-Contract with the Contractor or treat the same as having been repudiated or discontinue performance shall cease if within such period of notice and subject to clause 7.4 the Company shall give notice in writing to the Sub-Contractor requiring the Sub-Contractor to accept the instructions of the Company or its appointee to the exclusion of the Contractor in respect of the carrying out and completion of the Sub-Contract Works upon the terms and conditions of the Sub-Contract.

- 7.3 If so required by notice in writing given by the Company and subject to clause 7.4 the Sub-Contractor shall accept the instructions of the Company or its appointee to the exclusion of the Contractor in respect of the carrying out and completion of the Sub-Contract Works upon the terms and conditions of the Sub-Contract. The Contractor acknowledges that the Sub-Contractor shall be entitled to rely on a notice given to the Sub-Contractor by the Company under this clause as



conclusive evidence for the purposes of this deed that the right to serve such notice has accrued to the Company pursuant to the terms of the Building Contract.

7.4 Any notice given by the Company under clause 7.2 shall state that the Company or its appointee accepts liability for payment of fees payable to the Sub-Contractor under the Sub-Contract and for performance of the Contractor's obligations under the Sub-Contract and in the case of the Company nominating an appointee the Company guarantees all payments due to the Sub-Contractor from its appointee.

7.5 Compliance by the Sub-Contractor with the provisions of this clause 7 will not be treated as a waiver of any breach on the part of the Contractor giving rise to the right of termination nor otherwise prevent the Sub-Contractor from exercising its rights after the expiration of the notice issued pursuant to clause 7.1 unless the rights of termination have ceased under the provisions of clause 7.2.

## **8. PRODUCT LIABILITY INSURANCE**

8.1 The Sub-Contractor warrants that, without prejudice to its liability under this deed, it shall effect and will maintain at all relevant times during the Works and for the period of twelve six years from the date of Practical Completion with reputable insurers carrying on business in the United Kingdom product liability insurance cover of at least five million pounds (£5,000,000) for any one occurrence but in the aggregate in the period of insurance PROVIDED ALWAYS such insurance continues to be available in the United Kingdom market upon reasonable terms and conditions and at commercially reasonable premium rates.

8.2 The Sub-Contractor shall throughout the period referred to in clause 8.1 provide to the Company, when reasonably requested by him to do so, evidence that the insurance required by clause 8.1 is being maintained in accordance with clause 8.1.

8.3 The Sub-Contractor shall immediately inform the Company as soon as it becomes aware that the insurance referred to in clause 8.1 is not maintained in accordance with this deed or for any reason becomes void or unenforceable and shall agree with the Company the best means of protecting the Sub-Contractor and the Company's respective interests and carry out such actions as shall be necessary to implement any agreed actions.

## **9. COPYRIGHT**

9.1 Copyright in the Sub Contractor's Design Documents shall remain vested in the copyright owner.

9.2 The Sub-Contractor waives any Moral Rights that it may have as author in respect of the Sub Contractor's Design Documents and/or the Sub-Contract Works and where it is not the author shall procure a waiver from the author of any Moral Rights the author may have in respect of the Sub Contractor's Design Documents and/or the Sub-Contract Works.

9.3 The Sub-Contractor grants or shall procure the grant from third parties engaged by the Sub-Contractor (where copyright is vested in such parties) to the Company of an irrevocable royalty-free non-exclusive licence of copyright and design right without limitation of time (and without payment of any fee) to use copy and reproduce inter alia the Sub Contractor's Design Documents for any purpose whatsoever connected with the Site and/or the Works and/or any premises

constructed or to be constructed on the Site including without limitation the execution completion maintenance letting occupation management sale advertisement extension alteration reinstatement and repair of the Site and/or the Works and/or any premises constructed or to be constructed on the Site PROVIDED THAT the Sub-Contractor shall not be liable for the consequences of any use of the Sub Contractor's Design Documents for any purpose other than that for which the same was prepared.

9.4 The Sub-Contractor agrees that:

9.4.1 the Company may assign the licence referred to in clause 9.3 or grant a sub-licence or sub-licences from such licence to any person with an interest in the Site and/or the Works and/or any premises constructed or to be constructed on the Site;

9.4.2 subject to payment of its reasonable copying costs it will provide the Company with such information and copies of the Sub Contractor's Design Documents as may be reasonably requested by the Company.

## **10. ASSIGNMENT**

10.1 The Company may (without the consent of the Sub-Contractor) assign its rights under this deed to :

10.1.1 any Group Company;

10.1.2 any other party on two occasions only.

10.2 In this deed references to the Company shall include where the context admits its permitted assignees but not so as to permit more than two assignments under clause 10.1.2.

10.3 The Sub-Contractor undertakes with the Company not to contend that any person to whom this deed may be assigned will be precluded from recovering under this deed any loss resulting from any breach of this deed either by reason that the person is an assignee and not the original party to this deed or by reason that the Company named in this deed or any intermediate owner of the Company's interest in the Works shall escape loss resulting from such breach by reason of the disposal of its interest in the Works.

## **11. CONTRACTOR ACKNOWLEDGEMENT**

The Contractor has joined in this deed to confirm its compliance with the arrangements made and contemplated by this deed and confirms that by acting in accordance with clause 7 the Sub-Contractor shall not incur any liability to the Contractor.

## **12. PERIODS OF RECKONING TIME**

Where under this deed an act is required to be done within a specified period of days after or from a specified date that period shall begin immediately after that date Where the period could include a day which is a Public Holiday that day shall be excluded.



### **13. LIMITATION AND MISCELLANEOUS**

- 13.1 The liability of the Sub-Contractor under this deed shall be limited to claims arising within twelve years after the date of Practical Completion.
- 13.2 The rights of the Company conferred by this deed are additional to any other that it may enjoy by grant assignment or at law.
- 13.3 Any consent approval comment or expression of satisfaction given by the Company with regard to any matter or thing relating to the Sub-Contract shall not in any way derogate from the Sub-Contractor's obligations hereunder nor diminish any liability on its part under this deed.
- 13.4 The Sub-Contractor acknowledges that:
- 13.4.1 the Company shall be deemed to have relied upon the Sub-Contractor's reasonable skill care and diligence in respect of those matters relating to the Works which lie within the scope of its responsibilities under the Sub-Contract or under this deed;
- 13.4.2 no negligent or other act omission or delay by or on behalf of the Company and their respective successors in title and assigns in inspecting approving or informing itself about anything relating to the Works shall abate or reduce the Sub-Contractor's liability under this deed to the Company and its respective successors in title and assigns.
- 13.5 For the purposes of the Contracts (Rights of Third Parties) Act 1999 the parties to this deed do not intend any terms of this deed to be enforceable by any third party who but for the Contracts (Rights of Third Parties) Act 1999 would not have been entitled to enforce such terms.

### **14. ADDITIONAL WARRANTIES**

Within 10 Working Days of a request to do so from the Company the Sub-Contractor shall execute as a deed and deliver to the Company a deed of collateral warranty in favour of any purchaser and/or tenant and/or funder in the same form as this deed (save that this clause and the step in provisions shall be deleted and the recitals amended to reflect the correct factual position).

### **15. NOTICES**

- 15.1 Any notice to be served under this deed shall be in writing and shall be regarded as properly served or sent if served or sent in the case of a corporation to its registered office for the time being or in any other case to any address for the time being of the person to be served.
- 15.2 Notice may be served by:
- 15.2.1 personal delivery; or
- 15.2.2 pre-paid registered or recorded delivery mail; or
- 15.2.3 facsimile transmission (transmitted before 4.00 pm on a Working Day) and confirmed by first class pre-paid post.



15.3 Notices and communications shall be deemed to have been served or received as follows:

15.3.1 in the case of personal delivery on the date of delivery;

15.3.2 in the case of pre-paid registered or recorded delivery mail on the second Working Day after the notice or communication is posted;

15.3.3 in the case of facsimile transmission sent as above and confirmed by first class pre-paid post on the date and at the time the facsimile is successfully transmitted as evidenced by the sender's facsimile transmission slip.

**16. LAW**

This deed shall be governed by English law and the parties hereby submit to the non exclusive jurisdiction of the English courts.

**EXECUTED AND DELIVERED** as a deed on the date at the head of this deed

Executed as a deed by  
**AJ CLADDING LIMITED**  
acting by two Directors/a  
Director and the Secretary

.....  
Director

Print name.....

.....  
Director/Secretary

Print name.....

Executed as a deed by  
**20:20 HOUSE (RESIDENTIAL  
MANAGEMENT) LIMITED**  
acting by two Directors/a  
Director and the Secretary

.....  
Director

Print name.....

.....  
Director/Secretary

Print name.....

Executed as a deed by  
**BALLYMORE CIVILS LIMITED**  
acting by two Directors/a  
Director and the Secretary

*Anthony Marley*  
.....  
Director

Print name *ANTHONY MARLEY*  
.....

*James McCallan*  
.....  
Director/Secretary

Print name *JAMES MCCALLAN*  
.....