

Dated

2010

- (1) BALFOUR BEATTY WORKPLACE LIMITED
- (2) BALFOUR BEATTY GROUP LIMITED
- (3) NORTH EAST LINCOLNSHIRE BOROUGH COUNCIL

Deed of Guarantee
Schedule 7

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THIS DEED OF GUARANTEE is made2010

BETWEEN

- (1) BALFOUR BEATTY WORKPLACE LIMITED (registered number 00598379) whose registered office is at 10th Floor, Marlowe House, 109 Station Road, Sidcup, Kent, DA15 7BH (the "**Partner**").
- (2) BALFOUR BEATTY GROUP LIMITED (registered number 00101073) whose registered office is at 4th Floor, 130 Wilton Road, London, SW1V 1LQ (the "**Guarantor**").
- (3) North East Lincolnshire Borough Council of Municipal Offices, Town Hall Square, Grimsby, DN31 1HU (the "**Council**").

OPERATIVE CLAUSES

1. **DEFINITIONS**

Definitions used in this Guarantee and not defined shall have the meaning given in **clause 1** of the Services Agreement.

2. **GUARANTEE AND INDEMNITY**

2.1 In consideration of the Partner and the Council (at the request of the Guarantor) entering into an agreement dated the date of this Guarantee for the provision of Services ("**the Services Agreement**") the Guarantor irrevocably and unconditionally undertakes the obligations and liabilities set out in this Deed of Guarantee, provided that:

2.1.1 such obligations and liabilities shall not apply in respect of matters to which the pensions bond under Clause 23.4 and Schedule 10 of the Services Agreement (or any replacement for such pensions bond) expressly applies but only to the extent that such pensions bond so applies; and

2.1.2 notwithstanding any other provision in this Guarantee, the Guarantor's liability under or pursuant to this Guarantee [REDACTED]; and

2.1.3 notwithstanding any other provision in this Guarantee, the Guarantor shall be entitled in relation to any written demand by the Council and in any actions or proceedings by the Council to raise any equivalent rights (including set-off) in defence or limitation of liability as the Partner would have against the Council under the Services Agreement.

2.2 The Guarantor irrevocably and unconditionally guarantees to the Council:

- 2.2.1 full, prompt and complete performance by the Partner of any or all of the Partner's obligations, provisions, warranties and undertakings under the Services Agreement as varied, extended or renewed from time to time in accordance with its terms or by the written agreement of the Partner and the Council; and
- 2.2.2 the due and punctual payment by the Partner of all debts and liabilities, due, owing or incurred to the Council under the Services Agreement whether actual or contingent, present or future, anywhere, in any currency, in any manner whatever, whether as principal or surety and whether alone or jointly; and
- 2.2.3 the due and punctual payment by the Partner of all commission, fees, charges, legal costs and other expenses including Value Added Tax incurred by the Council in connection with such debts and liabilities as set out in **clause 2.2.2** on a full indemnity basis

when and as the same shall become due or on demand in the case of payments under **clause 2.2.3**.

- 2.3 As a separate and primary obligation the Guarantor irrevocably and unconditionally guarantees to the Council that in the case of default by the Partner in making any of the payments or in the performance of any of the obligations, provisions, warranties and undertakings set out in **clause 2.2**, the Guarantor shall on demand observe and or perform any or all of such obligations, provisions, warranties and undertakings on the part of the Partner and pay all sums as if the Guarantor instead of the Partner were the primary obligor.
- 2.4 This Guarantee is a continuing security and is not satisfied, discharged or affected by any payments or performance of any of the obligations, provisions, warranties and undertakings due under the Services Agreement whether by the Partner or the Guarantor until all such payments and performance of such obligations, provisions, warranties and undertakings have been paid or made in full whereupon this Guarantee will automatically terminate whether or not returned for cancellation.
- 2.5 The Council may apply any sums received under this Guarantee as it in its absolute discretion from time to time decides, including to the credit of a suspense account.
- 2.6 The termination of the Services Agreement for any reason, including under **clauses 53 to 57** of the Services Agreement shall not affect the liability of the Guarantor for any sums, obligations or liabilities, present or future, actual or contingent, which are due, owing or incurred prior to the date of termination.

- 2.7 The Guarantor's obligations under this Guarantee are those of primary obligor and exist irrespective of any total or partial invalidity or unenforceability of any purported obligation or liability of the Partner to the Council.
- 2.8 If any sum due or purportedly due under this Guarantee is not or would not be recoverable under a guarantee for any reason whatsoever, whether or not known to the Council, such sum shall still be recoverable from the Guarantor as a sole principal debtor upon the terms of this Guarantee.
- 2.9 The Guarantor acknowledges and agrees that none of its liabilities under this Guarantee shall be terminated, reduced, discharged or otherwise affected by:
- 2.9.1 any variation, extension, release, discharge, compromise, dealing with, exchange or renewal of any security and of any other right or remedy which the Council may now or at any time have from or against the Partner or any other person in respect of any of the obligations and liabilities of the Partner or any other person under the Services Agreement;
 - 2.9.2 any act or omission by the Council or any other person in taking up, preserving, perfecting or enforcing any security from or against the Partner or any other person or any such security or other right or remedy held by the Council being or becoming void, voidable or unenforceable on any ground whatsoever (including due to the negligence of the Council) and whether in whole or in part;
 - 2.9.3 any termination, amendment, variation, novation or supplement of or to the Services Agreement (whether oral or in writing), including any increase in the obligations of the Partner under the Services Agreement in accordance with its terms or by the written agreement between the Partner and the Council;
 - 2.9.4 any grant of time, indulgence, waiver, or concession (whether express or by conduct) to the Partner or any other person;
 - 2.9.5 any claim or enforcement of payment from the Partner or any other person; and
 - 2.9.6 any dealing with any third party;
 - 2.9.7 the insolvency, bankruptcy, liquidation, administration, winding-up, incapacity, limitation, disability, discharge by operation of law, change in the constitution, name or style of the Partner or any other person; and

- 2.9.8 any act or omission which would not have discharged or affected the liability of a sole principal debtor instead of a guarantor or any act, omission, matter or thing which, but for this provision and subject to **clause 2.1.3**, might operate to exonerate, discharge, reduce or extinguish the Guarantor's liability under this Guarantee.
- 2.10 The Council may enforce this Guarantee whether or not it has first:
- 2.10.1 notified the Partner, the Guarantor or any other person of any default of the Partner;
- 2.10.2 made demand upon, or enforced any claim, right or remedy against the Partner or any other person;
- 2.10.3 taken action or obtained judgment in any Court against the Partner or any other person; or
- 2.10.4 made or filed any claim in a bankruptcy, liquidation, administration or insolvency of the Partner or any other person.
- 2.11 Except where prevented from so doing by law the Guarantor waives and agrees not to enforce or claim the benefit of any and all rights it has or may from time to time have as guarantor under any applicable law which is or may be inconsistent with any of the provisions of this Guarantee.

3. **EXCLUSION OF CONTRACTS (RIGHTS OF THIRD PARTIES ACT) 1999**

- 3.1 The parties do not intend that any term of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person other than the parties.

4. **NOTICES**

- 4.1 Any demand, notice or other communication given in connection with or required by this Deed shall be in writing (entirely in the English Language) and shall be delivered to, or sent by pre-paid first class post to, the recipient at its registered office or its address stated in this Deed (or such other address as may be notified in writing from time to time) marked for the attention of the Council's Partnership Director (as defined in the Services Agreement) in the case of the Council, Company Secretary in the case of the Guarantor and the Partner's Partnership Director (as defined in the Services Agreement) in the case of the Partner.
- 4.2 Any such demand, notice or communication shall be deemed to have been duly served:-
- 4.2.1 if delivered by hand, when left at the proper address for service;

4.2.2 if given or made by pre-paid first class post, 48 hours after being posted

provided in each case that if the time of such deemed service is either after 4pm on a Business Day or on a day other than a Business Day service shall be deemed to occur instead at 10am on the next following Business Day.

5. **GOVERNING LAW AND JURISDICTION**

5.1 This Deed and any non-contractual obligations arising out of or in connection with it will be governed by English law and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales for the determination of any dispute arising out of or in connection with this Deed (including (without limitation) in relation to any non-contractual obligations).

6. **ASSIGNMENT**

6.1 This Guarantee is personal to the Council and no right to benefit interest or share in this Guarantee shall be assigned without the prior written consent of the Guarantor, save that the Guarantee may be assigned to any party to whom the Services Agreement is novated in accordance with **clause 2.9.3**.

6.2 Neither the Partner nor the Guarantor shall have the right to assign the benefit or delegate the burden of this Guarantee without the prior written consent of the Council which it may in its absolute discretion refuse.

THIS DOCUMENT is executed as a deed and delivered on the date stated at the beginning of this Deed.

EXECUTED as a **DEED**)
by **BALFOUR BEATTY WORKPLACE**)
LIMITED acting by its duly appointed)
Attorney in the presence of a witness)

.....
Witness

.....
Name:

Attorney

Address:

EXECUTED as a **DEED**)
by **BALFOUR BEATTY GROUP LIMITED**)
acting by)
two directors or a director and the)
company secretary)

Director

Director/Secretary

THE **COMMON SEAL** of)
NORTH EAST LINCOLNSHIRE)
BOROUGH COUNCIL)
was hereunto affixed)
in the presence of:)