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EXECUTION COPY

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Dated 27 February 2019

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DEED OF GUARANTEE, INDEMNITY AND PROJECT SUPPORT

This **DEED OF GUARANTEE, INDEMNITY AND PROJECT SUPPORT** (this "**Guarantee**") is made as a **DEED** on 27 February 2019 between:

- (1) **KHARKIV CITY COUNCIL** (the "**Guarantor**"), a representative body of the city of Kharkiv, Ukraine, with its legal address at 7 Maidan Konstytutsii, Kharkiv, Kharkivska Oblast, 61003, Ukraine, represented by Gennadiy Kernes, the Mayor of the City of Kharkiv, acting on the basis of Article 42 of the Law of Ukraine No. 280/97-BP "On Local Self-Governance in Ukraine" dated 21 May 1997, as amended, and the resolution of Kharkiv City Council dated No. 1216/18 dated 22 August 2018; and
- (2) **EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT** ("**EBRD**"), an international financial institution established pursuant to the Agreement Establishing the European Bank for Reconstruction and Development dated 29 May 1990, with its headquarters located at One Exchange Square, London EC2A 2JN, represented by Matteo Patrone, Managing Director, Eastern Europe and Caucasus, acting on the basis of the Certificate dated 21 November 2018.

WHEREAS:

- (A) By a loan agreement (the "**Loan Agreement**") dated 28 September 2018 between EBRD and Communal Enterprise "Trolleybusne Depo N 2", a communal enterprise duly organised and existing under the laws of Ukraine, having identification code of a legal entity No. 37766007 and having its registered office at 5 Newton Street, Kharkiv, 61105, Ukraine (the "**Company**"), EBRD agreed to extend to the Company a loan (the "**Loan**") in the principal amount of up to ten million Euros (EUR 10,000,000) on the terms and conditions set forth in the Loan Agreement.
- (B) By virtue of Section 4.01(a)(1)(ii) of the Loan Agreement, it is a condition of the first disbursement thereunder that the Guarantor shall have agreed to guarantee the obligations of the Company under the Loan Agreement on terms and conditions satisfactory to EBRD.
- (C) The Guarantor, in consideration of EBRD entering into the Loan Agreement and agreeing to disburse thereunder, has agreed so to guarantee the obligations of the Company under the Loan Agreement.
- (D) The giving of this Guarantee is for the commercial benefit of the Guarantor.

NOW THEREFORE THIS DEED WITNESSES, and the Guarantor hereby agrees as follows:

ARTICLE I - INTERPRETATION

Section 1.01. Definitions

(a) Wherever used in this Guarantee, unless the context otherwise requires or unless otherwise defined in this Guarantee, terms defined in the Loan Agreement have the same meanings herein. The Guarantor has been provided with, and hereby acknowledges receipt of, a copy of the Loan Agreement.

(b) Wherever used in this Guarantee, unless the context otherwise requires, the following terms have the following meanings:

“Aggregate Debt” means the Outstanding Debt and the Guaranteed Debt.

“City Debt Service” means, for any Financial Year of the Guarantor, all principal, interest, related charges and fees payable in the relevant financial period in relation to the Outstanding Debt and Guaranteed Debt.

“City Debt Service Coverage Ratio” means the ratio of Current Surplus to the City Debt Service.

“Company” has the meaning given to it in the recitals to this Guarantee.

“Current Expenditures” means, for any Financial Year of the Guarantor, all recurring expenditures of the Guarantor relating to the current activities of the Guarantor which on the date of this Guarantee correspond to the aggregate of:

(a) the expenses for salary and other salary payments, the expenses for goods and services excluding research and development costs connected with development measures and expenses for the special purpose measures;

(b) current transfers and social security excluding capital transfers and contributions to statutory capital of municipal/communal companies; and

(c) undistributed expenditures.

“Current Revenues” means, for any Financial Year of the Guarantor, all recurring revenues received by the Guarantor in relation to its current activities, including, without limitation, any equalisation transfers, subsidies and any other forms of assistance from upper level budgets, which on the date of this Guarantee corresponds to the aggregate of:

(a) Tax revenues;

- (b) Non-Tax revenues;
 - (c) official transfers to the Budget, excluding capital transfers and contributions to statutory capital; and
 - (d) earmarked funds.
- “Current Surplus” means, as for any Financial Year of the Guarantor, Current Revenues minus Current Expenditures.
- “Guaranteed Debt” means at any time any and all Financial Debt for which the Guarantor has provided or issued a guarantee in relation therewith at that time.
- “Loan Agreement” has the meaning given to it in the recitals to this Guarantee.
- “Outstanding Debt” means at any time all existing amounts of the Financial Debt of the Guarantor.
- “Rights” has the meaning given to it in Section 3.05(a).

Section 1.02. Interpretation

- (a) In this Guarantee, unless the context otherwise requires, words denoting the singular include the plural and vice versa.
- (b) In this Guarantee, a reference to a specified Article or Section shall be construed as a reference to that specified Article or Section of this Guarantee.
- (c) In this Guarantee, a reference (i) to an amendment or to an agreement being amended includes a supplement, variation, assignment, novation, restatement or re-enactment, and (ii) to an agreement shall be construed as a reference to such agreement as it may be amended from time to time.
- (d) In this Guarantee, the headings and the Table of Contents are inserted for convenience of reference only and shall not affect the interpretation of this Guarantee.
- (e) In this Guarantee, a reference to a “**person**” includes any person, natural or juridical entity, firm, company, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) or two or more of the foregoing and references to a “**person**” include its successors in title, permitted transferees and permitted assigns.
- (f) In this Guarantee, references to this Guarantee are to include the indemnity in Section 2.01 (c).
- (g) This Guarantee shall take effect as a deed even if it is signed under hand on behalf of EBRD.

- (h) In this Guarantee, references to liability are to include any liability whether actual, contingent, present or future.

ARTICLE II - GUARANTEE AND INDEMNITY

Section 2.01. Guarantee and Indemnity

The Guarantor irrevocably and unconditionally:

- (a) guarantees to EBRD punctual performance by the Company of all of its obligations under the Loan Agreement, including, but not limited to the repayment to EBRD of (i) the outstanding principal amount of the Loan of ten million Euros (EUR 10,000,000); (ii) all charges, commission and fees related to or arising out of the Loan Agreement; (iii) any interest applicable to the Loan; (iv) any default interest applicable to the Loan; (v) any increased costs related to or arising out of the Loan Agreement; (vi) all liabilities, obligations, losses, damages (compensatory, punitive or otherwise), penalties, claims, actions, Taxes, suits, costs and expenses of whatsoever kind of nature which are imposed on, incurred by or asserted against EBRD or any its officers, directors, employees, agents or servants and which in any way relate or arise out of the Loan Agreement or any Project Agreement; and (vii) any other amount which the Company shall pay EBRD under the terms of the Loan Agreement;
- (b) undertakes with EBRD that whenever the Company does not pay any amount when due under or in connection with the Loan Agreement, the Guarantor shall immediately on demand pay that amount as if it was the principal obligor and not merely a surety; and
- (c) agrees with EBRD that if for any reason, any obligation guaranteed by it is or becomes unenforceable, invalid, ineffective or illegal or otherwise becomes irrecoverable on the basis of a guarantee, the Guarantor shall, as an independent and primary obligation, indemnify EBRD immediately on demand against any cost, loss or liability it incurs as a result of the Company not paying any amount which would, but for such unenforceability, invalidity, ineffectiveness, illegality or irrecoverability, have been payable by it under the Loan Agreement on the date when it would have been due. The amount payable by the Guarantor under this indemnity will not exceed the amount it would have had to pay under this Section 2.01 if the amount claimed had been recoverable on the basis of a guarantee.

ARTICLE III - CREDITOR PROTECTIONS

Section 3.01. Continuing Guarantee

The Guarantor acknowledges and agrees that this Guarantee is and at all times shall be a continuing guarantee and shall extend to cover the ultimate balance due at any

time from the Company to EBRD under or in respect of the Loan Agreement and any of the transactions contemplated thereby regardless of any intermediate payment or performance or discharge in whole or in part.

Section 3.02. Waiver of Defences

The Guarantor acknowledges and agrees that none of its obligations or liabilities under this Guarantee shall be affected by any act, omission, matter or thing which, but for this Section 3.02, would reduce, release or prejudice any of its obligations under this Guarantee (without limitation and whether or not known to it or EBRD) including:

- (a) any termination, discharge, compromise, amendment, variation, novation, supplement, dealing with, exchange, substitution, renewal of any right or remedy under, extension or restatement (however fundamental and whether or not more onerous) or replacement of the Loan Agreement or any other document or security including, without limitation, any change in the purpose of, any extension of or increase in any facility or the addition of any new facility under the Loan Agreement or other document or security;
- (b) any act or omission by EBRD or any other person in taking up, perfecting, renewing, releasing or enforcing any security, indemnity or guarantee from or against the Company or any other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (c) any time, indulgence, waiver, consent or concession granted or agreed to be granted to, or composition with, the Company or any other person under the Loan Agreement;
- (d) any insolvency, bankruptcy, liquidation, administration, winding-up, incapacity, lack of power, authority or legal personality (including, without limitation, any change in constitution, status, function, control, ownership or name), dissolution, re-organisation or alteration of the legal structure of the Company or any other person, or any limitation, disability or discharge by operation of law of the Company or any other person;
- (e) any invalidity, illegality, unenforceability, irregularity of, or any defect in, any provision of the Loan Agreement or other guarantee or any of the actual or purported obligations of the Company or any other person under or in connection with the Loan Agreement or any other guarantee;
- (f) any claim against or enforcement of payment from the Company or any other person;
- (g) the release of any debtor or co-guarantor or any other person under the terms of any composition or arrangement with any creditor of the Company;
- (h) any purported or actual assignment of this Guarantee or the Loan Agreement by EBRD to any person;

- (i) any act, event or omission which but for this Section 3.02 might operate to discharge, impair or otherwise affect any of the obligations of the Guarantor contained in this Guarantee or any of the rights, powers or remedies conferred upon EBRD by this Guarantee or by law; or
- (j) any act or omission which would not have discharged or affected the liability of the Guarantor had it been a principal debtor instead of guarantor or indemnitor or by anything done or omitted by any person which but for this provision might operate to exonerate or discharge the Guarantor or otherwise reduce or extinguish its liability under this Guarantee.

Section 3.03. Guarantor Intent

Without prejudice to the generality of Section 3.02, the Guarantor expressly confirms that it intends that this Guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to the Loan Agreement and/or any facility or amount made available under the Loan Agreement for the purposes of or in connection with any of the following: business acquisitions of any nature; increasing working capital; enabling investor distributions to be made; carrying out restructurings; refinancing existing facilities; refinancing any other indebtedness; making facilities available to new borrowers; any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; and any fees, costs and/or expenses associated with any of the foregoing.

Section 3.04. Immediate Recourse

EBRD (or any trustee or agent on its behalf) shall not be obliged before taking steps to enforce any of its rights and remedies under this Guarantee to make any demand or seek to enforce any right or security against the Company or any other person, to obtain judgement in any court against the Company or any other person or to file any claim in a bankruptcy, liquidation or similar proceedings of the Company or any other person. The Guarantor waives any right it may have of first requiring EBRD (or any trustee or agent on its behalf) to make any such demand, enforcement or claim against it or any other person. This waiver applies irrespective of any law or any provision of the Loan Agreement to the contrary.

Section 3.05. No Security. Deferral of Guarantor's Right

- (a) The Guarantor warrants and represents to EBRD that, except for the Article 17 Agreement and the Security Document(s), it has not taken or received, and agrees not to take, exercise or receive the benefit of any security or other right or benefit (whether by set-off, counterclaim, subrogation, indemnity, proof in liquidation or otherwise and whether from contribution or otherwise, all together "**Rights**"), it being understood, for the avoidance of doubt and without prejudice to the provisions of Article VI, that the Rights shall not include the Guarantor's rights under the Article 17 Agreement and the Security Document(s)) from or against any of the Company or any other person in

respect of any liability of, payment or performance by the Guarantor under this Guarantee or otherwise in connection with this Guarantee and, until all amounts which may be or become payable by the Company under or in connection with the Loan Agreement have been irrevocably paid in full and unless EBRD otherwise directs, the Guarantor agrees that it will not exercise any rights which it may have by reason of performance by it of its obligations under this Guarantee or by reason of any amount being payable, or liability arising, under this Guarantee:

- (1) to be indemnified by the Company;
 - (2) to claim any contribution from any other guarantor of the Company's obligations under the Loan Agreement;
 - (3) to take the benefit (in whole or in part and whether by way of subrogation, indemnity or otherwise) of any rights of EBRD under the Loan Agreement or of any other guarantee or security taken pursuant to, or in connection with, the Loan Agreement by EBRD;
 - (4) to bring legal or other proceedings for an order requiring the Company to make any payment, or perform any obligation, in respect of which the Guarantor has given a guarantee, undertaking or indemnity under Section 2.01;
 - (5) to effect any set-off against the Company; and/or
 - (6) to claim or prove as a creditor of the Company in competition with EBRD.
- (b) The Guarantor acknowledges that its obligations under this Section 3.05 are irrevocable and not conditional on the exercise of its rights under the Article 17 Agreement and the Security Documents(s).
- (c) If the Guarantor receives any Rights referred to in Section 3.05(a), the Guarantor declares that such Rights and all benefits, payments or distributions at any time received or held in respect of such Rights shall be held by the Guarantor on trust for EBRD for application in or towards the discharge of the liabilities of the Guarantor to EBRD under this Guarantee.
- (d) The Guarantor agrees that all Rights and all benefits, payments or distributions in relation to such Rights from time to time held on trust by the Guarantor for EBRD under or pursuant to Section 3.05(b) shall be transferred, assigned or, as the case may be, paid to EBRD or as EBRD may direct promptly following EBRD's demand.

Section 3.06. Guarantor as Principal Debtor of the Guarantee

Without prejudice to anything herein to the contrary, the Guarantor has a right, on not less than 10 Business Days' prior notice to EBRD, to pay, as a principal obligor, when due in accordance with the Loan Agreement or at any time thereafter, in the currency in which the same falls due for payment, all monies and liabilities which are now or at

any time hereafter shall have been advanced to, become due, owing or incurred by the Company to or in favour of EBRD under or in connection with the Loan Agreement, including, but not limited to the repayment to EBRD of the outstanding principal amount of the Loan, which should not exceed EUR 10,000,000 (ten million Euros), as may be and if so agreed between the Company and the Guarantor.

ARTICLE IV – PAYMENTS; DISCHARGE; COSTS

Section 4.01. Interest

The Guarantor agrees to pay interest to EBRD on all sums demanded under this Guarantee from the date of EBRD's demand under this Guarantee or, if earlier, the date on which the relevant damages, losses, costs or expenses arose in respect of which such demand has been made, in each case until the date of actual payment (after as well as before judgement). Such interest shall be at the rate of interest applicable to overdue amounts under the Loan Agreement and shall be calculated in accordance with Section 3.06 of the Loan Agreement. The amount of interest payable on any such sums for any period pursuant to this Section shall be reduced by the amount of any interest otherwise paid by the Company on such sums pursuant to the terms of the Loan Agreement for the same period.

Section 4.02. Suspense Account

Until all amounts which may be or become payable by the Company under or in connection with the Loan Agreement have been irrevocably paid in full, EBRD may: (i) place and keep, for such time as EBRD thinks prudent, any monies received, recovered or realised hereunder or under any other guarantee or security in a suspense or impersonal account pending their application without any obligation on the part of EBRD to apply the same or any part thereof in or towards the discharge of any of the monies, obligations and liabilities that are the subject of this Guarantee, and (ii) refrain from applying or enforcing any other money, security or rights held or received by EBRD in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and the Guarantor shall not be entitled to the benefit of the same.

Section 4.03. Insufficient Payments

If EBRD at any time receives less than the full amount then due and payable to it under this Guarantee, EBRD shall have the right to allocate and apply the amount received in any way or manner and for such purpose or purposes under this Guarantee as EBRD in its sole discretion determines, notwithstanding any instruction that the Guarantor may give to the contrary.

Section 4.04. New Accounts

- (a) If this Guarantee ceases to be continuing for any reason whatsoever, then EBRD may open a new account or accounts in the name of the Company.
- (b) If EBRD does not open a new account or accounts pursuant to (a) above, it shall nevertheless be treated as if it had done so at the time that this Guarantee ceases to be continuing (whether by termination, calling in or otherwise) in relation to the Company.
- (c) As from that time, all payments made to EBRD by or on behalf of the Company shall be credited or be treated as having been credited to the new account or accounts and shall not operate to reduce the amount for which this Guarantee is available at that time nor shall the liability of the Guarantor under this Guarantee in any manner be reduced or affected by any subsequent transactions, receipts or payments into or out of any such accounts.

Section 4.05. Reinstatement

Any release, discharge or settlement by EBRD (whether in respect of the obligations of the Company or the Guarantor or any security for those obligations or otherwise) shall be conditional upon no security in favour of EBRD in respect of this Guarantee and no payment to, or other disposition in favour of, EBRD by the Company, the Guarantor or any other person on behalf of the Company or the Guarantor being avoided, reduced, set aside or ordered to be refunded pursuant to any enactment or law relating to bankruptcy, liquidation, administration, protection from creditors generally or insolvency or for any other reason. If any such security, payment or other disposition is at any time so avoided, reduced, set aside or ordered to be refunded, then the liability of the Guarantor under this Guarantee will continue or be reinstated and EBRD shall be entitled subsequently to enforce this Guarantee against the Guarantor as if such release, discharge or settlement had not occurred.

Section 4.06. Payments and Taxes

All amounts due to EBRD under this Guarantee shall be paid immediately upon demand without any set-off, condition or counterclaim whatsoever to such account at such office or bank as EBRD may notify to the Guarantor. Such payments shall be free and clear of, and without deduction or withholding for or on account of, any taxes, duties, fees or other charges of whatever nature; provided, however, that, in the event that the Guarantor is prevented by operation of law or otherwise from making such payments free and clear of such deductions or withholdings, the amount due under this Guarantee shall be increased to such amount as may be necessary to remit to EBRD the full amount it would have received had such payment been made without such deductions or withholdings.

Section 4.07. Demands and Notification Binding

Any demand, notification or certificate given by EBRD specifying amounts due and payable under or in connection with any of the provisions of this Guarantee shall, in the absence of manifest error, be final, conclusive and binding on the Guarantor.

Section 4.08. Costs and Expenses

The Guarantor shall, on demand and on a full indemnity basis, pay to EBRD the amount of all costs and expenses (including legal fees and expenses and any value added tax on such costs and expenses) which EBRD incurs in connection with:

- (a) the preparation, negotiation, execution and delivery of this Guarantee;
- (b) any actual or proposed amendment, variation, supplement, waiver or consent under or in connection with this Guarantee;
- (c) any discharge or release of this Guarantee;
- (d) the preservation or exercise (or attempted preservation or exercise), and the enforcement (or attempted enforcement) of, any rights under or in connection with, this Guarantee;
- (e) any stamping, registration or deregistration of this Guarantee.

Section 4.09. Set-off

EBRD shall have the right, to the fullest extent permitted by law, to set off any obligation owed by EBRD to the Guarantor, whether or not matured, against any amount then due and payable by the Guarantor under this Guarantee, whether or not EBRD had demanded payment by the Guarantor of such amount and regardless of the currency or place of payment of either such amount. If the obligations are in different currencies, EBRD may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

Section 4.10. Currency Indemnity

If, under any applicable law or regulation or pursuant to a judgement or order being made or registered against the Guarantor or the liquidation of the Guarantor or without limitation for any other reason, any payment under or in connection with this Guarantee is made or falls to be satisfied in a currency (the "payment currency") other than the currency in which such payment is expressed to be due under or in connection with this Guarantee (the "contractual currency") then, to the extent that the amount of such payment actually received by EBRD, when converted into the contractual currency at the rate of exchange, falls short of the amount due under or in connection with this Guarantee, the Guarantor, as a separate and independent obligation, shall indemnify and hold harmless EBRD against the amount of such shortfall. For the purposes of this Section, "rate of exchange" means the rate at which EBRD is able on or about the date of such payment to purchase, in accordance with

its normal practice, the contractual currency with the payment currency and shall take into account (and the Guarantor shall be liable for) any costs of exchange including any taxes or duties incurred by reason of any such exchange.

Section 4.11. Additional Security

This Guarantee is in addition to any other guarantee, security, right or remedy now or subsequently held by EBRD and shall not be in any way prejudiced by or merged with any other guarantee, security, right or remedy now or subsequently held by EBRD.

ARTICLE V - REPRESENTATIONS AND WARRANTIES; UNDERTAKINGS

Section 5.01. Representations and Warranties of the Guarantor

The Guarantor hereby represents and warrants to EBRD that, as of the date hereof and as of the dates when any representations or warranties are made pursuant to Sections 2.01, 2.02 or 2.03 of the Loan Agreement are repeated or deemed repeated pursuant to the terms of the Loan Agreement:

- (a) the Guarantor is a representative body of the City, duly organised and validly existing under the laws of Ukraine;
- (b) the Guarantor is fully familiar with and agrees to all the provisions of the Loan Agreement and confirms that the giving of this Guarantee is for its commercial benefit;
- (c) the Guarantor has full power and authority (i) to execute and deliver this Guarantee and all notices, certificates and other documents related to this transaction and (ii) to comply with the provisions of, and perform all its obligations under, this Guarantee;
- (d) the Guarantor has taken all necessary actions to authorise the execution and delivery of this Guarantee and this Guarantee constitutes the Guarantor's legal, valid and binding obligations enforceable against the Guarantor in accordance with its terms;
- (e) the entry into and performance by the Guarantor of this Guarantee does not and will not violate in any respect (i) any law or regulation of any governmental or official authority or body, or (ii) the constitutional documents of the Guarantor, or (iii) any agreement, contract or other undertaking to which the Guarantor or any of its Subsidiaries is a party or which is binding upon the Guarantor or any of its Subsidiaries or any of their respective assets;
- (f) all conditions provided by the Budget Code or any other applicable legislation for the entering by the Guarantor into this Guarantee have been duly and fully complied with (including by entering into the Guarantee Related Agreements);

- (g) all consents, licences, approvals and authorisations required in connection with the entry into, performance, validity and enforceability of this Guarantee and the transactions contemplated hereby have been obtained and are in full force and effect;
- (h) it is not necessary for the legality, validity, enforceability or admissibility in evidence of this Guarantee that this Guarantee or any document relating hereto be registered, filed, recorded or enrolled with any court or authority in any relevant jurisdiction or that any stamp, registration or similar tax be paid on or in relation to this Guarantee, except for: (i) the approval of the amount and the terms of the Guarantee by the Ministry of Finance of Ukraine; (ii) the approval of the terms of this Guarantee by the Guarantor; (iii) the approval (ratification) of the Guarantee by the Guarantor after its execution; and (iv) the registration of this Guarantee by the Ministry of Finance of Ukraine (with the Register of Local Borrowings and Local Guarantees) in accordance with Article 74 of the Budget Code;
- (i) no action, suit, proceeding, litigation or dispute against the Guarantor or any of its Subsidiaries is presently taking place or pending or, to its knowledge, threatened nor is there subsisting any judgement or award given against the Guarantor or any of its Subsidiaries before any court, arbitral tribunal or other body which, in either case, might have a material adverse effect on the business or condition (financial or otherwise) of the Guarantor or on the ability of the Guarantor to perform any of its obligations under this Guarantee;
- (j) the Guarantor is not in default under any agreement to which it is a party or by which it is bound, and no Event of Default relating to the Guarantor (or event which, with the giving of notice or lapse of time or other applicable condition might constitute an Event of Default relating to the Guarantor) has occurred and is continuing nor will such a default or Event of Default (or such event) result from the performance by the Guarantor of any of its obligations under this Guarantee;
- (k) the obligations of the Guarantor under this Guarantee rank and will rank at least *pari passu* with all claims of its other creditors, except for claims mandatorily preferred by laws applicable to companies generally;
- (l) the latest Draft Budget, the Budget, the Budget Performance Report and the accounts and financial statements of the Guarantor (which have been prepared in accordance with the Ukrainian laws) represent a true and fair view of the financial position of the Guarantor and its Subsidiaries at their respective dates and no significant liabilities (contingent or otherwise) exist which have not been fully disclosed or reserved against in such Draft Budget, the Budget, the Budget Performance Report and accounts and financial statements; there has been no material adverse change in the financial condition of the Guarantor and its Subsidiaries from that set forth in such Draft Budget, the Budget, the Budget Performance Report and accounts and financial statements;
- (m) all financial and other information furnished by the Guarantor in connection with the negotiation of this Guarantee or delivered to EBRD pursuant to this Guarantee was true and accurate when given and there were no other facts or

matters the omission of which would have made any statement or information contained therein misleading;

- (n) the Company is wholly-owned by the Guarantor;
- (o) the choice of English law as the governing law of this Guarantee will be recognised in Ukraine, and any award obtained in any arbitration undertaken in relation to this Guarantee will be recognised and enforced in Ukraine, subject to compliance with the 10 June 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the public policy of Ukraine;
- (p) the representations and warranties of the Company set out in Sections 2.01, 2.02 and 2.03 of the Loan Agreement were true and correct when made and will be true and correct when and in the manner repeated or deemed repeated pursuant to the terms of the Loan Agreement.

ARTICLE VI - COVENANTS

Section 6.01. Affirmative Covenants

The Guarantor undertakes that, so long as the Loan Agreement is in force or any amount or obligation remains outstanding or payable under the Loan Agreement or this Guarantee, it will comply in full with the following covenants unless EBRD otherwise agrees in writing:

- (a) in each Financial Year, the Guarantor shall (i) budget, as a separate budget line in the Budget, an amount of not less than one hundred per cent (100%) of the aggregate amount of principal that is scheduled to be repaid by the Company to EBRD under the Loan Agreement in the Financial Year to which the Budget relates; and (ii) procure that such amount is available on demand by EBRD;
- (b) in each Financial Year, the Guarantor shall budget, in accordance with applicable Ukrainian laws, as a separate budget line in the Budget an amount which is not less than one hundred per cent (100%) of (i) a reasonable amount of interest which is payable by the Company on the Loan in accordance with the Loan Agreement in the Financial Year to which the Budget relates; and (ii) a reasonable amount of all charges, commissions, fees, expenses and any other amounts (including legal fees and expenses and any value added tax on such costs and expenses) which are payable to EBRD in accordance with the Loan Agreement in the Financial Year to which the Budget relates, and shall procure that the amounts specified in (i) and (ii) above are available on demand by EBRD;
- (c) the Guarantor shall amend the Budget and perform all other actions necessary due to requirements of applicable Ukrainian legislation in order to fulfil its payment obligations under the Guarantee;
- (d) the Guarantor will send (or procure that there is sent) to EBRD:

- (i) as soon as available but, in any event, no later than 25 December of each calendar year, the Draft Budget for the following Financial Year;
 - (ii) as soon as available but, in any event, no later than 31 January of each calendar year or within 15 (fifteen) days from its adoption, whichever is earlier, the Budget for the following Financial Year (in case the Budget is adopted before that Financial Year) or the current Financial Year (in case the Budget is adopted in that Financial Year);
 - (iii) as soon as available but, in any event, no later than 30 April and 1 September of each calendar year, (A) the Budget Performance Report for the last half of the previous Financial Year or the first half of the same Financial Year (as the case may be), (B) a detailed calculation with respect to the financial ratios specified in Section 6.01(h) and other financial covenants referred to in this Section as certified by a duly authorised officer of the Guarantor, and (C) a statement (as certified by a duly authorised officer of the Guarantor) detailing the Aggregate Debt;
 - (iv) within 15 (fifteen) days from adoption, any amendments to the Budget;
 - (v) as soon as the same is instituted (or, to the knowledge of the Guarantor, threatened), details of any litigation, arbitration or administrative proceedings which is likely to have a Material Adverse Effect on the Guarantor or the Company;
 - (vi) from time to time, and on demand, such additional financial or other information relating to the Guarantor or the Company as may be requested by EBRD; and
 - (vii) within 7 (seven) days of its receipt, any credit rating report and credit rating decision and any other document indicating any change in the credit rating of the City;
- (e) the Guarantor will promptly notify EBRD in writing of any Event of Default or Potential Event of Default relating to the Guarantor forthwith upon the occurrence thereof;
 - (f) the Guarantor will obtain, maintain and promptly renew from time to time, and will promptly furnish certified copies to EBRD of, all such authorisations, approvals, consents and licences as may be required under any applicable law or regulation to enable the Guarantor to perform its obligations under this Guarantee or required for the validity or enforceability of this Guarantee, and the Guarantor shall comply with the terms of the same;
 - (g) the Guarantor shall cause the Company to implement the Environmental and Social Action Plan;
 - (h) the Guarantor shall maintain during each Financial Year:
 - (i) the City Debt Service Coverage Ratio of not less than 1.5:1 (calculated on a 12 month rolling basis);

- (ii) a ratio of Aggregate Debt to Current Surplus of not greater than 4.5:1; and
- (iii) a ratio of Aggregate Debt to Current Revenues of not greater than 0.5:1;
- (i) the Guarantor shall carry out such acts as may be required or advisable under Ukrainian legislation to ensure that the State Treasury Service of Ukraine maintains books of accounts and other records adequate to present a true and fair view of the financial condition of the City and the Guarantor;
- (j) the Guarantor will abstain, and shall cause any of the entities under its control (including any Subsidiaries of the Guarantor) to abstain, from any action, which, in the reasonable opinion of EBRD, might have an adverse effect on the ability of the Guarantor or the Company to meet their respective financial and other obligations under the Guarantee or the Loan Agreement respectively;
- (k) the Guarantor shall, as soon as possible, but no later than 28 March 2020, enter into the Public Service Contract with the Company, and shall henceforth not terminate the Public Service Contract;
- (l) the Guarantor shall procure that the Company complies with all its obligations under the Financing Agreements and the Project Agreements to which it is a party and carries out the Project as provided for in the Financing Agreements and the Project Agreements;
- (m) the Guarantor shall perform and comply with each of its obligations to the Company, including without limitation each of its obligations under the Public Service Contract, and cause any of its Subsidiaries and structural units to perform and comply with each of their respective obligations to the Company;
- (n) in each Financial Year, the Guarantor shall timely and properly budget in its Budget all payments and contributions to be made to the Company, including payments and contributions under the Public Service Contract as well as the Local Contribution required in accordance with the Loan Agreement, in each case in a manner and for amounts satisfactory to EBRD, and effect such payments and contributions to the Company in a timely manner;
- (o) the Guarantor shall ensure that all amounts payable under this Guarantee are clearly reflected in the relevant debt books, register of guarantees or any other similar or equivalent books, records or registers of the Guarantor in accordance with any applicable Ukrainian laws;
- (p) the Guarantor shall procure that, if the City is rated, the City will continue (at its own cost) to be rated by at least one Rating Agency and to have the relevant financial information reviewed and published by such Rating Agency;
- (q) the Guarantor will, as soon as possible, but no later than the date of the first Disbursement, approve and implement the applicable tariff for customers paying full price at full cost recovery level or, for the periods where the tariffs are set at less than the full cost recovery level, budget the full amount of compensating subsidies to the Company in its Budget;

- (r) the Guarantor will abstain from any action which would prevent the Company from charging tariffs at the levels specified in Section 6.01(q) above;
- (s) the Guarantor shall take (or procure to be taken) all actions, required to be taken, in order to ensure that the services provided or contemplated to be provided by the Company pursuant to the terms of the Public Service Contract are not altered or modified other than in accordance with the Public Service Contract;
- (t) the Guarantor shall take all necessary or advisable legislative, regulatory or other actions, to the extent permitted by Ukrainian law, required on its part to adopt, or cause to be adopted, all regulations which are necessary or appropriate to achieve the purpose of this Guarantee and the Project, as well as cause and support the Borrower to implement the Project in accordance with Project Implementation Plan;
- (u) except as expressly provided by the imperative norms of Ukrainian legislation, the Guarantor shall abstain from any action requiring the Company to declare or pay any dividend, or make any other allocation of profit received or to be received by the Company or distribution on its charter capital; and
- (v) where any obligation of the Company under any Financing Agreement or any Project Agreement requires the approval of the Guarantor, the Guarantor shall promptly grant such approval in accordance with applicable Ukrainian laws and regulations, and/or if it requires the approval or decision from any Governmental Authority, shall assist the Company in obtaining such approval or decision.

Section 6.02. Negative Covenants

The Guarantor undertakes that, so long as the Loan Agreement is in force or any amount remains outstanding or payable under the Loan Agreement or this Guarantee, it will comply in full with the following covenants unless EBRD otherwise agrees in writing;

- (a) the Guarantor shall not, and shall procure that the Company shall not, create, assume or permit to exist any Lien upon any of its or the Company's assets (whether now owned or hereafter acquired) except for the Permitted Liens;
- (b) the Guarantor shall not sell, transfer or otherwise dispose of any of its ownership rights in the Company and shall procure that the City will at all times retain the legal and beneficial ownership of 100% of the charter capital of the Company;
- (c) the Guarantor shall not, to the extent permitted under the applicable legislation and within its power, impose any direct or indirect Taxes, duties, fees and other charges of whatever nature on consultants employed by EBRD, the Company or the Guarantor in the implementation of the Project and financed out of the proceeds of the Loan or any technical cooperation funds made available by EBRD, except to the extent that such Taxes, duties, fees and other charges are

paid for by funds other than the proceeds of the Loan or any technical cooperation funds made available by EBRD;

- (d) the Guarantor shall not require the Company to meet service or other standards which exceed those required under the Ukrainian law or regulations, except as agreed under the Project Agreements, including the Public Service Contract;
- (e) the Guarantor shall not interfere with the day-to-day management and operations of the Company, which might, in the reasonable opinion of EBRD, impede the performance by the Company of its obligations under the Financing Agreements and/or the Project Agreements to which it is a party;
- (f) the Guarantor shall not, and shall procure that the Company shall not, without the prior consent of EBRD, lease, lend, sell, transfer or otherwise dispose or assign of all or any part of the Company's assets (whether by one transaction or by a series of transactions, whether related or not);
- (g) the Guarantor shall not claim or prove against the Company in any insolvency proceedings unless all amounts owing to EBRD under the Loan Agreement have been irrevocably paid in full;
- (h) the Guarantor shall not, and shall procure that the Company and/or any other respective authority or entity shall not, without the prior written consent of EBRD, reorganise, consolidate or amalgamate the Company with, or merge the Company into, any other entity;
- (i) the Guarantor shall not take or permit to be taken by any of the entities under its control (including any Subsidiaries of the Guarantor) any measure which might prevent the Company from enforcing its rights against any clients of the Company which do not settle duly, fully and timely the invoices issued by the Company or which might make such enforcement more difficult; and
- (j) the Guarantor shall not afford to any company carrying out its activity or part thereof in the City a treatment which is more favourable than the treatment which is afforded by the Guarantor to the Company.

ARTICLE VII- MISCELLANEOUS

Section 7.01. Notices

Any notice, application, demand or other communication to be given or made under this Guarantee to EBRD or to the Guarantor shall be in writing. Such notice, application, demand or other communication shall be deemed to have been duly given or made when it is delivered by hand, airmail or facsimile transmission to the party to which it is required or permitted to be given or made at such party's address specified below or at such other address as such party designates by notice to the party giving or making such notice, application or other communication.

For the Guarantor:

Kharkiv City Council

7 Maidan Konstytutsii,
Kharkiv, Kharkivska Oblast, 61003
Ukraine

Attention: Mayor of the City of Kharkiv

Fax: +38-057-760-7951

For EBRD:

European Bank for Reconstruction and Development

One Exchange Square
London EC2A 2JN
United Kingdom

Attention: Operation Administration Department (Operation Number 48195)

Fax: +44-20-7338-6100

Section 7.02. English Language

All documents to be furnished or communications to be given or made under this Guarantee shall be in the English language or, if in another language, shall be accompanied by a translation into English by a translator acceptable to EBRD, which translation shall be the governing version between the Guarantor and EBRD, provided that until otherwise notified by EBRD the documents to be furnished to EBRD pursuant to Sections 6.01(d) (i), (ii) (iii) (A) and (iv) may be furnished in the official language of Ukraine.

Section 7.03. Rights, Remedies and Waivers

- (a) The rights and remedies of EBRD in relation to any misrepresentations or breach of warranty on the part of the Guarantor shall not be prejudiced by any investigation by or on behalf of EBRD into the affairs of the Guarantor or the Company, by the execution or the performance of this Guarantee or the Loan Agreement or by any other act or thing which may be done by or on behalf of EBRD in connection with this Guarantee and which might, apart from this Section, prejudice such rights or remedies.
- (b) No course of dealing and no delay in exercising, or omission to exercise, any right, power or remedy accruing to EBRD under this Guarantee or any other agreement shall impair any such right, power or remedy or be construed to be a waiver thereof or an acquiescence therein. No single or partial exercise of any

such right, power or remedy shall preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No action of EBRD in respect of any such default, or acquiescence by it therein, shall affect or impair any right, power or remedy of EBRD in respect of any other default.

- (c) The rights and remedies provided in this Guarantee and the other Financing Agreements are cumulative and not exclusive of any other rights or remedies, whether provided by applicable law or otherwise.

Section 7.04. Governing Law

This Guarantee shall be governed by and construed in accordance with English law. Any non-contractual obligations arising out of or in connection with this Guarantee shall be governed by and construed in accordance with English law.

Section 7.05. Arbitration and Jurisdiction

- (a) Any dispute, controversy or claim arising out of or relating to (1) this Guarantee, (2) the breach, termination or invalidity hereof or (3) any non-contractual obligations arising out of or in connection with this Agreement, shall be settled by arbitration in accordance with the UNCITRAL Rules. There shall be one arbitrator and the appointing authority shall be LCIA (London Court of International Arbitration). The seat and place of arbitration shall be London, England and the English language shall be used throughout the arbitral proceedings. The parties hereby waive any rights under the Arbitration Act 1996 or otherwise to appeal any arbitration award to, or to seek a determination of a preliminary point of law by, the courts of England. The arbitral tribunal shall not be authorised to grant, and the Guarantor agrees that it shall not seek from any judicial authority, any interim measures or pre-award relief against EBRD, any provisions of UNCITRAL Rules notwithstanding. The arbitral tribunal shall have authority to consider and include in any proceeding, decision or award any further dispute properly brought before it by EBRD (but no other party) insofar as such dispute arises out of any Financing Agreement, but, subject to the foregoing, no other parties or other disputes shall be included in, or consolidated with, the arbitral proceedings.
- (b) Notwithstanding Section 7.05(a), this Guarantee and the other Financing Agreements, and any rights of EBRD arising out of or relating to this Guarantee or any other Financing Agreement, may, at the option of EBRD, be enforced by EBRD in the courts of Ukraine or in any other courts having jurisdiction. For the benefit of EBRD, the Guarantor hereby irrevocably submits to the non-exclusive jurisdiction of the courts of England with respect to any dispute, controversy or claim arising out of or relating to this Guarantee or any other Financing Agreement, or the breach, termination or invalidity hereof or thereof. The Guarantor hereby irrevocably designates, appoints and empowers Law Debenture Corporate Services Limited at its registered office (being, on the date hereof, at Fifth Floor, 100 Wood Street, EC2V 7EX London, England) to act as its authorised agent to receive service of process and any other legal summons in England for purposes of any legal action or proceeding brought by EBRD in

respect of any Financing Agreement. Failure by a process agent to notify the Guarantor of the process will not invalidate the proceedings concerned. The Guarantor hereby irrevocably consents to the service of process or any other legal summons out of such courts by mailing copies thereof by registered airmail postage prepaid to its address specified herein. The Guarantor covenants and agrees that, so long as it has any obligations under this Guarantee, it shall maintain a duly appointed agent to receive service of process and any other legal summons in England for purposes of any legal action or proceeding brought by EBRD in respect of any Financing Agreement and shall keep EBRD advised of the identity and location of such agent. Nothing herein shall affect the right of EBRD to commence legal actions or proceedings against the Guarantor in any manner authorised by the laws of any relevant jurisdiction. The commencement by EBRD of legal actions or proceedings in one or more jurisdictions shall not preclude EBRD from commencing legal actions or proceedings in any other jurisdiction, whether concurrently or not. The Guarantor irrevocably waives any objection it may now or hereafter have on any grounds whatsoever to the laying of venue of any legal action or proceeding and any claim it may now or hereafter have that any such legal action or proceeding has been brought in an inconvenient forum.

Section 7.06. Privileges and Immunities of EBRD

Nothing in this Guarantee shall be construed as a waiver, renunciation or other modification of any immunities, privileges or exemptions of EBRD accorded under the Agreement Establishing the European Bank for Reconstruction and Development, international convention or any applicable law. Notwithstanding the foregoing, EBRD has made an express submission to arbitration under Section 7.05(a) and accordingly, and without prejudice to its other privileges and immunities (including, without limitation, the inviolability of its archives), it acknowledges that it does not have immunity from suit and legal process under Article 5(2) of Statutory Instrument 1991, No. 757 (The European Bank for Reconstruction and Development (Immunities and Privileges) Order 1991), or any similar provision under English law, in respect of the enforcement of an arbitration award duly made against it as a result of its express submission to arbitration pursuant to Section 7.05(a).

Section 7.07. Waiver of Sovereign Immunity

The Guarantor represents and warrants that this Guarantee and the incurring by the Guarantor of the obligations hereunder are commercial rather than public or governmental acts and that the Guarantor is not entitled to claim immunity from legal proceedings with respect to itself or any of its assets on the grounds of sovereignty or otherwise under any law or in any jurisdiction where an action may be brought for the enforcement of any of the obligations arising under or relating to this Guarantee. To the extent that the Guarantor or any of its assets has or hereafter may acquire any right to immunity from set-off, legal proceedings, attachment prior to judgement, other attachment or execution of judgement on the grounds of sovereignty or otherwise, the Guarantor hereby irrevocably waives such rights to immunity in respect of its obligations arising under or relating to this Guarantee.

Section 7.08. Successors and Assigns; Third Party Rights

- (a) This Guarantee shall bind and inure to the benefit of the respective successors and assigns of the parties hereto, except that the Guarantor may not assign or otherwise transfer all or any part of its rights or obligations under this Guarantee or enter into any transaction which would result in any of those rights or obligations passing to another person.
- (b) EBRD may sell, transfer, assign, novate or otherwise dispose of all or part of its rights or obligations under this Guarantee and the other Financing Agreements or mitigate its risks from this Agreement and the other Financing Agreements through unfunded risk Participations, insurance or other means without the consent of the Guarantor.
- (c) Except as provided in Section 7.08(a) or 7.08(b), none of the terms of this Guarantee are intended to be enforceable by any third party.

Section 7.09. Disclosure

EBRD may use or disclose such documents, information and records regarding the Guarantor and this transaction (including, without limitation, copies of this Guarantee and any Financing Agreement) as EBRD deems appropriate in connection with: (a) any dispute or proceeding in relation to, or involving, the Guarantor, the Company or any other party to a Financing Agreement, for the purpose of defending, preserving or enforcing any of EBRD's rights or interests; (b) any actual or proposed Participation or any other proposed sale, transfer, assignment, novation or other disposal or risk mitigation contemplated by Section 7.08; or (c) the administration and monitoring of, or any dispute or proceeding involving, any other investment in, or financing to, the Borrower or any Affiliate thereof as may be made or provided directly or indirectly by EBRD from time to time.

Section 7.10. Severability

If at any time any one or more of the provisions in this Guarantee is or becomes invalid, illegal or unenforceable in any respect under any law or regulation, the validity, legality and enforceability of the remaining provisions of this Guarantee shall not be in any way affected or impaired thereby.

Section 7.11. Counterparts

- (a) This Guarantee is executed in originals in the English and in the Ukrainian languages. In case of any inconsistency between the English and Ukrainian versions of this Guarantee, the version of the Guarantee in the English language shall prevail.
- (b) This Guarantee may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

Section 7.12. Term of the Guarantee

The Guarantee shall continue in force until the date upon which EBRD confirms to the Guarantor in writing (i) that the Company has duly performed and discharged all of its obligations and liabilities under the Loan Agreement, and (ii) the Guarantor has duly performed and discharged all of its obligations under the Guarantee.

COPY

95)

BLANKET CITY COUNCIL



[Signature]

Mayor
The City of Blanket

Witnessed as follows by

EUROPEAN BANK
FOR RECONSTRUCTION AND DEVELOPMENT

[Signature]

Vice President
The European Bank for Reconstruction and Development



IN WITNESS WHEREOF, the parties hereto, acting through their duly authorised representatives, have caused this Guarantee to be signed as a Deed in their respective names as of the date first above written.

Executed as a Deed by

KHARKIV CITY COUNCIL



[Signature]
Name: Gennadiy Kernes
Title: Mayor of the City of Kharkiv

Executed as a Deed by

**EUROPEAN BANK
FOR RECONSTRUCTION AND DEVELOPMENT**



By:

[Signature]
Name: Matteo Patrone
Title: Managing Director, Eastern Europe and Caucasus

Dated 27 February 2010

IN WITNESS WHEREOF, the parties herein, acting through their duly authorized representatives, have caused this Certificate to be signed and Dated in their respective hands as of the date first above written.

Witnessed as a True and

LEGAL CERTIFICATE



Handwritten signature in blue ink, appearing to read 'Igor...'.



Witnessed as a True and