

**DRAFT (20 May 2020)**

**AUTONOMOUS GUARANTEE AGREEMENT**

**BETWEEN**

**CITY OF TAMPERE**  
**(AS GUARANTOR)**

**AND**

**COUNCIL OF EUROPE DEVELOPMENT BANK**  
**(AS BENEFICIARY)**

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**THIS AUTONOMOUS FIRST DEMAND GUARANTEE AGREEMENT (THE "GUARANTEE ") IS MADE BETWEEN:**

**CITY OF TAMPERE**, a Finnish municipality (business identity code 0211675-2), having its registered address at PO Box 765, 33101 Tampere, Finland and its headquarters at Aleksis Kiven katu 14-16C, Tampere, Finland, as guarantor (hereinafter, the "**Guarantor**")

**AND**

**COUNCIL OF EUROPE DEVELOPMENT BANK**, an international organisation, with its headquarters at 55, Avenue Kléber, 75116 Paris, France, as beneficiary (hereinafter, called the "**CEB**" or the "**Beneficiary**" and together with the Guarantor, collectively the "**Parties**" and each individually a "**Party**"),

**WHEREAS**

- (1) Having regard to the loan application submitted by Finland dated on 13 February 2020 and approved by the CEB's Administrative Council on 20 March 2020,
- (2) Having regard to the Third Protocol to the General Agreement on Privileges and Immunities of the Council of Europe,
- (3) Having regard to the CEB's Loan Regulations, as adopted by the CEB's Administrative Council Resolution 1587 (2016) (hereinafter, the "**Loan Regulations**"),
- (4) Having regard to the CEB's Loan and Project Financing Policy, as adopted by the CEB's Administrative Council Resolution 1611 (2019) (hereinafter, the "**Loan Policy**"),
- (5) Having regard to the framework loan agreement with reference LD 2040 (hereinafter, the "**Framework Loan Agreement**") entered into by the CEB as lender and Pirkan Opiskelija-asunnot Oy as borrower (hereinafter, the "**Borrower**") on [•] 2020 for a loan (hereinafter, the "**Loan**") amounting to EUR 10 300 000 (ten million three hundred thousand euros), the Disbursement Requests and the Disbursement Notices (as such terms are defined in the Framework Loan Agreement) entered or to be entered into under and in accordance with the Framework Loan Agreement (the Framework Loan Agreement, which includes the Loan Regulations by way of general conditions, hereinafter referred to as the "**Loan Agreement**"),
- (6) Having regard to the fact that the obligations of the CEB under the Loan Agreement are conditional upon the execution by the Guarantor of a satisfactory autonomous first demand guarantee in accordance with the terms herein,
- (7) Having regard to the fact that a guarantee resolution in respect of granting a directly enforceable guarantee (Fi: *omavelkainen takaus*) in favour of the Borrower in relation to the Kalevan Stara Sub-project has been passed by the city council of the Guarantor in a council meeting held on 19 August 2019 (resolution ref. no. TRE:4264/02.04.04/2019, the "**Guarantee Resolution**"),
- (8) Having regard to the fact that the Guarantor declares that it is well acquainted with the terms and conditions of the Loan Agreement, a copy of which, as signed by the parties thereto, has been delivered to the Guarantor.

**NOW THEREFORE, it is hereby agreed as follows:**

## 1. INTERPRETATION

### 1.1 Recitals

The Recitals (1) to (7) (inclusive) above are an integral part of the Guarantee.

### 1.2 Interpretation

- (a) Any reference to the Beneficiary or the Guarantor shall be construed to include their respective successors and permitted assignees from time to time, subject to the provisions of Clause 9 (*Assignment*).
- (b) Any reference to the Guarantee, the Loan Agreement or to any other document or agreement is a reference to the Guarantee, the Loan Agreement or to that other document or agreement respectively, as the same may have been, or may from time to time be, amended, novated, supplemented, extended or restated, including supplements providing for further increased commitments or refinancing, as applicable.
- (c) Clause headings are inserted for convenience only and shall hence be ignored when construing the Guarantee.
- (d) Words importing the singular shall include the plural and vice-versa.
- (e) References herein to "Clauses", "Sub-clauses", "Exhibits" and "Recitals" are, unless otherwise stated, references to clauses, sub-clauses, exhibits and recitals, respectively, of the Guarantee.

## 2. DEFINITIONS

Unless otherwise defined herein, terms defined in the Loan Agreement shall have the same meaning in the Guarantee.

In addition, for the purposes of the Guarantee:

- (a) "**Business Day**" means any day (other than a Saturday or a Sunday) on which banks are open for general business in Paris, France, and Finland, and any day on which TARGET 2 (the Trans-European Automated Real-time Gross Settlement Express Transfer system) is open for the settlement of payments in euro.
- (b) "**Demand**" means the CEB's written payment demand addressed to the Guarantor by registered letter with acknowledgement of receipt in accordance with the provisions of Clause 11 (*Notices*) and specifying the amount of the Guaranteed Sum(s) to be paid to the CEB under the Guarantee, the account to which such payment should be made and the Due Date, and otherwise in the form of Exhibit 1 hereto.
- (c) "**Due Date**" means the day which is five (5) Business Days after the date of receipt by the Guarantor of a Demand, or any later date falling on a Business Day which may be specified in the Demand.
- (d) "**Effective Date**" means the date of entry into force of the Guarantee resulting from Sub-clause 12.1 (*Effectiveness*).

- (e) "Guaranteed Sum" or "Guaranteed Sums" means an amount of up to EUR 7 500 000 (seven million five hundred thousand euros).

### 3. GUARANTEE

#### 3.1 Amount and payment

In consideration of the Loan granted to the Borrower by the CEB under the Loan Agreement, the Guarantor hereby fully, irrevocably and unconditionally undertakes to pay to the CEB, on first written demand, an amount of up to EUR 7 500 000 (seven million five hundred thousand euros) in accordance with the terms and conditions of the Guarantee. The Guarantor shall make such payment to the CEB on the Due Date of any Guaranteed Sum specified in any Demand.

The CEB has the right, which the Guarantor expressly accepts, to request the payment of any sum due under the Guarantee in one or several instalments.

#### 3.2 Default interest

In the event that the Guarantor fails to pay (in whole or in part) on its Due Date any Guaranteed Sum, as requested in a Demand received from the CEB, the Guarantor shall pay default interest on such unpaid amounts from the Due Date until the date of receipt of such payment by the CEB at the annual rate equal to one-month EURIBOR, as quoted on the Due Date at 11.00 a.m. (local time in Brussels, Belgium), plus 2.5% (two point five per cent) *per annum*.

#### 3.3 Nature of the Guarantee

- (a) The obligations of the Guarantor under the Guarantee are irrevocable, absolute and unconditional and irrespective of any defects affecting the Loan Agreement. The Guarantee shall remain in full force and effect notwithstanding the liquidation or other incapacity or any change in the constitution of (or in the name of) the Borrower or any other person or any settlement of account or other matter whatsoever.
- (b) The Guarantee is an autonomous first demand guarantee governed by article 2321 of the French *Code Civil*. It is in addition to and shall not merge with or otherwise prejudice or affect or be prejudiced by any other right, powers and remedies provided by law to the Beneficiary or by any present or future security interest (including, but not limited to, any guarantee, indemnity, mortgage, *hypothèque*, charge, pledge or lien) now or hereafter held by or available to the Beneficiary and may be enforced without first having recourse to any such security. For the avoidance of doubt, the Beneficiary and the Guarantor expressly confirm that the Guarantee does not constitute a suretyship (*cautionnement*) within the meaning of articles 2288 et seq. of the French *Code Civil*.
- (c) The Guarantor acknowledges and expressly accepts that it cannot raise any objection, defence, ground of plea of any kind, in particular based on the Loan Agreement or any agreement in connection therewith, to refuse or delay the performance of its obligations under the Guarantee and/or any payment to be made under the Guarantee. In particular, but without limitation, the Guarantor acknowledges and expressly confirms that its obligations to make payments under the Guarantee are independent from (i) the legality, validity, regularity and/or enforceability of the Loan Agreement or any agreement in connection therewith, (ii) any absence of action against the Borrower to enforce its obligations under the Loan Agreement or any agreement in connection therewith, (iii) any amendment, novation, supplement, extension, restatement or replacement of the Loan Agreement or any other document or security, (iv) any waiver or consent by the CEB with

respect to any provisions of the Loan Agreement or any agreement in connection therewith including any discharge, release or variation of the liability of, or the granting of any delay, indulgence or concession to, the Borrower, (v) the occurrence of any event whatsoever which could prevent the Borrower from performing its obligations, including the payment obligations, under the Loan Agreement or any agreement in connection therewith or (vi) any other circumstances which might otherwise constitute a legal discharge of, or a defence for, the Guarantor.

The Guarantor shall, in particular but without limitation, not be entitled to challenge any Demand under the Guarantee nor raise any objection, defence, exception, lien or right of set-off resulting from or relating to (i) any provisions of the Loan Agreement or any agreement in connection therewith, (ii) any relationship between (a) the CEB and the Borrower, (b) the Guarantor and the Borrower, or (c) the Guarantor and the CEB, (iii) any change in the legal and/or financial situation or the shareholding of the Borrower, (iv) any negligence or omission of the CEB, (v) any arrangement or agreement between the CEB and the Borrower including any cure period or delay which may be granted to the Borrower.

- (d) References in the Guarantee to the Loan Agreement or the Borrower shall not affect the autonomous nature of the Guarantee.

### **3.4 Continuing guarantee**

The Parties expressly agree that the Guarantee is a continuing guarantee and shall remain in force until the earlier of (i) the date falling twenty (20) years after the Effective Date and (ii) the date on which the CEB shall have notified in writing the Guarantor of the expiration of the Guarantee hereunder.

No payment or discharge, which may be avoided under any enactment relating to insolvency, no payment or discharge made or given which is subsequently avoided and no release, cancellation or discharge of the Guarantee given or made on the faith of any such payment shall constitute discharge of the Guarantor under the Guarantee or prejudice or affect the CEB's right to recover payment from the Guarantor to the full extent of the Guarantee.

## **4. REPRESENTATIONS AND UNDERTAKINGS**

The Guarantor hereby represents and undertakes to the CEB as follows:

### **4.1 Representations of the Guarantor**

The Guarantor represents to the CEB that:

- (a) it is a municipality duly organised and incorporated and validly existing under the law of its jurisdiction of incorporation;
- (b) it has the power to enter into and perform, and has taken all necessary action to authorise its entry into, and performance of, the Guarantee and the transactions contemplated under the Guarantee (including by obtaining, if necessary, any government or administrative or regulatory consent);
- (c) the resolutions set out in the Guarantee Resolution have remained in full force and effect unaltered and have obtained legal validity and non-appealability (Fi: *lainvoima*);

- (d) any conditionality relating to the Guarantee Resolution, including the receipt of satisfactory countersecurity from the Borrower, has been satisfied prior to the entry into this Guarantee;
- (e) the entry into and performance by it of, and the transactions contemplated under, the Guarantee do not conflict with (i) any law or legally binding regulation applicable to it, (ii) its administrative regulations (Fi: *hallintosääntö*), (iii) any document which is binding upon it or any of its assets, or (iv) any limitations on granting of guarantees applicable to it;
- (f) subject to any general principles of law limiting its obligations, the Guarantee is a legally binding, valid and enforceable obligation of the Guarantor;
- (g) it shall take all actions which the Beneficiary may reasonably request to protect the validity, the effectiveness and the enforceability of the Guarantee or the rights of the Beneficiary under the Guarantee; and
- (h) it is not a party to litigation, arbitration or other similar proceedings which might affect its ability to perform its obligations under the Guarantee.

#### 4.2 Undertakings of the Guarantor

So long as the Guarantee is outstanding, the Guarantor shall:

- (a) send to the CEB its audited financial statements, in case not published on the Guarantor's website, not later than one hundred and twenty (120) days from the end of the relevant financial year;
- (b) promptly inform the CEB if the Guarantor intends to cease or ceases to own directly or indirectly one hundred per cent (100%) of the Borrower's shares and voting rights;
- (c) deliver to the CEB from time to time, any other information on its financial position likely to have a detrimental effect on its ability to perform its obligations under the Guarantee or as the CEB may reasonably request; and
- (d) notify the CEB of any legislative or regulatory change, any material amendments to its administrative regulations (Fi: *hallintosääntö*), or of any event which may have a material adverse effect on the validity or enforceability of its obligations under the Guarantee or on its capacity to perform its obligations hereunder.

#### 5. TAXES, CHARGES AND EXPENSES

The Guarantor shall bear its own costs for the negotiation, preparation, execution, enforcement, registration, translation, or amendment of the Guarantee and, without prejudice to the terms of Clause 2 above, shall indemnify the CEB against all taxes and fiscal charges, legal costs and other expenses, fees and costs incurred by the CEB in relation thereto. Furthermore, the Guarantor shall make payments hereunder without withholding or deduction on account of duties, tax or fiscal charges or any other charges whatsoever, present or future.

If any amounts in respect of any applicable duties, taxes, fiscal charges or other charges must be deducted, withheld or retained from any amounts due under the Guarantee, the Guarantor undertakes to pay such additional amounts as may be necessary to ensure that the CEB receives a net amount equal to the full amount it is entitled in the relevant currency under the Guarantee.

**6. GOVERNING LAW**

The Guarantee is governed by the rules of the CEB as specified in the provisions of Article 1, paragraph 3, of the Third Protocol dated 6 March 1959 to the General Agreement on Privileges and Immunities of the Council of Europe dated 2 September 1949 and by the laws of France, to the extent they do not derogate from the rules of the CEB.

**7. JURISDICTION**

Disputes between the Parties arising out of or in connection with the Guarantee shall be subject to arbitration under the conditions laid down in Chapter 4 of the Loan Regulations.

**8. INVALIDITY**

The invalidity, illegality or unenforceability of any provision (or part of a provision) of the Guarantee shall not affect the validity, enforceability or legality of any other provisions hereof.

**9. ASSIGNMENT**

The Beneficiary may freely transfer or assign to any third party the whole or part of its rights under, or the benefit of, the Guarantee, without the prior written consent of the Guarantor.

The Guarantor may not assign or transfer any right and/or obligations under the Guarantee to any third party, without the prior written consent of the CEB.

**10. EXECUTION OF AN ARBITRATION AWARD**

The Parties agree not to take advantage of any privilege, immunity or legislation before any jurisdictional or other authority, whether domestic or international, in order to object to the enforcement of an award handed down in the conditions laid down in Chapter 4 of Loan Regulations.

**11. NOTICES**

Any notice or other communication to be given or made under the Guarantee to CEB or the Guarantor shall be in writing and, unless otherwise stated, may be made by fax or letter and will only be effective (i) if by way of fax, when received in eligible form; or (ii) if by way of letter, when it has been delivered by hand or left at the relevant address as indicated below or 10 Business Days after being deposited in the post postage prepaid in an envelope addressed to the relevant person at that address, and provided that, in each case, such notice or communication is addressed to the department or officer (if any) specified in the address details below:



For the CEB:

Council of Europe Development Bank  
55 Avenue Kléber  
75116 Paris  
France

Attention: Director Projects Division  
Fax: +33 1 47 55 37 52

For the Guarantor:

[INSERT ADDRESS]

Attention: [•]  
Fax: [•]

**Kommentoinut [KC1]:** To be completed by the guarantor.

All communications to be given or made shall be in the English or French language or, if in another language, shall be accompanied by an English or French translation thereof.

**12. DURATION**

**12.1 Effectiveness**

The Guarantee shall be effective upon its signature by the Guarantor and the Beneficiary and receipt by the Guarantor of a notice from the Beneficiary that shall not occur later than 31 December 2020, unless agreed otherwise by the Parties.

**12.2 Termination**

The Guarantee shall terminate in accordance with the provisions of Clause 3.4 above.

**13. COPIES OF AGREEMENT**

The Guarantee is drawn up in two (2) originals, each of which is equally valid. One original is kept by each of the Parties. The Parties expressly agree that after the termination of the Guarantee in accordance with its terms, the original of the Guarantee that is to be kept by the CEB in accordance with this Clause 13 shall remain the property of the CEB.

**IN WITNESS WHEREOF** the Parties hereto have caused the Guarantee to be executed in two (2) originals in the English language by the signatories mentioned below on behalf of the CEB and of the Guarantor (respectively).

Signed for and on behalf of

THE GUARANTOR

[DATE] in Tampere

Signed for and on behalf of

COUNCIL OF EUROPE DEVELOPMENT BANK

[DATE] in Paris

**EXHIBIT 1**

**Form of Demand**

[on letter-head of the Council of Europe Development Bank]

To: [the Guarantor]

By registered letter with  
acknowledgement of receipt

**Demand under the Guarantee (as defined below)**

Dear Madame / Sir,

1. We refer to the autonomous first demand guarantee dated [•] 2020 issued by the Guarantor in favour of the CEB, a copy of which is attached hereto (the "**Guarantee**").
2. Except where otherwise defined herein, capitalized terms used in this Demand shall have the same meaning as in the Guarantee.
3. This demand is a Demand for the purposes of the Guarantee.
4. We hereby (i) notify the Guarantor that the amount of EUR [•] due to the CEB under the Loan Agreement remains due and unpaid by the Borrower and (ii) demand that the Guarantor pays the sum of EUR [•] to the following account [DETAILS OF THE ACCOUNT] within [five (5) Business Days/any other later date] after the date of receipt by the Guarantor of this Demand, as set out in the acknowledgement of receipt relating hereto.

Made in Paris on [•]

[duly authorised signatory of the CEB]

Enclosure: Guarantee