

Direct Agreement

relating to

Project Arena

between

KOY Tampereen Monitoimiareena

and

Tampereen Monitoimiareena Ky

and

The City of Tampere

and

SRV Rakennus Oy

and

Nordea Bank ~~AB (publ), Finnish Branch~~ Abp

as Security Agent

††

2020

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This Agreement is dated ~~[-]~~ _____ 2020 and made between:

- (a) **KOY Tampereen Monitoimiareena**, a limited liability company incorporated under the laws of Finland with business identity code 2792951-4 as borrower (the "**Borrower**");
- (b) **Tampereen Monitoimiareena Ky**, a limited partnership incorporated under the laws of Finland (business ID 2858981-4), represented by the general partner **Tampereen Monitoimiareena GP Oy** (business ID 2865799-5) as its sole general partner (the "**Limited Partnership**");
- (c) **The City of Tampere** a Finnish municipality with business identity code 0211675-2 (the "**City of Tampere**");
- (d) **SRV Rakennus Oy**, a limited liability company incorporated under the laws of Finland with business identity code 1728244-6 (the "**SRV**"); and
- (e) **Nordea Bank ~~AB (publ), Finnish Branch~~Abp**, in its capacity as security agent for the Finance Parties (as defined below) under the Facility Agreement (as defined below) (the "**Security Agent**").

The corporations listed under (a) through (d) above are also below jointly referred to as the "**Parties**" and each of them as a "**Party**", as the context may require.

Background

- A. Pursuant to a EUR 40,000,000 facility agreement originally dated ~~[-]~~ 12 January 2018 between, among others, the Borrower as borrower and Nordea Bank ~~AB (publ), Finnish Branch~~ Abp as facility agent and as security agent (as amended and restated pursuant to an amendment and restatement agreement dated 15 February 2019, as amended pursuant to a waiver and amendment letter dated 28 June 2019, as amended pursuant to a waiver and amendment letter dated 5 September 2019 and as amended pursuant to a waiver and amendment letter dated 3 February 2020 and as amended, varied supplemented, superseded or extended from time to time thereafter, the "**Facility Agreement**"), the lenders under the Facility Agreement have agreed to grant to the Borrower certain debt financing for the purpose of financing the construction of the Property in accordance with the Project Documents (each term as defined in the Facility Agreement) (the "**Project**").
- B. According to the terms of the Construction Agreement (as defined below), SRV is responsible for the development and construction of the Project.
- C. It is a condition under the Facility Agreement that the Parties enter into an agreement whereby the Security Agent has certain step-in rights, as further set forth in this Agreement.

It is agreed as follows:

1. Definitions and Interpretation

1.1 Definitions

In this Agreement:

"**Effective Date**" has the meaning given to that term in paragraph 2(f).

"**Construction Agreement**" has the meaning given to that term in the Facility Agreement.

"**Finance Documents**" has the meaning given to that term in the Facility Agreement.

"**Finance Parties**" has the meaning given to that term in the Facility Agreement.

"**First Transferee**" has the meaning given to that term in paragraph 2(h).

"**Intercreditor Agreement**" has the meaning given to that term in the Facility Agreement.

"**Remedy Period**" has the meaning given to that term in paragraph 2(f).

"**Second Transferee**" has the meaning given to that term in paragraph 2(h).

"**Senior Discharge Date**" has the meaning given to that term in the Intercreditor Agreement.

"**Shareholders' Agreement**" has the meaning given to that term in the Facility Agreement.

"**Step-in**" has the meaning given to that term in paragraph 2(a).

"**Step-in by Replacement as Contract Party**" has the meaning given to that term in sub-paragraph 2(a)(ii).

"**Step-in by Replacement of Management**" has the meaning given to that term in sub-paragraph 2(a)(i).

"**Step-in Event**" has the meaning given to that term in 2(e).

"**Step-in Notice**" has the meaning given to that term in paragraph 2(f).

"**Step-in Period**" has the meaning given to that term in sub-paragraph 5(a)(iii).

"**Termination Cause**" has the meaning given to that term in sub-paragraph 5(a)(i).

"**Transferee**" means a person to whom the rights and obligations of the Borrower under the Construction Agreement are transferred pursuant to the terms of this Agreement.

1.2 Incorporation of defined terms

Unless a contrary indication appears, terms defined in the Facility Agreement have the same meaning in this Agreement.

1.3 Construction

Unless a contrary indication appears, any reference in this Agreement to:

- (a) the "**Borrower**", the "**Limited Partnership**", any "**Party**" or the "**Security Agent**" shall be construed so as to include its successors in title, assigns and transferees permitted under this Agreement;
- (b) a "**Finance Document**", the "**Construction Agreement**", or any other document, agreement or instrument, other than a reference to a document or other agreement or instrument in its original form, is a reference to that document, agreement or instrument as amended, supplemented or restated (however fundamentally) as permitted by this Agreement;
- (c) a "**Clause**", "**paragraph**" or a "**sub-paragraph**" shall, subject to any contrary indication, be construed as a reference to a Clause, paragraph or a sub-paragraph in this Agreement;
- (d) the singular of any term shall include the plural and vice versa as the context shall admit or require; and
- (e) a provision of law is a reference to that provision as amended or re-enacted.

2. Step-in

- (a) The Parties hereby agree that upon the occurrence of a Step-in Event, the Security Agent shall be entitled to take, in accordance with the terms and conditions set out in this Agreement and without the need to otherwise consult with or obtain the separate consent of the Limited Partnership, the City of Tampere, the Borrower or SRV, at the option of the Security Agent, one of the measures set out in sub-paragraphs (i) and (ii) below (each such measure, a "**Step-in**"):
 - (i) instructing the Limited Partnership, the City of Tampere and the Borrower (as applicable) to forthwith replace the members nominated by the Limited Partnership and the City of Tampere in the Board of Directors of the Borrower and the CEO of the Borrower with (and to maintain in such positions until the Senior Discharge Date or as otherwise instructed by the Security Agent) persons designated by the Security Agent (a "**Step-in by Replacement of Management**"); or
 - (ii) replacing the Borrower, as a contractual party to the Construction Agreement, with a Transferee appointed by the Security Agent (hereinafter a "**Step-in by Replacement as Contract Party**").

- (b) SRV, the Limited Partnership, the City of Tampere and the Borrower hereby, subject to the terms and conditions of this Agreement, accept and agree to approve and ratify as binding on themselves and fully co-operate with the Security Agent in the implementation of any Step-in carried out by the Security Agent in accordance with the terms and conditions of this Agreement.
- (c) On the Effective Date of a Step-in by Replacement of Management (and from time to time thereafter until the Senior Discharge Date, at the request of the Security Agent):
 - (i) the Borrower, the Limited Partnership and the City of Tampere (as applicable) shall pass all corporate resolutions and carry out all registrations and other matters required or desirable in order for the replacement to be implemented as soon as practicably possible; and
 - (ii) the Limited Partnership and the City of Tampere shall use all rights conferred on them in the Shareholders' Agreement in order to give effect, to the largest extent possible, to the foregoing.
- (d) On the Effective Date of a Step-in by Replacement as Contract Party:
 - (i) SRV and the Borrower shall do everything necessary or desirable to enable the Transferee to assume the Borrower's position under the Construction Agreement, (including, without limitation, delivering to the Transferee all documents and data associated with the Construction Agreement and the performance of the same);
 - (ii) the Borrower shall, at the request of the Security Agent, transfer to the same or to a party or parties designated by the Security Agent, all rights and obligations under or deriving from any Lease Documents as well as its title to and interest in the Property and other assets relating to the Project (for a consideration reflecting the then current market value of those asset(s)) and which are required or useful for the operation of the Project and the performance of the Construction Agreement; and
 - (iii) the Borrower will immediately and automatically cease to be (and shall be replaced by the Transferee as) a party to the Construction Agreement.
- (e) The Security Agent shall be entitled to carry out a Step-in as soon as one or more of the events and circumstances set out in sub-paragraphs (e)(i) and (e)(ii) of this Clause 2 (each a "**Step-in Event**") occurs, whether or not caused by an event or circumstance within the control of SRV, the Limited Partnership, the City of Tampere or the Borrower or any other person and whether or not voluntary or involuntary or arising by operation of applicable law or otherwise:
 - (i) any Event of Default, or other event which entitles the Agent to terminate and/or declare, in accordance with clause 25.20 (*Acceleration*) of the Facility Agreement, the facility made available under the Facility Agreement due and payable, occurs; or

- (ii) SRV expresses its intention, to terminate or repudiate the Construction Agreement or to abandon or withdraw from the Project or takes any action to this effect.
- (f) Notwithstanding paragraphs (a) through (e) of this Clause 2 above, the right of the Security Agent to carry out a Step-in shall (other than as set out in paragraph (g) below) be subject to:
- (i) the Security Agent having delivered a written notice to the Borrower, SRV and the Investors
 - (A) specifying its intention to carry out a Step-in and ~~the~~ identifying the relevant Step-in Event(s) and the nature of the intended Step-in; and
 - (B) requesting the Borrower to remedy the relevant Step-in Event(s) within a period of time (the "**Remedy Period**") specified in the notice and being not less than twenty (20) days; and
 - (ii) the Remedy Period having expired without the Borrower having remedied, to the satisfaction of the Finance Parties (acting reasonably), the Step-in Event and, thereafter,
 - (iii) the delivery by the Security Agent to SRV, the Borrower and the Investors of a written notice (a "**Step-in Notice**") confirming the Step-in, the nature and effective date of the same (the "**Effective Date**") and, where relevant, identifying the Transferee.
- (g) Sub-paragraphs (f)(i) and (f)(ii) of this Clause 2 above shall, however, not apply if insolvency proceedings have been commenced with regard to the Borrower or if the Borrower or any third party files an application for the commencement of any insolvency proceeding and such application, if vexatious, has not been revoked or dismissed as such within 14 days from filing.
- (h) If, in connection with a Replacement as Contract Party, the Security Agent or an affiliate of the Security Agent is appointed Transferee (the "**First Transferee**"), the Security Agent (and, where applicable, its affiliate) may at any time thereafter and without the occurrence of any new Step-in Event, appoint another Transferee (the "**Second Transferee**") in accordance with paragraph (a) of this Clause 2. By the appointment of the Second Transferee and the acceptance by the Second Transferee of such appointment, all of the rights, powers and obligations of the First Transferee in relation to the Construction Agreement shall immediately and automatically be transferred to and assumed by the Second Transferee and the First Transferee shall be released from all of its obligations under the Construction Agreement.
- (i) If the Security Agent has appointed a Transferee, then such Transferee shall as part of the Step-in assume, and be liable towards SRV for, those obligations of the Borrower that were legally incurred under the Construction Agreement before the Step-in and for all obligations legally incurred by the Transferee

thereafter, provided, however, that the Borrower shall nevertheless remain liable towards SRV for those obligations of the Borrower under the Construction Agreement that existed at the time of the Step-in on the basis of claims for damages having occurred or interest (including, without limitation, default interest) having accrued at the time of the Step-in.

- (j) Any person designated by the Security Agent and appointed to a management position in the Borrower through a Step-in by Replacement of Management shall (i) have the necessary qualifications and experience and (ii) carry out such duties diligently and in a responsible manner.
- (k) The Transferee may be the Security Agent or an affiliate of the Security Agent or a third party that, due to the extent of its commercial operations, experience and financial soundness, appears suitably equipped to assume the rights and obligations of the Borrower under the Construction Agreement. The Transferee may not, however, be a direct competitor of SRV.

3. Acceptance and confirmation by the Transferee

The Security Agent shall procure that any Transferee no later than the Effective Date delivers to SRV and the Borrower written confirmation of its acceptance of the appointment and of its assumption of the relevant rights and obligations under the Construction Agreement.

4. Obligations of the Borrower

- (a) The Borrower shall, regardless of any Step-in Notice, diligently, and with the care of a prudent entity and in accordance with the terms of the Facility Agreement, exercise its rights and fulfill its obligations under the Construction Agreement until the Effective Date.
- (b) The Borrower shall immediately inform the Security Agent in writing of any and all events or circumstances which constitute or may, with the passing of time or the giving of notice or otherwise, become a Step-in Event or which may adversely affect the validity or enforceability of this Agreement or the Construction Agreement, including, without limitation, the following:
 - (i) if SRV requests the Borrower to amend or modify, or to waive any of its rights under, the Construction Agreement in any manner that could be adverse to the Finance Parties; or
 - (ii) if the Borrower is, or expects to become, unable to perform its rights and obligations under the Construction Agreement.
- (c) The Borrower assumes the obligations set out in this Clause 4 solely for the benefit of the Finance Parties and the Transferee. SRV shall not have any rights under this Clause 4.

5. Obligations of SRV

- (a) SRV undertakes not to terminate, repudiate or in any way cause or allow to be terminated the Construction Agreement in any manner unless and until:
 - (i) an event or circumstance has occurred, which entitles SRV to terminate the Construction Agreement under the terms of the same (the "**Termination Cause**"); and
 - (ii) it has notified the Security Agent in writing of the Termination Cause and the fact that it intends, as a result of the same, to terminate, repudiate or withdraw from or release itself from the Construction Agreement; and
 - (iii) sixty (60) days (the "**Step-in Period**") have passed from the delivery of the notice referred to in sub-paragraph (ii) above without any Step-in having taken place.
- (b) Following a Step-in, SRV shall not prior to the Senior Discharge Date terminate, repudiate or otherwise withdraw from the Construction Agreement or cause or allow the same to be terminated on account of any event or circumstance having occurred prior to the Effective Date, provided that the Termination Cause (if capable of remedy within such time) has been remedied within sixty (60) days from the Effective Date or (if not capable of remedy within such time) is not materially adverse to SRV and the Security Agent continues to use its reasonable best efforts to remedy it until so remedied.

6. Obligations of SRV and the Borrower

- (a) Following the delivery of a Step-in Notice, SRV and the Borrower shall deliver to the Security Agent all information relating to the Borrower and the Project required or desirable to enable the Security Agent to properly assess the liabilities (actual as well as contingent), financial condition and prospects of the Borrower.
- (b) During the term of this Agreement, the Borrower and SRV shall not, without the prior written consent of the Security Agent, amend or agree to amend, modify or waive any material provision of [the](#) Construction Agreement other than as permitted under the Facility Agreement.

7. Inspection and Information

- (a) The Security Agent and/or its authorised representative is entitled to inspect all relevant information, records and documents relating to the Construction Agreement at any time during the usual business hours and after prior notice. On request of the Security Agent, the Borrower shall submit this information and such records and documents to the Security Agent.
- (b) In case any third party has access to or in their possession information, records, documents or data relevant for the purpose of a Step-in, the Borrower hereby

irrevocably and unconditionally authorises the Security Agent to demand handing over of such information, records, documents and data in the name of the Borrower. The Borrower will ensure to the best of its ability that these third parties hand over the above records to the Security Agent. The Security Agent will immediately advise the Borrower of any action under this paragraph 7 (b).

- (c) The Borrower shall update all records and documents relating to the Construction Agreement on a regular basis, exercising the care of a prudent merchant.
- (d) An adviser or consultant appointed by the Security Agent may exercise the rights of the Security Agent in accordance with this Clause 7.
- (e) A Transferee may also exercise the rights of the Security Agent in accordance with this Clause 7 as of the Effective Date of a Step-in by Replacement as Contract Party.

8. Term of the Agreement

The Security Agent shall be entitled to carry out a Step-in until the earlier to occur of (i) the Senior Discharge Date or (ii) the expiry or termination of the Construction Agreement in all respects in compliance with the terms of this Agreement without a Step-in having taken place.

9. Indemnity

- (a) The Security Agent shall not be liable for any loss or damage suffered by the Borrower or SRV save in respect of loss or damage suffered as a result of the willful misconduct or gross negligence of the Security Agent.
- (b) The Borrower will indemnify the Security Agent against any and all losses and damages which may be incurred by the Security Agent as a result of anything done or omitted in the exercise of the powers contained herein and occasioned by any breach of the Borrower of any of its obligations or undertakings herein contained other than to the extent that such losses and damages are incurred by or made against the Security Agent as a result of the gross negligence or willful misconduct of the Security Agent.

10. Successors and Transferees

- (a) This Agreement shall create rights and obligations of the Parties and of their respective successors.
- (b) The Security Agent may transfer its rights and obligations under this Agreement to its successor under the Finance Documents at any time, provided that such third party or any affiliate of such third party is not a direct competitor of SRV. The Borrower and SRV hereby irrevocably grant their consent that the relevant third party shall become a Party in lieu and as successor of the Security Agent upon the transfer becoming effective.

- (c) The Borrower shall not transfer its rights and obligations under this Agreement without the prior written consent of the Security Agent.

11. Costs and Expenses

All costs, charges, fees and expenses of the Security Agent and SRV triggered by this Agreement or reasonably incurred in connection with its preparation, translation, execution, amendment and enforcement (in each case including fees for legal advisers) shall be borne by the Borrower.

12. Amendments

Any amendments to this Agreement shall be in writing and shall have no effect before signed by the duly authorised representatives of the Borrower, the Limited Partnership, the City of Tampere, SRV and of the Security Agent.

13. Notices

- (a) All notices and communications under or in connection with this Agreement shall be in writing and shall be delivered by letter, posted or delivered by hand, e-mail or fax. Each notice or communication shall be given to the relevant party at the address or e-mail address and marked for the attention of the person(s) or department from time to time specified in writing by that party to the other. The initial address, e-mail address, and person(s) or department so specified by each party are set out below:

For the Borrower and the Limited Partnership:

KOY Tampereen Monitoimiareena / Tampereen Monitoimiareena Ky

Address: c/o SRV Rakennus Oy
PO Box 555
FIN-02601 Espoo, Finland
(Derby Business Park, Tarvonsalmenkatu 15)

E-mail: mia.vuorinen@srv.fi,
henrik.eklund@srv.fi, sini.makela@srv.fi,
jarkko.rantala@srv.fi

Attention: ~~Mia Vuorinen and Henrik Eklund~~ [Sini Mäkelä and Jarkko Rantala](#)

With a copy to

Krogerus Attorney Ltd
Address: Unioninkatu 22, 00130 Helsinki
E-mail: juha.wessman@krogerus.com
Attention: Juha Wessman

For the City of Tampere:

City Of Tampere
Address: [Aleksis Kiven katu 14-16 C](#), PO Box [487 65](#),

33101 Tampere, Finland
 E-mail: [✉ arto.vuojolainen@tampere.fi](mailto:arto.vuojolainen@tampere.fi),
janne.salonen@tampere.fi
 Attention: [✉ Arjo Vuojolainen and Janne Salonen](#)

For SRV:

SRV Rakennus Oy

Address: PO Box 555
 FIN-02601 Espoo, Finland
 (Derby Business Park, Tarvonsalmenkatu 15)
 E-mail: mia.vuorinen@srv.fi,
henrik.eklund@srv.fi, sini.makela@srv.fi,
jarkko.rantala@srv.fi
 Attention: ~~Mia Vuorinen and Henrik Eklund~~ [Sini Mäkelä and Jarkko Rantala](#)

For the Security Agent:

Nordea Bank ~~AB (publ), Finnish Branch~~ [Abp](#)

Address: Nordea Bank ~~AB (publ), Finnish Branch~~ [Abp](#)
[Fleminginkatu 27, VS4220](#)
~~2619 Structured Loan Services, Aleksis Kiven katu 3-5, FI-~~
 00020 NORDEA ~~VC215, Finland~~
 E-mail: sls.finland@nordea.com
 Attention: ~~2619~~ Structured Loan Services [2619](#)

- (b) Proof of posting or dispatch of any notice or communication to a party to this Agreement shall be deemed to be proof of receipt (i) in case of a letter, on the second business day in the country of receipt after posting, and (ii) in case of an email, when received in legible form.
- (c) Any notice or other communication under or in connection with this Agreement shall be in the English language or, if in any other language, accompanied by a translation into English. In the event of any conflict between the English text and the text in any other language, the English text shall prevail.

14. Miscellaneous

14.1 Partial invalidity

If, at any time, any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

14.2 Remedies and waivers

No failure to exercise, nor any delay in exercising, on the part of any Finance Party any right or remedy under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

14.3 Counterparts

This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

15. Governing Law and Jurisdiction

15.1 Governing law

This Agreement is governed by, and construed in accordance with, Finnish law.

15.2 Jurisdiction

- (a) The courts of Finland, with the District Court of Helsinki (Fi: *Helsingin käräjäoikeus*) as the court of first instance, have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement) (a "**Dispute**").
- (b) This Clause 15.2 is for the benefit of the Finance Parties only. As a result, no Finance Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Finance Parties may take concurrent proceedings in any number of jurisdictions.

This Agreement has been entered into on the date stated at the beginning of this Agreement.

Signatures

KOY TAMPEREEN MONITOIMIAREENA

Name:

TAMPEREEN MONITOIMIAREENA KY

represented by its general partner TAMPEREEN MONITOIMIAREENA GP OY

Name:

THE CITY OF TAMPERE

Represented by [●]

Name:

SRV RAKENNUS OY

Name:

NORDEA BANK ~~AB (PUBL), FINNISH BRANCH~~ABP

as Security Agent

Name:

Name: