

SUBORDINATION AGREEMENT

dated [●] 2020

between

THE HOLDERS OF SUN BONDS

as Sun Bondholders

STICHTING ZONNEDELERS

as the Foundation

ZONNEPARK KONINGSPLEIJ ARNHEM B.V.

as Company

and

COMMERZBANK AKTIENGESELLSCHAFT

as the Senior Lender

THIS AGREEMENT (the "**Agreement**") is dated [●] 2020 and made between:

- (1) **STICHTING ZONNEDELERS**, a foundation incorporated under Dutch law, with its statutory seat in Amsterdam, the Netherlands and registered with the trade registry of the Dutch Chamber of Commerce under number 62979795 (the "**Foundation**"), acting on behalf of itself and on behalf of each Sun Bondholder (*(zon obligatiehouder)* as defined in the Information Memorandum (as defined below));
- (2) **ZONNEPARK KONINGSPLEIJ ARNHEM B.V.** as the company (the "**Company**"); and
- (3) **COMMERZBANK AKTIENGESELSCHAFT** as senior lender (the "**Senior Lender**"),

hereafter together the "**Parties**" and each individually a "**Party**".

WHEREAS:

- (A) The Company as borrower and the Senior Lender as original lender are party to a EUR [●] facilities agreement dated [●] 2020 (as amended or amended and restated from time to time, the "**Facilities Agreement**").
- (B) Under a bond issuance as described in the Information Memorandum titled [●] and dated [●] (the "**Information Memorandum**"), the Company will issue [●] *zon obligaties* with a nominal value of EUR 25 each ("**Sun Bonds**") to Sun Bondholders (as defined below), pursuant to which the Company will borrow an aggregate amount of EUR [●] (the "**Sun Crowdfunding**").
- (C) Each Sun Bondholder has authorised the Foundation pursuant to an irrevocable and unconditional power of attorney included in the subscription agreement (*inschrijvingsovereenkomst*) with respect to the Sun Bonds to represent it (in and outside of court) in connection with the Sun Crowdfunding and all legal relationships in connection therewith, including the entry into this Agreement.
- (D) It is a condition under the Facilities Agreement that all present and future liabilities and obligations at any time of the Company to the Sun Bondholders (represented by the Foundation) under the Sun Crowdfunding will be fully subordinated to the claims of the Senior Lender under the Finance Documents (as defined below) on the terms and conditions of this Agreement.
- (E) It is also a condition under the Facilities Agreement that the Sun Security (as defined below) in favour of the Foundation is fully subordinated to the Security created in favour of the Senior Lender in connection with the Finance Documents on the terms set out in this Agreement.
- (F) The subordination of the Sun Crowdfunding and the Sun Security is described in the Information Memorandum (especially in chapter [5] [*Uitgevende instelling en betrokken partijen*]) thereof and in the bond terms (*obligatievoorwaarden*) attached to the Information Memorandum.

IT IS AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement capitalised terms have the meaning given to these terms in the Facilities Agreement unless specified otherwise herein and:

"Enforcement Action" means, in relation to any Subordinated Liabilities and in relation to the Company and any other person which has given any Security, indemnity or other assurance against loss in respect of any of the Subordinated Liabilities, (i) the acceleration of any Subordinated Liabilities or the making of any declaration that any Subordinated Liabilities are prematurely due and payable or are payable on demand, (ii) the making of a demand in relation to a Subordinated Liability that is payable on demand, (iii) the exercise of any right of set-off, (iv) the suing for, commencing or joining of any legal or arbitration proceedings to recover any Subordinated Liabilities, (v) the petitioning, applying or voting for, or the taking of any steps (including the appointment of any liquidator, receiver, administrator or similar officer) in relation to an Insolvency Event, (vi) the taking of any action to enforce any Security (including notifying any person of the Security) or (viii) or any analogous procedure or step in any jurisdiction.

"Finance Document" has the meaning given thereto in the Facilities Agreement.

"Information Memorandum" has the meaning given thereto in consideration (B) above.

"Insolvency Event" means, in relation to the Company, the occurrence of any event referred to under clause [25.6] (*Insolvency and insolvency proceedings*) of the Facilities Agreement.

"Liabilities" means all present and future liabilities and obligations at any time of the Company to any Party, both actual and contingent and whether incurred solely or jointly or as principal or surety or in any other capacity.

"Payment" means, in respect of any Liabilities (or any other liabilities or obligations), a payment, prepayment, repayment, redemption, or discharge of those Liabilities (or other liabilities or obligations), including, but not limited to, any set-off, provided that a release (*afstand doen*) by the Foundation for no consideration will not constitute a payment as such.

"Permitted Payment" means, to the extent applicable, the payment of interest and regular repayment under the Sun Crowdfunding, provided that such payments are only permitted if:

- (a) the payment is made when no Default (as defined in the Facilities Agreement) has occurred or could occur as a result of that payment being made; and
- (b) the payment is made in accordance with the Cashflow Waterfall (as defined in the Facilities Agreement and attached to the Facilities Agreement as Schedule [3]).

"**Security**" means any guarantee, joint and several liability (*hoofdelijke aansprakelijkheid*), suretyship (*borgtocht*), right of pledge, right of mortgage or other (personal or *in rem* form of) security.

"**Senior Liabilities**" means any and all Liabilities owed by the Company to the Senior Lender under the Finance Documents from time to time.

"**Subordinated Liabilities**" means any and all Liabilities owed by the Company to the Foundation and/or to a Sun Bondholder (whether or not represented by the Foundation) under the Sun Crowdfunding from time to time.

"**Sun Bond Documentation**" means all documentation relating to the Sun Crowdfunding, including the Information Memorandum and bond terms (*obligatievoorwaarden*) relating thereto (as attached as schedule [●] to the Information Memorandum), the subscription agreement (*inschrijvingsovereenkomst*) with respect to the Sun Bonds and the transfer deeds relating to the Sun bonds (as attached as schedule [●] to the Information Memorandum).

"**Sun Bondholder**" means:

- (a) each person specified in the register of Sun Bondholders as attached as Annex 1 to the resolution of the managing board of the Company as issuer and to whom pursuant to that managing board resolution of the Company (in its capacity as issuer) Sun Bonds have been issued; and
- (b) each person to which one or more Sun Bonds have been transferred from a Sun Bondholder set out under paragraph (a) above.

"**Sun Crowdfunding**" has the meaning given thereto in the consideration under (B) above.

"**Sun Security**" means the (second ranking) right of mortgage to be created by the Company in favour the Foundation on the same real property as the real property that is encumbered with a higher ranking right of mortgage in favour of the Senior Lender by the deed of mortgage dated [●] 2020.

"**Termination Date**" has the meaning given thereto in Clause 3 (*Duration*) of this Agreement.

1.2 **Construction**

- (a) References in this Agreement to a Finance Document, the Sun Crowdfunding or the Sun Security are references to that document or agreement as amended, supplemented or restated from time to time, including explicitly (i) increased, extensions or amendments in the Sun Crowdfunding or of a Finance Document, regardless of the amount of such increase or the manner of implementation of such increases, extensions or amendments and (ii) amendments in the parties to the Finance Documents or the Sun Crowdfunding (including the Sun Bondholders), including as a consequence of accession and resignation.

- (b) References in this Agreement to the Foundation, a Sun Bondholder, the Company, the Senior Lender or any other person refer to that (legal) person including its successors in title, permitted assignees and permitted transferees

2 SUBORDINATION

2.1 Ranking and priority

Each of the Parties agrees that the Subordinated Liabilities are fully subordinated and postponed to the Senior Liabilities, both in and outside of bankruptcy and/or a moratorium of payments on the terms set out in this Agreement.

3 DURATION

- (a) All obligations of the Company, the Foundation and the Sun Bondholders pursuant to this Agreement will remain in force until the moment the Senior Lender has confirmed to the Company and the Foundation in writing that all Senior Liabilities have been irrevocably paid in full and no new Senior Liabilities may arise (that moment the "**Termination Date**").
- (b) This Agreement terminates on the Termination Date.

4 NO PAYMENT

Other than as set out in Clause 8 (*Insolvency Event*) of this Agreement:

- (a) the Company will not make any Payment in connection with any Subordinated Liability; and
- (b) none of the Foundation, a Sun Bondholder or the Company may receive a Payment in connection with any Subordinated Liability,

other than a Permitted Payment.

5 SECURITY

5.1 No Security in connection with the Subordinated Liabilities

- (a) The Company shall not grant any Security (or permit any Security to subsist) in connection with any Subordinated Liability or grant any indemnity, guarantee or other form of security in connection with the Subordinated Liabilities, other than the Sun Security.
- (b) The Foundation will not be the beneficiary of any Security in connection with any Subordinated Liability other than pursuant to the Sun Security.

5.2 No other Security

The Company will not create any Security (or permit any Security to subsist) or grant any indemnity, guarantee or other form of security (hereafter together the "**Additional Security**") other than:

- (a) any Security securing the Senior Liabilities;
- (b) the Sun Security;
- (c) any security interest or lien arising by operation of law and in the ordinary course of trading and not as a result of any default or omission by the Company;
- (d) any security interest or right to set-off arising under articles 24 or 25 respectively of the general terms and conditions (*algemene voorwaarden*) of any member of the Dutch Bankers' Association (*Nederlandse Vereniging van Banken*) or any foreign equivalent thereof; or
- (e) any Security provided in connection with additional financing made available to the Company, provided that (A) the additional financing is permitted by the Senior Lender and (B) the value of the Additional Security is in reasonable proportion (to be determined by the Senior Lender) to the amount of the additional financing.

5.3 Sun Security

- (a) The Foundation will not, prior to the Termination Date and without the prior written consent of the Senior Lender, take any Enforcement Action (including the preparation thereof and/or cooperation therewith) of any Sun Security (including the giving of notice of any right of pledge to any debtor).
- (b) At the Senior Lender's first request made after the occurrence of a Default (where the notice of the Senior Lender stating that a Default has occurred will constitute as sufficient evidence of the occurrence of such Default), the Foundation will cooperate with the (whole or partial) sale of the assets of the Company encumbered with the Sun Security, also if such sale is envisaged to take place outside of an enforcement scenario.
- (c) The Senior Lender hereby confirms that, if it will proceed with the sale of assets encumbered with the Sun Security, it:
 - (i) will inform the Foundation thereof; and
 - (ii) will use its best efforts to sell those assets for fair market value, which will not obligate the Senior Lender to postpone an envisaged sale of such assets to obtain a higher purchase price or to deliver any evidence of having used its best efforts other than as set out in paragraph (d) below, and noting that the purchase price will qualify as fair market value if:
 - (A) it is obtained through enforcement of Security in accordance with the relevant provisions of the Dutch Civil Code;

- (B) the sale is effectuated after the insolvency of the Company and the appointed administrator or bankruptcy trustee has cooperated with the (manner of the) sale;
- (C) the sale took place by means of a controlled auction and potential purchasers have been contacted in a customary manner; and/or
- (D) an independent valuer confirms the fair market value in a valuation or fairness opinion.

6 NO AMENDMENTS

Prior to the Termination Date, none of the Sun Bondholders, the Foundation or the Company may, without the prior written consent of the Senior Lender, amend, supplement, restate, waive or otherwise alter any term of the Subordinated Liabilities (including any term of the Sun Crowdfunding or of the (other) Sun Bond Documentation) or enter into new or additional agreements with respect to the Subordinated Liabilities (such as any terms or conditions relating to the Sun Crowdfunding, including the Information Memorandum and the attachments thereto), if in the sole discretion of the Senior Lender this could negatively impact the interests of the Senior Lender.

7 NO ENFORCEMENT ACTION

Without prejudice to Clause 5.3 (*Sun Security*), none of the Foundation, any Sun Bondholder or the Company will take any Enforcement Action with respect to any Subordinated Liability, unless such action:

- (a) is necessary (but only to the extent necessary) to preserve the validity, existence or priority of claims in respect of Subordinated Liabilities; or
- (b) qualifies as an action described under (i) up to and including (iii) of the Enforcement Action definition and solely to the extent such action relates to a Permitted Payment.

8 INSOLVENCY EVENT

8.1 Distributions after an Insolvency Event

- (a) Until the Termination Date, the subordination of the Subordinated Liabilities will remain in full force and effect after the occurrence of an Insolvency Event with respect to the Company or the Foundation (or any Sun Bondholder).
- (b) If, after the occurrence of an Insolvency Event with respect to the Company:
 - (i) the Foundation (or any Sun Bondholder) is entitled to receive a distribution out of the assets of the Company in respect of the Subordinated Liabilities, the Foundation (or any Sun Bondholder) shall, to the extent it is able to do so, direct the person responsible for the distribution of the assets of the Company to make that distribution to

the Senior Lender for application in accordance with the terms of the Facilities Agreement;

- (ii) the direction set out under paragraph (i) above is not followed by the person responsible for the relevant distribution, then the Foundation (not limiting the general application of paragraph (i) above) may exercise any right it has with respect to the Company pursuant to the Subordinated Liabilities, including the acceleration thereof, declaring that they are prematurely due and payable or are payable on demand or submitting any Subordinated Liability in the bankrupt estate of the Company, provided that the Foundation will pay any amount it receives from the Company (or of any administrator or bankruptcy trustee of the Company) pursuant to this Clause to the Senior Lender in accordance with Clause 9 (*Turnover of receipts*); and
- (iii) any Subordinated Liabilities are discharged in whole or in part by way of payment to the Foundation (or to any Sun Bondholder), including by way of set-off (mandatory or otherwise), the Foundation shall pay an amount equal to the amount of the Subordinated Liabilities owed to it which are discharged by that set-off to the Senior Lender for application in accordance with the terms of the Facilities Agreement.

8.2 Filing of claims

- (a) After the occurrence of an Insolvency Event, the Foundation (acting for itself and on behalf of each Sun Bondholder) irrevocably authorises the Senior Lender, on its behalf and whereby the Senior Lender may also act as counterparty of the Foundation within the meaning of article 3:68 DCC, to:
 - (i) take any Enforcement Action against the Company;
 - (ii) demand, sue, prove and give receipt for any or all of the Subordinated Liabilities; and
 - (iii) file claims, take proceedings and do all other things the Senior Lender considers reasonably necessary to recover the Subordinated Liabilities.
- (b) Any costs incurred by any action taken pursuant to the power of attorney granted in this Clause will be for the account of the Company.

8.3 Further assurance

Each of the Sun Bondholders and the Foundation (acting for itself and on behalf of each Sun Bondholder) will:

- (a) do all things that the Senior Lender reasonably requests in order to give effect to this Clause 8 (*Insolvency Event*); and

- (b) provide all reasonable cooperation with any Enforcement Action to be taken by the Senior Lender.

9 **TURNOVER OF RECEIPTS**

If a Sun Bondholder or the Foundation receives or recovers any Payment or distribution of, or on account of or in relation to, any of the Subordinated Liabilities other than as permitted under this Agreement, it will promptly pay an amount equal to that recovery (or, if lower, the total amount of the Senior Liabilities) to the Senior Lender for application in accordance with the terms of the Facilities Agreement.

10 **POWER OF ATTORNEY**

- (a) The Foundation (acting for itself and on behalf of each Sun Bondholder) hereby grants an irrevocable and unconditional power of attorney to the Senior Lender to perform on its behalf and at its expense any of its obligations under this Agreement (explicitly including the obligations set out in paragraph (b) of Clause 5.3 (*Sun Security*) and paragraph (b) of Clause 8.1 (*Distributions after an Insolvency Event*)).
- (b) This power of attorney permits the Senior Lender to (also) act as counterparty of the Foundation within the meaning of article 3:68 DCC.
- (c) The appointment under paragraph (a) above may be exercised by the Senior Lender if the Foundation (or, if applicable, a Sun Bondholder) has failed to perform an act or obligation under this Agreement and has not remedied such failure within 3 Business Days after receipt of a notice of such failure from the Senior Lender.
- (d) The Foundation (and, to the extent necessary, each Sun Bondholder) hereby ratifies and confirms (where relevant, in advance) any act performed by the Senior Lender under the power of attorney appointment referred to in paragraph (a) above.

11 **NO TRANSFER OF RIGHTS AND OBLIGATIONS**

- (a) Neither the Company nor the Foundation can assign any of its rights or transfer any of its rights and obligations under this Agreement, except with the prior written consent of the Senior Lender.
- (b) A Sun Bondholder can only assign his/her rights or transfer any of his/her rights and obligations under this Agreement as part of a transfer of his/her rights and obligations under the Sun Crowdfunding in accordance with paragraph (c) below.
- (c) Neither the Foundation nor any Sun Bondholder can assign or transfer any of its rights or obligations under the Sun Crowdfunding, unless:
 - (i) such assignment or transfer takes place pursuant to the deed of transfer of Sun Bonds (*onderhandse akte van overdracht van Zon*

Obligaties) in the form approved by the Senior Lender prior to the entry into of this Agreement (as attached as schedule [●] to the Information Memorandum); and

- (ii) simultaneously with such assignment or transfer all the rights and obligations of the transferor pursuant to this Agreement will be transferred to the transferee as well.
- (d) This Clause 11 is a provision within the meaning of article 3:83 paragraph (2) of the Dutch Civil Code.

12 REPRESENTATIONS

Each of the Foundation and the Company represents and warrants to the Senior Lender that:

- (a) it is a foundation (*stichting*) or a private limited liability company (*besloten vennootschap met beperkte aansprakelijkheid*) respectively, duly incorporated and validly existing under the laws of the Netherlands;
- (b) it is authorised to enter into this Agreement and perform its obligations thereunder (with respect to the Foundation in its own capacity as well as in its capacity as attorney of each Sun Bondholder);
- (c) all conditions and requirements to enter into and perform its obligations under this Agreement (including any requirements arising pursuant to the Sun Bond Documentation) have been satisfied;
- (d) the entry into and performance by it of this Agreement, with respect to the Foundation both in its own capacity as in its capacity as attorney of each Sun Bondholder, does not and will not conflict with any law or regulation applicable to it, its constitutional documents, the Sun Bond Documentation or any other agreement or instrument binding upon it or any of its assets;
- (e) the obligations expressed to be assumed by it pursuant to this Agreement are its legal, valid, binding and enforceable obligations;
- (f) the Foundation has been appointed as attorney of each Sun Bondholder pursuant to an irrevocable and unconditional power of attorney of each Sun Bondholder in which the Foundation has been authorised to sign all documents and deeds in connection with the Sun Crowdfunding and the subordination of the Subordinated Liabilities, including but not limited to this Agreement;
- (g) each Sun Bondholder has consented that his/her rights as Sun Bondholder will exclusively be exercised by the Foundation;
- (h) no Security has been granted by the Company (or another person) in connection with the Subordinated Liabilities other than the Sun Security,

and these representations and warranties are (deemed to be) made on the date of this Agreement and on each date on which a Permitted Payment is made, in each case with respect to the facts and circumstances then existing.

13 **PRIORITIES NOT AFFECTED**

The obligations of the Foundation, the Sun Bondholders and the Company pursuant to this Agreement will not be affected by an act, omission, matter or thing including (without limitation and whether or not known to any Party):

- (a) any reduction or increase in the principal amount in respect of the Senior Liabilities or by any intermediate reduction or increase in, amendment or variation to any of the Finance Documents, any resignation or accession of a Senior Lender, or by any variation or satisfaction of, any of the Senior Liabilities or any other circumstances;
- (b) any amendment, novation, supplement, extension (whether of maturity or otherwise) or restatement (in each case, however fundamental and of whatsoever nature, and whether or not more onerous) or replacement of a Finance Document, the Sun Bond Documentation or any other document or security; or
- (a) any Insolvency Event.

14 **MISCELLANEOUS**

14.1 **Finance Document**

This is a Subordination Agreement as defined in the Facilities Agreement and this is a Finance Document.

14.2 **Information**

- (a) The Foundation and the Company will inform the Senior Lender upon its first request of the amount of the Subordinated Liabilities and provide the Senior Lender with copies of all agreements and other documentation with respect to the Subordinated Liabilities (including the name, address and city details (*NAW-gegevens*) of the Sun Bondholders) and with all other information requested by the Senior Lender in connection with the Subordinated Liabilities.
- (b) The Foundation will provide the Sun Bondholders with all information they might reasonably require with respect to this Agreement and the subordination of the Subordinated Liabilities and the Sun Security.

14.3 **No Rescission**

To the extent permitted by law, each of the Foundation (on behalf of itself and each Sun Bondholder) and the Company hereby waives (i) its rights under articles 6:228 and 6:265 to 6:272 DCC or any other ground under any applicable law inclusive to rescind (*ontbinden*) or nullify (*vernietigen*), or demand in legal proceedings the rescission (*ontbinding*) or nullification (*vernietiging*) of, this Agreement and (ii) its rights

under articles 6:52, 6:262 and 6:263 DCC or any other ground under any applicable law to suspend (*opschorten*) any obligation under or in connection with this Agreement.

14.4 **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.

14.5 **Notices**

Any communication to be made in connection with this Agreement will be made in writing in English and may, unless indicated otherwise, be made by email or letter to the email address or post address indicated for the relevant Party on the signature pages of this Agreement (or, in the event of a change of a contact person, email address or post address of a Party, as notified to the other Parties in writing at least 10 Business Days prior to the change of the relevant contact person, email address or post address).

14.6 **No implied waiver, no forfeiture**

- (a) Any waiver under this Agreement must be given by notice to that effect.
- (b) Where a Party does not exercise any right under this Agreement (which includes the granting by a Party to any of the other Parties of an extension of time in which to perform its obligations under any of these provisions), this is not deemed to constitute a forfeiture of that Party's right under this Agreement (*rechtsverwerking*).
- (c) The rights and remedies of the Senior Lender are in addition to any other right that the Finance Parties may have under Netherlands law or any other applicable law.

14.7 **Execution, amendments and conflicts**

- (a) This Agreement may be signed in any number of counterparts.
- (b) This Agreement may only be amended by a written agreement between the Parties.
- (c) In the event of a conflict between the provisions of this Agreement and a provision of the (other) Sun Bond Documentation, the provisions of this Agreement prevail (and to the extent necessary the conflicting provisions of the Sun Bond Documentation will hereby be considered amended so that they are in line with the provisions of this Agreement).

15 **ENFORCEMENT**

15.1 **Governing law**

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by Dutch law.

15.2 **Jurisdiction**

The courts of Amsterdam, the Netherlands, have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement.

(signature pages follow)

Signature page – Subordination Agreement (Koningspleij)

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

The Foundation

Stichting Zonnedelaers

Name:

Title:

Name:

Title:

Address: James Wattstraat 77 K, 8^e etage
1097 DL Amsterdam, Nederland

Attention: Sven M. Pluut

Email: trustee@zonnepanelendelen.nl

The Company

Zonnepark Koningspleij Arnhem B.V.

Name:

Title:

Name:

Title:

Address: [●]

Attention: [●]

Email: [●]

Signature page – Subordination Agreement (Koningspleij)

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

The Senior Lender

Commerzbank Aktiengesellschaft

Name:
Title:

Name:
Title:

Address: [●]
Attention: [●]
Email: [●]