



DEVELOPMENT AGREEMENT

By and Between

BONAIRE OVERHEIDSGEBOUWEN N.V.

And

RESORT BONAIRE B.V.

DATED: January 18, 2021

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "**Development Agreement**") is entered into as of this 18 day of January 2021, by and between (i) Bonaire Overheidsgebouwen N.V., a public limited liability company (*naamloze vennootschap*) duly organized and validly existing under the laws of the public entity Bonaire, Dutch Caribbean ("**BOG**") and (ii) Resort Bonaire B.V., a private limited liability company (*besloten vennootschap*) duly organized and validly existing under the laws of the public entity Bonaire, Dutch Caribbean ("**Developer**"), (BOG and the Developer each a "**Party**" and together the "**Parties**").

WITNESSETH

WHEREAS, BOG, is a 100% subsidiary of BHM N.V. (*Bonaire Holding Maatschappij N.V.*) which is the holding company of various government entities in the public entity Bonaire, Dutch Caribbean;

WHEREAS, BOG owns certain parcels of land in the so-called Sunset Beach area, destined for the development of a hotel or luxury apartments;

WHEREAS, BOG conducted a land development bid process on June 6, 2019 ("**BID Process**") regarding the development of a parcel of land of approximately 9,679 m² (Parcel C) section 4, subsection D number 3283 and as shown in **Exhibit A** hereto (the "**Buildable Land and Site**");

WHEREAS, as a result of the BID Process, the Developer has been selected as the most suitable party to develop the Buildable Land and Site;

WHEREAS, subject to the purchase of the Buildable Land and Site by the Developer as laid down in a sale and purchase agreement between the Parties (the "**Purchase Agreement**") and subject to the terms and conditions set forth herein, Developer desires to arrange or contract for the planning, construction or undertaking of rental apartments for tourists (the "**Project**") on the Buildable Land and Site;

WHEREAS, the Developer has obtained a letter of intent from her shareholders in respect of the funding of the Project;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and the undertakings of each Party to the other and such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound hereby, mutually covenant, promise and agree as follows:



ARTICLE 1

TERM AND TERMINATION OF AGREEMENT

- 1.1 The term of this Development Agreement shall commence on the date of undersignment of this Development Agreement, the "Effective Date", and end on the Date of Completion (as defined in paragraph 3.8), unless sooner terminated or extended pursuant to the provisions of this Development Agreement (the "Term").
- 1.2 The Parties agree that this Development Agreement shall not be terminated by way of notice or otherwise during the Term, unless (i) in accordance with clause 1.3 or clause 1.4 hereof, or (ii) with the mutual consent of the Parties.
- 1.3 Any Developer Default as referred to in article 7.1 (not waived in writing by BOG) shall give BOG the right to terminate this Development Agreement, subject to the terms and conditions as set out in this Development Agreement. Upon termination of this Development Agreement, Developer shall have no further right or obligation to develop apartments on the Buildable Land and Site and BOG shall be free to negotiate with third parties for the development of apartments on the Buildable Land and Site.
- 1.4 Any BOG Default as referred to in article 7.2 (not waived in writing by Developer) shall give Developer the right to terminate this Development Agreement.

ARTICLE 2

COMMITMENT FEE AND PURCHASE PRICE BUILDABLE LAND AND SITE

- 2.1 It is agreed that on or before the Effective Date the Developer will pay a commitment fee (the "Fee") in the amount of US\$ [REDACTED] payable to the following bank account registered in the name of BOG at the MCB Bank: [REDACTED]
- 2.2 The purchase price for the Buildable Land and Site is US\$ [REDACTED] less the Fee (the "Purchase Price") as defined in the Purchase Agreement;
- 2.3 The Fee shall be forfeited if the Developer fails to purchase the Buildable Land and Site on or before the Transfer Date as defined in the Purchase Agreement

ARTICLE 3

DEVELOPMENT OF THE PROJECT

- 3.1 The Developer shall develop the Project in accordance with the design, scope, density and the construction schedule set forth in the development plan (the "Development Plan") (Exhibit B);

- 3.2 The Project shall comprise of a building comprising of luxury apartments (“**Apartments**”). The Apartments shall be suitable for investors allowing them to become part of a rental pool arrangement. The Apartments shall be constructed and developed in accordance with the standards required under the local building and zoning regulations which amongst other things are included in the Zoning Development Plan of Bonaire (*Ruimtelijk Ontwikkelingsplan Bonaire*).
- 3.3 The design of the Apartments and the construction of all foundations and vertical buildings, structures and other constructions required shall comply with all design criteria established in or pursuant to applicable building and zoning regulations, environmental regulations and the Zoning Development Plan of the public entity Bonaire and all other ordinances, resolutions, codes, rules, regulations and policies applicable in the Public Entity Bonaire (“**Applicable Regulations**”). BOG shall to the extent it can do so without violating the Applicable Regulations, reasonably consider and approve any modifications to such design criteria requested by the Developer provided that such modifications shall not be incompatible with or reduce or diminish the quality standards in the design criteria established in or pursuant to the Applicable Regulations.
- 3.4 The Developer shall bear all costs in connection with making the Buildable Land and Site ready for construction, and obtaining permits or approvals required under the Applicable Regulations in order to develop, use and operate the Apartments. BOG shall bear all relevant costs related to the Land Registry (*Kadaster*) and the Department of Physical Planning (*Dienst Ruimtelijke Ordening en Beheer*).
- 3.5 By the fourth month after the Effective Date. Developer shall submit the construction documents and drawings for the Project (which should be pre-approved by BOG) to the Department of Physical Planning (*Dienst Ruimtelijke Ordening en Beheer*). The construction documents and drawings to be submitted should describe the quality, configuration, size, and relationship of all components to be incorporated into the Project and will include, but not be limited to, the following documents (the “**Project Documents and Drawings**”):
- (i) construction drawings (*bestektekeningen*);
 - (ii) a three-dimensional design of the Project;
 - (iii) the construction budget;
 - (iv) the construction schedule;
 - (v) design development documents;
 - (vi) overview of deliverables for each of the design development phase and the construction phase of the Project;
- 3.6 Developer shall commence the development of the Project within six (6) months after an irrevocable building permit has been obtained (the “**Date of Commencement**”) and subject to the following conditions precedent (which together with the condition to obtain the building permit will be referred to as: the “**Commencement Conditions**”) being met:

- (a) the Developer shall have concluded the Purchase Agreement in respect of the Buildable Land and Site within one month from the Effective Date;
 - (b) the Developer shall have submitted to BOG the Project Documents and Drawings on or before the third month after the Effective Date and BOG shall have approved the Project Documents and Drawings on or before one month after that;
 - (c) the Developer shall have submitted to BOG the budget for the Project, which should include the financing structure of the Project (the "Budget"), on or before the third month after the Effective Date and BOG shall have approved the Budget on or before one month after that.;
 - (d) the Developer shall have submitted to BOG the construction schedule for the Project (the "Construction Schedule") on or before the third month after the Effective Date and BOG shall have approved the Construction Schedule for the Project on or before one month after that;
 - (e) on or before the third month after the Effective Date the Developer shall have obtained a loan from a financier which together with its equity contribution will be sufficient to cover the funding needed for the Project;
 - (f) BOG shall have received a guarantee from Developer in respect of the completion of the Project equal to 10% of the hard construction costs for realization of the Project (See the Developer Covenant in paragraph 6.2(a)) before the Date of Commencement; and
 - (g) The Buildable Land and Site has been transferred to the Developer.
- 3.7 In the event that BOG fails to meet the term for approval as referred to in Clause 3.6 (b), the term as provided for in Clause 3.5 shall be extended with each Business Day that BOG needs to provide its approval.
- 3.8 In the event that BOG fails to meet the term(s) for approval as referred to in Clause 3.6 (c) and/or 3.6 (d), the term as provided for in Clause 3.6 (e) shall be extended with each Business Day that BOG needs to provide its approval(s).

The Developer and BOG shall meet and consult and provide mutual assistance with respect to satisfaction of the Commencement Conditions. Commencing on the date which is thirty (30) calendar days after the Effective Date, the Developer shall give to BOG (i) a written progress report (each quarter concerning the status of efforts to satisfy the Commencement Conditions and (ii) a written report setting forth any new matters occurring since the date of the last quarterly report which the Developer expects will change or significantly affect any such deadlines or milestones after the Developer becomes aware of such matters.

For purposes of clauses 3.7 and 3.8, Business Day means: a day other than a Saturday or Sunday on which banks are generally open for business in the public entity Bonaire.

- 3.9 Construction of each phase of the Apartments, only two phases will be used, shall be completed within thirty six (36) months from the Date of Commencement (the “**Date of Completion**”), provided that the Developer shall have the right to request BOG (not to be unreasonably withheld) for an extension of the completion deadline to a date later in time (the “**Extended Date of Completion**”) in the event of unforeseen circumstances obstructing the construction of the Apartments, such as, but not limited to, reasonably evaluated circumstances caused by third parties or other circumstances beyond the Developer’s control, such as, but not limited to, a natural phenomenon, but only if and to the extent that (i) such circumstances, despite the exercise of reasonable diligence and the observance of good utility practice, cannot be, or be caused to be, prevented, avoided or removed by the Developer, and (ii) such circumstance materially and adversely affects the ability of the Developer to perform its obligations under this Agreement, and the Developer has taken all reasonable precautions, due care and reasonable alternative measures in order to avoid the effect of such event on its ability to perform its obligations under this Agreement and to mitigate the consequences thereof.
- 3.10 Should completion of the Project take place beyond the Date of Completion or Extended Date of Completion, as applicable, and there is no circumstance as referred to in clause 3.9 above, than the Developer will incur a fine of US\$ [REDACTED] for each day of delay from the Date of Completion or Extended Date of Completion, as applicable, until the day completion of the Apartments takes place (the “**Overdue Completion Date**”).
- 3.11 The Project shall be considered completed when it has been constructed in accordance with Development Plan and the Construction Documents and Drawings, as approved by BOG.
- 3.12 BOG shall make reasonable efforts to assist Developer in obtaining all applicable approvals in a reasonable time frame and shall promptly execute any documents required to be executed by BOG with respect to such approvals. BOG and Developer shall cooperate with each other in all respects and shall use their mutual best efforts to effectuate the purposes of this Development Agreement, to obtain all required approvals to construct the Apartments, all as soon as reasonably practicable.

ARTICLE 4

GENERAL REGULATIONS

The Developer should comply with the following obligations:

- (a) *Maintenance fee.* During the Term Developer shall pay on or before 15th January of each year an annual contribution of US\$ [REDACTED] to BOG for the maintenance of the public area adjacent to the Chogogo lot (i.e. the park). Since the Effective Date differs from the beginning of a calendar year, the first Maintenance fee shall be reduced proportionately.
- (b) *Accessibility of public beach.* The Developer is obliged to keep the public beach located on the Buildable Land and Site ("Public Beach") accessible to the public free of charge;
- (c) *Exploitation of Public Beach.* The Developer should exploit the Public Beach in accordance with the following conditions:
 - (i) on the border between the Public Beach and the beach adjacent to it, no fences or vegetation should be placed;
 - (ii) the Developer should (with the prior approval of BOG) establish beach rules, which should in any case cover the prohibition to setting of fires of any kind, the prohibition of the possession of drugs, fire arms, tents, chairs, tables and ice jugs, the prohibition of any activity disturbing other visitors of the beach and rules for trash removal and disposal.
- (d) *Landscaping of open public spaces.* All open public spaces (*openbare ruimten*) (including but not limited to the public beach) adjacent to the Buildable Land and Site and other open spaces indicated by BOG shall be landscaped in accordance with a landscaping plan to be prepared together with BOG;
- (e) *Parking facilities.* The Developer should construct sufficient parking facilities according to the requirements as set by the Public Entity Bonaire.
- (f) *Obligation to tolerate.* The Developer is obliged to allow that the public entity of Bonaire or utility companies will construct electrical network cables, pipes or other devices on or under the property comprising the Buildable Land and Site or the premises comprising the Project in a timely and in direct consultation with the Developer prior to the commencement of such construction.

ARTICLE 5

ASSIGNMENT

Developer may not assign (*cederen*) the rights or transfer (*contractueel overdragen*) the rights and obligations under this Development Agreement to any other person or legal entity, unless consented to by BOG.

ARTICLE 6

REPRESENTATIONS, WARRANTIES AND COVENANTS

Developer's Representations and Warranties

- 6.1 The Developer represents and warrants to BOG that notwithstanding anything herein to the contrary and as of the Effective Date:
- (a) *Organization.* The Developer is a limited liability company duly organized and validly existing under the laws of the public entity Bonaire, Dutch Caribbean. The business which the developer carries on and which it proposes to carry on may be conducted by the Developer.
 - (b) *Authority.* The execution, delivery and performance of this Development Agreement by the Developer are within the Developer's powers and have been duly authorized by all necessary action of the Developer.
 - (c) *No Consent.* No consent, authorization, approval, order or other action by, and no notice to or filing with any court or governmental authority or regulatory body or third party is required for the execution, delivery and performance by the Developer of this Development Agreement.
 - (d) *Valid and Binding Obligation.* This Development Agreement is the legal, valid and binding obligation of the Developer, enforceable against the Developer in accordance with its terms except as limited by bankruptcy or similar laws affecting the rights or remedies of creditors generally.
 - (e) *No Pending Litigation, Investigation or Inquiry.* There is no action, proceeding or investigation, before any court, arbitrator, governmental or other board or official pending, or to the knowledge of the Developer, threatened against or affecting the Developer, any controlling person of the Developer, or any of their affiliates, which the management of the Developer in good faith believe that the outcome of which would (a) materially and adversely affect the validity or enforceability of, or the authority or ability of the Developer to perform its obligations under this Development Agreement, or (b) have a material and adverse effect on the consolidated financial condition or results of operations of the Developer or on the ability of the Developer to conduct its business as presently conducted or as proposed or contemplated to be conducted.

Developer Covenants

6.2 The Developer covenants and agrees with BOG as follows:

- (a) *Completion Guarantee.* The Developer shall furnish a completion guarantee to BOG , in respect of the completion of the Project equal to 10% of the hard construction costs for realization of the Project before the Date of Commencement.
- (b) *Local Construction Companies.* The Developer shall endeavor that the execution of the Project or parts thereof will be contracted as much as possible to local construction companies in Bonaire.

BOG's Representations and Warranties

6.3 BOG represents and warrants to the Developer that notwithstanding anything herein to the contrary and as of the Effective Date:

- (a) *Organization.* BOG is a limited liability company duly organized and validly existing under the laws of the public entity Bonaire, Dutch Caribbean.
- (b) *Authority.* The execution, delivery and performance of this Development Agreement by BOG are within BOG's powers and have been duly authorized by all necessary action of BOG.
- (c) *No Consent.* No consent, authorization, approval, order or other action by, and no notice to or filing with any court or governmental authority or regulatory body or third party is required for the execution, delivery and performance by BOG of this Development Agreement.
- (d) *Valid and Binding Obligation.* This Development Agreement is the legal, valid and binding obligation of BOG, enforceable against BOG in accordance with its terms except as limited by bankruptcy or similar laws affecting the rights or remedies of creditors generally.
- (e) *No Pending Litigation, Investigation or Inquiry.* There is no action, proceeding or investigation, before any court, arbitrator, governmental or other board or official pending, or to the knowledge of BOG, threatened against or affecting BOG, any controlling person of BOG, which the management of BOG in good faith believe that the outcome of which would materially and adversely affect the validity or enforceability of, or the authority or ability of BOG to perform its obligations under this Development Agreement.

ARTICLE 7

EVENTS OF DEFAULT

Developer Default

7.1 The occurrence of any of the following shall be an event of default by the Developer (“Developer Default”):

- (a) Any representation or warranty confirmed or made in this Development Agreement by the Developer was untrue in any material respect as of the date of execution of this Development Agreement;

The failure of the Developer to perform or observe any of the obligations, covenants or agreements or Commencement Conditions (other than those referred to under a above) to be performed by the Developer under this Development Agreement within sixty (60) calendar days after notice from BOG of such failure, provided however that if such performance or observance cannot reasonably be accomplished within such sixty (60) calendar day period, then no Event of Default shall occur unless:

- (i) the Developer fails to commence to remedy such failure within the abovementioned period of sixty (60) calendar days; and
(ii) the Developer fails to prosecute diligently the remedy of such failure within an additional period as may be reasonably required to remedy such failure with diligence and in good faith, with the understanding that if such failure is not remedied within one hundred eighty (180) days after notice from BOG of such failure then such failure shall constitute an Event of Default under this Development Agreement;

- (b) Any corporate action, legal proceedings or other procedure or step is taken, or notice given, in relation the suspension of payments, a moratorium of any indebtedness, winding-up, bankruptcy, dissolution, of, or the appointment of a liquidator to the Developer;

BOG Default

7.2 The occurrence of the following shall be an event of default by BOG (“BOG Default”):



- (a) Any representation or warranty confirmed or made in this Development Agreement by BOG was untrue in any material respect as of the date of execution of this Development Agreement;
- (b) The failure of BOG to perform or observe any of the obligations, covenants or agreements to be performed by BOG under this Development Agreement within sixty (60) calendar days after notice from the Developer of such failure, provided however that if such performance or observance cannot reasonably be accomplished within such sixty (60) calendar day period, then no Event of Default shall occur unless:
 - (i) BOG fails to commence to remedy such failure within the abovementioned sixty (60) calendar days; and
 - (ii) BOG fails to prosecute diligently the remedy of such default within an additional period as may be reasonably required to remedy such failure with diligence and in good faith, with the understanding that if such failure is not remedied within one hundred eighty (180) days after notice from the Developer of such failure then such failure shall constitute an Event of Default under this Development Agreement.

Force Majeure

- 7.3. Parties stipulate that in case of any occurrence beyond the control of any Party, including without limiting the generality of the foregoing any acts of God, war and any applicable governmental orders, rules, regulations or decrees, all terms and deadlines as mentioned in this Agreement are postponed until such an event no longer exists. In case of an occurrence beyond the control of Resort Bonaire, Resort Bonaire may request a postponement. In reasonableness and fairness, a postponement may be granted by BOG.

Corona Clause

- 7.4. The Parties are aware of the worldwide COVID-19 (coronavirus) pandemic, the associated measures by local governments to limit the further spread of the virus and the uncertainty that this entails for the fulfillment of the obligations of the Developer under this Agreement.

The Parties declare that the consequences of the COVID-19 (coronavirus) pandemic therefore form a circumstance that cannot be attributed to the Developer and that consequently the Developer is entitled to an extension of all terms, (due) dates, deadlines as mentioned in or resulting from this Agreement for those consequences.

Therefore, should the government measures to combat the COVID-19 (coronavirus) pandemic, or its consequences, make it impossible for the Developer to fulfill its obligations as resulting from this Agreement, all terms, (due) dates, deadlines as mentioned in or resulting from this Agreement are postponed until the government measures to stop the further spread of the COVID-19 (coronavirus) pandemic, or its consequences that caused the impossibility of fulfillment of obligations of the Developer are overturned. If the obligations of the Developer had to be performed within a certain period, this period will be extended by the duration of the period in which the fulfillment was impossible.

When confronted with the impossibility to fulfill its obligations as mentioned in this clause, the Developer must inform BOG as soon as possible, but in any case no later than ten (10) business days from the date on which it becomes aware of the impossibility to fulfill its obligations as mentioned in this clause. The Developer not only gives notice of the impossibility to fulfill its obligations as mentioned in this clause, but also of its intention to invoke this clause.

The notification contains all relevant information available to Developer which substantiates its impossibility to fulfill its obligations as mentioned in this clause and its intention to invoke this clause.

For costs incurred during this postponed period, the parties agree that each party bears its own costs.

ARTICLE 8

GOVERNING LAW AND JURISDICTION

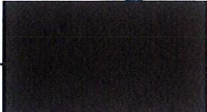
- 8.1. This Development Agreement shall be governed by and construed in accordance with the laws of the BES islands.
- 8.2 Any dispute that cannot be amicably resolved between the Parties may be submitted only to the competent court of Bonaire.

IN WITNESS WHEREOF, the parties hereto have caused this Development Agreement to be executed as of the day and year first above written.



BOG:

BONAIRE OVERHEIDSGBOUWEN N.V.

By:  18/1/2021

Name: Mrs. Adely Susana-Jansen MBA

Title: Director Bonaire Holding Maatschappij N.V.

DEVI

RESC

By: 

Name: Arie Sint Nicolaas

Title: Dir. Resort Bonaire

FOR ACKNOWLEDGEMENT:

**THE EXECUTIVE COUNCIL OF THE PUBLIC ENTITY
BONAIRE**

By: _____

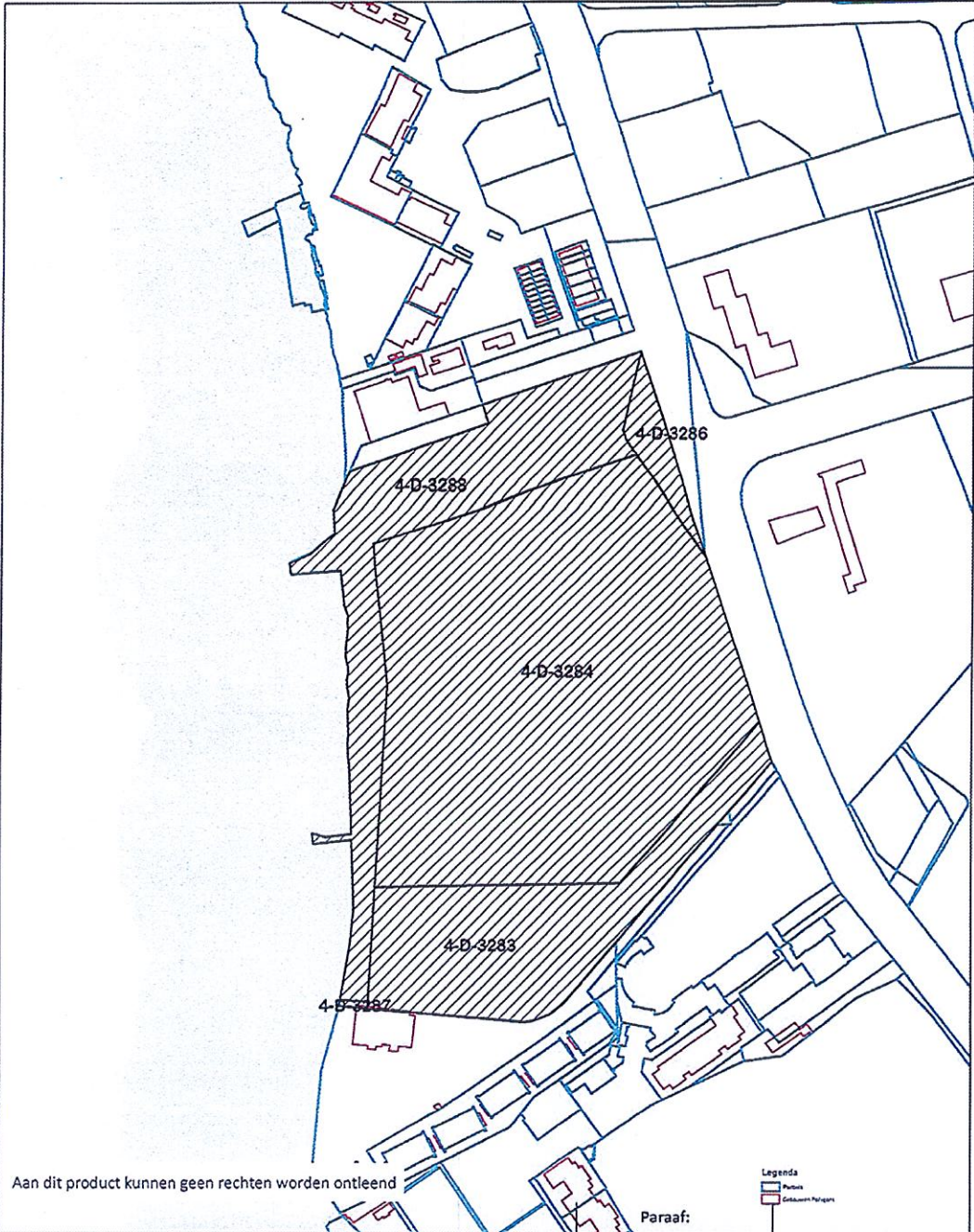
Name: Mr. Edison E. Rijna

Title: Lt. Governor



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EXHIBIT A

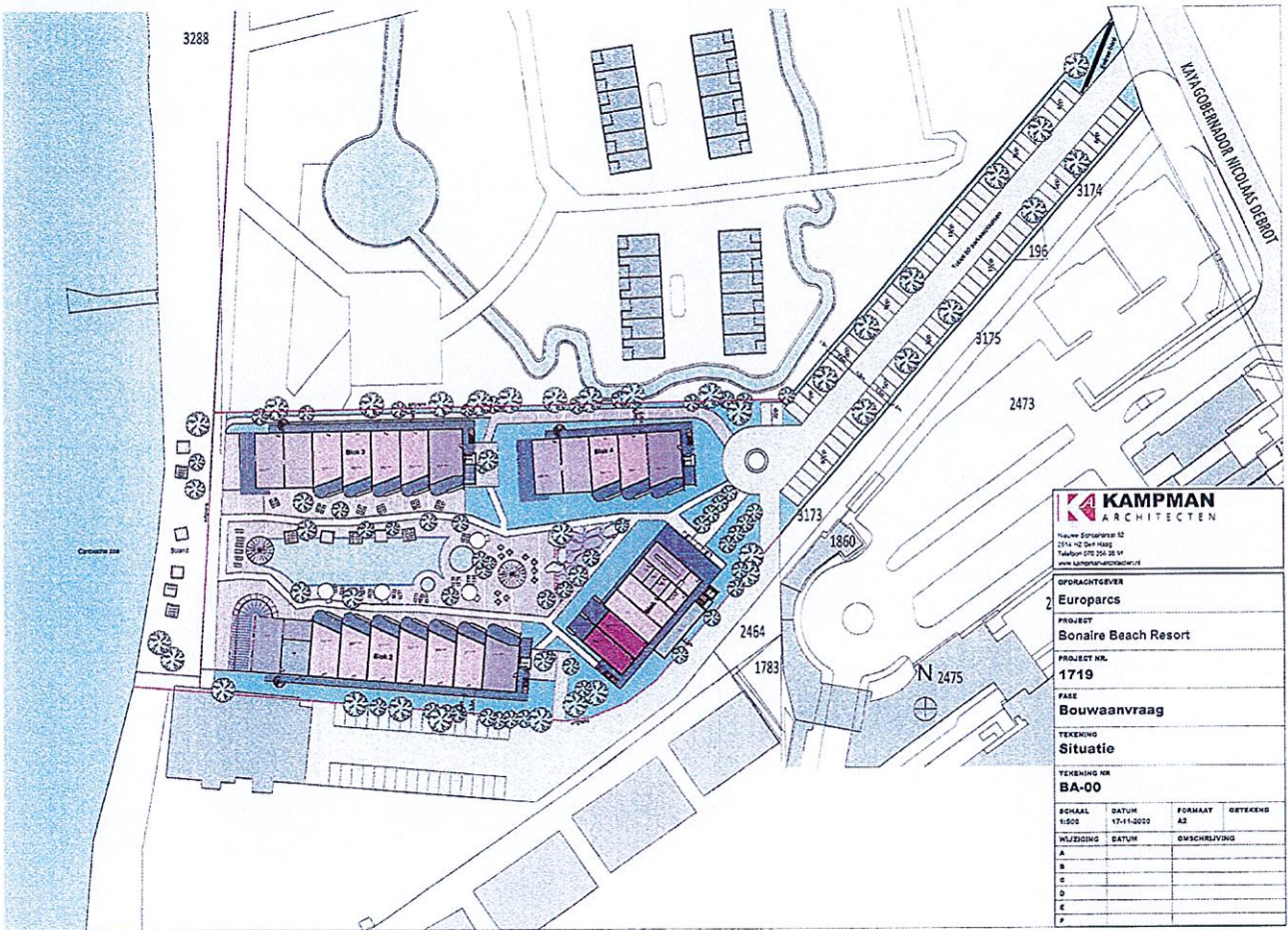


	Opdrachtgever : Bonaire Overheidsgebouwen N.V. [REDACTED]		
	Gegeven door: [REDACTED]		
	Schaal: 1:2,450		
	Datum: 9/14/2016		
Situatie tekening :4-D-3283,3284,3286 t/m4-D-3288			



EXHIBIT B





Naam: Sijmster 12 2614 HZ Sint Maarten Telefoon: 072 236 25 91 www.kampman-architecten.nl			
OPDRACHTGEVER			
2 Europarcs			
PROJECT			
Bonaire Beach Resort			
PROJECT NR.			
1719			
FASE			
Bouwaanvraag			
TEKENING			
Situatie			
TEKENING NR.			
BA-00			
SCHAAL	DATUM	FORMAAT	GETEKEND
1:500	17-11-2020	A3	
WIJZIGING		DATUM	OMSCHRIJVING
A			
B			
C			
D			
E			
F			

