

# DECLARATION OF CBRUP FOR INDIGO GREEN 2



This document presents the Declaration of CBRUP document for Indigo Green 2, which was executed on February 25th, 2020, and a true copy of which deed has been inscribed in the Public Registry of Sint Maarten on February 26th, 2020, in Register C volume 339 under number 3 by notarial office of Tjon Ajong & Associates, located at Front Street 5, Suite 4, Philipsburg, Sint Maarten.

This copy has been reformatted to make its reading easier to follow and make the document searchable.

A copy of the actual registered deed is available upon request.

Upon this twenty-fifth day of February, two thousand and twenty, came and appeared before me, Marcia Denise Bouterse, candidate-notary in Sint Maarten, hereinafter referred to as "civil law notary", by these presents acting as duly appointed deputy of Faride Eloisa Elixie Tjon Ajong, acting civil law notary of her vacant notarial protocol in Sint Maarten:

1. *Mr. René Lépine*, married, born in Montreal, Canada, on the seventh day of May, nineteen hundred and fifty-four, residing at 1212 Pine Avenue, Apartment 1203, Montreal, Quebec, Canada, by these presents acting as managing director of- and as such legally representing **INDIGO GREEN DEVELOPMENT B.V.**, hereinafter also referred to as "the **Developer**" and/or "**IGD**", a limited liability company organized and existing under the laws of Sint Maarten, having its office at Skyline Drive 2, Cay Bay, Sint Maarten, which company is registered in the Commercial Register of the Chamber of Commerce and Industry of Sint Maarten under number 21752;  
Indigo Green Development B.V. hereinafter to be referred to as "**IGD**".
2. *Mr. Marc Christiaan van de Bilt*, a project manager, residing at AquaMarina X72, Point Pirouette, Sint Maarten, according to his declaration born in Dordrecht, the Netherlands, on November sixteenth, nineteen hundred and sixty-nine, identified by a Kingdom of the Netherlands passport, not married, and hereby acting as proxy-in-writing of: *Olivier Steven Cojot*, born in Washington DC, United States of America, on May twenty-ninth, nineteen hundred and sixty-four, identified with United States of America passport, with office address at Welfare Road 64, Simpson Bay, Sint Maarten
  - a. in his capacity of managing director of- and as such legally representing: **CAY BAY DEVELOPMENT N.V.**, a limited liability company, established on Sint Maarten, with business address at Welfare Road 64, Second Floor, FedEx Building, Simpson Bay, Sint Maarten, registered in the Commerce Registry of the Chamber of Commerce and Industry, Sint Maarten, under number 017318; said Cay Bay Development N.V. hereinafter to be referred to as "**CBD**"; and
  - b. in his capacity as president of the Board- and as such legally representing: the **INDIGO BAY MASTER FOUNDATION**, a foundation established under the laws of Sint Maarten with its address at AquaMarina Unit X72, Amazon Road, Point Pirouette, Sint Maarten, which foundation is registered in the Commercial Register of the Chamber of Commerce of Sint Maarten under number 18565; said Indigo Bay Master Foundation hereinafter to be referred to as "**IBMF**".

## AUTHORIZATION

The authorization of the appearer sub 2 is sufficiently evidenced to me, civil law notary, by one (1) power of attorney, which will be attached to the original of this deed.

## **INTRODUCTORY STATEMENTS:**

The appearers, acting as mentioned above, declared:

- that Cay Bay Development N.V. (hereinafter referred to as “**CBD**”), a limited liability company established in Sint Maarten, is developing a residential and commercial project, known as “**Indigo Bay Estates**” at Cay Bay, in the district of Cole Bay, Sint Maarten, which is to be realized on the following real property:

a parcel of land situated in Sint Maarten, in the district of Cole Bay, having an area by computation of Five Hundred Ninety-Seven Thousand Eight Hundred and Twenty-Five square meters (597.825m<sup>2</sup>), being the parcel of land described in Certificate of Admeasurement number 132 of nineteen hundred seventy-one (C/A 132/1971), having an area of Six Hundred Eleven Thousand square meters (611.000m<sup>2</sup>), less a parcel of land described in Certificate of Admeasurement number 114 of nineteen hundred seventy-eight (C/A 114/1978), having an area of Thirteen Thousand One Hundred and Seventy-Five (13.175m<sup>2</sup>), the whole, subject to the right of long lease till January sixteenth, two thousand eighty-eight (January 16, 2088), with the exclusive option for renewal for an additional fifty-one (51) years until January sixteenth, two thousand one hundred thirty-nine (January 16, 2139) (hereinafter the “**Long Lease**”);

- \* that by the establishment of said right of long lease, inter alia, the following Long Lease conditions were put in place:

*“9.1. SALE AND TRANSFER OR SUBDIVISION OF THE LONG LEASE. In the event of subdivision of the Long lease, the successors in title, partial lessees or sub-lessees to such subdivided parts of the Long lease, as well as their respective successors in title, will – contrary to what is stipulated in article 767 of the Civil code of the Netherlands Antilles – only be liable for and be required to pay a proportional part of the total Long lease annual rent to the Lessor, if all such successors in title, partial lessees and/or sub-lessees have complied with the following conditions:*

*The Lessor has been properly notified of the subdivision(s) and the sale(s) and transfer(s) of the rights;*

*The successor(s) in title, partial lessee(s) and/or sub-lessees must become and remain a member of, or participant in an organization(s) of successors in title, partial lessees and/or sub-lessees (hereinafter referred to as the “Organization”), which Organization will be required to collect the applicable Long lease rents and pay same to Bell Realty Corporation NV, as well as assume –together with the successors in title, partial lessees and sub-lessees- full responsibility and liability towards BELL REALTY CORPORATION NV for the proper payment of all Long lease rents;*

*The successors in title, partial lessees and/or sub-lessees must as members of and/or participants in the Organization bind themselves for their individual share(s) to BELL REALTY CORPORATION NV for the proper performance of the Organization of its obligations towards BELL REALTY CORPORATION NV;*

*All successors in title, partial lessees and/or sub-lessees must –as members of and/or participants in the Organization- elect, for the purposes of the conditions contained herein domicile at the office(s) of the Organization, which offices must be situated on Sint Maarten, Netherlands Antilles.”*

- \* that the Developer is developing a residential project, known as “**Indigo Green**” within Indigo Bay Estates, which is to be realized on the following real properties to wit:

I. the right of long lease till January sixteenth, two thousand eighty-eight (January 16, 2088), on:

a parcel of land situated at Cay Bay, in the district of Cole Bay in Sint Maarten, with an area

of eight seven hundred and sixty-two square meters (762m<sup>2</sup>), described in Certificate of Admeasurement number 129 of two thousand and nineteen (**SXM CB 129/2019**).

- II. the right of long lease till January sixteenth, two thousand and eighty-eight (January 16, 2088), on:

a parcel of land situated at Cay Bay, in the district of Cole Bay in Sint Maarten, with an area of eight hundred and forty-three square meters (843m<sup>2</sup>), described in Certificate of Admeasurement number 021 of two thousand and nineteen (**SXM CB 021/2019**);

- III. the right of long lease till January sixteenth, two thousand and eighty-eight (January 16, 2088), on:

a parcel of land situated at Cay Bay, in the district of Cole Bay in Sint Maarten, with an area of one thousand four hundred and sixty square meters (1460m<sup>2</sup>), described in Certificate of Admeasurement number 072 of two thousand and nineteen (**SXM CB 072/2019**);

- IV. the right of long lease till January sixteenth, two thousand and eighty-eight (January 16, 2088), on:

a parcel of land situated at Cay Bay, in the district of Cole Bay in Sint Maarten, with an area of eight hundred and twelve square meters (812m<sup>2</sup>), described in Certificate of Admeasurement number 125 of two thousand and nineteen (**SXM CB 125/2019**);

hereinafter collectively to be referred to as “the Property”

- that IGD has formed and recorded a foundation for the purposes of the operation and maintenance of the Property, to be known as the IG2 Foundation hereinafter to be referred to as the “**IG2F**”;
- that IGD has developed a set of Community Building Regulations and Usage Prescriptions for Indigo Green (hereinafter to be referred to as the “**IG2 CBRUP**”) to which all Successive Title Holders who will acquire any part of the Property will be bound;
- that IGD hereby confirms its obligations to remain bound by the IG2 CBRUP, subject to any exceptions to the terms contained therein that may be granted from time to time by the IBMF;
- that IGD desires that all Successive Title Holders shall be bound by the IG2 CBRUP, which more appropriately governs the future of the Property, as such may evolve over time and places more appropriate restrictions on usage, architectural and landscape modifications to the Property.

#### **PRIOR ACQUISITION**

The above described immovable property mentioned under sub I. has been acquired by Indigo Green Development B.V., with more land, by means of inscription on September fifteenth, two thousand fourteen, in the Public Registers, kept at the office of the Registrar of Mortgages in Sint Maarten, in **Register C, volume 297, under number 05**, of an authentic copy of a deed of transfer, executed before M.M. Boekhoudt, civil law notary in Sint Maarten, on September ninth, two thousand fourteen.

Said immovable property was vertical subdivided and registered as a self contained right of long lease by means of the inscription on December fifteenth, two thousand sixteen in **Register C, volume 313, number 68**, of a true copy of a notarial deed of vertical subdivision, executed on December fourteenth, two thousand sixteen before me, civil law notary.

The above described immovable property described under sub II to IV. has been acquired by Indigo - Green Development B.V. with more land by means of inscription on the thirtieth day of July, two thousand eighteen, in the Public Registers, kept at the office of the Registrar of Mortgages in Sint Maarten in **Register C, volume 326, under number 17**, of an authentic copy of a deed of sale and purchase with transfer, executed before M.M. Boekhoudt, civil law notary, in Sint Maarten, on the twenty-seventh day of July, two thousand eighteen;

which subdivision was laid down in a notarial deed, passed on October first, two thousand and nineteen

before civil law notary F.E.E. Tjon Ajong, aforementioned, of which deed a true copy has been inscribed in the Public Registers in **Register C volume 336 under number 9**;

#### **AGREEMENT DECLARATION**

The appearers, acting as aforementioned, declared the following:

that the IG2 CBRUP attached hereto is a more appropriate document to govern the architectural, engineering and landscape modifications to the Property and agrees to its adoption as a deed restriction upon the Property;

Both CBD and IGD agree that upon the recording of the declaration of establishment of the IG2F and the IG2 CBRUP in the public records:

- a. that the other PBRUPs shall cease to apply to the Property;
- b. that IGD shall remain bound to the provisions of the IGPBRUP;
- c. that CBD hereby releases all Successive Title Holders from the application of all the provisions of the IGPBRUP; and
- d. that the Successive Title Holders of the Property shall be bound to the provisions of the IG2 CBRUP.

The IBMF intervenes to this agreement to declare that it is satisfied therewith and to undertake to comply therewith.

The IBMF hereby consent to the recording of this agreement on the Property.

#### **ESTABLISHMENT DECLARATION**

That IGD, acting as mentioned above, subsequently declared that the ownership rights in Indigo Green, to which the following immovable properties presently belong, and to which IGD may add or remove in the future certain immovable properties at its own discretion; are held encumbered, sold, or transferred by another title subject to the IG2 CBRUP, to further amendments, supplements or additions to be made to the IG2 CBRUP and other provisions, restrictions and/or rules by IGD, which IG2 CBRUP and other provisions, restrictions and/or rules are laid down by this deed, and which deed of establishment shall be called the "**Indigo Green Declaration of IG2 CBRUP**", and which IG2 CBRUP and other provisions, restrictions and/or rules are binding to all those entitled to, acquirers of, and/or parties who have any right to, title to or interest in any part of the properties belonging to Indigo Green, as well as to their legal successors and successors in title.

That in each deed of transfer of title or creation of a real right (of enjoyment) and also in a deed of creation of a mortgage on one of the immovable properties described above or part thereof, or those immovable properties that will in the future be acquired by IGD and added to Indigo Green, reference will be made to the IG2 CBRUP, the content of which will be deemed to have been inserted in those deeds, and that the acquirer accepts the provisions, restrictions and/or rules to be created subject to suspensory conditions, contained in the IG2 CBRUP, as they may read at present and/or at any time after amendment, and undertakes towards IGD and its successors in title to impose said IG2 CBRUP on the acquirer in each following deed of transfer of title or creation of a real right (of enjoyment) by means of a perpetual clause.

In execution of the above, the appearer acting as mentioned above, therefore declared that said IG2 CBRUP have been incorporated in a document with the title: "Indigo Green 2 - Community Building Regulations And Usage Prescriptions". A copy of this document shall be attached to the original of this deed.

The full contents of said document is considered to be incorporated literally in the present deed and to form an integral part thereof and a true copy of it shall be recorded in the Public Registers jointly with a true copy of the present deed.

**AMENDMENT**

This Declaration and the IG2 CBRUP may only be amended with the prior written consent of the IBMF and as provided for in the General Bylaws of the IG2F.

**PBRUP RELEASE AND CBRUP ADOPTION**

The appearers furthermore declared, that CBD has agreed to release all Successive Title Holders of the Property from the IGPBRUP and any other PBRUPs.

**AUTHORIZATION CONCERNING REGISTRATION**

The appearers, acting as aforementioned, furthermore declared to have authorized me, civil law notary, to record a true copy of, or an extract from this deed in the public registers.

The appearers are known to me, civil law notary.

**WHEREOF THIS DEED** has been executed in Sint Maarten, in one original copy, on the date mentioned in the heading hereof. After relating the substance of this deed to the appearers, they declared to have examined the contents of this deed and not to require a full reading thereof. Then, after a summary reading of this deed, this deed was signed by the appearers and by me, civil law notary, at thirteen hours and fifty-five minutes.

Was signed.

w.s. M.D. Bouterse

The undersigned Marcia Denise Bouterse, candidate-notary in Sint Maarten, by these presents acting as duly appointed deputy of Faride Eloisa Elixie Tjon Ajong, acting civil law notary of her vacant notarial protocol in Sint Maarten, hereby certifies that the above is an identical copy of the deed hereby presented for transcription.