

This document presents amendments to the "Constitution" document of the Indigo Green Foundation initially recorded on December 19th, 2014 with the Chamber of Commerce and Industry of Sint Maarten. The initial version of the articles of Incorporation was prepared by Notary SXM – Tjon Ajong & Associates, located at Front Street 5, Suite 4, Philipsburg, Sint Maarten. This document incorporates all modifications that were subsequently made to the document as most recently adopted on February 20th, 2024 and recorded on November 27th, 2024. A True Copy of the recorded version in notarial format as well as this reformatted version can be found online at www.IGF.SX/Legal/. This copy has been reformatted from the original to make its reading easier to understand.

AUTHORIZATION

The appearer, acting as aforementioned, is authorized to sign on behalf of her principal, by power of attorney, which instrument, I civil law notary have sufficient proof of and will be attached to the original of this deed.

The appearer, acting as aforementioned, also declared that the Board of the Foundation by resolution of the Board of August thirteenth, two thousand twenty four, has resolved to amend its current constitution (articles), pursuant to a general meeting of the Owners of the Foundation, held on February twentieth two thousand twenty four, as appears from a written instrument, copy which will be attached to the original of this deed.

The appearer, acting as aforementioned, declared to hereby according to said resolution, amend the constitution (articles) of the Foundation, and as a consequence of which the said constitution now will henceforth read in its entirety as follows:

INTRODUCTORY STATEMENTS

The appearer, 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:
 - o 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 (597.825m²), being the parcel of land described in Certificate of Admeasurement 132 of nineteen hundred seventy-one (C/A 132/1971), having an area of Six Hundred Eleven Thousand square meters (611.000m²), 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 [square meters] (13.175m²), 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 Sint Maarten – 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:

- a. The Lessor has been properly notified of the subdivision(s) and the sale(s) and transfer(s) of the rights;*
 - b. 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 N.V. as well as assume – together with the successors in title, partial lessees and sub-lessees – full responsibility and liability towards BELL REALTY CORPORATION N.V. for the proper payment of all long lease rents;*
 - c. 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 N.V. for the proper performance of the Organization of its obligations towards BELL REALTY CORPORATION N.V.;*
 - d. 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.”*
- that CBD has on the first day of April, two thousand ten (April 1, 2010), incorporated the Indigo Bay Master Foundation, (the “**IBMF**”), with legal seat in Sint Maarten, which is the master-foundation responsible for the collection of the applicable long lease rents and for the payment of same to Bell Realty Corporation N.V. as mentioned in the above quoted conditions;
 - that Indigo Green Development B.V. (hereinafter referred to as the “**Developer**”) is developing a residential project, known as “**Indigo Green**” within Indigo Bay Estates, which is to be realized on the following real property, which is the right of Long Lease till January sixteenth, two thousand eighty-eight (January 16, 2088) on:
 - o a portion of land in Sint Maarten, having an area by computation of Twelve Thousand One Hundred and Twenty-Two square meters (12.122m²), described in Certificate of Admeasurement number 81 of two thousand thirteen (C/A - CB 081/2013) as further shown as Parcel G-11; together with;
 - o a portion of land in Sint Maarten, having an area by computation of Four Thousand Five Hundred Eighty-Three square meters (4.583m²) described in Certificate of Admeasurement number 160 of two thousand fourteen (C/A - CB 160/2014) as further shown as Parcel G-12; collectively hereinafter to be referred to as the “**Property**”;
 - that the developer has on the nineteenth day of December two thousand fourteen (December 19, 2014), incorporated the Indigo Green Foundation, (the “**Foundation**”), with legal seat in Sint Maarten, which foundation is a sub-organization of all owners of any portion of the Property who shall be required to become participants and also be subject to the IBMF;
 - that the total surface area of the Property may be increased or decreased from time to time by the Developer or the Foundation, and that more immovable properties may be added to or removed from the Property by the Developer or the Foundation;

- That the properties developed or to be developed that are currently subject to this Foundation are more precisely referenced on Appendix 1, which will be attached to the original of this deed;
- These amendments seek to anticipate the possibility of the Developer increasing the Property subjected to the Foundation to include the following;
 - o a portion of land in Sint Maarten located on lot 053/2015 further described in the Certificate of Admeasurement number 053/2015 of two thousand fifteen (the “**Estate Land**”);
- that pursuant to aforementioned general meeting of the Owners held on February twentieth, two thousand twenty-four, an amended deed was recorded on July twenty-third, two thousand twenty four;
 - o that subsequent to the execution of that deed, the deed was found to contain some inconsistencies with the version approved at the general meeting;
 - o that the Board now wishes to amend the deed to better reflect the version that was approved at the general meeting.

The appearer, acting as mentioned above, therefore hereby declared that the Board herewith wishes to amend the articles by which the foundation is governed by amending the following provisions (the “**Constitution**”).

ARTICLE 1 – NAME, SEAT AND DURATION

1. The foundation bears the name: “**Indigo Green Foundation**”, the word “Foundation” being the translation of the Dutch “Stichting” (the “**Foundation**”).
2. The Foundation is established in Sint Maarten.
3. The Foundation is founded for a period of time starting from its incorporation and ending five years after the end of the duration of the Long Lease or the last renewal thereof.

ARTICLE 2 – DEFINITIONS

The following definitions shall apply to this Constitution and the General Bylaws, as amended, unless the context dictates otherwise:

1. **Annual Budget:** means the annual budget to be approved by the Board as provided for in articles 16 and 19.
2. **Annual Meeting:** means the annual meeting of the Owners to be held as provided in article 13.
3. **Authorized Representative:** means a physical person authorized to represent an Owner as provided for in article 11.
4. **Bell Deed:** means the deed of issuance in long lease executed on January seventeenth, nineteen hundred eighty-nine (January 17, 1989) before J.G.M. Speetjens, at that time civil law notary in Sint Maarten, an authentic copy of which deed was transcribed at the office of the Registrar of Mortgages on that same day in Register C, volume 91, number 41.
5. **Board:** means the board of directors of the Foundation.
6. **Builder:** means workers and contractors when working for the Developer, including their subcontractors and suppliers.
7. **CBRUP:** means the Community Building Regulations and Usage Prescriptions imposed upon the Owners and the Foundation, in their collective interest, as such CBRUP will become binding pursuant to deeds of conveyance by the Developer or the Builder for and between the Owners and the Foundation and thereafter for and between the Foundation and any subsequent Owner, as adopted by the Developer and any amendments thereto that may be adopted by the Developer during the

Development Period or the Foundation thereafter. The CBRUP do not form part of the Rules and Regulations.

8. **Committee:** means a committee formed by the Board as provided for in article 12.
9. **Condominium Building:** means a building constructed on a Condominium Lot housing two or more ROA Units and its common areas.
10. **Condominium Lot:** means a portion of Indigo Green recorded as a subdivided lot or lots by the Kadaster that is intended and designated by the Developer solely for multi-family residential use and that is owned by the homeowners' association of the Condominium Building thereon, as well as the subdivided lots on which are built the Condominium Buildings housing the Pool Unit and only Garage Units.
11. **Condominium Unit:** means a single-family residential ROA Unit.
12. **Developer:** means Indigo Green Development B.V., a private limited liability company established in Sint Maarten. The Developer is the founder of the Foundation.
13. **Developer Board:** means the Board described in paragraph 4 of article 6.
14. **Development Period:** means the period that commenced with the registration of the Foundation in the Commercial Register of the Chamber of Commerce on December 19, 2014 and that will end on the later of i) the date of the recording in the Kadaster of the last transfer to an Owner of title to the last Villa Lot or ROA Unit planned to be constructed upon the Property as part of Indigo Green and ii) the date of the delivery by the Builder to an Owner of the last Villa or ROA Unit planned to be constructed upon the Property as part of Indigo Green.
15. **Estate Land:** means the portion of land described in the Introductory Statements above, recorded as one lot by the Kadaster, and that is intended by the Developer to be subdivided into Estate Parcels.
16. **Estate Parcel:** means a parcel of land resulting from the subdivision of the Estate Land by the Developer and that is intended and designated by the Developer solely for the construction of one Villa and an Estate Street.
17. **Estate Street:** means that portion of the land forming part of an Estate Parcel that is intended and designated by the Developer to be used as a street pursuant to an easement to be granted by the Developer to the Foundation, such portion of land to be owned by the Owner of the Estate Parcel.
18. **Financial Statements:** means two-year comparative financial statements of the Foundation, save for the first fiscal year, comprising a statement of earnings, a statement of change in net assets, a balance sheet, a statement of operating fund, contingency fund and fixed assets fund, and notes to the financial statements.
19. **Garage Unit:** means an ROA Unit to be used by an Owner as a garage and personal storage only.
20. **Garden Area:** means the Limited Common Elements defined as "Garden Areas" in the deed of division of a Condominium Building that are dedicated for the exclusive use of an Owner.
21. **General Bylaws:** means the bylaws relating generally to the conduct of the affairs of the Foundation, as adopted by the Developer Board pursuant to article 9, as may be amended at a later date. The General Bylaws are not considered 'statuten' as meant in the Civil Code and are not meant to override but to complete this Constitution (which contains the 'statuten' as meant in the Civil Code).
22. **IBMF:** means the Indigo Bay Master Foundation, established in Sint Maarten.
23. **IG Common Areas:** means all immovable and movable properties (including improvements thereto and interest therein), which will be dedicated as such by the Developer or the Foundation and to be owned or managed by the Foundation for the common use and enjoyment of all Owners in Indigo Green and which are not a part of any Residential Lot. The following forms part of the IG Common Areas:

- a. the air above and the earth below all land making up the IG Common Areas, subject to the limitations imposed by the Long Lease;
 - b. all property designated as IG Common Areas in any future recorded supplemental declaration;
 - c. the landscaping and any improvements thereon, including without limitation all structures, recreational facilities, open spaces, walkways, swales, grass area, parking, streets, sidewalks, irrigation systems, sewer systems, street lights, entrance features, and all other areas which may be so designated from time to time by the Developer during the Development Period or the Foundation thereafter;
 - d. any ROA Unit that may be validly transferred to the Foundation by means of a notarial deed such as the Office Unit, the Pool Unit and any Storage Unit or Garage unit; and
 - e. all improvements to Estate Streets, such as pavement, landscaping, lighting and walls.
- 24. IG Maintenance:** means the maintenance and services provided by the Foundation as described in article 24, as may be amended from time to time.
- 25. IG Systems:** means the technical systems managed and operated by the Foundation as described in article 24, as may be amended from time to time.
- 26. Indigo Bay Estates:** means the residential and commercial project developed by Cay Bay Development N.V., at Cay Bay, in the district of Cole Bay, Sint Maarten.
- 27. Indigo Green:** means the residential project being developed by the Developer on the Property within Indigo Bay Estates.
- 28. Kadaster:** means the Kadaster and Land Registry of Sint Maarten.
- 29. Landscaped Common Area:** means the area of the IG Common Areas that is maintained and landscaped by the Foundation, to the exclusion of the IG Common Areas that are left to grow in their natural state and may require only sporadic maintenance.
- 30. Landscaped Private Area:** means any landscaped area of a Residential Lot, in front, on the side or behind any Serviced Villa or Condominium Building that is maintained.
- 31. Lessor:** means Bell Realty Corporation N.V., as well as its successors in title as meant in the Bell Deed.
- 32. Limited Common Elements:** means the portion of any Villa or Villa Lot which is utilized or shared by more than one Villa for the benefit of more than one Owner, including but not limited to common walls, utility lines, common structural components such as retaining walls or supporting earth. However, the interior walls, floors, roofs, patios, and other portions of a Villa, including those that may extend to the edge of the Lot, shall be considered as being a part of the Villa and are not Limited Common Elements, unless they are structurally co-dependent or used in common by two or more Villas.
- 33. Long Lease:** means the Long Lease described in the Introductory Statements.
- 34. Manager:** means the manager or management company referred to in article 22.
- 35. Non-Residential Lot:** means any lot, subdivided or not, within the Property that is not a Residential Lot.
- 36. Office Unit:** means the ROA Unit to be used only as an office by the Developer, the Foundation and the homeowners' associations of Indigo Green during the Development Period, and by the Foundation and the homeowners' associations thereafter.
- 37. Owner(s):** means the successors in title of the original Long Lease holder within Indigo Green, the partial Long Lease holders, and sub-long lease holders pertaining to the parcels of land in the Long Lease, respectively the owners of Villas, Villa Lots and ROA Units within Indigo Green. Owner(s) refers to a single owner, joint owners, the owners' association owning the common areas of a Condominium Lot and Condominium Building, and entities such as foundations, partnerships, trusts, estates,

corporate and other entities. Reference to an Owner in the singular shall include a reference to all the owners of the same Villa, Villa Lot and ROA Unit, whether persons or entities. Owners shall have the same meaning as “participants” under the law.

- 38. Owner’s Area:** means the area defined in paragraph 8 of article 16.
- 39. Owner’s IBMF Share:** means the share defined in paragraph 8 of article 16.
- 40. Owner’s IGF Share:** means the share defined in paragraph 8 of article 16.
- 41. Owner’s Share of Long Lease Rent:** means the share defined in paragraph 8 of article 16.
- 42. Participant:** means an Owner at any given time.
- 43. Permittee:** means any person or entity expressly or implicitly authorized by an Owner to be present on either or both his Villas, Villa Lots and ROA Units, the IG Common Areas, and includes without limitation his Authorized Representative, a spouse, members of his family, other occupants or users of his Residence, guests, visitors, servants, employees, representatives, contractors, subcontractors, lessees, tenants for life, beneficiaries of a trust, and any other person, entity or animal under his control and for whom he is responsible at law.
- 44. Pool Unit:** means the ROA Unit to be used in common by Owners only as a swimming pool, with a deck and a recreational area.
- 45. Private Area:** means a Residential Lot or portion thereof on which there is a Residence.
- 46. Private Area Services:** means the services performed in a Private Area by the Foundation as described in paragraph 6 of article 24.
- 47. Property:** means the land described as such in the Introductory Statements.
- 48. Residence:** means a Serviced Villa or a Serviced Condominium Unit.
- 49. Residential Lot:** means a Villa Lot or a Condominium Lot.
- 50. ROA Unit:** means a right of apartment, as meant in article 5:106 paragraph 3 of the Civil Code of Sint Maarten, created through a deed of division, whether a Condominium Unit, a Garage Unit, the Office Unit, the Pool Unit or a Storage Unit.
- 51. ROA Unit Area:** means the surface area of a ROA Unit as defined in the deed of division of its Condominium Building.
- 52. Rules and Regulations:** means those rules and regulations adopted by the Developer, as may be amended by the Developer during the Development Period, or the Foundation at a later date, governing the use of the Property and the construction of any improvements and facilities, common or private, in order to protect the collective interests and for the collective benefit of the Owners.
- 53. Serviced:** means, in respect of a Villa or a ROA Unit, that it meets all the following criteria:
 - a. Its construction is substantially completed, as evidenced by the Certificate of Substantial Completion issued by the project professional pursuant to the Villa or ROA Unit purchase agreement between the Owner and the Developer;
 - b. The Owner has taken delivery of the Villa or ROA Unit or it has functional water and electrical connections with N.V. GEBE, or its successor, since four (4) months;
 - c. It is connected to the sewage treatment system administered by the Foundation; and
 - d. The street in front of it is paved and sufficiently lighted, as determined by the Board.
- 54. Storage Unit:** means an ROA Unit to be used by an Owner for personal storage only.
- 55. Surcharge:** means any amount including fines, penalties, fees and reimbursements, that may become payable to the Foundation by an Owner, excluding non-recurring contributions, dues, special assessments, damages and interest.
- 56. Villa:** means a single-family residence constructed upon a Villa Lot.

- 57. Villa Lot:** means a portion of Indigo Green recorded as one or more subdivided lots by the Kadaster, that is or are intended and designated by the Developer solely for the construction of one Villa. The land dedicated as an Estate Street located on an Estate Parcel shall not form part of the associated Villa Lot.

Section I – GENERAL

ARTICLE 3 – PURPOSE OF THE FOUNDATION

- 1. Purpose** – The purpose of the Foundation is:
 - a. to function as the non-profit organization for Indigo Green that represents the collective interests of the Developer and the Owners during the Development Period, and the Owners after the Development Period, with a view to maintaining at all times the upper scale residential character or vocation of Indigo Green;
 - b. the preservation of the assets of the Foundation for the durable fulfillment of its collective purpose;
 - c. to provide for the benefit of Indigo Green and the Owners:
 - i. administrative and financial guidance, security, cleaning of the IG Common Areas, landscaping thereof and other services;
 - ii. administration of all IG Common Areas for the common use and enjoyment of the Owners, including, without limitation, common utility lines to the point of demarcation to a Villa or Condominium Building;
 - iii. the IG Maintenance and the IG Systems;
 - iv. the optional cleaning, maintenance, repair and landscaping services on Private Areas that may be offered by the Foundation;
 - v. the mandatory or remedial cleaning, maintenance, repair and landscaping services on Private Areas that may be determined by the Board;
 - vi. the administration and enforcement of the Rules and Regulations of the Foundation, with a view to providing, in particular, a peaceful environment to the residents of Indigo Green; and
 - vii. the protection of the architectural integrity and esthetics of Indigo Green, bearing in mind its upper scale residential character or vocation.
- 2. No Business** – The Foundation may not have the making of profit or the operation of a business as its main object.

ARTICLE 4 – MANDATE OF THE FOUNDATION

- 1. Tasks** – In order to effect its purpose, the Foundation shall:
 - a. execute those tasks that have been assigned to the Foundation in the individual notarial deeds of conveyance of the Villa Lots, Villas, Estate Parcels and ROA Units or any other conveyances of property within Indigo Green, and in this Constitution, the General Bylaws, the Rules and Regulations, the CBRUP and the deeds of easements registered on the Property;
 - b. pro-rate, collect, which includes enforcing payment by any lawful means, and pay the Long Lease rent due pursuant to the Bell Deed to Bell Realty Corporation N.V. or its legal successors with respect to Indigo Green;
 - c. assess and collect, which includes enforcing payment by any lawful means, the contributions payable by the Owners and that are necessary to cover the costs of operating the Foundation

- and operating and maintaining the IG Common Areas, both in the short and long term, and providing the services indicated under paragraph 1 of article 3;
- d. monitor, control and enforce the observance by the Owners of:
 - i. the General Bylaws, as amended from time to time;
 - ii. the Rules and Regulations, as amended from time to time;
 - iii. the CBRUP, as amended from time to time;
 - iv. the regulations as prescribed by the Island Territory of Sint Maarten in its “Island Resolution May twenty-ninth, two thousand seven, AB: 2008, Number 6, which Island Resolution contains the Planning Permit “Cay Bay Estate” (PP05088), as amended, supplemented or replaced; and
 - e. protect and represent the collective interests of the Owners.
- 2. **Owning** – The Foundation may acquire and own moveable and immovable property so long as such property is used for the fulfillment of the purpose of the Foundation set forth in article 3; the Foundation may sell such property.
 - 3. **Renting** – The Foundation may also rent or lend to third parties moveable and immovable property it owns for the fulfillment of the purpose of the Foundation set forth in article 3. The term of such lease shall not exceed five (5) years; the lease or loan may be renewed for terms of no more than five (5) years.
 - 4. **Improvements** – The Foundation may modify and improve the IG Common Areas and the IG Systems for the fulfillment of the purposes of the Foundation set forth in article 3.
 - 5. **Developer** – The Developer, having established the Foundation, shall actively participate in its functioning for the duration of the Development Period.
 - 6. **IG Common Areas** – The Developer shall transfer to the Foundation title to the IG Common Areas as a whole or in parts. Such transfers may at the Developer’s sole discretion include the transfer of title to the Office Unit, the Pool Unit, Storage Units or Garage Units. Such transfers shall be completed no later than upon the end date of the Development Period. All transfers shall be made at the expense of the Developer and the Foundation shall accept any transfer upon the date selected by the Developer.

ARTICLE 5 – CAPITAL AND OTHER FINANCIAL CONSIDERATIONS

- 1. **Capital** – The capital of the Foundation will consist of:
 - a. the contributions by the Owners, in the form of:
 - i. quarterly Foundation dues for the expenses incurred by the Foundation in the execution of its tasks; and
 - ii. special assessments, Surcharges and interest on arrears, if any;
 - b. the non-recurring contributions made by the Owners upon acquiring title to a Villa or a ROA Unit; and
 - c. all other receipts and revenues.
- 2. **Bank Accounts** – The Foundation shall deposit all receipts and revenues, including dues and special assessments, in accounts opened with one or more banks authorized to do business as such in Sint Maarten, and pay its liabilities from the same accounts. These accounts shall be used solely for the administration of the Foundation.
- 3. **Obligations** – Except as determined by the Developer during the Development Period, the Foundation may not enter into any financial obligations which cannot be fully covered by its capital and its forthcoming Foundation dues and special assessments.

4. **No Loan** – The Foundation may not enter into loan agreements as lender, assume any joint or several liabilities, or give any surety or guaranty for the debts of third parties, save in relation to the Long Lease rent payable by the Owners as provided in article 17.
5. **Contingency Fund** – The Board shall establish and administer a contingency fund based on the estimated cost of major repairs and replacement of the IG Common Areas, to provide cash funds to be allocated exclusively to such repairs and replacement. The Foundation is the exclusive owner of the fund and no portion of such fund shall be refunded to any Owner as a result of ceasing to be an Owner. The contributions of Owners to this fund shall be made through the payment of the quarterly dues and special assessments, as the case may be. During the Development Period, the Board may elect to waive in whole or in part contributions to the Contingency Fund.
6. **Investment of Contingency Fund** – The funds held in the contingency fund shall be invested with a view to preserving capital rather than maximizing yield. The investment strategy shall thus be conservative, investing in low-risk securities such as:
 - i. fixed-income securities with a minimum accepted rating of "A" as per Dominion Bond Rating Services ("DBRS") or equivalent, such as federal, provincial and state government bonds, corporate bonds and guaranteed investment certificates (Canadian and American markets);
 - ii. money market securities with a minimum accepted rating of "R1-Low" as per DBRS or equivalent, such as banker's acceptance, treasury bills and commercial paper, and blue-chip or large-capitalization equities (Canadian and American markets); and
 - iii. certificates of deposits issued by a bank licensed to do business in Sint Maarten.

Section II – THE BOARD OF THE FOUNDATION

ARTICLE 6 – THE BOARD

1. **Enforcement** – The Board shall be responsible for administering the Foundation and enforcing the provisions of this Constitution, the General Bylaws, the Rules and Regulations and the CBRUP.
2. **Responsibility** – Without limiting its rights and powers under the law, the Board shall be entrusted, on behalf of the Foundation, with the preservation, maintenance and administration of the IG Common Areas, in accordance with the character or vocation of Indigo Green, as well as all the measures of common interest. Furthermore, the Board shall be responsible for preparing budgets and collecting the contributions to common expenses with a view to maintaining financial stability for the benefit of all Owners and the Foundation and to provide such services as are specified by law and herein. The Board shall also be responsible for ensuring the compliance of the activities of the Foundation with local laws, including making the required tax and other filings with local authorities.
3. **Compliance** – In carrying out their duties, the Board members shall fulfill the obligations imposed on them by law and by virtue of this Constitution. The Board members shall act within the limits of the powers conferred on them, with prudence, diligence, honesty and loyalty in the interest of the Foundation.
4. **Developer Board** – During the Development Period, until March thirty-first, two-thousand twenty-six (March 31, 2026), all Board members shall be appointed by the Developer (the "**Developer Board**") and need not be Owners or Authorized Representatives, save for one member who shall be an Owner or an Authorized Representative. Should the Development Period extend beyond March thirty-first, two thousand twenty-six (March 31, 2026):
 - i. The Board shall be increased to five members as of the following Annual Meeting,
 - ii. Three of the members shall be appointed by the Developer, at least one of which shall be an Owner or Authorized Representative, and

- iii. The two other members shall be Owners or Authorized Representatives elected by the Owners at the following Annual Meeting in accordance with paragraph 6 hereafter.

Such appointments and elections shall continue for the duration of the Development Period.

The Developer may at its sole discretion and whenever it deems fit dismiss or replace any Board member it has appointed.

Upon the end of the Development Period, the Board members appointed by the Developer then in office shall continue to hold office until the next Annual Meeting, at which time all Board members shall be elected by the Owners in accordance with paragraphs 5 and 6 below. However, the Owners may, after the Development Period and prior to the next Annual Meeting, replace the Board members appointed by the Developer at an Owners' meeting called for this purpose.

Unless indicated otherwise in the Constitution, the General Bylaws or the Rules and Regulations, all references to the Board shall include the Developer Board.

5. **Number** – Except for the Developer Board, the Foundation shall be governed by a Board consisting of no less than three (3) and no more than seven (7) members of full age, each of whom must be an Owner of a Villa or Condominium Unit or his Authorized Representative, and must not be insolvent or bankrupt, a person to whom a curator, tutor or guardian is appointed, and must not have been convicted of a felony.
6. **Election** – Except for the members appointed by the Developer, Board members shall be elected by the Owners at their Annual Meeting by a majority of the votes cast in the meeting where no less than thirty five percent (35%) of the Owners are present or duly represented. If a quorum of thirty-five percent (35%) of the Owners is not present or duly represented at the meeting, the existing board of directors shall continue to serve until new members are elected pursuant to the provisions of this Constitution and the General Bylaws, unless they resign or otherwise cease to be Board members.
7. **Liability** – The Board members shall not, individually or collectively, incur any personal liability whatsoever vis-a-vis the Foundation, the Owners and other third parties for any reason whatsoever, including the fault and negligence of third parties with whom the Foundation may contract and the errors in judgment or negligence of the Board members. However, Board members shall, individually or collectively, incur personal liability to the Foundation for damages caused intentionally, by their gross negligence, willful misconduct or acts of a fraudulent nature.
8. **Reimbursement** – Each Board member shall be reimbursed and indemnified by the Foundation for the reasonable costs, charges and expenses (including reasonable legal fees) that he has paid or incurred regarding any action, suit or other proceeding brought against him in respect of any act or measure done, taken or authorized by him in carrying out his duties. However, each such Board member shall not be reimbursed or indemnified in relation to damages caused intentionally, by his gross negligence, willful misconduct and acts of a fraudulent nature.

ARTICLE 7 – BOARD MEMBERS COMPENSATION

Members of the Board shall not be entitled to compensation for the holding of such office and shall be entitled to receive reimbursement of the reasonable expenses they incur in the exercise of their functions, as set forth in the General Bylaws.

ARTICLE 8 – REPRESENTATION

Except for the Developer Board, the Foundation will be represented in and out of court by one Board member when the matter or claim has a value below the amount provided for in the General Bylaws, and by two Board members when the matter or claim has a value in excess of this

amount, authorized thereto by the Board and acting jointly, at least one of which will be the President, the Secretary or the Treasurer. Notwithstanding the foregoing, the Board may authorize the Manager to represent the Foundation in certain matters as it may see fit.

ARTICLE 9 – MEETINGS OF THE BOARD AND GENERAL BYLAWS

1. **Meetings** – In addition to the meetings to be held each year in accordance with article 19 of this Constitution, the Board shall meet whenever requested by the President or the majority of the members of the Board.
2. **Location** – All meetings of the Board shall be held in Sint Maarten. The meetings may also be held via conference call, online or via other technical means allowing for direct real time audio communications between members.
3. **Proxy** – A Board member may not be represented in a meeting by any other person, by proxy or otherwise.
4. **General Bylaws** – The Developer Board shall draw up the General Bylaws, to be laid down in a resolution. The General Bylaws shall at least concern the election of the members of the Board, the appointment of the officers of the Foundation, the convening of the meetings of the Board and Owners, the minutes of such meetings, the powers and duties of the Board, the passing of resolutions by the Board and Owners, the creation of Committees and the communications with the Owners.

ARTICLE 10 – RESOLUTIONS OF THE BOARD

1. **Developer's Approval** – During the Development Period, all Board resolutions shall become in force only upon receipt of approval from the Developer. In the event the Developer does not respond within thirty (30) days from the date the Developer has acknowledged receipt of such resolution (via return receipt, email or other means), the approval will be deemed to have been given by the Developer upon the expiry of this thirty-day (30-day) period.
2. **Owners' Approval** – Notwithstanding anything to the contrary in this Constitution or the General Bylaws, resolutions passed by the Developer Board shall not require Owners' approval.
3. **Forty percent (40%) Vote** – Subject to the Owners' approval or consultation, as may be required in the Constitution or the General Bylaws, resolutions concerning the following matters may only be passed where the majority of the Board members holding office is present and the resolution is passed by a vote of the majority of all Board members holding office:
 - a. the entering into or terminating of outsourcing agreements, including the agreement with the Manager;
 - b. the amount of the non-recurring contributions by Owners and refunds as meant in article 15 of this Constitution;
 - c. the amount of the Foundation dues and special assessments as meant in article 16, paragraph 1 of this Constitution;
 - d. the approval of the Annual Budget, including revisions thereto;
 - e. the approval of expenditures exceeding the Annual Budget by twenty percent (20%);
 - f. the approval of amendments to the Rules and Regulations; and
 - g. any other matter not subject to any other quorum or majority.If that quorum is not reached, such resolution may not then be adopted and may be tabled until a subsequent meeting where:
 - i. no less than forty percent (40%) of all Board members holding office are present; and

- ii. the resolution is passed by a vote of the majority of those present where such vote shall represent no less than forty percent (40%) of all the Board members holding office.
4. **Seventy-five percent (75%) Vote** – Subject to the Owners’ approval or consultation, as may be required in the Constitution or the General Bylaws, resolutions concerning the following matters may only be passed by a seventy-five percent (75%) vote of all Board members holding office:
- a. the amendment of the General Bylaws;
 - b. the increase or decrease of the percentage mentioned in the paragraph 3.e above;
 - c. the granting of easements on the IG Common Areas, save by the Developer Board;
 - d. the approval of the transfer or reacquisition of any part of the IG Common Areas provided for in paragraph 5 of this article; and
 - e. the approval of amendments to this Constitution.
5. **Transfer to IBMF** – The Board shall have the right to transfer title to streets, street lighting and sewage systems forming part of the IG Common Areas to the IBMF if it is of the opinion that such transfer and its terms and conditions are in the interest of the Foundation. The conditions of the transfer shall include the regular maintenance and repair of such streets and systems by the IBMF to the satisfaction of the Foundation, at the cost of the IBMF. Any deed of transfer shall also provide the Foundation with a unilateral option at any time to reacquire title to the streets, street lighting and sewage systems at terms and conditions acceptable to the Board. Any such transfer and reacquisition shall be subject to approval by two thirds (2/3) of all the Owners.
6. **Affecting Owners** – Any resolution of the Board that directly affects, financially or otherwise, all Owners or one or more Owners in particular shall be duly motivated in the body of the resolution or in an explanation attached thereto and contain the decision of the Board that the resolution be sent to the affected Owners. Alternatively, the Board may post such resolution on the Foundation’s website and advise the Owners of such posting.

Section III – OWNERS

ARTICLE 11 – OWNERS/PARTICIPANTS

1. **Representative** – If a Residential Lot, a Residence or another ROA Unit is owned by a legal person or more than one physical person, the Owner must appoint one physical person as his Authorized Representative. If the Owner is a single physical person, he may appoint another physical person as his Authorized Representative. The Authorized Representative shall represent the Owner in all matters relating to the Foundation, including engaging the liability of the Owner in favor of the Foundation and voting at meetings of Owners. The Owner shall give written notice of such appointment to the Secretary upon acquiring title to his Residential Lot, Residence or other ROA Unit and promptly after having appointed a new Authorized Representative. While such appointment shall provide the Authorized Representative with all authority to represent the Owner, it shall not release the Owner from his obligations hereunder.
2. **No Appointment** – When an Owner who must appoint an Authorized Representative fails to do so, the right to vote or approve of the Owner shall be suspended until he advises the Secretary of the identity of his Authorized Representative as provided for in article 3 paragraph d of the General Bylaws.
3. **Voting** – Owners are entitled to take part in any voting and approval process by the Owners that may be held under this Constitution or the General Bylaws, with the exception of Owners whose rights to vote are suspended.

4. **Approval in writing** – Notwithstanding anything to the contrary in the Constitution and the General Bylaws, and to the extent lawful, any matter required to be approved by a vote of Owners at an Annual Meeting or a special meeting of Owners may be approved in a writing signed by the majority of the Owners entitled to vote.
- a. Notice of a request to approve in writing must be given to all Owners entitled to vote, together with
 - i. a detailed explanation of the matter proposed to be approved in writing and
 - ii. the text of the resolutions submitted to approval in writing by Owners.
 - b. Approval in writing shall not be effective unless the approval is signed by Owners entitled to vote having the requisite number of votes and delivered to the Board within eight (8) weeks after the date the notice was given.
 - c. Once the approval in writing is signed by a number of Owners entitled to vote representing not less than the minimum number of votes that is necessary to approve such matter, such approval shall be deemed to have been granted upon having reached this minimum number.
 - d. An approval in writing shall have the same effect as a vote held at a duly constituted meeting and may be described as such in any document.
 - e. Whenever a matter is approved pursuant to this paragraph, the written approval of the Owners must be filed with the minutes of meetings of Owners.
 - f. The Board shall, within twenty-one (21) days after the earlier of written approval having been granted or the expiry of the delay provided for in subparagraph b. above, give notice to all Owners of whether the matter was approved and of the number of votes in favor of and against the proposals.
5. **Contact Information** – The Owner shall, upon becoming an Owner, provide and every two (2) years thereafter update the Board with his or her current complete contact information, as provided for in the General Bylaws. The inability of an Owner or Authorized Representative to receive notices, convening letters or other communications or to exercise rights hereunder, including voting, resulting from their failure to advise the Board of a change in their contact information shall give the Owner no right of action whatsoever to challenge any act, resolution or approval of the Board or the Owners, nor against the Foundation and its Board members and officers.
6. **No Updated Contact Information** – If the Owner fails to update his current complete contact information as provided for herein or in the General Bylaws and does not appear (whether in person or by proxy) at a meeting of Owners while an invitation to such meeting of Owners was sent to the contact address lastly provided by that Owner, the President of the Foundation shall hold a proxy authorizing him to represent the Owner, including to vote, at all meetings of Owners, until the Owner or his Authorized Representative shall have given his updated contact information to the Board or appears at a meeting of Owners in person or by proxy. The Board shall be under no obligation to retain the services of third parties to determine or update the identity or contact information of the Owner or his Authorized Representative.
7. **No Interference** – No Owner may interfere with the carrying out by the Board of urgent work inside his Villa or ROA Unit and on his Residential Lot, and of work useful or necessary for the conservation of the IG Common Areas or an adjacent Condominium Building, ROA Unit, Villa Lot, or Villa, as may be provided in the Rules and Regulations or as decided by the Board. Such work may include the cleaning, maintenance and repair of the Landscaped Private Areas.
8. **Indivisibility** – In case a Villa or ROA Unit is owned by more than one physical person or entity, the obligations of each Owner shall be indivisible and their performance may be demanded of any of

them, their heirs, successors, legatees or assigns. Said Owners shall also be jointly and severally liable for the payment of all dues, special assessments, Surcharges, damages and interest to the Foundation, which may demand full payment thereof from any of such Owner.

9. **Indemnification** – Each Owner shall be responsible individually to the Foundation, members of the Board, the officers of the Foundation and the other Owners for any material or bodily damage caused by his fault or negligence or that of his Permittees, or by the autonomous act of anything under his custody or control. Such Owner shall consequently indemnify the Foundation, the members of the Board, the officers of the Foundation and the other Owners for any such damage caused.
10. **Indemnification of Compliance Procedures** – All costs (court costs and third party costs, including actual attorneys' and experts' fees and expenses) incurred by the Foundation for the purposes of securing compliance with the Constitution (including the General Bylaws, the Rules and Regulations, and the CBRUP) by an Owner (including his or her Authorized Representative and Permittee) shall be reimbursed by this Owner to the Foundation upon demand, with interest at the *rate charged on arrears hereunder*.
11. **Other Indemnification** – All costs (court costs and third party costs, including actual attorneys' and experts' fees and expenses) incurred by the Foundation shall be reimbursed by the Owner (or Owners) to the Foundation upon demand in the event this Owner (or these Owners), or his (or their) Authorized Representative(s), abuses his rights hereunder or in law, such that the Owner's or his or her Authorized Representative's requests, challenges or complaints create a workload that significantly disrupts the normal operation of the Foundation or results in costs for the Foundation that are disproportionate to the inherent importance of the object of the requests, challenges or complaints. For the purposes of this article, the Foundation's costs shall be considered disproportionate if, over any 12-month period, such costs exceed 2% of the Foundation's Annual Budget in force at the end of this period, as a reference point beyond which such requests, challenges or complaints will be considered abusive. The amount of the Annual Budget used for such calculation shall be reduced by i) any amounts due to the IBMF, ii) capital expenditures, iii) contributions to contingency and reserve funds, iv) special assessments, and v) any amounts dedicated to the provision of Private Area Services.
12. **Notices** – Any and all notices or communications that the Board, the officers of the Foundation or the Manager may give to an Owner, and vice versa, may be given by electronic means.
13. **Time-Sharing** – No Owner shall sell or otherwise transfer or convey title to his Residence or ROA Unit to third parties such that these parties shall have periodic and successive rights of enjoyment of the Residence or ROA Unit, currently known as time-sharing.

ARTICLE 12 – COMMITTEES

1. **Establishment** – The Board may establish Committees to assist the Board in the performance of its duties, as set out in the General Bylaws.
2. **Dissolution** – The Board may dissolve any Committee at its discretion.

ARTICLE 13 – MEETINGS OF OWNERS

1. **Annual Meeting** – Each year the Board shall organize an annual meeting of the Owners to be held no later than in the month of April, in which the Board shall:
 - a. present the Financial Statements for the previous fiscal year;
 - b. present the proposed Annual Budget for the current fiscal year;

- c. discuss the financial situation, projections and the state of the activities of the Foundation in view of the proposed Annual Budget for the current fiscal year;
 - d. discuss the long-term prospects, financial and otherwise, of the Foundation in regard to its purpose, the condition of the IG Common Areas and the current and anticipated level of services provided by and of contributions to the Foundation;
 - e. hold the election of Board members to fill vacancies; and
 - f. submit any other matter for consultation or approval by the Owners as it may see fit.
2. **Certain Matters** – Unless it is either
- i. acceptable in the exclusive judgment of the Developer during the Development Period,
 - ii. approved by the majority of all Owners, or
 - iii. required by law or by competent public authorities,
- the Foundation may not:
- a. enter into a loan agreement as borrower,
 - b. undertake or allow construction on the immovable properties it owns, except for the administration of the IG Common Areas, for the benefit of and use by the Owners or to add facilities or services;
 - c. approve the transfer or reacquisition of any part of the IG Common Areas provided for in paragraph 5 of article 10; or
 - d. sell, alienate, burden or give in use to third parties the immovable property it owns, except for the granting of utility and passage easements.
3. **Borrowing** – Unless it is approved by a two thirds (2/3) vote of all Owners, the Foundation may not borrow any sum of money in excess of twenty percent (20%) of the Annual Budget.
4. **Location** – All meetings of the Owners shall be held in Sint Maarten at such a location as shall be determined by the Board. Alternatively, the Owners meetings may also be held via conference call, online or via other technical means allowing for real time audio communications between the Board and the Owners.
5. **Number of Votes** – There shall be:
- a. ten (10) votes per Villa Lot and Condominium Unit whether a Villa is constructed on the lot or not;
 - b. one (1) vote per Garage Unit, per Storage Unit, and for each of the Office Unit and the Pool Unit.
- No votes are attached to any ROA Unit or Villa Lot owned by the Foundation,
- The number of votes may not be divided among the co-Owners of a Residence, Villa Lot or other ROA Units and that number of votes may be cast only by the Authorized Representative.
- Only Owners of Serviced Residences shall have the right to vote on financial matters.
6. **Enforcement** – The resolutions passed at a meeting of or through written approval by Owners shall apply to all Owners, including those who opposed them, were absent, were not represented at the meeting or did not participate in the approval process.
7. **Impartiality** – The Owners shall at all times act in an impartial manner in the interest of the Foundation. They shall not pass or approve any resolution designed to harm Owners or some of them or to violate their rights.
8. **Suspension** – In all matters where Owners are requested to vote or give their approval in writing, the Owners whose right to vote is suspended shall not be authorized to vote or approve. Furthermore, such Owners shall not be counted to establish the total number of Owners eligible to vote or approve, or for quorum purposes. These Owners may, however, attend a meeting.

ARTICLE 14 – CONSULTATION OF OWNERS

1. **Consultation** – Except for the Developer Board, the Board shall consult the Owners prior to passing any resolution aimed at:
 - a. approving the Annual Budget for the coming fiscal year,
 - b. refunding in total or in part non-recurring contributions by the Owners; or
 - c. Increasing the amount of the Foundation dues by more than twenty percent (20%) of the Annual Budget.
2. **Not Binding** – The Board shall not be bound by the outcome of these consultations.

Section IV – FINANCIAL

ARTICLE 15 – INITIAL CAPITAL CONTRIBUTIONS

The amount of the initial capital contributions to be paid by all Owners to the Foundation upon their acquisition of a Villa Lot, a Villa or an ROA Unit from the Developer shall be determined by the Developer. The purpose of the initial capital contributions shall be for the acquisition of tools, furniture, fixtures and equipment by the Foundation, to make improvements and to provide additional IG Systems judged to be desirable by the Board for the fulfillment of the purposes of the Foundation as set forth in Article 3.

ARTICLE 16 – DUES AND ASSESSMENTS

1. **Obligation** – Every Owner is under the obligation to pay to the Foundation in respect of his Villa or ROA Unit the Owner's IGF Share of the Foundation dues and special assessments, the Owner's IBMF Share of the IBMF dues and special assessments, and the Owner's Share of Long Lease Rent, as well as any other dues and assessment levied by the Foundation, as determined by resolution of the Board, and as same may be useful or necessary for the fulfillment of the purpose of the Foundation set forth in Article 3. The failure to pay the full amount of dues and special assessments, Surcharges and interest as and when required shall constitute a violation of the Constitution. For greater certainty, the dues and special assessments which the Board may levy in respect of ROA Units owned by the Foundation shall be borne by the Owners.
2. **Resolution** – Foundation dues and special assessments shall be indebted to the Foundation as from the date of adoption of the resolution of the Board. The Board shall give prompt notice to all Owners of all dues and special assessments determined by the Board.
3. **Payment Dates** – The Foundation dues shall be based on the Annual Budget and be charged, due and payable in equal quarterly installments on the first day of January, April, July and October of each calendar year. As the annual dues for each year are adopted by the Board soon after the Annual Meeting to be held no later than in April of that year, the Owners shall pay the arrears in dues since January of that year with the July dues payment.
4. **Budget** – The Annual Budget shall cover all revenues and expenses of the Foundation as projected by the Board for:
 - a. the execution of its tasks for the collective benefit of the Owners;
 - b. the services provided by the Foundation or its service providers for the collective benefit of the Owners;
 - c. the operation, maintenance, repair and replacement of the IG Common Areas and other assets that have been or may be transferred or entrusted to the Foundation, as well as of the improvements to the Estate Streets;

- d. the contributions to the contingency fund as provided for in article 5, the whole, as deemed advisable by the Board;
 - e. the Long Lease rent;
 - f. the IBMF dues and special assessments; and
 - g. other costs of the Foundation reasonably expected.
5. **Revised Budget** – The Board may adopt a revised Annual Budget and the dues may be raised or lowered, and a special assessment adopted, accordingly by resolution of the Board if and when the Board deems such adjustment and adoption advisable and responsible, having regard to the financial stability, solvency and obligations of the Foundation towards the Owners and third parties, and the durability of the IG Common Areas. The Board shall give prompt notice of the adoption of a revised Annual Budget and of the resulting dues and special assessments, which shall become payable as determined by the Board.
6. **Special Assessments**
- a. Special assessments may be levied without consulting the Owners when the Board deems such assessments advisable and responsible, in its sole discretion,
 - i. to fund deficits of prior years,
 - ii. to counter the consequences of unforeseen circumstances or drastic events for the obligations of the Foundation towards the Owners, the IBMF or the durability of the IG Common Areas, or
 - iii. to fund special expenses as provided for in the General Bylaws.
 - b. In all other circumstances, and except for the Developer Board, special assessments may be levied by the Board with the prior approval of Owners, by a majority vote cast in a meeting where the majority of the Owners is present or duly represented.
 - c. Special assessments shall be due and payable as determined by the Board.
7. **No Annual Budget** – If, for any reason, the Board is unable to adopt an Annual Budget, the Owners shall pay, during the fiscal year for which an Annual Budget is not adopted, the same dues as were payable during the immediately preceding fiscal year for which an Annual Budget was adopted, until an Annual Budget is adopted. The Owners shall also continue to pay the special assessments that were payable at the end of that preceding year until the expense that is financed through this assessment is paid, or as instructed by the Board. During the Development Period, the Board may elect to not adopt an Annual Budget and to adopt a periodic special assessment for the actual expenses incurred by the Foundation in the preceding quarter, which shall be payable as determined by the Board. Any such assessment shall be accompanied with a report on or an overview of the expenses incurred in the quarter.
8. **Allocation of Expenses**
- a. **Owner's IGF Share** – An Owner's Share of the Foundation dues and special assessments shall be calculated by taking the Owner's combined surface area of the interior space of his Villa or ROA Unit and lot (together the "**Owner's IGF Area**") and dividing it by the total of all Owners' IGF Area of all Serviced Villas or ROA Units, where the Owner's IGF Area is equal to:
 - i. in respect of a Serviced Villa, the sum of:
 - the square meter area of the Owner's Villa Lot and
 - the square meter area of all the interior floors of the Owner's Villa; such area to include the thickness of the exterior walls and exclude outdoor (covered or uncovered) patios, balconies and terraces;

- ii. in respect of a Serviced ROA Unit, the sum of:
 - the square meter area of the Condominium Lot upon which the Condominium Building is erected, multiplied by the Owners' percentage of the dues and assessments such Owner is responsible for according to the homeowners' association of the Condominium Building in which his ROA Unit is located; and
 - the ROA Unit Area;

For the sake of clarity, for as long as there shall be no Serviced Villa on a Villa Lot, such Villa Lot shall not be included in the calculation of the Owner's IGF Area, and the respective Owner's IGF Share shall be equal to zero. In respect of ROA Units, only Serviced ROA Units and their aforementioned share of the Condominium Lot shall be included in the calculation of the Owner's IGF Area.

- b. **Owner's Share of Long Lease Rent** – An Owner's share of the Foundation's share of the Long Lease rent shall be calculated by taking the surface area of the Owner's lot (the "**Owner's Lease Area**") and dividing it by the total of all Owners' Lease Areas, where the surface area of each Owner's Lease Area is equal to:

- i. in respect of Villa Lots, the square meter area of the Owner's Villa Lot; and
- ii. in respect of a Condominium Lot, the square meter area of the Condominium Lot upon which the Condominium Building is erected, multiplied by the Owners' percentage of the dues and assessments such Owner is responsible for according to the homeowners' association of the Condominium Building in which his ROA Unit is located.

The Long Lease Rent levied against the Foundation by the IBMF shall be based on the complete land area of Indigo Green, including the IG Common Areas. For the sake of clarity, this rent shall be allocated only among all Owners of Residential Lots, including the Developer for the Residential Lots which it may own.

- c. **Owner's Share of IBMF Dues and Special Assessments** – An Owner's Share of the IBMF dues and special assessments shall be calculated by taking the Owner's combined surface area of the interior space of his Villa or ROA Unit and lot (together the "**Owner's IBMF Area**") and dividing it by the total of all Owners' IBMF Areas, where the Owner's IBMF Area is equal to:

- i. in respect of a Villa Lot, the sum of:
 - the square meter area of the Owner's Villa Lot; and
 - In the event there is a Serviced Villa on such Villa Lot, the square meter area of all the interior floors of the Owner's Villa; such area to include the thickness of the exterior walls and exclude outdoor (covered or uncovered) patios, balconies and terraces; and
- ii. in respect of a Serviced ROA Unit, the sum of:
 - the square meter area of the Condominium Lot, multiplied by the Owners' percentage of the dues and assessments such Owner is responsible for according to the homeowners' association of the Condominium Building in which his ROA Unit is located; and
 - the ROA Unit Area.

The dues and special assessments levied against the Foundation by the IBMF shall be based on the complete land area of Indigo Green, including the IG Common Areas, and Villas and ROA Units built, as determined by the IBMF. For the sake of clarity, such dues and special assessments shall be allocated only among all Owners of all Residential Lots, Serviced Villas and Serviced ROA Units, including the Developer for the Residential Lots, Serviced Villas and Serviced ROA Units which it may own.

- d. **Expenses Incurred for Private Areas** – To the extent that expenses are incurred for Private Areas,
- i. General Services provided for in paragraph 6 of article 24 shall be at the expense of the Foundation pursuant to paragraph 8.a. of this Article and collected from Owners through the Foundation dues, and
 - ii. Elective Services and Mandatory Services provided for in paragraph 6 of article 24 shall be paid by the Foundation and reimbursed upon demand to the Foundation by the Owners for the benefit of whom the services were provided, as allocated in a fair and equitable manner at the Board's reasonable discretion.
- e. **IBMF Dues** – Notwithstanding the method for calculating the Owner's IBMF Share, should the IBMF levy dues and special assessments on a basis other than surface areas, and to the extent that the resulting dues and special assessments can be equitably allocated to some or all Owners in a similar manner, the Board may elect to allocate such expenses to such Owners to best reflect the basis applied by the IBMF.
- f. **Proration of Dues and Expenses** – In relation to this article, in the event a Villa or ROA Unit is not Serviced on the first day of a calendar quarter, dues and expenses relating to such Villa or ROA Unit shall be calculated as if it was not Serviced for the entire quarter.
9. **No Reimbursement** – Upon any conveyance of title to his Residence to a third party, including a co-Owner, either through voluntary or forced sale, will or otherwise, the Owner shall not be entitled to the reimbursement of the dues, special assessments, Surcharges, damages and interest he may have paid to the Foundation hereunder.

ARTICLE 17 – LONG LEASE RENT

1. **Rent** – The Long Lease rent due pursuant to the Bell Deed shall be levied by the Foundation as part of the Foundation dues, which rent the Foundation shall pay to the IBMF, or to the Lessor as per the direction of the IBMF.
2. **Owner's Share of Long Lease Rent** – All Long Lease rent payments applicable to IG Common Areas, such as for the land under the pools, the streets, including the Estate Streets, and the green spaces shall be deemed an expense of the Foundation and as such shall be apportioned to all Owners in accordance with their respective Owner's Share.
3. **Liability** – While the Foundation will collect and pay the Long Lease rent to the IBMF, or to the Lessor as per the direction of the IBMF, the ultimate legal liability for the payment of such rent to the Foundation rests with each Owner personally as part of the Owner's Share of Long Lease Rent.

ARTICLE 18 – DEFAULT

1. **Late Payments** – If Foundation dues, special assessments, Surcharges, damages and interest thereon remain unpaid in whole or in part after having become payable, the Owner may be subject to interest and Surcharges as provided for herein and in the Rules and Regulations.
2. **Suspension** – If Foundation dues, special assessments, Surcharges, damages and interest thereon remain unpaid in whole or in part during one (1) month after having become payable, the Board may suspend the provision of some or all Private Area Services to the defaulting Owner without notice. If Foundation dues special assessments, Surcharges, damages and interest thereon remain unpaid in whole or in part during two (2) months after having become payable, all rights of the defaulting Owner under this Constitution, inclusive of but not limited to:
 - i. the right to vote or approve in writing,

- ii. the right to refunds and
- iii. the right to use the IG2 Common Areas,

may be suspended by the Board until all indebted dues, special assessments, Surcharges, damages and interest have been paid.

Notwithstanding the foregoing, the Owner shall retain the right to access his Villa or ROA Unit.

3. **Legal Proceedings** – The Foundation shall have the right to initiate legal proceedings to recover the payment of any arrears and any other amount that may be due by an Owner hereunder. Such amounts shall include i) any penalties and fines imposed, ii) all judicial and reasonable collection charges, actual legal, consultants, experts and other extra-judicial expenses incurred by the Foundation to secure compliance with a provision of the Constitution, the General Bylaws, the Rules and Regulations and the CBRUP, iii) any interest charged. Article 26 paragraph 2 does not apply in this situation. The reimbursement of the expenses and costs of the Foundation shall be secured by the legal hypothec of the Foundation.

4. **Title Transfer**

- a. **Payment of Arrears** – Prior to transferring his title to his Villa Lot, Villa or ROA Unit, including to a co-Owner, and whether by voluntary sale, will or otherwise, an Owner shall ensure that all his arrears in dues, special assessments, Surcharges, damages and interest and any other sum he may owe to the Foundation have been paid in full.
 - b. **Notice of Sale** – The Owner shall give notice to the Board of a proposed transfer of title and of the name and contact information of the acquirer.
 - c. **Statement of Arrears** – Pursuant to such notice and upon request from the Owner or acquirer, the Board shall, within fourteen (14) days after the receipt of such notice, provide to the acquirer a statement of all such arrears, with a copy to the Owner. In such event, the acquirer shall be jointly and severally liable with the Owner to the Foundation for the full payment of all such arrears if he has failed to ensure that all such arrears are paid to the Foundation prior to the recording of the deed of conveyance in the Public Registers.
 - d. **Unsettled Claims** – In addition to the amounts indicated in the statement of arrears provided for in paragraph c above, the Board shall indicate in such statement the existence of yet to be quantified unsettled claims of the Foundation against the Owner. In such event, if the transfer of title to the acquirer is recorded before the payment of such unsettled claims by the Owner, the acquirer shall become personally liable to the Foundation for such payment.
 - e. **Absence of Notice** – In the event that the Owner fails to give notice to the Board as set out in paragraph b above, the acquirer shall be jointly and severally liable to the Foundation with and to the same extent as the Owner.
 - f. **Other Transfer** – All persons and entities acquiring title to a Villa Lot, Villa or ROA Unit, including from a co-Owner, through any operation, including without limitation a donation, an exchange, inheritance, distribution of trust property or a forced sale, shall be required to request the same statement of arrears and shall be jointly and severally liable to the Foundation with and to the same extent as the Owner.
5. **Acquiring Title** – The Foundation shall have the right to acquire title to a Villa or ROA Unit by public auction through the execution of a lien or attachment. The Foundation shall then have authority to rent or sell the Villa Lot, Villa or ROA Unit as it sees fit and keep the proceeds thereof. In such event, the Foundation shall not be counted for the purposes of quorum and may not vote at meetings of Owners. The Villa Lot, Villa or ROA Unit so acquired shall not form part of the IG Common Areas.

6. **Surcharges** – Arrears in dues and special assessments shall be subject to administrative charges and interest, as may be provided for in the Rules and Regulations. If Foundation dues or a special assessment remain unpaid, in whole or in part, after the amount has become due and payable for a delay as provided for in the Rules and Regulations:
 - a. an administrative charge shall be added to the indebted quarterly Foundation dues and assessments in arrears, together with an interest charge at the rate set by the Board from time to time for late payments; and
 - b. the Board may apply any refunds due to the defaulting Owner to the payment of such arrears.
7. **Partial Payments** – In the event an Owner remits less than the full payment that is due, the amount received shall be applied in the following order to:
 - a. Any collection costs outstanding;
 - b. Any Surcharges outstanding;
 - c. Any interest outstanding; and then to
 - d. Any non-recurring contributions, dues, special assessments and damages outstanding, applying the payment to the oldest debt.

ARTICLE 19 – FINANCIAL YEAR, REPORTS AND BUDGET

1. **Fiscal Year** – The fiscal year of the Foundation coincides with the calendar year. Per the end of each fiscal year the books of the Foundation shall be closed.
2. **Annual Meeting** – Except for the Developer Board, each year the Board shall report on the activities and its administration of the Foundation at the Annual Meeting.
3. **Financial Statements** – The Treasurer shall see to it that the Financial Statements are compiled by a reputable accounting office so that the statements be i) approved by the Board and ii) thereafter sent to the Owners with the notice of Annual Meeting in compliance with the General Bylaws.
4. **Budget Approval** – Except for the Developer Board, each year the Board shall hold a meeting as soon as possible after the Annual Meeting just held in which the Board shall approve the Annual Budget for the coming fiscal year, by resolution.
5. **Books and Records** – All financial books, records and reports shall remain the property of the Foundation and shall be kept by the Board for a period of at least ten (10) years at the location in Sint Maarten designated by the Board for that purpose.

Section V – OPERATIONS

ARTICLE 20 – RULES AND REGULATIONS

1. **Amendments** – The Board may adopt and amend Rules and Regulations as it may see fit, subject to approval by the Owners as provided for in the General Bylaws.
2. **Developer** – The Developer Board may, during the Development Period, adopt and amend Rules and Regulations as it may see fit, without approval of Owners.
3. **Object** – The object of the Rules and Regulations is to:
 - a. provide for the security and proper and peaceful use and enjoyment of Residences, ROA Units and the IG Common Areas by all Owners, as well as
 - b. the perpetuation of the established standards set by the Developer and
 - c. the preservations of all Owners' property values in Indigo Green.

To reach such objectives it is necessary to set limits and conditions to the use and enjoyment of the Property for the benefit of all. These may include, without limitation, conditions that Owners must

comply with in respect of the rental of their Residence or ROA Unit, considering that Indigo Green is a residential development and not a resort. As examples, such limits may apply to the parking of vehicles on IG Common Areas, access controls, or the volume at which electronic equipment may be used on IG Common Areas, including the Pool Unit.

4. **Meeting** – Except for the Developer Board, the Board shall convene a meeting of Owners to submit such amendment for approval by the Owners, subject to the following process:
 - a. such meeting shall be held no sooner than three (3) weeks from the date a notice of meeting and the Board resolution amending the Rules and Regulations are sent to the Owners.
 - b. the Owners shall consider such resolution at a meeting in which:
 - i. approval of the amending resolution may be voted upon in whole or in parts;
 - ii. parts of the amending resolution may be amended during the meeting and voted upon repeatedly;
 - iii. a final vote on the whole resolution, as amended or not, shall take place in case parts thereof were voted upon.
 - c. If the amending resolution submitted to final vote is approved by a majority vote of the Owners where the majority of all the Owners is present or represented, the approval shall be considered a final approval.
 - d. If the amending resolution submitted to final vote is approved by a majority vote of the Owners where less than the majority of all the Owners is present or represented, the approval shall be considered an interim approval. In such a case, the Board resolution shall be submitted for final approval by the Owners at their next Annual Meeting.
5. **Enforcement** – An amendment with interim approval shall become in force upon such approval and shall cease to be in force upon denial of final approval by the Owners at the Annual Meeting. The Board shall give notice of interim approval, final approval or denial of final approval to the Owners as soon as practically feasible. Denial of approval shall not affect the validity of the acts of the Board made in compliance with an amendment since it has received interim approval.
6. **Suspension** – In case of breach of one or more of the Rules and Regulations by an Owner or his Permittee, the Board:
 - a. may, after having issued two (2) written warnings and given written notice of its decision to the Owner, suspend certain rights of the Owner under this Constitution, inclusive of but not limited to:
 - i. the right to vote and approve;
 - ii. the right to any refunds; and
 - iii. the right for the Owner and his Permittees to use certain IG Common Areas;
 - b. may impose fines according to a schedule of fines and procedures of assessment as may be set by the Board from time to time; and
 - c. without limiting the foregoing, shall have the right but not the obligation to cure such breach at the expense of the Owner.

The Board may not suspend the right of access of an Owner to his Residence. The above remedies shall not be mutually exclusive and may be imposed independently or collectively in an effort to cure the breach.
7. **Consolidation** – In the event the Rules and Regulations have been amended or are laid down in more than one resolution, the Board shall provide all Owners with a consolidation of all Rules and Regulations then in effect.

ARTICLE 21 – COMMON INTERESTS

The Foundation may join an association of or otherwise partner with generally similar foundations or owners associations for the creation, administration and upkeep of services for their common benefit and interests.

ARTICLE 22 – MANAGEMENT

Except for the Developer Board, the Board shall have the obligation to hire a Manager for the administration and accounting of the Foundation, as well as the day-to-day management of its facilities and services or parts thereof. Such Manager or any principal or employee of the Manager shall not be allowed to serve as a Board or Committee member or Officer of the Foundation, within the meaning of the Bylaws. To avoid any conflict of interest, the Manager shall not be an Owner, the spouse or a member of the family or household of an Owner, or a partner, employee or employer of an Owner, an Owner's spouse or a member of the family or household of an Owner.

ARTICLE 23 – EASEMENTS, RIGHTS & RESTRICTIONS

By separate notarial deed, which shall be recorded in the Public Registers of Sint Maarten, certain easements, rights and restrictions shall be created and granted to and for the benefit of the immovable properties (to be) owned by the Foundation over and burdening all Residential Lots and Non-Residential Lots as servient properties.

ARTICLE 24 – MAINTENANCE & REPAIRS

1. **Operations** – Unless decided otherwise by a majority vote of all Owners, the Foundation shall operate and maintain in good repair and replace as necessary, and may improve, the IG Maintenance and IG Systems described below:
 - a. the wastewater sewerage and treatment system, serving more than one Villa or ROA Unit, to the exclusion of any plumbing located within a Condominium Building,
 - b. the street lighting system and equipment,
 - c. the recreational and social equipment, furniture and facilities,
 - d. the security equipment, furniture and facilities,
 - e. the streets, walkways, green areas and retaining walls,
 - f. the landscaping located within the IG Common Areas and the Landscaping Area,
 - g. the irrigation systems for the Landscaping Area, and
 - h. other systems as the Board may decide to have provided for by the Foundation.The Foundation shall, at its cost, maintain, repair and replace the Office Unit, the Pool Unit, any Storage Unit and Garage Unit that it may own, and the improvements to the Estate Street, if any.
2. **Standards** – The standards of service of the IG Maintenance and the IG Systems shall be maintained to the levels set by the Developer Board, unless amended later by a majority vote of all Owners.
3. **Inclusion** – The provision of the IG Maintenance and IG Systems shall include and extend to payment for all electricity, water and consumables consumed.
4. **Utilities** – Without limiting the generality of the foregoing, the Foundation shall, upon reception of title to the IG Common Areas, assume all of the Developer's and its affiliates' responsibility to any utility company of any kind with respect to the IG Systems and shall thereafter indemnify and hold the Developer and its affiliates harmless with respect thereto.

5. **Water**

- a. In the course of performing IG Maintenance on the IG Common Areas, the Foundation may use water available to it freely or at its expense from various sources, save as provided in paragraph 5.b ii) below. For the purposes of this paragraph 5, “**IG Water**” shall refer to either:
- i. water from a public utility that is metered and invoiced to the Foundation;
 - ii. water that is recycled by the IG Systems;
 - iii. cistern water to which the Foundation has been given access;
 - iv. water from its own other sources (such as a well), or
 - v. water from any other source that the Foundation has been granted permission to use.

Provided it is practical and cost efficient (taking into account the cost of water and labor) when using IG Water, the Foundation shall try to prioritize the source of water that is the closest available or that has the lowest cost to the Foundation.

- b. When providing services in all other areas, the Foundation shall source the water as follows:
- i. **Villa’s Landscaped Private Area** – In regard to providing services on a Villa’s Landscaped Private Area, the Foundation shall prioritize the use of that Villa’s cistern water (when it contains water), over water from the Owner’s utility meter.
 - ii. **IG Common Areas in front of a Villa** – In regard to providing services on IG Common Areas immediately in front of a Villa, the Foundation shall prioritize the use of that Villa’s cistern water (when made available to the Foundation by the Owner), over other sources of IG Water.
 - iii. **Condominium Lot’s Landscaped Private Area** – In regard to providing services on a Condominium Lot’s common areas, the Foundation shall prioritize the use of the Condominium Building’s cistern water (when made available by the board of that Condominium Building), over water from the Condominium Building’s utility meter.
 - iv. **Condominium Unit’s Garden Area** – In regard to providing services on a Garden Area of a Condominium Unit, the Foundation shall prioritize the use of cistern water from the Condominium Building, over water from the Condominium Unit’s utility meter.

The use of such water by the Foundation shall not be monitored or logged, nor shall any compensation therefor be made to any Owner or homeowners’ association.

6. **Private Area Services** – The Foundation may provide the following general, elective and mandatory services in Private Areas,

- i. landscaping maintenance, irrigation, pest control and services typically provided for landscaped land;
- ii. maintenance and repair of driveways, walkways, pergolas, roofs, garages or any other improvements located within or upon any Private Area, and
- iii. other remedial services, maintenance and repair work as provided in paragraph 10 of this Article.

Subject to the nature and cost of such services, the Foundation may provide such services in the following manner:

- a. **General Services** – To the extent that such services are provided on all Private Areas as necessary at the Board’s reasonable discretion, or to the extent that it is impractical and not reasonably manageable to allocate such services individually or otherwise, the Foundation may provide such services. The Board may allocate the expenses for such services as a general expense of the Foundation to be collected pursuant to paragraph 8 d. i) of Article 16.
- b. **Elective Services** – To the extent that such services are provided to the Owners who elected to receive such services, the Foundation may provide such services on a periodic or ad hoc

basis. The expense of such services, including an administration fee, will be an expense of the Owner for the benefit of whom the services were provided. To the extent that such services are performed in combination with other services, the expenses for such services shall be allocated to the Owners in question in a fair and equitable manner at the Board's reasonable discretion and agreed to by the Owners in question.

- c. **Mandatory Services** – To the extent that such services are provided on one or more specific Private Areas because they are judged necessary or useful by the Board in order to preserve the value, integrity, esthetics, safety, security, convenience or efficiency of Indigo Green or of certain Residences, such services shall be provided on a mandatory basis. The Board may allocate the expenses for such services as an expense of the Owner in question.
- 7. **Payment for Private Area Services** – To the extent that the Board agrees to provide services to Private Areas at the request of an Owner, such as landscaping services, such services shall be invoiced to the Owner based on the Board's estimate of the cost of providing such services and the Owner will pay such cost as determined by the Board. However, services provided annually may be paid for by the Owner in equal, quarterly payments concomitant with the payment of the quarterly dues.
- 8. **IG Systems** – The IG Systems shall be separately metered. The IG Systems are owned, operated and maintained by the Foundation.
- 9. **Cost of Work** – Subject to paragraph 6 above, all work pursuant to this article and all expenses incurred hereunder shall be paid for by the Foundation through dues and special assessments, as the case may be. No Owner may waive or otherwise escape liability for dues and special assessments by non-use of any of all the IG Maintenance or IG Systems or abandonment of the right to use the IG Maintenance or IG Systems.
- 10. **Good Condition** – The Owners shall maintain their Villa or ROA Unit and keep them in a good state of repair and sanitary condition in accordance with the standards that may be set out by the Developer Board, as same may be later amended by a majority vote of all Owners.
- 11. **Failure** – The failure of an Owner to so maintain and repair his Villa or ROA Unit shall authorize the Board to perform such maintenance and repair provided that such default i) represents an unacceptable risk to the Foundation or other Owners, ii) may have a negative impact on the integrity, esthetics, safety, security or efficiency of Indigo Green, or iii) reflects negatively on the image and reputation of Indigo Green, and that the Board shall have given the Owner notice of default and adequate time to maintain and repair his Villa or ROA Unit. All costs incurred by the Foundation in relation to such default and maintenance and repair shall be payable by the Owner upon demand. Failure by the Owner to reimburse such costs to the Foundation within one (1) month after demand shall authorize the Foundation to take protective measures and measures of enforcement on the title of the Owner to his Villa or ROA Unit. Article 18 shall apply to this situation.
- 12. **Unknown** – If, i) for any reason, the Board is unable to determine the identity or contact information of an Owner or his Authorized Representative and, as a result, to enter into communication with the Owner or the Authorized Representative, and ii) his Villa or ROA Unit reasonably appears to the Board to be abandoned, the Foundation shall have the right of entry onto the Villa or ROA Unit to evaluate its condition and to take all conservatory measures that it shall then see fit to limit or prevent its deterioration or damage to an adjoining Villa or ROA Unit or the IG Common Areas. However, the Board shall have no obligation to take such measures, save to protect the IG Common Areas. All costs incurred by the Foundation in attempting to enter into communication with the Owner or his Authorized Representative and taking conservatory measures

shall be payable by the Owner upon demand and may be secured by the registration of a lien on the title to the Residence. Article 18 shall apply.

ARTICLE 25 – AMENDMENT, DISSOLUTION AND MERGER

1. **By Resolution** – Subject to the General Bylaws and to the approval of Owners referred to in paragraph 2 below, the Board may amend this Constitution by resolution.
2. **Owners' Approval** – Except for the Developer Board, the Board may only pass such a resolution after having received the approval of the Owners in a meeting in which:
 - a. at least two thirds (2/3) of the Owners were present or represented, and
 - b. that the resolution was approved by a two-third (2/3) majority of votes cast.
3. **Notarial Deed** – Any amendment of this Constitution shall be laid down in a notarial deed. The Board shall deposit an authentic copy of such deed, as well as the consolidated text of the Constitution as amended at the office of the Chamber of Commerce and Industry, Sint Maarten and any other public office deemed necessary by the Board or required by law. Further, the Board shall provide all Owners with the consolidated text of the amended Constitution.
4. **Dissolution** – No resolution may be passed by the Board to dissolve the Foundation without the required Owners' approval. Any resolution of the Board to amend this paragraph shall be null and void. The foregoing notwithstanding, the Board may put forth a proposal to the Owners to dissolve the Foundation, which proposal can only be approved by a ninety percent (90%) majority vote of all Owners. This paragraph does not apply during the Development Period.
5. **Merger** – The Foundation may merge with the IG2 Foundation (“IG2”), provided all of the following conditions are met:
 - a. The merger is legally possible;
 - b. The owners of each foundation vote to approve the merger, whereby the Owners of IG2 shall become participants and owners in the Foundation and the IG2's assets, including the IG2 Systems and IG2 Common Areas, rights, liabilities and obligations, shall become those of the Foundation, and
 - c. If the vote of the Owners on the merger is held during the Development Period, such decision is approved by the Developer.

ARTICLE 26 – DISPUTES AND INTERPRETATION

1. **Applicable Law** – This Constitution, the General Bylaws, the Rules and Regulations and the CBRUP, and any non-contractual right and obligation arising out of or in connection with any of the foregoing, whether contractual or non-contractual, are governed by the law of Sint Maarten.
2. **Exclusivity** – Sole and exclusive jurisdiction and competence concerning all disputes between Owners, between the Foundation and Owners, and between the Developer and any number of Owners, related in any manner to the founding, validity, existence or termination of the Foundation, or to their respective contractual and non-contractual rights and obligations pursuant to this Constitution, the General Bylaws, the Rules and Regulations and the CBRUP, is vested in the Court of First Instance of Sint Maarten, or in the Small Claims Court when the matter in dispute falls within its competence.
3. **Amicably** – If a dispute or disagreement arises between Owners or between one or more Owners and the Foundation or Board members, in relation with their respective contractual and non-contractual rights and obligations pursuant to this Constitution, the General Bylaws, the Rules and Regulations and the CBRUP, the parties shall first attempt to settle their dispute or disagreement

amicably and, failing to so reach a settlement, shall give serious consideration to mediation through an independent third party.

4. **Confidentiality** – Unless agreed otherwise in writing, all information and communications related to a mediation shall be kept confidential, save when disclosure is required by law or to enforce the settlement that the parties may have reached. Evidence otherwise admissible in legal proceedings shall not be admissible for the reason that it was made during the mediation. Settlements of disputes and disagreements should be in writing.
5. **Minimum Delay** – In all cases, no legal proceedings may be instituted by an Owner against the Foundation, a Board member or an officer before the expiry of a delay of three (3) months after his claim has been made in writing and in detail to the Board, except for extraordinary recourses such as an injunction.
6. **Certain Disputes** – Any dispute arising between the Foundation and the Developer or the Builder related to the IG Common Areas will be dealt with by the Foundation, to the exclusion of Owners. Any dispute arising between an Owner and the Developer or the Builder related to his Villa or ROA Unit shall be dealt with directly by the Owner, to the exclusion of the Foundation. The Foundation is prohibited from initiating or voluntarily intervening in any legal action against the Developer and the Builder for disputes, collective or individual, that Owners may have with the Developer or the Builder.
7. **No Claim** – An Authorized Representative shall have no personal claim against the Foundation, the Board members and the officers of the Foundation arising out of his status of representative of an Owner. Personal claims of an Authorized Representative against the Foundation, Board members and officers shall be made in the name of the Owner.
8. **Precedence** – The provisions of this Constitution and the General Bylaws, the Rules and Regulations and the CBRUP shall take precedence over any legislative or regulatory text, save the declaration of the IBMF, provided their provisions are not contrary to mandatory law or public order. In the event that any competent governmental authority enacts laws or regulations that are in conflict or incompatible with any provision of the Constitution and the General Bylaws, the Rules and Regulations and the CBRUP, such laws or regulations shall prevail, but only to the most limited extent as legally allowed while the other provisions shall remain in full force.
9. **Duplication** – When a matter is dealt with in more than one of the Constitution, the General Bylaws, the Rules and Regulations and the CBRUP, or when there is or appears to be uncertainty, incompatibility or conflict among provisions of these documents, the most stringent provision shall apply.
10. **Severability** – Each of the provisions of this Constitution, the General Bylaws, the Rules and Regulations and the CBRUP shall be presumed independent and divisible, and the invalidity or unenforceability in whole or in part of one or more of the provisions hereof shall not be deemed to affect, in any way whatsoever, the validity, enforceability or effect of the remainder hereof; in such event, all the other provisions hereof shall continue to apply and have full effect as if this invalid provision was not included herein.
11. **2139** – As the Foundation may be in existence until the year two thousand one hundred thirty-nine (2139), the founder recognizes that the legal framework, economic conditions, technological possibilities, social fabric and earth environment in which the Foundation and the successive Owners will live over time will change and, in certain cases, in ways beyond what may be imagined as at the date of drafting of the Constitution. As a result, it is reasonable to allow for cautious evolution in the interpretation and application of this Constitution over time, as same may be warranted by the then current framework,

conditions, possibilities, fabric and environment. However, such evolution shall not be a license for the then Board to amend the Constitution without seeking the participation and consent of the Owners, when such participation and consent would then appear to a reasonable and prudent person to be better suited to the purpose and long-term stability and survival of the Foundation, the durability of the Residences and the IG Common Areas, and the collective benefit of the Owners.

ARTICLE 27 – FINAL PROVISION

1. This Constitution shall apply to all Owners and Permittees.
2. This Constitution shall be considered to be an integral part of any transfer of title (or part thereof) to a Residence to any third party, related or not, including any lease or any division of such title by an estate, by mere reference to the Constitution. Failure to make such reference shall not prevent the Constitution from forming part of a transfer.

Appendix 1

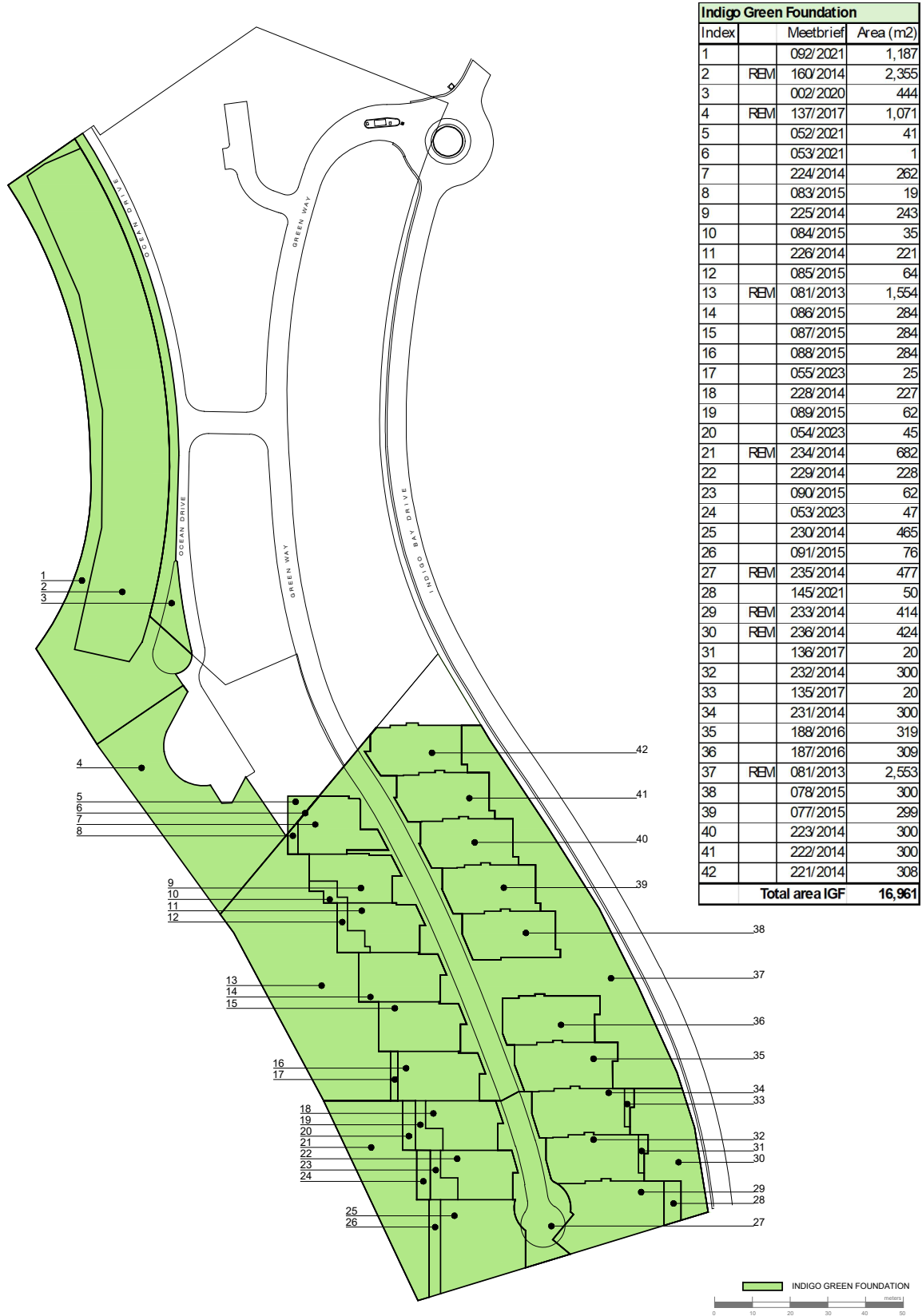


TABLE OF CONTENTS

ARTICLE 1 – NAME, SEAT AND DURATION	3
ARTICLE 2 – DEFINITIONS.....	3
Section I – GENERAL.....	7
ARTICLE 3 – PURPOSE OF THE FOUNDATION	7
ARTICLE 4 – MANDATE OF THE FOUNDATION	7
ARTICLE 5 – CAPITAL AND OTHER FINANCIAL CONSIDERATIONS	8
Section II – THE BOARD OF THE FOUNDATION.....	9
ARTICLE 6 – THE BOARD	9
ARTICLE 7 – BOARD MEMBERS COMPENSATION	10
ARTICLE 8 – REPRESENTATION	10
ARTICLE 9 – MEETINGS OF THE BOARD AND GENERAL BYLAWS.....	11
ARTICLE 10 – RESOLUTIONS OF THE BOARD.....	11
Section III – OWNERS	12
ARTICLE 11 – OWNERS/PARTICIPANTS	12
ARTICLE 12 – COMMITTEES	14
ARTICLE 13 – MEETINGS OF OWNERS.....	14
ARTICLE 14 – CONSULTATION OF OWNERS.....	16
Section IV – FINANCIAL.....	16
ARTICLE 15 – INITIAL CAPITAL CONTRIBUTIONS	16
ARTICLE 16 – DUES AND ASSESSMENTS	16
ARTICLE 17 – LONG LEASE RENT	19
ARTICLE 18 – DEFAULT	19
ARTICLE 19 – FINANCIAL YEAR, REPORTS AND BUDGET	21
Section V – OPERATIONS	21
ARTICLE 20 – RULES AND REGULATIONS	21
ARTICLE 21 – COMMON INTERESTS.....	23
ARTICLE 22 – MANAGEMENT.....	23
ARTICLE 23 – EASEMENTS, RIGHTS & RESTRICTIONS	23
ARTICLE 24 – MAINTENANCE & REPAIRS	23
ARTICLE 25 – AMENDMENT, DISSOLUTION AND MERGER	26
ARTICLE 26 – DISPUTES AND INTERPRETATION	26
ARTICLE 27 – FINAL PROVISION	28
Appendix 1	29