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No. 21 of 2008.

*St Kitts Peninsula Resort District
(Planned Community) Act, 2008.*

Saint Christopher
and Nevis.

In assent,

CUTHBERT M SEBASTIAN

Governor-General.

11th July, 2008.

SAINT CHRISTOPHER AND NEVIS

No. 21 of 2008

PART I PRELIMINARY

AN ACT to allow and facilitate the creation, development, and operation of one or more planned communities in the St Kitts Peninsula Resort District and to provide for related matters.

[Published 11th July 2008, Extra-Ordinary Gazette No. 31 of 2008.]

BE IT ENACTED by the Queen's Most Excellent Majesty by and with the advice and consent of the National Assembly of Saint Christopher and Nevis, and by the authority of the same as follows:

1. This Act may be cited as the St. Kitts Peninsula Resort District (Planned Community) Act, 2008, and shall come into operation on a day to be appointed by the Minister by notice published in the *Official Gazette*.

Short title and
commencement.

2. (1) In this Act unless the context otherwise requires

Interpretation.

“allocated interests” means the common expense liability and voting rights, which are allocated to each lot in the planned community or community corporation;

“board” means the body, which is designated in a declaration to act on behalf of the community corporation;

“by-law” means a by-law or by-laws of a community corporation;

“common elements” means any real estate within the planned community which is owned or leased by the community corporation, other than a lot;

“common expenses” means expenditures incurred by or financial liabilities of the community corporation for the benefit of the planned community, together with any allocations to reserves;

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“common expense liability” means the liability for common expenses allocated to each lot as permitted by this Act, the declaration or otherwise by law;

“compulsory acquisition” means any acquisition by the Government under the Land Acquisition Act or any other enactment,

“community” means a planned community in the St. Kitts Peninsula Resort District created pursuant to section 5;

“community corporation” means the entity designated in the declaration to govern and administer the affairs of the planned community and lot owners pursuant to this Act;

“condominium” means any real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions and registered under the Condominium Act, 1976;

“cooperative” means any real estate that is owned by a corporation, trust, trustee, or partnership, where the governing instruments of that organisation provide that each of the organisation’s members, partners, stockholders, or beneficiaries is entitled to exclusive occupancy of a designated portion of that real estate;

“declarant” means the owner or owners in fee simple of the real estate described in the description at the time of the registration of a declaration, and includes any successor or assignee of such owner or owners but does not include a bona fide purchaser of a lot or any successor or assignee of such purchaser unless the declarant designates such purchaser as a successor or assignee of the declarant at the time of the purchase;

“declaration” means any instruments, however denominated, that create the community and any amendments to those instruments which may, in addition to the declaration creating the community, also include one or more additional declarations that designate a particular portion of the community and contain provisions pertaining to such portion;

“description” means a description of the real estate which is encumbered by a declaration pursuant to this Act;

“lessee” means any person entitled to present possession of a leased lot as a lessee, sub lessee, or assignee;

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“limited common element” means a portion of the common elements allocated by the declaration or by operation of law for the exclusive use of one or more but fewer than all of the lots;

“lot” means a physical portion of the community designated for separate ownership or occupancy by a lot owner, including any condominium units included in the property;

“lot owner” means a declarant or other person who owns a lot or leases a lot under a lease for a term greater than twenty (20) years excluding renewal options, for residential or commercial purposes, but does not include a person having an interest in a lot solely as security for an obligation;

“master community corporation” means a community corporation described in section 18;

“Minister” means the Minister responsible for Special Resort Development;

“person” means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity;

“planned community” means real estate

- (a) comprised of or to be developed into a minimum of five parcels of land; and
- (b) with respect to which any person, by virtue of that person’s ownership of a lot, is expressly obligated by a declaration to pay real property taxes, insurance premiums, or other expenses to maintain, operate, improve, or benefit other lots or other real estate described in the declaration;

“property” means the real estate described in a description;

“purchaser” means any person, other than a declarant or a person in the business of selling real estate for the purchaser’s own account, who by means of a voluntary transfer acquires a legal or equitable interest in a lot, other than a leasehold interest with a remaining term, excluding renewal options, of less than twenty years, or as security for an obligation;

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“real estate” means any leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements and interests which by custom, usage, or law pass with a conveyance of land though not described in the contract of sale or instrument of conveyance and includes parcels with or without upper or lower boundaries, and spaces that may be filled with air or water;

“reasonable attorneys’ fees” means attorneys’ fees reasonably incurred without regard to any limitations on attorneys’ fees which otherwise may be allowed by law;

“Registrar” means the Registrar of Titles for the Saint Christopher Circuit and “Registry” shall be construed accordingly;

“special declarant rights” means rights reserved for the benefit of the declarant including any right to

- (a) complete improvements indicated on any plan or document filed with the declaration;
- (b) exercise any development right;
- (c) maintain a sales office, management office, and any signs advertising the planned community and models;
- (d) use easements or other access rights through the common elements for the purpose of making improvements within the planned community or within real estate which may be added to the planned community;
- (e) make the planned community part of a larger planned community or group of planned communities;
- (f) make the planned community subject to a master community corporation;
- (g) appoint or remove any officer or board member of the community corporation or any master community corporation during any period of declarant control, or
- (h) to remove any withdrawable real estate from the planned community;

“St. Kitts Peninsula Resort District” means the St. Kitts Peninsula Resort District designated under the Saint Christopher and Nevis (Designation of St. Kitts

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Peninsula Resort District) Order, SRO No. 29 of 2007 and any other real estate on the Southeast Peninsula of Saint Christopher whose owner consents to the inclusion of such real estate in the St. Kitts Peninsula Resort District;

“withdrawable real estate” means real estate which the declaration provides may be withdrawn from the planned community by the declarant or specified lot owners.

(2) For purposes of this Act “ownership of a lot” means ownership as registered proprietor or lessee under a lease for a term greater than twenty years, excluding renewal options.

3. (1) Except as otherwise provided in this section, this Act applies to any planned community created in the St. Kitts Peninsula Resort District after the coming into operation of this Act.

Application.

(2) Only land under the operation of the Title by Registration Act, chapter 279 may be submitted to a declaration pursuant to the provisions of this Act and where the land described in the declaration is not entirely under the Title by Registration Act, Chapter 279, the declaration shall not be registered.

(3) The transfer of any portion of a planned community by memorandum of transfer following the creation of the planned community, shall not invalidate the declaration or the planned community in whole or as applied to such portion of the planned community.

4. (1) The objectives of this Act are the following:

Objectives of the Act.

- (a) to allow and facilitate the creation, development, and operation of one or more planned communities in the St. Kitts Peninsula Resort District;
- (b) to provide a mechanism for the registration of title to a parcel of land intended for subdivision and development in a planned community and to provide for positive covenants to run with the title to the land;
- (c) to provide for the regulation of the rights and obligations of the owners of property within a planned community,
- (d) to provide for the creation of a community corporation which will be responsible for the development and management of the amenities within and the infrastructure of the planned community; and
- (e) to facilitate the establishment and enforcement of the obligations of a land owner within the planned

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community to contribute to the common expenses of the planned community.

(2) The provisions of this Act shall not be construed as derogating from any obligation or requirement for the community corporation or any individual lot owner to comply with any planning, health or any other enactment governing the subdivision, development, management and use of the property.

**PART II
CREATION, ALTERATION, AND TERMINATION OF PLANNED
COMMUNITY**

Creation and registration of the planned community.

5. (1) A declaration creating the community or any portion thereof shall be executed in the same manner as a memorandum of transfer under the Title By Registration Act, Chapter 279 and shall be registered in the Registry.

(2) The declarations, descriptions, by-laws, notices of termination, amendments of any of the foregoing instruments, and other instruments respecting land governed by this Act shall be registered and recorded in accordance with this Act and any regulations made hereunder.

(3) Upon the registration of the declaration and description, the property described in the description shall be governed by this Act.

(4) All property which is subjected to the declaration under this Act shall be owned, transferred and used subject to all of the provisions of the declaration, which shall run with the title to such property.

(5) The enforcement of any affirmative or negative covenants shall be subject to the provisions of the declaration which shall be binding upon all persons having any right, title, or interest in any portion of such property, and any of their heirs, successors, successors-in-title, and assigns.

(6) A declaration may provide that any person, by virtue of that person's ownership of a lot in the planned community is expressly obligated to pay real property taxes, insurance premiums, or other expenses to maintain, operate, improve, or benefit other lots or other real estate described in the declaration.

(7) For the purposes of this section, "ownership of a lot" means ownership as registered proprietor or lessee under a lease for a term greater than twenty (20) years excluding renewal options.

Contents of the declaration.

6. The declaration shall not be registered unless it is executed by the owner or owners of the land and interests appurtenant to the land described in the description and it contains:

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- (a) a statement of intention that the real estate described in the description be governed by this Act;
- (b) the consent in the prescribed form, of every person having a registered charge, mortgage, lien, or other claim securing the payment of money against the real estate described in the description;
- (c) the name of one or more community corporation for the planned community; and
- (d) an address for service within Saint Christopher and Nevis

7. (1) In addition to the matters set out in section 6, the declaration may also contain:

Additional contents of the declaration.

- (a) a specification of the common expenses;
- (b) a specification of any parts of the common elements that are to be used by the lot owners of one or more designated lots and not by all the lot owners;
- (c) provisions respecting the occupation and use of the lots and common elements;
- (d) provisions restricting gifts, leases and sales of the lots and common elements;
- (e) a statement specifying the number, qualification, nomination, election, term of office, compensation and removal of members of a board, and provisions respecting the meetings, quorum, functions and officers of the board;
- (f) a statement specifying the duties of the community corporation consistent with its objects;
- (g) provisions regulating the assessment and collection of the contributions towards the common expenses;
- (h) a specification of the majority required to make substantial changes in the common elements and the assets of the community corporation;
- (i) a specification of any provision requiring the community corporation to purchase the lots of any dissenters after a substantial addition, alteration or improvement to or revocation of the common elements has been made or after the assets of the community corporation have substantially changed;
- (j) a specification of any allocation of the obligations to repair and to maintain the lots and common elements;

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- (k) a specification of the requirements for a sale of part of the common elements;
- (l) a specification of the requirements for the termination of the declaration;
- (m) a reservation of easements, access rights or other rights by the declarant for the development, marketing, and operation of the planned community over the lots and common elements for the benefit of the declarant, the community corporation, and their respective successors and assigns and a statement of any restrictive covenants, easements, and other reserved rights binding on a lot owner and running with the land, and provisions for adding, removing or varying such covenants, easements, and rights;
- (n) a reservation of special declarant rights;
- (o) a reservation of declarant approval and control rights over the imposition or registration of future covenants, obligations, and instruments against the land; and
- (p) any other matters concerning the property and not expressly prohibited by this Act or any other enactment.

(2) The declaration may provide that if any substantial addition, alteration, or improvement to or renovation of the common property is made, or if any substantial change in the assets of the corporation is made, the corporation must, on demand of any owner who dissented purchase his lot and common lot.

Contents of the description.

8. The description registered pursuant to section 6 shall contain:

- (a) a written description of the land and a plan of survey showing the perimeter of the horizontal surface of the land; and
- (b) a description of any interests appurtenant to the land that are included in the property.

Construction and validity of the declaration and by-laws.

9. (1) The provisions of the declaration and by-laws are severable.

(2) A rule against perpetuities may not be applied to defeat any provision of the declaration, by-laws, rules, or regulations adopted pursuant to section 16(1)(a).

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(3) In the event of a conflict between the provisions of the declaration and the by-laws, the declaration shall prevail except to the extent that the declaration is inconsistent with this Act.

(4) The title to a lot and common elements shall not be rendered invalid or otherwise affected by reason of an insubstantial failure of the declaration to comply with this Act.

10. (1) Except in cases of amendments that may be executed by a declarant or declarant's designee under the terms of the declaration in accordance with subsection (6) or (7) of this section, or by certain lot owners under section 11(2), the declaration may be amended only

Amendment of
the declaration.

- (a) by the affirmative vote or written agreement of at least sixty seven percent of lot owners;
- (b) any larger majority as the declaration may specify; or
- (c) by the declarant if necessary for the exercise of any development right.

(2) The declaration may require declarant consent for an amendment of the declaration.

(3) No action to challenge the validity of an amendment adopted pursuant to this section may be brought more than one year after the amendment is recorded.

(4) Subject to subsections (5), (6) and (7) when the declaration is amended, the corporation shall register a copy of the amendment executed by all the owners and all persons having registered encumbrances against the lots and common interest and until the copy is registered the amendment shall have no effect.

(5) Notwithstanding subsections (1), (2) and (3), the Corporation may by resolution of the Board change its address for service and the change shall not have effect until a notice therein in the prescribed form is registered.

(6) During any period of declarant control, the declarant may reserve the right in the declaration to make amendments to the declaration without the consent of the community corporation or any other lot owners, or their mortgagees or chargees except that such amendment shall not adversely affect title to any lot unless the owner thereof consents thereto in writing.

(7) The declarant may reserve the right after the declarant control period to make amendments to the declaration without the consent of the community corporation or any other lot owners, or their mortgagees or chargees

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- (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, judicial determination, or agreement;
- (b) to cure any ambiguity or to correct or supplement any provisions that are defective, missing or inconsistent with any other provisions thereof;
- (c) to grant, create, modify, terminate, or otherwise amend easements over the common elements or any portion thereof, or any adjacent land, in order to provide access or utility services or other necessary services or rights;
- (d) to modify the description or boundaries of any lot owned by declarant or any consenting owner; and
- (e) to correct any typographical, scrivener's, or surveyors errors or any error of like nature.

Termination of
the planned
community.

11. (1) Except in the case of taking of all the lots by compulsory acquisition, the planned community may be only terminated by agreement of

- (a) at least eighty percent of the lot owners, or
- (b) any larger percentage or additional requirements, including declarant consent, as the declaration may specify except that the declaration may specify a smaller percentage only if all of the lots in the planned community are restricted exclusively to nonresidential uses.

(2) An agreement to terminate shall be evidenced by the execution of a termination agreement, or ratifications thereof, in the same manner as provided under Part X of the Title by Registration Act, Chapter 279, by the requisite number of lot owners.

(3) The termination agreement shall specify a date after which the agreement will be void unless it is recorded before that date.

(4) The termination agreement and all ratifications thereof shall be recorded in the Registry of Saint Christopher and shall be effective only upon registration.

(5) The termination agreement may provide for the sale of the common elements, but may not require that the lots be sold following termination, unless the declaration as originally recorded provided otherwise or unless all the lot owners consent to the sale.

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(6) Where, pursuant to the agreement, any real estate in the planned community is to be sold following termination, the termination agreement shall set forth the minimum terms of the sale.

(7) Until the sale has been concluded and the proceeds thereof distributed, the community corporation shall continue in existence with all the powers it had before termination.

(8) Any proceeds of the sale shall be distributed to lot owners and lienholders as their interests may appear, as provided in the termination agreement.

(9) If the real estate constituting the planned community is not to be sold following termination, the title to the common elements shall vest in the lot owners upon termination as tenants in common in proportion to their respective interests as provided in the termination agreement.

(10) Following the termination of the planned community, the proceeds of any sale of real estate, together with the assets of the community corporation, shall be held by the community corporation as trustee for lot owners and holders of liens on the lots as their interests may appear.

(11) All other creditors of the community corporation are to be treated as if they had perfected liens on the common elements immediately before termination.

(12) Where the termination agreement does not provide for the distribution of sales proceeds pursuant to subsection (8) of this section or the vesting of title pursuant to subsection (9) of this section, the sale proceeds shall be distributed and title shall vest in accordance with each lot owner's allocated share of common expense liability.

(13) The enforcement of a lien or encumbrance against the common elements shall not terminate the planned community, and the enforcement of a lien or encumbrance against a portion of the common elements other than withdrawable real estate shall not withdraw that portion from the planned community.

(14) The enforcement of a lien or encumbrance against withdrawable real estate does not of itself withdraw that real estate from the planned community, except that the person taking title thereto has the right to require from the community corporation, upon request, an amendment excluding the real estate from the planned community.

12. (1) Where a lot is acquired by compulsory acquisition, or if part of a lot is acquired by compulsory acquisition leaving the lot owner with a remnant which may not practically or lawfully be used for any

Compulsory
acquisition.

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purpose permitted by the declaration, the lot owner shall be compensated for his lot and its interest in the common elements.

(2) Upon acquisition, unless the decree otherwise provides, the lot's allocated interests are automatically reallocated to the remaining lots in proportion to the respective allocated interests of those lots before the taking, exclusive of the lot taken.

(3) Where a portion of a lot is acquired, unless the decree otherwise provides,

- (a) that lot's allocated interests are reduced in proportion to the reduction in the size of the lot, or on any other basis specified in the declaration; and
- (b) the portion of the allocated interests divested from the partially acquired lot are automatically reallocated to that lot and the remaining lots in proportion to the respective allocated interests of those lots before the taking, with the partially acquired lot participating in the reallocation on the basis of its reduced allocated interests.

(4) Where there is any reallocation under subsection (1), (2), or (3) of this section, the community corporation shall promptly prepare, execute, and record an amendment to the declaration reflecting the reallocations and any remnant of a lot remaining after part of a lot is taken under this subsection is thereafter a common element.

(5) Where part of the common elements is acquired by compulsory acquisition, the portion of the award attributable to the common elements taken shall be paid to the community corporation.

(6) Unless the declaration provides otherwise, any portion of the award attributable to the acquisition of a limited common element shall be apportioned among the lot owners of the lots to which that limited common element was allocated at the time of acquisition based on their allocated interest in the common elements before the taking.

(7) Notice of the acquisition by compulsory acquisition shall be published in the *Official Gazette*.

(8) The provisions of the Land Acquisition Act Chapter 273 shall apply in all cases of compulsory acquisition under this Act.

Obligations of lot owners.

13. (1) Every lot owner shall be bound by and shall comply with this Act, the declaration and the by-laws.

(2) The community corporation and any person having an encumbrance against any lot or common element shall have a right to the

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compliance by the lot owners with this Act, the declaration and the by-laws.

(3) The lot owners shall contribute towards the common expenses in the proportions specified in the declaration and the assessment and collection of contributions towards the common expenses may be regulated by the declaration or the by-laws.

(4) The obligation of a lot owner to contribute towards the common expenses shall not be avoided by waiver of the right to use the common elements or by abandonment.

(5) Where a lot owner defaults in his obligation to contribute to the community corporation towards the common expenses in the proportion allocated to his lot, the community corporation shall have a lien for the unpaid amount against that lot and its appurtenant interests pursuant to section 28.

14. (1) A planned community, by agreement of the lot owners as provided in subsection (3) of this section, may be merged or consolidated with any two or more planned communities into a single planned community.

Merger or
consolidation of
planned
communities.

(2) Where there is a merger or consolidation of planned communities, unless the agreement otherwise provides, the resultant planned community shall be

- (a) the legal successor of all of the previously existing planned communities; and
- (b) the operations and activities of all community corporations of the previously existing planned communities shall be merged or consolidated into a *single community corporation which shall hold all powers, rights, obligations, assets, and liabilities of all the previously existing community corporations.*

(3) An agreement of two or more planned communities to merge or consolidate pursuant to this section shall

- (a) be evidenced by an agreement prepared, executed, recorded, and certified by the president of the community corporation of each of the previously existing planned communities following approval by lot owners of lots to which are allocated the percentage of votes in each planned community required to terminate that planned community; and
- (b) any such agreement shall be recorded in the Registry of every Circuit in which a portion of the planned

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community is located and is not effective until registered.

(4) Every merger or consolidation agreement shall provide for the reallocation of the allocated interests in the new planned community among the lots of the resultant planned community.

**PART III
COMMUNITY CORPORATION**

Organisation of
community
corporation.

15. (1) The registration of the declaration shall create one or more community corporations, as specified in the declaration, without share capital.

(2) The Registrar may refuse to register the declaration where the name to be registered is not distinguishable from the name of an existing corporation or is otherwise misleading or undesirable.

(3) The membership and control of the community corporation shall be set forth in the declaration.

(4) The Companies Act, 1996 shall not apply to a community corporation created under this Act.

Powers of
community
corporation.

16. (1) Unless the by-laws of the community corporation or the declaration expressly provides to the contrary, every community corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its affairs including the power to

- (a) adopt and amend by-laws and rules and regulations for the planned community;
- (b) adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from lot owners;
- (c) levy, impose, and collect assessments or fees for the establishment and funding of a charitable, philanthropic, or social welfare organization that will generate, develop, strengthen, promote, conserve, protect or preserve the social, physical, cultural, recreational, educational, or natural environment of Saint Christopher and Nevis;
- (d) hire and discharge managing agents and other employees, agents, and independent contractors;
- (e) institute, defend, or intervene in litigation or administrative proceedings on matters affecting the planned community;

- (f) make contracts and incur liabilities;
- (g) regulate the use, maintenance, repair, replacement, and modification of common elements;
- (h) cause additional improvements to be made as a part of the common elements;
- (i) acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, except that common elements may only be conveyed or subjected to a security interest pursuant to section 25;
- (j) grant easements, leases, licenses, concessions, access rights, and other necessary rights through or over the common elements;
- (k) impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements other than the limited common elements and for services provided to lot owners;
- (l) impose reasonable charges for late payment of assessments and, after notice and an opportunity to be heard, suspend privileges or services provided by the community corporation, except rights of access to lots, during any period that assessments or other amounts due and owing to the community corporation remain unpaid for a period of thirty days or longer, and levy reasonable charges and assessments based on costs and expenses caused by or arising out of violations of the declaration, by-laws, and rules and regulations of the community corporation;
- (m) after notice and an opportunity to be heard, impose reasonable assessments or suspend privileges or services provided by the community corporation, except rights of access to lots, for reasonable periods for violations of the declaration, by-laws, and rules and regulations of the community corporation;
- (n) impose reasonable charges in connection with the preparation and registration of documents, including amendments to the declaration or statements of unpaid assessments;
- (o) provide for the indemnification of and maintain liability insurance for its officers, board, directors, employees, and agents;

- (p) assign its right to future income, including the right to receive common expense assessments; and
- (q) exercise any other powers necessary and proper for the governance and operation of the community corporation.

(2) The declaration and by-laws may distinguish between commercial and residential lot owners and provide for different rights and obligations for each class and may establish committees to administer their respective rights and obligations.

By-laws.

17. (1) The by-laws of the community corporation shall provide for

- (a) the number of the members of the board and the titles of the officers of the community corporation;
- (b) the election of the board of officers of the community corporation;
- (c) the qualification, powers, and duties, terms of office and manner of electing and removing board members and officers and filling vacancies;
- (d) which if any of its powers the board or officers may delegate to other person or to a managing agent;
- (e) which of its officers may prepare, execute, certify and record amendments to the declaration on behalf of the community corporation; and
- (f) the method of amending the by-laws.

(2) The by-laws may provide for any other matters the community corporation deems necessary and appropriate.

Master community corporation.

18. If the declaration for the planned community provides that any of the powers described in section 16 are to be exercised by or may be delegated to a corporate or other legal entity which exercises those or other powers on behalf of one or more other planned communities or for the benefit of the lot owners of one or more other planned communities, all the provisions of this Act applicable to community corporations shall apply to any such corporate or other legal entity.

Liability of community corporation.

19. The lot owners, whether or not they are members of the community corporation, and the directors and officers of the community corporation are not, personally liable for the acts, debts, liabilities, or obligations of the community corporation.

Board members and officers of the community corporation.

20. (1) The declaration or by-laws shall provide for the membership and otherwise of the board members and officers for the community corporation.

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(2) Subject to subsection (3), the board elected at a time when the declarant owns a majority of the units shall, not more than twenty one days after the declarant ceases to be the registered owner of a majority of the lots, call a meeting of the members of the corporation to elect a new board of directors and such meeting shall be held within twenty one days after the calling of the meeting.

(3) The declaration may provide for a period of declarant control of the community corporation for a period of time set forth in the declaration, during which period a declarant, or persons designated by the declarant, may appoint and remove the officers and members of the board.

(4) The declarant shall include the duration of the declarant control period provided for pursuant to subsection (3) in all of the purchase agreements for the sale of its lots in the planned community.

**PART IV
MANAGEMENT OF THE PLANNED COMMUNITY**

21. (1) Except as otherwise provided in the declaration, section 26(7) or section 22(1), the community corporation shall be responsible for

Maintenance of the planned community.

- (a) causing the common elements to be maintained, repaired, and replaced when necessary; and
- (b) assessing the lot owners as necessary to recover the costs of such maintenance, repair, or replacement except that the costs of maintenance, repair, or replacement of a limited common element shall be assessed as provided in section 27(5)(a).

(2) Except as otherwise provided in the declaration, each lot owner shall be responsible for the maintenance and repair of his lot and any improvements thereon.

(3) Each lot owner shall afford to the community corporation and when necessary to another lot owner access through the lot owner's lot reasonably necessary for any such maintenance, repair, or replacement activity.

22. (1) Where a lot owner is legally responsible for damage inflicted on any common element, the community corporation may direct such lot owner to repair such damage, or the community corporation may itself cause the repairs to be made and recover damages from the responsible lot owner.

Responsibility and assessments for damages.

(2) Where damage is inflicted on any lot by an agent of the community corporation in the scope of the agent's activities as such agent, the community corporation is liable to repair such damage or to

reimburse the lot owner for the cost of repairing such damages and the community corporation shall also be liable for any losses to the lot owner.

(3) When the claim under subsection (1) or (2) of this section is less than or equal to the jurisdictional amount established for claims or actions in the Magistrate's Court, any aggrieved party may request that a hearing be held before an arbitrator in accordance with the Arbitration Act Chapter 6, to determine if a lot owner is responsible for damages to any common element or the community corporation is responsible for damages to any lot.

(4) The liabilities of lot owners determined by arbitration or as otherwise provided by law shall be assessments secured by lien under section 28.

(5) The liabilities of the community corporation determined by arbitration or as otherwise provided by law may be set off by the lot owner against sums owing to the community corporation and if so offset, shall reduce the amount of any lien of the community corporation against the lot at issue.

(6) Unless it expressly contracts to do so, the community corporation shall not be liable for maintenance, repair, and all other expenses in connection with any real estate which has not been incorporated into the planned community.

Tort and contract liability.

23. (1) Neither the community corporation nor any lot owner, except the declarant, is liable for the declarant's torts in connection with any part of the planned community which that declarant has the responsibility to maintain.

(2) An action alleging a wrong done by the community corporation shall be brought against the community corporation and not against a lot owner.

Transfer of special declarant rights.

24. Except for the transfer of declarant rights pursuant to the enforcement of a mortgage, no special declarant right may be transferred except by an instrument evidencing the transfer recorded in the Registry and the instrument is not effective unless executed by the transferee.

Conveyance or encumbrance of common elements.

25. (1) Any portion of the common elements may be conveyed or subjected to a security interest by the community corporation if approved in accordance with the declaration.

(2) The proceeds of the sale or financing of a common element other than a limited common element shall be an asset of the community corporation.

(3) The community corporation, on behalf of the lot owners

- (a) may contract to convey common elements or subject them to a security interest, but the contract is not enforceable against the community corporation until approved pursuant to subsection (1) of this section; and
- (b) thereafter, the community corporation shall have all the powers necessary and appropriate to effect the conveyance or encumbrance, free and clear of any interest of any lot owner or the community corporation in or to the common element conveyed or encumbered, including the power to execute deeds or other instruments.

(4) Any purported conveyance, encumbrance, or other voluntary transfer of common elements, unless made pursuant to this section is void.

(5) A conveyance or encumbrance of common elements pursuant to this section may not deprive any lot of its rights of access and support.

26. (1) Commencing not later than the date of the first conveyance of a lot to a person other than a declarant, the community corporation shall maintain, to the extent reasonably available at a commercially reasonable cost

Insurance.

- (a) property insurance on the common elements insuring against all risks of direct physical loss commonly insured against and the total amount of insurance after application of any deductibles shall be not less than eighty percent of the replacement cost of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies; and
- (b) liability insurance in reasonable amounts, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the common elements.

(2) The declaration may require the community corporation to carry any other insurance, and in any event, the community corporation may carry any other insurance that it deems appropriate to protect the community corporation or the lot owners.

(3) Any loss covered by the property policy under subsection (1)(a) of this section shall be adjusted with the community corporation, but the insurance proceeds for that loss are payable to any insurance trustee designated for that purpose, or otherwise to the community corporation, and not to any mortgagee.

(4) The insurance trustee or the community corporation shall hold any insurance proceeds in trust for lot owners and lienholders as their interests may appear and subject to the provisions of subsections (7) and (9) of this section, the proceeds shall be disbursed first for the repair or restoration of the damaged property.

(5) The lot owners and lien holders shall not be entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored and any reserves deemed necessary by the community corporation have been established, or the planned community is terminated.

(6) An insurance policy issued to the community corporation shall not prevent a lot owner from obtaining insurance for the lot owner's own benefit.

(7) Any portion of the planned community for which insurance is required under subsection (1)(a) of this section which is damaged or destroyed shall be repaired or replaced promptly by the community corporation unless

- (a) the planned community is terminated;
- (b) repair or replacement would be illegal under any local health or safety statute or ordinance; or
- (c) the lot owners decide not to rebuild by an eighty percent vote, including one hundred percent approval of owners assigned to the limited common elements not to be rebuilt.

(8) The cost of repair or replacement in excess of insurance proceeds and reserves shall be a common expense.

(9) Where any portion of the planned community is not repaired or replaced,

- (a) the insurance proceeds attributable to the damaged common elements shall be used to restore the damaged area to a condition compatible with the remainder of the planned community;
- (b) the insurance proceeds attributable to limited common elements which are not rebuilt shall be distributed to the owners of the lots to which those

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limited common elements were allocated, or to lien holders, as their interests may appear; and

- (c) the remainder of the proceeds shall be distributed to all the lot owners or lienholders, as their interests may appear, in proportion to the common expense liabilities of all the lots.

(10) Notwithstanding the provisions of this subsection, section 11 governs the distribution of insurance proceeds where the planned community is terminated.

27. (1) Except as otherwise provided in the declaration, the declarant shall pay all common expenses until the community corporation makes a common expense assessment.

Assessments for
common
expenses.

(2) After any assessment has been made by the community corporation, assessments thereafter shall be made at least annually.

(3) Except for assessments under subsections (5), (6), and (7) of this section, all common expenses shall be assessed against all the lots in accordance with the allocations set forth in the declaration.

(4) Any past due common expense assessment or installment thereof bears interest at the rate established by the community corporation not exceeding eighteen percent per year.

(5) To the extent required by the declaration

- (a) any common expense associated with the maintenance, repair, or replacement of a limited common element shall be assessed against the lots to which that limited common element is assigned, equally, or in any other proportion that the declaration provides;
- (b) any common expense or portion thereof benefiting fewer than all of the lots shall be assessed exclusively against the lots benefited; and
- (c) the costs of insurance shall be assessed in proportion to risk and the costs of utilities shall be assessed in proportion to usage.

(6) Any assessments to pay a judgment against the community corporation may be made only against the lots in the planned community at the time the judgment was entered, in proportion to their common expense liabilities.

(7) Where any common expense is caused by the negligence or misconduct of any lot owner or occupant, or by the failure of any lot owner or occupant to comply with the requirements of the declaration,

the community corporation may assess that expense exclusively against that lot owner or occupant's lot.

(8) Where common expense liabilities are reallocated, common expense assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated common expense liabilities.

Lien for
assessments.

28. (1) Any assessment levied against a lot that remains unpaid for a period of at least 30 days shall constitute a lien on that lot when a claim of lien is registered in the Registry of the Circuit in which the lot is located in the manner provided herein.

(2) Unless the declaration otherwise provides, any fees, charges, late charges, and other charges imposed pursuant to sections 16, 22 and 27 may be enforceable as assessments under this section.

(3) The community corporation may enforce the claim of lien in like manner as a mortgage on real estate.

(4) Where there is any conflict between this Act and the Title by Registration Act Chapter 297, the Title by Registration Act Chapter 297 shall prevail.

(5) Any lien pursuant to this section shall have priority to any other liens and encumbrances on a lot except

- (a) any liens and encumbrances, including a mortgage on the lot, that is recorded before the filing of the declaration; and
- (b) liens for real estate rates and other governmental assessments and charges against the lot.

(6) This section does not prohibit any other action brought to recover the sums for which subsection (1) of this section creates a lien.

(7) A judgment, decree, or order in any action brought under this section shall include costs and reasonable attorneys' fees for the prevailing party.

(8) The collection of debt and enforcement of a lien remain uncontested as long as the lot owner does not dispute, contest, or raise any objection, defense, set off, or counterclaim as to the amount or validity of the debt and lien asserted or the community corporation's right to collect the debt and enforce the lien as provided in this section.

(9) A lot owner shall not be required to pay attorneys' fees and court costs until the lot owner is notified in writing of the community corporation's intent to seek payment of attorneys' fees and court costs.

(10) A notice pursuant to subsection (9)

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- (a) shall be sent by overnight delivery or by post to the property address and, if different, to the mailing address for the lot owner in the community corporation's records;
- (b) shall set out the outstanding balance due as of the date of the notice and state that the lot owner has 15 days from the mailing of the notice to pay the outstanding balance without the attorneys' fees and court costs and where the lot owner pays the outstanding balance within this period, then the lot owner shall have no obligation to pay attorneys' fees and court costs;
- (c) shall also inform the lot owner of the opportunity to contact a representative of the community corporation to discuss a payment schedule for the outstanding balance as provided in subsection 10 of this section and shall provide the name and telephone number of the representative.

(11) The community corporation, in its own discretion, may agree to allow payment of an outstanding balance in installments except that, neither the community corporation nor the lot owner is obligated to offer or accept any proposed installment schedule.

(12) Reasonable administrative fees and costs for accepting and processing installments may be added to the outstanding balance and included in an installment payment schedule and reasonable attorneys' fees may be added to the outstanding balance and included in an installment schedule only after the lot owner has been given notice as required in subsection 9 of this section.

(13) A claim of lien shall set forth the name and address of the community corporation, the name of the record owner of the lot at the time the claim of lien is filed, a description of the lot, and the amount of the lien claimed.

**PART V
MISCELLANEOUS**

29. (1) With respect to a third person dealing with the community corporation in the community corporation's capacity as a trustee

- (a) under section 11 following termination; or
- (b) under section 26 for insurance proceeds;

the existence of trust powers and their proper exercise by the community corporation may be assumed without inquiry.

Community
corporation as
trustee.

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(2) A third person

- (a) is not bound to inquire whether the community corporation has power to act as a trustee or is properly exercising trust powers;
- (b) without actual knowledge that the community corporation is exceeding or improperly exercising its powers, is fully protected in dealing with the community corporation as if it possessed and properly exercised the powers it purports to exercise; and

(3) is not bound to assure the proper application of trust assets paid or delivered to the community corporation in its capacity as trustee.

Declaration
limits on
attorneys' fees.

30. Except as provided in section 28, in an action to enforce provisions of the declaration, by-laws, or duly adopted rules or regulations, the court may award costs to the prevailing party.

Voting by
mortgagees.

31. Where a mortgage or charge of a lot contains a provision that authorizes the mortgagee or chargee to exercise the right of the lot owner to vote or to consent, the mortgagee or chargee may exercise the right, and, where two or more such mortgages or charges contain such a provision, the right may be exercised by the mortgagee or chargee who has priority.

Performance of
duties.

32. (1) Where a duty imposed by this Act, the declaration or the by-laws is not performed, the community corporation, any lot owner, or any person having an encumbrance against a lot may apply to the High Court for an order directing the performance of the duty.

(2) The High Court may by order direct performance of the duty, and may include in the order any provisions that the Court considers appropriate in the circumstances.

(3) The lessee of a lot shall be subject to the duties imposed by this Act, the declaration and the by-laws, on a lot owner, except those duties respecting common expenses, and this section shall apply in the same manner as to a lot owner, and where the lessee is in contravention of an order under this section, the Court may terminate the lease.

(4) Nothing in this section shall restrict the grant of any remedies otherwise available for failure to perform any duty imposed by this Act.

Condominiums
in the planned
community.

33. (1) A condominium is not in and of itself a planned community, but real estate comprising of or to be developed into a condominium may be part of a planned community.

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(2) Where a condominium comprises a portion of the property, the owners of the units, as defined in the Condominium Act, 1976 shall be both “owners” for purposes of the Condominium Act, 1976 and “lot owners” for purposes of this Act and shall be subject to both the declaration creating the condominium and registered under the Condominium Act, 1976 and the declaration creating the planned community and registered under this Act.

(3) Obligations imposed on lot owners pursuant to this Act or a declaration registered under this Act shall be direct obligations of such condominium owners.

34. (1) The Minister may make regulations generally for the proper carrying out of the purposes and provisions of this Act and in particular may make Regulations

Regulations.

- (a) as to the manner and form of registering the planned community;
- (b) providing for the amendment of the registered planned community plans;
- (c) prescribing the manner of registering transfers and leases of common property;
- (d) providing for the insurance of planned community lots;
- (e) providing for the voting rights of mortgagees of lots;
- (f) prescribing the fees to be paid for anything required or permitted to be done under the Act;
- (g) prescribing any other matter or anything which may be or is required by this Act to be prescribed.

(2) All regulations made pursuant to this Act shall be subject to the negative resolution of the National Assembly.

CURTIS A. MARTIN
Speaker

Passed by the National Assembly this 18th day of June, 2008.

JOSÉ LLOYD
Clerk of the National Assembly