

ARTICLE
5
POWERS OF THE MHCS D, LIENS AND
RULES

Section 5.01. **MHCS D Exercise of Powers.** The MHCS D may exercise the powers provided by this Article, and any other powers provided by this Declaration, either directly through the Board of Directors of the MHCS D, through an officer of the MHCS D, or through one or more persons designated by the Board of Directors of the MHCS D.

Section 5.02. **Discipline.** The MHCS D may impose monetary penalties and fines and take other actions for the failure of any Owner or Occupant to comply with the governing documents. The MHCS D may also impose a charge against any Lot and against the Owner of any Lot, as provided by Section 5.04. Monetary penalties, fines and other charges that can be made by the MHCS D, together with interest, late charges, bad check charges, costs and attorneys' fees authorized by this Declaration, may be charged against an Owner or Occupant ("Assessments"). Assessments shall be due and payable when levied or in installments as specified by the MHCS D. Assessments are levied when Notice of the imposition of the Assessment is made to the person so assessed. The MHCS D shall provide for reasonable notice and an opportunity to be heard before a decision to impose a monetary penalty is reached, and shall otherwise conform to Section 7341 of the California Corporations Code, as it may hereafter be amended, repealed or renumbered, relating to the termination of membership in a non-profit mutual benefit corporation ("Fair Process Requirements"). No hearing must be held to impose interest, late charges and bad check charges.

Section 5.03. **Remedial Assessment.** The MHCS D may levy an Assessment against any Lot or Unit, the Owner or Occupant of which has, by negligent or tortious acts or omissions, or by acts or omissions in violation of this Declaration, made necessary any expenditure of money by the MHCS D ("Remedial Assessment"). Such assessment shall be in an amount necessary to reimburse the MHCS D for all reasonable costs, including attorneys' fees, regardless of whether legal action is brought, incurred in bringing the Owner or Occupant and the Owner's or Occupant's Lot into compliance with this Declaration, or in obtaining compensation from or other remedies against such Owner or Occupant. The MHCS D shall observe the Fair Process Requirements before imposing a Remedial Assessment.

Section 5.04. **Delinquency and Enforcement of Lien.**

A. **Delinquency.** Any Assessment or monetary penalty that is not paid within fifteen (15) days after it becomes due, is delinquent. The MHCS D may require any Owner who has not paid an Assessment within fifteen (15) days after its due date, to pay a late charge, in an amount which the MHCS D may prescribe by Rule or, in the absence of such a Rule, an amount equal to the greater of ten dollars (\$10.00) or ten percent (10%) of such delinquent Assessment, as reimbursement for the costs of handling the delinquent payment. The late charge shall constitute an additional Assessment which is collectible with the Assessment for

which it was charged. This provision for late charges is designed to encourage the prompt payment of Assessments when due, and to compensate for the cost and expenses caused by the late payment of Assessments. The existence of this provision, whether or not any such late charge is actually paid in a given case: (i) does not excuse the payment of any Assessment or allow an Owner the privilege of extending the due date of any Assessment; (ii) does not constitute an agreement to forbear from the collection of any delinquent Assessment; (iii) does not prevent such delinquency from being treated as a default of the Owner's obligations under this Declaration; and (iv) does not prevent the collection of the delinquent amount in any lawful manner.

B. Interest on Overdue Assessments. If the Assessment, late charges and reasonable costs incurred in the collection of the Assessment or any portion of them is not paid within fifteen (15) days after the due date of the Assessment, the unpaid amount shall bear interest from the due date at a rate of ten percent (10%) per annum or at the option of the MHCS D at a rate to be set by Rule that does not exceed such rate or any higher rate then allowed by law. Such charges shall constitute an additional Assessment collectible together with the assessment for which they were charged.

C. Charges for Checks Returned from Bank. If the MHCS D deposits a check tendered by an Owner for the payment of an Assessment, and the bank holding the account upon which the check is drawn returns the check as unpaid, the MHCS D may require such Owner to pay a "bad check charge" in an amount which the MHCS D may prescribe by Rule as compensation for the additional costs incurred in handling the check. Such a "bad check charge" may include any charges imposed on the MHCS D by a bank for handling or processing the return of the check. Such a bad check charge shall constitute an additional Assessment collectible together with the assessment for which it was charged.

D. Remedies.

1. General. If an Assessment is not paid within fifteen (15) days after its due date, the MHCS D may bring an action to recover a money judgment against each Owner and Occupant personally liable for the Assessment and upon the creation of a lien by the filing of a Notice of Delinquent Assessment, enforce its Assessment lien by judicial or non-judicial foreclosure and sale of the Lot or in any other manner permitted by law. The MHCS D shall provide an itemized statement of the charges owed by the Owner or Occupant, including all charges and information required by applicable law. When an action is brought, there shall be added to the amount of the delinquent Assessment, the late charge and the costs of preparing, filing, and prosecuting the action; any judgment in such action shall include interest, costs, and reasonable attorneys' fees.

2. Foreclosure of Lien. The MHCS D may enforce its lien by nonjudicial foreclosure in accordance with the following provisions.

(a) **Legal Requirements.** Enforcement of the lien may occur after the expiration of thirty (30) days following its Recordation of the Notice of Delinquent

Assessment. Foreclosure of the lien and sale of the Lot shall be conducted in accordance with Sections 2924 and 2924b through 2924h of the California Civil Code, applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner permitted by law. If it is deemed desirable or required by law, the MHCS D may designate a trustee and may substitute trustees for the nonjudicial foreclosure of the assessment lien and authorize such trustee to sell the property that is being foreclosed. The MHCS D, through its duly authorized agents, may bid on the Lot at the foreclosure sale, take a deed in lieu of foreclosure, and may acquire and hold, lease, mortgage, and convey the Lot.

(b) **Priority of Liens.** The liens provided by this Declaration shall have a priority over all other liens except for the lien of taxes and governmental assessments, including the assessments for bonded indebtedness that become a lien subsequent to the date this Declaration encumbers the property being lien ed. The liens provided by this Declaration, however, shall be subordinate to the lien of any Mortgage.

(c) **Release of Lien.** The MHCS D shall Record an appropriate satisfaction and release of the lien of any Notice of Delinquent Assessment, when the default giving rise to such notice is timely cured, and all applicable charges, interest, costs, and fees, including a fee not to exceed the greater of \$15.00 or the actual costs incurred by the MHCS D, as determined by the MHCS D from time to time, for the preparation and Recording of such satisfaction and release, have been paid.

(d) **Writ of Execution.** If the MHCS D Records a Notice of Delinquent Assessment and, before release of the lien, obtains a money judgment against the Owner, then any writ of execution issued upon such judgment shall relate back to the Recording of such notice, and shall have the same priority as such lien.

3. **Cumulative Remedies.** The lien and rights to foreclosure and sale under such lien shall be in addition to, and not in substitution for, all other rights and remedies which the MHCS D may have under this Declaration and by law, including a suit to recover a money judgment.

4. **Obligations Not Enforceable by Non-Judicial Foreclosure.** Notwithstanding any other provision of this Declaration, monetary penalties imposed by the MHCS D as a disciplinary measure for failure of an Owner or Occupant to comply with the Governing Documents, pursuant to the provision of Section 5.02, shall not create a lien enforceable by the non-judicial sale of the Owner's Lot, pursuant to Sections 2924, 2924b, and 2924c of the Civil Code. This Subsection shall not apply to charges imposed by the MHCS D against a Lot which are: (i) late charges and interest for Assessments; or (ii) costs reasonably incurred by the MHCS D in collecting Assessments, including bad check charges and attorneys' fees. This Subsection does not limit in any way other remedies the MHCS D may have to collect monetary penalties in such cases including, but not limited to, obtaining and enforcing a money judgment and judicial foreclosure of a lien.

E. **Waiver of Interest and Charges.** The MHCS D may waive interest, late charges, or both, on any delinquent Assessment if: (i) the MHCS D determines in its sole

discretion, that the amount of the interest or late charge does not warrant the cost of billing it or collecting it or both; or (ii) as part of the settlement of disputed charges or Assessments.

Section 5.05. **Application of Assessments to Mortgagees.** No Mortgagee shall be liable for the payment of Assessments against a Mortgaged Lot except those for the period after such Mortgagee obtains title to the Lot pursuant to its remedies under the Mortgage. Each Mortgagee who obtains title pursuant to its remedies under the Mortgage, and any purchaser at a foreclosure sale conducted pursuant to the provisions of a Mortgage, shall take title to the Lot free and clear of any claims or liens for unpaid assessments and charges which were for the period prior to such acquisition of title, except as otherwise provided by law.

Any such sale

shall extinguish such liens, but the purchaser or Mortgagee who so acquires title shall be liable for all assessments accruing after the date of such sale, which Assessments shall constitute a lien upon the purchased Lot in accordance with this Article. If an Institutional Lender that is a seller of a Lot under an executory installment land sale contract is considered a Mortgagee for purposes of this Declaration, Assessment liens shall be subordinate to the interest of such a seller until the earlier of the following events: (i) the contract is fully performed by the purchaser and

title to the Lot is conveyed to the purchaser; (ii) a seller obtains title to the Lot free of any legal obligation to convey the Lot to the purchaser under the contract; or (iii) the purchaser under the contract abandons possession of the Lot.

Section 5.06. **Limitation on Enforcement Against Mortgagees.** No violation of this Declaration by, or enforcement of this Declaration against, an Owner, shall impair the lien of any Mortgage against the Owner's Lot, but this Declaration shall be enforceable against any Owner whose title is acquired through foreclosure, trustee's sale, voluntary conveyance, or otherwise.

Section 5.07. **Rules.**

A. **Adoption.** The MHCS D may, from time to time and subject to this Declaration, adopt, amend, and repeal rules and regulations ("Rules"). Such Rules may provide for any of the circumstances listed in this Subsection.

1. **Discipline.** The Rules may provide for monetary penalties or other discipline, for failure to comply with the Governing Documents. Rules may provide for the setting of penalties and fines which may be assessed on a daily basis for any continuing violation or infraction and for maximum penalties per day for each infraction of the Governing Documents. In such event, any infraction occurring within one twenty-four (24) hour period is considered a separate infraction. Any discipline imposed under this Subsection shall comply

with the Fair Process Requirements. No forfeiture or abridgment of an Owner's right to the full use and enjoyment of such Owner's Lot is permitted except by judgment of a court of competent jurisdiction, a decision arising out of arbitration, or on account of foreclosure or sale under the provisions of Section 5.04D.

2. **Modification of Use and Architectural Provisions.** The Rules

may provide for the modification of prohibitions and restrictions contained in this Declaration, subject to appropriate terms and conditions, upon a finding by the MHCS D that applicable laws

or other government regulations, including, without limitation, any regulations relating to energy conservation, communications, or environmental protection, require such a modification. The Rules may also provide for the manner of maintenance, care and replacement of entry features, sound walls, street trees and Park Strips and other property controlled or maintained by the MHCS D.

3. Personal Information. The Rules may provide for information to be supplied to the CS D by each Owner with regard to the ownership and transfer of ownership to each Lot, the persons living in each Unit, the vehicles kept in the Community, and other information reasonably necessary or convenient to administer the Community.

4. Construction of Declaration. The Rules may provide for the interpretation of the provisions of this Declaration as they would apply to specific factual situations.

5. Methods of Giving Notice. The Rules may provide for the alternative methods of giving Notice in addition to those provided in Section 9.03, based on technological and delivery method changes.

B. Delivery. The MHCS D shall give Notice to each Owner, and Notice to each Occupant who requested in writing such Notice, of the Rules as they may, from time to time, be adopted, amended, or repealed. The MHCS D shall also post a copy of the Rules, as they may be adopted, amended, or repealed from time to time, at one (1) or more reasonable locations as the MHCS D determines, in its own discretion, will provide exposure to Owners and Occupants. Upon such Notice and posting, the Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration. Any Rule relating to the health or safety of Occupants or other persons coming upon the Community shall take effect upon adoption if the Rule so states.

Section 5.08. **Community Services District; Additional Powers and Duties.** The MHCS D shall have the power but not the duty to do the following.

A. Inspection of Rules by Owners. To maintain, for inspection by any Owner, a copy of the Rules, as they may be adopted, amended, or repealed, certified by any officer of the MHCS D.

B. Take Action on Plans. To approve, conditionally approve, deny, or take any other appropriate action upon such proposals or plans as are submitted to it from time to time, in accordance with this Declaration.

C. Enforcement of Declaration. To enforce the provisions of this Declaration and the Rules and, to enforce this Declaration, the MHCS D may use any of the powers provided this Declaration and by any law. The MHCS D may ask a court of competent

jurisdiction to grant relief and enforce the Declaration without the MHCSD holding a hearing.

D. Other Acts. To perform other acts where the power is given to the MHCSD to perform such acts by the provisions of this Declaration.

E. Removal of Improvements. The MHCSD may remove or cause to be removed or brought into conformity with this Declaration, any Improvement constructed, reconstructed, refinished, modified, or maintained in violation of this Article, or require the Owner to do so. In either case, such Owner shall reimburse the MHCSD for all expenses incurred in connection therewith, including reasonable attorneys' fees and costs, whether or not legal action has been commenced. The MHCSD shall observe the Fair Process Requirements before taking any such action to remove or alter Improvements.

F. Telecommunications and Data Transfer Services. Provide for the construction, installation and maintenance of telecommunications, data transfer, internet and cable television service facilities for the Community and contract with service providers for telecommunications, data transfer, internet and cable television services to be provided to the Community. Each Owner shall be liable for such Owner's assessment for such facilities or services or both as assessed to such Owner by the MHCSD.