

## SAMPLE CC&R PROVISIONS

THESE ARE EXEMPLARS. EACH MANAGER SHOULD REVIEW THE SPECIFICS OF THE GOVERNING DOCUMENTS FOR THE COMMUNITIES HE/SHE MANAGES

### DEVELOPER “RELINQUISHES CONTROL” UPON SALE OF FIRST UNIT

### ESTABLISHING “CLOSE OF ESCROW” DATE FOR LIMITATIONS PERIOD

14.3.3 Association’s Construction Defect Claims. DECLARANT ELECTS TO USE THE ALTERNATE CONTRACTUAL NON-ADVERSARIAL PROCEDURES CONTAINED IN CALIFORNIA CIVIL CODE SECTION 6000, EXCEPT AS OTHERWISE PROVIDED HEREIN, RATHER THAN THE STATUTORY PRE-LITIGATION PROCEDURES OF THE CONSTRUCTION CLAIMS STATUTE, WITH RESPECT TO CLAIMS BY THE ASSOCIATION. Prior to the commencement of any legal proceeding by the Association against Declarant or any Declarant Party based upon a claim for defects in the design or construction of the Association Property, or any improvements thereon, or any other area within the Community which the Association has standing to make a claim for defects in the design or construction thereof, the Association must first comply with all of the applicable requirements of California Civil Code Section 6000, as the same may be amended from time to time, or any successor statute thereto. For purposes of claims under this Section, notice to “builder” under California Civil Code Section 6000 shall mean notice to Declarant’s agent for notice of construction defect claims on file with the Secretary of State, with a copy to Declarant, as provided above. In addition to the requirements of said Section 6000, Declarant shall have an absolute right, but not an obligation, to repair any alleged defect or condition claimed by the Association to be in violation of the standards set forth in the Construction Claims Statute, within a reasonable period of time after completion of the inspection and testing provided for in such Section and prior to submission of builder’s settlement offer under such Section. If the parties to such dispute are unable to resolve their dispute in accordance with the procedures established under California Civil Code Section 6000, as the same may be amended from time to time, or any successor statute, the dispute shall be resolved in accordance with the binding arbitration provisions of Section 14.5 below and the parties to the dispute shall each be responsible for their own attorneys’ fees. The Association shall have the power to initiate claims against a Declarant Party for violations of Construction Claims Statute, as soon as the Association has one (1) Class A Member other than Declarant. Upon the written request of any Class A Member to the Board of Directors, the Board shall establish a committee consisting exclusively of Class A Member(s) other than Declarant to investigate claimed violations of the standards of the Construction

Claims Statute. Upon the committee’s determination that cause exists to initiate a claim, the decision of whether to initiate a claim shall be made by a vote of the Class A Members other than Declarant. A majority of the votes cast shall be deemed to be the decision of the Association, which the Board shall carry out by submitting the necessary claim to Declarant or the appropriate Declarant Party; provided, however, that the vote is either conducted at a properly convened meeting with the requisite quorum in accordance with the provisions of the Bylaws relating to meetings and voting, or the vote was conducted without a meeting in accordance with California Corporations Code Section 7513, as authorized by the Bylaws.

## DEVELOPER OPTS OUT OF SB800

CC&Rs STATE:

12.15 Disputes Involving Declarant. Any disputes, claims, issues or controversies between any Owner and the Declarant or between the Association and Declarant regarding matters that arise from or are in any way related to the Development, the relationship between Owner and Declarant or the relationship between the Association and Declarant, whether contractual, statutory or tort, including, but not limited to, the purchase, sale, condition, design, construction or materials used in construction of any portion of the Development, the agreement between Declarant and an Owner to purchase a Condominium or any related agreement, any Claimed Title 7 violation as defined in the Title 7 Master Declaration and Title 7 Individual Agreement or a deficiency as that term is defined in Section 896 of the California Civil Code shall be resolved in accordance with the Claims Processes and Dispute Resolution Procedures established in the applicable Title 7 Master Declaration and Title 7 Individual Agreement.

TITLE VII MASTER DECLARATION PROVIDES:

5.2 **FORMAL CLAIM PROCESS**: Chapter 4 of Title 7 establishes non-adversarial procedures to address claims for damages arising from or related to Issues. A complete copy of Chapter 4 of Title 7 is attached to this Title 7 Master Declaration as **Exhibit "1d."** California Civil Code Section 914 provides that builders may provide an association, buyers and subsequent owners of record with alternative non-adversarial procedures to address claims for damages arising out of Issues and, accordingly, Declarant has elected to utilize alternative non-adversarial procedures ("**Formal Claim Process**") which are different from and are to be used in lieu of the non-adversarial procedures set forth in Chapter 4 of Title 7. The Formal Claim Process is set forth in **Exhibit "6"** attached hereto. If the Association or an Owner believes that the Customer Service Process will not resolve an Issue to the satisfaction of the Association or the Owner, as the case may be, the Association or the Owner may commence the Formal Claim Process by filing a written Claim with Declarant in accordance with the Formal Claim Process. Any Claim filed shall have the same force and effect as a notice of the commencement of a legal proceeding pursuant to California Civil Code Section 910(a). The Formal Claim Process impacts the legal rights of Owner and the legal rights of the Association. The parties shall cooperate in good faith and shall diligently perform such acts as may be necessary to carry out the purposes of this Section 5.2.

EXHIBIT 6 ADDS:

### **MEDIATION:**

A. Homebuilder's receipt of a proper Notice of Action, the matter shall be submitted to mediation pursuant to the rules of the Judicial Arbitration and Mediation Services ("JAMS"), its successor, or to any other entity offering mediation services agreed to by the parties. The mediation shall be limited to four hours, except as otherwise mutually agreed by the parties, before a nonaffiliated mediator selected and paid for by the Homebuilder. At the Homeowner/Association's sole option, the Homeowner/Association may agree to split the cost of the mediator and if he or she does so, the mediator shall be selected jointly. No person with any financial or personal interest in the mediation's result shall serve as a mediator, except by the written consent of the parties. Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption or bias or prevent a prompt commencement of the mediation process.

B. Prior to the mediation, Homebuilder shall have the right to perform an inspection or testing of each and every Alleged Violation. Homebuilder and Homeowner/Association shall schedule a mutually convenient date and time during normal business hours for the inspection.

DEVELOPER ELECTS DIFFERENT PROCEDURE UNDER CIVIL CODE 1375 (now Section 6000 -CALDERON)

14.3.3 Applicability to California Civil Code § 1375. Any Dispute covered by this Section 14.3 that involves the Project, Association Property, BCA, EUCA, or any other areas of the Project that the Association is required to Maintain, repair or replace, as set forth in this Declaration, and prior to the commencement of any arbitration proceedings as set forth in Subsection 14.3.1, above, the Association shall serve on Declarant a "Notice of Commencement of Legal Proceedings" as set forth in *California Civil Code* § 1375(b), as may be amended from time to time. Except as modified herein (and specifically, Subsection 14.3.4, below, allowing access and repair rights to Declarant) or as may be precluded by *California Civil Code* § 910, *et seq.*, Association and Declarant agree that Disputes within the purview and scope of *California Civil Code* § 1375 between Association and Declarant, the pre-litigation procedures of *California Civil Code* § 1375 shall control prior to the commencement of the arbitration proceedings in this Section 14.3. However, because Declarant has elected to utilize the provisions of the Right to Repair Act, pursuant to *California Civil Code* § 910, *et seq.*, such access and repair protocol shall take precedence and, to the extent allowed by law, be part of and included within the pre-litigation procedures of *California Civil Code* § 1375 to avoid duplication.