

SOLAR ENERGY SYSTEM POLICY

L'ASSOCIATION DES PROPRIETAIRES

I. INTRODUCTION

L'Association Des Proprietaires (“**Association**”) has implemented this Solar Energy System Policy (“**Policy**”) to govern matters involving the application, installation, maintenance, and repair, of solar energy systems (“**Systems**”) on the Association’s common area roof(s) and any exclusive use common area garages or carports affecting the buildings and condominium units (“**Units**”) located throughout the Association’s development. This Policy is intended to be read in conjunction with the Association’s Declaration of Covenants, Conditions and Restrictions (“**Declaration**”); in the event of any conflict between the terms of this Policy and the Declaration, the provision of the Declaration shall prevail.

In adopting this Policy, the Association and its Members acknowledge that any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer of sale of, or any interest in, and any provision of a governing document from effectively prohibiting or restricting the installation of use of a System is prohibited.

II. DEFINITIONS

The following definitions apply to terms utilized in this Policy. They are intended to supplement any additional terms defined elsewhere in this Policy, as well as any terms defined in the Declaration or Architectural Guidelines.

“**Applicant**” shall mean an Owner who submits an application for a proposed System installation in accordance with this Policy and any other requirements contained in the Architectural Guidelines.

“**ARC**” shall mean the Association’s Architectural Committee.

“**Architectural Guidelines**” shall mean and refer to any architectural policies, procedures or rules adopted by the Association in effect at the time of the System Application which regulate the types of improvements that may be installed by Members, in addition to the procedures governing how approval for such improvements may be obtained from the ARC.

“**Agreement**” shall mean and refer to the “Maintenance & Indemnity Agreement for Solar Energy System” that must be executed by the Applicant as a condition of approval for the Applicant’s proposed System.

“**Owner**” shall mean and refer to a record owner of a Unit within the Association’s development.

“**System**” means a “solar energy system” as that term is defined in *Civil Code* § 801.5(a) (i.e., solar panels).

“**System Application**” shall mean an application for a proposed System that contains all information required by this Policy, as well as any other information required by the ARC or other provisions of the Association’s governing documents relative to the proposed System.

III. QUALIFIED APPLICANTS

The right to submit a System Application, and have the same reviewed by the Association and its ARC, shall be reserved exclusively for the Owners who are in “Good Standing” with the Association. “Good Standing” means that the Applicant must not (a) currently have his/her membership privileges suspended, (b) currently be delinquent in the payment of any assessments owed to the Association, or (c) be engaged in any legal dispute with the Association (e.g. open violations of the Governing Documents).

IV. SYSTEM APPLICATION REQUIREMENTS

1. **Approval Requirement.** No System or any components thereof may be installed or placed anywhere within the Association’s development, nor may any portion of Association common area be altered or improved, unless a complete System Application has been first submitted to, and approved in writing by, the ARC.
2. **System Application.** A complete System Application shall include all the following information:
 - **Architectural Application.** A completed Architectural Application, together with all supporting documents and forms as specified in the Architectural Guidelines.
 - **Plans and Specifications.** The details, plans, and specifications for the proposed System as prepared by a California State licensed contractor or its designated, qualified sales representative.
 - **Neighbor Notification Statement.** The Applicant must notify all Owners of a Unit in the building on which the proposed System installation will be located, or all Owners sharing in the use of the garage or carport where the proposed System will be located, of the Applicant’s intent to apply for ARC approval for the proposed System. That notification must be provided in writing and mailed to all Owners required by this paragraph. The Applicant shall, as part of the System Application, include a signed statement verifying that the Applicant has provided such notification (“**Neighbor Notification Statement**”).
 - **Solar Site Survey.** A “**Solar Site Survey**” must be provided with the System Application. The Solar Site Survey must (a) be prepared by a licensed contractor, (b) show the placement of the proposed System, (c) show the usable solar roof area of the location in which the proposed System will be installed, and (d) include a determination of an equitable allocation of the usable solar roof area among all Owners sharing the same roof, garage or carport. The Solar Site Survey must be prepared at the Applicant’s expense, and is not considered as part of the costs of the proposed System as used in *Civil Code* § 714.
 - **Executed Maintenance & Indemnity Agreement.** A Maintenance & Indemnity Agreement for Solar Energy System (“**Agreement**”) signed by the Applicant.

V. ADDITIONAL OBLIGATIONS OF APPLICANT

By virtue of Applicant’s submission of a System Application, the Applicant hereby acknowledges, accepts and agrees to the following obligations as a condition of approval for the proposed System.

1. **Associated Costs.** In addition to any other costs or expenses contemplated by this Policy or the Agreement, the Applicant shall bear all costs associated with:
 - a. The installation, use, maintenance, repair, removal and/or replacement of the System;
 - b. The repair of damage to the Common Area, exclusive use Common Area, or other Units resulting from the installation, use, maintenance, repair, removal and/or replacement of the System; *and*
 - c. Any monetary burdens borne by the Association as a result of (i) the Applicant's failure to comply with this Policy, (ii) the negligent installation, maintenance, repair, removal and/or replacement of the System, and/or (iii) the Applicant's or his or her successor's breach of the Agreement. Reimbursement for any such expenses incurred by the Association shall be recoverable by the Association through a special reimbursement assessment against the record Owner of the Unit, in addition to and/or in lieu of any other rights and remedies the Association may have.

2. **Compliance with Additional Requirements.** An Applicant's submission of a System Application, or the Association's/ARC's approval of the same, shall not impact the obligations of the Applicant to comply with any additional requirements on the System's installation and maintenance provided for in the Declaration or the Architectural Guidelines, nor shall it impact the Association's authority to take any enforcement action in response to noncompliance.

3. **Disclosure to Prospective Purchasers/Successors in Interest.** The Applicant shall be responsible for disclosing to prospective purchasers or successors in interest to Applicant's Unit the existence of the System, Applicant's obligations with respect thereto, and any related responsibilities pursuant to *Civil Code* § 4746.

4. **Final Inspection.** No later than five (5) days upon completion of installation of the System, the Applicant shall, as soon as possible, notify the Association that the installation has been completed. The Applicant shall thereafter cooperate with the Association in scheduling and conducting an inspection of the System by the Association's retained engineer or construction consultant ("**Final Inspection**"), which shall take place as soon as practicable after the completion of the System installation. The purposes of the Final Inspection will be to assess whether the System was installed in substantial conformance with the System plans, to determine if any damage to the Common Area was caused as a result thereof, and to determine whether any structural or related issues exist that necessitate corrective work by the Owner.
 - a. **Final Inspection Fee.** Applicant shall, on or before the date of the Final Inspection, remit payment to the Association to reimburse the Association for its costs in conducting the Final Inspection ("**Final Inspection Fee**"). The Final Inspection Fee may be recovered by the Association through a special reimbursement assessment against the Applicant, in addition to and/or in lieu of any other rights and remedies the Association may have against the Applicant.

5. **Indemnity.** Applicant on behalf of himself or herself and anyone owning or having an interest in his Unit, shall defend, indemnify and hold harmless (including payment of all legal fees and costs) the Association, and its Board of Directors, officers, Members, agents, attorneys and employees from and against any and all injuries, damages, causes of action or claims which may exist or be

brought or instituted against any or all of said parties because of, arising out of, or in any manner caused by the granting of approval of the System, the power to grant and confirm in writing such approval, or the construction, installation, maintenance, removal, repair, replacement, existence or use of the System except for that which is caused by the gross negligence or willful misconduct of the Association, its Board of Directors, officers, Members, agents, attorneys or employees.

6. Insurance

- a. **Applicant Insurance.** The Applicant, and each successive Owner of his or her Unit, shall maintain a homeowner liability coverage policy at all times and provide the Association with the corresponding certificate of insurance within fourteen (14) days of approval of the System Application and annually thereafter.
 - b. **Contractor Insurance.** The Applicant shall require, as part of its contract with the System installer (“**Contractor**”), that the Contractor maintain comprehensive general liability insurance which names the Association as an additional insured.
7. **Modifications to System Plans.** Any modifications to the proposed System or its supporting components to be made after the execution of an Agreement, or deviations from the System plans prior to installation, shall require the Applicant to obtain prior, written approval from the ARC and, at the ARC’s election, re-submit a System Application and/or execute an updated Agreement.
8. **Neighbor Installation of Systems.** Applicant acknowledges that the Association’s Common Area roof, garage or carport is a valuable asset and consists of a finite surface area. Applicant’s installation of the System may prohibit or limit the future installation of a System by a neighboring Owner. Therefore, Applicant shall, at Applicant’s expense, cause the relocation of the existing System and/or its supporting components in order to accommodate the installation of additional Systems and pay all costs associated therewith, or, in the alternative, grant neighboring Owners the right to pay Applicant for the use of the existing System as determined by the neighboring Owner’s pro rata use of the System and the neighboring Owner’s share of the cost for installation, purchase, and pro rata portion of the maintenance and repair of the System.
9. **Removal of System to Accommodate Association Maintenance and Repairs.** There will be a need for the Association to perform roof maintenance or related common area maintenance/repairs to the areas where the System is located (i.e., fumigation, roof tile replacement, etc.). In those instances, the temporary removal of the System may be required. Applicant hereby agrees, on behalf of himself and any successors in interest, to comply with any demand by the Association for the Applicant to temporarily remove the System and to restore it to its prior location upon completion of the Association’s maintenance or repair efforts. Such removal will be performed by Applicant within fifteen (15) days of receipt of the Association’s demand for the same. All costs and expenses incurred in performing the temporary removal, and subsequent re-installation, of the System shall be borne by the Applicant, including any utility expenses that Applicant may pay while the System is nonfunctional, any additional expenses that may be required to restore functionality of the System, and any expenses that may be required to repair damage to the common area sustained as a result of the System’s removal or re-installation.

MAINTENANCE & INDEMNITY AGREEMENT
FOR SOLAR ENERGY SYSTEM

California Civil Code §§ 4746, 714, 714.1

This Maintenance & Indemnity Agreement for Solar Energy System (“**Agreement**”) is being entered into by and between:

[Print Applicant’s Name] _____ (“**Owner**”),

and the L’ Association Des Propriétaires, a California nonprofit mutual benefit corporation (“**Association**”). Owner and Association are referred to herein individually as a “Party” and collectively as the “Parties.” The Parties enter into this Agreement with reference to the following:

RECITALS

A. The Owner is the record owner of a Unit within the Association, commonly known as and described as follows (the “**Subject Unit**”):

[Print Address of Applicant’s Unit] _____, Lake Forest, CA 92630.

The Subject Unit is part of a common interest subdivision and includes an undivided interest in common area controlled and maintained by the Association.

C. The Owner is required to comply with the provisions contained within the Association’s Governing Documents which include, among others, the Association’s recorded Declaration of Restrictions and any amendments thereto (collectively, “**Declaration**”), its Architectural Guidelines, and its Solar Energy System Policy (“**Policy**”).

D. The Owner is prohibited under the Declaration from altering or improving any portion of the Subject Unit, common area or exclusive use common area without the Association’s prior written approval.

E. The Owner has submitted an application to the Association for the installation of a solar energy system on a common area roof, garage or carport (“**Proposed System**”). An application for the System and its corresponding plans is attached hereto as **EXHIBIT A** and are incorporated herein by this reference (“**System Plans**”).

F. The Proposed System, in whole or in part, affects a portion of the development which the Association has the responsibility to maintain, repair and insure.

G. The Association is desirous of providing the Owner with the requisite approval for the installation of the Proposed System, contingent upon the Owner’s execution of this Agreement, and adherence to its terms. The Association’s authority to require the execution of this Agreement as a condition of approval is provided for at *California Civil Code* §§ 714, 714.1 and 4746.

NOW THEREFORE, in consideration of the terms and conditions set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

TERMS AND CONDITIONS

1. **Adoption of Recitals.** The Parties acknowledge the accuracy of the Recitals above and hereby adopt and incorporate each as the basis for this Agreement.
2. **Adoption of Policy Obligations.** Owner hereby acknowledges and accepts any obligations of Owner as may be contained in the Policy; such obligations are hereby incorporated into this Agreement by reference.
3. **Association Approval.** The Association hereby issues approval for the Owner to install the Proposed System in strict compliance with the details, plans and specifications submitted to, and conditionally approved, by the Association (“**System Plans**”). A true and correct copy of the System Plans is attached hereto as **EXHIBIT A** and is incorporated herein by this reference. This paragraph shall not in any respect impact the obligations of the Owner to comply with any additional requirements on the Proposed System’s installation and maintenance provided for in the Declaration, the Policy or the Architectural Guidelines, nor shall it impact the Association’s authority to take enforcement action in response to the Owner’s noncompliance. Any modifications or replacement of the Proposed System after the execution of this Agreement, or deviations from the System Plans prior to installation, shall require Owner to obtain prior, written approval from the Association and, at the Association’s election, execute an updated Agreement.
4. **Owner’s Acknowledgements.** Prior to the execution of this Agreement, the Owner acknowledges that the Owner has (a) notified each Owner of a Unit in the building on which the Proposed System will be located of the Proposed System and the pending application for approval, and (b) determined that the Proposed System will be installed in accordance with an equitable allocation of the usable solar roof area among all Owners sharing the same building.
5. **Owner’s Obligations.** Failure to satisfy any of the following requirements and to provide satisfactory evidence of same constitutes a material breach of this Agreement. Any monetary burdens borne by the Association as a result of such breach by the Owner may be recovered by the Association through a special reimbursement assessment against the Owner, in addition to and/or in lieu of any other rights and remedies the Association may have against the Owner.
 - a. **Final Inspection.** Upon completion of installation of the System, the Owner shall, as soon as possible, notify the Association that the installation has been completed. The Owner shall thereafter cooperate with the Association in scheduling and conducting an inspection of the System by the Association’s retained engineer or construction consultant (“**Final Inspection**”), which shall take place as soon as practicable after the completion of the System installation. The purposes of the Final Inspection will be to assess whether the System was installed in substantial conformance with the System Plans, to determine if any damage to the common area was caused as a result thereof, and to determine whether any structural or related issues exist that necessitate corrective work by the Owner.
 - b. **Final Inspection Fee.** The Owner shall, on or before the date of the Final Inspection, remit payment to the Association to reimburse the Association for its costs of the Final Inspection (“**Final Inspection Fee**”). If the Owner fails or refuses to remit the Final Inspection Fee, the Final Inspection Fee may be recovered by the Association through a special reimbursement assessment against the Owner, in addition to and/or in lieu of any other rights and remedies the Association may have against the Owner.
 - c. **Costs for Maintenance & Removal.** Owner shall ensure that the System and its supporting components are regularly maintained in a fashion consistent with Owner’s general

maintenance obligations under the Governing Documents for the Subject Unit. The Owner shall be responsible for costs for the maintenance, repair, and replacement of the System until it has been removed and for the restoration of the common area, exclusive use common area, or separate interests after removal.

- i. Temporary Removal Required Due to Association Maintenance.** There will be a need for the Association to perform roof maintenance or related common area maintenance/repairs to the areas where the System is located (i.e., fumigation, roof tile replacement, etc.). In those instances, the temporary removal of the System may be required. Owner hereby agrees to comply with any demand by the Association for the Owner to temporarily remove the System and to restore it to its prior location upon completion of the Association's maintenance or repair efforts. Such removal will be performed by Owner within fifteen (15) days of receipt of the Association's demand for the same. All costs and expenses incurred in performing the temporary removal, and subsequent re-installation, of the System shall be borne by the Owner, including any utility expenses that Owner may pay while the System is nonfunctional, any additional expenses that may be required to restore functionality of the System, and any expenses that may be required to repair damage to the common area sustained as a result of the System's removal or re-installation.
- d. Costs for Damage.** The Owner shall be responsible for costs of repairing damage to the common area, exclusive use common area, or adjacent Units resulting from the installation, maintenance, repair, removal or replacement of the System, and for correcting any building code defects or other hazardous conditions resulting from the installation, maintenance, repair, removal or replacement of the System. Those costs will be paid by Owner within ten (10) days of demand for the same by the Association.
- e. Disclosure to Prospective Purchasers.** The Owner shall disclose the existence of this Agreement and the terms and conditions contained herein to any prospective purchasers of the Subject Unit.
- f. Insurance.** The Owner shall at all times maintain a homeowner liability coverage policy and provide the Association with the corresponding certificate of insurance within fourteen (14) days of execution of this Agreement and annually thereafter.
- g. Contract with System Installer.** The Owner shall require, as part of its contract with the System installer ("**Contractor**"), that the Contractor procure and maintain comprehensive general liability insurance which names the Association as an additional insured.
- h. Liens.** The Owner shall ensure that Association property shall remain free from any liens that may arise as a result of Owner's failure to pay Contractor under the terms of the Contract. Owner agrees that if any lien or claim is filed or made against the job site or Project (i.e., Community Association Property), or Owner as a result of Owner's failure to meet its obligations under the Contract, Association, upon twenty (20) days prior written notice, shall have the right to settle said lien or claim directly and shall levy against Owner a special or reimbursement assessment in the amount of the lien, including all costs incurred therewith.
- 6. System Requirements.** By execution of this Agreement, the Owner represents that the System satisfies all of the following requirements: (a) the System meets applicable health and safety standards and requirements imposed by state and local permitting authorities; (b) if the System is a solar water heating

system, the System and its installation are certified by the Solar Rating Certification Corporation (SRCC) or other nationally recognized certification agencies; *and* (c) if the System produces electricity, the System meets all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories and, where applicable, rules of the Public Utilities Commission regarding safety and reliability. Any future replacement, modifications or repairs to the System shall satisfy those requirements.

- 7. Permits.** The Owner covenants and agrees that all construction, maintenance and continued use of the System shall be in accordance with generally accepted construction, maintenance and repair practices and in compliance with all applicable laws and building codes. Association's consent to the terms of this Agreement shall not be construed as an acknowledgment that the System complies with applicable laws, and the Owner shall be responsible for any necessary permits and inspections.
- 8. Indemnity.** The Owner shall defend, indemnify and hold harmless (including payment of all legal fees and costs) the Association, and its Board of Directors, officers, Members, agents, attorneys and employees from and against any and all injuries, damages, causes of action or claims which may exist or be brought or instituted against any or all of said parties because of, arising out of, or in any manner caused by the granting of written confirmation of approval for the System, the power to grant and confirm in writing such approval, or the construction, installation, maintenance, removal, repair, replacement, existence or use of the System except for that which is caused by the gross negligence or willful misconduct of the Association, its Board of Directors, officers, Members, agents, attorneys or employees.
- 9. Release.** Owner releases Association, its Board of Directors, officers, Members, agents and employees from any duty or obligation to pay, or from otherwise being responsible for, the cost of construction, maintenance, repair or replacement of the System.
- 10. Owner's Breach.** If Owner breaches any terms, conditions or requirements of this Agreement, said breach shall, at the Association's election, and after giving the Owner notice and a reasonable period of time to cure the breach, operate to relinquish any approval for the System. The Association may thereafter pursue any and all recourse, claims and causes of action against the Owner as provided for in the Governing Documents relating to enforcement of unapproved or nonconforming architectural improvements, including but not limited to, the removal of the System and the restoration of the common area. Payment of all costs and expenses incurred by the Association in connection with such efforts shall be the responsibility of the Owner, and may be recovered by the Association through a special reimbursement assessment against the Owner, in addition to and/or in lieu of any other rights and remedies the Association may have against Owner.
- 11. Attorneys' Fees.** In any action or proceeding pertaining to or arising out of the terms of this Agreement, or the breach thereof, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs along with any other relief granted.
- 12. Conflict.** This Agreement shall be in addition to, and not in lieu of the Declaration, Bylaws and other Governing Documents of the Association. Unless otherwise stated herein, if there is any conflict between the terms of this Agreement and the terms of the Governing Documents of the Association, the applicable provisions of the Governing Documents shall control.
- 13. Independent Counsel.** Each party to this Agreement has been advised to seek legal counsel and, in entering this Agreement, has had the opportunity to rely upon the advice, evaluation and recommendation of its own counsel and not opposing counsel. This Agreement shall be construed

without reference to the identity of the party or parties preparing the same. It is understood and agreed that the Parties hereto participated equally in the drafting of this Agreement.

14. Integration Clause. This Agreement supersedes all prior representations, undertakings or agreements of the parties and the parties rely solely upon the contents of this Agreement. This Agreement may be modified only by a writing signed by the parties or their parties or their respective successors in interest and recorded in the same manner as this Agreement.

15. Severability. If any of the terms or provisions of this Agreement shall be declared by a court of competent jurisdiction to be invalid or inoperative, all of the remaining terms and provisions shall remain in full force and effect.

16. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors in interest and assigns.

17. Counterparts: This Agreement may be executed in counterparts and each counterpart may individually be considered an original signature effective to bind the party to this Agreement.

IN WITNESS WHEREOF, the parties to this Agreement have signed and acknowledged it below.

ASSOCIATION

Dated: _____

By: _____

Its: _____

Dated: _____

By: _____

Its: _____

OWNER

Dated: _____

EXHIBIT A
SYSTEM PLANS

[Enclose a copy of the plans and specifications for the Proposed System]