

## 61.0.0 OWNER-INITIATED ALTERATIONS SOLAR ENERGY SYSTEMS

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Solar Energy Systems (as defined in Section 61.0.1 below) may only be installed by owners of a unit in Mutual 39 on the roof top of the condominium building in which the unit is located or adjacent carport or garage roof. No other Common Areas in Mutual 39 may be used for Solar Energy Systems by individual unit owners.

This rule is intended to conform to Civil Code Sections 714, 714.1, and 4746. In the event of any conflict between any provision of this Rule and any applicable statute, the terms of the statute shall prevail and supersede any contrary provisions in this Rule. This Rule shall be effective for all new installations on the date adopted and shall supersede all prior Mutual polices and rules pertaining to Solar Energy System installations.

### 61.0.1 DEFINITIONS

As used in this Rule, a "Solar Energy System(s)" is any solar collector or other solar energy device whose primary purpose is to provide for the collection, storage and distribution of solar energy. "Owner/Applicant" shall be the owner of the condominium unit requesting the installation of a Solar Energy System and any subsequent transferees of that unit. "MOD" is the Mutual Operations Division of Golden Rain Foundation of Walnut Creek, managing agent for Walnut Creek Mutual Thirty-Nine. "Mutual" is Walnut Creek Mutual Thirty-Nine.

The terms "Board," "Common Area," "Exclusive Use Common Area," and "Unit" have the same definition as in the Bylaws of Walnut Creek Mutual Thirty-Nine. "Usable Solar Space" is the amount and location of space on a condominium building roof suitable to use for solar panel installations.

### 61.0.2 AVAILABILITY OF COMMON AREA SPACE

The installation of Solar Energy Systems in or on Common Area roofs is subject to a determination of Usable Solar Space, allocation of Usable Solar Space to the numbers of units in the condominium building.

The Usable Solar Space shall be calculated by the solar contractor of each Owner/Applicant in the building, and it shall include a calculation of the square footage available for the Solar Energy System and the allocated portion for each Unit in the condominium building.

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The Mutual shall not be required to prune or allow pruning or removal of trees and/or shrubs which were planted before the Solar Energy System was proposed. However, trees or shrubs after the installation of the Solar Energy System may not be allowed to grow so as to cast a shadow greater than ten percent (10%) of the collector absorption area upon that collector's surface at any one time between the hours of 10:00 a.m. and 2:00 p.m. local standard time (California Public Resources Code Section 25982). Pruning needs shall be determined and dictated by the landscape or tree experts of the Mutual.

## 61.2.0 APPLICATION AND APPROVAL PROCESS

The installation of a Solar Energy System on a condominium building roof top results in the exclusive use of a portion of the Common Area by a member. The same review and approval process as for other proposed physical changes to Units or Common Area shall be followed, except for mutual owners' vote of approval and other certain modifications as set forth herein. Alteration permit procedures are more fully set forth in Rule 51.0.0.

(A) Indemnification and Maintenance Agreement. As a condition of approval of installation of any Solar Energy System within the Common Area, the applicant shall execute a separate "Maintenance and Indemnity Agreement" acknowledging that he or she has read and understands this Rule and representing that the proposed Solar Energy System, its installation and maintenance shall comply fully with this Rule, and further agreeing to indemnify and hold harmless the Mutual, Golden Rain Foundation of Walnut Creek and their respective officers, directors, employees and members from and against any and all claims, allegations, litigation, arbitration or judgments resulting in whole or in part from the installation, maintenance or removal of the Solar Energy System, substantially in the form attached to this Rule (EXHIBIT A).

(8) Notification to Neighbors. As required by Civil Code 714.1, Sec. 4746, the Owner/Applicant shall notify each owner of a Unit in the building on which the installation will be located (*i.e.*, those under the same common roof) and the Owner/Applicant shall certify in the application the names and addresses of those notified and the date of the notification. This will be done by the attached form to this Rule (EXHIBIT D) or copies of certified return letter receipts from the Post Office.

(C) Mutual President's Review. The application will be prepared with the assistance of the MOD Alterations Department and then submitted to the Mutual President for preliminary review. The Director may suggest reasonable restrictions on the installation but may not disapprove the installation.

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(D) Proof of \$1 Million Liability Insurance Policy. The Applicant will include proof of having a homeowner liability insurance policy providing \$1 million in coverage which includes the Mutual 39 named as additionally insured under the Applicant's homeowner liability insurance policy providing \$1 million in coverage with a right of notice of cancellation. The Applicant must renew this liability insurance annually and provide evidence of annual renewal to MOD.

(E) Permit Review and Approval. The Mutual Alteration Permit Review Committee shall review the application for installation of a Solar Energy System to determine whether or not all of the items required on the Solar Installation Checklist Addendum (EXHIBIT B) have been included and may offer recommendations, if any, for additional reasonable restrictions within limits prescribed in Civil Code Section 714. However, no application for installation of a Solar Energy System may be approved or denied by the Permit Review Committee; the Board alone has the authority to approve such applications.

(F) City of Walnut Creek Permits. The applicant shall provide satisfactory evidence of compliance with requirements of the City of Walnut Creek and its permits.

(G) Board Review of Application; Decision. Any decision by the Board on a proposed Solar Energy System installation must be in writing and, if the proposed Solar Energy System is disapproved, the written decision shall include an explanation of why the application was disapproved. As provided by Civil Code section 714, an application for the installation of a Solar Energy System that is not denied in writing within forty-five (45) days from the date of receipt of the application by the Mutual shall be deemed approved, unless that delay is a result of a reasonable request for additional information.

## 61.3.0 GENERAL INSTALLATION REQUIREMENTS

The following installation conditions shall govern the installation of Owner/Applicant initiated installation of Solar Energy Systems:

(A) All installations of Solar Energy Systems shall be completed so as not to materially harm or damage common elements of the Mutual, or any other individual Unit or Exclusive Use Common Area, void any warranties held by the Mutual or other owners and/or impair the integrity of a building or structure. The applicant will be responsible for learning the status of the roof warranty from MOD and responsible for following MOD instructions to protect the warranty.

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(B) All portions of a Solar Energy System shall be secured in a manner which does not jeopardize the safety or soundness of any structure and/or the safety of any person within the Mutual. All solar energy systems shall have non-glare panels installed flush to the roof.

(C) There shall be no penetrations into building structures, not limited to walls and roofs, unless it is absolutely necessary for the installation and operation of the system and/or to avoid an unreasonable increase in the cost of the installation. Any penetrations for wiring or piping for a Solar Energy System shall be properly sealed and waterproofed in accordance with industry standards and building codes in order to prevent moisture penetration and resulting structural damage.

(D) The Owner/Applicant installing the Solar Energy System shall be responsible for any damage to building elements, Unit interiors or personal property caused by such penetrations even if the Mutual has primary maintenance responsibility for such elements under the governing documents of the Mutual.

#### 61.4.0 INSTALLATION BY COMMERCIAL INSTALLERS

Installation shall only be by a licensed and properly insured installer knowledgeable in the installation of Solar Energy Systems. Prior to installation, the installer shall have insurance coverage that meets the following minimums: (i) Worker's Compensation with minimum coverage required by California law; and (ii) Contractor's General Liability (including completed operations) with policy limits of at least \$500,000.00. The installer must, prior to installation, provide to the Mutual copies of certificates of insurance for the above policies and endorsements which name the Owner/Applicant and the Mutual as additional insureds.

#### 61.5.0 SAFETY

(A) Solar Energy Systems shall be installed and secured in compliance with manufacturer's instructions and all City of Walnut Creek, State of California and Federal ordinances, regulations and laws.

(8) A Solar Energy System for heating water shall be certified as to all system components and the installation thereof by the Solar Rating & Certification Corporation" or other nationally recognized certification agency.

(C) A Solar Energy System for producing electricity shall also meet all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronic Engineers (IEEE) and accredited

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testing laboratories such as Underwriters Laboratories (UL™) and, where applicable, rules of the Public Utilities Commission regarding safety and reliability.

(D) To ensure the safety of individuals and allow safe access to the physical plant of the Mutual, Solar Energy Systems shall not obstruct access to or from any Unit, walkway, or ingress or egress into any area of the Mutual.

(E) In approving the installation of any Solar Energy System, the Board is entitled to rely upon the representation of the Owner/Applicant or his or her contractor that the system fully complies with the safety criteria set forth in this Rule. Should the Board later determine that the equipment is not in conformance with such criteria, the Board may require the Owner/Applicant to remove the Solar Energy System or modify it so that it is in compliance with such criteria.

## 61.6.0 MAINTENANCE

(A) Owner/Applicant of a Solar Energy System is solely responsible for all associated costs, including but not limited to: replacement, repair, maintenance, moving and/or removal of the Solar Energy System or any of its components; repair and/or replacement of any property damaged by the installation, maintenance and/or use of the Solar Energy System; payment of any medical expenses incurred by persons injured by the installation, maintenance and/or use of the Solar Energy System; and/or restoration of Solar Energy System sites to their original condition after removal.

(B) Owner/Applicant shall not permit his or her Solar Energy System to become a hazard or fall into disrepair. Owner/Applicant shall be responsible for correction of any safety hazards and Solar Energy System repair and/or replacement. Owner/Applicant shall be responsible for the cost of repainting or replacement of the visible ancillary components of the Solar Energy System, such as conduits, plumbing and supports, if deterioration occurs, whether performed by the Mutual or outside contractor.

(C) Owner/Applicant shall be responsible for any increased costs incurred by the Mutual in maintaining or repairing the Common Area or those portions of a Unit or Exclusive Use Common Area which the Mutual is responsible under the Governing Documents for maintaining or repairing which are caused by the presence of a Solar Energy System on the Common Area.

(D) If it is necessary to temporarily remove a Solar Energy System or some of its components so that the Mutual may perform required maintenance or repairs to the Common Area, the Owner/Applicant of the Solar Energy System shall

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be responsible, at his or her sole expense, for removing and reinstalling the system after the maintenance or repair is completed. Unless there is an emergency, notices to the Owner/Applicant regarding removal shall be in writing sent by certified mail at least fifteen (15) days prior to the date removal is required. If the Owner/Applicant fails to remove a Solar Energy System or a system component when requested to permit necessary maintenance or repairs, the Mutual may remove the system or component and charge the cost of such removal to the Owner/Applicant. So long as the Mutual uses reasonable care in removing and reinstalling the Solar Energy System or any component thereof, the Mutual shall not be responsible for any damage caused to the system or component by such removal or reinstallation.

#### 61.7.0 RESALE OR TRANSFER OF OWNER'S UNIT

Upon resale or transfer of any Owner/Applicant's interest in his or her Unit which has a permitted Solar Energy System, the buyer or transferee (as the case may be) shall assume in writing all of the Owner/Applicant's duties and responsibilities as outlined in this Rule 61.0 and shall execute an additional Maintenance and Indemnity Agreement prior to close of escrow.

#### 61.7.1 REMOVAL OF SOLAR ENERGY SYSTEM

If a buyer or a transferee does not agree in writing to assume responsibility for the Solar Energy System, the Owner/Applicant must remove the Solar Energy System and restore the area where the Solar Energy System had been located which shall be in accordance with the Removal Procedures attached hereto as EXHIBIT D. Should an Owner/Applicant fail to remove the Solar Energy System when required, the Mutual may remove the Solar Energy System at the Owner/Applicant's expense.

**Walnut Creek Mutual Thirty-Nine  
Rule 61 Solar Energy Systems  
MAINTENANCE AND INDEMNITY AGREEMENT  
Exhibit A. Rule 61.0**

I/We (name) \_\_\_\_\_

Owner(s) of the condominium unit at (address) \_\_\_\_\_

Walnut Creek, CA 94595 (collectively, the "Undersigned") in consideration of the approval of Mutual 39 (the "Mutual"), a California nonprofit mutual benefit corporation, of my/our application to allow the installation of a solar energy system in the common area of the building located at \_\_\_\_\_

\_\_\_\_\_ in  
Mutual 39, I/we acknowledge that I/we have read Walnut Creek Mutual Thirty-Nine's Rule, Owner-Initiated Alterations, Solar Energy System ("Rule 61.0"), understand its contents and agree as follows:

1. The proposed solar energy system shall be installed and maintained in full compliance with Rule 61.0 and Alteration Permit # \_\_\_\_\_ that has been issued by the Mutual for this installation and the Undersigned agree to comply with all terms and conditions set forth in Rule 61.0 and Alteration Permit # \_\_\_\_\_

2. I/we shall indemnify and hold harmless Mutual 39, Golden Rain Foundation of Walnut Creek, and their respective officers, directors, employees, agents, and members, and their respective successors and assigns (hereinafter "Indemnitees," from and against any and all claims, liability, loss, or damage arising from suits, losses, costs, liabilities, interest, attorney's fees, including but not limited to any such fees and expenses incurred in enforcing this Indemnity Agreement (collectively "Damages") resulting from, arising out of or in any connected with the installation, maintenance, operation or removal of the solar energy system described in Alteration Permit # \_\_\_\_\_

3. The planned solar energy system under Alteration Permit # \_\_\_\_\_ shall be installed on the common-area roof of the building at \_\_\_\_\_, Walnut Creek, CA 94595 in the manner and location approved by the Mutual, which roof is defined under the Declaration of Covenants, Conditions and Restrictions (CC&Rs") of Mutual 39 to be part of the Mutual's common area.

4. Should the Undersigned sell the unit; the transferee shall accept in writing the obligations under this agreement or the Undersigned agrees to remove the installation at its own cost and restore the common area to its original condition and in compliance with Rule 61.0.

5. Should the Undersigned fail to meet its obligation to defend and/or indemnify and save harmless in accordance with this agreement, then in such case Indemnitee shall have full right to defend, pay or settle said claim on their own behalf with or without notice to the Undersigned for all fees, costs and payments made or agreed to be paid to discharge said claim.

6. In the event of enforcement of said maintenance and indemnification obligations as set forth herein, the Undersigned agrees to pay all reasonable attorneys' fees necessary to enforce said maintenance and indemnification obligations.

THIS AGREEMENT SHALL BE UNLIMITED AS TO AMOUNT OR DURATION and shall be binding upon and inure to the benefit of the parties, their respective successors, assigns, personal agents and representatives.

SIGNED this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ at \_\_\_\_\_ by all owners of the condominium unit making application for the installation of a solar energy system, as follows:

Name of Owner: \_\_\_\_\_

By (signature): \_\_\_\_\_

Name of Owner: \_\_\_\_\_

By (signature): \_\_\_\_\_

Name of Owner: \_\_\_\_\_

By (signature): \_\_\_\_\_



**Walnut Creek Mutual Thirty-Nine  
Rule 61 Solar Energy Systems  
SOLAR INSTALLATION CHECKLIST ADDENDUM**

Exhibit B, Rule 61.0

Documents required to be attached to application:

- A. Manufacturer's spec sheet of solar panels (similar to Sun Power X20-250-BLK BC); only non- glare panels will be approved
- B. Survey of usable solar roof area showing dimensions and placement of installation
- C. Engineering drawings of proposed installation with placement of panels flush to roof as high as practical to roof ridge
- D. Dimensioned plans showing location of the following:
  - (1) Solar panels
  - (2) Routing of electrical/plumbing lines
  - (3) Placement of sub-panels within Unit
- E. Detailed engineering drawings showing roof penetrations for the following:
  - (1) Electrical/plumbing lines and flashing
  - (2) Attachment of panels
  - (3) Method of affixing panel brackets and flashing to roof
- F. Proof of liability insurance coverage, to be renewed annually
- G. Solar installation warranty; minimum 10-year warranty on installation workmanship
- H. For roofs that have an existing warranty, written approval by Mutual's roofing contractor or roofing consultant of roof penetrations.
- I. Final inspection checklist:
  - (1) Visible ancillary components, such as conduits, plumbing and supports painted to match exterior of adjacent structures (unless such painting would void a manufacturer's warranty).
  - (2) Solar panels mounted flush with roof surface, with all rooftop installations blending into the roof color as much as possible.
- J. Proof of Notification of owners of condos in the same building

**Walnut Creek Mutual Thirty-Nine**  
**Rule 61 Solar Energy Systems**  
**SOLAR ENERGY SYSTEM REMOVAL ADDENDUM**

Exhibit C, Rule 61.0

When it is necessary to remove solar energy systems from Mutual 39 roof tops, the building structure should be returned to its pre-solar installation condition, as follows:

1. Owner of installation shall obtain an alteration permit for removal. This assures that the work is done by a licensed contractor with appropriate insurance, and in accordance with all permits and legal requirements.
2. Obtain Walnut Creek city permit (if required).
3. After removal of the solar energy system, remove roofing and plywood in areas previously covered by the panels, if required by Mutual 39's Building Maintenance Manager.
4. If deemed necessary by Mutual 39, install new roofing system matching the pre-existing roofing design, although color match may not be possible.
5. Patch all holes in the interior ceiling, if deemed necessary by the Mutual, and other penetrations where solar panel appurtenances were installed.
6. Inspect exterior of structure, utility/meter closets and electrical panels for penetrations and repair them.
7. Properly dispose of all materials outside Rossmoor.
8. All work shall be done to the satisfaction of Mutual 39
9. Satisfy all other requirements imposed by Mutual 39

**Walnut Creek Mutual Thirty-Nine Rule 61  
Solar Energy Systems  
OWNER NOTIFICATION FORM**

**Exhibit D Rule 61.0**

1. Name of Applicant: \_\_\_\_\_
2. Date of Request: \_\_\_\_\_
3. Notification of each owner of condo in building at: \_\_\_\_\_

Name: \_\_\_\_\_ Address: \_\_\_\_\_  
Signature \_\_\_\_\_

Name: \_\_\_\_\_ Address: \_\_\_\_\_  
Signature \_\_\_\_\_

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