

17.0 SOLAR ENERGY SYSTEMS (SES)

DEFINITIONS

Solar Energy System (SES): Any photovoltaic solar system providing collection, storage, and distribution of solar energy into the structural and electrical systems of the unit. Included in the solar module are solar panels, mounting systems, and wiring systems (disconnects for the dc and ac sides of the inverter, ground-fault protection, and overcurrent protection).

Exclusive Use Common Area: For purposes of this Rule, Exclusive Use Common Area means a portion of the Common Area rooftop that is set aside for the exclusive use of one or more owners for installation of a solar energy system (SES)..

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This section sets forth Mutual 59's rules for the installation and maintenance of Solar Energy Systems (SES) pursuant to Public Resource Code Section 25982 and Civil Code Sections 714, 714.1, as amended, and 4746.

An SES (as defined) may be installed within the Common Area of Mutual 59 only as permitted under this policy. Any systems installed in violation of this policy will be removed, and the surrounding areas and electrical connections will be restored to their previous condition at the owner's expense.

Because the Project is a "condominium project," as that term is defined in Civil Code section 4125, each Owner has fee simple title to his or her individual Unit as well as an undivided fractional interest in all of the Common Area of the Mutual. The Mutual is required to maintain, repair and replace Common Area roof systems. It is the intent of this Policy to recognize the respective ownership rights of the Owners and to enable the Mutual to perform its exterior maintenance, repair and replacement obligations.

17.2 SELECTION OF AN SES PROVIDER

The selection of an SES Provider is the complete responsibility of the M59 owner who wishes to explore becoming an SES owner. All requirements and responsibilities regarding solar policies must be agreed to and met by the owner before the solar application will be approved by M59. If the SES owner chooses to lease any or all of the SES components, the Mutual will not be a party to the lease agreement and will not be responsible for maintaining or reinstalling the system in the event that an owner's contract with a provider requires such things.

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1. Prior to approval, the installer must have insurance coverage that meets the following minimums:
 - a) Worker's Compensation with minimum coverage required by California law;
 - b) Contractor's General Liability (including completed operations) with policy limits of at least \$1,000,000.00. Policy cannot exclude work done at multi-unit projects or condominium projects; and
 - c) The installer must provide copies of certificates of insurance for the above policies which name the owner and Mutual 59 as insureds.

2. The SES Provider must utilize only the components agreed upon by the Board for all installations to maintain uniformity of all installations within the Mutual. These include:
 - a) Only non-glare, black solar panels and black frames will be approved.
 - b) Adherence to the distributive solar generating allotment of roof space for the project as plotted in the solar site survey.
 - c) Duration of installation project must be specified and adhered to.
 - d) The installed SES must operate at less than 50 decibels.

17.3 ALLOCATION OF AVAILABLE SOLAR SPACE

The installation of an SES will be limited to the roof of the building in which the applicant resides. SES installations on a building will be initially limited to the flat portions of the roof unless the solar site survey indicates there is insufficient solar space on the flat portion.

1. Installation of all SES's on the Common Area of rooftops will be based on equitable apportionment of available solar space for current and future SES applicants within a building. The Board's goal will be to assure fair distribution of usable solar space for all SES owners when the first solar application is submitted for each building, based on:
 - The availability of usable solar space as determined by a solar site survey, and
 - The roof plan.

2. The solar site survey and the roof plan of the applicant's roof prepared by a licensed contractor or the contractor's registered salesperson

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knowledgeable in the installation of an SES, must be performed and submitted to the Mutual 59 Board for determination of the usable solar space available to all residents of the building. The roof plan must be to scale showing the physical plant and locations of existing roof vents, skylights, air conditioning/heat pumps, etc. These documents will identify the available and usable solar space on the roof.

3. Based on the solar site survey, usable solar space for a building will be reasonably apportioned by the Mutual taking into consideration the following constraints:
 - a) Walkways for the maintenance of existing roof equipment, vents, skylights, air conditioning/heat pumps, and gutters;
 - b) Walkways deemed necessary by the Fire Department;
 - c) A number of plots (with the same square footage) equal to the number of units in the building; and
 - d) Any other constraints outlined in the solar site survey.

NOTE: The resulting allocation of roof space may not be able to *fully* accommodate the solar generation needs of an SES applicant.

4. On a first-come, first-served basis, an SES applicant will identify one unused plot for the installation of their SES.
5. This same roof plan will be used to identify a plot for future SES Owners in the same building.

17.4 APPROVAL PROCESS

No SES may be installed or maintained within the Exclusive Use Common Area of Mutual 59 without the written consent of the Mutual Board. The Board will generally utilize the same review and approval process used for other proposed physical changes to Units or Common Area. Alteration permits will be required as delineated in Mutual 59 Rule 1.0.

1. SES applicants must notify each owner of a unit in the building on which the installation will be located of their intentions to install an SES and attach to the application a completed Neighbor Contact Form (attached).

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No application may be denied because of objections by a neighbor, but comments may be used by the Mutual in establishing any reasonable restriction on the installation. Mutual 59 will not be held responsible for possible glare under a theory of Nuisance (Civil Code section 3479).

2. The application must include all required information and must be submitted to the Board at least 14 days before Board consideration at its next duly scheduled board meeting. The Board will review the application for reasonable restrictions on the installation within limits prescribed in Civil Code Section 714. Any application that complies with all of Mutual 59's Solar Policies will not be denied by the Board. The application is deemed approved if the Board fails to act on it within 45 days.
3. The applicant must provide satisfactory evidence of compliance with all requirements of the City of Walnut Creek by obtaining applicable permits and approvals through the City of Walnut Creek.
4. Before approving installation of any SES within the Mutual confines, the Board requires every applicant to execute a separate agreement acknowledging the applicant has read, understands and agrees to comply with all related M59 SES rules. Additionally, the applicant must agree to indemnify and hold harmless the Mutual, Golden Rain Foundation and their officers, directors, employees and members from and against all claims, allegations, litigation, arbitration or judgments resulting in whole or in part from the installation or maintenance of the SES. (See Addendum Agreement.)
5. The SES applicant is financially responsible for any damage to the Common Area, including Exclusive Use Common Area, and any Unit, caused by the Owner's SES. The applicant must maintain liability insurance coverage for any damages to the SES or related to the SES. Before MOD issues final approval of the installation to allow operational use of the SES, the applicant must provide MOD with the corresponding written certificate of liability insurance
6. The SES applicant who installs the system and each successive owner must maintain a homeowner liability coverage policy throughout the entire life of the SES.

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17.5 SES INSTALLATION REQUIREMENTS

1. SES' visible ancillary components such as conduits and supports must be painted to match the exterior of adjacent structures, unless such painting would void a manufacturer's warranty, result in an increase of more than \$1,000 for an SES or reduce the efficiency of the system by more than 10%.
2. All installations of the SES components must not materially harm or damage the Mutual's common elements, any other individual's Unit, nor any of the Unit's Exclusive Use Common Area, nor void any warranties held by the Mutual or other Owners and/or impair the integrity of a building or structure.
3. All portions of an SES will 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.
4. There will not be any SES penetrations into building structures, including but 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 of more than \$1,000, or an unreasonable decrease of more than 10% in the SES' efficiency as originally specified and proposed in an SES application.
 - a) Any penetrations for wiring, piping or anchoring of an SES must be properly sealed and waterproofed in accordance with industry standards and building codes in order to prevent moisture penetration, resulting structural damage, or loss of warranty.
 - b) For installations on Durolast surfaces, a Durolast certified roofing company, preferably the company that installed the current roof, must be contracted with to reseal the penetrations and the Durolast manufacturer must recertify the warranty. A new certificate of warranty must be provided to MOD prior to project completion.
5. The SES Owner is responsible for any damage to building elements, unit interiors or personal property caused by such penetrations through the existing rooftop, even if the Mutual has primary maintenance responsibility for such elements, such as roofing, under the Mutual's governing documents.

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17.6 SAFETY

Each SES must be installed and secured in compliance with manufacturer's instructions and all city, state and federal ordinances, regulations and laws.

1. Each SES must meet all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronic Engineers and accredited testing laboratories such as Underwriters Laboratories and, where applicable, rules of the Public Utilities Commission regarding safety and reliability.
2. An SES must not obstruct access to or from any Unit, walkway, or ingress or egress into any area of the Mutual in order to ensure the safety of individuals and allow safe access to the Mutual's physical plant.

In approving the installation of any SES, the Board is entitled to rely upon the representation of the designated contractor that the system fully complies with the safety criteria set forth in this policy. Should the Board later determine that the equipment is not in conformance, the Board may require the SES Owner(s) to remove or modify the SES to bring it into compliance and assume all associated costs.

17.7 MAINTENANCE

1. SES Owners are responsible for all associated costs including, but not limited to:
 - a) Replacement, repair, maintenance, moving or removal of the SES and any of its components.
 - b) Repair or replacement of any property damaged by the installation, maintenance and/or use of the SES.
 - c) Restoration of SES installation sites to their original condition after removal.
 - d) Correction of any SES safety hazards.
 - e) Painting or replacing visible SES components, such as conduits and supports when deterioration occurs.
 - f) Any increased costs incurred by the Mutual for maintenance or repair caused by the presence of an SES on the Common Area or those portions of a Unit or Exclusive Use Common Area (for which the Association is responsible under M59 Governing Documents).

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- g) Temporary removal and reinstallation of an SES or any of its affected system components so that the Mutual may perform required maintenance, repairs, and replacement (under M59 Governing Documents), to the adjacent Common Area, or portions of a Unit, along with all their associated costs after the required Mutual maintenance or repair is completed. When the SES Owner does not respond to a request in a reasonable time:
- The Mutual may remove the system or components and charge the responsible SES Owner(s) all the associated costs.
 - As long as reasonable care is used to remove the SES and any of its components, the Mutual will not be responsible for any damage caused to the system.
- h) When an SES is moved or removed for any reason, the roof warranty must be recertified (see section 17.5. #4, (b)).
2. The Board of Directors must take into account the effect on SES's resulting from shade created by trees or shrubs within the boundaries of the Mutual. The Board will be guided by the principal of "first in time is first in right."
- a) If a tree or shrub was planted before the SES was installed, the tree or shrub may grow without regard to its effect on the SES. The Mutual will not be required to prune, or allow pruning, of trees and/or shrubs which were planted before the SES was installed. However,
- b) Trees or shrubs planted after installation of the SES may not be allowed to grow to cast a shadow greater than 10% of the collector absorption area of the SES at any one time between the hours of 10:00 a.m. and 2:00 p.m. local time (Public Resources Code Section 25982). Pruning needs will be dictated and determined by the Mutual's landscape or tree experts.

17.8 RESALE OR TRANSFER OF OWNER'S UNIT

Upon resale or transfer of any SES Owner's interest in his or her condominium unit which has a permitted SES, the Buyer or Transferee (as the case may be) must assume in writing all of the SES Owner's duties and responsibilities as outlined in this Mutual 59's Rule 1.17. The new SES Owner's (or Transferee's) written assumption of duties and responsibilities must be executed by all of the parties before escrow can close and the transfer of the ownership can be legally completed.

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17.9 REMOVAL OF SOLAR ENERGY SYSTEM

1. The sale or removal of an SES must be approved by Mutual 59 and all costs relating to the sale or removal of the SES and restoration of the Common Area shall be the sole responsibility of the SES Owner.
2. When a future Unit buyer or a transferee does not agree in writing to assume complete responsibility for the Unit Owner's SES:
 - a) The current Unit SES Owner may either sell the SES to another Owner or Owners within the same building, or
 - b) Remove the SES and all its components and restore the areas where they were located or attached to original condition by completing the following:
 - i. Obtain a Mutual Alteration Permit and a Walnut Creek city permit.
 - ii. Seal any penetration points with roof tile where applicable and paintable sealant, then paint to match adjacent surfaces.
 - iii. Patch all holes in interior Units and all other exterior penetrations where solar panel appurtenances were installed.
 - iv. If the Board deems it necessary, the SES Owner may be required to remove roofing and plywood in areas previously covered by the SES and install a new roofing system matching the pre-existing roofing design and roof tile where applicable.
 - v. If an SES is removed from a Durolast surface, the Durolast manufacturer must recertify the warranty (refer to section 17.4 #4, (b)).

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MUTUAL 59 NEIGHBOR CONTACT FORM

UNDERTAKEN BY:

Name(s): _____

Address: _____ Unit # _____

Walnut Creek, California 94595

Alteration Permit Number: _____

As described in Mutual 59 Operating Rules for Solar Energy Systems, owners wishing to install a Solar Energy System (SES) on their building must notify each owner of a unit in the building on which the installation will be located of their intentions to install an SES. Please document each contact made and provide the following information.

Date of Contact	Owner Name	Address	Comments provided by this owner
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			

No application may be denied because of objections by a neighbor, but comments may be used by the Board in establishing any reasonable restriction on the installation.

Adopted 9/11/18

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MUTUAL 59 SOLAR ENERGY SYSTEMS
MAINTENANCE AND INDEMNITY AGREEMENT

UNDERTAKEN BY:

Name(s): _____

Address: _____ Unit # _____
Walnut Creek, California 94595

Alteration Permit Number: _____

I/we, as the Owner(s) and as the Undersigned, of the above condominium Unit in Mutual 59 of Rossmoor, a California nonprofit mutual benefit corporation, and in consideration of the approval of my/our application to allow the installation of a Solar Energy System (SES) in the Common Area of the building at the above address, have read Mutual 59's Policies on Solar Energy Systems, understand the contents, and agree to all of the following:

1. The proposed solar energy system will be installed and maintained in full compliance with the Policies and the Alteration Permit that has been issued by the Mutual for this installation and agree to comply with all the terms and conditions set forth in the Policies and the Alteration Permit.
2. I/We indemnify and hold harmless Mutual 59, Golden Rain Foundation of Walnut Creek, and their respective officers, directors, employees, agents, members, and their respective successors, and assigns (hereinafter "Indemnitees"), from damages resulting from suits, losses, costs, liabilities, interest, attorneys' fees, including, but not limited to, any such fees and expenses incurred in enforcing this Indemnity Agreement, resulting from, arising out of or in any way connected with the installation, maintenance, operation or removal of the solar energy system described in our/my above Alteration Permit.
3. The planned SES under the above Alteration Permit will be installed on the Common Area roof of the building at the above address in the manner and location approved by the Mutual, which roof is defined under the Declaration of Covenants, Conditions and Restrictions (CC&R's) of Mutual 59 to be part of the Mutual's Common Area.

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Alteration Permit Number: _____

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 Policies before close of Escrow.
5. Should the Undersigned fail to meet any obligations to defend and/or indemnify and save harmless in accordance with this agreement, then in such cases all Indemnitees 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 BELOW BY ALL OWNERS of the condominium Unit making application for the installation of a solar energy system, on Day ____ Month _____ Year 20____.

Name of Owner (Print): _____

Signature of Owner: _____

Name of Owner (Print): _____

Signature of Owner: _____