

OWNER-INITIATED ALTERATIONS SOLAR ENERGY SYSTEMS

This Solar Energy Policy (the "Policy") for Walnut Creek Mutual No. Sixty-Five (the "Mutual") shall govern the installation, maintenance, use, removal, replacement and reinstallation (if necessary) responsibilities pertaining to solar collectors and other solar energy devices and systems whose primary purpose is to provide for the collection, storage and distribution of solar energy (a "Solar Energy System") installed within the Walnut Creek Mutual No. Sixty-Five condominium project (the "Project"), as well as the protection of commonly-owned and Mutual-maintained Common Area.

When adopted by the Board, this Policy will become part of the Mutual's Rules which constitute "operating rules," as that term is defined in Civil Code section 4340(a).

It is the intent of this Policy to comply with all laws and regulations, both state and federal, and in particular, Public Resource Code section 25982, Civil Code section 714, Civil Code section 714.1, and Civil Code section 4746. In the event of any conflict between any provision of this Policy and any applicable statute, the terms of that statute shall prevail and supersede any contrary provision in this Policy.

1. Definitions. All capitalized terms that are not otherwise defined in this Policy shall have the meanings ascribed to them in the Amended & Restated Declaration of Covenants, Conditions and Restrictions of Walnut Creek Mutual No. Sixty-Five, recorded on October 16, 2001, as Document No. 2001-0311734-00 in the Office of the County Recorder of Contra Costa County (the "Declaration").

2. Introduction. 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 a fractional interest in the Common Area. The Common Area is owned by the Mutual. The Mutual is required by the Declaration to maintain, repair and replace the Common Area roof systems in the Project. It is the intent of this Policy to recognize the respective ownership rights of the Owners and Mutual, and enable the Mutual to perform its exterior maintenance, repair and replacement obligations. As a result, the rights of individuals to install Solar Energy Systems on Common Area roofs or the roofs of the Exclusive Use Common Area garages must be limited to the extent necessary to not infringe upon neighboring Owners' property rights and to enable the Mutual to perform its maintenance, repair and replacement obligations.

3. Alteration Application.

(a) The installation of Solar Energy Systems is subject to the provisions of (i) Article VIII of the Declaration entitled "Design Review," (ii) Exhibit B attached to the Declaration, (iii) this Policy, and (iv) the Mutual's other Policies, including but not limited to the Mutual's Policy 1.0 entitled "Alterations" (the "Alterations Policy"). As such and as required by the Declaration, an Owner wishing to install a Solar Energy System on a Common Area roof of his or her Unit or the roof of an

Exclusive Use Common Area garage assigned to his or her Unit is required to submit an alteration application to the Board or the Architectural Control Committee/Design Review Committee (if appointed), in care of the Mutual Operations Division (MOD) Alterations Department.

(b) **Owner must receive written notice of approval by the Board or the Architectural Control Committee/Design Review Committee (if appointed) PRIOR to installation of any Solar Energy System.**

(c) Owner shall provide plans and specifications as part of the alteration application, and furnish such other information and documentation as may be reasonably requested by MOD, the Board, and/or the Architectural Control Committee/Design Review Committee.

(d) Owner shall also provide manufacturer literature for all proposed Solar Energy System components, including specifications, color, and materials, with the alteration application.

(e) The plans and specifications provided as part of the alteration application shall include the following:

(i) Plans and specifications clearly indicating where the Solar Energy System will be located, technical specifications and dimensions (i.e., brand, manufacturer, model number, nature, kind, shape, color, height, width, weight, materials, etc.), and structural requirements, as well as photographs depicting the panels and equipment to be installed;

(ii) Plans and specifications showing the visibility of the Solar Energy System from areas open to public access (e.g., streets, Common Area, neighboring Units);

(iii) A solar site survey pursuant to Civil Code section 4746, which contains the following information: (A) shows the placement of the Solar Energy System, (B) contains a determination of total usable area of the Common Area roof or the roof of the Exclusive Use Common Area garage, (C) contains a determination of the maximum number of Solar Energy Systems which can be installed on the Common Area roof or the roof of the Exclusive Use Common Area garage; and (D) contains a determination of the equitable allocation of the total usable area of the Common Area roof or the roof of the Exclusive Use Common Area garage among all Owners sharing the same Common Area roof or the Exclusive Use Common Area garage (if any).

(f) Owner shall notify all Owners sharing the same Common Area roof or Exclusive Use Common Area garage of his or her alteration application for installation of a Solar Energy System and certify to the Mutual, in writing, the names and addresses of those notified and the date of the notification. The

certification and any written comments by an affected Owner shall be attached to the alteration application. No alteration application may be denied because of objections by an affected Owner, but may be used by the Mutual in establishing any reasonable restrictions on the installation of the Solar Energy System. A copy of the solar site survey and a drawing depicting how the equipment will be mounted shall be attached to the notification to affected Owners.

(g) Owners are responsible for confirming receipt of their alteration application, supporting documentation, and other information by the Board or the Architectural Control Committee/Design Review Committee.

(h) Except as modified by law, all provisions of Article VIII of the Declaration, this Policy, and other applicable Policies, including the Alterations Policy, shall apply to the installation of the Solar Energy System.

4. Mutual's Right to Retain Consultant. In reviewing any alteration application for the installation of a Solar Energy System, the Mutual retains the right to have its own solar site survey prepared at Owner's expense. The Mutual also retains the right to hire a consultant, at Owner's expense, to review all information and documentation provided by Owner including, but not limited to, the solar site survey and the plans and specifications as set forth in Paragraph 3(e), above.

5. Leasing of Solar Energy Systems. In the event that the Owner is leasing the Solar Energy System from a third party (rather than purchasing it outright) for installation within the Mutual, the third party Lessor must agree in writing to be subject to any all terms, conditions, restrictions and obligations assumed by the Owner in having the Solar Energy System installed and maintained within the Mutual including, but not limited to, repair, replacement, temporary removal for repairs, and/or permanent removal as appropriate. Owner agrees to reimburse the Mutual for the costs for any legal action, including any attorneys' fees and costs, to enforce the provisions of this Section 5.

6. Availability of Common Area Space. The installation of Solar Energy Systems in or on Common Area, including Common Area roofs or the roofs of the Exclusive Use Common Area garages, is subject to a determination of Usable Solar Space and 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 the Owner and it shall include a calculation of the square footage available for the Solar Energy System and the equitable allocation for each Unit in the condominium building. Each Owner of a unit in the subject building shall receive a drawing showing the Usable Solar Space and the specific location within that Usable Solar Space to be allocated to the Owner seeking to install the Solar Energy System. Owner may only install a Solar Energy System on the Common Area roof of a building in which his or her Unit is located or the roof of an Exclusive Use Common Area garage assigned to his or her Unit.

7. Insurance Requirements. The Owner of a Solar Energy System and each successive Owner shall be responsible for maintaining a homeowner liability coverage policy at all times with policy limits of at least \$1,000,000 and shall provide the Mutual

with the corresponding certificate of insurance within fourteen (14) days of approval of the alteration application and annually thereafter.

8. Approval Guidelines. The Board or the Architectural Control Committee/Design Review Committee (if appointed) may impose reasonable restrictions on the installation of Solar Energy Systems in the Project. "Reasonable restrictions" are defined as those that do not significantly increase the cost of the Solar Energy System or significantly decrease its efficiency. "Significantly" means an amount exceeding ten percent (10%) of the cost of the Solar Energy System or decreasing the efficiency of the Solar Energy System by an amount exceeding ten percent (10%), as originally specified and proposed. For photovoltaic systems that comply with state and federal law, a significant or unreasonable restriction is one that results in an increased cost to the Solar Energy System as originally specified and proposed of over \$1,000 or a decrease in the Solar Energy System's efficiency in an amount exceeding ten percent (10%) as originally specified and proposed.

9. Conditions for Approval. The Mutual may require as a condition for the approval of a Solar Energy System that each Owner and each successive Owner of the Solar Energy System be responsible for all of the following:

- (a) Costs to repair any damage to the Solar Energy System, the Common Area, the Exclusive Use Common Area, the Unit (if applicable), and/or other Units resulting from the installation, maintenance, use, repair, removal, replacement or reinstallation of the Solar Energy System;
- (b) Costs for the installation, maintenance, use, repair, removal, replacement or reinstallation of the Solar Energy System until it is permanently removed and for the restoration of the Common Area, the Exclusive Use Common Area, the Unit (if applicable), and/or other Units after permanent removal;
- (c) Disclosing to prospective buyers the existence of any Solar Energy System of the Owner and the related responsibilities of the Owner pursuant to this Solar Policy and any applicable law; and
- (d) Recordation of an installation, maintenance and indemnification agreement in a form acceptable to the Mutual, wherein the Owner specifically agrees to defend and indemnify the Mutual, the Golden Rain Foundation of Walnut Creek, and their respective officers, directors, managers, 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, use, removal replacement, or reinstallation of the Solar Energy System. If required, the recordable agreement shall also include all conditions of approval so as to bind future Owners of the Unit.

10. Solar Shade Control. The Board or the Architectural Control Committee/Design Review Committee must take into account the effect on Solar Energy Systems that may result from shade created by trees or shrubs within the boundaries of the Mutual. The

Board or the Architectural Control Committee/Design Review Committee will be guided by the principal of "first in time is first in right." If a tree or shrub was planted before the Solar Energy System was installed, the tree or shrub may grow without regard to its effect on the Solar Energy System. The Mutual shall not be required to prune, or allow pruning, of trees and/or shrubs which were planted before the Solar Energy System was installed. However, trees or shrubs planted after 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 surface at any one time between the hours of 10:00 a.m. and 2:00 p.m. local standard time (Public Resources Code section 25982). Pruning needs shall be dictated and determined by the Mutual's landscape or tree experts.

11. Decisions in Writing; Reconsideration. Any decision by the Board or the Architectural Control Committee/Design Review Committee (if appointed) 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 alteration application was disapproved and a description of the procedure for reconsideration of the decision by the Architectural Control Committee/Design Review Committee, if applicable. The decision of the Board on a written alteration application is final.

12. Forty-Five Day Approval Period. As provided by Civil Code section 714, a complete alteration 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 alteration application by the Board shall be deemed approved, unless that delay is a result of a reasonable request by the Board or the Architectural Control Committee/Design Review Committee for additional information.

13. Appeals; Reconsideration by the Board. If a written alteration application for the installation of a Solar Energy System is denied by the Architectural Control Committee/Design Review Committee, Owner is entitled to reconsideration of the decision by the Board at an open Board meeting. The decision of the Board on appeal is final. Owner is responsible for confirming receipt of a request for reconsideration by the Board.

14. Installation Conditions; Permits.

(a) Tubing, piping, and related materials shall be installed so as to be minimally visible and blend into the material to which they are mounted or placed. When not unreasonable to do so, the Solar Energy System shall be colored to blend into the background onto which it is mounted or placed to the greatest extent possible. Panels must be located entirely within a boundary defined by the roof eaves and the roof peaks. Visibility of the underside of the panels shall be minimized from the Common Area. Visibility of any plumbing, wiring, or auxiliary equipment should also be minimized.

- (b) All portions of a Solar Energy System shall be secured in a manner that does not jeopardize the safety or soundness of any structure or the safety of any person within the Project.
- (c) There shall be no penetrations into building structures including, but not limited to, walls, ceilings, floors, windows, and roofs, unless it is absolutely necessary for the installation and operation of the Solar Energy System and/or to avoid an unreasonable increase in the cost of the installation (more than \$1,000 for photovoltaic systems) or an unreasonable decrease in the Solar Energy System's efficiency (more than ten percent (10%) as originally specified and proposed for photovoltaic systems). Any penetrations for wiring or piping for a Solar Energy System shall be properly sealed and waterproofed in accordance with industry standards and applicable building codes in order to prevent moisture penetration and resulting structural damage.
- (d) To ensure the safety of individuals and allow safe access to the Mutual, Solar Energy Systems shall not obstruct access to or from any Unit, walkway, ingress or egress into any area of the Project.
- (e) All installations shall be done in accordance with all City of Walnut Creek, State of California and federal ordinances, regulations and laws including, but not limited to, City of Walnut Creek Development Review Services Information Bulletin No. 1B-025 entitled "Submittal Requirements for Photovoltaic Array Systems or Alternative Energy Systems," as amended from time to time.
- (f) The installing Owner must obtain all necessary permits, authorizations and approvals from local regulating agencies and provide copies thereof to the Mutual. A copy of the final City inspection must also be provided to the Mutual.
- (g) 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.
- (h) A Solar Energy System for producing electricity shall meet all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronic Engineers (IEEE), and accredited testing laboratories such as Underwriters Laboratories (UL™) and, where applicable, rules of the Public Utilities Commission regarding safety and reliability.
- (i) All installations of Solar Energy Systems shall be completed so as not to (A) materially harm or damage Common Area, the Exclusive Use Common Area, or other individual Units; (B) void any warranties held by the Mutual or other Owners, including the roof warranty; and/or (iii) impair the integrity of any building or structure.
- (j) In approving the installation of any Solar Energy System, the Mutual is entitled to rely upon the representation of the Owner and/or his or her contractor

that the system fully complies with the safety criteria set forth in this Policy. Should the Mutual later determine that the equipment is not in conformance with such criteria, the Mutual may require the Owner, at his or her sole cost and expense, to remove the Solar Energy System or modify it so that it is in compliance with such criteria.

(k) An Owner may not install a Solar Energy System on his or her own. Installation shall be by a qualified, licensed, and properly insured contractor knowledgeable about installation of Solar Energy Systems or the contractor's registered salesperson 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 \$1,000,000. The contractor or the contractor's registered salesperson must, prior to installation, provide copies of certificates of insurance for the above policies and endorsements which name the Owner and the Mutual as additional insureds in the policies.

(l) All installations must be in accordance with the manufacturer's installation specifications and instructions.

15. Installation Period. Once work on the approved Solar Energy System has started, all work must be completed within a reasonable period of time, weather permitting (i.e., no later than ninety (90) days after approval), and must not be a safety hazard to surrounding Units, the Common Area, and/or the Exclusive Use Common Area (e.g., location of supplies or tools used for the installation). In the event that the Owner fails to commence work on an approved Solar Energy System within six (6) months of approval, the approval shall be deemed revoked, and the Owner must submit a new alteration application for the installation of a Solar Energy System.

16. Inspection. The Mutual may inspect a Solar Energy System at any time to ensure compliance with the provisions of this Policy and the alteration application, as approved. Owner shall be responsible for reimbursing the Mutual for any costs incurred by the Association in having the Solar Energy System inspected. If the Mutual determines that the installation is not in accordance with the provisions of the Declaration, this Policy, the Rules, and/or the approved alteration application, the Mutual may require the Owner, at the Owner's expense, to remove or otherwise modify the Solar Energy System to comply with the provisions of this Policy and/or the approved alteration application.

17. Mutual's Increased Maintenance Costs. Owners 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.

18. Improper Installation. If a Solar Energy System is improperly installed, the Owner shall be responsible for any costs associated with correcting the installation or relocating the Solar Energy System to another location.

19. Owner's Maintenance Obligations. Owner agrees to regularly maintain the Solar Energy System in good condition and repair. Should Owner fail to maintain the Solar Energy System in good condition and repair, the Mutual may remove the Solar Energy System at the Owner's expense. Unless there is an emergency, the Mutual shall provide the Owner with at least fifteen (15) days advance written notice. The Mutual shall not be responsible for any damage to the Solar Energy System or loss of use due to removal of the Solar Energy System. If the Mutual must remove the Solar Energy System, the Mutual may levy a Special Individual Assessment, as provided in Section 5.4 of the Declaration, to reimburse the Mutual for costs incurred in removing the Solar Energy System, after giving the Owner notice and an opportunity for a hearing in accordance with the Governing Documents. If the Mutual must remove the Solar Energy System, the Mutual shall not be responsible for replacing or reinstalling it. Reinstallation of the Solar Energy System shall be at the Owner's sole cost and expense and shall be in compliance with the Declaration, this Policy, and any other Rules.

20. Mutual's Maintenance Obligations. Owner shall be required to remove the Solar Energy System at his or her own cost or expense if necessary to enable the Mutual to meet its maintenance, repair and/or replacement obligations as imposed by the Declaration and/or California law. Should an Owner fail to remove the Solar Energy System upon the Mutual's request, the Mutual may remove the Solar Energy System at the Owner's expense. Unless there is an emergency, the Mutual shall provide the Owner with at least fifteen (15) days advance written notice. The Mutual shall not be responsible for any damage to the Solar Energy System or loss of use due to removal of the Solar Energy System. If the Mutual must remove the Solar Energy System, the Mutual may levy a Special Individual Assessment, as provided in Section 5.4 of the Declaration, to reimburse the Mutual for costs incurred in removing the Solar Energy System, after giving the Owner notice and an opportunity for a hearing in accordance with the Governing Documents. If the Mutual must remove the Solar Energy System, the Mutual shall not be responsible for replacing or reinstalling it. Reinstallation of the Solar Energy System shall be at the Owner's sole cost and expense and shall be in compliance with the Declaration, this Policy, and any other Rules.

21. Inoperable System/Equipment. If a Solar Energy System becomes inoperable, either by damage or termination of service, the Solar Energy System must be removed from the structure within twenty (20) days after receiving written notice from the Mutual and any and all damage to the Common Area, the Exclusive Use Common Area, the Unit (if applicable), and/or other Units repaired at the Owner's expense.

22. Owner's Liability. Owner assumes all responsibility for any and all damage to his or her Unit, other Units, the Exclusive Use Common Area, and/or the Common Area, and any other property damage and/or personal injury resulting from the installation, maintenance, use, repair, removal, replacement or reinstallation of the Solar Energy System including, but not limited to, roof leaks and damage caused by roof leaks which

are the result of the Solar Energy System. The Mutual may recover from the Owner any expenses it incurs in connection with any violation of this Policy, in any manner provided by law or permitted by the Mutual's Declaration, Rules and Bylaws including, without limitation, imposition of a Special Individual Assessment, as provided in Section 5.4 of the Declaration, against the Owner and his or her Unit to reimburse the Mutual for costs incurred, provided the Owner's liability has been established after notice to the Owner and the opportunity for a hearing in accordance with the Governing Documents.

23. Mutual Not Responsible. The Mutual is not responsible for any accidents or incidents which may occur during installation, maintenance, use, repair, removal, replacement or reinstallation of the Solar Energy System. Additionally, the Mutual is not responsible for the installation, maintenance, use, repair, removal, replacement and/or reinstallation of any Solar Energy System.

24. Resale or Transfer of Owner's Unit. Upon resale or transfer of any Unit which has a permitted Solar Energy System, the buyer or transferee (as the case may be) shall agree in writing to assume all of the Owner's duties and responsibilities as outlined in this Policy. The buyer or transferee's written agreement shall be in a form acceptable to the Mutual and executed by all of the parties before escrow can close and the transfer of the ownership can be legally completed.

25. 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 must, prior to the close of escrow, remove the Solar Energy System and restore the area where the Solar System had been located. In particular, any penetration patches must be completely sealed with paintable sealant. The removal must be approved by the Mutual and all costs relating to the removal of the Solar Energy System and restoration of the surrounding area shall be the sole responsibility of the Owner. If the Owner fails to remove the Solar Energy System prior to the close of escrow, the Mutual may remove the Solar Energy System at the Owner's expense.

26. Reimbursement. The Mutual may recover from the Owner any expenses it incurs in connection with any violation of this Policy, in any manner provided by law or permitted by the Declaration including, without limitation, imposition of a Special Individual Assessment, as provided in Section 5.4 of the Declaration, against the Owner and his or her Unit to reimburse the Mutual for costs incurred, provided Owner's liability has been established after giving the Owner notice and an opportunity for a hearing in accordance with the Governing Documents and California law.

27. Failure to Comply with this Policy and Other Governing Documents. An Owner's failure to comply with this Policy and/or any other Governing Documents including, but not limited to, the Declaration and other Mutual Policies, shall be subject to enforcement by the Board pursuant to the Governing Documents and applicable California law.