

### **Solar Release and Indemnity Agreement**

This Solar Release and Indemnity Agreement ("Agreement") is by and between Tierra Linda Maintenance Corporation ("Association") and \_\_\_\_\_ ("Owners")<sup>1</sup>. The Association and Owners are referred to collectively as the "Parties" and individually as a "Party."

#### RECITALS

A. Whereas, the Association is a California non-profit mutual benefit corporation organized as a homeowner association for the residential development located in Rancho Santa Margarita, California, and established as a common interest development, as described in the Davis-Stirling Common Interest Development Act and Civil Code §§ 4000-6150.

B. Whereas, Owners are the record owners of real property within the Association located at \_\_\_\_\_ ("Property") and are thus members of the Association.

C. Whereas, all members of the Association are bound by the restrictions imposed in the *Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Tierra Linda* recorded on June 19, 1989, as Document No. 89-321793, in the Official Records of Orange County, California ("CC&Rs").

D. Whereas, the Association's CC&Rs define roofs as part of "Common Area" which the Association is obligated to maintain, repair and replace in a clean, sanitary and attractive condition. (See CC&Rs, Art. I, §13; Art. 11, §7). Notwithstanding the foregoing, the Association's Policy on Solar Energy Systems and CC&Rs generally permits the installation of solar energy systems, subject to certain limitations.

E. Whereas, Owners seek to install a solar energy system on the roof of the Property ("SES"), which would potentially impact the Association's ability to properly maintain, control and manage the roofs in a neat, safe, attractive, sanitary and orderly condition, pursuant to the CC&Rs.

F. Whereas, Owners represent and warrant that they have obtained all other approvals and/or permits required in order to install the SES, including any approval and/or permit required from the City of Rancho Santa Margarita, County of Orange, and/or Tierra Linda Maintenance Corporation (as stated in the CC&Rs), as may be applicable, and, if so, have provided evidence of the same to the Association.

G. Whereas, the Parties have agreed to be bound by the provisions provided for in this Agreement, which will permit Owners to install the SES in exchange for certain maintenance costs and indemnity provided for herein.

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<sup>1</sup> Even if there is just one record owner, the plural "Owners" is used throughout the Agreement.

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**Agreement**

NOW THEREFORE, in exchange for the releases, promises and other consideration described in this Agreement, and by incorporation of the recitals referenced above, the Parties agree as follows:

1. **Permission for Solar Installation.** The Association hereby grants permission to Owners for the installation of the SES on the roof of the building located directly above the Property, at a specific location as approved by the Association, subject to the conditions and limitations contained herein. It is expressly understood that Owners are not being granted exclusive use of the roof, and that it is not appurtenant to their separate interest. It is further understood that Owners are not entitled to utilize the Association's roof for any other purpose. If at any time Owners shall fail to comply with any of the terms or conditions contained in this Agreement, such permission shall be immediately revoked, and the roof shall be put back into its original condition at Owners' sole cost and expense. Each of Owners' obligations under this Agreement are a material term, and breach of any of Owners' obligations shall be considered a material breach of this Agreement.

2. **Indemnity and Release of Association.** Owners, on behalf of himself, herself, and any heirs, representatives, successors and assigns, hereby indemnifies, holds harmless, shall defend, and releases the Association and its officers, directors, employees, members, attorneys, and agents, and each of them, from any and all claims, debts, liabilities, demands, and causes of action, whether known or unknown, now and in the future, arising from or related to any loss or damage, including, without limitation, water damage, and any other damage sustained from or arising from the SES and its installation, maintenance, or use, or any claims relating to the legality of the installation of the SES and/or any legal challenge concerning the installation of the SES by any other member of the Association, and shall remove the SES in the event of such challenge. Owners agree to be solely responsible for any water intrusion, mold, and/or other damages caused to the Property, the Association's common area, or to any other property at the Association as a result of the installation, maintenance, and/or use of the SES. Owners further agree to be solely responsible for any costs incurred by Owners and/or the Association, including actual attorney fees, in the defense of any legal or other challenge to the installation, maintenance and/or use, of the SES, as described herein.

3. **Future Maintenance and Repair.** Owners agree to pay to Association the actual increase in any costs to maintain, repair, and/or replace the roof and any other building components as a result of the installation, maintenance and/or use of the SES. Owners specifically acknowledge that the SES may need to be lifted and/or removed to allow for the ongoing maintenance of the roof by the Association, and Owners agree to be solely liable for such costs. Upon request from the Association, Owners agree to have the SES lifted or removed within fourteen (14) days to accommodate repairs and maintenance to the roof or other building components. If Owners fail to lift or remove the SES within the allotted time, the Association shall be authorized to cause the lifting or removal of the SES and charge the actual cost of the same to Owners as a special assessment. In no event shall the Association be responsible for the costs of lining, removing, and/or reinstalling the SES, for any damages caused, or for any increase in Owners utilities during times which the SES is inoperable for any reason.

4. **Transfer of the Property.** Owners agree that prior to the sale or transfer of the Property to another, either (1) the SES shall be removed and the Owner shall reimburse the Association for the cost of the roof being put back into its original condition, or (2) the transferee of the Property shall sign a counterpart

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addendum to this Agreement whereby the transferee agrees to assume, abide by, and be bound by all of the terms herein as the Owners.

5. **Compliance with Solar Policy.** Owners agree at all times to comply with and be bound by the Association's Policy on Solar Energy Systems, a copy of which is attached hereto and incorporated herein by this reference, and which is subject to amendment from time to time.

6. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California.

7. **Modifications.** This Agreement may not be amended, canceled, revoked or otherwise modified except by written agreement signed by all of the Parties hereto.

8. **Successors in Interest.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective directors, officers, agents, shareholders, partners, members, servants, employees, affiliates, representatives, heirs, executors, executrix, conservators, successors, beneficiaries, and assigns.

9. **Further Assurances.** The Parties shall timely execute and deliver any and all further documents that may be reasonably necessary to effectuate the provisions of this Agreement, including any documents necessary to allow this Agreement to run with the land.

10. **Tax Consequences.** Each Party is responsible for their own tax consequences, if any, related to this Agreement.

11. **Attorneys' Fees.** If any act at law or equity, including an action for declaratory relief; is brought to enforce or interpret the provisions of this Agreement, the prevailing Party shall be entitled to recover actual attorneys' fees, which may be determined by the court in the same action or in a separate action brought for that purpose in addition to any other relief to which that Party may be entitled.

12. **No Reliance and Advice of Counsel.** The Parties have been instructed to and have had the opportunity to have this Agreement reviewed by independent counsel of their own choosing, and by entering into this Agreement neither Party has relied upon the advice of the other Party. Each Party hereto executes this Agreement acting upon its independent judgment and upon the advice of its respective counsel, if applicable, without any representation, express or implied, of any kind or nature, from each to the other, except as only specifically set forth herein.

13. **Counterparts.** This Agreement may be signed and executed in one or more counterparts, each of which shall be deemed an original and shall be effective when all parties have executed a counterpart. Signatures on this Agreement transmitted by facsimile and/or other electronic means shall have the same force and effect as original signatures.

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14. **Captions and Interpretations.** The paragraph titles, headings or captions are inserted in this Agreement as a matter of convenience. As such, the paragraph titles, headings or captions are not intended to define, limit or describe the scope of any provision, and shall not affect the interpretation of any paragraph hereto.

15. **Singular, Plural, and Gender Usage.** Whenever applicable within this Agreement, the masculine, feminine and/or neutral gender shall be deemed to include the other, and the singular and plural are each deemed to refer to the other.

16. **Authority to Enter Agreement.** This Agreement is the result of arms-length negotiations. Each signatory to this Agreement represents and warrants to the others that he or she has full authority and is duly and fully authorized to execute this Agreement.

17. **Incorporation of Recitals.** Paragraphs A through G, inclusive, of the Recitals hereof are fully incorporated herein and are true and correct. These Recitals are intended and shall be deemed and construed to be a material and integral portion of this Agreement.

18. **Confidentiality.** Owners agree that this compromise between the Parties and the contents of this Agreement are strictly confidential. Owners shall not disclose anything regarding this compromise or Agreement to any other person or entity unless legally compelled to do so, and then, only upon timely prior notice to Association, giving it sufficient time to contest any such disclosure.

19. **Entire Agreement.** This Agreement constitutes the entire agreement and understanding between the Parties with respect to the subject matter of this Agreement and supersedes and replaces all prior agreements and understandings, whether oral or in writing, and may not be modified or amended except by written instrument signed by all Parties.

20. **Right to Record Agreement.** This Agreement may be recorded against the Property at the County Recorder's Office, in the sole discretion of the Association.

< Signature Page to Follow >

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THE UNDERSIGNED EXECUTED THIS AGREEMENT ON THE DATE SHOWN BELOW.

**OWNERS:**

\_\_\_\_\_  
Date

\_\_\_\_\_  
[INSERT NAME]

\_\_\_\_\_  
Date

\_\_\_\_\_  
[INSERT NAME]

**TIERRA LINDA MAINTENANCE CORPORATION**

\_\_\_\_\_  
Date

Signed: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_