

RECORDING REQUESTED BY:

NORTH AMERICAN TITLE COMPANY

AFTER RECORDING RETURN TO:

ROBERT D. BURTON, ESQ.

WINSTEAD, PC

401 CONGRESS AVE., SUITE 2100

AUSTIN, TEXAS 78701

(Space Above for Recorder's Use)

DECLARATION OF SOLAR ENERGY COVENANTS, CONDITIONS
AND RESTRICTIONS
FOR

MALONE PARK

[SECTION ONE]

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This Declaration of Solar Energy Covenants, Conditions and Restrictions for Malone Park [Section One] ("*Solar Energy Declaration*") is made by **CALATLANTIC HOMES OF TEXAS, INC.**, a Delaware corporation ("*Declarant*").

RECITALS

A. Declarant owns the real property ("*Covered Lots*") in the City of Austin, Travis County, Texas, described as follows:

Lots 2 and 3, Block B; Lots 4 through 26, and Lots 28 through 52, Block C; Lots 1 through 16, and Lots 33 through 36, Block D; and Lots 20 through 34, Block E; located in Malone Subdivision, Section One, a subdivision located in Travis County, Texas, according to the map or plat thereof recorded in Document No. 201800013 in the Official Public Records of Travis County, Texas.

B. The Covered Lots are a part of the Malone Park ("*Community*") being constructed by Declarant. The Covered Lots may be real property that is (i) improved with one or more residences, or (ii) open space or improved with Access Ways (defined below) and other amenities for the common use of residents. As used in this Solar Energy Declaration, "*Owner*" refers to (i) Declarant, (ii) the individuals or entities to whom Declarant conveys fee title to a Covered Lot and all successors in interest to such Covered Lot, and (iii) if appropriate to the context in which the term Owner is used in this Solar Energy Declaration, any homeowners' association to which a Covered Lot may be conveyed in fee title or by easement.

C. Declarant now desires to record this Solar Energy Declaration to impose against the Covered Lots mutually beneficial restrictions to protect the operational effectiveness of any roof-mounted residential solar energy systems that may now or hereafter be installed on some or all of the Covered Lots, pursuant to a general plan to enhance the value of the Covered Lots and the Community by accommodating the installation and use of residential solar energy systems in compliance with public policies that encourage solar energy systems as a reliable, alternative source of clean and renewable energy.

D. In furtherance of this general plan, Declarant has granted or will grant solar energy equipment easements over some or all of the Covered Lots, to SunStreet Energy Group, LLC, a Delaware limited liability company, its affiliates, successors and assignees (collectively, "*SunStreet*") as grantee, for the purpose of providing access and other rights necessary for the

design, layout, operation, installation, maintenance, repair, replacement, improvement, expansion, and removal of roof-top solar energy equipment (each, a *"Solar Equipment Easement"* and collectively, the *"Solar Equipment Easements"*).

THEREFORE, Declarant declares as follows:

1. Solar Energy Systems.

1.1. **System Described.** Some or all of the homes constructed within the Covered Lots may now or hereafter be improved with roof-mounted residential solar energy systems (each, including any modifications or replacements, a *"System"*). Each System may include, without limitation, some or all of the following components:

- (a) roof-mounted frames and brackets;
- (b) roof-integrated photovoltaic roof tiles, roof-mounted solar panels, or other roof-mounted devices or structures or part of a device or structure used to collect and transform solar energy into thermal, chemical or electrical energy for any or all of (i) water heating, (ii) space heating or cooling, and (iii) power generation, (each a *"Solar Array"*);
- (c) electrical wiring;
- (d) an inverter or multiple micro-inverters that convert(s) DC electricity generated by the Solar Array to AC electricity for home use;
- (e) a bi-directional electric meter compatible with solar energy generation; and
- (f) an internet-based solar energy monitoring system.

1.2. **Other System Elements.** To be subject to and protected or benefitted by the provisions of this Solar Energy Declaration, a Solar Array must be roof-mounted, comply with the building codes and other applicable regulations of the local governmental agencies having jurisdiction over the Covered Lots, and must be no less than ten (10) feet above the surface of the ground that is nearest the Solar Array. The components of a System may change in the future with the availability of newer technology. A System that is installed on a Covered Lot may be purchased and owned by the Owner of the Covered Lot, or it may be operated under the terms of a written Solar Equipment Easement, lease, power purchase agreement and/or similar agreement between the Owner and SunStreet or another third-party.

2. **SOLAR ARRAY SHADING RESTRICTIONS.** A System generates energy by exposure to the sun, and the generation of such energy will be reduced or even eliminated if the solar absorption area of a System's Solar Array (the "*Absorption Area*") is shaded by trees, other landscaping, structures or other objects (each an "*Obstruction*", collectively "*Obstructions*") located on any Covered Lot. Therefore, restrictions prohibiting the shading of the Absorption Area of Solar Arrays are established to protect the reliable and beneficial production of solar energy from Systems.

2.1. **Prohibited Shading Defined By Height and Distance of Obstruction.** "**Prohibited Shading**" as used in this Solar Declaration means any shading of the Absorption Area of a Solar Array caused by an Obstruction that is closer to the Solar Array than a distance of twice the height that the Obstruction extends above the closest point on the Solar Array.

2.2. **Prohibited Shading Defined by the Angle of the Sun.** Prohibited Shading as used in this Solar Declaration also means any shading of the Absorption Area of a Solar Array that occurs during the period of the day when the angle of the sun, measured from the horizon, is greater than or equal to 26.6 degrees (plus or minus 1.3 degrees). This angle is referred to as the "*Angle of Obstruction*" as depicted on **Exhibit A**, described below.

2.3. **Prohibited Shading Restrictions.** No Owner of a Covered Lot may permit any Obstructions to be installed or maintained on such Covered Lot that cause Prohibited Shading of an Absorption Area located on the Owner's Covered Lot or on any other Covered Lot or Qualifying Lot. Further, no Owner of a Covered Lot may permit the planting of any tree or other landscape Obstruction on the Covered Lot that, at its generally-accepted mature height, is likely to cause such Prohibited Shading. Additionally, no holder of a Solar Equipment Easement on a Covered Lot may permit any part of a System owned by such holder to cause Prohibited Shading.

2.4. **Application of Restrictions.** These Prohibited Shading restrictions apply to the Absorption Area of any existing or future Solar Array, unless Prohibited Shading of such Absorption Area by an existing Obstruction (i) occurs at the time the Solar Array is installed or (ii) will occur at any time during the annual solar cycle following installation. The Prohibited Shading restrictions set forth in this Solar Energy Declaration also apply regardless of the fact that an applicable local governmental agency or homeowners' association, if any, may have issued an approval or permit for the installation or planting of the Obstruction causing the Prohibited Shading, and regardless of compliance with the Minimal Shading Criterion or Horizontal Distance Table, below. The Prohibited Shading restrictions set forth in this Solar Energy Declaration further apply to improvements on a Covered Lot that may cause shading of the Absorption Area of a Solar Array located on other real property not subject to this Solar Energy

Declaration, provided that such other real property (a) is a part of the real property described as Annexable Lots (as defined below), or (b) is subject to a solar shading restriction imposed by law or a recorded covenant that provides shading protections comparable to the Prohibited Shading restrictions of this Solar Energy Declaration (each such lot that satisfies the requirements set forth in clause (a) or clause (b) above, a "*Qualifying Lot*"). These Prohibited Shading restrictions do not apply to shading caused by the residential structures constructed by Declarant within the Community.

3. System Access Easements.

3.1. **Over Covered Lots.** Declarant reserves over the Covered Lots and grants to SunStreet, nonexclusive easements in gross and rights-of-way for unobstructed access over the portions of those Covered Lots, if any, now or in the future improved with private streets, drives, alleys and sidewalks (collectively, "*Access Ways*"). These easements and rights-of-way include all reasonable rights of access as SunStreet may deem necessary for the preservation, operation, maintenance, repair, replacement, improvement, expansion and removal of Systems now or hereafter installed on the Covered Lots and for the exercise of SunStreet's right to cure Prohibited Shading pursuant to **Section 5.2**. SunStreet shall be responsible for the repair of any damage caused by SunStreet to such Access Ways in its exercise of these easements and rights-of-way. These easements and rights-of-way will remain in effect during any time, and from time to time, that SunStreet may now or hereafter hold an interest in or to any System installed on a Covered Lot in the Community, or hold any easement rights encumbering all or any portion of a Covered Lot in the Community.

3.2. **Over Other Land.** Declarant also reserves and grants to SunStreet, as applicable, temporary and nonexclusive easements in gross and rights-of-way for unobstructed access, over private streets or drives on real property owned by Declarant that connect the public street(s) serving the Covered Lots to the Access Ways within the Covered Lots, if any. This additional grant of easements and rights-of-way to SunStreet shall be concurrent and coextensive with the temporary access easements over the same private streets or drives granted by Declarant to, or for the benefit of, the Owners of the Covered Lots, if any. If so granted, these additional temporary easements and rights-of-way shall terminate as to any portion of such private streets or drives that are annexed as Additional Covered Lots (defined below) and thereby made subject to all the provisions of this Solar Energy Declaration.

4. **DESIGN AND APPROVAL OF IMPROVEMENTS.** To prevent Prohibited Shading of Absorption Areas by Obstructions installed or planted by Owners of Covered Lots or persons in control of such Covered Lots (and except for Declarant-installed trees as provided below), the distance of planted trees and other Obstructions from the closest point of a nearby

Solar Array located on a Covered Lot or a Qualifying Lot must be carefully planned. Determining the mature height and distance of trees, and the height and distance of other Obstructions, is very important when improvements to a Covered Lot are planned by Owners. As an example, a Solar Array on a one-story home means that even a small tree, if planted too close to the home, can cause shading of the Absorption Area when the tree matures. Mature trees are generally categorized by height as being “small” (up to 20 feet), “medium” (up to 35 feet) or “large” (up to 50 feet).

4.1. **Height and Distance Guidelines.** As a guide for the planting of trees or the installation of other Obstructions on a Covered Lot, reference is made to guidelines established by the California Energy Commission to minimize the shading of Solar Arrays (New Solar Homes Partnership Guidebook, Fifth Edition, California Energy Commission (“CEC”), September 2012). The Guidebook sets forth a standard for determining if the Absorption Area of a Solar Array will be free from significant shading from nearby Obstructions. This standard, called the “*Minimal Shading Criterion*,” is paraphrased as follows:

No obstruction can be closer than a distance of twice the height that the obstruction extends above the closest point of the Solar Array.

4.2. The Minimal Shading Criterion has been used to develop the following table (“*Horizontal Distance Table*”) to provide an example of the closest horizontal distance that trees (as measured from the vertical prolongation of the tree trunk at grade) or other Obstructions, may be located from the closest point of a hypothetical Solar Array on a one-, two- or three-story home.

Solar Array Location	Small Tree Distance (up to 20 feet tall)	Medium Tree Distance (up to 35 feet tall)	Large Tree Distance (up to 50 feet tall)
1 story home (lowest point of Solar Array is 12 ft above grade)	16 feet (minimum distance from nearest point on Solar Array)	46 feet (minimum distance from nearest point on Solar Array)	76 feet (minimum distance from nearest point on Solar Array)
2 story home (lowest point of Solar Array is 22 ft above grade)	Any distance	26 feet (minimum distance from nearest point on Solar Array)	56 feet (minimum distance from nearest point on Solar Array)

Solar Array Location	Small Tree Distance (up to 20 feet tall)	Medium Tree Distance (up to 35 feet tall)	Large Tree Distance (up to 50 feet tall)
3 story home	Any distance	6 feet	36 feet
(lowest point of Solar Array is 32 ft above grade)		(minimum distance from nearest point on Solar Array)	(minimum distance from nearest point on Solar Array)

4.3. **Application of Guidelines.** The Minimal Shading Criterion and the guidelines established in the Horizontal Distance Table apply to the distance from any Solar Array of trees and other Obstructions on a Covered Lot, whether the Solar Array is located on such Covered Lot or on any other Covered Lot or Qualifying Lot. When planning to plant a tree or install any tall Obstructions, the Minimal Shading Criterion and Horizontal Distance Table must be used to determine the areas of maximum height at minimum distance from the closest point or points on any such Solar Array. For example, using the Minimal Shading Criterion, a tree having a mature height of 40 feet should be planted at a distance not less than 56 feet from the nearest point on any such Solar Array on the roof of a two-story home. The Horizontal Distance Table and the Minimal Shading Criterion do not apply to the location of trees planted on a Covered Lot by Declarant in substantial conformance with a landscape plan approved by the applicable local governmental agency, although the Prohibited Shading restrictions will apply to the maintenance of the mature or maturing height of such trees.

4.4. **Diagram.** A diagram that illustrates a typical example of the application of the Minimal Shading Criterion and Horizontal Distance Table is attached as **Exhibit A**. However, the attached diagram does not apply to the location of trees planted on a Covered Lot by Declarant in substantial conformance with a landscape plan approved by the applicable local governmental agency.

4.5. **Tree Selection.** Once the planned height and distance of proposed trees has been determined, a tree variety must be selected that has the appropriate mature height characteristics. To select a tree variety with an appropriate mature height (small, medium or large) for the proposed location on a Covered Lot, refer to the recommended tree list that may be approved for the Community by the applicable local governmental agency. If no such tree list has been approved, refer to the tree selection list for the applicable tree zone published by the Center for Urban Forestry Research of the U.S. Forest Service (Pacific Southwest Research Station) and posted at http://www.fs.fed.us/psw/programs/cufr/tree_guides.php, if available, or if not available refer to the current edition of Sunset Western Garden Book.

4.6. **Improvement Plan Approval.** The Covered Lots are subject to that certain Amended and Restated Declaration of Covenants, Conditions and Restrictions for Malone Park, recorded on January 10, 2018 as Document No. 2018004956 of the Official Public Records of Travis County, Texas, as amended (the "**Declaration**"). Pursuant to Article 7 of the Declaration, Declarant is exempt from the architectural review and approval requirements set forth in the Declaration, and Declarant shall be exempt from the approval requirements set forth in this Section. Any non-Declarant Owner may not permit the planting of any tree or other tall Obstruction on the Owner's Covered Lot without first submitting an improvement plan for the Obstruction to the Architectural Control Committee (as defined in the Declaration) and obtaining written approval of the plan in accordance with Section 7.2 of the Declaration. In addition to the requirements set forth in Article 7 of the Declaration, the improvement plan submitted must describe, in a scaled drawing, the height and distance of the proposed improvements from any Solar Arrays located on such Owner's Covered Lot or on any other Covered Lot or Qualifying Lot which may be shaded by such improvements, including the type of planned trees, their mature heights and other details of the proposed improvements, and must comply with other submission procedures, if any. SunStreet has the right, at its expense, to request a copy of every improvement plan submitted to the Architectural Control Committee for the purpose of providing the Architectural Control Committee with a timely advisory analysis of the potential for Prohibited Shading from the planned improvement. The Architectural Control Committee must consider any such advisory analysis it receives, in approving or denying a plan.

5. **Maintenance Requirements.**

5.1. **Owner Obligation.** Each Owner must maintain the height of trees and other landscape Obstructions planted on the Owner's Covered Lot to prevent Prohibited Shading of the Absorption Area of any Solar Array. This same obligation will apply, alternatively, to a homeowners' association, if any, that is obligated to maintain such trees and landscaping on a Covered Lot under any applicable governing documents. The height and distance standards in the Minimal Shading Criterion and the Horizontal Distance Table establish the maximum height of trees and other Obstructions that should be maintained to minimize the shading of Solar Arrays. For example, for a Solar Array on the roof of a one-story home, existing trees and landscaping should be maintained so that they do not exceed: 20 feet in height at a distance of 16 feet from the closest point on the Solar Array; 35 feet in height at a distance of 46 feet from the closest point on the Solar Array; and 50 feet at a distance of 76 feet from the closest point on the Solar Array. The diagram of the typical application of height and distance guidelines to the planting of trees in **Exhibit A** also demonstrates the application of such guidelines to the maintenance of trees and other Obstructions. However,

regardless of these guidelines, the height of trees and other Obstructions must be continuously maintained at whatever height is necessary to prevent Prohibited Shading of Absorption Areas.

5.2. Failure to Maintain; Right to Cure. If an Owner's use or maintenance of a Covered Lot results in Prohibited Shading of an Absorption Area located on such Covered Lot or on any other Covered Lot or Qualifying Lot, and if SunStreet holds a Solar Equipment Easement over the Covered Lot or Qualifying Lot being shaded, SunStreet may give notice of the Prohibited Shading ("*Violation Notice*") to such offending Owner. If the offending Owner fails to cure the violation within thirty (30) days after the offending Owner's receipt of the Violation Notice, SunStreet may then give notice to the offending Owner of SunStreet's intention to enter the Covered Lot of the offending Owner for the purpose of curing the Prohibited Shading ("*Entry Notice*"). Entry Notice must be given not less than seventy-two (72) hours before such entry. Commencing at the expiration of such time, SunStreet is granted the right to enter upon the offending Owner's Covered Lot, during normal business days and hours, for the purpose of taking reasonable steps to cure any violation of the Prohibited Shading restrictions. SunStreet shall have the right to recover from the offending Owner SunStreet's actual costs to enforce the Prohibited Shading restrictions and to cure such Owner's violation. SunStreet shall be responsible for the repair or replacement of any real or personal property of the offending Owner damaged by SunStreet during such entry, except to the extent that such damage was reasonably necessary to cure the Prohibited Shading. Notices to be given under this provision must be in writing and must be delivered either personally or by U.S. mail, registered or certified, postage paid with return receipt requested, to the address of the Owner's Covered Lot. Notices not personally delivered but properly addressed and with sufficient postage will be deemed received by the offending Owner three (3) business days after mailing.

6. Impacts on Use of Lots.

6.1. Effect of Shading Restrictions. The restrictions against Prohibited Shading of the Absorption Areas of Solar Arrays by Obstructions, and the height and distance guidelines set forth in the Minimal Shading Criterion and the Horizontal Distance Table, mean that the dimensions of some Covered Lots may restrict or entirely prohibit (a) the planting of all trees, or the planting of medium or large trees, in the yard area of a Covered Lot, (b) the installation of upper-floor additions, roof-mounted structures or other tall improvements within a Covered Lot, and (c) the growth of trees to mature heights on a Covered Lot.

6.2. Effect of Uncontrolled Shading. In some cases the Covered Lots may be adjacent to other real property that is not encumbered by this Solar Energy

Declaration or similar restrictions that prohibit the shading of Solar Arrays located on the Covered Lots. In such cases, it may be lawful for Obstructions to be installed or permitted to grow on such adjacent property that cause Prohibited Shading of roof-mounted Solar Arrays on one or more of the Covered Lots. Such Obstructions that shade a Solar Array will reduce or eliminate the Solar Array's generation of solar energy.

7. Environmental Attributes.

7.1. **Defined.** Except as limited below, "*Environmental Attributes*" means any existing or future credits, offsets, allowances, commodities, certificates, reporting rights, entitlements or other incentives or assets defined or administered by any federal, state or local department or agency, and any public utility, accruing from (i) the efficient use of natural resources, (ii) the generation and use of renewable energy, (iii) the creation and conservation of habitat and open space and other uses of land and water, and (iv) the installation of qualifying fixtures, appliances, equipment or other systems, by or on behalf of Declarant or other builder, in the design and construction of improvements to the Covered Lots. The meaning of Environmental Attributes is intended to be broadly defined in this Solar Energy Declaration, as may be amended, except that Environmental Attributes as defined in this Solar Energy Declaration shall not mean:

(a) Any incentive or Environmental Attribute paid to Declarant, SunStreet or other builder of residences on the Covered Lots, for the installation of a System or other energy efficient or resource-conserving fixtures, appliances, equipment or systems, in or appurtenant to a residence on a single Covered Lot, including but not limited to state rebates; or

(b) Any incentive accruing or paid to an Owner or occupant of a residence on a single Covered Lot, or to the owner of a System, for the installation of a System or other energy efficient or resource-conserving fixtures, appliances, equipment or systems, or for engaging in energy efficient or resource-conserving activities, in or appurtenant to such residence, including but not limited to renewable energy credits or federal tax credits.

7.2. **Reservation of Environmental Attributes.** It is in the best interests of the Community to aggregate certain Environmental Attributes. Therefore, Declarant reserves to itself all Environmental Attributes as defined in this Solar Energy Declaration, if any, accruing from the Covered Lots, together with the obligation to transfer or assign the same to a non-profit homeowners' association, if any, having jurisdiction over the Covered Lots, to be held and exercised subject to the

governing instruments of such homeowners' association. If the Covered Lots are not subject to the jurisdiction of any homeowners' association, then such Environmental Attributes shall be transferred or assigned to any other non-profit organization whose purpose includes serving or benefiting the Community and the Covered Lots. If such organization does not exist, then Declarant may transfer or assign such Environmental Attributes to SunStreet, to an affiliate of Declarant, a third party, or to other designees, provided that:

(a) The holder or beneficiary of such reserved Environmental Attributes shall not have the right to unreasonably interfere with development or maintenance of the Covered Lots, or the use and enjoyment of any residence on the Covered Lots; and

(b) The holder or beneficiary of such reserved Environmental Attributes shall not have the right to enter any Covered Lot or residence on any Covered Lot without reasonable prior written notice to the owner or occupant thereof or as otherwise provided herein or in any grant of easement with respect to the Covered Lots.

8. Resolution of Disputes; Remedies.

8.1. **Solar Dispute.** Any dispute between Owners or between one or more of Declarant, SunStreet (including any successor or assign of a Solar Equipment Easement) or Owners (including any homeowners' association), arising over alleged or prospective Prohibited Shading of a Solar Array under this Solar Energy Declaration, or over the breach, enforcement, interpretation or validity of this Solar Energy Declaration, including a dispute as to the scope or applicability of the provisions of this Section, is a "*Solar Dispute*".

8.2. **Negotiation; Small Claims Court.** Subject to Section 11 below, if a Solar Dispute arises, the Owners of Covered Lots affected by the Solar Dispute and any other parties to the Solar Dispute (each a "*Party*", collectively, the "*Parties*") must first engage in communication about the issue in an attempt to resolve the Solar Dispute by good-faith negotiation, regardless of who may have originally planted or installed the subject obstructions, or otherwise originated the Solar Dispute. If such Parties are not able to resolve the Solar Dispute by communication and negotiation between themselves within a reasonable period of time, the Parties may pursue resolution of the Solar Dispute in the local small claims court, to the extent the Solar Dispute is within the jurisdiction of the small claims court.

8.3. **Binding Arbitration.** Subject to Section 11 below, if a Solar Dispute remains unresolved after the Parties attempt to negotiate a resolution, and small claims court adjudication was not sought or was not available, the Solar Dispute

must be determined by binding arbitration in the county in which the Covered Lots are located, or such other location as the Parties may agree upon. Solar Disputes subject to arbitration under this Section involve and concern interstate commerce and are governed by the provisions of the Federal Arbitration Act (9 U.S.C. §1, *et seq.*), to the exclusion of any inconsistent Texas law or judicial rule. At the option of the first Party to initiate arbitration, the arbitration will be administered either by JAMS (Judicial Arbitration and Mediation Services) pursuant to its Streamlined Arbitration Rules and Procedures, or by the American Arbitration Association pursuant to its Commercial Arbitration Rules. The selected arbitration administrator is referred to herein as the "*Arbitration Service*".

(a) *Initiation.* The arbitration will be initiated by delivery by one Party to the other Party or Parties of a written notice for arbitration, which notice must describe the initiating Party's claims, the issues to be submitted to arbitration and the relief sought.

(b) *Fees and Costs.* The fees necessary to initiate arbitration must be advanced by the Party making the written demand for arbitration, unless the Parties agree to each pay the applicable fees, or unless Declarant is a Party to the Solar Dispute in which case Declarant must advance the fees necessary to initiate arbitration. The ultimate allocation between the Parties of such initiation fees and the overall costs and arbitrator's fees of the proceeding, is to be made according to agreement of the Parties or, if they cannot agree, by a determination of the arbitrator in the final award. The arbitrator may also award the reasonable attorneys' fees of the prevailing party.

(c) *Selection of Arbitrator.* The arbitration will be conducted by one impartial arbitrator selected jointly by the Parties, within fifteen (15) days following delivery of the written notice for arbitration, from the list of available arbitrators of the Arbitration Service who are attorneys or retired judges of Texas or federal courts, and who have expertise in the interpretation and enforcement of covenants running with the land and any other areas of dispute. If the Parties fail to agree upon an arbitrator within such period, the Arbitration Service will make the selection of such arbitrator.

(d) *Conduct.* The arbitration will commence in a prompt and timely manner on the date established (i) in accordance with the rules of the Arbitration Service, or if the Arbitration Service's rules do not specify a date by which the arbitration must commence, then (ii) by agreement of the Parties, or if they cannot agree, then (iii) by the arbitrator. The arbitration will be conducted by the arbitrator to obtain a prompt and

timely conclusion of the matter. Parties each have the right to be represented by counsel.

(e) *Discovery.* The Parties may conduct discovery as if the matter were pending before a Texas court and the arbitrator will have the power to issue and enforce subpoenas and to award sanctions; provided, however, the Parties may apply to either the arbitrator or the courts of Texas for protective orders with respect to such discovery.

(f) *Final Award.* The arbitrator is authorized to provide any remedies or relief in law or in equity, which the courts of Texas could issue, for any cause of action that is the basis of the arbitration. The arbitrator follow the standards for issuing such relief as defined under Texas law and the arbitrator must follow the Texas Rules of Evidence and the Judicial Canons of Ethics. The arbitrator's judgment will be final and binding upon the parties, and may be entered in any court of Texas having appropriate jurisdiction.

(g) *Enforcement.* In any enforcement action to compel participation in an arbitration of a Solar Dispute initiated pursuant to this Section, the prevailing Party in that enforcement action is entitled to an award of its reasonable attorneys' fees incurred in such action.

8.4. **Other Remedies.** Failure to comply with any of the applicable terms of this Solar Energy Declaration by Declarant, SunStreet (including any successor or assign of a Solar Equipment Easement) and Owners (including any homeowners' association) is grounds for relief which may include an action to recover damages, for injunctive relief, for declaratory relief or to enter a Covered Lot pursuant to **Section 5.2** above, or any combination thereof. All such remedies are cumulative and none are exclusive. However, the dispute resolution procedures established above in this Section must first be followed, if they apply. Notwithstanding the provisions of this Section, nothing in this Solar Energy Declaration is, or may be interpreted to infer, an obligation of Declarant or any homeowners' association (if existent) to enforce the performance or enjoin the violation of any provisions herein. Declarant declares that neither it nor any homeowners' association assumes any obligation to enforce the provisions of this Solar Energy Declaration.

9. **AMENDMENT OR TERMINATION.** This Solar Energy Declaration may be amended or terminated by an instrument recorded in the official records of the county in which the Community is located, as described in this Section.

9.1. **By Declarant Before First Closing.** Before the date of the first close of an escrow for the sale to a member of the public of the first Covered Lot ("*First*

Closing”), Declarant may unilaterally amend or terminate any provisions of this Solar Energy Declaration, except that Declarant may not unilaterally amend or terminate any provision of this Solar Energy Declaration in a manner that impairs the rights or interests of SunStreet, including without limitation the rights of access and rights-of-way to any of the Covered Lots in which SunStreet holds a Solar Equipment Easement, without the prior written consent of SunStreet. Failure of Declarant to obtain the prior written consent of SunStreet to an amendment or termination of provisions of this Solar Energy Declaration that impairs said rights or interests of SunStreet shall render void such amendment or termination. The right of Declarant described above shall similarly apply to the right of Declarant to amend or terminate any provisions of a Supplemental Solar Declaration before the date of the First Closing in the Additional Covered Lots described in such instrument.

9.2. By Declarant After First Closing. On or after the date of the First Closing, and during any time that Declarant now or hereafter owns any Covered Lot in the Annexable Lots or the Community, Declarant may unilaterally amend or terminate the provisions of this Solar Energy Declaration to:

- (a) conform with the rules, regulations or requirements of VA, FHA, DRE, Fannie Mae, Ginnie Mae, Freddie Mac or other lender requirements (excluding any amendment purporting to subordinate the recording priority of this Solar Energy Declaration),
- (b) correct any typographical or engineering errors on an attached exhibit or conform an exhibit to originally-constructed as-built conditions of a home or System,
- (c) include any exhibit that was inadvertently omitted at the time of this Solar Energy Declaration was recorded,
- (d) comply with any city, county, state or federal laws or regulations, and
- (e) correct other typographical or inadvertent errors;

except that Declarant may not unilaterally amend or terminate any provision of this Solar Energy Declaration in a manner that impairs the rights or interests of SunStreet, including without limitation the rights of access and rights-of-way to any of the Covered Lots in which SunStreet holds a Solar Equipment Easement, without the prior written consent of SunStreet. Failure of Declarant to obtain the prior written consent of SunStreet to an amendment or termination of provisions of this Solar Energy Declaration that impairs said rights or interests of SunStreet shall render void such amendment or termination. The limited right of Declarant described above shall similarly apply to the right of Declarant to amend or terminate any provisions of a Supplemental Solar

Declaration on or after the date of the First Closing in the Additional Covered Lots described in such instrument.

9.3. **By Owners.** The provisions of this Solar Energy Declaration may also be amended or terminated by a vote of the Owners (including any homeowners' association acting through its board of directors) with (a) the prior written consent of Declarant so long as Declarant owns any Covered Lot in the Community, and (b) the prior written consent of SunStreet during any time that it now or hereafter holds any interest in any System or any Solar Equipment Easement pertaining to a Covered Lot in the Community. No earlier than receipt of the written consent of Declarant and SunStreet, as applicable, an amendment or termination of this Solar Energy Declaration must be approved by the vote, in person or by proxy, of Owners (including any homeowners' association acting through its board of directors) representing not less than sixty-seven percent (67%) of the voting power of the Community, with each Owner of a Covered Lot entitled to cast one (1) vote for each Covered Lot owned.

10. **Annexation.**

10.1. **By Declarant.** Declarant may unilaterally add those lots or parcels ("*Annexable Lots*") located within the Community and described on the attached **Exhibit B**, to the real property subject to this Solar Energy Declaration, during such time as Declarant owns any portion of the Community. Declarant may effect such addition by recording a Supplemental Declaration of Solar Energy Covenants, Conditions and Restrictions ("*Supplemental Solar Declaration*"). When recorded, the Supplemental Solar Declaration will make all provisions in this Solar Energy Declaration applicable to the real property (the "*Additional Covered Lots*") described in such Supplemental Solar Declaration in the same manner as if the described Additional Covered Lots were originally covered by this Solar Energy Declaration. The Supplemental Solar Declaration must: (i) reference the document number or volume and page number where it is recorded, as well as the date of its recordation, (b) describe with specificity the Additional Covered Lots, (c) state that this Solar Energy Declaration applies to the Additional Covered Lots, and (d) contain such additional or modified provisions and exhibits as may be appropriate to the character of the Additional Covered Lots and the Systems to be installed on the Additional Covered Lots. The Supplemental Solar Declaration must be signed by Declarant.

10.2. **De-Annexation.** Declarant may remove all or a portion of the Covered Lots (including Additional Covered Lots) from the coverage of this Solar Energy Declaration, thereby terminating this Solar Energy Declaration as to such Covered Lots during any time that Declarant now or hereafter is the Owner of all of such Covered Lots to be removed, provided that: (a) such de-annexation does not impair the rights or interests of SunStreet (including without limitation any

Solar Equipment Easement rights with respect to any Covered Lot); and (b) any amendment to this Solar Energy Declaration that removes of Covered Lots is recorded by Declarant in a manner similar to the recording of a Supplemental Solar Declaration. Failure of Declarant to obtain the prior written consent of SunStreet to any amendment to Solar Energy Declaration effecting such de-annexation that impairs the rights or interests of SunStreet described in subsection (a) shall render void such amendment.

11. Effect of Applicable Laws; Interpretation.

11.1. **Compatibility With Other Laws.** The provisions of this Solar Energy Declaration are in addition to, do not replace or supersede, and may be more or less restrictive than, other restrictions (for example, height, setback, landscaping and architectural design restrictions) that may also apply to the height, location and maintenance of trees and other improvements installed on a Covered Lot, whether such other restrictions are imposed by: (i) law; (ii) declarations of covenants, easements or other matters of record; (iii) rules, guidelines or other governing documents of an applicable homeowners' association, if any; or (iv) with reference to Section 11.2, by contract. If there is a conflict between the shading restrictions set forth in any of the foregoing and those set forth in this Solar Energy Declaration, the shading restriction that most restricts shading of the Absorption Area of Solar Arrays shall control. The provisions of this Solar Energy Declaration are intended to be compatible with applicable federal, state and local solar energy laws, including without limitation, Texas Prop. Code § 202.010. All binding modifications, restatements and interpretations of the laws applicable to the use of a System or shading of a Solar Array are to be interpreted to modify, restate or interpret the solar shading restrictions of this Solar Energy Declaration, as applicable and to the extent such modifications are more restrictive than the shading prohibitions set forth herein.

11.2. **Rules of Interpretation.** Notwithstanding anything to the contrary in this Solar Energy Declaration (including but not limited to the provisions in Section 8 pertaining to the resolution of Solar Disputes hereunder), the provisions of this Solar Energy Declaration shall not, absent the express agreement of the parties otherwise, amend, waive or otherwise limit the obligations and rights of such parties under any other agreements between or among such parties. For the avoidance of doubt, and without limiting the foregoing sentence, the power purchase agreements and Solar Equipment Easements to which the homeowners and SunStreet may be party from time to time shall control in the event of a conflict or inconsistency between this Solar Energy Declaration and any such agreements.

12. **RUN WITH THE LAND; ASSIGNMENT.** All provisions of this Solar Energy Declaration are imposed as equitable servitudes on the Covered Lots and the Solar

Equipment Easements. All covenants, conditions and restrictions in this Solar Energy Declaration shall: (i) run with and burden the Covered Lots and the Solar Equipment Easements; (ii) bind and benefit all of the Covered Lots and the Solar Equipment Easements and all persons acquiring any interest in the Covered Lots or the Solar Equipment Easements; and (iii) bind and benefit SunStreet and its successors and assigns during such time as it now or hereafter holds an interest in or to any System installed on a Covered Lot in the Community, or any Solar Equipment Easement rights to a Covered Lot within the Community. Each of the rights and exemptions of Declarant or SunStreet (including its successors and assigns) under this Solar Energy Declaration may be assigned, pledged or encumbered by Declarant or SunStreet, respectively, by a written assignment or other instrument. SunStreet is a third-party beneficiary of this Solar Energy Declaration.

13. **MORTGAGEES.** This Solar Energy Declaration and the rights, obligations, covenants, conditions, restrictions and easements hereunder are superior and senior to any lien placed upon any Covered Lot or Solar Equipment Easement after the recordation of this Solar Energy Declaration, including the lien of any mortgage or deed of trust. No breach of this Solar Energy Declaration will defeat, render invalid, diminish or impair the lien of any mortgage or deed of trust made in good faith and for value, but the covenants, conditions, restrictions, easements and rights-of-way hereunder are binding upon and effective against any person (including any mortgagee or beneficiary under a deed of trust) who acquires title to any Covered Lot, or any interest therein, or Solar Equipment Easement, or interest therein, by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise.

14. **NO WAIVER.** No waiver of any default of any obligation by any Owner of a Covered Lot or other Party shall be implied from any omission by any other Owner or other Party to take any action with respect to such default.

15. **GOVERNING LAW.** The laws of Texas govern the interpretation, validity, performance and enforcement of this Solar Energy Declaration.

[SIGNATURES ON FOLLOWING PAGE]

This Solar Energy Declaration is dated for identification purposes March 4 2019.

DECLARANT:

CALATLANTIC HOMES OF TEXAS, INC.,
a Delaware corporation

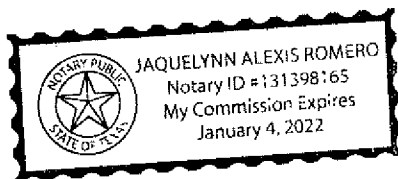
By: [Signature]
Printed Name: SHERRY SLATTERY
Title: AUTHORIZED AGENT

STATE OF TEXAS)
) ss.
COUNTY OF Travis)

The foregoing was acknowledged before me this 4 day of March 2019, by Sherry Slattery Authorized Agent of CALATLANTIC HOMES OF TEXAS, INC., a Delaware corporation, on behalf of such corporation.

Witness my hand and official seal.

My commission expires: 1/4/22

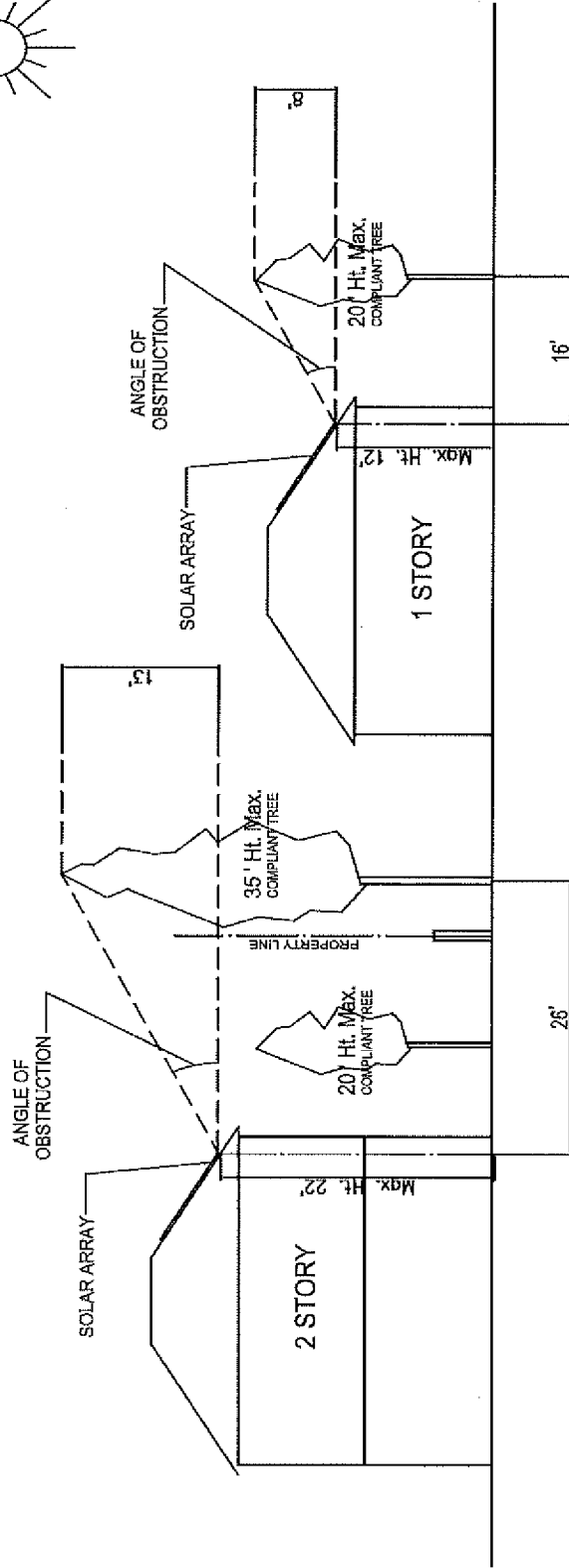
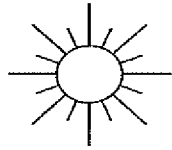


[Signature]
Notary Public

EXHIBIT A
TO SOLAR ENERGY DECLARATION
TYPICAL SHADING HEIGHT AND DISTANCE GUIDELINES

EXHIBIT NOTES: These notes apply to the typical depiction of height and distance guidelines attached as this **Exhibit A** to the Solar Energy Declaration.

1. Any height and distance restrictions shown are to be interpreted as guidelines for the prevention of Prohibited Shading. Compliance with these height and distance guidelines does not permit or excuse Prohibited Shading.
2. The actual (as-built) dimensions and location of any Solar Arrays control in the application of the height and distance guidelines shown.
3. The diagrams shown are not to scale and any dimensions are approximate.
4. The height, location and maintenance of trees and other improvements installed on a Covered Lot may be affected by their Prohibited Shading of Solar Arrays on neighboring real property, whether or not the neighboring Solar Array currently exists or the neighboring real property is subject to the Solar Energy Declaration. Neighboring real property and the improvements thereon may not be subject to the Solar Energy Declaration or other restrictions prohibiting the shading of Solar Arrays on a Covered Lot.
5. Other restrictions (for example, height, setback, landscaping and architectural design restrictions) may also apply to the height, location and maintenance of trees and other improvements installed on a Covered Lot, whether or not such other restrictions are imposed by (a) law, (b) covenants, easements or other matters of record, or (c) rules, guidelines or other governing documents of a homeowners' association, if any.



NOTES:

1. The actual as-built dimensions and location of any Solar Arrays (as defined in the Solar Declaration to which this Exhibit is attached) shall control in the application of the height and distance guidelines shown.
2. This diagram is not to scale and all dimensions are approximate.

Illustration of Minimal Shading Criterion

EXHIBIT A

EXHIBIT B
TO SOLAR ENERGY DECLARATION
ANNEXABLE LOTS

[NOT APPLICABLE]

SunStreet Solar Home Program



FILED AND RECORDED
OFFICIAL PUBLIC RECORDS

Dana DeBeauvoir

DANA DEBEAUVOIR, COUNTY CLERK
TRAVIS COUNTY, TEXAS

March 19 2019 04:40 PM

FEE: \$ 106.00 **2019038338**