

Mountain Oaks Townhouses Homeowners Association

SOLAR ENERGY DEVICE ARCHITECTURAL RULES

Adopted and effective June 17, 2020

1. Installation of a solar energy device by an Owner on the Owner's Dwelling Unit must be pre-approved by the Architectural Committee.
2. Prior to commencing the installation of a solar energy device on the Owner's Dwelling Unit, the Owner must submit to the Architectural Committee a signed application (the "Application") and a signed Solar Energy Device Installation, Use and Maintenance Agreement and Indemnification, in the forms as determined from time to time by the Architectural Committee, together with, but not limited to, the following:
 - (a) drawings that fully describe the proposed location, size and pitch of the solar energy device and all of the related equipment and wiring;
 - (b) a pamphlet, brochure or other similar information, that describes the proposed material and aesthetics of the solar energy device and samples of such materials as determined appropriate by the Architectural Committee;
 - (c) information regarding the solar energy device's color, frame and wiring, which must match the colors of the Dwelling Unit colors as closely as reasonably possible; and
 - (d) assurance that the solar energy device panels and frames are non-glare.
3. The solar energy device shall be installed in accordance with the Application, these Solar Energy Device Architectural Rules and the plans and drawings therefor approved by the Architectural Committee. Any changes, alterations, adjustments, or deviations from the approved Application and plans must be re-submitted for to the Architectural Committee for review and approval prior to commencing the installation or the subsequent alteration of the solar energy device.
4. The Owner shall obtain and provide to the Association copies of all permits required by the City of Flagstaff and other authorities as a condition to installing the solar energy device on the Owner's Dwelling Unit.
5. The solar energy device must be engineered to assure the installation and maintenance of the solar energy device on the roof of the Owner's Dwelling Unit will not damage the structural integrity of the Dwelling Unit; provided that the Association shall not be responsible for confirming such engineering is adequate.
6. The solar energy device shall be installed by a licensed and insured contractor acceptable to the Association.

7. So long as the following restrictions do not unreasonably restrict the installation and use of the solar energy device or adversely affect or impair the efficiency or functioning thereof and do not unreasonably delay the installation and use thereof or result in an unreasonable cost increase:

(a) Any installed solar energy device shall have the appearance similar to a skylight installed flat on the roof surface of the Dwelling Unit.

(b) Frames of the solar energy device shall be constructed of a non-reflective material, with colors matching the roof color as closely as possible. Only black or bronze color frames on solar panel equipment is permitted.

(c) Any solar panel equipment that is visible (such as, lines, conduits, mounting brackets, panel boxes etc.) shall be screened and/or painted to match adjacent surface.

(d) The solar energy device shall be placed such that reflected solar radiation or glare shall not be directed onto any habitable portion of an adjacent Dwelling Unit or roadway.

8. The solar energy device may be located only on the Owner's Dwelling Unit and may not be located on the Common Area or on any other Dwelling Unit. No solar energy device may be placed on or encroach on the Common Area.

9. The Owner and the successor Owners of the Lot shall use the solar energy device in accordance with the directions and specifications applicable to the solar energy device.

10. The electrical panels and sub-panels of the solar energy device shall be located on the rear side of the Dwelling Unit, i.e. the side of the Dwelling Unit opposite the side of the Dwelling Unit on which the main entrance to the Dwelling Unit is located.

11. The Owner and the successor Owners of the Lot are solely responsible for the installation, use, care, maintenance and replacement of the solar energy device on the Owner's Dwelling Unit.

12. Any damage to the roof and/or the exterior of the Owner's Dwelling Unit resulting from the installation, use, care, maintenance and replacement of the solar energy device and any damages caused to the interior of the Owner's Dwelling Unit resulting from such installation, use, care, maintenance and replacement shall be the sole responsibility of the Owner and its successors-in-interest.

13. The Owner and its successors-in-interest shall be responsible for any additional maintenance costs incurred by the Association due to the installation, use, care, maintenance and replacement of the solar energy device, including, without limitation, the additional costs associated with the Association's performance of its maintenance obligations under the Declaration.

14. In no event shall the Association be responsible for any damage to the solar energy device due to any cause or thing.

15. Within fifteen (15) days of the date of the written request by the Association, the Owner shall remove the solar energy device from the Owner's Dwelling Unit as determined appropriate by the Board of Directors of the Association to enable the Association to perform its maintenance obligations under the Declaration. The Lot Owner shall be solely responsible for the costs of removing, replacing and re-installing the solar energy device on the Owner's Dwelling Unit following the completion by the Association of such maintenance.

16. The Association shall not be liable or responsible for any damages or costs incurred by the Owner or its successors in interest as a result of the removal, replacement or re-installation of the solar energy device or resulting from the loss of the use of the solar energy device for any reason.

17. The Owner has the burden to prove that the above rules will interfere with the solar energy device' use, efficiency or functioning, or will cause an unreasonable cost increase.

18. Any successor-in-interest to the Owner shall be obligated to comply with the provisions of, and be bound by the obligations of such Owner under, these Solar Energy Device Architectural Rules.

19. Subject to the provisions of the Declaration and applicable statutes, the Architectural Committee retains the right to amend or replace all or any portion of these Solar Energy Device Architectural Rules.

When recorded mail to:
Sterling Real Estate Management
323 South River Run Road, Suite 1
Flagstaff, AZ 86001

SOLAR ENERGY DEVICE INSTALLATION, USE AND MAINTENANCE AGREEMENT
AND INDEMNIFICATION

THIS AGREEMENT (the “Agreement”) made effective this ___ day of _____ 202__ (the “Effective Date”) by and between Mountain Oaks Townhouses Homeowners Association (the “Association”) and _____ (together, the “Lot Owner”). The Association and the Lot Owner are sometimes referred to hereinafter individually as a “Party” and collectively as the “Parties.”

WHEREAS, the Lot Owner is the owner of the Dwelling Unit (the “Lot Owner’s Dwelling Unit”) located on Lot _____ (the “Lot”) at Mountain Oaks Subdivision as legally described on Exhibit A attached hereto and incorporated herein by this reference. The Lot and the Lot Owner’s Dwelling Unit are located in the Mountain Oaks Subdivision, and, therefore, the Lot, the Lot Owner’s Dwelling Unit and the Lot Owner are subject to the covenants, conditions and restrictions set forth in the Second Amended and Restated Declaration of Covenants, Conditions and Restrictions for Mountain Oaks Subdivision recorded August 1, 2014, as Instrument #3698226 in the Official Records of Coconino County, Arizona (the “Declaration”). Except as otherwise specifically defined herein, capitalized terms used herein have the meanings as defined in the Declaration; and

WHEREAS, pursuant to Section 9.2 of Article 9 of the Declaration, the Association is responsible for the maintenance, repair and replacement of certain portions of the Lots and the Dwelling Units, including repair and replacement of the Dwelling Unit exterior building surfaces and roofs (down to and including the roof sheeting boards) as described in and subject to the provisions of such Section 9.2; and

WHEREAS, pursuant to Section 6.6 of Article 6 of the Declaration, the Lot Owner has submitted to the Association an application (the “Application”) requesting the approval by the Association of the installation of solar panels and related brackets, framing, wiring, electrical panels and equipment (together, the “Solar Energy Device”) on the roof and other exterior portions of the Lot Owner’s Dwelling Unit. The Solar Energy Device is to be installed by the Lot Owner, or its agent, at the sole cost of the Lot Owner; and

WHEREAS, pursuant to Section 6.6 of Article 6 of the Declaration, the Association has adopted Architectural Rules regulating the installation and maintenance of solar energy devices on the Dwelling Units in the Project (the “Solar Energy Device Architectural Rules”); and

WHEREAS, the Lot Owner and the Association desire to set forth herein their agreements as to the terms and conditions under which the Association will permit the Lot Owner and their successors and assigns to install, maintain and use the Solar Energy Device on the roof and other exterior portions of the Lot Owner's Dwelling Unit.

NOW THEREFORE, in consideration of the mutual covenants contained herein and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Installation of the Solar Energy Device. Subject to the terms and conditions of this Agreement, the Association approves the installation of the Solar Energy Device on the Lot Owner's Dwelling Unit in accordance with the Application and the Solar Energy Device Architectural Rules. Prior to commencing the installation of the Solar Energy Device, the Lot Owner must sign and deliver to the Association a copy of this Agreement.

2. Conditions of Installation. In connection with the submission of the Application, the Lot Owner has provided to the Association such plans, drawings and other information as requested by the Association regarding the installation of the Solar Energy Device. The Lot Owner agrees the Solar Energy Device shall be installed in accordance with the Application, the Solar Energy Device Architectural Rules and the plans and drawings therefor approved by the Association. Any changes, alterations, adjustments, or deviations from the approved Application and plans must be re-submitted for to the Architectural Committee for review and approval prior to commencing the installation or the subsequent alteration of the Solar Energy Device. The solar energy device must be engineered to assure the installation and maintenance of the Solar Energy Device will not damage the structural integrity of the Lot Owner's Dwelling Unit; provided that the Association shall not be responsible for confirming such engineering is adequate. The Lot Owner shall obtain and provide to the Association copies of all permits required by the City of Flagstaff and other authorities as a condition to installing the Solar Energy Device on the Lot Owner's Dwelling Unit. The Solar Energy Device shall be installed by a licensed and insured contractor acceptable to the Association. The Lot Owner and the successor Owners of the Lot shall use the Solar Energy Device in accordance with the directions and specifications applicable to the Solar Energy Device. The Solar Energy Device may be located only on the Lot Owner's Dwelling Unit and may not be located on the Common Area or on any other Dwelling Unit.

3. Lot Owner's Acknowledgements and Responsibilities. The Lot Owner for itself and on behalf of the successor Owners of the Lot acknowledges and agrees that:

(i) the Lot Owner and the successor Owners of the Lot are solely responsible for the installation, use, care, maintenance and replacement of the Solar Energy Device on the Lot Owner's Dwelling Unit;

(ii) any damage to the roof and/or the exterior of the Lot Owner's Dwelling Unit resulting from the installation, use, care, maintenance and replacement of the Solar Energy Device and any damages caused to the interior of the Lot Owner's Dwelling Unit resulting from such installation, use, care, maintenance and replacement shall be the sole responsibility of the Owner and its successors-in-interest;

(iii) the Lot Owner and its successors-in-interest shall be responsible for any additional maintenance costs incurred by the Association due to the installation of the Solar Energy Device on the Lot Owner's Dwelling Unit, including, without limitation, the additional costs associated with the Association's performance of its maintenance obligations under the Declaration;

(iv) in no event shall the Association be responsible for any damage to the Solar Energy Device due to any cause or thing;

(v) within fifteen (15) days of the date of the written request by the Association, the Lot Owner shall remove the Solar Energy Device from the Lot Owner's Dwelling Unit as determined appropriate by the Board of Directors of the Association to enable the Association to perform its maintenance obligations under the Declaration. The Lot Owner shall be solely responsible for the costs of removing, replacing and re-installing the Solar Energy Device on the Lot Owner's Dwelling Unit following the completion by the Association of such maintenance, and

(vi) the Association shall not be liable or responsible for any damages or costs incurred by the Lot Owner or its successors in interest as a result of the removal, replacement or re-installation of the Solar Energy Device or resulting from the loss of the use of the Solar Energy Device for any reason.

4. Damage to the Common Area, the Lot Owner's Dwelling Unit and/or Other Dwelling Units. In the event any portion of the Common Area or of any other Dwelling Unit or Dwelling Units is damaged as a result of the installation, maintenance, use and/or removal of the Solar Energy Device on the Lot Owner's Dwelling Unit and/or the Lot Owner's or its successors and assigns' exercise of its rights granted pursuant to this Agreement, the Lot Owner or its successors and assigns, as the case may be, shall be responsible for repair of such damage and for restoring the damaged portion of the Common Area or such other Dwelling Unit or Dwelling Units to the condition it was in prior to the occurrence of such damage, all at the Lot Owner's or its successors' and assigns', as the case may be, sole cost and expense. In any such event, the Lot Owner or its successors and assigns, as the case may be, shall use its best efforts to cause such damage to be repaired within forty-eight (48) hours after the earlier of (i) the date of its knowledge of such damage or (ii) the date of its receipt of written notice of such damage from the Association. In the event of the permanent removal of the Solar Energy Device, such repair and restoration obligations of the Lot Owner and its successors and assigns shall also include, without limitation, the obligation to restore the roof of the Lot Owner's Dwelling Unit and the other portions of the Lot Owner's Dwelling Unit to the condition it was in prior to the installation of the Solar Energy Device.

5. Remedies. Should the Lot Owner or its successors and assigns fail to properly perform its obligations under this Agreement, the Association may provide the Lot Owner or its successors or assigns, as the case may be (the "Breaching Party"), with written notice ("Notice") of the Breach. If the Breaching Party fails to remedy the Breach within twenty-four (24) hours after delivery of the Notice, the Association may, but is not obligated to, perform the work or take such other actions necessary to remedy the Breach. The Association may present the Breaching Party with a statement of the costs of performing such work, and the Breaching Party shall reimburse the Association for these costs within ten (10) days of receipt of the statement. In the event the Board determines that emergency repairs are needed to the portions of the Lot Owner's Dwelling Unit or of another Dwelling Unit the Association is obligated to maintain pursuant to the Declaration as a result of the installation, maintenance, use or removal of the Solar Energy Device, the Association

shall be entitled to make such repairs to such portion of the Lot Owner's Dwelling Unit or the other Dwelling Unit as the Association determines are required to repair such portion of the Lot Owner's Dwelling Unit or the other Dwelling Unit without giving prior Notice to the Lot Owner or its successor or assigns and the Lot Owner or its successors or assigns, as the case may be, shall reimburse the Association for the costs of such repairs within ten (10) days of the date of a statement of such costs from the Association.

6. Compensation for Damages and Indemnity. The Lot Owner and its successors and assigns shall compensate the Association for all personal or bodily injury, death or property damage suffered by the Association and/or its Members or their respective agents, contractors, employees, invitees, or guests resulting from the installation, maintenance, use and/or removal of Solar Energy Device and the exercise of the rights and obligations of the Lot Owner, its successors and assigns or their respective agents, contractors, employees, invitees, permittees or representatives and/or persons under this Agreement. The Lot Owner and its successors and assigns (together, jointly and severally, the "Indemnitors") hereby release and agree to indemnify, defend, and hold harmless the Association, its officers, directors, members, agents, attorneys, successors and assigns for, from, and against any and all loss, cost, claim, or liability (including reasonable attorneys' fees and costs) arising from the installation, maintenance, use and/or removal of Solar Energy Device and the exercise of the rights and obligations of the Unit Owner, its successors and assigns or their respective agents, contractors, employees, invitees, permittees or representatives and/or persons under this Agreement. The Indemnitors shall maintain, at their sole cost and expense, liability insurance in the amounts reasonably acceptable to the Association insuring claims for bodily injury, death and property damage occurring on, in or about the Lot or the Common Area as a result of the installation, maintenance, use and/or removal of Solar Energy Device and the exercise of the Indemnitors' rights and obligations under this Agreement. The Indemnitors shall cause the Association to be listed as an additional insured under the foregoing liability policy maintained by the Indemnitors. All policies of insurance shall insure the performance of the party insured thereunder of the indemnity agreements contained herein and shall contain a provision that the insurance company will give all Parties to this Agreement no less than thirty (30) days advance written notice of any cancellation or lapse, or the effective date of any reduction in the amounts or scope of coverage. The limits and types of insurance maintained by the Indemnitors shall not limit the Indemnitors' liability under this Agreement.

7. Successors and Assigns. This Agreement shall run with the land and shall be binding upon and inure to the benefit of the Association and any Owner of the Lot. The Lot Owner covenants and agrees that all of its interests, as its interests may from time to time appear, in and to the Lot shall be held and conveyed subject to the terms and the covenants established in this Agreement.

8. Amendment. This Agreement may be amended, modified, terminated or canceled, in whole or in part, only by the agreement of the Parties hereto. No such amendment, modification, termination or cancellation (collectively, an "Amendment") shall be effective until a written instrument setting forth its terms has been executed, acknowledged and recorded in the records of Coconino County, Arizona.

9. Attorneys' Fees. If there is any litigation between the Parties to enforce or interpret any provisions or rights of this Agreement, the unsuccessful Party in such litigation, as determined by the court, agrees to pay the successful Party, as determined by the court, all costs, legal fees, and

expenses (through trial and appeal), including, but not limited to, reasonable attorneys' fees and costs incurred by the successful Party.

10. Merger. This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter contained in this Agreement. All prior and contemporaneous agreements, representations and understandings of the Parties, oral or written, regarding the subject matter hereof, are expressly superseded by and merged in this Agreement.

11. Notices. All notices required to be given hereunder shall be in writing and shall be either served personally or by facsimile, hand delivered, U.S. mail, postage prepaid, certified return receipt requested, and addressed to the Parties as follows:

ASSOCIATION:

Mountain Oaks Townhouses Homeowners Association
323 South River Run Road, Suite 1
Flagstaff, Arizona 86001
Telephone Number: (928) 773-0690

UNIT OWNER:

Flagstaff, Arizona 86004
Telephone Number: () _____

12. General Provisions. No waiver of any term of this Agreement shall be deemed to be a continuing waiver of that term or a waiver of any other term of this Agreement. This Agreement may be signed in one or more counterparts, each of which together will form one binding agreement of the Parties. Each person executing this Agreement personally represents that he or she has the power and authority to execute this Agreement and personally represents that the Party on whose behalf he or she is executing this Agreement is properly authorized to perform its respective duties and obligations under this Agreement. Time is of the essence of this Agreement. The paragraph captions set forth in this Agreement are for the convenience of the Parties and do not modify, limit or otherwise affect the express provisions of this Agreement. This Agreement and all questions relating to its validity, interpretation, performance and enforcement shall be governed by and construed in accordance with the laws of the State of Arizona.

Executed and entered into as of the Effective Date.

[SIGNATURES ON THE FOLLOWING PAGE]

“ASSOCIATION”

Mountain Oaks Townhouses Homeowners Association

By: _____

Name: _____

Its: _____

STATE OF ARIZONA)
) ss.
County of _____)

On this ____ day of _____ 202__, before me, the undersigned Notary Public, personally appeared _____, the _____ of Mountain Oaks Townhouses Homeowners Association, and known to me to be the person whose name is subscribed to the foregoing and acknowledged that (s)he executed the same for the purposes therein stated on behalf of and intending to bind such entity thereto.

Notary Public

My Commission Expires: _____

“LOT OWNER”

Name: _____

Name: _____

STATE OF ARIZONA)
) ss.
County of _____)

On this ____ day of _____ 202__, before me, the undersigned Notary Public, personally appeared _____ and _____, and known to me to be the persons whose names are subscribed to the foregoing, and acknowledged that they executed the same for the purposes therein stated.

Notary Public

My Commission Expires: _____

EXHIBIT A
TO
TEMPORARY EASEMENT AND INDEMNIFICATION AGREEMENT

THE DWELLING UNIT

Lot ____, MOUNTAIN OAKS SUBDIVISION, according to the Final Plat Mountain Oaks recorded in Case 6, Maps 48, 48A and 48B, and the Final Plat for the Replatting of Mountain Oaks, Lots 17 through 28 recorded in Case 7, Map 64, in the Official Records of Coconino County, Arizona.

SAMPLE