

RECORDING REQUESTED BY, AND
WHEN RECORDED MAIL TO:

Park East Square HOA
1075 Monroe Drive
Boulder, CO
80303

Above space reserved for Recorder's use

SOLAR ENERGY DEVICE MAINTENANCE, LICENSE AND INDEMNITY AGREEMENT

This Agreement is made and entered into on _____, by and between the Park East Square Homeowner's Association, Inc., a Colorado nonprofit corporation (hereinafter the "Association") and _____ (hereafter individually and/or jointly referred to as "Owner"), whose address is _____.

RECITALS

- A. The Association is the association named and referred to in the Declaration of Covenants, Conditions, Restrictions and Easements ("Declaration"), recorded on December 3rd, 1974 at Reception No. 125648, in the real property records of Boulder County, State of Colorado, as may be amended. All terms not otherwise defined herein shall have the definition set forth in the Declaration.
- B. The Owner is the record owner of (insert address: _____ ("Townhome")).
- C. Article VII of the Declaration requires the Association to provide certain exterior maintenance, including repair and replacement of the roofs.
- D. Article V of the Declaration also requires the Association acting through its Board of Directors and through its Architectural Control Committee, to review and approve any exterior alteration or improvement.
- E. Owner has requested approval of the following Solar Energy Device (collectively referred to as "Owner's Solar Device").
- F. Because the proposed Owner's Solar Device will be installed onto a component over which the Association has maintenance, repair, and replacement obligations (i.e., the roof), the Association is concerned that it will increase the maintenance, repair, insurance, and liability exposure of the Association.
- G. The Association acknowledges that C.R.S. §38-30-168 requires the Association to allow the Owner to install such Solar Energy Device, subject to certain conditions specified in the statute. However, the Association is permitted to adopt reasonable regulations over such installations and, as such, has agreed to allow the Owner to install Owner's Solar Device as more particularly described in Exhibit A, pursuant to the terms and conditions set forth in this Agreement.
 - 1. Prior to installation, the Owner shall submit a complete Application for Exterior Modifications ("Application") that includes plans, specifications, and other required documentation concerning the proposed installation for the Board's written approval. The Application shall be in compliance with such resolutions, policies, rules, and architectural guidelines as adopted by the Board. The Owner's Solar Device and all ancillary work and costs associated there with shall be installed and performed in accordance with all specifications and requirements contained in Exhibit A and at the sole cost and expense of the Owner, including costs to restore any Common Area, Association-maintained components, or other townhomes disturbed in the process of installing the system. No additional equipment or upgrades may be installed that are not set forth in Exhibit A.
 - 2. The Owner shall further be responsible for: (i) obtaining any necessary permits and/or governmental approvals; (ii) ensuring that the Owner's Solar Device complies with applicable zoning, building, and/or other codes, rules, regulations, and ordinances, including any and all safety requirements; and,

- (iii) ensuring that the Owner's Solar Device will not violate, encroach upon, or interfere with any easements, utility lines, or other encumbrances.
3. All of Owner's Solar Device must be installed by a licensed and certified contractor familiar with the installation of the Owner's Solar Device;
 4. The Owner's contractor must carry liability insurance and workers' compensation insurance. Before commencement of the work, the Owner must provide a copy of the contractor's certificate of insurance to the Association as part of the Application;
 5. The Owner agrees to provide, within 14 days of the Owner receiving the Association's consent for the installation, a certificate of insurance naming the Association as an additional insured on the Owner's insurance policy for any claim related to the installation, maintenance, or use of the system. The Owner, and each successive owner, shall at all times have and maintain such insurance policy.

In consideration of the Association's approval of Owner's Solar Energy Device, Owner hereby agrees to the following.

- A. The Owner's Solar Device is the property of the Owner. Upon sale or change in occupancy of the Townhome, if the Owner's Solar Device is removable, the Owner shall either remove, assign, sell it to the buyer of the Townhome. If the Owner's Solar Device is not removed at the time of sale or change in occupancy, each successive owner shall assume all the terms and conditions of this Agreement until the Owner's Solar Device is removed.
- B. The Owner shall maintain the installation in good, attractive, working condition as determined in the sole discretion of the Association's Board of Directors, at the Owner's sole cost, without contribution from the Association and without any reduction with respect to Owner's assessment obligations.
- C. The Owner shall be financially responsible for repairing any property damage to the Common Area, building exterior, or other townhomes caused, in whole or in part, by Owner's solar device, use, maintenance, repair, removal, or replacement of such installation.
- D. The Owner shall indemnify and hold harmless the Association and its officers, directors, managers, and members from any and all liability, costs, expenses, loss, damage, (including reasonable attorney fees), manner of action, inactions, cause and causes of action, suits, controversies, claims and demands or claim of loss whatsoever, in law or equity, which arise from, or are in any way related to, the installation, maintenance, repair, removal, or replacement of the Owner's Installation. The Owner hereby releases and forever discharges the Association, its officers, directors, members, managers, successors and assigns of and from any and all liability, costs, expenses, loss, damage, (including reasonable attorney fees) manner of action, inactions, cause and causes of action, suits, controversies, claims and demands or claim and loss whatsoever, in law or equity, against the Association that Owner ever had, now has, for, upon or by reason of, any matter, cause or things whatsoever, relating to the installation, operation, maintenance, repair, removal, or replacement of the Owner's Solar Device.
- E. In the event that the Owner's Solar Device needs to be removed and re-installed to allow for the Association to perform its maintenance, repair, and replacement obligations under the Declaration, Owner shall assume all responsibility for such removal and re-installation, by hiring a licensed, insured contractor for the same. Should the Owner fail to perform such removal within a reasonable period of time after reasonable written notice, not less than 72 hours absent an emergency, the Association may undertake such removal on its own, and charge the cost thereof to the Owner pursuant to the Declaration.
- F. If the Owner fails to maintain the Owner Installation, or as provided herein and after written notice from the Association, the Association has the right to perform such maintenance and repairs of the Owner's Solar Device or repair any damage caused by the Owner's Solar Device and assess all maintenance and repair costs against the Owners. Absent an emergency, the Association shall provide the Owner reasonable notice, but not less than 72 hours, to perform any necessary maintenance and repairs.

- G. Any modifications, alterations, or other changes of the Owner's Solar Device, or removal thereof, shall require prior written approval from the Association. Association shall have the right to demand removal of the Owner's Solar Device and restoration of the building or any affected Common Area, at Owner's sole cost, should the Owner's Solar Device cause material damage to the building exterior, any Common Area of the Association, or another owner's Townhome.
- H. In the event of any legal action or arbitration arising out of or in connection with this Agreement, the prevailing party shall be entitled, in addition to any other relief, to reasonable attorney fees, expert witness fees, and costs.
- I. In the event of a default under this Agreement, the remedies available to the non-defaulting party shall include all those remedies provided in the Declaration, or other legal documents of the Association, together with specific performance, damages or both. In addition, the prevailing party in any dispute shall be entitled to recover their reasonable costs and attorney fees. The Association has the option to terminate upon the earlier of: (i) the Owner's breach of this Agreement; or, (ii) the Owner's abandonment of the rights granted to it pursuant to this Agreement
- J. This Agreement is the entire agreement between the parties and may be altered only by a written instrument, executed by the parties hereto.
- K. This Agreement is not intended to, and does not, modify any obligations of the party under the Association's governing documents except as explicitly set forth herein. Specifically, Owner acknowledges that there is no claim of offset for assessments imposed by the Association based on Owner's maintenance of Owner's Solar Device.
- L. This Agreement and the Owner's obligation hereunder shall be a covenant running with the Townhome and shall be binding upon the parties, and their successors and assigns, including all subsequent owners of the Townhome. The Owner hereby agrees to disclose the existence of this Agreement to any prospective purchaser of the Townhome and, at the Association's request, to require any subsequent purchaser of the Townhome to execute a similar agreement with the Association as a condition of any conveyance of the Property.
- M. The invalidity or unenforceability of any particular provision of this Agreement shall not in any way affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.
- N. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Venue shall be proper in Boulder County, Colorado. The Association shall record this Agreement with the Clerk and Recorder of Boulder County, Colorado. Owner shall be responsible for reimbursing the Association all recording fees and such fees shall be collectible as assessments.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

Owner:

Park East Square Homeowners Association, Inc.,
a Colorado nonprofit corporation

President

STATE OF COLORADO)
) ss.

COUNTY OF Boulder)

The foregoing was acknowledged before me this _____ day of _____, 20____, by _____ as President of the Park East Square Homeowners Association, Inc., a Colorado nonprofit corporation.

Witness my hand and official seal.
My commission expires: _____

Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF Boulder)

The foregoing was acknowledged before me this _____ day of _____, 20____ by _____ as Owner of the Townhome.

Witness my hand and official seal.
My commission expires: _____

Notary Public

August 25, 2022

Exhibit A

See attached complete Application for Exterior Modifications for Solar Energy Device including Plans and Specifications