

**Strawberry Square Homeowner's Association
Policy for the Approval, Installation
and Maintenance of Solar Energy Systems Checklist**

From the Policy for the Approval, Installation, and Maintenance...	Initial
Item II. <u>Architectural Review Procedures</u>	
1) <u>Written Request</u> – Submit Architectural Control Application <i>*This can be obtained either at the office or filled out on-line</i>	_____
Item III. <u>Restrictions on Placement of System and Manner of Installation</u>	
1) No installation of Encroachment on Common Area or Another Owner's Lot. <i>*Acknowledgement of encroachment</i>	_____
4) Homeowner shall obtain all required permits and approvals prior to installation. <i>*Acknowledgment of permits and approvals</i>	_____
5) Have a minimum of \$1,000,000 liability insurance, be named an additional insured on our general policy, provide to the Association a certificate of insurance. <i>*Acknowledgement to obtain proper insurance</i>	_____
From the Maintenance and Indemnity Agreement...	
Will get notarized maintenance and indemnity agreement with the Association. <i>*Acknowledgment to get a notary</i>	_____

STRAWBERRY SQUARE HOMEOWNER'S ASSOCIATION
Policy for the Approval, Installation
and Maintenance of Solar Energy Systems

This document sets forth the guidelines and policies of the Strawberry Square Homeowner's Association (the "Association") for the approval, installation and maintenance of solar energy systems within the Strawberry Square planned development (the "Policy"), pursuant to California Civil Code sections 714 and 714.1 and the Association's Amended and Restated Declaration of Covenants, Conditions and Restrictions ("CC&Rs").

I. Permissible Types of Solar Energy Systems.

- 1) Generally. For the purposes of this Policy, the term "solar energy system" is defined in California Civil Code § 801.5(a)(1) and (2) and includes any solar collector or other solar energy device whose primary purpose is to provide for the collection, storage, and distribution of solar energy for (a) space heating or cooling, (b) electric generation, or (c) water heating. Other solar energy devices are not permitted.
- 2) Specific Requirements for Solar Electricity Generation (Photovoltaic) Systems. A solar energy system used for electricity generation permitted under this Policy must meet all safety and performance standards established by the National Electric Code, the Institute of Electrical and Electronics Engineers (IEEE), and accredited testing laboratories, such as Underwriters Laboratories (UL) and applicable rules of the California Public Utilities Commission (CPUC).
- 3) Specific Requirements for Solar Water Heaters. A solar energy system used for water heating permitted under this Policy must be certified by the Solar Rating Certification Corporation (SRCC) or other nationally recognized certification agency. The certification must be for the entire solar energy system and installation.

II. Architectural Review Procedures.

- 1) Written Request, Plans and Specifications. Each owner's lot is subject to the architectural application and approval provisions contained in the Association's CC&Rs. Prior to installing a solar energy system, an owner must submit a written request to the Association's Architectural Committee ("AC") in the same manner and containing the same information as an application for approval of any other architectural modification, addition, or alteration.
- 2) Consultants; Lot Access. In reviewing the owner's application, the AC may retain the services of a solar energy, engineering or other consultant (e.g. roofer, attorney) whose cost shall be reimbursed by the applying owner. By submitting an application for approval regarding a solar energy system, the owner shall be deemed to authorize the AC and/or the Association's consultant to enter the owner's lot, upon reasonable notice to the owner, to review the proposed location for the solar energy system.
- 3) Decisions in Writing. Any Association decision regarding a solar energy system application shall be in writing. If the owner's application is not denied in writing within forty-five (45) days from date that the AC receives the complete application, the application shall be deemed approved, unless the delay is a result of a reasonable request for additional information. If the application is denied, the written decision shall include an explanation of why the application is denied.
- 4) Approval may be Conditioned. The Association may require as a condition of its approval that the owner install the solar energy system in a different location than originally proposed and/or in a different manner and comply with any other reasonable restriction, as long as the

Association's requirements do not exceed the cost and efficiency parameters specified in Section III of this Policy. The Association may also require the installation of a different solar energy system of comparable cost, efficiency, and energy conservation benefits.

- 5) Later Modifications by Association Permissible. After the solar energy system has been installed, the Association reserves the right to require post-installation modifications to the system to address health and safety issues, as well as glare, noise, and other nuisance issues raised after installation.

III. Restrictions on Placement of System and Manner of Installation.

- 1) No Installation or Encroachment on Common Area or Another Owner's Lot. No portion of the solar energy system may be installed on, or encroach upon, any common area or another owner's lot.
- 2) Preferred Location. **The Association may require that any solar energy system shall be installed in the least obtrusive location possible that does not significantly increase the cost of the system or significantly decrease its efficiency or specified performance.** "Least obtrusive location" means a location where the solar energy system is the least visible and produces the least glare that may be seen or noise that may be heard from neighboring residences or common area.
 - a) For solar water heating systems, a significant increase in cost means an amount exceeding \$1,000 or 10% of the cost of the originally proposed system, whichever is less; a significant decrease in the system's performance or efficiency means the efficiency of the originally proposed system is reduced by more than 10%.
 - b) For solar electricity generation (photovoltaic) systems, a significant increase in cost means \$1,000 more than the cost of the originally proposed system; a significant decrease in the system's performance or efficiency means the efficiency of the originally proposed system is reduced by more than 10%.
- 3) Aesthetic Restrictions. Provided that the energy efficiency or specified performance is not significantly decreased, nor the cost significantly increased, the Association may require any or all of the following.
 - a) Least Obtrusive. Depending on the size and configuration of a particular lot or residence, the Association may require that a solar energy system shall be (i) ground rack mounted in an enclosed patio, or (ii) flat mounted on the roof or other exterior building surface (as opposed to raised or angled mounting), or (iii) mounted on the portion of the roof or building surfaces that face away from streets, common areas or neighboring lots.
 - b) Ancillary Equipment. To the maximum extent possible, the Association may require that all wiring, piping, lines, and other associated equipment be installed so as to be least visible from neighboring residences and/or common area. The Association may require that such components be installed underground or painted to blend in with the background color of the surface to which they are attached or placed.
 - c) Camouflaging. The Association may require the owner to install screens or landscaping to screen the solar energy system, at the owner's expense.
- 4) Installation Standards; Compliance with Governmental Requirements. In order to protect and preserve roofs within the development, the Association has developed specific guidelines,

documentation requirements and installation criteria for the installation of solar energy systems on roofs (the "Guidelines"). The Guidelines are attached here as Attachment A and made part of this Policy. Owners wishing to install a solar energy system on the roof must comply with the Guidelines except as otherwise permitted by the Association. In addition to compliance with the Guidelines and meeting the industry safety standards set forth in Section I of this Policy, all solar energy systems must be installed in accordance with applicable building, fire, electrical, plumbing, and related codes and any other applicable governmental requirements. The owner shall obtain all required permits and approvals prior to installation.

- 5) Professional Installation / Contractor Insurance. The solar energy system shall be installed by a licensed contractor qualified in the installation and maintenance of solar energy systems. For the duration of the installation of the solar energy system, the contractor shall (a) maintain in effect a policy of commercial general liability insurance with a minimum limit of \$1,000,000.00 per occurrence, (b) to the extent reasonably feasible, cause the Association, by endorsement, to be named an additional insured under such policies, and (c) provide the Association with a certificate of insurance and such endorsement evidencing the Association's additional insured status.
- 6) Maintenance and Indemnification Agreement Required. As a condition of the Association's approval of the installation of any solar energy system on any roof or other exterior building surface for which the Association has maintenance responsibility, the owner shall be required to enter into a recordable maintenance and indemnity agreement with the Association (in the form attached hereto), binding upon the owner and the owner's successors in interest, in which the owner agrees (a) to be responsible for future maintenance of the solar energy system, (b) to indemnify, defend and hold the Association and its members harmless for any damage or losses that might result from the installation, maintenance and use of the solar energy system, and (c) reimburse the Association for any increased costs of maintenance that the Association incurs as a result of the solar energy system. The Association will prepare this recordable agreement for the applying owner to sign. The owner shall deliver to the Association a signed, notarized original of the agreement for recording in the Santa Clara County Records as a condition of the Association's approval of the owner's application. Upon recordation of the agreement, the Association shall provide the owner with a copy. As a condition of the Association's approval of the installation of any solar energy system, the owner shall reimburse Association for the actual cost of having the agreement prepared and recorded.

IV. Inspection.

The Association and its agents may, upon receipt of the owner's written notice of completion (or upon its own initiative if the owner fails to provide such notice), enter the owner's lot to inspect the solar energy system to ensure that the approved type and design were installed in the location and manner approved by the Association in accordance with this Policy and the CC&Rs. If the Association determines that the system was not installed in the approved location or manner or is otherwise not in compliance with this Policy or the CC&Rs, the Association shall provide the owner with a notice of non-conformity. Upon complying with the notice and hearing requirements set forth in the CC&Rs and finding that there is no valid reason for the continuing non-conformity, the violation shall be deemed a continuing nuisance and the Association may require the owner, at the owner's sole expense, to remedy or remove the solar energy system, including but not limited to, replacing the system with the one approved by the Association, re-installing the system in the approved manner, and/or moving the system to the approved location.

V. Maintenance; Removal; Replacement or Alteration; No Association Liability.

- 1) Owner Responsibility Generally. The owner shall be responsible, at the owner's sole expense, for the installation, maintenance, repair, insurance, use, replacement and removal of the solar energy system. The owner shall at all times, at the owner's sole expense, maintain, repair, insure, use, replace and remove the solar energy system in accordance with all relevant provisions of this Policy, the CC&Rs, the Association's other governing documents including its operating rules; and local, state and federal codes, ordinances, regulations and governmental requirements.
- 2) Owner Responsibility for Increased Association Maintenance Costs. The Association may require the owner to reimburse it for any increase(s) in the cost of maintaining common area or portions of the owner's lot that the Association is obligated to maintain where such cost is reasonably incurred by the Association as a result of the installation or existence of the solar energy system.
- 3) Owner Responsibility for System Removal. The Association may require the owner to remove the solar energy system where the Association determines, in its sole discretion, that (a) removal is necessary to allow the Association access to perform its maintenance responsibilities, (b) the owner has failed to maintain the solar energy system in accordance with this Policy, the CC&Rs, and the Association's operating rules, or (c) the solar energy system creates a health or safety hazard. The owner shall be responsible, at the owner's sole expense, for the removal of the solar energy system (and, if permitted by the Association, for its replacement) and, if the solar energy system is to be removed permanently, for restoring the owner's lot to its condition prior to the installation of the solar energy system.
- 4) Failure to Remove System when Notified. If the owner fails to remove the solar energy system within the time period designated in the notice to the owner demanding its removal, the Association may, to the extent and in the manner permitted in the CC&Rs, enter the owner's lot and remove the system. The owner shall be responsible for all expenses that the Association incurs in removing the solar energy system, and the Association may recover such expenses in any manner allowed by law or the Association's governing documents, including the levying of an assessment for reimbursement to the Association. The Association shall not be responsible to the owner for any losses that the owner may incur, including but not limited to damage to the system, if the Association must remove the system pursuant to this Policy. The Association shall not be responsible to store or otherwise safeguard the system after the Association removes it.
- 5) Replacement, Material Alteration, Expansion or Removal. The owner must submit a written request to the AC and receive architectural approval of any replacement, material alteration, expansion or removal of the solar energy system.
- 6) No Association Liability. The Association shall not be responsible for any losses or liabilities related to or resulting from an owner's solar energy system, including but not limited to (a) any damage caused to the system, (b) replacement of the system, (c) loss of electricity, heating or cooling benefits, (d) loss of revenue from selling or trading electricity generated by the system, or (e) the owner's cost of obtaining energy from alternative sources.

Adopted by the Board of Directors,
Strawberry Square Homeowner's Association
Dee O'Hara, Secretary
Dated: May 1, 2019
5806-01/616523

Attachment A

Strawberry Square Homeowners Association Solar Panel Documentation Requirements and Solar Panel Installation Criteria

Attachment A provides the documentation requirements and installation criteria for the installation of solar energy systems on SSHOA roofs as described in the SSHOA Policy for the Approval, Installation, and Maintenance of Solar Energy Systems. Owners wishing to install a solar energy system on the roof must comply with the requirements and criteria except as otherwise permitted by the Association. In addition, solar panels must meet the industry safety standards set forth in Section I of this Policy, and all solar energy systems must be installed in accordance with applicable building, fire, electrical, plumbing, and related codes and any other applicable governmental requirements. The owner shall obtain all required permits and approvals prior to installation.

Solar Panel Documentation Requirements:

1.	Solar Energy System Application Completed.
2.	Strawberry Square HOA Solar Policy Acknowledgement Completed.
3.	Solar panel specifications, drawings, and installation instructions provided which shall also include: <ul style="list-style-type: none">• Building footprint, location of the PV panels, and locations of photovoltaic and utility interconnection point. Details of anchorage, interconnection of elements, and weatherproofing of roof perforations.
4.	Copies of San Jose permits, as necessary, e.g., solar, building, plumbing, and electrical provided.
5.	Copy of City of San Jose final inspection approval when completed.
6.	Picture of final installation showing the 3-foot clearance where stated.

Solar Panel Installation Criteria

1.	Total panel weight including frame is less than 5 pounds per square foot
2.	Maximum concentrated load at each point of support is less than 40 pounds
3.	Maximum height above the roof surface is less than 18 inches
4.	Photovoltaic (PV) panels are not ballasted
5.	If the solar panels exceed the total panel weight including frame and/or the maximum concentrated load stated above, owner will be required to hire the services of a structural engineer to provide load calculations and framing drawings, including any additional framing required.
6.	Solar panels shall be installed on frames above the roof with mounting standoffs easily flashed with standard 1.5- or 2-inch roof jack flashings. Panels shall not be installed in direct contact with the roof.
7.	When possible, panels shall not be installed over any ventilation. If solar panels need to be installed over roof ventilation (heater vents, waste stack vents etc.), the framework shall provide enough clearance to be a minimum three (3) inches above the tallest vent to allow sufficient air flow to provide adequate ventilation.
8.	A minimum 3-foot clearance shall be provided from any eave, hip, rake, confined rake ridge, valley and property line.
9.	All electrical penetrations shall provide appropriate roof flashing for ¾-inch conduit. Cables shall not be attached to the roof in any manner.
10.	After installation/removal is complete, an inspection shall be performed to ensure compliance with the Association's Solar Energy Systems Policy.

11.	All roof repairs and tie-ins shall be performed by Petersen Dean Roofing (or their approved vendor and/or partner) to maintain the current warranty on the roof through year 2022. After 2022, roof repairs and tie-ins shall be performed by a licensed roofing contractor (i) insured for common interest development (CID) construction and (ii) approved by the Association.
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RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

STRAWBERRY SQUARE HOA
c/o Berding & Weil LLP
2175 N. California Blvd., Ste. 500
Walnut Creek, CA 94596

**MAINTENANCE AND INDEMNIFICATION AGREEMENT
CONCERNING SOLAR PANELS**

This Maintenance and Indemnification Agreement Concerning Solar Panels (this "Agreement") is made between STRAWBERRY SQUARE HOMEOWNER'S ASSOCIATION, a California nonprofit mutual benefit corporation ("Association") and _____ ("Owner".) Association and Owner may hereinafter be referred to individually as a "Party" and jointly as the "Parties."

RECITALS

A. The Association is the association, as defined in California *Civil Code* section 4080, created to manage the Strawberry Square planned development located in the City of San Jose, State of California ("Development".)

B. Owner is the owner of that certain lot within the Development ("Owner's Lot") commonly known as:

San Jose, CA 95129
Assessor Parcel Number _____ - _____ - _____

C. All property within the Development, including Owner's Lot, is subject to that certain Amended and Restated Declaration of Covenants, Conditions and Restrictions of Strawberry Square recorded on January 29, 2009, as Document No. 20115302, Santa Clara County Records CCC&Rs".)

D. The Association reviews architectural applications with respect to exterior alterations of buildings within the Development. Owner and Owner's Lot are subject to the architectural application and approval provisions contained in the CC&Rs.

E. Pursuant to the CC&Rs, Association is responsible to maintain the roof coverings of the buildings within the Development. Owner wishes to obtain Association approval to install a solar energy system on the roof of the building situated on Owner's Lot (the "Building") as such "solar energy systems" are defined in California *Civil Code* section 801.5 (a) (1) and (2) (the "Improvements"). Association is willing to approve Owner's request to install the Improvements, subject to the terms and conditions set forth herein.

F. In consideration for approval to install the Improvements, Owner has agreed to indemnify and hold the Association harmless from any claims or damages arising from

installation and maintenance of the Improvements. Owner has also agreed to reimburse the Association for the cost of any additional roof maintenance related to the Improvements.

NOW THEREFORE, in consideration of the mutual covenants, conditions, and promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

AGREEMENT

1. Incorporation of Recitals. The Recitals above constitute an integral part of this Agreement and are fully incorporated into this Agreement by this reference.
2. Association's Agreement. Subject to the terms and conditions set forth herein and Owner's compliance with the CC&Rs and the rules and regulations governing solar energy systems and architectural standards of the Association (the "Rules"), the Association approves Owner's request to install the Improvements.
3. Owner's Agreement. Owner agrees that the Improvements are or will be installed only by a licensed contractor qualified in the installation and maintenance of solar energy systems and that the installation is in conformance with all local, state, and federal codes, ordinances, or regulations with respect to solar energy systems on private residential property within subdivisions like the Development, including California *Civil Code* sections 714 and 714.1. Moreover, Owner agrees that Owner shall at all times install, maintain, repair, insure, use, replace, and remove the Improvements in accordance with what is approved by Association, as well as in compliance with this Agreement, the CC&Rs, and the Rules including but not limited to provisions for architectural control, standards for owner maintenance of property, and abatement of nuisance with respect to neighboring property. Owner shall be responsible for obtaining all permits required by law for installation, repair, use, and/or removal of the Improvements.
4. Maintenance, Repair, and Use: Reimbursement for Increased Maintenance Costs. Owner shall be solely responsible, at Owner's sole cost and expense, to install, maintain, repair, insure, use, replace, and remove the Improvements in accordance with the CC&Rs, the Rules and this Agreement. Owner agrees to and shall maintain the Improvements in a clean, safe, orderly and first-class condition so as to prevent any damage to the roof or other lots or property. Owner understands that Association is responsible to maintain the roof covering of the Building, as provided in the CC&Rs. In the event that the existence of the Improvements increases the cost or expense to Association in maintaining the roof covering, any other portion of the Building or other component of the Development for which Association has maintenance responsibility, Owner agrees to be financially responsible and reimburse Association for any such additional cost or expense. Owner shall reimburse Association for the cost of any additional roof maintenance or repair expenses within ten (10) days of receipt of a written request for reimbursement. The need for such maintenance shall be as solely determined by Association's Board of Directors.
5. Disturbance/Removal of Improvements. In the event that Association takes action which necessitates the disturbance or removal of the Improvements (e.g. roof maintenance), Owner shall be responsible for all costs associated with such disturbance or removal or subsequent replacement, including any resulting damage except to the extent that such damage results from the gross negligence of the Association. Association shall provide reasonable advance notice to Owner before engaging in any disturbance or removal of the Improvements. Association shall not be obligated to restore the Improvements.

6. Indemnification. Owner shall indemnify, defend, and hold the Association, and each of its directors, officers, members (including owners of other lots in the Development), managing agents, agents, and employees (each, an "Indemnified Party"), absolutely free and harmless with respect to any and all claims, losses, damages, injuries, liabilities, expenses, and costs (including attorneys' fees), incidental to, arising from, or related in any way to this Agreement, Association's execution thereof, or Owner's installation, maintenance, repair, insurance, use, replacement, or removal of the Improvements (including but not limited to any damage to party walls or other components of other lots), except for any such claim, loss, damage, injury, or liability that results from the gross negligence of an Indemnified Party.
7. Inspection of the Alterations. The Improvements shall, at Association's request, be subject to inspection and approval by Association prior to, during, and at the conclusion of installation of the Improvements.
8. Attorneys' Fees. In any action (including arbitration proceedings) brought to enforce this Agreement, the prevailing Party shall be entitled to reasonable attorneys' fees, costs, and expenses against the non-prevailing Party, in addition to all other relief to which the Party may be entitled.
9. Term. This Agreement shall take effect immediately upon execution by the Parties and continue until such time as it is terminated. The Agreement shall be for the benefit of the Parties hereto, their successors and assigns and shall only terminate by a writing executed by all of the Parties hereto or each Party's successor or assign, if any.
10. Recordation/Costs. The Parties consent to the recordation of this Agreement with the Office of the Recorder of the County of Santa Clara. Owner agrees to reimburse Association for the actual cost of preparing and recording this Agreement.
11. Covenant Running with the Land. This Agreement shall run with the land and shall be binding upon and inure to the benefit of the Parties hereto and any successors in interest.
12. Governing Law, Interpretation. This Agreement shall be governed only by the laws of the State of California. This Agreement has been negotiated between, and reviewed by, the Parties. For purposes of interpreting this Agreement, no Party shall be deemed drafter and no provision of this Agreement shall be construed more strictly against one Party than against any other Party. Each Party represents and warrants that the Party had a reasonable opportunity to consult with legal counsel prior to the execution hereof.
13. Severability, No Oral Modifications. The inapplicability or unenforceability of any provision of this Agreement shall not limit or impair the operation or validity of any other provision of this Agreement. Any modification of this Agreement must be in writing and signed by the Parties or their successor(s) in interest.
14. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.
15. No Waiver. The Parties agree that a failure on the part of either Party to exercise, or a delay in exercising, any right, power, or privilege under this Agreement shall not operate as a waiver of any right, power, or privilege hereunder.
16. Authority. Each of the signatories hereto warrants and represents that he or she is competent and authorized to enter into this Agreement on behalf of the Party for whom he or she purports to sign.

17. No Modification of Association's Governing Documents. Except as expressly stated herein, this Agreement does not otherwise alter or modify the rights and obligations under the CC&Rs, Rules, or other Association governing documents.

The following to be notarized by the homeowner:

IN WITNESS WHEREOF, the homeowner(s) have executed this Agreement as of the dates set forth below:

OWNER(s):

Signed: _____ Dated: _____

Print Name: _____

Signed: _____ Dated: _____

Print Name: _____

Notary seal and signature herein

Upon submittal of this notarized document, an officer of the board of director's signature:

STRAWBERRY SQUARE HOMEOWNER'S ASSOCIATION (SSHOA)

Signed: _____ Dated: _____

Print Name: _____, Officer of SSHOA

**Strawberry Square Homeowner's Association
Solar Energy Systems Policy
Acknowledgement Form**

I, _____, warrant that I have received a copy of the following documents:

1. Architectural Control Improvement Application
2. Policy for the Approval, Installation and Maintenance of Solar Energy Systems
(including Attachment A: Guidelines for Installation of Solar Energy Systems)
3. Maintenance and Indemnification Agreement Concerning Solar Panels

Signed: _____

Dated: _____

Strawberry Square Address: _____

San Jose, CA 95129