

Recording Requested By:

PARK IMPERIAL COMMUNITY
ASSOCIATION

WHEN RECORDED RETURN TO:

Fiore, Racobs & Powers
A Professional Law Corporation
74-130 Country Club Drive, Suite 102
Palm Desert, CA 92260

**AGREEMENT AND COVENANT
(RUNNING WITH THE LAND)**

SOLAR INSTALLATIONS

This Agreement and Covenant (Running with the Land) ("Covenant") is made and entered into between _____, ("Owner"), and PARK IMPERIAL COMMUNITY ASSOCIATION, a California nonprofit mutual benefit corporation ("Association"), and is effective as of the date provided for in this Covenant.

RECITALS

- A. Owner is the owner of a subleasehold interest in real property located in the County of Riverside, State of California (the "Subject Property"), commonly known as _____, Palm Springs, California, and legally described as:

Parcel ____, as shown on the Record of Survey Map recorded in Book 30, Pages 89 and 90 of Record of Surveys in the office on the County Recorder of Riverside County.

- B. Association is a nonprofit mutual benefit corporation organized and existing under the laws of the State of California and was established and incorporated as part of a general plan to provide for the management, protection, maintenance, preservation, operation, development and control of, among other property, the real property (the "Common Area") described as:

Parcels 24 and 53, as shown on the Record of Survey Map recorded in Book 30, Pages 89 and 90 of Record of Surveys in the office on the County Recorder of Riverside County ("Record of Survey Map"), and those portions of Parcels 1 to 23 and 25 to 52, inclusive, as shown on the Record of Survey Map, which are not a separate interest Unit, as defined in Section 1.25 of the Restated Declaration of Covenants, Conditions, and Restrictions for Park Imperial Community Association, recorded as Instrument No. 2001-509573, on October 19, 2001, in the Official Records of Riverside County, California ("Declaration").

- C. Association is obligated to operate, control, repair, maintain and restore the Common Area within the development commonly known as Park Imperial North, as set forth in the Declaration.

- D. Owner applied for and received the written approval of the Association to install a solar energy system on the roof over the Subject Property ("Improvement"), as shown on the application and plans and specifications, which include the name of the contractor, contractor's license number, the contractor's liability policy number, and the name of the carrier, dated _____, and consisting of _____ () pages, which are incorporated into this Covenant by this reference.
- E. Pursuant to the Declaration, at Article 6 and Exhibit A – Allocation of Maintenance Responsibilities, the Association is responsible for maintaining the Subject Property's roof. The installation and maintenance of solar-energy equipment on the roof of the Subject Property will affect the integrity of the roof and roofing system, lead to increased roof traffic, higher roof maintenance and repair costs, require special attention during re-roofing and otherwise increase the Association's costs. Because the entire roof system may be affected by, among other things, increased roof traffic related to the installation, repair and maintenance of Owner's solar-energy equipment and the specific cause of any leak, injury or damage may not be subject to precise determination, the parties agree it is a fair and reasonable allocation of responsibility for the Owner to assume all responsibility for the entirety of the roofing surfaces upon which any of Owner's solar-energy equipment is installed.
- F. Owner and Association intend to fix and determine the rights and obligations of the parties and their successors-in-interest, including all present and future members of the Association, with respect to the maintenance, use, repair and improvement of the Improvement and resulting impacts on the Association-maintained roof system, in accordance with Civil Code Section 714.1(c), and have therefore entered into this Covenant.
- G. Owner and Association intend that this Covenant be made and entered into pursuant to the provisions of California Civil Code Section 1468, in effect as of the effective date of this Covenant, and that this Covenant shall run with the land of the Owner (the Subject Property) and the land owned and controlled by the Association (the Common Area) and that it shall be binding on Owner, each successive owner of the Subject Property during their period of ownership, and on each person having any interest in the Subject Property, and that it shall be for the benefit of Association and Association's successors and assigns.
- H. Owner represents that the consent of no other party is required to grant priority to this Covenant over any and all security interests in the Subject Property.

NOW, THEREFORE, in consideration of the terms and conditions contained in this Covenant, Owner and Association hereby agree as follows:

COVENANT

1. The Owner's land (the Subject Property) which is affected and burdened by this Covenant is located in the City of Palm Springs, County of Riverside, State of California, and is described in paragraph A, above.
2. The Association's land (the Common Area) which is affected and benefited by this Covenant (and each of the individual parcels of land comprising the Common Area) is located in the City of Palm Springs, County of Riverside, State of California, and is described in paragraph B, above.

3. Owner agrees and covenants with Association, expressly for the benefit of the Common Area, to do or refrain from doing the following acts on the Subject Property, which acts relate to the use, repair, maintenance, replacement or improvement of the Subject Property and the Association Common Area:
 - a. Owner agrees to assume sole and full responsibility for maintaining, repairing and replacing the solar-energy equipment upon the Subject Property's roof in a safe, neat and attractive condition and in good repair.
 - b. Owner agrees to be responsible for the future maintenance, repair, restoration and replacement of the exterior surfaces and roof areas, including substrate and substructures, affected by the Improvement, to the extent such maintenance, repair, restoration and replacement are as a direct or indirect result of the Improvement. The determination of whether any maintenance, repair, restoration and replacement required are as a direct or indirect result of the Improvement is at the sole and absolute discretion of the Association. Owner shall also be responsible for the costs of restoration of the Common Area, Exclusive Use Common Areas or Units after removal of the Improvement.
 - c. Owner agrees to be responsible for the removal of the Improvement from the roof for roof repair, maintenance or replacement, as necessary and appropriate, in the Association's sole determination. Owner further agrees that the Association may remove the Improvement from the roof, if such is reasonably necessary and appropriate, in the Association's sole determination, and Owner fails to act within fourteen (14) days of the Association's demand that Owner effect such removal, and that Owner shall pay the costs of removing the Improvement from the roof for roof repair, maintenance or replacement, in such circumstances.
 - d. Owner accepts all liability and responsibility for any damages resulting to Association, the Subject Property, Owners, the Common Area, all property and structures adjacent to the Subject Property, all persons and other real or personal property arising from or related to (i) Association's consent to construction of the Improvement, and (ii) to the design, installation, maintenance, use, repair, replacement or removal of the Improvement.
 - e. Owner agrees to indemnify the Association, its members, officers, directors, agents, representatives, members and employees, and to save and hold them harmless and to defend them at Owner's sole expense from any liability or claims, demands, damages, expenses (including, without limitation, attorneys' fees), costs or judgments that the Association, its members, officers, directors, agents, representatives and employees, may suffer arising out of or related to (i) construction or maintenance of the solar-energy equipment; (ii) the location, design, maintenance, use, repair or improvement of the solar-energy equipment; (iii) the Association's consent to Owner's assumption of maintenance responsibility for the solar-energy equipment; and (iv) maintenance or modification of the solar-energy equipment.
 - f. Owner shall be required to maintain a homeowner liability coverage insurance policy in the amount of \$1,000,000. Owner shall also be required to provide Association with the corresponding certificate of insurance within fourteen (14) days of approval of the application and annually thereafter, and ensure that such coverage cannot be

cancelled without at least fourteen (14) days' prior written notice of the carrier's intent to cancel the policy, which notice must be provided to Association.

- g. Owner shall comply with the Declaration and acknowledges the right of Association to reasonably enforce the Declaration in accordance with the law and its terms. Owner further covenants that the maintenance, installation, use, repair and replacement of the Improvement by Owner will be in accordance with the law and the Declaration and subject to routine inspections by an independent consultant engaged by Association, which may include inspections inside the Unit and a charge for these services, if warranted. Owner further agrees that, by entering into this Covenant, Association has not waived any rights of enforcement, regulation or control as provided in the Declaration.
 - h. Owner shall not alter, change, or intensify their use of the Improvement and, although Owner may and shall maintain the Improvement, Owner is prohibited from upgrading or modifying the Improvement in any manner whatsoever without the prior consent of the Architectural Committee or the Board of Directors.
 - i. Owner represents that the Improvement meets all applicable health and safety standards and requirements imposed by state and local permitting authorities. Owner further represents that, if the Improvement is for heating water, the entire Improvement is certified by the Solar Rating Certification Corporation (SRCC) or other nationally recognized certification agency, and meets the requirements of the IBC, UPC as adopted by the local jurisdiction having authority and water purveyor rules, including any requirements for backflow device installation and testing. Owner further represents that, if the Improvement is for producing electricity, the Improvement meets all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories and, where applicable, rules of the Public Utilities Commission regarding safety and reliability.
- 4. Owner consents to and acknowledges that this Agreement and Covenant will be recorded with the County Recorder, Riverside County, California, and may therefore affect title to or the value of Owner's interest in the Subject Property. Owner further agrees to indemnify and hold Association, and its officers, employees, directors, agents, and representatives, including Architectural Committee members, harmless from and against any and all liability, claims, damages, expenses (including, without limitation, attorneys' fees), costs or judgments arising out of or resulting from the recording of this Covenant.
 - 5. Neither the Association nor its legal counsel has rendered advice to Owner of any nature whatsoever with respect to execution of this Covenant, and Owner has been advised by or had the opportunity to seek advice from independent legal counsel in this regard.
 - 6. Owner and Association further agree and covenant that the covenants provided in this Covenant shall run with the land owned by Owner (the Subject Property) and the land owned by Association (the Common Area) and shall be binding on Owner and each and all successive owners of the Subject Property, or any portion thereof, during such successor's ownership of the same, and on each person having any interest in the Subject Property, or any portion thereof, for the benefit of the land of Association, its successors and assigns, and its members and their successors and assigns.

7. In the event Owner shall lease the Subject Property, Owner shall make any claim or demand or pursue any legal remedy against Owner's lessee(s) necessary for Owner to fulfill the obligations of Owner under this Covenant.
8. Owner agrees and represents that Owner will not look to Association, or hold Association responsible, to disclose to potential buyers of the Subject Property any information concerning the Improvement or this Covenant, and Association shall have no obligation to disclose such information.
9. The term of this Covenant shall coincide with the term of the Declaration, and any extensions of the Declaration.
10. The covenants contained in this Covenant shall be deemed separate, distinct, and severable covenants between Owner and Association as to the Subject Property and the Common Area.
11. If any provision or part of this Covenant is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way.
12. The prevailing party in any action to enforce or interpret the terms and conditions of this Covenant shall be entitled to recover from the other its reasonable attorneys' fees and costs.
13. Any notices, requests, demands, instructions or other communications in conjunction with this Covenant shall be personally delivered or mailed by first-class mail, certified and return receipt requested, to the parties as follows:

To Owner: _____

To Association: Park Imperial Community Association
 c/o Personalized Property Management
 68-950 Adelina Rd
 Cathedral, City, CA 92234

14. The address to which such notice or communication is to be sent may be changed by a party from time to time by a notice delivered or mailed as provided in this Covenant. Any notice or other communication required to be given by this Covenant shall not be required to be given to a successor-in-interest to a party unless such successor-in-interest has given notice, as provided in this Covenant, to the other party of its ownership interest in the land subject to this Covenant and of the address to which any such notice or communication is to be directed.
15. This Covenant is made in, and shall be construed in accordance with, the laws of the State of California.
16. This Covenant shall be effective upon its execution by Owner and Association and its recordation in the Office of the County Recorder, County of Riverside, State of California.

17. This Covenant may be executed in counterparts which, upon execution by all parties, are to be taken together as one instrument.

"Owner"

Date: _____

Date: _____

"Association"

PARK IMPERIAL COMMUNITY ASSOCIATION

Date: _____ By: _____

Its: _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Riverside)

On _____, 20____, before me, _____,
(insert name of the officer)

Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Riverside)

On _____, 20____, before me, _____,
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Signature_____